

# LECC

Law Enforcement  
Conduct Commission

## The New South Wales Child Protection Register: Operation Tusket Supplementary Report

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2021



## Law Enforcement Conduct Commission

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22 June 2021

The Hon Matthew Mason-Cox MLC  
President  
Legislative Council  
Parliament House  
SYDNEY NSW 2000

The Hon Jonathan O'Dea MP  
Speaker  
Legislative Assembly  
Parliament House  
SYDNEY NSW 2000

## Dear Mr President and Mr Speaker

In accordance with section 132(3) of the *Law Enforcement Conduct Commission Act 2016*, the Commission hereby furnishes to you its supplementary report in relation to its investigation in Operation Tuskett, entitled *The New South Wales Child Protection Register: Operation Tuskett Supplementary Report*.

Pursuant to section 142(2) of the Act, I recommend that this report be made public immediately.

Yours sincerely,



**The Hon Lea Drake**

Commissioner for Integrity

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# Foreword

It has been 19 months since the Commission released its report *The New South Wales Child Protection Register: Operation Tusk Final Report*, which detailed a long history of significant issues with the NSW Child Protection Register, dating back to 2002. Errors had resulted in child sex offenders being unmonitored in the community, and in other cases people being wrongly convicted, and even unlawfully imprisoned.

The Commission noted in the *Final Report* that there were a number of factors which had contributed over time to errors being made in the administration of the Register. Some of these factors were within the ability of the NSW Police Force to address. These included ensuring adequate resourcing of the specialist unit responsible for maintaining the Register, dedicated legal support for that unit, and upgrades to electronic systems. The Commission made recommendations to the NSW Police Force to adopt these solutions and we are pleased to report in this supplementary report that police have implemented these recommendations.

The Commission concluded in the *Final Report* that one of the most significant causes of the errors in the Register was how difficult it can be to interpret and apply the provisions of the *Child Protection (Offenders Registration) Act 2000* (CPOR Act) correctly. The complexity and ambiguity in key provisions in that Act make it inevitable that errors will be made in its implementation. Further errors in the Register have been identified since the *Final Report* was published.

The NSW Police Force has taken significant steps to substantially improve processes for identifying errors existing in the Register and to prevent new errors from occurring. It has implemented, or is in the process of implementing, all of our recommendations that are within its power to implement. However, errors will continue to be made in the administration of the Register unless the law is changed. The NSW Commissioner of Police has described the current legislative framework for the Register as ‘unworkable’, and the NSW Police Force has been working to develop proposals for reform. The Commission agrees with and supports the position of the Commissioner of Police.

It is imperative that the NSW Parliament substantially reform the CPOR Act, as a matter of urgency. It is inevitable that the number of people who need to be managed on the Register will continue to grow. According to the NSW Bureau of Crime Statistics and Research, from January 2019 to December 2020 the number of incidents of child victims reporting current sexual assaults increased by 21.3%. The greater the number of people who come within the scope of the Register, the higher the risk that errors will be made under the current law.

The Commission thanks the NSW Police Force, in particular Deputy Commissioner David Hudson and his staff, for the collaborative approach adopted throughout Operation Tusk, including in this final review stage. The NSW Police Force provided the Commission with a progress report on its implementation of the recommendations, and documentation and information about specific cases. It has also agreed to take further action to implement one of our recommendations.

The Commission also thanks the Minister for Police and Emergency Services, the Hon David Elliott MP, for the letter he provided to the Commission. The Commission had written to the Minister in his capacity as the Minister responsible for the CPOR Act, to request a response from the NSW Government to those recommendations that would require law reform. The Minister's response has been referred to in the report.

Legal Aid NSW also approached the Commission and provided information relevant to this review, and the Commission thanks Legal Aid NSW for the information it provided.

It is important to note that the NSW Police Force is not the only agency with responsibilities in relation to the Register. The CPOR Act places obligations on sentencing courts and certain NSW authorities to assist police to implement the Register. The courts have failed to fulfil their obligations, and there have been failures in the performance of these obligations by others for almost as long as the Register has existed.

All those authorities who have responsibilities under the Act, as well as the NSW Parliament, have a crucial role to play at this juncture, to ensure that the Register is a robust and accurate tool for monitoring offenders and protecting children from harm.



**The Hon Lea Drake**

**Commissioner for Integrity**

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# Executive Summary

In September 2017 the Law Enforcement Conduct Commission commenced an investigation into the administration of the NSW Child Protection Register (the Register) by the NSW Police Force. On 31 October 2019 the Commission released its report of the investigation: *The New South Wales Child Protection Register: Operation Tusket Final Report (Operation Tusket Final Report)*.<sup>1</sup>

The Commission's investigation established there had been problems with the Register for over 17 years. Since 2002 the NSW Police Force had made over 700 incorrect decisions in its administration of the Register under the *Child Protection (Offenders Registration) Act 2000* (NSW) (CPOR Act). These included decisions about which persons were 'registrable persons' required to be placed on the Register, and decisions about the number of years registrable persons were legally required to report their information to police. The consequences of these incorrect decisions included child sex offenders being in the community unmonitored, police unlawfully requiring people to report their personal information and conducting unlawful inspections of people's homes, and people being wrongly charged, arrested, convicted and even imprisoned for offences under the CPOR Act.

The Commission also investigated how the NSW Police Force responded to persons who had been subjected to unlawful or unjust actions by police as a consequence of errors in the Register. It found that while police sought annulments when they identified the wrongful convictions, they did not write to notify persons that errors had been made in their Register cases. Further, the NSW Police Force wrote letters that were misleading to persons whose Register cases had been affected by errors.

The Commission made 11 recommendations in the *Operation Tusket Final Report* aimed at remedying the unlawful conduct that had occurred as a result of errors in the Register, ensuring any new errors are identified and reducing the risk of errors being made in future. The purpose of this supplementary report is to provide a public update on the actions the NSW Police Force has taken to implement the 11 recommendations. The recommendations and their implementation status are summarised in the table in the following section.

Overall, the NSW Police Force has either fully implemented, or is in the process of implementing, all of the recommendations that are within the control of police to fully implement. Those recommendations which are outstanding are those which cannot be implemented by the NSW Police Force alone, but will require action from the NSW Government, the NSW Parliament and other authorities.

The Commission's key recommendation was that the CPOR Act be comprehensively reformed (the Commission had recommended this be informed by a review conducted by the NSW Law Reform Commission). The current legal framework for the Register can be very difficult to implement, making errors inevitable. The NSW Police Force has done considerable work to develop proposals for reform. This recommendation requires action by the NSW Government. The NSW Government

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<sup>1</sup> Available on the Law Enforcement Conduct Commission website at: <https://www.lecc.nsw.gov.au/investigations/past-investigations/2019/operation-tusket>.



has acknowledged the law reform proposal work being done by police, but has not made any commitments to amend the Act. The need for reform of the CPOR Act is discussed in Chapter 1.

The Commission had recommended the NSW Police Force write to persons who may have been subjected to unlawful or unjust police actions as a result of errors in the Register. The NSW Police Force did send letters to 155 people. However, the majority of the letters did not give enough detail about the error in the person's case for recipients to make informed decisions about how to respond. The letters also may have misled persons who are currently registrable into thinking they do not need to report to police. As discussed in Chapter 2, the NSW Police Force has agreed to send a further letter to these people, providing more specific information, and confirming if the person has current reporting obligations. The NSW Police Force is in the process of attending to this additional work.

The Commission had made three recommendations to help identify errors in the Register. Two of the recommendations, to introduce provisions into the CPOR Act for a statutory review mechanism and for independent compliance auditing of the Register, require legislative action. The NSW Police Force supports and is pursuing both of these amendments through its development of a law reform proposal paper. The NSW Police Force has implemented the Commission's other recommendation, which was for police to provide the people it places on the Register with the reasons for its decisions regarding the application of the CPOR Act to that person. These recommendations and the responses are discussed in Chapter 3.

In Chapter 4 the Commission discusses its four recommendations to help prevent errors occurring in the Register (in addition to substantial reform of the CPOR Act). The NSW Police Force has fully implemented three of these recommendations by adopting a responsive model for resourcing the Child Protection Registry (including a review of its resourcing in 2020), establishing a dedicated legal officer position in that Registry and completing an upgrade to CPR COPS, the database used to record the Register. In relation to the fourth recommendation, to develop and implement a Child Protection Register governance framework, the NSW Police Force informed the Commission this framework was actively being developed at the time of writing.

Finally, the Commission had made two recommendations to improve collaboration between the NSW Police Force, the courts, and the various 'supervising authorities' that have statutory responsibilities under the CPOR Act in relation to the Register. The Commission recommended the NSW Police Force initiate the establishment of an interagency Child Protection Register Committee, and the creation and implementation of an interagency governance framework in relation to the Register. As discussed in Chapter 5, the NSW Police Force has formed an interagency working group to develop the proposals for reform of the CPOR Act. It informed us that this group would also consider the establishment of an (interagency) operational working group, and that group, if established, would consider the development of an interagency governance framework. Of course, implementation of these two recommendations will require action from the courts and the supervising authorities.

In Chapter 6 the Commission concludes, in light of this report, that a further inquiry into the administration of the Register at the end of this year would be superfluous. However, if the NSW Parliament does not substantially reform the CPOR Act, a further inquiry by the Commission may become necessary in future.

# Table of recommendations in *Operation Tusk Final Report*

Summary of recommendation	Authority responsible for implementation	Has recommendation been implemented, fully or partially?	Relevant chapter of this report
<b>Recommendation 1:</b> Notify persons who may have been subjected to unlawful or unjust actions by the NSW Police Force.	NSW Police Force	Partially implemented (implementation in progress)	Ch. 2
<b>Recommendation 2:</b> Adopt a responsive model of resourcing for the Child Protection Registry.	NSW Police Force	Fully implemented	Ch. 4
<b>Recommendation 3:</b> Refer the CPOR Act to the NSW Law Reform Commission for review.	NSW Government	Not implemented	Ch. 1
<b>Recommendation 4:</b> Introduce a statutory review mechanism.	NSW Parliament	Not implemented	Ch. 3
<b>Recommendation 5:</b> Establish a dedicated legal officer position in the Child Protection Registry.	NSW Police Force	Fully implemented	Ch. 4
<b>Recommendation 6:</b> Provide reasons for decisions under the CPOR Act.	NSW Police Force	Fully implemented	Ch. 3
<b>Recommendation 7:</b> Prioritise the 'CPR COPS' upgrade project.	NSW Police Force	Fully implemented	Ch. 4
<b>Recommendation 8:</b> Establish an Interagency Child Protection Register Committee.	NSW Police Force + other authorities with obligations under CPOR Act	Not implemented	Ch. 5
<b>Recommendation 9:</b> Develop an interagency governance framework.	NSW Police Force + other authorities with obligations under CPOR Act	Not implemented	Ch. 5
<b>Recommendation 10:</b> Implement a Child Protection Register governance framework.	NSW Police Force	Partially implemented (implementation still in progress)	Ch. 4
<b>Recommendation 11:</b> Introduce independent compliance auditing of the Child Protection Register.	NSW Parliament	Not implemented	Ch. 3

# 1. The need for change in the law

## 1.1 Reasons for the recommendation

The Commission's investigation established that one of the main reasons the NSW Police Force had made over 700 errors in administering the Register was that the CPOR Act can be very difficult to interpret and apply in practice. The Commission concluded that the CPOR Act is so complex and ambiguous in key aspects that it creates an inherent risk of errors occurring in the Register which the NSW Police Force cannot mitigate. The Commissioner of Police in his letter to the Commission on 30 September 2019 described the framework for the Register in the CPOR Act as 'unworkable', and agreed with the Commission that a new framework is required.<sup>2</sup>

It is not only the NSW Police Force that has found the CPOR Act very challenging to implement; in the early years of the Register court staff found it so difficult to determine who was registrable under the Act that the responsibility for identifying registrable persons effectively shifted onto police.<sup>3</sup>

**The way the CPOR Act is drafted creates such difficulties for those who have to apply it, that it undermines the Act's object of ensuring that registrable persons are monitored and comply with their obligations. In Appendix 2 of the *Operation Tusk* Final Report the Commission set out in detail over 20 problems with the Act. In summary:**

- the CPOR Act makes it difficult, if not impossible, to identify every offence that will be registrable, as it does not specifically list each registrable offence, and there are errors in the Act;
- a significant amount of detail about a person's criminal history is required to correctly determine whether a person is registrable and their reporting period, sometimes more detail than was required to convict the person of the offences;
- certain provisions which are ambiguous or lack specificity allow for different interpretations and inconsistent decisions as to who is registrable and the length of their reporting period, and when their reporting obligations will be extended;
- ambiguity in some of the reporting obligation provisions, particularly in relation to timeframes for reporting, make it unclear exactly when criminal liability for failing to report will arise, and
- the provisions relating to the reporting obligations of persons who commit registrable offences in other jurisdictions and move to New South Wales are particularly challenging to apply.

Some of these issues have resulted in incorrect decisions being made about which persons are registrable under the Act, and how long other registrable persons are

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<sup>2</sup> Letter from Commissioner of Police, NSW Police Force, to Chief Commissioner, Law Enforcement Conduct Commission, 30 September 2019, p 1.

<sup>3</sup> Law Enforcement Conduct Commission, *The New South Wales Child Protection Register: Operation Tusk Final Report* (2019) Chapter 7.

required by the Act to report their personal information to police. The consequences have been significant; people have been wrongly convicted and even unlawfully imprisoned for not complying with reporting obligations in the CPOR Act when those obligations did not apply to them.

The Commission accordingly recommended that the Attorney General refer the CPOR Act to the NSW Law Reform Commission for urgent and comprehensive review. The Commission's view was that the NSW Law Reform Commission would be best placed to conduct a comprehensive, consultative review of the CPOR Act, and make detailed recommendations for new legislative provisions. However the Commission acknowledged that this must be completed in a timely manner. Some of the problems with the CPOR Act relate to provisions which are fundamental to the operation of the Act, such as the definitions of which offences and which persons are registrable, and the calculation of reporting periods. The Commission therefore recommended that the review of the CPOR Act be completed within six months.

## 1.2 Commission's Final Report recommendation

The Commission made the following recommendation in the *Operation Tuskett Final Report* in relation to reform of the CPOR Act:

**Recommendation 3: Refer the CPOR Act to the NSW Law Reform Commission for review.** The Attorney-General urgently refer the *Child Protection (Offenders Registration) Act 2000* (NSW) to the NSW Law Reform Commission for comprehensive review, to be completed within six months.

## 1.3 Responses to the recommendation from the NSW Police Force and the Minister for Police

The NSW Police Force agrees with the Commission that there is an urgent need for comprehensive reform of the CPOR Act.

In September 2019 the NSW Police Force stated to the Commission that it 'supports legislative reform as a matter of urgency but does not support referral to the NSW Law Reform Commission', due to concerns about the length of time it would take for the Law Reform Commission to complete its review, and then for consideration and implementation of its recommendations.<sup>4</sup>

The NSW Police Force advised that it had prepared its own proposal for a 'wholesale redraft of the CPOR Act', drawing on the Commission's analysis, and it intended to consult with 'key Government stakeholders (NSW Health and Communities and Justice)' about that proposal, and then submit it to the NSW Government on an urgent basis. The NSW Police Force stated that 'given LECC's extensive review, it is appropriate to approach Government to seek legislative reform', rather than a referral to the Law Reform Commission.<sup>5</sup>

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<sup>4</sup> Letter from Commissioner of Police, NSW Police Force, to Chief Commissioner, Law Enforcement Conduct Commission, 30 September 2019, p 2 and Annexure B - Submissions on Proposed Recommendations.

<sup>5</sup> Letter from Commissioner of Police, NSW Police Force, to Chief Commissioner, Law Enforcement Conduct Commission, 30 September 2019, pp 1-2 and Annexure B - Submissions on Proposed Recommendations.

The NSW Police Force provided a draft of its proposals for reform of the CPOR Act to the Commission on 11 October 2019 (at which time the *Operation Tuskett Final Report* was being finalised). In February 2020 Commission staff met with members of the NSW Police Force to provide initial feedback on the draft proposals.

On 22 May 2020 the Commission wrote to the Hon David Elliott MP, Minister for Police and Emergency Services, as the Minister responsible for the CPOR Act, for a response from the NSW Government to Recommendation 3 (as well as Recommendations 4 and 11, discussed in Chapter 3).

The Minister replied on 29 June 2020 and referred the Commission to the detailed review of the CPOR Act being conducted by the NSW Police Force, stating that review 'is very carefully considering the recommendations and observations made in the Operation Tuskett Final Report in relation to the legislative framework'.<sup>6</sup> The Minister informed the Commission that the NSW Police Force had established an interagency working group 'in order to actively consult with other NSW Government agencies on the legislative review'. The Minister stated that the NSW Police Force 'intends on closely consulting with the Law Enforcement Conduct Commission as the review progresses'.

In July 2020, at the invitation of the NSW Police Force, a Commission representative provided a presentation to the interagency working group on the problems in the CPOR Act.

Later in July 2020 the NSW Police Force confirmed in its progress report to the Commission that it 'maintains its support of urgent reform of the CPOR Act as an alternative to referral of the CPOR Act to the NSW Law Reform Commission'. It stated:

The NSWPF has commenced a detailed review of the CPOR Act which is carefully considering the recommendations and observations made in the Operation Tuskett report. The NSWPF's review includes consideration of recommendations 4 and 11 of the Operation Tuskett report and all of the significant issues with the CPOR Act identified in Appendix 2 of the Operation Tuskett report.<sup>7</sup>

On 16 November 2020 the NSW Police Force provided a copy of its revised proposal paper for reforms to the CPOR Act to the Commission for comment, along with other government agencies. The Commission provided its comments on the proposal paper to the NSW Police Force on 17 December 2020.

In March 2021 the NSW Police Force confirmed that it was 'pursuing the revision of the [CPOR Act]'. It stated that its review of the CPOR Act was continuing, and that the NSW Police Force 'will present recommendations for legislative change for Government consideration at completion of the review'.<sup>8</sup>

Although the NSW Government has not implemented Recommendation 3, the Commission acknowledges the work the NSW Police Force has done through its

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<sup>6</sup> Letter from the Minister for Police and Emergency Services, NSW Government, to A/Chief Commissioner, Law Enforcement Conduct Commission, 29 June 2020.

<sup>7</sup> NSW Police Force, *Progress Report on the NSWPF's Implementation of Recommendations made in LECC's Operation Tuskett Report*, 20 July 2020, Annexure A.

<sup>8</sup> Letter from Commissioner of Police, NSW Police Force, to Commissioner for Integrity, Law Enforcement Conduct Commission, 18 March 2021 (Attachment 'Status Report - Operation Tuskett - Child Protection Register State Crime Command, NSW Police Force').

review of the CPOR Act and the interagency working group to actively progress the case for substantial reform of the Act.

**Conclusion: Recommendation 3 has not been implemented.**

## 1.4 Urgent need for substantial reform of the CPOR Act

The Commission shares the concern raised by the NSW Police Force about the need for the CPOR Act to be reformed as soon as possible. It has been 19 months since the publication of the *Operation Tuskett Final Report*. In that time further errors in the Register have been identified. **The Commission fully anticipates that errors will continue to be made in the administration of the Register until the legal framework is substantially revised.**

The letter from the Minister for Police indicates that the NSW Government is looking to the NSW Police Force, rather than the NSW Law Reform Commission, to develop proposals for reform of the CPOR Act, with input from other agencies. The Commission acknowledges the work that the NSW Police Force has undertaken to develop its own proposals for reform of the CPOR Act.

The Commission also welcomes the establishment by the NSW Police Force of an interagency working group to provide input into those proposals. It is crucial that the other agencies which have obligations under the CPOR Act to assist police with the maintenance of the Register are given the opportunity to consider the current problems and participate in the development of proposals for legislative changes. This includes sentencing courts, the Department of Family and Community Services and Justice, Corrective Services NSW and NSW Health.

It is also crucial that all those authorities that have a role in implementing the CPOR Act are consulted on any proposed changes to those roles. One such example is the question (raised by the Commission in the *Operation Tuskett Final Report*) whether judicial officers should be given statutory responsibility for determining whether a person meets the definition of a registrable person, and calculating their initial reporting period.<sup>9</sup>

Other organisations will also be able to provide important input into proposals for law reform. For example, on 30 June 2020 the President of the Law Society of New South Wales wrote to the Attorney General the Hon Mark Speakman SC MP to indicate that the Law Society supported the CPOR Act being referred to the NSW Law Reform Commission, and would participate in any review of the Act.<sup>10</sup> Also, as noted in Chapters 2 and 3, Legal Aid NSW has experience and expertise in dealing with the complexities of the CPOR Act.

Given the history of problems with the current legislative framework, the Commission urges the NSW Government to consider releasing an exposure draft of any proposed new bill for consultation prior to finalising it for introduction in Parliament, so that organisations with relevant expertise can provide comment to help identify any drafting issues.

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<sup>9</sup> Law Enforcement Conduct Commission, *The New South Wales Child Protection Register: Operation Tuskett Final Report* (2019) Chapter 7.

<sup>10</sup> Letter from President, Law Society of New South Wales to the Attorney General, NSW Government, 30 June 2020.

The Commission emphasises that unless the problems with the statutory framework set out in the *Operation Tuskiet Final Report* are adequately addressed through the law reform process, it is inevitable that errors will continue to be made in the administration of the Register, including errors of the types, and with the consequences, outlined in that report. As the NSW Police Force has stated, until the statutory framework for the Register is simplified ‘there exists a level of risk that cannot be mitigated’.<sup>11</sup>

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<sup>11</sup> NSW Police Force response to the interim report of Operation Tuskiet, 23 October 2018, F/2018/94374; D/2018/851613, pp 2 and 3.

## 2. Notification to persons affected by errors

### 2.1 Background to the recommendation

In 2016 when the NSW Police Force started reviewing Register case files (the CPR case review) it discovered it had placed some people on the Register who were not 'registrable persons' under the CPOR Act. In other cases it had incorrectly calculated the period of time during which a registrable person was legally required to comply with the reporting obligations in the CPOR Act (referred to as their 'reporting period'). As a result police had required persons to comply with reporting obligations for longer than the reporting periods prescribed for them by the CPOR Act.

These types of errors in applying the CPOR Act led to some persons being subjected to unlawful or unjust actions by police. Such actions included police requiring persons to report their personal information and inspecting persons' homes when there was no lawful basis for police to do so, and persons being wrongly charged, arrested, convicted and sentenced to imprisonment for failing to comply with reporting obligations under the CPOR Act.

Generally when the NSW Police Force discovered that a person had been wrongly convicted for an offence under the CPOR Act, it contacted the courts or the Department of Justice to seek an annulment of the conviction. However, the NSW Police Force did not proactively notify the people who it identified had been subjected to unlawful reporting obligations, unlawful inspections, unjust charges or wrongful convictions.

The NSW Police Force did send out letters to persons who were, at the date the error was discovered, still reporting their information to police when they had no obligation to do so, to ensure they did not continue to report. However in those letters the NSW Police Force did not disclose that it had made errors in those cases. Nor did the letters inform the recipients that police had (as a result of these errors) taken unlawful or unjust actions against them, even when the NSW Police Force was aware that this had occurred. Relying on internal legal advice, the NSW Police Force intentionally limited the information it provided to such persons, to avoid the prospect of civil claims. The Commission found that letters the NSW Police Force wrote were in fact misleading.<sup>12</sup>

On 30 September 2019 the NSW Police Force acknowledged that 'letters to approximately 185 people were misleading because they did not disclose errors made by the NSWPF'.<sup>13</sup> The NSW Police Force stated:

NSWPF will write to approximately 185 people who were incorrectly determined to be a registrable person or whose reporting period was calculated as being too long. The letter will notify those people that an error has been made in their case, identify types of actions that may have been taken, apologise for the error and

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<sup>12</sup> Law Enforcement Conduct Commission, *The New South Wales Child Protection Register: Operation Tusk Final Report* (2019), Chapter 4 (Finding 4).

<sup>13</sup> Letter from Commissioner of Police, NSW Police Force, to Chief Commissioner, Law Enforcement Conduct Commission, 30 September 2019, p 3.



suggest that they may wish to obtain independent legal advice. In this way, affected persons can make informed decisions about how to respond to the consequences of having been on the register for too long or when they shouldn't have been on at all. This is the right and fair thing for the NSWPF to do.<sup>14</sup>

The Commission agreed with the approach of notifying all persons who may have been subjected to unlawful or unjust actions, and providing them with sufficient information to self-identify whether they had been subjected to such actions, and to seek legal advice accordingly. This was the subject of Recommendation 1 in the final version of the *Operation Tuskett Final Report* provided to the NSW Police Force on 23 October 2019 (set out below).

## 2.2 Commission's Final Report recommendation

In the *Operation Tuskett Final Report* the Commission made the following recommendation in relation to notifying persons affected by errors in the Register:

**Recommendation 1: Notify persons who may have been subjected to unlawful or unjust actions by the NSW Police Force.** The NSW Police Force write to each of the 277 people identified by the CPR case review who may have been subjected to unlawful or unjust actions by the NSW Police Force as a result of errors in the Child Protection Register. Each letter should:

- explain the specific error that was made in their case;
- identify each of the types of actions that the NSW Police Force may have mistakenly subjected the person to as a result of that error, and
- apologise for these errors, and suggest the person may wish to obtain independent legal advice.

In the text supporting the recommendation the Commission emphasised 'the importance of the NSW Police Force providing sufficient detail in the letters to enable each recipient to identify if in fact they were subjected to an unlawful or unjust action by police.' The Commission specifically stated that the letter to each person whose reporting period had been incorrectly calculated by the NSW Police Force should specify the date on which the person's reporting obligations under the CPOR Act had in fact ended.<sup>15</sup>

## 2.3 NSW Police Force response to the recommendation

In the progress report provided by the NSW Police Force on 20 July 2020 it clarified that there were in fact 188, not 277 people who may have been subjected to unlawful or unjust actions due to errors in the Register. The incorrect higher number was due to one group of persons being double counted as they were recorded in two different categories in the CPR case review results, when in fact one category was a sub-set of the other. The Commission accepts that the number of people required to be sent a notification letter is therefore 188, not 277 as referred to in its recommendation.

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<sup>14</sup> Letter from Commissioner of Police, NSW Police Force, to Chief Commissioner, Law Enforcement Conduct Commission, 30 September 2019 (Annexure C – Requests for Corrections to the Final Draft Report).

<sup>15</sup> Law Enforcement Conduct Commission, *The New South Wales Child Protection Register: Operation Tuskett Final Report* (2019) p 90.

The NSW Police Force stated that it started serving letters on the people identified by the CPR case review in October 2019, and that most of the letters have been served by the NSW Police Force personally. It stated that (as at 20 July 2020):

- of the 44 who were wrongly placed on the Register, 42 had been served the letters, and the other two people were deceased, and
- of the 144 whose reporting periods were calculated as being too long, the NSW Police Force had served letters on 113 of these people, 10 were deceased, one had been deported from Australia and their whereabouts was unknown, and 20 were yet to be served, but the NSW Police Force was continuing to take steps to serve them or ascertain their whereabouts so that they can be served.<sup>16</sup>

On 22 May 2020 the Commission issued a Notice to Produce Documents to the NSW Police Force under s 55 of the *Law Enforcement Conduct Commission Act 2016*, to request copies of the letters the police had sent, as well as other documents. In response the NSW Police Force provided copies of 155 letters it had sent to persons who may have been subjected to unlawful or unjust actions as a result of errors in the Register.

The text of 154 of the 155 letters sent by the NSW Police Force was almost identical. The letters were based on two template letters, one for those persons who had been placed on the Register in error (Template A), and the other for those who had been required to comply with reporting obligations for longer than their reporting periods under the CPOR Act (Template B). The NSW Police Force did not individualise these 154 letters beyond changing the person's name and CPR case number at the top (the template letters).

The template letters contained information about the CPR case review, and the reasons why errors occurred in the Register. They stated that '[t]he errors meant that some people were entered onto the Register when they shouldn't have been, some weren't entered onto the Register when they should have been, and the length of time some were required to comply with reporting obligations was calculated as either being too long or too short.'

The template letters ran over a page, but only included one line which gave the recipient general information about what had occurred in their particular case. For 41 of the letters sent to persons who had been wrongly determined to be registrable persons, Template A (dated 22 October 2019, and signed by the Acting Assistant Commissioner of the State Crime Command) stated:

In your case, the [CPR case] review has identified that you were entered on the Register when you shouldn't have been. This error has been corrected in the Register.

For the 113 letters sent to persons whose reporting periods had been incorrectly calculated, Template B stated:

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<sup>16</sup> NSW Police Force, *Progress Report on the NSWPF's Implementation of Recommendations made in LECC's Operation Tusk Report*, 20 July 2020, Annexure A.

In your case, the [CPR case] review has identified that the length of time you were required to comply with reporting obligations was too long. This error has been corrected in the Register.

Those letters did not state on what date the person's reporting period under the CPOR Act had ended. Those letters were dated 29 October 2019 and signed by the Acting Assistant Commissioner of the State Crime Command with the date of the signature marked as 31 October (2019).

The template letters did contain some of the information that the Commission recommended be included, namely they included a paragraph describing the types of action that police may have taken against the person as a result of the error:

During the time you were on the Register when you weren't meant to be, you likely took steps to comply with reporting obligations that didn't apply to you, including by reporting personal information to the NSWPF. The NSWPF may have also taken steps to verify that information by inspecting your home, relying on a power under the Act which didn't apply in the circumstances. If you didn't take steps to comply with reporting obligations, the NSWPF may have also taken action, including arresting and charging you, for what appeared at that time to be non-compliance with reporting obligations that didn't apply to you.

The letters also included an apology ('I apologise for the error that has been made in your case') and contained the following instructions:

If you've been affected by the error made in your case or any of the steps that have been taken as a result of it, you may wish to contact a lawyer to get independent legal advice.

...

If you would like further information about your case, please contact the Child Protection Registry by email to [email address].

In March 2020 the NSW Police Force **did** alter the template to include case-specific information in one letter to a person who was on the Register incorrectly. It was only in early 2020 that the NSW Police Force realised that an error had been made in this person's Register case. The letter the NSW Police Force sent to that person, signed 31 March, told the recipient (in bold) 'it was identified that you were placed on the Register appropriately on [specific date], however remained on the Register when you should have been removed on [specific date]. This error has been corrected in the Register.'

## 2.4 Analysis of the NSW Police Force response

The Commission has identified a number of issues with the template letters sent by the NSW Police Force, which are set out in the sections that follow. These include:

- The letters may have misled some recipients into thinking they were no longer required to report their information to police when they in fact had ongoing reporting obligations due to subsequent offending.
- The letters to persons who were inadvertently required by police to comply with reporting obligations for longer than their reporting period under the CPOR Act did not include the date their reporting period had ended, and

therefore contained insufficient detail for recipients to identify if police had taken unlawful actions against them.

- It appears that the vast majority of persons who received the letters did not respond by seeking any information from police about their specific case.
- The lack of specific detail in the letters was not consistent with the remedial purpose of those letters.
- The Commission's concerns as to whether recipients sufficiently understood the letters are heightened in the case of those recipients whose records suggest they have cognitive impairments.
- There has been significant delay in service of the notification letters on certain persons.

#### 2.4.1 Template letters may have misled registrable persons into thinking they were no longer required to report

The decision by the NSW Police Force not to personalise the template letters by including details of how and when the error had occurred in the particular person's case has created a new problem. Some of these template letters were sent to persons who had been incorrectly registered in the past, but who were in fact registrable persons under the CPOR Act at the time they received the letter. The general comments in the template letters regarding errors in their cases may have misled those people into thinking they were no longer required to report to police. Case Study 1 is an example. In that case the Template A letter Mr AB (a pseudonym)<sup>17</sup> received from police in March 2020 did in fact cause him, and his legal representatives, to believe he was not a registrable person, when in fact he is required to report his details to police until at least 2023.

##### CASE STUDY 1: Mr AB

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In 2015 Mr AB pled guilty and was sentenced for three counts of indecent assault of a person under 16. He was under 18 years of age when he had committed the offences. An exemption to registration applied to Mr AB because of the circumstances of his offending, and therefore those offences did not make him a registrable person under the CPOR Act.<sup>18</sup> However, the NSW Police Force did not at the time realise the exemption applied to Mr AB, and placed him on the Register.

In 2016 Mr AB was convicted and sentenced for four counts of assault with an act of indecency against a person under 16 years of age. These sentences in 2016 caused Mr AB to become a registrable person at that point, and his reporting period was seven years and six months from the date of his sentencing.<sup>19</sup>

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<sup>17</sup> All registrable persons mentioned in case studies in this report have been given pseudonyms.

<sup>18</sup> As Mr AB had committed all three offences against the same person, and committed them within a single 24 hour period, the exception in s 3A(2)(c) applied: *Child Protection (Offenders Registration) Act 2000* (NSW) s 3(3) and s 3A(2)(c).

<sup>19</sup> Mr AB was also under the age of 18 when he committed these offences, and the four offences counted as a 'single offence' because he had committed them against one person,

However it appears the NSW Police Force did not realise at that time that in fact it was these offences which had made him registrable under the Act.

In March 2018 Mr AB was convicted for an offence of failing to comply with reporting obligations under the CPOR Act.

At some point after this the NSW Police Force realised that Mr AB had been wrongly placed on the Register back in 2015. On this basis, in October 2019 the NSW Police Force prepared a Template A letter for Mr AB which included the lines: 'you were entered onto the Register when you shouldn't have been. This error has been corrected in the Register'. The letter did not mention that after this initial error Mr AB had in fact become a registrable person (in 2016), and therefore should still be reporting to police.

In May 2020 legal representatives for Mr AB emailed the NSW Police Force, noting that the letter dated October 2019 was only served on Mr AB in March 2020. Given the advice from the NSW Police Force that Mr AB was 'entered on the Register when he shouldn't have been', the legal representatives asked police to confirm the date he was removed from the Register, and asked whether any steps had been taken to annul his conviction in March 2018 for failing to comply with reporting obligations in March 2018, and if not, requested such steps be taken immediately.

In June 2020 the NSW Police Force replied to Mr AB's legal representatives, explaining that even though Mr AB was originally placed on the Register in error because of the 2015 offences, due to his convictions and sentences in 2016 he became a registrable person from that point, with a reporting period of seven years and six months. He therefore had been required to report in 2018, which meant his conviction under the CPOR Act in March 2018 was lawful. The NSW Police Force clarified that, as of the date of its reply, Mr AB was a registrable person and continued to have reporting obligations under the Act.

The Commission is concerned by the case of Mr AB, as it illustrates the risk that had Mr AB's legal representatives not contacted the NSW Police Force to seek information about annulment of the conviction, Mr AB would have proceeded on the understanding that he was no longer required to report to police, due to the lack of specific information in the letter police sent to him.

The Commission is concerned that neither the Commission nor the NSW Police Force is aware how many currently registrable people like Mr AB were sent template letters which may have misled them into thinking they no longer needed to report to police. However, it is apparent that Mr AB's case was not an isolated incident; see the case of Mr CD (Case Study 2 immediately below). The Commission also reviewed the case of Mr BC (Case Study 3, discussed in section 2.4.4). In that case the NSW Police Force was aware of the risk of the template letter causing confusion for Mr BC, as it appears police served the letter on him on the same day that he attended a police station to make his annual report to police under the CPOR Act. Police added a

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within a 24 hour period. His reporting period was therefore that for a child sentenced to two Class 2 offences at different points in time: *Child Protection (Offenders Registration) Act 2000* (NSW) s 3(3), s 14A(1)(b)(ii) and s 14B.

hand-written notation to the template letter which informed Mr BC he was still on the Register and had reporting obligations 'unrelated to this letter'.

## CASE STUDY 2: Mr CD

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Mr CD became a registrable person when the CPOR Act commenced on 15 October 2001.<sup>20</sup> Mr CD subsequently committed numerous offences and was sentenced to imprisonment several times. These periods in custody pushed his reporting period end date back by more than five and a half years (as his reporting period was suspended every time he re-entered custody).<sup>21</sup> Mr CD's reporting obligations consequently ended in early June 2017. However it appears the NSW Police Force incorrectly calculated these extensions, as Mr CD was still recorded in COPS as being required to report to police beyond this date.

Records entered in COPS reveal that Mr CD has an intellectual disability.

In June 2017 Mr CD was arrested and charged under s 17 of the CPOR Act for not reporting a change of residence which occurred the previous day. He was convicted and sentenced to 12 months' imprisonment, with a non-parole period of seven months.

In June 2018 the NSW Police Force reviewed Mr CD's reporting period and realised that his reporting obligations in fact had ended in June 2017 prior to his change of residence, and therefore he should not have been arrested and charged in June 2017. However it did not seek an annulment of his wrongful conviction and sentence until November 2019, one year and five months after the error was identified (the annulment was granted in March 2020).

In November 2018 the Local Court made a five-year child protection prohibition order in relation to Mr CD under the *Child Protection (Offenders Prohibition Orders) Act 2004*. As a result of this order, his reporting obligations under the CPOR Act recommenced, and would continue for the term of the order.<sup>22</sup>

The NSW Police Force subsequently sent a Template B letter to Mr CD (signed 31 October 2019) which notified him that 'the length of time you were required to comply with your reporting obligations was too long. This error has been corrected in the Register.' The letter did not explain to him that, despite this past error, he still had reporting obligations under the CPOR Act because of the child protection prohibition order made in November 2018.

In 2020 Mr CD was convicted of contravening his child protection prohibition order and was sentenced to 20 months' imprisonment, with a non-parole period of 15 months.

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<sup>20</sup> This was due to the fact he was serving a sentence of imprisonment for a Class 1 registrable offence on that date: *Child Protection (Offenders Registration) Act 2000* (NSW) (version in force as at 15 October 2001) s 3 (definition of 'existing controlled person' and definition of 'registrable person', paragraph (e)).

<sup>21</sup> *Child Protection (Offenders Registration) Act 2000* (NSW) s 15.

<sup>22</sup> *Child Protection (Offenders Registration) Act 2000* (NSW) s 20A.

The risk that registrable persons may fail to report to police due to misunderstanding the template letters is not the only risk created by those letters. The letters may also cause issues for police in the prosecution of offences under the CPOR Act.

The Commission has raised these issues with the NSW Police Force, and it has agreed to review the cases of the people who may have been subjected to unlawful or unjust actions due to errors in the Register in the past, to identify which of those persons are in fact currently registrable. As mentioned in 2.5, the NSW Police Force has agreed to write a further letter to people affected by past errors in their Register case. These letters will explain that despite the past error, they have subsequently been placed on the Register correctly and must comply with their current reporting obligations.

#### 2.4.2 Letters did not provide sufficient detail for recipients to identify unlawful actions, and most recipients did not seek further information

The letters written to 113 persons who had been required by police to comply with reporting obligations for too long did not include the date their reporting period under the CPOR Act had ended (after which point there was no legal basis for police to require them to report). Those letters therefore did not comply with the Commission's recommendation that the letters should explain the specific error that occurred in the person's case.

In a letter to the Commission in January 2020 the NSW Police Force stated that including in the letters the date the person's reporting period had ended 'would have involved additional work' by the Child Protection Registry (the Registry), the specialist unit in the State Crime Command responsible for maintaining the Register, and 'would have delayed the dispatch of the letters when we were aiming to notify people as soon as possible.'<sup>23</sup> The NSW Police Force stated that:

Instead, our letter identifies the error that was made and invites recipients to seek legal advice and approach the Registry for further information about their case. Any person who wishes to have additional information (including the date) can obtain it themselves or through their legal representative. Recipients who wish to obtain legal advice or take other actions would may [sic] in any event need information in addition to the date in order to confirm what occurred between that date and the date on which the error was corrected.<sup>24</sup>

The Commission requested under the s 55 Notice that the NSW Police Force provide copies of all such requests for information that it received from recipients of the template letters, and police responses to those requests. Only eight of the people who had had been served template notification letters contacted the police to request details about their particular case.<sup>25</sup> An additional three people had legal

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<sup>23</sup> Letter from Deputy Commissioner, Investigations and Counter Terrorism, NSW Police Force, to Chief Commissioner, Law Enforcement Conduct Commission, 15 January 2020.

<sup>24</sup> Letter from Deputy Commissioner, Investigations and Counter Terrorism, NSW Police Force, to Chief Commissioner, Law Enforcement Conduct Commission, 15 January 2020.

<sup>25</sup> Letters and emails produced by the NSW Police Force in response to Notice issued under s 55 of the *Law Enforcement Conduct Commission Act 2016* (NSW), No. 322 of 2020, item 5.

representatives send Letters of Demand to the NSW Police Force after receiving the template letter, without seeking details first.<sup>26</sup>

The NSW Police Force responded to all the requests it received from recipients of the letters, providing explanation of the letter or details about what occurred in the person's specific case. These responses show that if recipients of the template letters were proactive in contacting police (or asking a legal representative to contact police) to seek information about their particular case, they were provided with this information, and therefore received effective notification of the error that had been made in their case.

However it appears that only 11 out of 154 people responded in some way to the template letters sent by the NSW Police Force. A number of inferences may be drawn from this fact. The low number of responses could suggest that most recipients were unconcerned by these events described in the letters, and/or did not want to engage further with the NSW Police Force. However it also may be an indication that the template letters did not contain enough specific information to enable recipients to understand the extent of the error police made in their particular case.

Some of the emails that the NSW Police Force did receive from recipients of the template letters show that at least some persons were confused as to what the letter was saying about what had happened in their case, and only understood once they made specific enquiries with police and were given with further explanation.<sup>27</sup>

The Commission is therefore concerned that it appears that around 143 people have not contacted the NSW Police Force after receiving a template letter to seek information about what happened in their case (or to seek legal redress). The Commission is concerned that a reason for the low response rate may be that those persons did not sufficiently understand the letters, or if they did, the letters did not provide them with enough information about the actual error police made in their case to enable them to make informed decisions about whether to contact police (or a lawyer) to pursue the matter further.

The Commission is particularly concerned about the 13 people who were wrongly convicted of offences under the CPOR Act (or in one case, under the *Child Protection (Offenders Prohibition Orders) Act 2004* (NSW)) as a result of errors in the Register. At the date of writing only three of those people appear to have asked the NSW Police Force for information about what happened in their case (or otherwise proceeded to issue legal proceedings against police in relation to the matter).

The Commission is therefore concerned that 10 of the people who have been wrongly convicted as a result of errors in the Register may still not have been effectively notified about the error the NSW Police Force made in their case. Even though the NSW Police Force has contacted the Department of Communities and Justice and the courts to annul all of these wrongful convictions, this does not relieve police of the obligation to notify the people themselves of the mistakes that were

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<sup>26</sup> Letters produced by the NSW Police Force in response to Notice issued under s 55 of the *Law Enforcement Conduct Commission Act 2016* (NSW), No. 322 of 2020, item 6.

<sup>27</sup> Letters and emails produced by the NSW Police Force in response to Notice issued under s 55 of the *Law Enforcement Conduct Commission Act 2016* (NSW), No. 322 of 2020.



made by the NSW Police Force. As was noted in the *Operation Tusket Final Report*, there was no evidence in the court files reviewed by the Commission that persons were notified through the annulment processes that the reason their conviction was being annulled was because the NSW Police Force had made an error in determining how the CPOR Act applied in their case.<sup>28</sup>

### 2.4.3 Notification letters are for remedial purpose

As noted above the NSW Police Force stated that it did not include recipients' reporting period end dates in the letters because that 'would have involved additional work by the [Registry] and would have delayed the dispatch of the letters when we were aiming to notify people as soon as possible.'

To the extent that the task would involve additional work, work which would 'delay the dispatch of the letters', this has to be weighed against the purpose for which the letters are being created.

The purpose of the NSW Police Force sending the notification letters was to remedy the wrongs that have occurred due to errors it made in administering the Register. As result of these errors, the State has subjected persons to unlawful or unjust actions. In at least 13 cases, errors in the Register led to persons being wrongly convicted, and eight of those persons were unlawfully imprisoned as a result.

In the *Operation Tusket Final Report* the Commission spelt out the obligation on agencies of the State such as the NSW Police Force to act fairly in their dealings with members of the public.<sup>29</sup> As the NSW Ombudsman has stated in *Good conduct and administrative practice: Guidelines for state and local government*, '[a]gencies have a duty to provide appropriate redress where members of the public have been detrimentally affected by maladministration.'<sup>30</sup> The Ombudsman stated that redress by a public sector agency should be:

- 'fair and reasonable';
- 'provide a comprehensive resolution of the issue';
- 'properly responsive and procedurally sound';
- 'provided in a timely manner';
- 'appropriate and proportionate to the detriment caused by the maladministration', and
- 'fair to both the person detrimentally affected and the agency concerned (having regard to the circumstances)'.<sup>31</sup>

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<sup>28</sup> Law Enforcement Conduct Commission, *The New South Wales Child Protection Register: Operation Tusket Final Report* (2019) p 85.

<sup>29</sup> Law Enforcement Conduct Commission, *The New South Wales Child Protection Register: Operation Tusket Final Report* (2019) pp 80-82.

<sup>30</sup> New South Wales Ombudsman, *Good conduct and administrative practice: Guidelines for state and local government* (3<sup>rd</sup> ed, 2017) p 71.

<sup>31</sup> New South Wales Ombudsman, *Good conduct and administrative practice: Guidelines for state and local government* (3<sup>rd</sup> ed, 2017) p 73.

The Commission's view is that the template letters sent by the NSW Police Force did not in the circumstances constitute 'fair and reasonable' redress to the recipients. Further, they did not provide a comprehensive resolution of the issue.

The decision by the NSW Police Force not to individualise the notification letters, and in particular not to include the date the person's reporting period under the CPOR Act had ended, meant that the letters did not provide sufficient detail to enable each recipient to identify if in fact they were subjected to an unlawful or unjust action by police. The letters informed the recipient of the general type of error that was made in their case, but did not tell them at what point in time the error affected their case.

The NSW Police Force was aware when drafting these letters that the recipients would need more information than it was including in the letters in order to ascertain whether police had taken unlawful or unjust actions against them. In its letter to the Commission in January 2020 the NSW Police Force noted that '[r]ecipients who wish to obtain legal advice or take other actions would may [sic] in any event need information in addition to the date in order to confirm what occurred between that date and the date on which the error was corrected.'<sup>32</sup>

The NSW Police Force is also aware how difficult it can be to interpret the CPOR Act to correctly calculate a reporting period end date. It knows the significant amount of information that can be required to correctly calculate a person's reporting period, information which it can access, but to which a person or their lawyer may not have ready access (for example detailed criminal and custodial histories).

In these circumstances, it was not 'fair and reasonable' for police to withhold the detail about the error in the person's case from the letters and only provide that information to those recipients who sufficiently understood the letter and were competent and comfortable to contact police and ask the right questions (or engage legal representatives to do so) in order to get this information. As noted above in 2.4.2, it appears that only 11 of those who received the template letters in fact did so.

The decision by the NSW Police Force not to undertake the additional work to individualise the notification letters also does not appear to be 'appropriate and proportionate to the detriment caused' by the errors made in the administration of the Register. This detriment included people unlawfully being required to report their personal information to police for years, persons' homes being subjected to unlawful inspections, and persons being wrongly charged, arrested, convicted and imprisoned for offences which they could not, as a matter of law, have committed.

#### 2.4.4 Template letters served on people with cognitive impairments

The Commission is particularly concerned whether people with cognitive impairments who received the template letters would understand from those letters what police were saying had happened in their case, and their right to seek further information or initiate legal action. In a number of the case studies which the Commission reviewed, the person in relation to whom police incorrectly applied the CPOR Act appeared to have a level of cognitive impairment (see for example Case Study 2 in 2.4.1, and Case Study 3 in this section).

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<sup>32</sup> Letter from Deputy Commissioner, Investigations and Counter Terrorism, NSW Police Force, to Chief Commissioner, Law Enforcement Conduct Commission, 15 January 2020.

This was also an issue that Legal Aid NSW raised in a submission to the Commission. Legal Aid NSW contacted the Commission because the former provides advice and assistance to persons on the Register who are charged with offences against the CPOR Act. Legal Aid NSW stated that generally its clients are vulnerable, including those charged with offences against the CPOR Act, and ‘many suffer from cognitive and/or mental health conditions’. It submitted that:

Many of our clients are challenged in understanding and initiating action in response to a formal notice of a potential error in their status as a registrable person and reporting requirements pursuant to the CPOR Act.<sup>33</sup>

Legal Aid NSW emphasised that the CPOR Act acknowledges that a person’s disability or other circumstances may impact on their ability to understand notifications about their reporting obligations.<sup>34</sup> The CPOR Act also requires the NSW Police Force to record in the Register whether a registrable person ‘has any special need or disability’.<sup>35</sup> The Act defines a person who has a ‘special need’ as including a person who has impaired intellectual functioning, or is under a guardianship order, or is illiterate (or not literate in English), or is visually impaired to the extent the person is unable to read a written notice.<sup>36</sup> There is a specific section in ‘CPR COPS’, the section of the Computerised Operational Policing System used by the NSW Police Force that contains information about registrable persons under the CPOR Act, for police to record whether a person has a special need or disability.

The CPOR Act does not require a registrable person to inform police if they have a special need or disability. The Commission requested information from the NSW Police Force about how it identifies registrable persons who have a disability.<sup>37</sup>

The NSW Police Force noted that a registrable person is required to attend a police station in person to make their initial report, and then at least once a year for as long as they are required to report. The police officers who are responsible for receiving reports from registrable persons are required to ascertain whether the person has a special need and record this in CPR COPS. This may be apparent if, for example, the person is accompanied by a disability support worker. The officers are also trained to ask questions of the registrable person including whether they can read English, and whether they need a support person present, and to generally gauge their understanding of their reporting obligations under the CPOR Act. The Registry may also update a registrable person’s case to record a special need or disability based on information received from the registrable person’s legal representative or guardian, or a government agency (e.g. the Public Guardian), or information contained in police intelligence reports.<sup>38</sup>

There are mechanisms in the CPOR Act and the *Child Protection (Offenders Registration) Regulation 2015* (CPOR Regulation) to help ensure people understand their reporting obligations. Under s 12B of the Act any person is entitled to be

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<sup>33</sup> Letter from Legal Aid NSW to Law Enforcement Conduct Commission, 14 August 2020.

<sup>34</sup> See *Child Protection (Offenders Registration) Act 2000* (NSW) s 17(2)(b) and (b1).

<sup>35</sup> *Child Protection (Offenders Registration) Act 2000* (NSW) s 19(2)(f).

<sup>36</sup> *Child Protection (Offenders Registration) Act 2000* (NSW) s 3(6).

<sup>37</sup> Letter from Prevention and Education Team, Law Enforcement Conduct Commission to Child Abuse and Sex Crimes Squad, NSW Police Force, 27 October 2020.

<sup>38</sup> Letter from Child Abuse and Sex Crimes Squad, NSW Police Force, to Prevention and Education Team, Law Enforcement Conduct Commission, 11 November 2020.

accompanied by a support person of the person's choosing when making a report to police (regardless of whether they have a special need or disability). Further, cl 15 of the CPOR Regulation requires that if a registrable person has a special need and is in fact incapable of understanding a statutory notice, police must 'take such measures as are reasonably practicable' to assist the registrable person to understand the person's reporting obligations, and the consequences for non-compliance. Such measures may include providing an oral explanation, providing additional written notice in a more accessible form for the person, or arranging for a support person to be present when the notice is being given to the person.<sup>39</sup>

If the NSW Police Force utilises such measures when notifying persons with disability of the errors that occurred in relation to their Register case, this will help to ensure they receive effective notification.

For example, Mr BC, the subject of Case Study 3 below, has a significant level of cognitive impairment. The NSW Police Force added a simple handwritten note at the bottom of the template letter to ensure Mr BC understood that despite the content of that letter, he still had reporting obligations. Police served it on Mr BC when he attended a police station and his support person was present to assist him. The Commission notes however that there was a delay of almost 10 months between when the NSW Police Force drafted his template letter and when it was served on Mr BC.

### CASE STUDY 3: Mr BC

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In 2001 Mr BC was charged with aggravated sexual assault against an adult. Mr BC has an intellectual disability. Due to his disability he was found unfit to stand trial for the offence and a special hearing was conducted under the *Mental Health (Criminal Procedure) Act 1990*. He was found by a jury to have committed the offence, and in 2004 a sentencing judge imposed a good behaviour bond on Mr BC for three years with conditions.

During Mr BC's sentencing evidence was tendered from a number of psychologists in relation to the significance of his disability. One psychologist gave evidence that Mr BC, who was in his late twenties at the time of sentencing, 'lacked the ability to comprehend anything other than relatively simple concepts'. Another considered that Mr AB 'had an effective level of development comparable to that of a child aged between five and six years'. The Crown noted that he was unable to read or write.

The NSW Police Force incorrectly determined that Mr BC was a registrable person under the CPOR Act due to his sentencing in 2004, on the basis of a mistaken belief that his offence had been committed against a child.

In 2015 Mr BC was charged and convicted of failing to comply with reporting obligations under s 17 of the CPOR Act.

In 2017 Mr BC was convicted for the offence of kidnapping a 17 year old girl and was sentenced to five years' imprisonment. Due to that sentence he then became

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<sup>39</sup> *Child Protection (Offenders Registration) Regulation 2015* (NSW) cl 15(3).

a registrable person under the CPOR Act, with a reporting period of eight years (starting after his release from prison).

By February 2018 the NSW Police Force became aware of the error it had made in placing Mr BC on the Register due to his sentence in 2004. It wrote to the Department of Justice seeking an annulment of Mr BC's conviction and sentence for the CPOR Act offence in 2015. His conviction and sentence for that offence was annulled by the court later that year.

By August 2019 the NSW Police Force had realised that, despite the original error in placing Mr BC on the Register, due to his sentence in 2017 he in fact had become a registrable person. Around the same time records were made in the police database noting Mr BC's cognitive impairment, and that 'court reports have described him as [sic] a mental capacity of 6-7yrs'.

On 22 October 2019 the NSW Police Force prepared a Template A letter to Mr BC notifying him that 'you were entered on the Register when you shouldn't have been' and that '[t]his error has been corrected in the Register'.

In November 2019 police officers attended Mr BC's residence to conduct an inspection under s 16C of the CPOR Act, with the intention of serving the template letter on Mr BC at the same time, however Mr BC was not home. In April 2020 police officers again attended Mr BC's residence and as he was at home successfully completed the s 16C inspection, but it appears they did not attempt to serve the template letter on that day.

It appears that in August 2020 Mr BC attended a police station with his support person in order to make an annual report of his personal information as required under the CPOR Act. On that same day police served the template letter on him, but had added a handwritten sentence at the bottom of the letter which read: 'Note: You are still on the Child Protection Register and have current obligations due to offences unrelated to this letter'. Mr BC and his support person both signed the letter.

In October 2020 the Commission raised Mr BC's case with the NSW Police Force. The Commission was informed by the NSW Police Force in November 2020 that Mr BC's disability had not been recorded in CPR COPS under the 'special needs' field, but this had now been corrected.

The Commission suggested to the NSW Police Force that the recording of disability in CPR COPS should be included in the audit of the Register being conducted by the NSW Police Force Corporate Internal Audit Team. The audit team considered this issue, and this is discussed further in 3.3.3.

As discussed in 2.5, the NSW Police Force has agreed to write a further letter to persons affected by past errors in the Register, to provide them with more specific information about the error that occurred in their case. The Commission has stated to the NSW Police Force that it should take note of any information in the person's file that suggests they have a disability which may impact on their ability to understand the letter, and ensure those persons have a support person present when the further letter is provided, to help them understand it.

## 2.4.5 Delay in service of notification letters

The NSW Police Force in the progress report provided to the Commission on 20 July 2020 noted that there were 20 persons who may have been subjected to unlawful actions who, as of the date of the response, had not been served with one of the template letters, but police were continuing to take steps to serve them or ascertain their whereabouts so that they could be served.<sup>40</sup>

The Commission notes that it is appropriate that the NSW Police Force is serving notification letters on recipients personally, rather than simply sending the letters through the post, as under s 21E of the CPOR Act it is an offence for anyone (including police) to disclose information concerning registrable persons to third parties (except in certain limited circumstances).

However, timely service of effective notification on all those who may have been subjected to unlawful or unjust actions on the part of police is crucial for those who may wish to pursue compensation through legal proceedings. The NSW Police Force should take all reasonable steps to ensure that persons are served with effective notification about the error that was made in their case as soon as possible. In Case Study 1 in 2.4.1, the NSW Police Force drafted a template letter to Mr AB in October 2019, but it was only served on him in March 2020. In Case Study 3 in 2.4.4 the NSW Police Force discovered the error in Mr BC's case in February 2018. It drafted a letter to him in October 2019, but it was only served on him in August 2020.

The NSW Police Force should ensure that any persons who bring legal proceedings in relation to any unlawful actions that resulted from errors by police in administering the Register are not disadvantaged in their claims due to the delay by police in providing effective notification of those errors.

## 2.5 NSW Police Force to send further notification letters

The Commission acknowledges that the 155 notification letters the NSW Police Force served on persons affected by errors in the administration of the Register contain an acknowledgement of error, a description of the types of actions police may have taken against them as a result of that error, an apology and a suggestion to seek legal advice. Those letters were therefore a substantial improvement on the letters sent to such persons by police in the past, which were the subject of significant criticism in the *Operation Tuskett Final Report*.

However, the 113 letters sent to persons whose reporting periods were incorrectly calculated did not comply with Recommendation 1 in the *Operation Tuskett Final Report* that the recipients be notified of the specific error that occurred in their case, as those letters did not include the date their reporting obligations had ceased under the CPOR Act (i.e. the end date of their reporting period).

Further, the decision by the NSW Police Force to use template letters to notify those affected by errors in the Register, letters which included only one generic line about what had gone wrong in the person's particular case, was problematic. As a result of this decision:

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<sup>40</sup> NSW Police Force, *Progress Report on the NSWPF's Implementation of Recommendations made in LECC's Operation Tuskett Report*, 20 July 2020, Annexure A.

- some persons who currently have reporting obligations under the CPOR Act may have been misled into thinking they no longer needed to report;
- recipients were not provided with sufficient information about the error police made in their case to enable them to identify whether police had taken unlawful or unjust actions against them;
- recipients may have found it difficult to understand the relevance of the letter to their particular case, particularly those with cognitive impairments.

The Commission is not convinced that the template letters achieved the purpose the NSW Police Force stated the letters would, namely that they would ensure 'affected persons can make informed decisions about how to respond to the consequences of having been on the register for too long or when they shouldn't have been on at all.'<sup>41</sup> The fact that only 11 out of 154 people who had been served those letters sought information about their particular case from police (or initiated legal action) suggests this purpose was not achieved. The fact that only three out of the 13 people who have been wrongly convicted as a result of errors in the Register have done so is of particular concern.

In light of the obligation on the NSW Police Force to remedy the wrongs that have occurred due to errors it made in administering the Register, and to address the risk that the template letters may have misled registrable persons regarding their current obligations, the Commission considers it is imperative that the NSW Police Force provides effective notification to affected persons, which includes providing specific information about what occurred in their case.

The Commission raised its concerns about the template letters both in the draft of this report which was provided to the NSW Police Force in February 2021, and in subsequent correspondence with police.

In May 2021 the NSW Police Force agreed it would send a further notification letter to those persons who may have been subjected to unlawful or unjust actions due to past errors in the Register. The NSW Police Force requested the Commission indicate what content should be included in the letters.

The Commission has advised that these letters should include the date the person was placed on the Register, and, for those persons whose reporting periods were incorrectly calculated, the correct end date for the person's reporting period. Also, if the person at the date of the letter in fact has current reporting obligations under the CPOR Act (for example due to offending subsequent to the past registration error), this should be clearly stated in the letter, to avoid any misunderstanding.

The Commission advised the NSW Police Force that no further letter need be sent to a person where there is evidence that the person had already been provided with detailed information about the specific error in their case, including their reporting period end date. Similarly, no letter need be sent if the person is deceased.

In order to prepare the individualised letters, police will need to review the COPS records and case files of relevant persons, to identify the details of their case to include in the letter and to determine whether they currently have reporting

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<sup>41</sup> Letter from Commissioner of Police, NSW Police Force, to Chief Commissioner, Law Enforcement Conduct Commission, 30 September 2019 (Annexure C – Requests for Corrections to the Final Draft Report).

obligations. The Commission has stated to the NSW Police Force that it should take note of any information in those records that suggests the person has a disability which may impact on their ability to understand a notification letter. If there is such information, the NSW Police Force should ensure that the officers responsible for serving the letter on the person are aware of the person's disability. Those officers should ensure that when the letter is provided to the person they have a support person present who can help them understand the letter.

The Commission also raised with the NSW Police Force the fact that there are certain people who it appears have not yet received any notification letter from police because they are homeless, including two persons who have been wrongly convicted due to errors in the Register. The Commission emphasised to the NSW Police Force that it should take all reasonable steps to attempt to provide a letter to such persons.

The Commission considers that these further letters and actions on the part of the NSW Police Force will ensure that persons are provided with enough information to understand the significance of the error made in their case, and make an informed decision about whether to seek more information or legal advice. They will also ensure that people who had errors in their registration in the past but have since become registrable persons or recommenced reporting obligations are not misled into thinking they are not required to report to police.

The NSW Police Force estimated that the further letters would be sent out within the next two to three months, subject to resourcing restrictions.

**Conclusion: Recommendation 1 has been partially implemented to date and implementation is still in progress.**



# 3. Measures to help identify errors in the Register

## 3.1 Reasons for the recommendations

The Commission's investigation established that significant errors have been made in the application of the CPOR Act for over 17 years, starting as early as 2002. One of the main reasons for the errors was that the CPOR Act can be a very difficult piece of legislation to implement in practice. The need to reform the CPOR Act is detailed in Chapter 1.

For years the Child Protection Registry (the Registry) did not have sufficient staff to enable it to conduct adequate quality assurance regarding its implementation of the CPOR Act. This meant that errors were not identified and corrected. For example, in 2002 an error was made in the calculation of the reporting period of one person, Mr CC, but that error was not detected for 14 years. As a result, police officers arrested and charged him with offences under the CPOR Act in 2010, 2011, 2012, 2013, 2015 and 2016, despite the fact he did not have any obligations to report under that Act after 2008.<sup>42</sup>

In 2016 the NSW Police Force initiated an internal review of 5,749 Register case files, referred to as the CPR case review. The CPR case review was finalised in October 2018. It found that 44 per cent of the Register case files had been affected by errors.<sup>43</sup> After the CPR case review started the NSW Police Force improved its quality assurance processes. In 2018, due to additional positions being added to the Registry, that unit was able to create a dedicated Quality Assurance Officer position, who now ensures that supervisory checks are completed whenever a new Register case is created.<sup>44</sup>

## 3.2 Commission's Final Report recommendations

The Commission made three recommendations in its *Operation Tuskett Final Report* to further improve quality assurance in relation to implementation of the Register:

**Recommendation 4: Introduce a statutory review mechanism.** A provision should be included in the *Child Protection (Offenders Registration) Act 2000* (NSW) (or any Act which replaces it) which gives a person the right to seek review by the NSW Police Force of the decision that they meet the definition of a registrable person under the Act, and/or the decision as to which reporting period applies to the person. Consideration should be given to providing a right of appeal from the NSW Police Force review to a tribunal or court.

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<sup>42</sup> Law Enforcement Conduct Commission, *The New South Wales Child Protection Register: Operation Tuskett Final Report* (2019) pp 51 and 52 (Case Study 6).

<sup>43</sup> Law Enforcement Conduct Commission, *The New South Wales Child Protection Register: Operation Tuskett Final Report* (2019) p 43.

<sup>44</sup> Law Enforcement Conduct Commission, *The New South Wales Child Protection Register: Operation Tuskett Final Report* (2019) p 110.

**Recommendation 6: Provide reasons for decisions under the CPOR Act.**

The NSW Police Force provide written notification to each person placed on the Register of the basis upon which their status as a registrable person and their reporting period has been determined, including the sections of the CPOR Act relied on. For persons already on the Register, this information is to be provided upon request.

**Recommendation 11: Introduce independent compliance auditing of the Child Protection Register.** Provisions should be included in the *Child Protection (Offenders Registration) Act 2000* (NSW) (or any Act which replaces it) for independent compliance audits of the Register, with publicly reported (and de-identified) results, similar to those in the *Sex Offenders Registration Act 2004* (Vic).

## 3.3 Responses to the recommendations

### 3.3.1 Statutory provisions for review of decision-making (Recommendation 4)

The NSW Police Force stated its support for the introduction of a statutory review mechanism in its response to the draft *Operation Tuskett Final Report*.<sup>45</sup> However Recommendation 4 requires legislative change and therefore action by the NSW Parliament.

On 22 May 2020 the Commission wrote to the Hon David Elliott MP, Minister for Police and Emergency Services, in his capacity as the Minister responsible for the CPOR Act. The Commission requested the Minister provide a response from the NSW Government to Recommendation 4 (as well as Recommendation 3 (see Chapter 1) and Recommendation 11 (see 3.3.3)). The Minister replied by letter dated 29 June 2020 and referred the Commission to the review of the CPOR Act being conducted by the NSW Police Force, stating that review is carefully considering the recommendations made in the *Operation Tuskett Final Report* in relation to the legislative framework.

In its progress report to the Commission in July 2020 the NSW Police Force confirmed it continued to support Recommendation 4 and was carefully considering it and the other law reform recommendations in the context of its own detailed review of the CPOR Act (discussed in Chapter 1).

**Conclusion: Recommendation 4 has not been implemented.**

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<sup>45</sup> Letter from Commissioner of Police, NSW Police Force, to Chief Commissioner, Law Enforcement Conduct Commission, 30 September 2019 (Annexure B – Submissions on Proposed Recommendations).

### 3.3.2 Provide reasons for decisions under the CPOR Act (Recommendation 6)

The NSW Police Force confirmed its support for Recommendation 6 in its response to the draft *Operation Tuskett Final Report*,<sup>46</sup> and in the progress report provided on 20 July 2020.

The NSW Police Force provided the Commission with a template for written notification which sets out the basis upon which a person's status as a registrable person and their reporting period have been determined, including the provisions of the CPOR Act relied upon. The NSW Police Force informed the Commission that on 4 May 2020 it commenced sending written notifications based on that template to persons placed on the Register from that date. The NSW Police Force stated it would provide the notification to any person already on the Register on request.

The Commission concludes that the NSW Police Force has fully implemented Recommendation 6. The template for written notification explains in clear language the basis upon which the NSW Police Force has concluded that the recipient is a registrable person under s 3A of the CPOR Act, including details of the offences that made the person registrable such as date of sentencing, offence description, and which 'class' each offence fell under.<sup>47</sup> It also specifies which of the formulas in s 14A for calculating reporting periods the NSW Police Force consider applies to the person, and the resulting decision regarding the length of the person's reporting period. The template also includes separate, specific information for persons who are registrable in New South Wales because they are 'corresponding registrable persons'.<sup>48</sup>

By using this template to provide reasons for the decisions it makes about the application of the CPOR Act, the NSW Police Force will improve transparency and accountability of decision-making under the Act. This will also provide an early opportunity for the recipient to query any legal or factual discrepancies in the information police are relying upon.

**Conclusion: Recommendation 6 has been fully implemented.**

### 3.3.3 Independent compliance auditing of the Register (Recommendation 11)

The NSW Police Force confirmed its support for Recommendation 11 in its response to the draft *Operation Tuskett Final Report*,<sup>49</sup> and in the progress report provided on 20 July 2020.

In March 2021 the NSW Police Force informed the Commission that 'to accomplish this recommendation fully, [the] NSWPF is pursuing the revision of the [CPOR Act]

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<sup>46</sup> Letter from Commissioner of Police, NSW Police Force, to Chief Commissioner, Law Enforcement Conduct Commission, 30 September 2019 (Annexure B - Submissions on Proposed Recommendations).

<sup>47</sup> Under the *Child Protection (Offenders Registration) Act 2000* (NSW) registrable offences are generally divided into 'Class 1' offences and 'Class 2' offences: see s 3.

<sup>48</sup> *Child Protection (Offenders Registration) Act 2000* (NSW) div 10.

<sup>49</sup> Letter from Commissioner of Police, NSW Police Force, to Chief Commissioner, Law Enforcement Conduct Commission, 30 September 2019 (Annexure B - Submissions on Proposed Recommendations).

to include the requirement for independent auditing of aspects of the Act'. However the NSW Police Force also stated that '[u]ntil the legislative changes are accomplished, the Commissioner has approved an interim Independent Audit Strategy to be conducted regarding compliance assurance over the Register.'<sup>50</sup>

In May 2020 the NSW Police Force approved the first audit under this strategy, covering two years of Register activity from 1 September 2018 to 31 August 2020. The audit was conducted by the NSW Police Force Corporate Internal Audit Team, which reports directly to the NSW Police Force Risk Management & Audit Committee.

The focus of the audit was 'principally on providing assurance' over the Registry's approach to meeting the Commissioner's obligation under s 19 of the CPOR Act to establish and maintain the Register. The audit assessed the adequacy and effectiveness of key controls in place in relation to the completeness, accuracy, authenticity, reporting and timeliness of information in the Register. The audit assessed these controls across a sample of 40 Register cases.

The audit team identified 'minimal opportunities for improvement'.<sup>51</sup> The audit report noted that '[f]ollowing the LECC Review, the Registry has reviewed and significantly improved its procedures and controls. It has also made substantial improvements to manage and maintain the Register'.<sup>52</sup> The audit team did not identify any non-compliance with the key compliance controls in the 40 Register cases it reviewed.<sup>53</sup>

The audit report did include four recommendations to strengthen the Registry's oversight of compliance practices in the NSW Police Force Regions and ensure that multiple staff in the Registry are trained to fulfil the Quality Assurance Officer or Registry Training Coordinator roles if necessary, given those roles are 'key control points to help ensure compliance' with the CPOR Act.<sup>54</sup> The audit report includes 'agreed actions' by the Registry in response to those recommendations.

In February 2021 the Commission raised two matters for consideration by the NSW Police Force Corporate Internal Audit Team for inclusion in its audit, arising out of our analysis of the Register cases mentioned in Chapter 2:

- **Errors remaining in case files:** From the Commission's review of Register case files it appears that there were significant errors remaining in a number of the files after the CPR case review team had reviewed them (but which have since been corrected)(discussed in 3.4 below). The Commission suggested the internal audit consider what processes are in place or needed to identify any errors remaining in the Register case files.

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<sup>50</sup> Letter from Commissioner of Police, NSW Police Force, to Commissioner for Integrity, Law Enforcement Conduct Commission, 18 March 2021 (Attachment 'Status Report - Operation Tusket - Child Protection Register State Crime Command, NSW Police Force').

<sup>51</sup> *NSW Police Force Corporate Internal Audit Final Report: Child Protection Register Compliance*, March 2021, p 3.

<sup>52</sup> *NSW Police Force Corporate Internal Audit Final Report: Child Protection Register Compliance*, March 2021, p 3.

<sup>53</sup> *NSW Police Force Corporate Internal Audit Final Report: Child Protection Register Compliance*, March 2021, p 4.

<sup>54</sup> *NSW Police Force Corporate Internal Audit Final Report: Child Protection Register Compliance*, March 2021, pp 13-16.

- **Recording of registrable persons' disabilities:** In relation to Case Study 3 (discussed in 2.4.4) it was noted that Mr BC's significant cognitive impairment had not been recorded in CPR COPS under the 'special needs' field. The Commission suggested the internal audit should include auditing the recording of disability in the 'special needs' field in CPR COPS.

The NSW Police Force Corporate Internal Audit Team considered both of these matters. In relation to errors remaining in Register case files, the audit team noted that:

- The Quality Assurance Team undertook an 'extensive process' in 2019 to review all finalised and rejected cases to verify that the assessment of the closed cases were correct.
- Following that process, the Registry 'implemented a strict quality assurance process for all cases' entered into the Register, including review by the 'Case Creator, Supervising Sergeant, and the Quality Assurance Officer'.<sup>55</sup>

The audit team noted that it did not observe any 'completeness or accuracy errors' in the 40 Register cases it reviewed. It also noted that the Registry had recently implemented additional controls:

- The NSW Police Force Regions complete a monthly review of a sample of Register cases using the Case Review Checklist to identify any errors and report them to the Head of the Registry, and
- The Quality Assurance Team in the Registry perform a full case review of any persons on the Register who reoffend.<sup>56</sup>

In relation to recording of registrable persons' disabilities, the audit team commented that none of the registrable persons in the 40 cases it sampled had a disability so they could not test whether disabilities were being appropriately recorded in CPR COPS. However, the audit team noted that the Registry had stated that the following additional controls had been implemented in response to the Commission's observations, 'to ensure that vulnerable people are processed correctly':

- The Child Protection Register Standard Operating Procedures were updated to include specific procedures for processing a registrable person.
- A newsletter from the Registry was sent to the NSW Police Force Regions advising them on how to process a registrable person.
- The NSW Police Force Regions have established a 'how to' guide on processing vulnerable persons.

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<sup>55</sup> *NSW Police Force Corporate Internal Audit Final Report: Child Protection Register Compliance*, March 2021, Appendix A, p 18.

<sup>56</sup> *NSW Police Force Corporate Internal Audit Final Report: Child Protection Register Compliance*, March 2021, Appendix A, pp 18-19.

- Future courses of the ‘basic’ Register training for officers will include how to process a vulnerable person.<sup>57</sup>

The Commission welcomes the NSW Police Force’s implementation of an interim Independent Audit Strategy. Compliance auditing by the NSW Police Force Corporate Internal Audit Team will help to further improve quality assurance in relation to the Register. The Commission also notes that it is stated in the Terms of Reference for the interim Independent Audit Strategy that the Commissioner of Police would make the final report of the audit available to the Minister for Police and Emergency Services, who in turn ‘would submit the report to NSW Parliament’.<sup>58</sup> The Commission supports the tabling of the audit report as a measure to increase transparency and accountability in relation to maintenance of the Register.

However, there remains a need for an ongoing compliance auditing process conducted by a body independent of the NSW Police Force, as per Recommendation 11. This is discussed in 3.4 below.

**Conclusion: Recommendation 11 has not been implemented.**

### 3.3.4 Other responses to the Commission’s report

It is not only the NSW Police Force that has taken steps following the *Operation Tuskett Final Report* to increase identification of errors in the implementation of the Register. In September 2020 Legal Aid NSW produced a podcast and a factsheet to inform its legal practitioners about the Commission’s findings in Operation Tuskett regarding errors in the Register. The factsheet notes that ‘The extent of the errors is uncertain and exceeds those accounted for to date as new errors are coming to light in the wake of the LECC Report.’

Both the factsheet and the podcast instruct all Legal Aid NSW lawyers, if they encounter a client who has been notified by the NSW Police Force that they are on the Register, to establish for themselves if the person is in fact a registrable person under the CPOR Act, and the length of their reporting period, and to take action if they suspect an error. The materials warn legal practitioners about the challenges involved in navigating the CPOR Act, and explain the key provisions in the Act about which lawyers should be aware. Legal Aid NSW circulated a link to these materials in its newsletter in October 2020.

These measures by Legal Aid NSW will help facilitate a further level of independent quality review of the application of the CPOR Act. If Legal Aid lawyers become familiar with the complexities of the CPOR Act and actively review the registration and reporting period of their clients they will identify when legal or factual errors have been made, and will be able to support their clients to seek rectification.

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<sup>57</sup> NSW Police Force Corporate Internal Audit Final Report: Child Protection Register Compliance, March 2021, Appendix A, p 19.

<sup>58</sup> NSW Police Force Corporate Internal Audit Final Report: Child Protection Register Compliance, March 2021, Appendix C, p 21.

### 3.4 Need for NSW Parliament to implement Recommendations 4 and 11

While the NSW Police Force has made significant improvements to its quality assurance processes for the Register in the last two years, including an internal audit, the need for a statutory review mechanism and independent compliance auditing remains. As Legal Aid NSW correctly noted, further errors in Register case files have been discovered since the *Operation Tuskett Final Report* was published.

The new internal quality assurance processes that the NSW Police Force has put in place in the Registry during Operation Tuskett appear to be working well. The Commission has not identified any errors that have remained in Register cases after they have been reviewed by the Registry's Quality Assurance officer. However, the Commission is concerned about errors remaining in those Register files which have not been brought to the attention of that officer for re-review.

Over the course of Operation Tuskett, for both the *Final Report* and this supplementary report, the Commission reviewed a total of 41 Register cases. In five (possibly six) of those cases it appears there were significant errors in the files that the CPR case review team had missed. All of those errors have now been corrected by the NSW Police Force, but in most cases only because an external party (either the Commission or the person's legal representative) queried with police whether the person's registration was correct, and the Registry's Quality Assurance officer then re-reviewed the file.

The audit of 40 Register cases conducted by the NSW Police Force Corporate Internal Audit Team, and the additional quality assurance measures implemented more recently by the Registry that the audit team noted, further reduce the risk of errors remaining in Register files. However, given the long history of errors being made in the administration of the Register, and the complexities and ambiguities that still exist in the CPOR Act which can make correct implementation very difficult, external quality assurance mechanisms are needed.

The CPOR Act does not contain any provision that gives a person the right to ask the NSW Police Force, or any other body, to review a decision that he or she meets the definition of a registrable person under s 3A, or the calculation of their reporting period under s 14A. In practice people can, and do, request that the Registry review the decision that they are registrable, or the initial calculation of their reporting period, and the Registry conducts these reviews. Providing for a statutory right to an internal review would therefore formalise the current NSW Police Force practice. It would also help ensure that individuals are aware of their right to seek a review, and enable statutory controls, such as timeframes, to be put in place around the process. This mechanism would allow for the initiation of another level of quality assurance and provide the NSW Police Force with an early opportunity to rectify errors made at the case creation stage, avoiding unlawful consequences later.

However it is also important that individuals who are unsatisfied with an internal review by the NSW Police Force of its application of the CPOR Act have a right to appeal to a tribunal or court. This is particularly necessary given the potential for varying interpretations of key provisions in the CPOR Act, which may require a judicial ruling to clarify.

The statutory framework for the Register should therefore be amended to include a right to seek review of a decision that a person is registrable, and the calculation of the person's reporting period, first by the NSW Police Force, and, if unsatisfied, to a tribunal or court.

Given the occurrence of hundreds of errors in the Register over a period of over 17 years, it is also important that legislation provide for regular compliance auditing of the Register by an independent body. Such auditing would assist the NSW Police Force to identify and correct errors, and public reporting on those audits would also help to restore and maintain public confidence in the registration and management of child sex offenders by the NSW Police Force into the future.

The NSW Police Force in its response to the Commission in March 2021 confirmed it is actively supportive of the introduction of a statutory-based independent compliance audit mechanism for the Register.

A successful model for such independent auditing exists in Victoria. The introduction of an audit role for the Independent Broad-based Anti-corruption Commission under the *Sex Offenders Registration Act 2004* (Vic) has helped improve and maintain compliance by Victoria Police with its obligations regarding the registration of sex offenders in that state.



# 4. Measures to help prevent errors occurring in the Register

## 4.1 Recommendation for a responsive resourcing model for the Registry

In the *Operation Tusket Final Report* the Commission concluded one reason so many errors had been made in the administration of the Register was because the NSW Police Force did not maintain adequate levels of staff in the Registry to deal with its increasing workload over the years.

In July 2017 the Workforce Intelligence Unit within the NSW Police Force Human Resources Command completed a comprehensive review of the Registry's workload and staffing, and recommended an additional 14 officers be allocated to the Registry. By the time the *Operation Tusket Final Report* was published, the NSW Police Force had added 14 officers to the Registry, doubling its size.<sup>59</sup>

The recommendations made by the Workforce Intelligence Unit were the minimum staff required to address the errors and risks associated with the Register **at that time**. The recommendation of 14 officers was based on the size of the Register in April 2017. Since that time the Register grew from 3,775 currently registered persons to 4,516 as at 30 June 2020.<sup>60</sup>

The workload of the Registry will continue to increase as the number of persons convicted of registrable offences each year continues to trend upwards. The Registry's workload can also be significantly affected by factors such as changes in the statutory framework which 'widen the net' of the Register, amendments to statutory offender registration schemes in other jurisdictions, and the creation of additional statutory functions.

For these reasons, the Commission recommended that the NSW Police Force adopt a responsive resourcing model for the Registry, to ensure that its resources keep pace with increases in the volume and complexity of its workload. The Commission's recommendation in the *Operation Tusket Final Report* was as follows:

**Recommendation 2: Adopt a responsive model of resourcing for the Child Protection Registry.** The NSW Police Force ensure that the resourcing of the Registry is reviewed at least every two years, and that staffing is maintained at a level sufficient to perform statutory functions under the CPOR Act efficiently and accurately.

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<sup>59</sup> Law Enforcement Conduct Commission, *The New South Wales Child Protection Register: Operation Tusket Final Report* (2019) p 93.

<sup>60</sup> State Intelligence Command, NSW Police Force, *Child Protection Register Monthly Report*, June 2020, produced by the NSW Police Force in response to Notice issued under s 55 of the *Law Enforcement Conduct Commission Act 2016* (NSW), No. 322 of 2020, item 1.

## 4.2 Recommendation for a dedicated legal officer for the Registry

The Workforce Intelligence Unit had also recommended that the NSW Police Force establish at least one legal officer position dedicated to providing legal support to the Registry, to help break down the complexity of interpreting the CPOR Act and reduce the risk of errors.<sup>61</sup>

In 2018 the Registry was given increased legal support through the loan of a full-time legal officer from the Prosecutions Command. However, the Commission did not consider that the loan of a legal officer from another command was adequate to ensure Registry staff had continual access to expert legal advice on an ongoing basis.<sup>62</sup> Given the inherent challenge of applying the legal framework in the CPOR Act, the Registry requires guaranteed and ongoing access to expert legal support. The Commission accordingly made the following recommendation in the *Operation Tuskett Final Report*:

**Recommendation 5: Establish a dedicated legal officer position in the Child Protection Registry.** The NSW Police Force establish at least one ongoing legal officer position within the Registry that is dedicated solely to supporting Registry staff, and fill that position as a matter of priority.

## 4.3 Recommendation for prioritisation of the CPR COPS upgrade project

To administer the Register the NSW Police Force relies on the accuracy of the information in 'CPR COPS', a specific part of the Computerised Operational Policing System used by the NSW Police Force for recording information about the Register. In 2014 Registry officers began to notice issues with the reliability of some of the automatic functions in CPR COPS, which had resulted in registered child sex offenders being released into the community without being monitored by the NSW Police under the CPOR Act.<sup>63</sup>

The NSW Police Force approved an IT project in 2017 to fix the issues with these automatic functions. However at the time of the *Operation Tuskett Final Report* the project still had not been completed. The Commission recommended that the NSW Police Force complete the project as soon as was possible, so that the automatic functions could again be utilised and Registry staff would no longer need to 'perpetually review' Register cases. Our recommendation in the *Operation Tuskett Final Report* was as follows:

**Recommendation 7: Prioritise the 'CPR COPS' upgrade project.** The NSW Police Force prioritise the recruitment for the CPR COPS upgrade project to ensure that the project is completed as soon as possible.

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<sup>61</sup> Law Enforcement Conduct Commission, *The New South Wales Child Protection Register: Operation Tuskett Final Report* (2019) p 131.

<sup>62</sup> Law Enforcement Conduct Commission, *The New South Wales Child Protection Register: Operation Tuskett Final Report* (2019) pp 131-2.

<sup>63</sup> Law Enforcement Conduct Commission, *The New South Wales Child Protection Register: Operation Tuskett Final Report* (2019) p 150.

## 4.4 Recommendation for a Child Protection Register governance framework

Within the NSW Police Force responsibility for the administration of the Register is shared between the Registry (within the State Crime Command) and officers in the Police Area Commands and Police Districts (local commands). The Registry is the unit within the NSW Police Force with expertise in relation to the Register and CPOR Act. The Registry's key responsibilities are to identify registrable persons, place them on the Register, and determine and update their reporting periods.

The monitoring of the vast majority of registrable persons in the community, and the enforcement of their reporting obligations, is undertaken by the local commands in which the registrable persons live and report.

There has been a lack of consistency in the ways local commands perform Register-related activities, including unofficial databases and record-keeping processes.<sup>64</sup>

The Registry has no 'line-command' supervisory responsibility over local commands; it has no role in monitoring their compliance with the CPOR Act. At the time of the *Operation Tuskett Final Report* the Registry's only involvement was to produce monthly reports by collating local commands' performance data for Register-related activities from the NSWPF Command Performance Accountability System (COMPASS). The dataset in COMPASS includes, for example, registrable persons who have failed to make an initial or subsequent report to police. COMPASS targets for Register-related activities were set by the Planning Team of the NSWPF Performance and Program Support Command without input from the Registry.<sup>65</sup>

In light of the complexity and ambiguity in the statutory framework and the risks associated with the administration of the Register, the Commission recommended the NSW Police Force utilise the expertise of the Registry in developing and implementing a governance framework to ensure compliance by all local commands with the statutory framework for the Register. The Commission's recommendation in the *Operation Tuskett Final Report* read:

**Recommendation 10: Implement a Child Protection Register governance framework.** The NSW Police Force develop and implement a governance framework to ensure compliance by all local commands across New South Wales with the statutory framework for the Register. This framework should:

- leverage the expertise of the Child Protection Registry to support local commands and provide quality assurance;
- ensure that emerging compliance risks are identified and addressed, and
- contain appropriate reporting mechanisms to ensure future accountability.

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<sup>64</sup> Law Enforcement Conduct Commission, *The New South Wales Child Protection Register: Operation Tuskett Final Report* (2019) p 164.

<sup>65</sup> Law Enforcement Conduct Commission, *The New South Wales Child Protection Register: Operation Tuskett Final Report* (2019) pp 164-166.

## 4.5 Responses to the recommendations

In relation to Recommendation 2 regarding a responsive model of resourcing for the Registry, the NSW Police Force in its response to the draft *Operation Tuskiet Final Report* stated that it ‘agrees to conduct a review of the resourcing of the Registry every two years in order to consider the optimal staffing level based on its responsibilities and risks.’<sup>66</sup>

In the progress report provided to the Commission on 20 July 2020, the NSW Police Force stated that it approved a new review of the resourcing of the Registry in April 2020, the ‘primary purpose’ of which was ‘to ensure that the Registry is sufficiently resourced to perform its functions, including under the CPOR Act’. The NSW Police Force Workforce Strategy & Analytics branch commenced the review in July 2020, and in March 2021 the NSW Police Force informed us that the draft report was in the process of being finalised.

The Commission was informed the recommendations in the report suggest that three additional staff should be allocated to the Registry: two Constable Investigator positions to ‘enhance investigations into Non-Compliant Registrable Persons’, and one Constable position as an Assistant Training Officer ‘given the increase in demand for training in Police Area Commands and Districts.’<sup>67</sup> The NSW Police Force had stated to the Commission that it would carefully consider any recommendations the review made. The Commission has requested the NSW Police Force provide a copy of the report to the Commission once it has been finalised.

In response to Recommendation 5 regarding a dedicated legal officer for the Registry, the NSW Police Force informed the Commission that in January 2020 it assigned an ongoing legal officer position dedicated solely to supporting Registry staff. The legal officer is physically co-located with Registry staff and reports to the Manager of the Operational Legal Advice Unit in the Police Prosecutions and Licencing Enforcement Command. The NSW Police Force stated that Registry staff and the Registry’s dedicated legal officer are also supported by lawyers in the NSWPF Office of the General Counsel in relation to complex statutory interpretation advice and civil litigation.

In relation to Recommendation 7, regarding the CPR COPS upgrade project, the NSW Police Force has confirmed that the interface between CPR COPS and OIMS (the Offender Integrated Management System used by Corrective Services NSW) was rectified in October 2019. It also explained that the upgrade project was expanded to include approximately 15 other enhancements to CPR COPS, which have also all been implemented. The enhancement include ‘new processes, information recording options and internal dissemination capabilities’.

The Commission commends the NSW Police Force for fully implementing Recommendations 2, 5 and 7. Regular reviews of the Registry’s staffing arrangements and the establishment of a dedicated officer position for the Registry

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<sup>66</sup> Letter from Commissioner of Police, NSW Police Force, to Chief Commissioner, Law Enforcement Conduct Commission, 30 September 2019 (Annexure B – Submissions on Proposed Recommendations).

<sup>67</sup> Letter from Commissioner of Police, NSW Police Force, to Commissioner for Integrity, Law Enforcement Conduct Commission, 18 March 2021 (Attachment ‘Status Report – Operation Tuskiet – Child Protection Register State Crime Command, NSW Police Force’).

are both important measures which will help to ensure that the Registry has the resources it needs to administer the Register accurately and effectively. The Commission notes that implementation of Recommendation 2 requires the NSW Police Force to continue to review staffing levels at least every two years.

The completion of the CPR COPS upgrade means that Registry staff are again able to utilise automatic functions to keep Register records up to date, reducing their workload and the risk of errors resulting from reliance on outdated information.

**Conclusion: Recommendations 2, 5 and 7 have been fully implemented.**

In relation to Recommendation 10 regarding developing and implementing a NSWPF Child Protection Register governance framework, the NSW Police Force on 20 July 2020 informed the Commission:

The Registry has been working with the NSWPF's Governance Risk & Compliance team to develop a framework for local commands to manage registrable persons. This will include automated monthly reporting through COMPASS and the ability for local commands to monitor Register related activities, which is currently in testing phase.

The NSWPF has also introduced Region Investigation Co-ordinators whose responsibilities include promoting compliance with the CPOR Act within the local commands that fall within their Region. These Co-ordinators liaise with Registry staff.

The NSWPF's Governance, Risk & Compliance team also conducts audits in Regions that include Register related activities in order to identify and address any emerging compliance risks.

In addition, 10 new CPR Co-ordinator positions dedicated to managing registrable persons will be introduced in August 2020. These positions have been allocated to local commands based on factors including the number of registrable persons within the local area. These 10 positions are in addition to the 15 positions initially allocated in the last financial year.

The Commission welcomes the fact the NSW Police Force has initiated a process to develop a Register governance framework, with input from the Registry. Once implemented, automated monthly reporting and the ability for local commands to monitor Register-related activities will help to increase accountability for those activities. The establishment of Region Investigation Co-ordinators who liaise with Registry staff will help to improve compliance with the CPOR Act and encourage consistency across the local commands in the region in the monitoring of registrable persons.

Consistency in the performance of Register-related activities and compliance with the CPOR Act at the local command level will also improve with the deployment of 10 additional officers dedicated to the specific role of managing the relevant command's registrable persons.

**Conclusion: Recommendation 10 has been partially implemented to date and implementation is still in progress.**

Despite the significant steps taken by the NSW Police Force to help prevent errors occurring in the administration of the Register, the risk of errors of the type documented in the *Operation Tusket Final Report* will remain unless and until the legal framework for the Register is comprehensively reformed (see Chapter 1).

# 5. Improving interagency collaboration

## 5.1 Reasons for the recommendations

The NSW Police Force is not the only organisation that has statutory obligations in relation to the Register. Courts and ‘supervising authorities’ have obligations under the CPOR Act to assist the NSW Police Force to implement the Register. However, almost since its inception, this multi-agency system has not been functioning as Parliament intended.

Under the CPOR Act courts are responsible for notifying the NSW Police Force and other authorities when they sentence a ‘registrable’ person. However, in practice, responsibility for determining that a person is registrable has fallen to the NSW Police Force. Courts and other authorities also have statutory obligations to notify persons about their reporting obligations under the CPOR Act. But independent reviews of the CPOR Act have indicated that there have been problems with the performance of these interagency responsibilities for many years.<sup>68</sup>

There are many factors contributing to the inconsistent performance by the courts and other authorities of their statutory responsibilities in relation to the Register, including the complexity and ambiguity in the CPOR Act. However, these factors are exacerbated by the absence of an appropriate interagency governance framework that defines the roles, responsibilities and practices required of each authority.

The NSW Police Force suggested a committee be set up comprising all relevant authorities and chaired by the Department of Justice to discuss the obligations, compliance risks and mitigation strategies of each authority.<sup>69</sup> That committee should develop an interagency framework or memorandum of understanding to implement the decisions of the NSW Police Force and other authorities regarding the administration of the Register. The framework would need to define the roles, obligations, and desired outcomes for each authority and articulate measurable key performance indicators to support its functioning.

## 5.2 Commission’s Final Report recommendations

In the *Operation Tuskett Final Report* the Commission made the following recommendations to improve accountability and compliance with the statutory and regulatory framework for the Register by all authorities with responsibilities under the CPOR Act:

**Recommendation 8: Establish an interagency Child Protection Register Committee.** The NSW Police Force initiate the establishment of a Child

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<sup>68</sup> New South Wales Ombudsman, *Review of the Child Protection Register: Report under s 25(1) of the Child Protection (Offenders Registration) Act 2000* (2005); Ministry for Police and Emergency Services (NSW), *Report: Statutory review of the Child Protection (Offenders Registration) Act 2000* (2013).

<sup>69</sup> NSW Police Force, *NSW Police Force response to the interim report of Operation Tuskett*, 23 October 2018, F/2018/94374; D/2018/851674, p 7.

Protection Register Committee with relevant authorities to discuss and decide the obligations, compliance risks and mitigation strategies of each authority in relation to the statutory framework governing the Register.

**Recommendation 9: Develop an interagency governance framework.** The NSW Police Force initiate the creation and implementation of a robust interagency governance framework to ensure consistent service delivery in accordance with each authority's responsibilities under the statutory framework for the Register.

### 5.3 Response to the recommendations

In its response to a draft of the *Operation Tuskett Final Report*, the NSW Police Force stated it supported Recommendations 8 and 9 'to the extent that the NSWPF agrees to initiate an interagency governance review of the administration of the CPOR Act in order to promote the objectives of the Act...the NSWPF notes that the success of the review depends on the engagement and cooperation of other agencies.'<sup>70</sup>

As mentioned in Chapter 1, in 2020 the NSW Police Force formed an interagency working group (IWG) in order to consult with other agencies in relation to issues connected with the Register. In its progress report on 20 July 2020 the NSW Police Force informed the Commission that:

The current focus of the working group is the reform of the CPOR Act. However, the working group will also consider the establishment of an operational working group, which will discuss the obligations, compliance risks and mitigation strategies of each authority in relation to the statutory framework governing the Register. This discussion will occur in the context of the reform of the CPOR Act.

The NSW Police Force also stated that it is intended that the operational working group, if established, will 'consider the creation of an interagency governance framework', and '[a] framework will be considered in the context of reform of the CPOR Act.'

The NSW Police Force Corporate Internal Audit Team in its audit of the maintenance of the Register from September 2018 to August 2020 noted the Commission's recommendation regarding the establishment of an interagency Child Protection Register Committee. The team concluded that 'in our examination of cases and meetings with stakeholders, centralised action was not evident.'<sup>71</sup>

The creation by the NSW Police Force of the IWG is a significant step. It is important that all the authorities with responsibilities under the CPOR Act are brought into the discussion about the problems with the current legislative framework and any proposed solutions. However the IWG is a temporary body set up for the specific task of considering proposals for law reform. An interagency Child Protection Register Committee should be a permanent body, focused on practical matters concerning implementation of the Register. It is hoped that, as the NSW Police Force anticipates, the establishment of the IWG will lead to the establishment of a

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<sup>70</sup> Letter from Commissioner of Police, NSW Police Force, to Chief Commissioner, Law Enforcement Conduct Commission, 30 September 2019 (Annexure B – Submissions on Proposed Recommendations).

<sup>71</sup> *NSW Police Force Corporate Internal Audit Final Report: Child Protection Register Compliance*, March 2021, p 14.

permanent interagency Child Protection Register Committee as envisioned in Recommendation 8.

It is also hoped that the establishment of that Committee will in turn lead to the establishment of an interagency governance framework in relation to implementation of the CPOR Act, as per Recommendation 9.

**Conclusion: Recommendations 8 and 9 have not been implemented.**



## 6. Commission's further inquiry into the Register

In the *Operation Tuskett Final Report* the Commission stated its intention to conduct a follow-up inquiry into the administration of the Register by the NSW Police Force, to ensure it is consistent with statutory requirements. The Commission stated that, as part of the inquiry, it intended to examine the adequacy of the resourcing of the Registry and the governance and accountability arrangements put in place to ensure the information in the Register is accurate. The Commission stated it intended to commence the follow-up inquiry in two years from the date of the publication of the *Operation Tuskett Final Report*.

However, the Commission now considers that given the work that both the NSW Police Force and the Commission has done in relation to the Register since the publication of the *Operation Tuskett Final Report*, there would be little utility in conducting the planned follow-up inquiry at the end of this year.

In 2020 the NSW Police Force conducted both a compliance audit of the Register by the Corporate Internal Audit Team (discussed in 3.3.3), and a review of the resourcing of the Child Protection Registry (the Registry) by the Workforce Strategy & Analytics branch (discussed in 4.5).

The audit of the administration of the Register conducted by the NSW Police Force Corporate Internal Audit Team assessed the adequacy and effectiveness of key controls in relation to the completeness, accuracy, authenticity, reporting and timeliness of information in the Register.

The review of the resourcing of the Registry has been completed, recommending that three additional staff should be allocated to the Registry. The NSW Police Force stated it would provide a copy of the report to the Commission once it was finalised.

Further, the work the Commission has undertaken in preparing this supplementary report has been more extensive than originally envisioned at the time of the *Operation Tuskett Final Report*. In addition to requesting a progress report on implementation of the recommendations, the Commission also reviewed extensive further documentation which was provided by the NSW Police Force in compliance with a Notice under s 55 of the *Law Enforcement Conduct Commission Act 2016*.

The Commission also reviewed 20 individual cases of persons who had been affected by errors in the Register, additional to those mentioned in case studies in the *Operation Tuskett Final Report*, and identified new issues in those cases. Those issues have been raised with the NSW Police Force, and it has either taken action to address those issues, or has undertaken to do so.

The Commission therefore concludes that it is not necessary or appropriate for it to conduct the planned follow-up inquiry at the end of this year, given the effectiveness and recentness of the above actions.

Also, the Commission concludes in this report that the NSW Police Force has either implemented, or is in the process of implementing, all of the recommendations from our *Operation Tuskett Final Report* that are in the control of police to fully implement.

The key cause of errors in the Register that remains to be addressed is one that only Parliament can fix: the problematic legislative framework for the Register.

While the Commission does not consider that a follow-up inquiry into the Register would be appropriate at this time, we note that if the CPOR Act is not significantly amended to address the issues documented in the *Operation Tusk Final Report*, a further Commission inquiry into the administration of the Register may become necessary in the future.

# Glossary

Glossary	Description
Class 1 offence/Class 2 offence	An offence that falls within the definition of ‘Class 1 offence’ or ‘Class 2 offence’ in s 3(1) of the <i>Child Protection (Offenders Registration) Act 2000</i> (NSW).
Commission	Law Enforcement Conduct Commission, New South Wales
COMPASS	NSW Police Force Command Performance Accountability System
COPS	NSW Police Force Computerised Operational Policing System
CPOR Act	<i>Child Protection (Offenders Registration) Act 2000</i> (NSW)
CPR	New South Wales Child Protection Register
CPR case review	Internal review of 5,749 Child Protection Register case files initiated by the NSW Police Force in July 2016, and completed in October 2018.
CPR COPS	The section of the NSW Police Force Computerised Operational Policing System (COPS) that contains information about registrable persons under the <i>Child Protection (Offenders Registration) Act 2000</i> (NSW).
IWG	Interagency Working Group set up by the NSW Police Force in 2020 to develop proposals for reform of the <i>Child Protection (Offenders Registration) Act 2000</i> (NSW).
LECC	Law Enforcement Conduct Commission
NSW	New South Wales
NSWPF	New South Wales Police Force
Operation Tusket	Investigation by the Commission under Part 6 of the <i>Law Enforcement Conduct Commission Act 2016</i> (NSW) into alleged ‘agency maladministration’ by the NSW Police Force in relation to the Child Protection Register.
<i>Operation Tusket Final Report</i>	<i>The New South Wales Child Protection Register: Operation Tusket Final Report</i> , released by the Commission on 31 October 2019, available at <a href="https://www.lecc.nsw.gov.au/investigations/past-investigations/2019/operation-tusket">https://www.lecc.nsw.gov.au/investigations/past-investigations/2019/operation-tusket</a> .
Register	NSW Child Protection Register, established under s 19 of the <i>Child Protection (Offenders Registration) Act 2000</i> (NSW).
Registrable offence	Defined in s 3 of the <i>Child Protection (Offenders Registration) Act 2000</i> (NSW). If a person is convicted of a ‘registrable offence’ they may become a ‘registrable person’ under that Act.

Registrable person	Defined in s 3A of the <i>Child Protection (Offenders Registration) Act 2000</i> (NSW) as a person who has been sentenced for a registrable offence.
Registry	The Child Protection Registry, a specialist unit in the Child Abuse and Sex Crimes Squad, in the State Crime Command of the NSW Police Force.
Reporting obligations	Requirements in Part 3 of the <i>Child Protection (Offenders Registration) Act 2000</i> (NSW) that registrable persons report certain personal information to the NSW Police Force within certain timeframes.
Reporting period	Period of time during which a registrable person is legally required to comply with the reporting obligations in the <i>Child Protection (Offenders Registration) Act 2000</i> (NSW).
Supervising authorities	Government agencies which are prescribed under the <i>Child Protection (Offenders Registration) Regulation 2015</i> (NSW) as having control of registrable persons (for example, Corrective Services NSW).

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