LECC
Law Enforcement
Conduct Commission

1.16 Privacy Management Plan

The Law Enforcement Conduct Commission (the LECC) is required by s 33 of the *Privacy and Personal Information Protection Act 1998* (PPIP Act) to have a Privacy Management Plan (the Plan).

In carrying out its functions, the LECC collects personal and health information. The LECC is committed to protecting the privacy of individuals by ensuring that the collection, storage, use and disclosure of personal and health information is undertaken in accordance with the requirements of the PPIP Act and the *Health Records and information Privacy Act 2002* (HRIP Act).

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1. Definitions

CEO	Chief Executive Officer
Commission	Law Enforcement Conduct Commission.
LECC	Law Enforcement Conduct Commission.
Employees / Officer	Persons working with or on behalf of the LECC, including ongoing, temporary or term-basis employees and senior executives.
Collection	The way in which the LECC acquires personal or health information, including written or online form, a verbal conversation, a voice recording or photograph/image.
Disclosure	When the LECC makes known to an individual or entity personal or health information not previously known to them.
Health information	Information or opinion about a person's physical or mental health or disability, or information provided or generated in the delivery of a health service. See s 6 of the HRIP Act for the full definition.
Personal information	Information or opinion that identifies or could reasonably identify an individual. See s 4 of the PPIP Act for the full definition.
Privacy principles	The Information Protection Principles set out in Division 1, Part 2 of the PPIP Act and the Health Principles set out in Schedule 1 of the HRIP Act. The privacy principles set out the minimum standards for all NSW public sector agencies when handling personal and health information. Lawful exemptions are provided.
Sensitive personal information	Personal information about an individual's race, ethnicity, religion, sexual activities, political or philosophical beliefs or membership of a trade union.

2. LECC Values

The LECC values of accountability, fairness, integrity and respect are the basis of a values-led workplace culture. The LECC expects that your behaviour and conduct will comply with the LECC Code of Ethics and Conduct.

3. Purpose

Section 33 of the *Privacy and Personal Information Protection Act 1998* (PPIP Act) requires all public sector agencies to have a Privacy Management Plan (the Plan).

This Plan sets out how the LECC complies with the principles and requirements of the PPIP Act and, where applicable, the *Health Records and Information Privacy Act* 2002 (HRIP Act) and demonstrates our commitment to respecting the privacy rights of LECC employees and members of the public.

This Plan includes information on the type of personal information held by the LECC, how personal information can be accessed, as well as providing a reference tool for LECC staff dealing with personal information.

4. Know your responsibilities

4.1 Employees

All LECC employees are required to comply with the PPIP and HRIP Acts and this Plan, and must immediately notify the CEO after becoming aware of a relevant data breach concerning personal information.

4.2 Managers and Directors

Managers and Directors are responsible for ensuring that their staff are aware of and understand their obligations under the PPIP and HRIP Acts and comply with this Plan.

4.3 Executive

The Executive is responsible for approving this Plan.

5. Scope

This Plan applies to all LECC employees and contractors and covers all personal information and personal health information collected, received and held by the LECC.

6. About the LECC

The LECC was established in 2017 as a permanent independent investigative commission to provide oversight of the NSW Police Force and NSW Crime Commission.

The LECC strengthens law enforcement integrity, by preventing, detecting and investigating misconduct and maladministration within law enforcement in NSW. The LECC does this by detecting and investigating misconduct and corruption, and overseeing complaint handling.

The LECC also aims to understand and assist in the prevention of officer misconduct.

More detailed information about the role and functions of the LECC can be obtained by visiting the LECC website at: *www.lecc.nsw.gov.au*.

7. Privacy obligations

Both the PPIP Act and the HRIP Act contain privacy principles that set out how a public sector agency must manage an individual's personal and health information and identifies the privacy rights of individuals and obligations of public sector agencies to protect those rights.

The privacy principles place obligations on how an agency:

- collects personal information;
- retains personal information and maintains its security;
- enables individuals to access their own personal information and make changes to it;
- uses personal information; and
- discloses personal information.

Exemptions to the privacy principles can be found in the PPIP Act and HRIP Act, as well as Regulations, Privacy Codes and Public Interest Directions.

Section 27 of the PPIP Act and s 17 of the HRIP Act provide that the LECC is not required to comply with the privacy principles except in connection with the LECC's exercise of its administrative and educative functions.

7.1 What is personal information and personal health information

Personal information is any information or opinion that is capable of identifying a person, as defined by s 4(1) of the PPIP Act and s 5(1) of the HRIP Act, as follows:

> *'... information or an opinion (including information or an opinion forming part of a database and whether or not recorded in a material form) about an individual whose identity is apparent or can reasonably be ascertained from the information or opinion.'*

Section 5(2) of the HRIP Act provides that personal information includes:

> *'... such things as an individual's fingerprints, retina prints, body samples or genetic characteristics.'*

Health information is a specific type of personal information. It is any information or opinion about a person's physical or mental health, or disability.

Any reference to personal information in this Plan refers to personal and health information as defined in the PPIP and HRIP Acts.

Information that is not personal information

There are certain types of information that are not considered personal or health information and are therefore not protected by the privacy principles.

Examples of when the privacy principles would not apply include:

- Information about an individual who has been dead for more than 30 years.
- Information about an individual that is contained in a publicly available publication.
- Information about an individual arising out of a warrant issued under the Telecommunications (Interception and Access) Act 1979 (Cth).
- Information about an individual that is contained in a protected disclosure within the meaning of the Public Interest Disclosures Act 2022 (NSW), or that has been collected in the course of an investigation arising out of a protected disclosure.

- Information about an individual arising out of a Royal Commission or Special Commission of Inquiry.
- Information about an individual arising out of a complaint made under Part 8A of the Police Act 1990 (NSW).
- Information or an opinion about an individual's suitability for appointment or employment as a public sector official.

7.2 Types of Personal information held by the LECC

Examples of personal information that the LECC holds in connection with the exercise of its administrative and educative functions include:

- Personnel records regarding LECC officers collected for the purposes of human resources management.
- Medical information provided by LECC officers for purposes associated with their employment, for example, in support of applications for leave.
- Medical information regarding LECC officers for the purposes of ensuring officers meet the health levels required for the performance of their duties.
- Records relating to former employees for the purposes of human resources management.
- Data collected by the LECC for the purposes of security in respect of contractors, including consultants engaged by the LECC. This includes personal information which those individuals authorised the LECC to obtain for the purposes of a probity assessment.
- Images captured by closed circuit television cameras on LECC premises, maintained for the purposes of security.
- Audit logs maintained by the LECC's security system of when LECC Officers enter and exit LECC premises, recorded for the purposes of security.
- Visitor logs of persons (not employed or otherwise engaged by the LECC) who attend LECC premises, maintained for the purposes of security.

8. The privacy principles

The objective of the PPIP and HRIP Acts are to protect individuals' privacy, to allow them a degree of control over the information held about them by public sector agencies and to provide a mechanism for complaints. These objectives are achieved primarily through compliance with the privacy principles. The privacy principles (IPPs and HPPs) are the standard that the LECC adheres to when dealing with personal information, including collection, storage, use and disclosure.

The privacy principles have been summarised below to assist LECC officers in complying with their obligations. This summary does not cover the full complexity of privacy law and should not be treated as a substitute for the principles as set out in the PPIP and HRIP Acts. If LECC officers are unsure whether the IPPs apply to information they are dealing with, or the manner in which IPPs apply, they should seek advice from the Legal Services Unit (LSU).

In brief, the Information Protection Principles state:

- A public service agency must not collect personal information unless the information is collected for a lawful purpose directly relating to the function or activity of the agency and the information is reasonably necessary for that purpose.
- In collecting personal information, a public service agency must collect the information directly from the individual to whom the personal information relates, unless the individual has authorised the information to be collected from someone else.
- If a public sector agency collects personal information from an individual, the agency must ensure that the individual to whom the information relates is made aware that the information is being collected, the purposes for which the information is being collected, the intended recipients of the information, whether the supply of the information by the individual is required by law or is voluntary, and any consequences for the individual if the information (or any part of it) is not provided, the existence of any right of access to, and correction of, the information, and the name and address of the agency that is collecting the information and the agency that is to hold the information.
- If a public sector agency collects personal information from an individual, the agency must ensure that the information collected is relevant to that purpose, is not excessive, and is accurate, up to date and complete, and, the collection of the information does not intrude to an unreasonable extent on the personal affairs of the individual to whom the information relates.
- A public sector agency that holds personal information must ensure that the information is kept for no longer than is necessary for the purposes for which the information may lawfully be used, that the information is disposed of securely and in accordance with any requirements for the retention and disposal of personal information, that the information is protected, by taking such security safeguards as are reasonable in the circumstances, against loss, unauthorised access, use, modification or disclosure, and against all other misuse, that, and, if it is necessary for the information to be given to a person in connection with the provision of a service to the agency, everything reasonably within the power of the agency is done to prevent unauthorised use or disclosure of the information.
- A public sector agency that holds personal information must take such steps as are reasonable to enable any person to ascertain whether the agency holds personal information, whether the agency holds personal information relating to that person, and, if the agency holds personal information relating to that person, the nature of that information, the main purposes for which the information is used, and, that person's entitlement to gain access to the information.
- A public sector agency that holds personal information must, at the request of the individual to whom the information relates and without excessive delay or expense, provide the individual with access to the information.

9. How the LECC manages personal and health information

9.1 How the privacy principles apply to the LECC

The LECC collects, holds, uses and discloses personal information for the purpose of carrying out its functions.

The Information Protection Principles only apply when LECC is exercising administrative or educative functions.

In relation to its administrative and educative functions, the LECC collects personal and health information only where it is reasonably necessary for those functions, including human resources, corporate services, training and education activities.

Some examples of administrative and educative functions are:

- Managing employees – including payroll and leave records;
- Training staff;
- Workers compensation records; and
- Corporate services including budget and IT.

LECC officers, when dealing with personal information in connection with the exercise of the administrative and educative functions of the LECC, should be aware of the requirement to comply with the IPPs and, when dealing with health information, the further requirement of complying with the HPPs.

For administrative and educative functions, personal information is collected directly from individuals wherever practicable. In some cases, information may be collected from third parties where authorised or required by law. The LECC provides individuals with notice at or before collection through forms, online systems, correspondence or verbal advice.

The LECC ensures that, in respect of administrative and educative functions, personal information collected is relevant, not excessive and not unreasonably intrusive.

9.2 Policy and procedure development

To ensure compliance with the requirements of s 33(2) of the PPIP Act, the LECC is required to set out in this Plan how policies and practices are developed.

The LECC Executive Group is responsible for approving all LECC policies and procedures.

Various policies affect the collection and handling of personal information by the LECC. Internal LECC policies and procedures concerning the manner in which information is dealt with include the following:

- The Code of Ethics and Conduct (1.1) sets out the general standards of conduct expected of LECC officers, including the use and protection of personal information.
- The Employee Induction Procedure (2.6) provides procedures which ensure all officers newly employed at the LECC are notified of internal policies and procedures, including responsibilities regarding the confidentiality of information.
- The IT Conditions of Use Policy (5.1e) identifies the principles for proper use of the LECC Information Communication and Technology facilities and systems, along with the responsibilities of all employees of the LECC. It ensures that LECC information is held on Information Communication and Technology facilities in a way that maintains the confidentiality, integrity and availability of the information.
- The Information Security Policy (5.1a) provides guidelines to ensure that information within the LECC is treated with the appropriate levels of security.
- The Records Management Policy (6.2) provides for the management of records within the LECC including the capture, creation, control and maintenance of electronic and physical records.

- The Security Vetting and Clearance Policy and Procedure (2.16a) establishes the guidelines for the security clearance and pre-employment checks to be undertaken in respect of all staff and contractors prior to commencement of duties at the LECC. This includes the manner in which personal information may be collected and dealt with for such purposes.
- The Physical Security (Personnel & Premises) Procedure (4.3) outlines procedures to ensure the security of the LECCs working environment, including maintaining the physical security of confidential information.
- The Family and Community Services Leave (FACS) and Sick Leave guidelines outline the manner in which records relating to leave applications by LECC officers are dealt with.

9.3 Dissemination of policies and procedures

All LECC officers are required to familiarise themselves with and comply with LECC policies and procedures.

All policies and procedures are published on the LECC intranet site which is accessible to all LECC officers.

All external contractors and consultants engaged by the LECC are notified of relevant policies and procedures when engaged by the LECC.

LECC officers are notified of new policies adopted, reviews and amendments to existing policies by way of internal email and annual policy and procedure acknowledgments.

This Plan is available on the LECC intranet and publicly on the LECC website: *www.lecc.nsw.gov.au*

9.4 Storage and security of personal information

The collection, storage, retention and access to personal information held by the LECC is governed by various LECC policies.

Where personal information is held in hard copy format it is kept in separate secure storage areas. Information held electronically is stored on secure password protected computer databases. LECC staff are required to regularly change their passwords and not give out their password to others. Our systems comply with the international standard of information security ISO 27001.

Access to particular personal information is restricted to those key LECC officers deemed to require access to that information in order to perform their functions and to the person to whom the information relates. Hard copy material is mainly located at the LECC's office. Access to the non-public areas of the LECC is by key card access. Visitors cannot enter these areas without permission and must be escorted at all times by a LECC officer. Visitors are not granted access to personal information held by the LECC.

Personal information that is no longer required and can be destroyed is disposed of by either being shredded or placed in locked bins for secure destruction.

The LECC minimises the risk of its employees committing offences when dealing with personal information by undertaking appropriate vetting to ensure that it only employs staff of the highest integrity, ensuring that staff both during their induction and continuing service with the LECC are informed about and provided with training on relevant legislative

provisions and ethical conduct, providing secure storage of and limited access to personal information records and regularly reviewing this plan and its policies and procedures in relation to the collection, storage, retention and access to personal information.

10. Public Registers

A public register is a register of personal information that is publicly available or open to public inspection (whether or not on payment of a fee).

The PPIP Act imposes obligations on agencies who maintain public registers which require them not to disclose any personal information kept in the register unless the agency is satisfied that it is to be used for a purpose relating to the purpose of the register or the Act under which it is kept (see s 57 of the PPIP A*ct*).

The LECC does not maintain any public registers.

LECC officers who access public registers should be mindful of the above obligations imposed on the agencies that maintain those registers. If a LECC officer requires clarification regarding this section they should seek advice from the LSU.

11. Accessing personal information

Individuals, including LECC Officers, have the right to access, amend and update the personal information that LECC holds about them. The LECC must provide access to this information without excessive delay and does not charge any fees to access or amend it.

LECC staff wanting to access or amend their own personal or health information should contact the Manager, Human Resources.

For members of the public, a request for access to any personal information held by the LECC should be made in writing to the Chief Executive Officer of the LECC. Any person can make a formal application to the LECC. The application should:

- Include the person's name and contact details (postal address, telephone number and email address, if applicable);
- State whether the person is making the application under the PPIP Act (personal information) or HRIP Act (health information);
- Explain what personal or health information the person wants to access or amend; and
- Explain how the person wants to access or amend it.

The LECC aims to respond in writing to formal applications within 20 working days and will advise the applicant how long the request is likely to take, particularly if it may take longer than expected. If an individual believes that the LECC is taking an unreasonable amount of time to respond to an application, they have the right to seek an internal review.

12. Procedures for privacy complaints and applications for an internal review

A person who is dissatisfied about the manner in which the LECC has dealt with their personal information can make a complaint to the LECC in writing. The LECC will consider the issues raised by the complainant and respond in writing as soon as is reasonably possible (but not later than 60 days after receipt of the complaint). Complaints should be addressed to the Chief Executive Officer at the address below.

Part 5 of the PPIP Act provides that a person aggrieved by certain conduct of the LECC under the PPIP Act is entitled to apply for a review of that conduct. This part applies to the following conduct:

- The contravention of an applicable IPP
- The contravention of an applicable Privacy Code of Practice
- The disclosure of personal information kept in a public register

Section 21 of the HRIP *Act* provides that a person is also entitled to apply for a review of the conduct of the LECC in respect of the following conduct:

- The contravention of an applicable HPP
- The contravention of an applicable *Health Privacy Code of Practice*

Requests for review must be made in writing and include a postal address by which the LECC can send a response. The request should be addressed to:

The Chief Executive Officer
Law Enforcement Conduct Commission
GPO Box 3880
SYDNEY NSW 2000

Applications for review should generally be made within six months of the person becoming aware of the conduct which forms the subject of the application. The LECC may decline to deal with applications which are made after this time.

Upon receipt of any application for review, the LECC will notify the Privacy Commissioner of the application as per s 54 of the PPIP Act. The LECC will keep the Privacy Commissioner informed of the progress of the application and the ultimate outcome.

All requests for review and the LECC's responses to such requests are to be recorded on the LECC's internal document management systems.

The LECC will process the application for review in accordance with Part 5 of the PPIP Act.

The LECC will acknowledge receipt of a request for internal review within seven days and complete the review within 60 days. It is noted, that if any application for review is not completed within 60 days from the day of its receipt, the applicant is entitled to make an application under s 55 of the PPIP Act to the Civil and Administrative Decisions Tribunal (NCAT) for a review of the relevant conduct. Further information about making an application to the tribunal can be found on their website *www.ncat.nsw.gov.au*.

As soon as possible after the completion of the review (but not longer than 14 days), the LECC will notify the applicant in writing of the outcome of the review, the actions proposed to be taken by the LECC (and the reasons for those actions) and the rights of the applicant, including the right to have those findings and the proposed action reviewed by the NCAT.

12.1 Complaints to the Privacy Commissioner

An individual can make a compliant to the Privacy Commissioner about a breach of their privacy by the LECC. More information about the role of the Information and Privacy Commission (IPC) in handling complaints can be found on the IPC website www.ipc.nsw.gov.au.

13. Offences associated with dealing with personal information

LECC officers should be aware that the PPIP Act and HRIP Act create certain offences for the improper dealing of personal information by public officials. These include:

- The intentional unlawful disclosure or use of personal information by public officials (see s 62(1) of the PPIP Act). The same offence exists in respect of health information (see s 68(1) of the HRIP Act)
- Inducing or attempting to induce a person to unlawfully disclose personal information (see s 62(2) of the PPIP Act Section 62(2); s 68(2) of the HRIP Act).
- Offering to unlawfully supply personal information (see s 63 of the PPIP Act; s 69 of the HRIP Act).

14. Other legislative requirements when dealing with personal information

LECC officers should be aware that the obligations under the PPIP Act and HRIP Act may be only some of those applicable to the information they are dealing with and a number of other pieces of legislation regulate the manner in which information is dealt with.

Section 180 of the LECC Act is of particular significance and is applicable to both current and former officers of the LECC. Section 180(2) of the LECC Act holds that a person to whom the section applies must not:

> *(2) ... directly or indirectly, except for the purposes of this Act or otherwise in connection with the*
>
> *exercise of the person's functions under this Act -*
>
> *(a) make a record of any information, or*
>
> *(b) disclose or communicate to any person any information,*
>
> *being information acquired by the person by reason of, or in the course of, the exercise of the person's functions under this Act.*

Other legislation that may be relevant to the treatment of personal information includes:

- Government Information (Public Access) Act 2009
- Surveillance Devices Act 2007
- Workplace Surveillance Act 2005
- State Records Act 1998
- Crimes Act 1900
- Criminal Records Act 1991

- Public Interest Disclosures Act *2022*
- Telecommunications (Interception and Access) (New South Wales) Act 1987
- Telecommunications *(Interception and Access) Act 1979* (Cth)
- Privacy Act 1988

In addition to the above the Privacy and Other Legislation Amendment Bill 2024 introduced a statutory tort for serious invasions of privacy. Individuals now have an additional avenue to seek redress for privacy harms in the courts.

The Legal Services Unit can provide advice to LECC officers on the effect of these Acts and any obligations arising under them.

15. Data Breach Policy

Separate from this PMP, the LECC has a *Data Breach Policy* that sets out the LECC's procedures for managing a data breach, including the assessment and notification requirements for the Mandatory Notification of Data Breach Scheme under PIPPA Part 6a.

16. Monitoring and review

This Plan will be reviewed in accordance with the policy review schedule and at other times if any significant new information or legislative or organisational change warrants a change in this document. Reviews will be completed in consultation with the appropriate business units for relevance and effectiveness.

17. Advice and further information

Feedback, comments and suggestions about this Plan can be directed to the Chief Executive Officer, or officer appointed by the Chief Executive Officer from time to time.

LECC Privacy statement

We will only collect personal information if:

- it is for a lawful purpose that is directly related to one of our functions; and
- it is reasonably necessary for us to have the information.

By limiting our collection of personal information to only what we reasonably need, it is much easier to comply with our other privacy obligations. When requesting personal information on behalf of the LECC, staff should only ask for information that is reasonably necessary to the task at hand. We will especially avoid collecting sensitive personal information if we do not need it.

We will collect personal information directly from the person unless they have authorised otherwise or, in the case of health information, it would be unreasonable or impractical to obtain the information directly from the individual.

The LECC will not collect personal information by unlawful means. The LECC will not collect personal information that is excessive or intrusive and will take reasonable steps to ensure that the personal information collected is relevant and accurate. For example employment at the LECC is offered only after successful completion of a rigorous probity assessment process. Potential employees are required to provide a range of personal information including declarations and details of financial interests, conflicts and associates. The vetting documents outline the information required and provide details on the use, storage and disposal of that information.

When collecting personal information, the LECC will take reasonable steps to tell the person:

- that the LECC is collecting and holding the information;
- what the information will be used for;
- what other organisations (if any) routinely receive this type of information;
- whether the collection of this information is required by law;
- what the consequences will be for the person if they do not provide the information; and
- how they can access their personal information held by us.

Notification is usually provided to individuals through a ‘privacy notice’ at the initial time of collection or as soon as we can afterwards. Privacy notices can be in writing or verbal.

We will put in place reasonable security safeguards to protect personal information from loss, unauthorised access, use, modification or disclosure, and against all other misuse. We will ensure personal information is stored securely, not kept longer than necessary for lawful purposes and disposed of appropriately.

We will enable anyone to know, on request to the LECC:

- whether we hold their personal information;
- the nature of the personal information;
- the main purposes for which we use their personal information was/is being used; and
- their entitlement to access their personal information.

The publication of this Plan promotes accountability and increases the transparency of our information handling practices. This Plan will be accessible on our website and available to download and print.

We will allow people to access their personal information and must do so without excessive delay or expense. We will allow people to update or amend their personal information, to ensure it is accurate, relevant, up-to-date, complete and not misleading. We will only refuse access or a request to amend personal information where authorised by law, and we will provide written reasons, if requested.

Before using personal information, we will take reasonable steps to ensure that the information is relevant, accurate, up-to-date, complete, and not misleading. For example, if investigating a workplace grievance, we will give the person the subject of the complaint an opportunity to correct the information relied upon before a final decision is made. We will not use personal information that we know is based on misleading or erroneous information.

We may use personal information for:

- the primary purpose for which it was collected;
- a directly related secondary purpose within the reasonable expectations of the person;
- another purpose permitted by law, such as where it is reasonably necessary to prevent or lessen a serious and imminent threat to life or health; or
- another purpose for which the person has consented.

We may disclose personal information if:

- the disclosure is directly related to the purpose for which the information was collected, and we have no reason to believe that the person concerned would object to the disclosure;
- the person has been made aware in accordance with a privacy notice under s 10 of the PPIP Act that information of the kind in question is usually disclosed to the intended recipient; or
- another purpose if the person has consented.

We can generally only disclose sensitive personal information when the person has consented to the disclosure or when it is necessary to prevent a serious and imminent threat to life or health. We may disclose health information if:

- the person has consented to the disclosure;
- the disclosure is directly related to the purpose for which it was collected and the individual would reasonably expect us to disclose the information for that purpose; or
- we reasonably believe that the recipient of the information is subject to a law or binding scheme equivalent to the HPPs, or
- we have bound the recipient by contract to privacy obligations equivalent to the HPPs.

We will not disclose personal or health information outside of NSW or to a Commonwealth agency except in limited circumstances permitted by law.