

LECC Law Enforcement
Conduct Commission

OPERATION DENALI
REPORT PURSUANT TO SECTION 132 *LAW*
ENFORCEMENT CONDUCT COMMISSION ACT 2016

June 2023

LECC

Law Enforcement Conduct Commission

Level 3, 111 Elizabeth Street
Sydney NSW 2000
Email: contactus@lecc.nsw.gov.au

Postal address

GPO Box 3880
Sydney NSW 2001
Phone: (02) 9321 6700
Toll free: 1800 657 079
Fax: (02) 9321 6799

Copyright: © State of New South Wales through the Law Enforcement Conduct Commission, NSW, Australia, 2000. You may copy, distribute, display, download and otherwise freely deal with this work for any purpose, provided that you attribute the Law Enforcement Conduct Commission as the owner. However, you must obtain permission from the Commission if you wish to (a) charge others for access to the work (other than at cost), (b) include the work in advertising or a product for sale, or (c) modify the work.

Disclaimer: This document has been prepared by the Law Enforcement Conduct Commission for general information purposes. While every care has been taken in relation to its accuracy, no warranty is given or implied. Further, recipients should obtain their own independent advice before making any decision that relies on this information. This report is available on the Commission's website: www.lecc.nsw.gov.au. For alternative formats such as Braille, audiotape, large print or computer disk, contact the Commission by email: media@lecc.nsw.gov.au or phone: (02) 9321 6700, toll free: 1800 657 079 or fax: (02) 9321 6799.

ISBN 978-1-74003-057-1

The Law Enforcement Conduct Commission acknowledges and pays respect to the Traditional Owners and Custodians of the lands on which we work, and recognises their continuing connection to the lands and waters of NSW. We pay our respects to the people, the cultures, and the Elders past and present.



27 June 2023

The Hon. Benjamin Cameron Franklin, MLC
President
Legislative Council
Parliament House
SYDNEY NSW 2000

The Hon. Greg Piper, MP
Speaker
Legislative Assembly
Parliament House
SYDNEY NSW 2000

Dear Mr President and Mr Speaker

Under section 132(3) of the *Law Enforcement Conduct Commission Act 2016* (the Act), the Commission provides you with a copy of its report in relation to its investigation in Operation Denali.

Under section 142(2) of the Act, we recommend that this report be made public immediately.

Yours sincerely

A handwritten signature in black ink, appearing to be 'Peter Johnson', with a long horizontal flourish extending to the right.

The Hon. Peter Johnson SC
Chief Commissioner

Table of Contents

- 1. Summary.....1
- 2. The Commission’s Investigation.....1
- 3. Prosecution.....3
- 4. Affected Persons.....3
- 5. Findings and Conclusion.....4
- Appendix 1 - The Commission’s Statutory Functions5

1. Summary

- 1.1 The Commission's investigation in Operation Denali started with a complaint to the Commission that various officers of the NSW Police Force ('NSWPF'), including Detective Sergeant Michael Mannah, were involved in illegal activities and improper associations.
- 1.2 During this investigation, the Commission became aware that Detective Sergeant Michael Mannah was accessing child abuse material on the internet. The Commission moved quickly to gather evidence for the purposes of a prosecution. This included executing a search warrant on 22 January 2021. Detective Sergeant Michael Mannah was arrested and charged on the same day with offences under the *Criminal Code 1995* (Cth) and *Firearms Act 1996* (NSW).
- 1.3 Detective Sergeant Michael Mannah resigned from the NSWPF in February 2022, so he will now be referred to as Mr Mannah.
- 1.4 Mr Mannah pleaded not guilty to two charges relating to child abuse material. The jury found him guilty of the charge of accessing child abuse material, and not guilty of the charge of possessing or controlling child abuse material.
- 1.5 On 20 January 2023 Mr Mannah was sentenced to a term of imprisonment of 12 months, commencing on 19 January 2023 and expiring on 18 January 2024.¹
- 1.6 Mr Mannah is named in this report as criminal proceedings were brought against him which have resulted in conviction and sentence passed in open court.

2. The Commission's Investigation

- 2.1 On 6 September 2019 the Commission received an anonymous online complaint alleging illegal activities and improper associations by various NSWPF officers, including Mr Mannah. On 26 September 2019, the Commission decided to commence an investigation into the allegations raised by the complaint. This decision was made under s 44(1)(a) of the *Law Enforcement Conduct Commission Act 2016* ('the LECC Act').

¹ *R v Mannah* [2023] NSWDC 96.

- 2.2 The Commission's statutory powers and functions are summarised in Appendix 1 to this report.
- 2.3 The Commission's investigation involved the review of information from both open sources and the NSWPF. In addition, the Commission was granted warrants under the *Telecommunications (Interception and Access) Act 1979 (Cth)* that allowed it to lawfully intercept certain telephone services.
- 2.4 Whilst monitoring Mr Mannah's mobile phone, it was discovered that he had accessed a website which contained child abuse material. Further investigation showed that between 7 August 2020 and 20 January 2021, Mr Mannah had used his mobile phone to access child abuse material on 47 different dates from 110 unique websites. In total, Mr Mannah had accessed over 6,000 images of child abuse material.
- 2.5 Further investigation showed that on 22 November 2020, while Mr Mannah was rostered to work at the location of a hotel for COVID-19 quarantine duties, he had accessed child abuse material on his mobile phone.
- 2.6 As part of its investigation, Commission officers reviewed and assessed the child abuse material using the Australian National Victim Image Library schema ('ANVIL'). This system divides the material depicted into six separate categories, and each image or video is categorised accordingly.²
- 2.7 On 22 January 2021 Commission officers executed search warrants on Mr Mannah's vehicle and home. The Commission seized a number of items including his mobile phone. His police firearm was found in a sports bag on the floor of his bedroom.
- 2.8 Mr Mannah was arrested by officers attached to the NSWPF Professional Standards Command. He was charged with one count of using a carriage service to access child abuse material pursuant to s 474.22(1) of the *Criminal Code 1995 (Cth)* and one count of not keep firearm safely pursuant to s 39(1)(a) of the *Firearms Act 1996 (NSW)*.
- 2.9 The Commission was not involved with the *Firearms Act* charge, which was prosecuted by the NSWPF and the NSW Director of Public Prosecutions.

² *R v Porte* [2015] NSWCCA 174; 252 A Crim R 294 at [16]-[17].

3. Prosecution

- 3.1 The Commonwealth Director of Public Prosecutions ('CDPP') took over the prosecution of the charge relating to the child abuse material, with the Commission acting as the informant.
- 3.2 Mr Mannah was granted conditional bail on 23 January 2021 at the Parramatta Local Court and was legally represented throughout the course of his proceedings.
- 3.3 On 27 July 2021 the CDPP laid an additional charge of possessing or controlling child abuse material obtained or accessed using a carriage service, pursuant to s 474.22A of the *Criminal Code 1995* (Cth).
- 3.4 Mr Mannah entered pleas of not guilty to both charges and was committed for trial on 28 September 2021. The trial commenced on 21 September 2022 before Judge Bourke SC and a jury.
- 3.5 Commission officers and Mr Mannah gave evidence. The trial took 7 days. Ultimately, the jury returned a verdict of guilty to the charge of accessing child abuse material (s 474.22(1)) and not guilty to the charge of possessing or controlling child abuse material (s 474.22A).
- 3.6 On 20 January 2023 Mr Mannah was sentenced to a term of imprisonment of 12 months, commencing on 19 January 2023 and expiring on 18 January 2024. The execution of the sentence was partially suspended after serving a period of four months, upon entering into a recognisance pursuant to s 20(1)(b) of the *Crimes Act 1914* (Cth).³

4. Affected Persons

- 4.1 In Appendix 1 to this Report the Commission set out the provisions of s 133 of the LECC Act dealing with the contents of reports to Parliament. Subsections (2), (3) and (4) relate to "affected persons".
- 4.2 The Commission is of the opinion that Mr Mannah is an affected person within the meaning of subsection 133(2) of the LECC Act, being a person against whom, in the Commission's opinion, substantial allegations have been made in the course of the investigation. The draft of this report was provided to Mr Mannah who did not wish to make submissions concerning its content.

³ *R v Mannah* [2023] NSWDC 96.

5. Findings and Conclusion

- 5.1 The Commission is satisfied that Mr Mannah accessed child abuse material. At times, he accessed this material whilst he was on duty as a police officer.
- 5.2 The Commission acted quickly to interrupt this conduct, which ended in Mr Mannah's arrest.
- 5.3 Mr Mannah has now been charged, tried and convicted of an offence which stemmed from conduct uncovered by the Commission. He is no longer a police officer and will not return to the NSWPF. In the circumstances, it is not necessary for the Commission to express any opinion for the purpose of s 133(2) of the LECC Act. No further action is needed by the Commission or the NSW Police Commissioner.

Appendix 1 - The Commission's Statutory Functions

1. The LECC Act lists among the Commission's principal functions the detection and investigation of serious misconduct and serious maladministration: s 26.
2. Section 10 of the LECC Act defines "serious misconduct":
 - (1) For the purposes of this Act, **serious misconduct** means any one of the following:
 - (a) conduct of a police officer, administrative employee or Crime Commission officer that could result in prosecution of the officer or employee for a serious offence or serious disciplinary action against the officer or employee for a disciplinary infringement,
 - (b) a pattern of officer misconduct, officer maladministration or agency maladministration carried out on more than one occasion, or that involves more than one participant, that is indicative of systemic issues that could adversely reflect on the integrity and good repute of the NSW Police Force or the Crime Commission,
 - (c) corrupt conduct of a police officer, administrative employee or Crime Commission officer.
 - (2) In this section:

serious disciplinary action against an officer or employee means terminating the employment, demoting or reducing the rank, classification or grade of the office or position held by the officer or employee or reducing the remuneration payable to the officer or employee.

serious offence means a serious indictable offence and includes an offence committed elsewhere than in New South Wales that, if committed in New South Wales, would be a serious indictable offence.
3. "Officer maladministration" and "agency maladministration" are both defined in s 11 of the LECC Act. "Officer maladministration" is defined in s 11(2) in these terms:
 - (2) **Officer maladministration** means any conduct (by way of action or inaction) of a police officer, administrative employee or Crime Commission officer that, although it is not unlawful (that is, does not constitute an offence or corrupt conduct):

- (a) *is unreasonable, unjust, oppressive or improperly discriminatory in its effect, or*
 - (b) *arises, wholly or in part, from improper motives, or*
 - (c) *arises, wholly or in part, from a decision that has taken irrelevant matters into consideration, or*
 - (d) *arises, wholly or in part, from a mistake of law or fact, or*
 - (e) *is conduct of a kind for which reasons should have (but have not) been given.*
4. The conduct of an officer or agency is defined as “*serious maladministration*” if the conduct, though not unlawful, is conduct of a serious nature which is unreasonable, unjust, oppressive or improperly discriminatory in its effect or arises wholly or in part from improper motives: LECC Act, s 11(3).
5. The Commission may hold an examination for the purpose of an investigation into conduct that it has decided is (or could be) serious misconduct or serious maladministration: s 61(a).
6. Section 29 provides the authority for the Commission to make findings and express opinions:
- (1) *The Commission may:*
 - (a) *make findings, and*
 - (b) *form opinions, on the basis of investigations by the Commission, police investigations or Crime Commission investigations, as to whether officer misconduct or officer maladministration or agency maladministration:*
 - (i) *has or may have occurred, or*
 - (ii) *is or may be occurring, or*
 - (iii) *is or may be about to occur, or*
 - (iv) *is likely to occur, and*
 - (c) *form opinions as to:*
 - (i) *whether the advice of the Director of Public Prosecutions should be sought in relation to the commencement of proceedings against particular*

persons for criminal offences against laws of the State, or

- (ii) whether the Commissioner of Police or Crime Commissioner should or should not give consideration to the taking of other action against particular persons, and*
 - (d) make recommendations as to whether consideration should or should not be given to the taking of action under Part 9 of the Police Act 1990 or under the Crime Commission Act 2012 or other disciplinary action against, particular persons, and*
 - (e) make recommendations for the taking of other action that the Commission considers should be taken in relation to the subject-matter or opinions or the results of any such investigations.*
- (2) Subsection (1) does not permit the Commission to form an opinion, on the basis of an investigation by the Commission of agency maladministration, that conduct of a particular person is officer maladministration unless the conduct concerned is (or could be) serious maladministration.*
 - (3) The Commission cannot find that a person is guilty of or has committed, or is committing or is about to commit, a criminal offence or disciplinary infringement.*
 - (4) An opinion or finding that a person has engaged, is engaging or is about to engage in:
 - (a) officer misconduct or serious misconduct or officer maladministration or serious maladministration (whether or not specified conduct), or*
 - (b) specified conduct (being conduct that constitutes or involves or could constitute or involve officer misconduct or serious misconduct or officer maladministration or serious maladministration), and any recommendation concerning such a person is not a finding or opinion that the person is guilty of or has committed, or is committing or is about to commit, a criminal offence or disciplinary infringement.**
 - (5) Nothing in this section prevents or affects the exercise of any function by the Commission that the Commission considers appropriate for the purposes of or in the context of Division 2 of Part 9 of the Police Act 1990.*

- (6) *The Commission must not include in a report under Part 11 a finding or opinion that any conduct of a specified person is officer misconduct or officer maladministration unless the conduct is serious misconduct or serious maladministration.*
 - (7) *The Commission is not precluded by subsection (6) from including in any such report a finding or opinion about any conduct of a specified person that may be officer misconduct or officer maladministration if the statement as to the finding or opinion does not describe the conduct as officer misconduct or officer maladministration.*
7. This report is made pursuant to Part 11 of the LECC Act. Section 132(1) provides that the Commission may prepare reports “in relation to any matter that has been or is the subject of investigation under Part 6”.
8. Section 133 (Content of reports to Parliament) provides that:
- (1) *The Commission is authorised to include in a report under section 132:*

 - (a) *statements as to any of the findings, opinions and recommendations of the Commission, and*
 - (b) *statements as to the Commission's reasons for any of the Commission's findings, opinions and recommendations.*
 - (2) *The report must include, in respect of each affected person, a statement as to whether or not in all the circumstances the Commission is of the opinion that consideration should be given to the following:*

 - (a) *obtaining the advice of the Director of Public Prosecutions with respect to the prosecution of the person for a specified criminal offence,*
 - (b) *the taking of action against the person for a specified disciplinary infringement,*
 - (c) *the taking of action (including the making of an order under section 181D of the Police Act 1990) against the person as a police officer on specified grounds, with a view to dismissing, dispensing with the services of or otherwise terminating the services of the police officer,*
 - (d) *the taking of reviewable action within the meaning of section 173 of the Police Act 1990 against the person as a police officer,*
 - (e) *the taking of action against the person as a Crime*

Commission officer or an administrative employee on specified grounds, with a view to dismissing, dispensing with the services of or otherwise terminating the services of the Crime Commission officer or administrative employee.

Note. See section 29 (4) in relation to the Commission's opinion.

- (3) An "affected person" is a person against whom, in the Commission's opinion, substantial allegations have been made in the course of or in connection with the investigation (including examination) concerned.*
- (4) Subsection (2) does not limit the kind of statement that a report can contain concerning any affected person and does not prevent a report from containing a statement described in that subsection in respect of any other person.*

9. The Commission does not sit as a criminal or civil court. It does not determine the rights of any person. However, the Commission may make findings which are adverse to persons and their reputation. The standard of proof to be applied by the Commission in making findings of fact is the civil standard of proof, proof on the balance of probabilities, being qualified having regard to the gravity of the questions to be determined. The test is whether the facts have been proved to the reasonable satisfaction of the Commission.⁴

⁴ *Briginshaw v Briginshaw* (1938) 60 CLR 336 at 362; [1938] HCA 34; *Rejtek v McElroy* (1965) 112 CLR 517 at 521; [1965] HCA 46; *Neat Holdings Pty Ltd v Karajan Holdings Pty Ltd* (1992) 67 ALJR 170 at 171-172; [1992] HCA 66.

LECC

Law Enforcement
Conduct Commission