

**OPERATION TABARCA**  
**SUPPLEMENTARY REPORT PURSUANT TO S 132**  
***LAW ENFORCEMENT CONDUCT COMMISSION ACT***  
***2016***

December 2020

# LECC

Law Enforcement  
Conduct Commission

## Office of Commissioner for Integrity

43043/951

15 December 2020

The Hon John Ajaka MLC  
President  
Legislative Council  
Parliament House  
SYDNEY NSW 2000

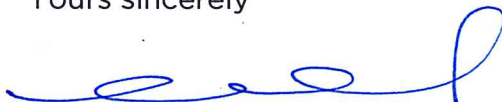
The Hon Jonathan O'Dea MP  
Speaker  
Legislative Assembly  
Parliament House  
SYDNEY NSW 2000

Dear Mr President and Mr Speaker

In accordance with section 132(3) of the *Law Enforcement Conduct Commission Act 2016* (the Act), the Commission hereby furnishes to you a Supplementary Report in relation to its investigation in Operation Tabarca.

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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## 1. Introduction

- 1.1 On 8 May 2020, the Commission furnished to Parliament its primary report in Operation Tabarca. It recommended that the report be made public. That report focused on the conduct of BKJ, Commander of LAC1 arising from allegations made against him by officers within the Command of bullying, harassment and discrimination.
- 1.2 The Commission found that BKJ had breached the New South Wales Police Force (NSWPF) Guidelines and Statement in relation to Respectful Workplace Behaviour and that he engaged in serious misconduct by behaving in a manner contrary to the NSWPF Code of Conduct and Ethics.
- 1.3 The investigation in Operation Tabarca revealed systemic issues within the NSWPF with respect to the notification and handling of complaints of bullying and discrimination.
- 1.4 In particular, there was no functioning system in place to identify complaint clusters, such as the one which occurred in that particular command. This failure resulted in BKJ's conduct going unchecked for a number of years, during which time officers submitted hurt on duty claims citing BKJ's treatment of them as a contributing factor to their psychological injury and some were medically discharged.
- 1.5 This supplementary report will address those issues and the steps the NSWPF has since undertaken to address the issue.

## 2. The Commission's Statutory Functions

- 2.1 The *Law Enforcement Conduct Commission Act 2016* (the LECC Act) lists among the Commission's principal functions the detection and investigation of serious misconduct and serious maladministration: s 26.
- 2.2 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.*

2.3 “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.*

2.4 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).

2.5 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).

2.6 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.*

2.7 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*”.

2.8 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.*

2.9 In considering any factual conclusions to be reached in a report, the Commission will apply the civil standard of proof, namely whether the relevant factual matters have been proved to the reasonable satisfaction of the Commission.<sup>1</sup> Accordingly findings can form the basis of opinions and recommendations, even if they do not reach the standard of beyond reasonable doubt.

2.10 At the conclusion of the investigation the Commission determined that, whilst it was appropriate to provide a report to Parliament, having regard to the provisions of s 63(5)(d) of the LECC Act, the identity of the person/places referred to in the report should be suppressed. Accordingly, codenames have been issued for the purposes of this report. In accordance with s 176 of the LECC Act there is to be no publication of the actual name of any person or place referred to in this report in relation to the conduct examined except as identified by the Commission.

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<sup>1</sup> *Briginshaw v Briginshaw* [1938] 60 CLR 336; *Neat Holdings Pty Ltd v Karajan Holdings Pty Ltd* (1992) 67 ALJR 170.



### 3. The Commission's Investigation

3.1 In February 2018, the Commission decided to commence a preliminary investigation into complaints made by a number of police officers alleging that between 2002 and 2016, BKJ had been involved in the harassment, bullying and victimisation of staff. The NSWPF had investigated a number of complaints made against this officer, two of which were sustained (harassment/bullying). This resulted in him receiving one counselling session. Analysis of records revealed there had been 15 staff terminations at LAC1 between January 2014 and March 2019 whilst BKJ was the Commander.

3.2 The Commission decided to commence a full investigation, which became Operation Tabarca. In furtherance of its investigation, the Commission conducted private examinations. The evidence was referred to in the Commission's report in Operation Tabarca furnished to Parliament on 8 May 2020. It is not proposed to refer to that evidence in this report.

3.3 On 24 September 2019 the Commission expanded the scope and purpose of its investigation to consider whether there were systemic failures within the NSWPF in how it dealt with complaints regarding staff workplace behaviour, specifically:

*To investigate whether there has been, or is continuing, any conduct by the NSWPF in relation to dealing with workplace bullying, harassment and/or discrimination which was, or is unreasonable or oppressive in its effect, or arises wholly or in part from a mistake of law or fact or indicative of systemic issues that could adversely reflect on the integrity of the NSWPF.*

3.4 The Commission called Mr Peter Remfrey and Ms Membreno, past and present employees of the Police Association of New South Wales (PANSW). Mr Remfrey appeared before the Commission in a private examination on 27 September 2019 and Ms Membreno appeared on 29 May 2019.

#### A. Mr Remfrey

3.5 Mr Remfrey was formerly Secretary of the PANSW. From time to time, he had also been a member of the Medical Discharge Review Panel (MDRP). That panel was set up pursuant to the death and disability schemes to provide advice to the Commissioner of Police or his delegate in relation to the medical discharge of officers.

3.6 Originally advice provided by the MDRP encompassed:

- (1) whether the medical files provided were sufficient in scope to recommend medical discharge, and

- (2) recommendations as to whether any medical discharge was on the basis of partial and permanent incapacity or total and permanent incapacity.<sup>2</sup>
- 3.7 Under a new scheme, which commenced in 2011, the scope of the recommendations related to medical discharge for work-related or non-work-related injuries and total and permanent incapacity.
- 3.8 Initially the MDRP would meet monthly, go through the medical files and vote on whether they considered the individual officer should be medically discharged and whether it was a work-related incapacity. Some time later the meetings became virtual with the papers produced electronically. The members representing the PANSW and the NSWPF would make independent decisions. If they disagreed the papers would be referred to the independent member for decision.
- 3.9 The papers provided to the members consisted of a file summary at the front, a summary of the officer's medical treatment and a summary of the decisions made by the various nominated doctors and specialists. There would also be a commentary concerning attempts at rehabilitation, return to work and the decision of the Commander of Workplace Safety who would make a recommendation to the panel. A service history of the subject officer was also included. It was a comprehensive brief. The members requested further information if required and mostly there was no issue about the members being provided with such information.<sup>3</sup>
- 3.10 By the time the file reached the panel, the recommendation was for medical discharge and each member of the panel would consider the recommendation independently.
- 3.11 Mr Remfrey ceased being a member of the panel in about 2011 but then returned to it in about August 2018.
- 3.12 If Mr Remfrey supported the recommendation for discharge he would simply state "*Recommendation: medical discharge supported, on or off duty*". If he did not think there was sufficient medical evidence, he would note "*Insufficient*" and request further evidence be obtained. This might include psychiatric reports. If he did not think there had been sufficient attempts at a return to work he would note "*This is not supported*".
- 3.13 Mr Remfrey had sympathy for Commanders who did not have the capacity to place injured workers in permanent restricted duties positions. However, there would be times when he would see a file that demonstrated a "*complete lack of any attempt*" to find or modify positions. His opinion was that in those cases more work needed to be done.<sup>4</sup>
- 3.14 If the issues giving rise to the claim related to bullying and harassment, and it was not apparent that there had been any action taken to investigate the veracity of that claim, Mr Remfrey would bring that failure to the attention

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<sup>2</sup> Transcript of private examination of Mr Remfrey, 27 September 2019, p.5.

<sup>3</sup> Ibid, pp.6-7.

<sup>4</sup> Ibid, p.10.

of the NSWPF and recommend that some sort of remedial action be taken and that those situations should be treated as workplace management issues.<sup>5</sup>

- 3.15 In one particular case he had been appalled by the commentary in the medical reports. There was reference to *“almost organisationally sanctioned harassment.”*<sup>6</sup> He was later informed that the matter had been investigated but he was not advised of the outcome.
- 3.16 Mr Remfrey was not aware if information arising from medical retirement applications and other related matters were considered to be misconduct and referred to the Professional Standards Command (PSC) for investigation. The PANSW made a submission to an inquiry to the effect that a complaint to PSC should be automatically generated if the insurer accepts the veracity of a complaint. It would act like an automatic flag.<sup>7</sup>
- 3.17 Mr Remfrey identified nine claims in the last 12 months of his service which related to bullying arising out of which he had made recommendations. There were two claims out of the one office in the one month which raised concerns for him. The claims alleged severe bullying, harassment and overwork. The independent medical report identified issues and in his view, they were matters that needed to be investigated. *“Losing two people out of the one office... something’s going on here”*.<sup>8</sup>
- 3.18 Mr Remfrey would not know from the medical files whether there had been any formal complaints made or if someone had followed up the issues identified in the claims. He therefore felt it was incumbent on him to raise the issues by way of recommendations which went straight to the Assistant Commissioner for Human Resources.
- 3.19 There had been a problem in the NSWPF involving upward bullying and he considered that the union had done *“a pretty good job”* in attempting to manage those issues.<sup>9</sup> He acknowledged that there was quite a difference between leadership skills required in an operational sense where command and control was critical and in managing people back at the station in a normal workplace environment.
- 3.20 The PANSW received a Workcover grant in 2010 to examine that particular issue and a tripartite investigation between the PANSW, NSWPF and Flinders University was conducted by Mr Peter Cotton. The report resulted in the development of the Supportive Leadership Program to deal with the gap in training of police officers. Police officers are typically promoted on their operational skills (command and control) which are only required 10 per cent of the time, whereas for 90 percent of the time, normal soft management skills are required. Supervisors and managers need different management skills for different circumstances.

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<sup>5</sup> Ibid, pp.8 and 10.

<sup>6</sup> Ibid, p.11.

<sup>7</sup> Ibid, p.12.

<sup>8</sup> Ibid, p.14.

<sup>9</sup> Ibid, p.15.

- 3.21 The Supportive Leadership program was implemented to recognise the gap and provide that training.<sup>10</sup> The training was provided by those identified as workplace leaders. It was designed to address a number of issues but principally spiralling psychological injuries. Police officers experience traumatic incidents on a daily basis and some cope and some do not. Dr Cotton was trying to identify why at some point in time an officer's post-traumatic stress disorder (PTSD) was triggered. In many respects it was found to be because of the way that that person might have been treated in the workplace following exposure to trauma. Persons working in hotspots such as child mistreatment, police prosecutions and forensic science, could go through their whole career without having their PTSD triggered but occasionally something will trigger it. It is *"often as simple as not being provided with a supportive workplace when they most need it."*<sup>11</sup> The program's aim was to give people some understanding that different management skills are required for different circumstances. *"If they're provided with supportive leadership in the workplace... at sergeant level or even leading senior constable level, but often at inspector and above, they will get through that trauma and not only survive but thrive and continue to make a contribution as a police officer, but more importantly not have their home life suffer."*<sup>12</sup>
- 3.22 Mr Remfrey stated that the *"beauty"* of the program was that it was not being delivered by the Academy but by peers in whom people had respect and it worked. He understood that the program was no longer operating contributing to the spike in workers' compensation claims and psychological injuries. This led to the old Death and Disability scheme becoming uneconomical and being shut down.
- 3.23 Mr Remfrey said that there was a massive reluctance in people coming forward to make complaints if it was formalised and adversarial in nature. If the poor behaviour continues, people do not get well and ultimately are medically discharged with psychological injuries far greater than they would have been had they received treatment earlier or the behaviour had stopped.<sup>13</sup>
- 3.24 Mr Remfrey commented on the absence of anti-bullying legislation in the New South Wales industrial system. If such behaviour is not investigated people will not be held to account. Over the years he had seen Commanders who he would regard as bullies promoted rather than dealt with. He had seen situations that should have been a red flag to human resources (sick leave levels, transfer numbers) but no action had been taken.
- 3.25 Mr Remfrey noted that he had not been working in the area now for over 12 months. He could not speak with any currency but in his opinion the human resources command tasked to deal with such matters had done some good work. He considered that the system needed to dig deeper.

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<sup>10</sup> Ibid, p.15.

<sup>11</sup> Ibid, p.16.

<sup>12</sup> Ibid, p.17.

<sup>13</sup> Ibid, p.18.

## B. Ms Membreno

- 3.26 Ms Membreno is the Assistant Secretary – Industrial of the PANSW. She gave evidence in relation to the manner in which hurt on duty claims are handled within the NSWPF. Her evidence was that these claims are a two-step process. Initially a notification of an injury claim form (P902) is submitted online. Those workers who were already out of the workplace on account of an injury would mostly have someone within the workplace submit the form on their behalf and include some detail as to the nature of the claim. That form is then followed up with a WorkCover medical certificate identifying the claim as a workers' compensation or hurt on duty claim.<sup>14</sup>
- 3.27 The claim is progressed differently depending on whether the injured officer was employed pre-1988 or post-1988. For an officer employed pre-1988, the claim (P902 form and medical certificate) would go to the Hurt on Duty Unit (HDU) within the NSWPF, which manages all pre-88 claims, and to Allianz Insurance, the company tasked to manage and pay all medical-related expenses associated with those claims. The Local Area Command and the injury management advisor employed by the NSWPF would also be notified.
- 3.28 For an officer employed post-1988, the claims do not go to the HDU, but rather go directly to EML Insurance.
- 3.29 If a medical retirement arises in relation to a pre-1988 officer, the HDU is tasked to investigate and determine liability. On average, for a psychological injury, it takes approximately 12 months for that decision and determination to be made.
- 3.30 Post-1988 officers have provisional liability for 12 weeks pursuant to the workers' compensation legislation. In most cases a determination will be made within that 12-week period and the officer is paid compensation through the NSWPF payroll. If that officer is found to be totally or permanently incapacitated for work in the NSWPF, which is usually after the conclusion of at least a nine-month period, that officer could then be considered for medical retirement or discharge. The recommendation is made to the MDRP who makes a determination. The Assistant Commissioner of HR and a PANSW representative are on that panel. If those two members disagree about a recommendation, the recommendation is then referred to an independent member to adjudicate and make a determination regarding the recommendation.<sup>15</sup>
- 3.31 For a pre-1988 officer, the situation is considered by the Police Superannuation Advisory Committee (PSAC) which is administered through State Super. The panel members comprise a number of representatives from the PANSW, the NSWPF and State Super. Ms Membreno thought that there were 12 members on the panel but was

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<sup>14</sup> Transcript of private examination of Ms Membreno, 29 May 2019, p.27.

<sup>15</sup> Ibid, pp.28-29.

not certain if that figure was correct.<sup>16</sup> The PSAC deals with hurt on duty and non-hurt on duty medical discharges, application for benefits for HOD and Non HOD infirmities, pension increases for officers currently on a pension, applications from former officers for benefits and death benefits.

- 3.32 Ms Membreno met with PSC shortly after the establishment of this Commission and discussed PSC undertaking the process of reviewing P902 and P124 claim forms in circumstances where a complaint may arise. Although a P124 form is a claim form for medical expenses people often put on that form detailed information around the nature of their claim.
- 3.33 Ms Membreno understood that any information provided to the NSWPF, whether on the P902 form, medical certificate or on subsequent reports, would be triaged and reviewed by PSC. She was not aware whether this actually occurred or whose responsibility it was within PSC.
- 3.34 PSC has informed the Commission that at the time of hearing, it had no involvement in the assessment of P902 forms to determine whether the report included any misconduct information, nor did the PSC have any involvement in triaging these matters when misconduct information was identified.
- 3.35 That initial discussion with PSC was for the purpose of PSC notifying the PANSW that it would need to inform its members that any information contained in those forms could potentially form part of complaint processes and be triaged moving forward. The PANSW intended to review that process.<sup>17</sup>
- 3.36 A P901 form should also be completed and commenced at the same time that the P902 form is submitted. The P901 form is the investigation form and should be instigated at the same time at the command.
- 3.37 The difficulty was, that if the allegation was made against a senior officer within that command, on the majority of occasions the P901 investigation would be conducted within the same command to which the complaint related. That P901 investigation would run parallel to the workers' compensation claim.
- 3.38 Ms Membreno noted that it often happened that there would be a complaint about the Commander and the investigation of that complaint was conducted within that Command. Although there is a requirement under the NSWPF Complaint Handling Guidelines to identify such a conflict the onus is on the individual to identify the conflict.
- 3.39 Ms Membreno stated that in such cases where the complained about person also conducts the P901 investigation, quite often the injured workers lodge a subsequent complaint in a different format to a different

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<sup>16</sup> 8 members = 1 from SAS Trustee Corporation Board, 1 from SAS Trustee Corporation Counsel, 1 nominated by Minister for Police, 1 from State Insurance Regulatory Authority, 4 from Police Association of NSW (one of who represents the Commissioned Police Officers Branch of the PANSW)

<sup>17</sup> Transcript of private examination of Ms Membreno, 29 May 2019, pp.31-32.

place. This could be the PSC, the region or an internal grievance, “because throughout their absence they either hear nothing or they are unclear as to whether it’s actually being investigated and, in desperation, start to submit other documentation to open up, in their mind, an alternate complaint investigation process”.<sup>18</sup>

### C. Additional Information

- 3.40 In June 2019, the Commission issued a section 55 Notice to the NSWPF<sup>19</sup> seeking records of claims recording any allegation of bullying, harassment or discrimination behaviour by a sworn or unsworn member of the NSWPF attached to LAC1 between 1 June 2016 and 3 June 2019. Analysis of the records produced in response to that Notice identified that during that three-year period, 15 people submitted hurt on duty claims by way of lodgement of a P902 form.
- 3.41 Of those 15 people, eight cited the treatment of them by BKJ as the cause of or as a contributing factor to their psychological injury. A further two officers cited bullying and harassment by senior officers as the cause of their psychological injury.

## 4. Analysis of Evidence

- 4.1 Mr Remfrey’s evidence was that if issues related to bullying and harassment were raised in any of the claims he had to consider whilst on the MDRP,<sup>20</sup> he would bring it to the attention of the NSWPF so that they could consider appropriate action.<sup>21</sup> He recalled one particular case where a medical report referred to “...almost organisationally sanctioned harassment”.
- 4.2 A claim referred to in the Commission’s Tabarca Report contained references to evidence which was damning of BKJ and the NSWPF as a whole, yet this conduct raised no red flag at the time and was not brought to any officer’s attention within the NSWPF.
- 4.3 Some 16 months later the insurer requested information from a NSWPF employee tasked with managing injury claims about whether there had been any other claims of bullying at LAC1. That employee informed the insurer that there were no such other claims. However, between July 2015 and November 2016, there were five claims of psychological injury arising from alleged bullying at LAC1, four of which directly attributed causation to BKJ. A report in relation to one of those claims had only been finalised 10 days’ prior to the insurer’s request for information and it made specific mention of the injured officer feeling “bullied and harassed” after attending a meeting with the Commander.
- 4.4 The failure by the NSWPF employee to bring the other claims to the attention of the insurer represented a lost opportunity to address BKJ’s

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<sup>18</sup> Ibid, p.34.

<sup>19</sup> No. 936 of 2019.

<sup>20</sup> Medical Discharge Review Panel

<sup>21</sup> Transcript of private examination of Mr Remfrey, 27 September 2019, pp.8 and 10.

behaviour before it caused damage to any other officer. Thereafter a further three officers submitted claims alleging BKJ's conduct had directly contributed to their injuries. In addition, a further two claims were submitted alleging bullying and harassment by other senior officers in the Command.

- 4.5 There is no evidence before the Commission to suggest that any officer deliberately omitted to take into account the fact that there had been at least one other previous claim relating to bullying and harassment by BKJ. However, the response suggests a lack of care and attention to detail. This was a serious failure to communicate pertinent information which may have prevented further psychological injury, not just to that particular officer but to those other officers who subsequently submitted claims on account of BKJ's behaviour and other superior officers in his command.
- 4.6 Mr Remfrey gave evidence that two claims in a month were worrying and that such an event should raise a red flag. In the three-year period from June 2016 to June 2019 there were numerous claims relating to BKJ and bullying at his Command. There were two claims in the month of April 2018 alone and yet this raised no flags within the NSWPF.
- 4.7 Mr Remfrey noted that if bad or inappropriate behaviour is not called out, *"the behaviour will continue and people aren't getting themselves well, and eventually it ends up in ultimately a medical discharge but their psychological injuries are much worse than they would otherwise be if they had got some treatment earlier or the behaviour stopped."*<sup>22</sup>
- 4.8 This is what occurred whilst BKJ was Commander at LAC1. The majority of officers who left LAC1, either by way of transfer, resignation or medical discharge, were officers with many years of experience who by all accounts enjoyed their work and who most likely would have remained in their jobs but for the impact of BKJ's behaviour. It also seems likely that, had BKJ's behaviour been scrutinised earlier, after the first few claims had been submitted between July 2015 and November 2016, any damage to the involved officers and the Command could have been contained and perhaps even rectified.
- 4.9 BKJ's behaviour should have been recognised and he should have been required to undertake specific training and/or counselling about appropriate workplace management and behaviour. Had this occurred it is likely that at least some of those officers who were medically discharged would still be employed in the NSWPF.
- 4.10 BKJ himself has suffered reputational damage as a result of his behaviour. Had his behaviour been identified and dealt with earlier he may have continued in his position with his reputation intact.
- 4.11 The cost of BKJ's conduct to the NSWPF in financial terms and reputation was great.

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<sup>22</sup> Ibid, p.18.



- 4.12 Mr Remfrey gave evidence about the Supportive Leadership Program which was implemented to recognise the gap in training of police officers and to provide that training. He observed that police officers were typically promoted on their operational skills whereas management skills were required in those leadership positions. Its success lay in the fact that the training was provided by those identified as workplace leaders rather than by the Academy. It is unfortunate that that program or a similar program was not continued.
- 4.13 Mr Remfrey gave evidence that he had seen Commanders over the years who were regarded as bullies promoted rather than dealt with and he had seen situations that should have been a red flag to human resources, such as sick leave levels and transfer numbers, where no action was taken. This evidence is of great concern to the Commission. It suggests that whilst the NSWPF has policies and guidelines in relation to respectful workplace behaviour, those policies were not necessarily being implemented.
- 4.14 Ms Membreno understood that any information provided to the NSWPF, whether on the P902 form, medical certificate or on subsequent reports, would be triaged and reviewed by PSC. The Commission finds that this was not occurring successfully. Had it been, BKJ's conduct would have been identified and dealt with.
- 4.15 Claims citing BKJ's bullying and harassment as the cause of injury and incapacity were dealt with by that same command. This was inappropriate and clearly a conflict. It would have given the injured officers little comfort that the matter would be properly investigated.

#### A. Legislative Council Inquiry

- 4.16 In July 2017, the NSW Legislative Council commenced an inquiry into the prevalence of bullying, harassment and discrimination within State Emergency Services, including the NSWPF. The inquiry received 194 submissions. The final report was published on 24 July 2018 with 27 recommendations, four of which specifically related to the NSWPF (recommendations 17-21). The report considered the issue of management of bullying-related workers' compensation claims. It noted that there was currently no formal process for bullying allegations made in workers' compensation claims to trigger the complaints process when the victim had not initiated the complaints process themselves. The PANSW suggested that this undermined efforts to appropriately address bullying. The PANSW proposed that a process be established whereby bullying allegations that form part of a workers' compensation claim automatically generate a police complaint. They suggested that this could occur when the insurer accepted liability for an injury resulting from bullying.
- 4.17 Both the PANSW and Mr Fuller, the Commissioner of Police, voiced concerns about the impact the implementation of such a process could have on victims who did not wish to make a complaint and the risk that it could lead to additional stress, injury risks or barriers to recovery and return to work for those victims. It could also have the effect of deterring people from making complaints.

- 4.18 The Commission understands that there are issues arising from the automatic notification of a complaint once a psychological injury claim is submitted. However, the Commission investigation in Operation Tabarca exposed the significant impact of not identifying systemic bullying behaviour within a Command, not only on the injured officers, the subject officer and the Command, but also on the NSWPF as a whole.
- 4.19 The NSWPF lost experienced and well-regarded officers in circumstances which could have been avoided. In addition, the NSWPF itself suffered reputational damage as the public report exposed the failure of the NSWPF to address BKJ's conduct in a timely and appropriate fashion as well as the deficiencies in implementation of policies designed to protect employees.
- 4.20 If not for the complaint by a concerned officer to the Commission and its subsequent investigation, it seems likely that BKJ would have still been in charge of the Command and his behaviour never exposed and investigated.

## B. The Role of the Workplace Relations and Equity Unit (WREU)

- 4.21 According to the NSWPF Respectful Workplace Behaviours Guidelines,<sup>23</sup> the role of the WREU is to:
- (1) provide expert advice on workplace equity matters and the Respectful Workplace Behaviours Policy Statement and guidelines;
  - (2) provide clarification, training and support to employees, commanders, managers and supervisors in dealing with workplace equity matters;
  - (3) ensure that the mandatory standards outlined in Respectful Workplace Behaviours Policy Statement and guidelines are implemented;
  - (4) monitor the performance of negative workplace behaviour prevention and management strategies, and
  - (5) provide advice to commanders and managers on a proactive risk management approach to negative workplace behaviours.
- 4.22 As noted earlier in paragraph 4.3, in November 2016, arising from a particular claim, the insurer made inquiries with the NSWPF as to whether there were any other claims or allegations about BKJ's conduct. In response, the NSWPF employee referred them to the WREU. It seems that nothing more occurred after that communication and therefore BKJ's conduct was never called into question by the WREU. This was an obvious failure by the WREU to fulfil its role as set out in the guidelines, particularly as to points 3 to 5 above. There was no oversight of BKJ's conduct nor assurance that the guidelines were being implemented. Many of the officers who were targeted by BKJ were either part-time employees or restricted

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<sup>23</sup> *NSW Police Force Respectful Workplace Behaviours Guidelines*, Workplace Relations & Equity Unit, Human Resources, December 2016.

duties officers. This alone should have involved the intervention of the WREU and triggered a review or response by the WREU.

- 4.23 Ultimately the intervention of the PSC would have been appropriate and prudent.
- 4.24 The Commission's examination of these issues in the Tabarca report and the Shorewood Report<sup>24</sup> has led to an internal review of procedures by the PSC. Several presentations and consultations have taken place between the PSC and the Commission. The NSWPF have proposed a new scheme to manage complaints of bullying and harassment. It has been many months in creation. Many of the issues identified by the Commission's reports have been dealt with. The major components of the new scheme are outlined below in the NSWPF response. The new scheme appears to have developed a process which ensures the reporting of misconduct information that arises during the injury management process and minimises the previous risks which occur when a conflict of interest in a command or reporting line was identified.

## 5. The NSWPF response to Operation Shorewood and the findings of the Tabarca report

- 5.1. In accordance with s 146 of the LECC Act the NSWPF informed the Commission by letter dated 4 November 2020 of the action it had taken in response to its Report in Operation Shorewood.
- 5.2. In addition, on 16 November 2020, the Commission received from the NSWPF a response to the identified issues and recommendations in its draft supplementary report in Operation Tabarca.
- 5.3. In summary the NSWPF informed the Commission that, in consultation with the Commission, it had taken the following steps to address those issues identified by the Commission in the Shorewood Report and in its investigation in Operation Tabarca:
  - i. The NSWPF has developed a management model entitled Respectful Workplace Behaviour Misconduct Management Model for the management and investigation of misconduct matters involving allegations of a breach of the Respectful Workplace Behaviour Policy. The new model includes a 4-tiered response to misconduct related to workplace behaviours which allows matters to be dealt with through both formal and informal processes. It implements alternative pathways for the resolution of misconduct matters without the need for formal investigation where considered not appropriate.

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<sup>24</sup> Commission report in Operation Shorewood: Review of how the New South Wales Police Force manages and investigates workplace equity matters, published 21 July 2020.

- ii. An Assessment and Advisory Unit (AAU) and Assessment Advisory Panel (AAP) have been established within PSC to assist delegates with advice and recommendations concerning the best approach to be taken when assessing, managing and resolving misconduct matters involving hostile workplace behaviour. The AAU has assumed some of the responsibilities previously undertaken by the Workplace Relations and Equity Unit. The AAU's role is to assess the matter, classify the behaviour and develop advice for the AAP on the best approach to be taken in resolving the matter. The involvement of the AAU and AAP will ensure that identified issues are addressed in a consistent, fair and proportionate manner.
- iii. A *'single of source of truth'* with respect to data relevant to the management and resolution of these matters has been developed. This single data source provides uniformity in measurements.
- iv. A clear separation between investigation and recovery processes will be created. Where a matter has been subject to investigation by PSC, the PSC investigations unit will conduct a formal handover with the impacted Commander in consultation with HR Command. As part of this handover process PSC aims to:
  - Identify ongoing and emerging issues to prevent re-occurrences.
  - Provide an overview of investigation outcomes to abate the spread of misinformation and rumour which exacerbates negative impacts upon the work environment.
  - Provide information to Commanders and HR Command to aid in the recovery process.

A formal handover document will be completed and accompanied by an *"Investigator's report' that identifies supervisory, managerial and organisational/governance issues"*.

- v. PSC have established the Safe Reporting and Advisory Unit. This is *"a safe place for employees to seek advice regarding the reporting of all forms of misconduct, inclusive of hostile or inappropriate workplace behaviours."*
- vi. The introduction of the management model will ensure that PSC has involvement in the triaging of identified misconduct matters. Workflows in relation to the identification and referral of misconduct information have been developed for a number of identified source documents, including documentation such as P902 reports. In addition to these workflows, an internal audit process has been established. Local audits will be conducted to ensure that all misconduct information is registered on IAPro and dealt with in accordance with the Misconduct Matters Management Framework (the management framework) or the management model, where appropriate.

- 5.4. In addressing the Commission's recommendations in the Shorewood Report, the NSWPF indicated that the *"changes envisioned by the [management model], and the implementation of recommendations from PSC's timeliness review, will address the principles underpinning the LECC's recommendations."*
- 5.5. In addressing the Commission's recommendations in the draft supplementary report in Operation Tabarca, the NSWPF noted the following:
- i. It was important that Commanders *"deal with misconduct matters that relate to officers within their Command to ensure that appropriate risk strategies are considered and introduced, and outcome or resolutions strategies are effective."* However, the management framework was developed to ensure that when dealing with such matters practitioners consider whether a conflict of interest exists. If a conflict is identified, there are several strategies available to them to mitigate any risks posed by the conflict.
  - ii. PSC monitor all newly registered misconduct matters and should the conduct involve a Superintendent, PSC will review the matter to determine if it should be involved, either by way of assistance or by taking over investigation of the matter.
  - iii. The NSWPF is confident that the enhancements made to the way in which it deals with misconduct matters involving bullying and harassment will ensure that patterns of behaviour and/or clusters will be identified and addressed.
  - iv. The NSWPF Education and Training (E & T) Command has been provided with a copy of the draft report for consideration of the implementation of a program such as the Supportive Leadership Program.
  - v. The NSWPF has established the Promoting Respectful Workplaces Operating Model whereby the HR, PSC and E & T commands will *"collaboratively deliver contemporary evidence-based misconduct prevention strategies relating to Bullying, Harassment (including Sexual), Discrimination, Victimisation and Vilification."* Commands requiring staff training, development and/or workshops may seek assistance from those stakeholder commands.
- 5.6. The NSWPF concluded in its response that it was *"confident that the new management model will address the issues identified by [the Commission's] review and will create a system that provides flexibility in the way these types of matters are resolved. With a focus on prevention and early intervention, the management model will ensure that matters of this kind are addressed in a more timely manner, inappropriate behaviour is challenged, reflected on and addressed by the involved officer/s; and behavioural expectations are re-enforced."*

## 6. Findings

- 6.1 The Commission finds that during BKJ's period of employment as a Superintendent the NSWPF had insufficient processes in place to identify complaint clusters. BKJ's conduct should have been identified by at least November 2016. Instead, his behaviour continued until he took leave in May 2019. He departed on leave when he became aware of the Commission's investigation into his conduct. By that stage, 15 officers had left the Command, some permanently.

## 7. Outcome

- 7.1 The Commission is encouraged by the NSWPF response to its recommendations in both the Shorewood Report and its draft supplementary report in Operation Tabarca. The Commission is satisfied that the implementation of the Respectful Workplace Behaviour Misconduct Management Model will go a long way towards addressing the issues identified in those reports.
- 7.2 The Commission will review the operation of the proposed NSWPF response in consultation with the NSWPF and the PANSW six months after commencement of its operation.

## 8. Recommendations

- 8.1 PSC should monitor all newly registered misconduct complaints and be involved in the triaging of misconduct complaints related to bullying and harassment with a view to identifying any patterns of behaviour amongst specific officers or complaint clusters about specific officers, specific police stations or Commands. The identified offending behaviour should be investigated and dealt with.
- 8.2 Where the alleged misconduct involves a Superintendent or a more senior officer, PSC should review the complaint to determine if it should be involved, either by way of assistance, or by taking over the investigation of the complaint.
- 8.3 A program similar to the Supportive Leadership Program should be considered and the involvement of Senior Managers should be mandatory.
- 8.4 Attendance at regular refresher training (online or otherwise) about appropriate workplace behaviour should be mandatory.

Operation Tabarca  
Supplementary Report pursuant to s 132  
*Law Enforcement Conduct Commission Act 2016*  
December 2020

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