

OPERATION MINDO

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

OCTOBER 2019



Law Enforcement
Conduct Commission

Office of Commissioner for Integrity

44263/523

31 October 2019

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 Report in relation to its investigation in Operation Mindo.

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

Yours sincerely

A handwritten signature in blue ink, consisting of a series of loops and a long horizontal stroke, representing The Hon Lea Drake.

The Hon Lea Drake
Commissioner for Integrity

Encl.

Table of Contents

1. Introduction	3
2. The Commission's Report	3
3. Evidence.....	6
4. Findings.....	10
5. Considerations.....	10

1. Introduction

- 1.1 Operation Mindo arose from a complaint referred to the Commission by the Australian Border Force about an officer of the NSW Police Force ('Officer A').
- 1.2 The referral identified Officer A as being possibly involved in migration fraud through his migration business and its close connection with Sydney based education agents, Company C and Company D, owned and operated by Mr B. The referral suggested that Officer A may be falsifying residency and visa records.
- 1.3 Further, Officer A was suspected of knowing or being aware of the unlawful activity of Mr B who conducted his business as an education agent from the same premises that Officer A and his father, Mr A, conducted their business.
- 1.4 The Commission undertook a thorough investigation into Officer A's business and his personal relationship with Mr B and his companies. The investigation utilised telecommunication interception and physical surveillance. The business and personal financial records of Officer A and Mr A were examined.
- 1.5 Officer A was questioned at a private examination on 7 May 2019 and Mr A was examined on 25 June 2019.
- 1.6 The evidence obtained during the investigation did not support any adverse findings against Officer A.
- 1.7 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 *Law Enforcement Conduct Commission Act 2016* (LECC Act), the identity of Officer A and other parties should be suppressed. Accordingly, codenames for Officer A and other parties have been used for the purposes of this report. There is to be no publication of the actual name of Officer A or any other party referred to in this report.

2. The Commission's Report

- 2.1 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*".
- 2.2 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.

- 2.3 Part 4 of the LECC Act sets out the functions of the Commission. Pursuant to section 29, the Commission may, *inter alia*, make findings and form opinions on the basis of its investigations as to whether officer misconduct occurred and to make recommendations as to 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 or whether consideration should be given to the taking of action under Part 9 of the *Police Act 1990* (NSW).

However, the Commission cannot include in a report under Part 11 of the LECC Act a finding or opinion that any conduct of a specified person is officer misconduct unless the conduct is serious misconduct.

2.4 Serious misconduct is defined in section 10 of the LECC Act as:

(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.

2.5 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: section 61 (a).

2.6 Before expressing any opinion that serious misconduct has, or may have occurred, or that in all the circumstances it is of the opinion that consideration should be given to the prosecution of any person for a specified criminal offence, the Commission should be reasonable satisfied of the relevant facts,

applying the civil standard of proof in the manner suggested by Dixon J in *Briginshaw v Briginshaw*.¹ His Honour said:

*The seriousness of an allegation made, the inherent unlikelihood of any occurrence of a given description, or the gravity of the consequences flowing from a particular finding are considerations which must affect the answer to the question whether the issues had been proved to the reasonable satisfaction of the tribunal. In such matters "reasonable satisfaction" should not be produced by inexact proofs, indefinite testimony or indirect inferences.*²

- 2.7 Section 143 (Persons to be heard) requires the Commission, before including in a report under Part 11 any comment about a person that the Commission considers adverse, so far as practicable, to inform that person of the substance of the grounds of the adverse comment and give the person an opportunity to make submissions.³
- 2.9 The Commission provided Officer A (through his legal representative) with a copy of the Commission's draft report and invited him to make submissions in response. The Commission considers that it has complied with section 143 of the LECC Act.

3. Evidence

- 3.1 Evidence of Officer A
- 3.2 Officer A commenced business as a migration agent in 2009. His father, Mr A commenced business as a migration agent in 2012.
- 3.3 Officer A and Mr A conducted business through Company A. The business was mainly concerned with family visas and skilled visas. The business was a small business and was conducted mainly at the father's house. It was referred clients from two education agents. Officer A's work concerned representing clients in the Administrative Appeals Tribunal.
- 3.4 The uncle of Officer's A's wife, Mr B, conducted business as an education agent. Officer A met him at a party in 2009.
- 3.5 The turnover of Company A was small. Officer A drew remuneration of less than \$5,000 from the business. He used a mobile telephone service for the business.

¹ (1938) 60 CLR 336.

² Ibid, at p.361.

³ LECC Act, section 143(1).

- 3.6 Company A also had premises in the city containing a desk and a computer. Mr A used those premises more than Officer A.
- 3.7 Officer A's financial commitments were approximately \$2,800 per month.
- 3.8 Officer A completed and lodged secondary employment application forms with the NSWPF in order to work as a migration agent. In each of those forms he made the following statement:

I do not anticipate being subject to any improper associations as this industry is highly regulated. If I find myself being subject to any improper associations, I would dissociate myself immediately as a migration agent and immediately declare my situation to my supervisor in the NSW Police Force.

- 3.9 In his evidence to the Commission Officer A stated 'improper associations' meant: someone not following the law; accepting or soliciting secret commissions; people acting contrary to the Migration Act (and regulations); and persons lodging false documents with the Department of Immigration.
- 3.10 Officer A understood that Mr B had some compliance problems and that the Australian Border Force had spoken to him. He did not tell anyone in the NSWPF about it.
- 3.11 Officer A said he had not 'really' spoken to his wife about Mr B. He knew Mr B had an association with a male person from Company B. He told his wife that the guy from Company B was flashy, he wore a Rolex and she suggested that the schools might make a lot of money and they might have students enrolled who didn't attend. Officer A said he should have suspected that Company B was not operating lawfully.
- 3.12 Officer A understood that the reason Mr B's company, Company C, changed its name to Company D was because they had a lot of refusals under the name Company C.
- 3.13 Officer A was unaware that Company C was wound up because it failed to pay premiums to BUPA it had collected on its behalf. His wife did not mention that Company C had been wound up. He subsequently said that his wife had said to him that Mr B owed money to BUPA.
- 3.14 Officer A's wife earned about \$900 per week. Sometimes she got a bonus of \$150 to \$200 from a school.

- 3.15 There had been mutual clients between Mr B's business and the business Officer A conducted with his father. His business didn't deal with student visas.
- 3.16 Officer A stated that at the time he found out about the issue with Company B, he discussed it with his supervisor in NSWPF. Officer A said he subsequently had unrelated issues with this supervisor.
- 3.17 Officer A told the Commission he was contacted by the Migration Agents Registration Authority (**MARA**) in December 2014 in relation to his picture appearing on a website for Company C. He thinks Mr B put his picture on the website. The website also showed a Migration Agents Registration Number for Officer A that was incorrect.
- 3.18 He responded to the MARA stating that there was no business association between Company A and Company C. He acknowledged in his evidence that there had been referrals from Company C to Company A at that time and that the expression he used, "no business association", was a poor choice of words.
- 3.19 He discussed his photo being on the website with Mr B and his wife at that time. He asked her to get Mr B to take it off. He believes he sent Mr B an email asking him to remove it.
- 3.20 Officer A was surprised to see that, as at the date of the examination, his picture was still on the website. He acknowledged he should have done more for it to be taken down.
- 3.21 He did not know why money was transferred from Mr B to Company A. He thought that it may be due to the fact that he and his father used Mr B's EFTPOS machine and payments would be made to Company A through that and then Mr B would transfer the money back to Company A.
- 3.22 His father knew Mr B very well.
- 3.23 Officer A knew Mr B conducted business as an education agent that dealt with onshore students not offshore students, the students would come to him and he would assist them in putting in a student visa application and refer them to a school. He had been to Mr B's house on a number of occasions for social occasions.
- 3.24 He did not take steps to find out more about Mr B's business.

- 3.25 Officer A told the Commission his wife had a house in Chiang Mai, Thailand. Mr B paid the mortgage on this house, and she transfers \$1,500 to \$2,000 per month to an account in Thailand to repay Mr B. He could not explain why the repayments were made in this way. She sends it by an OrbitRemit account which is in his name. His wife also has a credit card debt in Thailand which she needs to pay off.
- 3.26 Officer A transferred \$10,000 from Company A's client account in support of his mother in law's application for a visa to visit Australia in 2017 for the purpose of seeing a new grandchild and meeting Officer A's parents. The money was transferred to show that they had access to the money. On each occasion he transferred the money back to the client account. On the second occasion he transferred \$8,000 back to the client account. He acknowledged that this was not proper record keeping and that it suggested that he was not entitled to the money.
- 3.27 He also acknowledged that he had presented a document to the Department of Immigration that was not correct.
- 3.28 He was aware that the ABF were making inquiries into Company C and Company D. He was aware that someone from the ABF came in and spoke to his father. He did not take any steps to find out what the investigation was about.
- 3.29 Officer A told the Commission that he regularly received reports from other agencies such as the ABF but that he did not recall seeing a document which made allegations about Company C, Mr B and his wife's cousin, Ms A.
- 3.30 He was aware that his wife appeared before another investigating agency. He said that he found the letter from that agency to his wife in her handbag before she appeared. He said he told her to tell the truth.
- 3.31 His father did not tell Officer A that he had advised clients of Company D not to cooperate with the investigation by Immigration.
- 3.32 He had not heard of an allegation that Company E was involved in providing services to students such as assisting them with assignments or falsifying attendance records for the purposes of them maintaining their student visas.
- 3.33 Company E did have some dealings with his business but not many. He said his father would know why many of the transfers from Company E would have

been made to Company A. He said that he would occasionally go to dinner with the operators of Company E.

- 3.34 Ms A also works for Mr B. He has not heard of her providing large sums of money to students on a temporary basis for a fee so that they can satisfy the immigration means test.
- 3.35 Officer A has not heard of Company C or Company D providing services to students such as completing assignments and falsifying attendance records for a fee, nor is he aware of his wife or Ms A providing these services.
- 3.36 **Evidence of Mr A**
- 3.37 Mr A was also examined. His evidence corresponded with the evidence of Officer A.
- 3.38 Mr A stated that Officer A had relinquished his registration as a migration agent in early May 2019.

4. Findings

- 4.1 The evidence of Officer A's involvement in the migration industry, while concerning, does not support a finding of serious misconduct against Officer A.
- 4.2 There is a considerable risk that Officer A would be exposed to improper associations if he continued his secondary employment as a migration agent.

5. Considerations

- 5.1 The Commission considers that any approval from the NSWPF for Officer A to conduct secondary employment as a migration agent should be revoked and not renewed.
- 5.2 Further, the Commission considers that serving police officers should not be authorised to conduct secondary employment as migration agents because of the perceived and real risk of improper associations and corrupt conduct.
- 5.3 A copy of this report, together with a schedule containing the true identities of the codenamed persons and entities referred to in this report, have been supplied to the Commissioner of Police.

Operation Mindo
Report pursuant to s 132
Law Enforcement Conduct Commission Act 2016
September 2019

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