

LECC

Law Enforcement
Conduct Commission

OPERATION TRIESTE

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

OCTOBER 2019

LECC

Law Enforcement
Conduct Commission

Office of Commissioner for Integrity

49565/172

31 October 2019

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

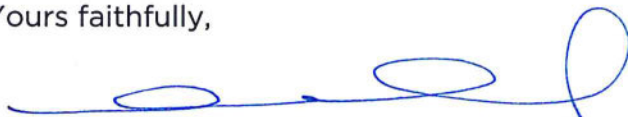
The Hon Jonathan O'Dea MP
Speaker
Legislative Assembly
Parliament House
SYDNEY NSW 2000

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 Trieste.

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

Yours faithfully,



The Hon Lea Drake
Commissioner for Integrity

Encl.

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1. Introduction

- 1.1 On 30 May 2019, the Law Enforcement Conduct Commission (**Commission**) decided to conduct an investigation pursuant to s.44(1)(a) of the *Law Enforcement Conduct Commission Act 2016* (NSW) (**LECC Act**) into whether Officer 1, or Officer 2, or both of them, engaged in serious misconduct during a traffic stop of Ms Y and her stepmother Mrs R on 20 April 2019.¹
- 1.2 The footage of this incident obtained from the Body Worn Video (**BWV**) and In Car Video (**ICV**) during this investigation by the Commission should be viewed prior to reading this Report. A pixelated version of the footage has been uploaded to the Commission's website with this Report.
- 1.3 Ms Y is 24 years old. She has no criminal history. She is a student. She works to finance her studies and support her family who are part of the Muslim Afghan expatriate community living in the western suburbs of Sydney.
- 1.4 On 20 April 2019, Ms Y was driving with Mrs R as a passenger in a silver 2008 Holden Barina. She was pulled over by Officer 1 and Officer 2.
- 1.5 Officer 1 issued Ms Y with five (5) traffic infringement notices for:
 - i. Negligent driving (no death or GBH)
 - ii. Not give left change of direction signal (exit roundabout)
 - iii. Drive with 1 unrestrained passenger (16 yrs or older)
 - iv. Not obey direction of police/authorised person
 - v. Not comply with conditions of licence.
- 1.6 Mrs R was not charged with any offence.

¹ This is the "scope and purpose" as announced by the Commissioner p.4-5

- 1.7 ICV and BWV of the incident was obtained. Ms Y also participated in a record of interview with officers of the Commission.
- 1.8 The BWV, and its transcript, depict Officer 1 and Officer 2 pulling over Ms Y for a traffic stop. During the course of the traffic stop the following events, amongst others, occurred:
- i. Officer 1 said to Ms Y that she was the “...*most stupidest (sic) person I’ve ever met as a driver . . .*”
 - ii. When Mrs R could not produce identification documents, Officer 1 and Officer 2 threatened Mrs R with being handcuffed and taken into immediate custody.
 - iii. Officer 1 threatened Ms Y with arrest for negligent driving.
 - iv. Officer 2 questioned Ms Y concerning her religion and told her to “*swear to Allah*”.
 - v. When Ms Y tried to explain her conduct, Officer 1 threatened Ms Y with “...*going back in the paddy wagon as an accessory to bloody murder.*”
 - vi. Officer 1 cautioned Ms Y: “*Don’t take advantage of our system*” and Officer 2 appeared by his demeanour to agree with this sentiment.
- 1.9 The Commission gave consideration to the relevant provisions of the LECC Act and determined that a private examination should take place.
- 1.10 On 15 July 2019, Officer 1 and Officer 2 gave evidence at a private examination before the Commission. The general scope and purpose of the examinations was:
- To investigate whether [Officer 1], [Officer 2] or both of them engaged in serious misconduct during a traffic stop of [Ms Y] and [Mrs R] on 20 April 2019.*
- 1.11 The investigation of Officer 1 and Officer 2 examined, amongst other issues:

- i. Whether they, individually or acting together, breached s 7 of the *Police Act 1990* (NSW) (**Police Act**).
- ii. Whether they, individually or acting together, breached the Code of Conduct and Ethics during the traffic stop.
- iii. Whether they complied with the relevant provisions of the *Law Enforcement (Powers and Responsibilities) Act 2002* (NSW) (**LEPRA**).
- iv. Whether, as a consequence of the issues identified in subparagraphs 1.11 (i), (ii) and (iii) they each engaged in serious misconduct within the meaning of the LECC Act.

1.12 The Commission did not consider it necessary to conduct an examination of any other person for the purpose of this investigation.

1.13 For the reasons set out later in this Report the Commission finds that Officer 1 and Officer 2 engaged in serious misconduct during the relevant traffic stop in that they breached s 7 of the Police Act, breached the NSWPF Code of Conduct and Ethics and breached the provisions of LEPRA.

1.14 The Commission has made a determination to protect the identities of all persons involved. Accordingly, all persons will be referred to by codenames in this Report.

2. The Commission's Statutory Functions

2.1 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 reputation 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: 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.² Accordingly findings can form the basis of opinions and recommendations, even if they do not reach the standard of beyond reasonable doubt.

3. The Commission's Investigation

ICV footage

² *Briginshaw v Briginshaw* [1938] 60 CLR 336; *Neat Holdings Pty Ltd v Karajan Holdings Pty Ltd* (1992) 67 ALJR 170.

3.1 The ICV footage demonstrates that on 20 April 2019 the following occurred:

- i. At 17:05:44, Officer 1 and Officer 2 were travelling south on Church Street, Parramatta in a Raptor Highway Patrol car. They observed Ms Y and her stepmother Mrs R travelling north.
- ii. At 17:06:04, Officer 2 performed a U-turn in front of oncoming traffic against a red light at the traffic lights on Church Street to follow Ms Y. He increased speed through traffic, passed three cars, and then, having observed Ms Y's vehicle indicating an intention to turn right from Church Street into Raymond Street, he also turned right at the intersection of Church and Raymond Streets as the lights were turning red.
- iii. At 17:06:20, Officer 1 and Officer 2 pulled in behind Ms Y on Raymond Street and activated their lights and sirens.
- iv. Officer 1 and Officer 2 followed Ms Y for approximately two minutes.
- v. At 17:08:27 Ms Y pulled over to the left on Brisbane Street.
- vi. At 17:20:10, Officer 1 and Officer 2 departed Brisbane Street.

BWV footage

3.2 After she had stopped, Officer 1 approached Ms Y. He activated his BWV. Although the stop was for approximately 12 minutes the BWV footage only lasts for approximately 4 minutes and 33 seconds. The BWV was deactivated by Officer 1 before his interaction with the two women had finished. Over seven minutes of the traffic stop was not recorded.

3.3 A transcript of the BWV records the following statements made by Officer 1 and Officer 2 to Ms Y and her stepmother, Mrs R.

Speaker	Recipient	Evidence
Officer 1	Ms Y	You have to be the most stupidest (sic) person I've met as a driver of a motor vehicle with a police vehicle(s) all the way since Church Street to here.
Ms Y	Officer 1	(referring to Mrs R) she has no ID 'cause she's . ..
Officer 1	Ms Y	She would have ID of some description
Ms Y	Officer 1	She came from overseas
Officer 1	Ms Y	Oh it doesn't matter, she [Mrs R] would have some ID on her of some description
Officer 1	Mrs R	Have you got ID
Ms Y	Officer 1	No she's [Mrs R] just migrated from overseas. We've applied for her ID card, it hasn't arrived to us.
Officer 1	Ms Y	Well she'd [Mrs R] have something
Mrs R		[foreign]
Officer 2	Officer 1	Paddy wagons gonna take her [Mrs R] away
Officer 1	Officer 2	Yeah, we're taking her back to gaol anyway.
...		
Officer 1	Ms Y	Yeah we're taking her [Mrs R] back to gaol anyway
...		
Officer 1		Where's her wallet [in relation to Mrs R]? I don't care where your home is; at this stage you're under arrest for driving in a negligent manner.

...		
Officer 1	Ms Y	Do you understand that? Hop out of the car. [To Officer 2] Whack the cuffs on her.
...		
Officer 1	Ms Y	Don't argue with me love or you'll be going back in the paddy wagon as accessory to bloody murder
...		
Officer 1	Ms Y	This is ridiculous
Officer 2	Ms Y	Why didn't you stop?
Officer 1	Unidentified persons	[to relatives coming to assist Ms Y and Mrs R] Go away. Go home. You, go home, you're their friends?
...		
Ms Y	Officer 2	I swear to God that I didn't know where to stop.
Officer 2	Ms Y	So, what, you think . . .lights on . . .
Officer 2	Ms Y	Well then hand your licence back. If you don't know how to drive on Australian roads, hand your licence back.
Ms Y	Officer 2	No, I swear
Officer 2	Ms Y	Well what's your religion?
Officer 2	Ms Y	Okay swear to Allah.
Ms Y	Officer 2	I swear to Allah, I didn't know.
Officer 1	Ms Y	Yeah right
Officer 1	Mrs R	Date of birth?

Officer 1	Ms Y	[In relation to Mrs R] Date of birth?
Officer 1	Mrs R	I don't care, you go back to gaol. I don't care
...		
Officer 1	Mrs R	How old are you?
Mrs R	Officer 1	[foreign]
Officer 1	Mrs R	You're telling fibs
...		
Officer 1	Ms Y	Do your maths, that's ... forty-four ... Someone's telling me lies. Your mum has thirty seconds to tell me her date of birth or we're on the way to Rosehill ... police station.
Ms Y	Officer 1	She doesn't know her date of birth
Officer 1	Ms Y and Mrs R	You ring someone, tell 'em to get your passport down here now or you go back to the police station
...		
Officer 2	Mrs R	Villawood
...		
Officer 2	Ms Y	What kind of visa [is] Mum on?
Ms Y	Officer 2	She's on a temporary visa.
Officer 2	Ms Y	Oh, she's committed offences whilst on a temporary visa?
Officer 1		Yep.
Officer 2		Aid and abet
...		

Officer 1	Ms Y	[when Mrs R goes to fetch ID] Bring those, she stays here, mum stays here oi
Officer 2	Mrs R	Ah, ah, ah, ah, ah, ah. You stay here.
Officer 1	Ms Y	Ring someone to go and get you her passport and bring it here now.
Officer 1	Mrs R	Here.
...		
Officer 1	Ms Y	Don't get aggro with me or you'll be in the back of a divvy van going back to the gaol.
...		
Officer 1	Ms Y	Don't take advantage of our system
...		
Officer 2	Ms Y	Outrageous
Officer 1	Ms Y	This is ridiculous

3.4 In her complaint to the NSWPF Ms Y stated that comments to her, not recorded on the BWV footage, were also made by Officer 1 and Officer 2 to the following effect:

- i. What would the police do if they were in Afghanistan?
- ii. There were drugs in the car.
- iii. If they were in Afghanistan they would be gunned down.
- iv. She had a criminal record in Australia.

3.5 Ms Y was issued traffic infringement notices for the following offences:

- i. Drive with 1 unrestrained passenger (Penalty amount \$337 and a maximum of 3 demerit points)
- ii. Negligent driving (no death or grievous bodily harm) (Penalty amount \$448 and a maximum of 3 demerit points)

- iii. Not obey direction of police/authorised person (Penalty amount \$337 and a maximum of 3 demerit points)
- iv. Not comply with conditions of licence (Penalty amount \$263 and a maximum of 2 demerit points)
- v. Not give left change of direction signal (exit roundabout) (Penalty amount \$263 and a maximum of 2 demerit points)

3.6 Ms Y is the only person in her family who is licenced to drive a car. She was on her "P" plates at the time she was pulled over and would lose her licence if any of these offences were proven. Had she been on a non-provisional licence she would also have lost her licence.

The evidence of Officer 1

3.7 Officer 1 gave evidence to the Commission on 15 July 2019.

3.8 Officer 1 and Officer 2 are both Senior Constables. Officer 1 has been in the NSWPF longer than Officer 2, and was thus senior to Officer 2.

3.9 Officer 2 was driving the car on 20 April 2019. As they were driving on Church Street, Parramatta, Officer 1 said that he observed a passenger in a car, then going in the opposite direction, who was not wearing a seatbelt. He told Officer 2 who then asked him if he wanted to follow the vehicle. Officer 1 hesitated but then told Officer 2 to pursue the vehicle.

3.10 Officer 1 agreed that when he said to Ms Y: "*You'd have to be the most stupidest person I've ever met*" he was rude, discourteous and disrespectful, and he was "*not proud of*" saying it.³

3.11 Officer 1 claimed that he had never been this rude to anyone else before, but later agreed that "*it has happened in the past*" (outside of dealing with members of outlaw motorcycle gangs) though not "*many times*".⁴ He felt "*embarrassed*" but made no effort to apologise.⁵ Although

³ Private examination of Officer 1 at T30 at lines 1-3

⁴ Private examination of Officer 1 at T30 at lines 1-20

⁵ Private examination of Officer 1 at T30 at lines 1-7

previous allegations of rude and discourteous conduct had been sustained in the past, he certainly had not learnt from those previous occasions.⁶

3.12 Officer 1 agreed that warning Ms Y with the words: *“Don’t argue with me love or you’ll be going back in the paddy wagon as accessory to bloody murder”* was a stupid thing to say and was something he should not have said.⁷ Although Officer 1 denied losing his temper, or attempting to bully and intimidate Ms Y, he admitted he was angry and *“lost his cool”* and he could see how that could be seen as bullying and intimidating behaviour.⁸

3.13 Officer 1 agreed that the roundabout at which Ms Y failed to indicate, at the corner of Raymond and High Streets, was a small roundabout.⁹ He was aware that the relevant road rule provided that where a driver was proceeding straight at a roundabout, the driver must indicate their intention to turn left *“if practicable”*.¹⁰ Further, he agreed it would have been misleading for her to put her indicator on to turn left before she entered the roundabout because it might actually indicate she was turning left, whereas she was proceeding straight ahead.¹¹ Ultimately, Officer 1 conceded that the words *“if practicable”* meant that a person would not necessarily always need to indicate if they were proceeding straight ahead through an intersection.¹² He agreed that this was a low level traffic offence.¹³

3.14 Officer 1 charged Ms Y with negligent driving on the basis that she had committed the other traffic offences,¹⁴ namely because she: *“...continued to keep driving whilst we were trying to stop her”*. Officer 1 agreed that

⁶ Private examination of Officer 1 at T46 from line 42

⁷ Private examination of Officer 1 at T17 at lines 25-26

⁸ Private examination of Officer 1 at T36 at lines 39-40

⁹ Private examination of Officer 1 at T23 at lines 24-26

¹⁰ Private examination of Officer 1 at T23 at lines 38-41

¹¹ Private examination of Officer 1 at T23 at lines 43-47

¹² Private examination of Officer 1 at T24 at lines 32-38

¹³ Private examination of Officer 1 at T24 at line 20

¹⁴ Private examination of Officer 1 at T26 at lines 33-36

he had charged Ms Y with two offences for the one act of failing to stop, when he charged her with negligent driving and also failing to stop.¹⁵

3.15 Officer 1 was asked what he knew of the 10 provisions of NSWPF Code of Conduct. He had no clear knowledge of the Code. However, he agreed that he breached the NSWPF Code of Conduct, in that his conduct on that day was “*out of line*”¹⁶ and that when he spoke to Ms Y he “*wasn’t courteous to her*”.¹⁷

3.16 Officer 1 stated that he should not have said, “*Don’t argue with me love or you’ll be going back in the paddy wagon as accessory to bloody murder*”. His remarks were totally wrong and disrespectful.¹⁸ His evidence was that he made these remarks because he was “*annoyed she didn’t stop*”¹⁹ and that Mrs R was not wearing a seatbelt. He originally denied that he had made this threat because the women were arguing with him²⁰ but when questioned by Counsel Assisting he agreed that this was the case. Officer 1 conceded that the comment could be described as bullying and intimidation to a degree but continued to deny he lost his temper or that he intended to bully Ms Y.²¹

3.17 He acknowledged that:

- i. the women were not acting in a violent manner;²²
- ii. he knew he did not have that power;
- iii. it would have been “*a wrongful arrest*” if he had taken them back to the police station;²³ and
- iv. he had no right to make that comment.²⁴

¹⁵ Private examination of Officer 1 at T27 at lines 30-33

¹⁶ Private examination of Officer 1 at T32 at lines 30-32

¹⁷ Private examination of Officer 1 at T32 at line 47 to T33 at lines 1-5

¹⁸ Private examination of Officer 1 at T33 at lines 26-31

¹⁹ Private examination of Officer 1 at T33 at line 35 and T34 at line 4

²⁰ Private examination of Officer 1 at T34 at line 24 onwards to T35

²¹ Private examination of Officer 1 at T36 at lines 39-40 and T35 at lines 24-28

²² Private examination of Officer 1 at T39 at lines 19-20

²³ Private examination of Officer 1 at T40 at lines 6-7

²⁴ Private examination of Officer 1 at T40 at lines 20-21

However, beyond offering that he was “*annoyed and frustrated*” and it was “*stupid*” he could not offer any reason why he threatened Ms Y with an arrest which he knew he had no right to perform.²⁵ Officer 1 denied that he behaved this way towards the two women because they were Muslim, but he agreed that it might appear that way to a person in the street²⁶ and the women involved could reasonably view his behaviour as racially motivated and bigoted conduct.²⁷

- 3.18 Officer 1 did not recall, but did not deny, saying to Ms Y and Mrs R that if they had been stopped in Afghanistan they would be shot from behind. Nor did he remember Officer 2 saying those words.²⁸
- 3.19 Officer 1 acknowledged that saying to Ms Y “*...don’t take advantage of our system*” was another stupid comment.²⁹ His explanation for making this remark was that it was “*...in regards to the driving (and not stopping)*”.³⁰ He maintained that what he meant by this was taking advantage of the Australian road system by breaking traffic laws.³¹
- 3.20 After viewing the BWV footage, Officer 1 acknowledged that his behaviour was rude and inappropriate. He also stated that he could see how, from Ms Y’s point of view, his behaviour may have been intimidating and “*way out of line*”.³²
- 3.21 Officer 1 heard Officer 2 talking to Ms Y about swearing to her own god.³³ He agreed it was definitely not the right thing to say and “*not appropriate*”. He did not counsel Officer 2 not to say that sort of thing.³⁴ He was and is aware that under the Code of Conduct officers are

²⁵ Private examination of Officer 1 at T40 from line 17 and see T41 line 16

²⁶ Private examination of Officer 1 at T41 at line 38 to T42

²⁷ Private examination of Officer 1 at T42 from line 10

²⁸ Private examination of Officer 1 at T37 at lines 25-24

²⁹ Private examination of Officer 1 at T43 at lines 19-21

³⁰ Private examination of Officer 1 at T43 from line 15

³¹ Private examination of Officer 1 at T43 at lines 26-28

³² Private examination of Officer 1 at T45 at lines 15-24

³³ Private examination of Officer 1 at T47 at lines 44-47

³⁴ Private examination of Officer 1 at T48 at lines 5-12

obliged to report the misconduct of other officers. He did not report Officer 2.³⁵

3.22 Officer 1 stated that it was stupid to tell Ms Y that she was going to be arrested for negligent driving and he should not have said it.³⁶ Officer 1 was threatening a citizen with arrest and custody when he knew he did not have that power.³⁷ When asked why he did so, he claimed that he did not know, but admitted that it would be reasonable for an observer to conclude he was trying to bully Ms Y and that he was doing so because she was Muslim.³⁸ However, Officer 1 specifically denied that that was his intention.³⁹

3.23 Officer 1 admitted that he told Officer 2 to handcuff Ms Y. He acknowledged that he had been indifferent to the effect that this behaviour would have on Ms Y. He was more concerned with his feelings of anger and upset.⁴⁰ In retrospect, he was aware that this conduct would scare her, but he denied having that intention at that time.⁴¹

3.24 Officer 1 was asked about the Statement of Values set out in s 7 of the Police Act. He was “*not aware of section 7*” and it was clear that he had no idea of the content of s 7.⁴²

3.25 Officer 1 agreed that on 20 April 2019, when dealing with Ms Y and Mrs R, he:

- i. failed in his duty to “*uphold the rule of law*” in accordance with s 7(b) of the Police Act;⁴³
- ii. failed in his duty to exercise his authority responsibly and exceeded his authority in breach of s 7(h) of the Police Act;⁴⁴ and

³⁵ Private examination of Officer 1 at T48 at lines 18-24

³⁶ Private examination of Officer 1 at T52 at lines 36-40

³⁷ Private examination of Officer 1 at T52 at line 35

³⁸ Private examination of Officer 1 at T52 at line 41 to T53 line 22

³⁹ Private examination of Officer 1 at T54 at line 21

⁴⁰ Private examination of Officer 1 at T55 at lines 30-38

⁴¹ Private examination of Officer 1 at T54 from line 35

⁴² Private examination of Officer 1 at T55 at line 42 and see T56 at line 25

⁴³ Private examination of Officer 1 at T56 at line 10

⁴⁴ Private examination of Officer 1 at T56 at lines 41-43

- iii. failed in his duty to act in a way that preserved the rights and freedoms of Ms Y and Mrs R in breach of s 7(c) of the Police Act.⁴⁵
- 3.26 Officer 1 failed to tell Ms Y and Mrs R that their conversation was going to be recorded on BWV in breach of the NSWPF protocol regarding the use of BWV.⁴⁶
- 3.27 Officer 1 failed to tell Ms Y and Mrs R his name, the powers he was about to exercise and the reason for it, in accordance with s 202 of LEPR.⁴⁷ He asserted that this omission was unusual.⁴⁸
- 3.28 Officer 1 told a member of the women's family who had come down to assist Mrs R to *"Go away. Go home. You, go home, you're their friends?"* before he knew who they were. He knew he had no general power to move on persons, but claimed he had the power to *"stop a breach of the peace"*, even though there was no objective evidence of an imminent breach of the peace.⁴⁹
- 3.29 Officer 1 knew he had no power to send Mrs R to gaol when he said, *"I don't care. You go back to gaol"* but said it because he was *"frustrated ... annoyed"*.⁵⁰
- 3.30 Officer 1 agreed that it was *"not even reasonable"* to say to Ms Y and Mrs R, *"Your mum's got 30 seconds to tell me her date of birth or we're on the way to Rosehill"*.⁵¹ He agreed that he knew he had no right to say this but denied that he was trying to bully or intimidate Mrs R. He only said it because he was *"frustrated and annoyed"*.⁵²

⁴⁵ Private examination of Officer 1 at T56 at line 57 to T57 at line 9

⁴⁶ Private examination of Officer 1 at T60 at lines 33-36

⁴⁷ Private examination of Officer 1 at T60-61

⁴⁸ Private examination of Officer 1 at T61-62

⁴⁹ Private examination of Officer 1 at T64 to T66 at line 2

⁵⁰ Private examination of Officer 1 at T66 at lines 10-21

⁵¹ Private examination of Officer 1 at T67 at lines 3-19

⁵² Private examination of Officer 1 at T67 at line 26

3.31 Officer 1 was unaware of the Police Commissioner's policies which are designed to build relationships with ethnically diverse groups. In particular he was not aware of the "Framework for Community Engagement". He agreed that on this day, he had done nothing to engender community/ police trust,⁵³ and his behaviour could have undermined efforts to build relationships with the women's community.⁵⁴

3.32 Officer 1 admitted that there was nothing to gain from using these tactics. It *"...probably causes more issues than not in regards to if they did see something or hear something, then they are not going to come to the police."*⁵⁵

3.33 Officer 1 stated in relation to the conduct that:

*"It [was] way out of line. It [was] wrong. I shouldn't have said what I said and I am very apologetic."*⁵⁶

*... It's not something I would like my mum to go through, or a family friend . . . if I could wind back the clock I would make it a lot different".*⁵⁷

3.34 Officer 1 said in the future he should *"...treat people how you want to be treated yourself"* and said he could benefit from counselling or anger management to *"get to the crux of"* why he acted like this.⁵⁸

The Evidence of Officer 2

3.35 Officer 2 was the driver of the police patrol car. He commenced his evidence by stating that *"I can assure you that I would have been rude and arrogant"* to Ms Y and Mrs R on 20 April 2019.⁵⁹ He stated that he is

⁵³ Private examination of Officer 1 at T70 at line 9

⁵⁴ Private examination of Officer 1 at T69 at lines 38-42

⁵⁵ Private examination of Officer 1 at T70 from line 45

⁵⁶ Private examination of Officer 1 at T72 at lines 25-26

⁵⁷ Private examination of Officer 1 at T72 at lines 31-35

⁵⁸ Private examination of Officer 1 at T73 & T74 at line 42

⁵⁹ Private examination of Officer 2 at T11 at lines 34-35 and 43

usually rude and arrogant at the end of a pursuit if he considers a person may be untruthful.⁶⁰

- 3.36 Officer 2 acknowledged that when he and Officer 1 commenced following Ms Y the situation was not urgent or pressing requiring an immediate response in breach of the safe driver policy.⁶¹ He then stated that it was alright to use the police vehicle in response to a person possibly not wearing a seat belt, in the manner he did on 20 April 2019 “*because it’s an offence*”⁶² and that his driving was safe and the danger proportionate to the “*crime*” committed, in the circumstances.⁶³
- 3.37 Officer 2 could not remember, and highly doubted that he would have said to Ms Y or Mrs R, that if they stopped like that in Afghanistan police would shoot them.⁶⁴
- 3.38 Officer 2’s evidence was that he believed that he had the right to stop a passenger in a car and demand identification.⁶⁵
- 3.39 His evidence was that it would be relevant to ask for a driver’s religion if they were swearing to God.⁶⁶ It is his way of verifying if they are telling the truth⁶⁷ and that he asks this of everybody.⁶⁸ He denied that he was harassing Ms Y or mocking her religion.⁶⁹
- 3.40 Officer 2 accepted that he failed to comply with clause 4 of the Code of Conduct and Ethics, in that he did not treat Ms Y with respect or treat her professionally.⁷⁰
- 3.41 Officer 2 was asked why he told Ms Y that she had aided and abetted an offence. He said he did not know why he had said that.⁷¹ When pressed,

⁶⁰ Private examination of Officer 2 at T12 at lines 3-5

⁶¹ Private examination of Officer 2 at T13 at line 13 & T19-23

⁶² Private examination of Officer 2 at T13 at 30-32

⁶³ Private examination of Officer 2 at T14

⁶⁴ Private examination of Officer 2 at T14 at 26-32

⁶⁵ Private examination of Officer 2 at T17 at line 8

⁶⁶ Private examination of Officer 2 at T17 at lines 33-36

⁶⁷ Private examination of Officer 2 at T19 at lines 1-18

⁶⁸ Private examination of Officer 2 at T18 at line 18

⁶⁹ Private examination of Officer 2 at T19 at lines 36-38

⁷⁰ Private examination of Officer 2 at T20 at lines 8-20

⁷¹ Private examination of Officer 2 at T21 at line 12

he speculated that “*the only thing (he) could think of*” was because he thought Ms Y was aiding and abetting the offence of Mrs R failing to wear a seat belt whilst on a visa.⁷² After he was shown the BWV, Officer 2 suggested that Ms Y was aiding and abetting Mrs R by not giving the right details of identification, thereby suggesting that not having proper identification details may be some form of crime which Ms Y was aiding and abetting.⁷³ Officer 2 agreed that there was no offence of “*aid and abet*”.⁷⁴

3.42 Officer 2 denied that, in asking about Mrs R’s visa status and mentioning “*aid and abet*” and “*Villawood*”, he was trying to give the impression she would be taken to Villawood Detention Centre for breaching her visa because she had committed a bogus offence.⁷⁵

3.43 Officer 2 admitted that this is the way he treats ordinary people when dealing with traffic offences if he believes they are not telling the truth.⁷⁶

3.44 Officer 2 agreed that neither he nor Officer 1 asked Mrs R whether she was wearing her seatbelt.⁷⁷ This was despite the fact that Mrs R appeared to be trying to explain by a physical demonstration that she had had her seatbelt on.⁷⁸

3.45 Officer 2 was asked about his having said the word “*outrageous*” in response to Officer 1 telling Ms Y she was “*taking advantage of our system*”.⁷⁹ At first, he said he could not hear it. It was replayed to him. It was put to him that he was agreeing with Officer 1 that the women were “*taking advantage of our system*”⁸⁰. He then admitted he had said “*outrageous*”⁸¹ immediately after Officer 1 had told the women they should not be “*taking advantage of our system*”.⁸² He responded that he

⁷² Private examination of Officer 2 at T21 from line 30 and T25 at lines 10-19

⁷³ Private examination of Officer 2 at T23 from line 33 & T25 from line 10

⁷⁴ Private examination of Officer 2 at T25 from line 21

⁷⁵ Private examination of Officer 2 at T27 at lines 5-39

⁷⁶ Private examination of Officer 2 at T25 from line 3

⁷⁷ Private examination of Officer 2 at T30 at lines 37-41

⁷⁸ Private examination of Officer 2 at T29 from line 19 to T30 at line 41

⁷⁹ Private examination of Officer 2 at T31 at lines 1-11

⁸⁰ Private examination of Officer 2 at T31 at lines 16-23

⁸¹ Private examination of Officer 2 at T31 at lines 28-30

⁸² Private examination of Officer 2 at T31 at lines 32-35

could not comment because he could not remember what he meant. When pressed, his “*best guess*” was that it was “*outrageous*” that she had refused to stop.⁸³

- 3.46 In his final explanation for his remark Officer 2 stated: “...*she hasn't worn a seatbelt. She has refused to stop for the police. She has driven back to her house. Her family have come out. The whole situation's outrageous*”.⁸⁴
- 3.47 Officer 2's evidence was that he and Officer 1 were just “*doing their job*”. He responded in the affirmative when asked if he thought the hearing before the Commission was pay-back for doing his job.⁸⁵
- 3.48 Officer 2 agreed that Officer 1 did not treat Ms Y and Mrs R with respect and courtesy⁸⁶ but said that Officer 1's treatment of them was not unfair because he treats everybody that way.⁸⁷ Because he consistently treats everyone in the same manner, Officer 1 was acting with fairness.⁸⁸
- 3.49 Officer 2 gave evidence that he saw Officer 1 threaten Ms Y with arrest for negligent driving, had heard him tell him to “*whack the cuffs on her*”,⁸⁹ and arrest Ms Y as “*an accessory to bloody murder*”,⁹⁰ had heard him give Mrs R 30 seconds to comply with his direction to produce identification or he would take her to gaol, and had heard him threaten Ms Y with gaol for being “*aggro*”.⁹¹ Despite having observed all of this conduct Officer 2 considered that Officer 1 was treating everyone with fairness, and that Officer 1 was acting within the rule of law when he threatened to take the passenger to gaol if she could not produce ID or

⁸³ Private examination of Officer 2 at T32 at line 21

⁸⁴ Private examination of Officer 2 at T32 at line 25

⁸⁵ Private examination of Officer 2 at T34 at lines 18-20

⁸⁶ Private examination of Officer 2 at T39 at lines 35-38

⁸⁷ Private examination of Officer 2 at T39 at lines 30-33

⁸⁸ Private examination of Officer 2 at T42 at line 47

⁸⁹ Private examination of Officer 2 at T36 at lines 28-31

⁹⁰ Private examination of Officer 2 at T36 at lines 46-47 and T37 at lines 1-3

⁹¹ Private examination of Officer 2 at T39 at lines 15-18

answer his question within 30 seconds.⁹² His evidence was that the “*Road Transport Act*” provided this power.⁹³

3.50 Officer 2 gave evidence that Officer 1 was acting within the law when he said, “*don’t get aggro or you’ll be in the back of a divvy going back to gaol*” to Ms Y.⁹⁴ Officer 2 believed it was within the rule of law for a police officer to take someone to gaol if they could not provide ID within 30 seconds.⁹⁵ Officer 2 also believed a police officer is entitled to take someone into custody if they are being “*aggro*”, even if, as in this case, there was no breach of the peace.⁹⁶

3.51 Officer 2 was questioned regarding his knowledge of the power to arrest without warrant under s 99 of LEPR. He could not indicate when a police officer had the power to arrest without warrant under LEPR, legislation which has been in place for at least the past 12 years of his service.⁹⁷ His best effort at describing the circumstances in which a police officer can arrest someone without a warrant was “*Somebody in the act of committing or immediately after having committed an offence, somebody who has committed an offence and has not been tried , I can’t - I can’t remember any more at this point in time.*”⁹⁸

3.52 Despite having been informed of the effect of s 99 of LEPR Officer 2 still insisted that Officer 1 was not acting beyond his powers when Officer 1 told the driver she was going to be arrested for negligent driving and threatened her with “*whacking the cuffs on her*”.⁹⁹

3.53 Officer 2’s only concession was that Officer 1 transgressed the Code of Conduct by being rude and disrespectful to Ms Y and Mrs R. He did

⁹² Private examination of Officer 2 at T38 to T40

⁹³ Private examination of Officer 2 at T41 at lines 5-15

⁹⁴ Private examination of Officer 2 at T41 at lines 27-32

⁹⁵ Private examination of Officer 2 at T40 at line 47

⁹⁶ Private examination of Officer 2 at T41 at line 27

⁹⁷ Private examination of Officer 2 at T43 from line 5

⁹⁸ Private examination of Officer 2 at T42 from line 42

⁹⁹ Private examination of Officer 2 at T44 from line 21

nothing to report that misconduct because he considered that *“it’s not serious misconduct”*.¹⁰⁰

3.54 Officer 2 believed he accepted responsibility for his conduct on that day by admitting *“I was rude”*.¹⁰¹

3.55 Officer 2 indicated that he would like to have the opportunity to apologise to Ms Y and Mrs R for his conduct on 20 April 2019.¹⁰² He gave evidence that it was only upon watching the video that he could say *“That’s not who I am. That would not have been nice for them.”*¹⁰³

3.56 When questioned by his counsel Officer 2 gave evidence regarding previous traumatic events in the course of his employment with the NSWPF.¹⁰⁴

4. Submission by the Commander, Criminal Groups

4.1 Following the private hearings the Commission asked for a submission from the Commander, Criminal Groups in relation to the conduct of Officer 1. The Commander was present at the private hearing, viewed the relevant footage and heard the evidence.

4.2 A very detailed and thoughtful submission was received on 23 August 2019. There was no attempt to defend the conduct of either officer. The Commission does not intend to detail matters set out in that submission in this report but has considered the background provided and the strategies set out under Actions 1 to 4 in that submission.

¹⁰⁰ Private examination of Officer 2 at T45 at lines 18-19

¹⁰¹ Private examination of Officer 2 at T47 at line 29

¹⁰² Private examination of Officer 2 at T50 at lines 23-25

¹⁰³ Private examination of Officer 2 at T50 from line 35

¹⁰⁴ Private examination of Officer 2 at T51 to T54

5. Submissions of Officer 1

- 5.1 Officer 1's solicitor provided submissions regarding the use of the word "pursuit". Those submissions have been accepted and the report suitably amended.

6. Submissions of Officer 2

- 6.1 Submissions were received from Officer 2's representative on 10 October 2019.
- 6.2 Some suggested corrections to the draft report were made and were accepted.
- 6.3 Officer 2 submitted that he was suffering from long-standing PTSD arising from his duties as a police officer and that he had suffered an acute relapse during the incident on 20 April 2019.
- 6.4 Extracts from the submissions are set out below:

PTSD as a relevant issue

4. *The Commission should take into account that the Senior Constable's long standing Post Traumatic Stress Disorder (PTSD) caused his behaviour towards [Mrs R] and [Ms Y].*
5. *It is not submitted that his PTSD in any way excuses his behaviour on 20 April 2019. However, it is submitted that the Senior Constable's PTSD is relevant in determining the most appropriate recommendation the Commission should make in the circumstances.*
6. *The Senior Constable's history of PTSD was led in evidence during the private examination. At no stage was this evidence objected to and as such it remains an issue for the Commissioner to consider. Further, a consideration of the state of mind of the Senior Constable is essential to determine if the*

proposed finding of serious misconduct and proposed recommendation of s.173 Police Act 1990 reviewable action are the most appropriate responses by the Commission.

Medical history of PTSD

7. *During his 16 years of service in the New South Wales Police Force (NSWPF) the Senior Constable was exposed to horrific scenes which led to, and then exacerbated, his PTSD diagnosis.*
8. *In his evidence before the Commission, the Senior Constable gave a visceral description of a 2007 police pursuit he was involved in, that ended with a 13 year-old being horrifically killed (2007 Police Pursuit). When describing the incident he said “I had to sit there and watch him essentially take his last breaths before his brain had exploded and poured out of his ear onto the back seat of the car leaving all his blood and brain matter. And that is something that haunts me every day I wake up, because essentially my partner and I were the ones that caused that”. The Senior Constable reflected “I don’t want anybody else’s death on my hands, hence why I can’t do this job anymore”.*
9. *In his evidence he acknowledged the profound effect the 2007 Police Pursuit has had on him, especially when dealing with subsequent police pursuits, even only the “technical pursuit” of 20 April 2019. The effect included him being rude and arrogant at the end of a pursuit. This rudeness and arrogance ultimately led the Senior Constable to the Commission:*
 - a. *“After that [2007 Police Pursuit], I had serious – well, serious issues in relation to anybody who doesn’t stop”;*
 - b. *“So, I have seen the worst that happens as a result of a pursuit and I don’t deal with it well”;*

- c. *It was “exactly right” that “the fact they won’t stop, this brings up memories of those previous incidents”;*
- d. *“So my reactions at the end of pursuits aren’t very nice”*

10. This PTSD also caused him to be rude and arrogant in how he treated ordinary people he picked up for non-pursuit traffic offences and whom he believed were not telling the truth.

- 6.5 Whilst Officer 2 gave evidence of experiences in the course of his employment which have led to his developing post-traumatic stress syndrome he did not submit at the hearing that he relied upon that condition to explain his conduct on 20 April 2019.
- 6.6 The Commissioner of Police may take into account medical evidence provided by Officer 2 in determining what outcome, if any, of a disciplinary nature should arise from his conduct.

7. Analysis of Evidence

- 7.1 Part 6-2 of the NSWPF policy entitled Safe Driving provides that:
- *Traffic stops are not urgent duty.*

Part 6-4 of the policy provides that:

When conducting a traffic stop and/or speed check police must take into consideration the following:

- *Danger to police, other road users*
- *In considering danger to police and other road users, factors should include;*
- *Weather and road conditions, traffic density including vehicles and pedestrians*
- *Time of the day, day of the week (ie active school zones, road works)*
- *Whether the circumstances or offence detected requires an immediacy of action.*
- *...*

- *If the danger to police or other road users outweigh the need to undertake the traffic stop and/or check then police should discontinue the activity.*

A. Officer 1

7.2 Officer 1 commenced the following of Ms Y's vehicle because he thought he had seen Mrs R not wearing a seat belt. Officer 1 said that he "... *umm-ed and ahh-ed*" when he was deciding whether to follow.¹⁰⁵ He was the senior officer and then instructed Officer 2 to follow the vehicle. Officer 2's evidence was that the circumstances were not sufficiently urgent or pressing so as to require an immediate response in breach of the safe driver policy.¹⁰⁶ Following the vehicle involved a U-turn at a set of lights, breaching two red lights, and speeding. The Commission is satisfied that this behaviour involved some degree of danger, both to the officers and the general public, which the suspected offence of not wearing a seat belt, did not justify. There was insufficient urgency to justify the following of the vehicle. The Commission is satisfied that Officer 1 breached the relevant provisions of the NSWPF policy regarding "Safe Driving" in encouraging Officer 2 to initiate the following of Ms Y and Mrs R. This should be a matter of concern for the NSWPF and should be addressed. However, the Commission is not satisfied that this error of judgement, viewed discretely, amounts to serious misconduct.

7.3 Despite the stated purpose of this pursuit being the apprehension of a driver whose passenger was not wearing a seatbelt, no attempt was made to investigate whether a seatbelt was actually being worn. Mrs R can be seen attempting to explain by gestures that she had had her seatbelt on. No questions were asked of her or her daughter regarding the reason for the pursuit. Officer 1 could not have been satisfied that no seatbelt was being worn from his brief opportunity to observe the passenger on Church Street, Parramatta. He was in the passenger seat

¹⁰⁵ Private examination of Officer 1 at T12 at lines 4-11

¹⁰⁶ Private examination of Officer 2 at T13 at lines 19-23

of the police vehicle. Mrs R was in the passenger seat of Ms Y's vehicle travelling in the opposite direction. Mrs R was wearing relatively voluminous clothing. The Commission is satisfied that, absent an actual investigation, Officer 1 could not be satisfied that any offence had occurred. Despite this, no investigation took place. This should be a matter of concern for the NSWPF and should be addressed. However, the Commission is not satisfied that this unsatisfactory situation, viewed discretely, amounts to serious misconduct.

- 7.4 Excluding the offence of failing to stop, which might have had some merit, although the Commission is satisfied that Ms Y simply did not know what to do in the circumstances, the offences with which Ms Y was charged were low level traffic offences and unjustified.
- 7.5 Officer 1 unreasonably increased the charges against Ms Y when he charged her with Negligent Driving. Officer 1 explained that he charged Ms Y with negligent driving because she had committed the other traffic offences.¹⁰⁷ This conduct was already covered by another charge namely, the offence of "*not obey the direction*".¹⁰⁸ The relevant test is whether the manner of driving involved a departure from the standard of care which an ordinary prudent driver would observe in the circumstances.¹⁰⁹ This layering of charges was inappropriate. The Commission accepts the evidence of Officer 2 that Officer 1 customarily conducts himself in this fashion when performing traffic patrol work. He is ordinarily rude and arrogant. He fails to exercise any discretion in relation to charges. In all the circumstances surrounding this traffic stop the excessive multi-layering of charges and the number of charges was bullying conduct.
- 7.6 Clause 118 of the Road Rules provides that:

¹⁰⁷ Private examination of Officer 1 at T26 at lines 33-36

¹⁰⁸ Private examination of Officer 1 at T27 at lines 21-42

¹⁰⁹ *DPP (NSW) v Yeo and Anor* (2008) 188 A Crim R 82 at [27]

(1) *If practicable, a driver driving in a roundabout must give a left change of direction signal when leaving the roundabout.*

- 7.7 Having reviewed the footage, the Commission is satisfied that:
- i. The roundabout is a small roundabout.
 - ii. Ms Y could not, nor should not, have indicated a left turn safely before she entered the roundabout. A left indicator would have had the potential to cause confusion to any cars behind her and any cars entering the intersection from her left (i.e. approaching the intersection along High Street travelling north). A left indicator would have been misleading.
 - iii. It was not “*practicable*” for her to make the left hand signal and there were no reasonable prospects of a conviction for any such offence.
- 7.8 Officer 1 charged Ms Y with the offence of failing to indicate as she left the roundabout at the intersection of Raymond Street and High Street when the circumstances justified an exercise of discretion.¹¹⁰ A left indicator was not appropriate in the circumstances. Charging Ms Y with this offence amounted to bullying.
- 7.9 Officer 1 made persistent and harassing requests for Mrs R to produce some form of identification. Pursuant to s 175 of the *Road Transport Act 2013 (NSW)*¹¹¹ Officer 1 was entitled to ask Ms Y to produce identification. In the circumstances surrounding this traffic stop this entitlement did not extend to Mrs R, who was her passenger. Even had he had that entitlement, his manner of making the request was intentionally offensive.

¹¹⁰ Private examination of Officer 1 at T23 from line 19

¹¹¹ (1) An authorised officer may, in the execution of the officer’s functions under the road transport legislation, require the driver or rider of a vehicle or horse to do any or all of the following: (a) produce the driver’s relevant Australian driver licence (in the case of the driver of a motor vehicle), (b) state the driver’s or rider’s name, (c) state the driver’s or rider’s home address

- 7.10 During this traffic stop Officer 1 wilfully pretended to have powers he did not have and threatened Ms Y and Mrs R with the exercise of those powers.¹¹²
- 7.11 Officer 1 threatened Ms Y with arrest in circumstances where he knew he had no basis to make such a threat.
- 7.12 Officer 1 made continued demands for Mrs R to produce identification when he had no entitlement to make that request.
- 7.13 Officer 1 used intimidating and abusive language to both Ms Y and Mrs R. He bullied and frightened both Ms Y and Mrs R. He intended his conduct to have this effect.
- 7.14 Officer 1 acted deliberately towards Ms Y and Mrs R. There was no loss of control. Accepting that he was angry, and even frustrated, there was no point at which his emotional reaction impaired his ability to know what he was doing. He was indulging himself. This was evident from the audio-visual material before the Commission and his evidence. Officer 2 confirmed that Officer 1 always behaves in this fashion at traffic stops.
- 7.15 Officer 1 engaged in this misconduct as a result of his unreasonable and unjustified anger and frustration, and his conduct was partially motivated by and exhibited racial prejudice.
- 7.16 Officer 1 acknowledged that his behaviour would be likely to cause not only the two women, but also members of their family and community, as well as those persons who witnessed his conduct, to be suspicious of and mistrust the police. It is almost certain that the officer's conduct would be widely reported in the community of which the complainant was a member, with the result that other officers would be tarred with the same brush. This "ripple effect" cannot be underestimated. The people who hear of this incident are likely to form a very adverse view of police officers and, as a result, be wary of or even aggressive towards those officers with whom they come into contact.

¹¹² Private examination of Officer 1 at T67 at line 41 to T68

- 7.17 Not only does this conduct have the highly likely outcome of adversely affecting the reputation of the force in general, and individual officers who behave in a reasonable and appropriate fashion, it also risks placing other officers in danger as a result of the not unreasonable fears and reactions of these members of the public who may, not unreasonably, associate such conduct with members of the police force in general.
- 7.18 The implications for the NSWPF are very serious and wilfully risked by the behaviour of Officer 1 and Officer 2 at this traffic stop. There is good reason to suspect that this behaviour was not an isolated occurrence, as Officer 2 himself asserted, with a corresponding increase in the risk to other police officers.
- 7.19 Officer 1 failed to exercise his power as a police officer responsibly. His failure is demonstrated by his conduct as a whole but is most clearly established by the threat made by him to Ms Y that she would be going *"...back in the paddy wagon as accessory to bloody murder"*.¹¹³
- 7.20 Officer 1 failed *"to treat everyone with respect, courtesy and fairness"* in his dealings with both Ms Y and Mrs R on 20 April 2019. In relation to Ms Y this failure was most evident in calling her the *"the most stupidest person I've ever met"*, and also in his threat to Ms Y to stop arguing or she would be *"...going back in the paddy wagon as accessory to bloody murder"*, a threat which he knew to be entirely without justification.
- 7.21 As to Mrs R, Officer 1 stated to her, *"You're telling fibs"* in circumstances where he had no way of understanding what she was saying nor, was he making any effort to understand what she was saying. He also told her, through Ms Y, that *"Your mum's got 30 seconds to tell me her date of birth or we're on the way to Rosehill"*¹¹⁴ when he knew he did not have any authority to engage in that removal. Officer 1 made these statements to bully and intimidate both Ms Y and Mrs R.

¹¹³ Private examination of Officer 1 at T17 at lines 25-26

¹¹⁴ Private examination of Officer 1 at T67 at lines 3-19

- 7.22 Having regard to Officer 1's comment that the women were "...taking advantage of our system", the Commission is satisfied that the race and religion of Ms Y and Mrs R were relevant to Officer 1's treatment of the women on that day. He was referring to two immigrants taking advantage of the Australian system. What is obvious is that when he referred to "our system" he did so because he did not consider that Ms Y and Mrs R were part of that system.
- 7.23 Officer 1 failed to comply with clause 10 of the Code of Conduct when he failed to report Officer 2's conduct. Officer 1 witnessed Officer 2 request Ms Y to swear to Allah, in circumstances where that request was made by Officer 2 without any justification.
- 7.24 Officer 1 breached the NSWPF protocol for BWVs when he failed to tell Ms Y and Mrs R that their conversation was going to be recorded on BWV.¹¹⁵
- 7.25 Officer 1 had no authority to tell members of Ms Y's family to "go away". He knew he had no general power to move persons on. There was no evidence of an imminent breach of the peace to justify this action.¹¹⁶
- 7.26 The further inappropriate statements that Ms Y alleged were made by Officer 1, and which were not recorded on the BWV, are consistent with Officer 1's conduct evidenced by the BWV and on balance the Commission is satisfied that they were likely to have been said.
- 7.27 Officer 1 is obliged, to the best of his ability, to apply s 7 of the Police Act, Statement of Values of Members of NSW Police Force in the performance of his duties, which provides that:

Each member of the NSW Police Force is to act in a manner which:

- (a) places integrity above all,*
- (b) upholds the rule of law,*
- (c) preserves the rights and freedoms of individuals,*

¹¹⁵ Private examination of Officer 1 at T60 at lines 33-36

¹¹⁶ Private examination of Officer 1 at T64-65

- (d) seeks to improve the quality of life by community involvement in policing,*
- (e) strives for citizen and police personal satisfaction,*
- (f) capitalises on the wealth of human resources,*
- (g) makes efficient and economical use of public resources, and*
- (h) ensures that authority is exercised responsibly.*

7.28 Officer 1 is obliged, to the best of his ability, to apply the NSWPF Code of Conduct and Ethics in the performance of his duties, which provides:

An employee of the NSW Police Force must:

- 1. Behave honestly and in a way that upholds the values and good reputation of the NSW Police Force whether on or off duty*
- 2. Act with care and diligence when on duty*
- 3. Know and comply with all policies, procedures and guidelines that relate to their duties*
- 4. Treat everyone with respect, courtesy and fairness*
- ...*
- 10. Report misconduct of other NSW Police Force employees.*

7.29 Officer 1's conduct, in intentionally intimidating, abusing, threatening and bullying Ms Y and Mrs R by his language, and by deliberately exceeding his authority, breached s 7 (a), (b), (c), (d), (e) and (h) of the Police Act as well as Clauses 1, 2, 3, 4, and 10 of the NSWPF Code of Conduct and Ethics and was serious misconduct.

7.30 Officer 1 is obliged to apply the provisions of LEPRA in the performance of his duties. Officer 1 breached his duties in accordance with s 202 of LEPRA when he failed to tell Ms Y and Mrs R his name, the powers he was about to exercise and the reason for it,¹¹⁷ and this failure was serious misconduct.

¹¹⁷ Private examination of Officer 1 at T61 at line 22 to T62 at line 13

7.31 Officer 1 is presently unfit for purpose as a police officer who has any contact with members of the public in his present mode of operation.

B. Officer 2

7.32 In the circumstances surrounding this investigation, the danger to police and other road users far outweighed the need to pursue the complainant's vehicle and undertake a traffic stop to investigate whether a passenger was not wearing a seat belt.

7.33 Officer 2's actions in initiating and maintaining a pursuit in these circumstances was in breach of Part 6 of the Safe Driving Policy.

7.34 Officer 2's failure to preserve the rights and freedoms of individuals is demonstrated by the conduct set out below.

- i. He issued a threat that Mrs R would be taken away in a "*paddy wagon*".
- ii. He asked Ms Y what religion she was, then asked her to swear to Allah.
- iii. He implied that Mrs R would be taken to Villawood.

7.35 Officer 2 failed to improve the quality of life by community involvement in policing when he, by his conduct, intimidated Ms Y and Mrs R. The women, their families, their communities, and any members of the public who observed the conduct of Officer 2 would, more likely than not, be reluctant to engage with the NSWPF in the future. Officer 2's conduct could only have created a negative impression of the NSWPF. For the reasons already expressed in relation to Officer 1, Officer 2's conduct also endangered the reputation of individual officers as well as possibly endangering their physical safety.

7.36 Officer 2 did not ensure that his authority was exercised responsibly. His conduct was an abuse of his authority. Officer 2's demeanour by his own admission was rude and arrogant. His evidence was that he is always rude and arrogant at traffic stops if he considers that people may be untruthful. Although on this occasion he had no reason to

consider Ms Y was not being truthful, he did not treat Ms Y with respect or in a professional manner. Further, Officer 2 made threats to Mrs R in relation to:

- i. her being taken into custody;
- ii. being sent to Villawood; and
- iii. having committed offences without any foundation.

7.37 As to Ms Y, Officer 2 sought to intimidate her by seeking details of her religion in a peremptory and aggressive manner and by informing her that she had committed offences without any foundation.

7.38 Officer 2 breached the Code of Conduct and Ethics.

7.39 Officer 2's comment of "*outrageous*" following Officer 1's comment that the women were "*taking advantage of our system*" demonstrate that in his mind the race and religion of Ms Y and Mrs R were relevant to his treatment of the women. He, like Officer 1, did not consider that Ms Y and Mrs R were part of the Australian system.

7.40 Officer 2 did not treat these women with respect, courtesy and fairness. Officer 2:

- i. deliberately made baseless threats to both women about being taken into custody or immigration detention;
- ii. inappropriately made Ms Y swear to Allah;
- iii. knowingly informed Ms Y that her stepmother had committed offences whilst on a temporary visa without any foundation for doing so and made a statement that indicated that she had aided and abetted some kind of unidentified criminal offence.

7.41 Officer 2 witnessed the conduct of Officer 1. Despite the fact that he was prepared to acknowledge that Officer 1 failed to treat the women with respect and courtesy,¹¹⁸ he did not report the conduct of Officer 1.

¹¹⁸ The Commission notes that Officer 2 was of the view that Officer 1 was acting fairly (see Private Examination of Officer 2 at T39 at lines 35-38)

This failure is exacerbated by his admission that he has worked with Officer 1 on many prior occasions, and that Officer 1 treats everybody that way.¹¹⁹

7.42 Officer 2 has no knowledge of the relevant policies and legislation restraining the behaviour of police officers. His total ignorance does not disturb him. Examples are set out below.

- i. He believes that a police officer is entitled to take someone into custody if they are being “*aggro*” even if, as in this case, there was no breach of the peace occurring or threatened;¹²⁰
- ii. He has no knowledge of when a police officer has the power to arrest without warrant under LEPR;¹²¹ and
- iii. He believes that Officer 1 was acting within the law when he said, “*don’t get aggro or you’ll be in the back of a divvy going back to gaol*” to Ms Y.¹²²

7.43 Officer 2 is unfit for purpose as a police officer. He is ignorant of his duties and responsibilities. He admits to being rude and arrogant in the ordinary course of his duties when he decides a person may not be truthful. On this occasion he made no attempt to ascertain the truth. His evidence was that he intends to retire in the near future. He should not be in further contact with members of public in the meantime.

8. Findings

8.1 The Commission finds that both Officer 1 and Officer 2 engaged in serious misconduct during the relevant traffic stop in that they breached s 7 of the Police Act, breached the NSWPF Code of Conduct and Ethics, and breached the provisions of LEPR.

9. Affected Persons

¹¹⁹ Private examination of Officer 2 at T39 at lines 30-33

¹²⁰ Private examination of Officer 2 at T41 at line 27

¹²¹ Private examination of Officer 2 at T43 from line 5

¹²² Private examination of Officer 2 at T41 at lines 27-32

- 8.2 In Part 2 of this report the Commission set out the provisions of section 133 of the LECC Act dealing with the contents of reports to Parliament. Subsections (2), (3) and (4) relate to “*affected persons*”.
- 8.3 The Commission is of the opinion that Officer 1 and Officer 2 are affected persons within the meaning of subsection 133(2) of the LECC Act, being persons against whom, in the Commission’s opinion, substantial allegations have been made in the course of the investigation.

10. Recommendations

- 10.1 The Commission recommends that consideration be given to the taking of action against Officer 1 pursuant to s 173 of the Police Act after taking into account the submission of the Commander and after consideration of the Commission’s findings.
- 10.2 The Commission recommends that consideration be given to the taking of action against Officer 2 pursuant to s 173 of the Police Act after consideration of the Commission’s findings.

Operation Trieste
Report to Parliament Pursuant to Section 132
Law Enforcement Conduct Commission Act 2016
October 2019

Contact information

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

Hours of operation

08:30am to 4:30pm Monday to Friday (excluding weekends and public holidays)

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ISBN: 978-1-74003-013-7

