

# LECC

Law Enforcement  
Conduct Commission

## OPERATION MOKENO

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

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March 2022

# LECC

## Law Enforcement Conduct Commission

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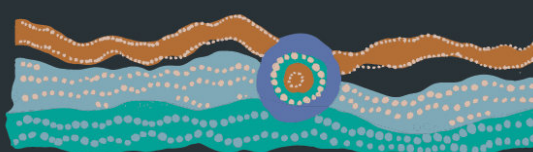
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The Law Enforcement Conduct Commission acknowledges and pays respect to the Traditional Owners and Custodians of the lands on which we work, and recognises their continuing connection to the lands and waters of NSW. We pay our respects to the people,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



## Office of Commissioner

24 March 2022

The Hon Matthew Ryan Mason-Cox MLC  
President  
Legislative Council  
Parliament House  
SYDNEY NSW 2000

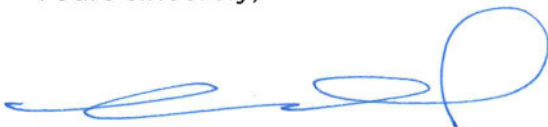
The Hon Jonathan O'Dea MP  
Speaker  
Legislative Assembly  
Parliament House  
SYDNEY NSW 2000

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 Mokeno.

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

Yours sincerely,



**The Hon Lea Drake**  
Commissioner

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## 1. Introduction

1.1 The Commission's investigation in Operation Mokeno arose from a complaint submitted to the Commission by a member of the public alleging an unreasonable use of force by police officers at a Woolworths supermarket on 29 April 2021.

1.2 The complaint stated the following:

*"I am emailing you to inform you of a Police matter that involves excessive violence and force.*

*On the 29<sup>th</sup> of April at 4pm at Woolworths, while I was at the self-serve counter, a woman exited the store through the registers. As she was leaving, an undercover Policeman launched himself at her, grabbed her by the throat, lifted her and then threw her to the ground. Her head slammed on the ground and a shuddering thud was heard when her head made contact with the floor tiles. Many people stood in shock, others took videos and the staff were shocked as well. The woman was crying on the floor and clutching her head. The said Policeman then handed [sic] cuffed her and along with 5 other undercover Police, they dragged her from the centre."*

1.3 Subsequent inquiries by the Commission revealed that at approximately 4:30 p.m. on 29 April 2021, Civilian MOK1 had been seen exiting the Woolworths supermarket in an inner western Sydney suburb without paying for grocery items in her possession. Officer MOK2 stopped Civilian MOK1 outside the supermarket and escorted her back inside the store. Civilian MOK1 attempted to leave the store and was subsequently taken to the ground by Officer MOK3.

1.4 On 20 May 2021, pursuant to s 44(1)(a) of the *Law Enforcement Conduct Commission Act 2016* (the LECC Act), the Commission decided to commence an investigation to determine whether any involved officer had used excessive force during the arrest of Civilian MOK1.

1.5 For greater understanding the footage of this incident obtained during the 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.

1.6 For the reasons set out later in this Report, the Commission has found that Officer MOK3 engaged in serious misconduct when he performed a leg-sweep on Civilian MOK1 and then kicked her when she was on the ground.

## 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 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 its reports, the Commission applies 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 The Commission has made a determination to protect the identities of all persons involved. Accordingly, all persons and places will be referred to by codenames in this report. There is to be no publication

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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.

of the name or image of any of the codenamed persons or places in relation to the evidence given in Operation Mokeno or included in this report without further order of the Commission.

### 3. The Commission's Investigation

- 3.1 The Commission obtained CCTV footage, body-worn camera footage, and other materials which revealed that Officer MOK2, Officer MOK3 and Officer MOK4 were conducting a covert operation on 29 April 2021, with the assistance of Woolworths employees, to target shoplifters.
- 3.2 At about 4:20 p.m., a Loss Preventions Officer from Woolworths observed Civilian MOK1 taking various items from the shelves and placing them into two bags. The Loss Preventions Officer immediately informed Officer MOK2.
- 3.3 Civilian MOK1 proceeded to the self-service checkout. She paid for one cucumber and one bottle of water. She did not pay for the other items in her bags. She exited the supermarket and was then approached by Officer MOK2.
- 3.4 Officer MOK2 informed Civilian MOK1 that she was a police officer and placed her under arrest. She asked Civilian MOK1 to produce a receipt. Civilian MOK1 stated that she had not printed the receipt. Officer MOK2 told her that they could go back into the supermarket to re-print the receipt. As Officer MOK2 escorted Civilian MOK1 into the supermarket she saw Officer MOK3 and said to him *"I've got one more"*.
- 3.5 Civilian MOK1 apologised to Officer MOK2 and stated that she could pay for the items. Officer MOK2 responded that that would not be possible and informed Civilian MOK1 that she was required to attend the back of the supermarket with her.
- 3.6 Civilian MOK1 continued to apologise, stated that she wanted to pay for the items and walked towards the self-service checkouts. At this point Officer MOK2 called out for Officers MOK3 and MOK4.
- 3.7 Civilian MOK1 placed the items onto a self-service checkout and commenced walking towards the exit of the supermarket. Before she had reached the exit Officer MOK3 approached her from behind and took her to the ground with a leg sweep, causing her head to hit the

ground. He then kicked her once with his right leg. Civilian MOK1 called out “*you hurt me, I hit my head*”.

3.8 Officer MOK3 then informed Civilian MOK1 that she was under arrest for shoplifting and assault police.

3.9 Bystanders who had witnessed the incident approached the officers. One stated “*What did she do, just shoplift, and you beat the crap out of her*” and “*that’s just given you police the worst name, you guys are rotten*”.

3.10 Civilian MOK1 was charged with larceny and resist arrest. On 8 June 2021 she pleaded guilty to larceny but not guilty to resist arrest. She was convicted in her absence of both charges on 7 September 2021 and received a \$300 fine for larceny and an \$800 fine for resisting arrest.

3.11 On 27 January 2022 the Commission decided to conduct examinations of Officers MOK2, MOK3 and MOK4. Due to the nature of the allegations, and after taking into account the factors set out in s 63 of the LECC Act, the Commission decided that the examinations would be held in private.

3.12 The scope and purpose of the private examinations was:

*To investigate whether or not [Officer MOK3], or any other officers of the NSWPF, engaged in serious misconduct in relation to the arrest of Civilian MOK1 on 29 April 2021.*

3.13 The examinations were held on 9 and 10 February 2022.

## THE EVIDENCE

### Evidence of Officer MOK4

3.14 Officer MOK4 gave the following evidence during his private examination:

- (a) He joined the New South Wales Police Force (NSWPF) in 2014 and was in the proactive crime team, targeting break and enters and thefts in the local area.<sup>2</sup>
- (b) He had received training at the Police Academy on the use of force, and education as to what constituted unreasonable use of force. He received further training and education on those topics after becoming a sworn officer.<sup>3</sup>
- (c) He acknowledged that reasonable force was dependent on various factors such as the level of resistance, the present threat, the number of police officers involved and the suspect's size, age, build, skills and gender.<sup>4</sup>
- (d) He was aware of the NSWPF policy on the use of force, as well as sections 230 and 231 of the *Law Enforcement (Powers and Responsibilities) Act 2002* governing the use of force by police.<sup>5</sup>
- (e) He agreed that, in accordance with NSWPF policy<sup>6</sup>, when considering the use of force, an officer's ultimate goal is control.
- (f) This occasion was the first time he had come across Civilian MOK1 and he was not aware of any intelligence relating to her before that.<sup>7</sup>
- (g) He was part of a covert shoplifting operation at Woolworths. He had performed this function on numerous occasions throughout the year.<sup>8</sup>
- (h) Officers assigned to this duty will generally monitor customers throughout the supermarket for suspicious behaviour, but there is no particular role assigned to each officer.<sup>9</sup>

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<sup>2</sup> Private examination QQB at T5.

<sup>3</sup> Private examination QQB at T5-6.

<sup>4</sup> Private examination QQB at T6.

<sup>5</sup> Private examination QQB at T7.

<sup>6</sup> Private examination QQB at T8.

<sup>7</sup> Private examination QQB at T10.

<sup>8</sup> Private examination QQB at T10-11.

<sup>9</sup> Private examination QQB at T11.

- (i) The officers present on that day were himself, Officer MOK2 and Officer MOK3. Officer MOK3 was the most senior officer.<sup>10</sup>
- (j) He was dealing with another shoplifter when he saw a Loss Preventions Officer approach Officer MOK2. He saw Officer MOK2 approach Civilian MOK1 outside the supermarket and escort her back inside. He remained outside.<sup>11</sup>
- (k) He subsequently heard yelling in the self-service checkout area. He then saw Officer MOK3 conduct a leg sweep takedown of Civilian MOK1.<sup>12</sup>
- (l) When shown the CCTV footage of Officer MOK3 taking down Civilian MOK1, he agreed that it was excessive, given Civilian MOK1's age and gender. He also agreed that it was unnecessary.<sup>13</sup>
- (m) He estimated that Civilian MOK1 was aged in her mid 50's and weighed about 60 kilograms.<sup>14</sup>
- (n) He did not hear Officer MOK3 say anything to Civilian MOK1 before approaching her.<sup>15</sup>
- (o) When shown Officer MOK3's take down of Civilian MOK1 he stated that was how leg sweeps are normally executed with the hand placed on the upper torso and shoulder area.<sup>16</sup>
- (p) He agreed that the CCTV footage showed Officer MOK3 kicking Civilian MOK1 after she fell to the ground.<sup>17</sup> He agreed that the kick was excessive and inappropriate.<sup>18</sup>
- (q) He later had a conversation with Officer MOK3 at the police station. He asked him what had happened because he did not see what had led to the take down. Officer MOK3 stated that Civilian MOK1 had been resisting arrest.<sup>19</sup>

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<sup>10</sup> Private examination QQB at T11-12.

<sup>11</sup> Private examination QQB at T12.

<sup>12</sup> Private examination QQB at T12-13.

<sup>13</sup> Private examination QQB at T15.

<sup>14</sup> Private examination QQB at T15.

<sup>15</sup> Private examination QQB at T16.

<sup>16</sup> Private examination QQB at T17.

<sup>17</sup> Private examination QQB at T17.

<sup>18</sup> Private examination QQB at T17-18.

<sup>19</sup> Private examination QQB at T18.

- (r) He did not consider reporting Officer MOK3's conduct because he did not know there was a kick until he saw the video footage in the examination.<sup>20</sup>
- (s) Because he had not seen the level of resistance at the time it was hard for him to determine whether the take down was justified.<sup>21</sup>
- (t) Having then seen the video footage, his view was that "*it was excessive for the situation*".<sup>22</sup>
- (u) The last information he had concerning this incident was that the Crime Manager was reviewing the footage.<sup>23</sup>
- (v) No one else expressed to him any concern regarding Officer MOK3's conduct.<sup>24</sup>
- (w) He did not have a role in organising an ambulance for Civilian MOK1 because he had returned to the supermarket to obtain a receipt of what had been stolen.<sup>25</sup>
- (x) He believed Officer MOK3 called for further police to attend because he considered that the incident was getting out of hand and there was a large group of people around them.<sup>26</sup>
- (y) In contrast to the behaviour of Officer MOK3 his preferred method is to communicate first.<sup>27</sup>
- (z) If he had seen the kick he would have reported the incident and behaved differently.<sup>28</sup>

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<sup>20</sup> Private examination QQB at T19.

<sup>21</sup> Private examination QQB at T19.

<sup>22</sup> Private examination QQB at T20.

<sup>23</sup> Private examination QQB at T20.

<sup>24</sup> Private examination QQB at T20.

<sup>25</sup> Private examination QQB at T21 and T26.

<sup>26</sup> Private examination QQB at T22.

<sup>27</sup> Private examination QQB at T24.

<sup>28</sup> Private examination QQB at T24 and T26.



## Evidence of Officer MOK2

3.15 Officer MOK2 gave the following evidence during her private examination:

- (a) She joined the NSWPF in 2018 and is currently based in a proactive crime team.<sup>29</sup>
- (b) When she attended Police Academy she received training in the use of force in different situations, such as mental health incidents and when somebody is armed.<sup>30</sup>
- (c) She had received education on the use of force provisions contained in the *Law Enforcement (Powers and Responsibilities) Act 2002*.<sup>31</sup>
- (d) She had seen the NSWPF document titled 'Tactical Options and Use of Force' and was aware of the options and concepts set out therein.<sup>32</sup>
- (e) She had not seen the NSWPF document titled 'Kicks and Knee Strikes Manual'.<sup>33</sup>
- (f) The last time she had received training on the use of force was a couple of years ago when she was in general duties.<sup>34</sup>
- (g) She agreed that the use of force must always be reasonable, and that that reasonableness was dependent on the person's height, build, strength, age and whether they are under the influence of any substance.<sup>35</sup>
- (h) She was shown the statement she had made regarding the interaction with Civilian MOK1 on 29 April 2021. She confirmed that she was able to recall the incident.<sup>36</sup>
- (i) The operation on that day targeting shoplifters was the first one she had ever participated in and she has not participated in any since.<sup>37</sup>

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<sup>29</sup> Private examination DXZ at T5.

<sup>30</sup> Private examination DXZ at T6.

<sup>31</sup> Private examination DXZ at T6.

<sup>32</sup> Private examination DXZ at T7.

<sup>33</sup> Private examination DXZ at T8.

<sup>34</sup> Private examination DXZ at T8.

<sup>35</sup> Private examination DXZ at T8-9.

<sup>36</sup> Private examination DXZ at T9.

<sup>37</sup> Private examination DXZ at T9-10.

- (j) Her role on that day was to identify people shoplifting with the assistance of a Loss Preventions Officer.<sup>38</sup>
- (k) She could not recall the number of people caught shoplifting that day.<sup>39</sup>
- (l) There were three officers, including herself, conducting the operation on that day.<sup>40</sup>
- (m) After being alerted to Civilian MOK1's shoplifting by a Loss Preventions Officer she approached Civilian MOK1. She introduced herself as a police officer and placed Civilian MOK1 under arrest based on the observations of the Loss Preventions Officer.<sup>41</sup>
- (n) Civilian MOK1 advised her that she did not have a printed receipt. Officer MOK2 therefore escorted her back inside the supermarket to obtain a printout of the receipt. However, Civilian MOK1 veered back towards the self-service checkout area whilst stating she would pay for the items.<sup>42</sup>
- (o) She tried to stop Civilian MOK1 from going to the self-service checkout area by standing in front of her and putting her arm up, but Civilian MOK1 made her way into the self-service checkout area and placed some items onto the register.<sup>43</sup>
- (p) Officer MOK2 called out for Officers MOK3 and MOK4. She saw Civilian MOK1 attempt to leave the supermarket. She gave evidence that "*there was a bit of pushing there, I was grabbing on to her and she was pulling on to me, so there was a bit of a struggle there between her and I*".<sup>44</sup>
- (q) Civilian MOK1 stated she was going to have a heart attack and that she had mental health problems.<sup>45</sup>
- (r) Officer MOK2 gave evidence that Officer MOK3 then performed a "*forearm strike*" and Civilian MOK1 fell back.<sup>46</sup> However she

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<sup>38</sup> Private examination DXZ at T10.

<sup>39</sup> Private examination DXZ at T10.

<sup>40</sup> Private examination DXZ at T10.

<sup>41</sup> Private examination DXZ at T11 and T13.

<sup>42</sup> Private examination DXZ at T11-12.

<sup>43</sup> Private examination DXZ at T12.

<sup>44</sup> Private examination DXZ at T12.

<sup>45</sup> Private examination DXZ at T12-13.

<sup>46</sup> Private examination DXZ at T12.

stated that “upon looking at the footage, after the fact, you see it’s more than just a forearm strike”.<sup>47</sup>

- (s) She agreed that Officer MOK3’s hand was on Civilian MOK1’s neck and then he pushed her down.<sup>48</sup> This is not a technique that she has used.<sup>49</sup>
- (t) She picked up Civilian MOK1’s bags and then went back to the self-service register to retrieve the rest of her groceries.<sup>50</sup>
- (u) She did not hear Officer MOK3 announce his office.<sup>51</sup>
- (v) Civilian MOK1 would have had no reason to recognise Officer MOK3 as a police officer.<sup>52</sup>
- (w) Civilian MOK1 complained about an injury.<sup>53</sup>
- (x) She had had no role in calling for an ambulance.<sup>54</sup>
- (y) She described Civilian MOK1 as about 50 years of age, and skinny but “*she had strength on her*”.<sup>55</sup>
- (z) She did not perceive Civilian MOK1 as a threat.<sup>56</sup>
- (aa) Because she could not control Civilian MOK1 physically she considered that physical control was needed, but not to the extent used by Officer MOK3.<sup>57</sup>
- (bb) She did not think having Civilian MOK1 on the ground was an appropriate outcome.<sup>58</sup>
- (cc) She did not think Officer MOK3’s actions were reasonable. She would not have taken that approach.<sup>59</sup>

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<sup>47</sup> Private examination DXZ at T15.

<sup>48</sup> Private examination DXZ at T16.

<sup>49</sup> Private examination DXZ at T16.

<sup>50</sup> Private examination DXZ at T12.

<sup>51</sup> Private examination DXZ at T13.

<sup>52</sup> Private examination DXZ at T14.

<sup>53</sup> Private examination DXZ at T16.

<sup>54</sup> Private examination DXZ at T16.

<sup>55</sup> Private examination DXZ at T16.

<sup>56</sup> Private examination DXZ at T16.

<sup>57</sup> Private examination DXZ at T17.

<sup>58</sup> Private examination DXZ at T17-18.

<sup>59</sup> Private examination DXZ at T18.

- (dd) Members of the public had approached the scene. They voiced their negative opinions regarding what had happened.<sup>60</sup>
- (ee) She did not speak to Officer MOK3 about his take-down of Civilian MOK1.<sup>61</sup>
- (ff) She did not think Officer MOK3's actions amounted to misconduct, because she did not "*see anything wrong with what he did. It was more so just the age and, the age of the female, how he went about it. It was such a minor incident for such force used on her*".<sup>62</sup>
- (gg) She agreed that a more reasonable constructive approach would have been for the officers to walk up to Civilian MOK1 and hold her without striking her.<sup>63</sup>
- (hh) Although she agreed that there were more reasonable approaches she said "*I can't comment on him, but I suppose that he took that approach because it was the fastest thing*".<sup>64</sup>
- (ii) When shown Officer MOK3's kick to Civilian MOK1 on CCTV footage, she responded that was not an approved NSWPF tactic in accordance with what she was taught.<sup>65</sup> She did not think it was necessary to kick Civilian MOK1.<sup>66</sup>
- (jj) She was not aware of any internal investigation concerning Officer MOK3's conduct.<sup>67</sup>
- (kk) She was aware of her obligation to report misconduct in the NSWPF.<sup>68</sup> When asked how she thought this portrayed the NSWPF to the people who were present at the scene, she said "*poorly*".<sup>69</sup>
- (ll) She stated that "*I do believe we need a lot more training, because I haven't been trained in a while. So a refresher would be great for us, to avoid incidents like this*".<sup>70</sup>

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<sup>60</sup> Private examination DXZ at T18.

<sup>61</sup> Private examination DXZ at T18.

<sup>62</sup> Private examination DXZ at T18.

<sup>63</sup> Private examination DXZ at T19.

<sup>64</sup> Private examination DXZ at T19.

<sup>65</sup> Private examination DXZ at T21.

<sup>66</sup> Private examination DXZ at T21.

<sup>67</sup> Private examination DXZ at T21.

<sup>68</sup> Private examination DXZ at T21.

<sup>69</sup> Private examination DXZ at T22.

<sup>70</sup> Private examination DXZ at T23.

(mm) She has worked with Officer MOK3 since that day and has not observed any other similar incident.<sup>71</sup>

(nn) She stated that she wished she had taken a colleague with her on that day whilst escorting Civilian MOK1 *“because you don’t know who you’re dealing with at the end of the day”*.<sup>72</sup>

### Evidence of Officer MOK3

3.16 Officer MOK3 stated the following during his private examination:

- (a) He joined the NSWPF in 2012 and currently holds the rank of Leading Senior Constable at an inner-west police station.<sup>73</sup>
- (b) In April 2021 he worked in the inner-west proactive crime team, targeting low-level crime, including drug offences and property offences.<sup>74</sup>
- (c) In the Police Academy he was taught that using excessive force was considered to be an assault.<sup>75</sup>
- (d) After being sworn in, his training relating to the use of force was provided yearly. It had most recently changed to every two years. This training involved the use of various techniques including communication, use of appointments and weapon control tactics.<sup>76</sup>
- (e) He agreed that there are various factors that determine what constitutes reasonable force, including the suspect’s age, gender, size, skills, level of resistance and the number of police officers involved.<sup>77</sup>
- (f) He agreed with the guideline set out in the NSWPF Handbook which stated *“when faced with a situation where force is required to be used, such force must be considered reasonable and appropriate based upon the level of resistance met or the threat presented”*.<sup>78</sup>

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<sup>71</sup> Private examination DXZ at T24.

<sup>72</sup> Private examination DXZ at T24.

<sup>73</sup> Private examination LTQ at T5.

<sup>74</sup> Private examination LTQ T5.

<sup>75</sup> Private examination LTQ T6.

<sup>76</sup> Private examination LTQ at T6.

<sup>77</sup> Private examination LTQ T6-7.

<sup>78</sup> Private examination LTQ T7.

- (g) He was aware of the use of force provisions sections 230 and 231 in the *Law Enforcement (Powers and Responsibilities) Act 2002*.<sup>79</sup>
- (h) He agreed that when considering the use of force, an officer's ultimate goal is control.<sup>80</sup>
- (i) He agreed that kicks and knee strike techniques were to be used in a defensive action and to control an offender.<sup>81</sup>
- (j) Prior to 29 April 2021, he had conducted similar operations targeting shoplifters at various supermarkets, but he could not recall exactly how many.<sup>82</sup>
- (k) During these operations, the officers are not given specific roles. They work alongside a Loss Preventions Officer to identify shoplifters.<sup>83</sup>
- (l) The person leading the operation is usually the most senior officer.<sup>84</sup> On 29 April 2021 he was the most senior officer involved in the operation.<sup>85</sup>
- (m) He could not recall how many shoplifters had been caught on that day but it was "*probably the most busiest day we'd had up to that date for shoplifters*".<sup>86</sup>
- (n) Officers MOK2 and MOK4 did not have any specific roles that day.<sup>87</sup>
- (o) There were other police officers involved in the operation but at the relevant time they were with a person in custody at the police station. By 4:00 p.m. there were only three officers left at the scene.<sup>88</sup>
- (p) He was dealing with another offender when Civilian MOK1 first came to his attention.

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<sup>79</sup> Private examination LTQ T7.

<sup>80</sup> Private examination LTQ T8.

<sup>81</sup> Private examination LTQ T9.

<sup>82</sup> Private examination LTQ T9.

<sup>83</sup> Private examination LTQ T10.

<sup>84</sup> Private examination LTQ T10.

<sup>85</sup> Private examination LTQ at T10.

<sup>86</sup> Private examination LTQ at T11.

<sup>87</sup> Private examination LTQ at T11.

<sup>88</sup> Private examination LTQ at T11.

- (q) After dealing with the other offender he saw Officer MOK2 escorting Civilian MOK1 back into the supermarket and described her as *“compliant at the time”*.<sup>89</sup>
- (r) At that stage he saw *“only a side profile”* of Civilian MOK1, and saw that she was *“just a compliant lady, a middle-aged woman”*.<sup>90</sup>
- (s) He went to the service counter where cigarettes are sold and then heard yelling and raised voices coming from the self-service counter.<sup>91</sup>
- (t) He looked over and saw *“Constable [MOK2] pulling on [Civilian MOK1]”* and *“[Civilian MOK1] was pulling away towards the exit and Constable [MOK2] was struggling to maintain her grip”*.<sup>92</sup>
- (u) He walked over *“with the intention of placing a handcuff, which is to stop her from fleeing the scene”*.<sup>93</sup>
- (v) Based on Civilian MOK1’s non-compliance and her position he *“utilised a leg sweep. I walked in front of [Civilian MOK1] and I’ve put my – I can’t remember which leg, but I put out my leg, I believe it was my right leg, behind her legs and I have pushed her down with force, with the intention of putting her on the ground for handcuffing”*.<sup>94</sup>
- (w) He had watched the footage from Officer MOK2’s body-worn camera a week before his private examination and had also watched it in 2021 when he was drafting his statement.<sup>95</sup>
- (x) He could not recall Officer MOK2 saying *“I’ve got one more”* on the day, but he was aware that Officer MOK2 had another person.<sup>96</sup>
- (y) He did not hear Officer MOK2 call out his name when she was at the self-service checkout with Civilian MOK1.<sup>97</sup>

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<sup>89</sup> Private examination LTQ at T12.

<sup>90</sup> Private examination LTQ at T12-13.

<sup>91</sup> Private examination LTQ at T13.

<sup>92</sup> Private examination LTQ at T14.

<sup>93</sup> Private examination LTQ at T14.

<sup>94</sup> Private examination LTQ at T14.

<sup>95</sup> Private examination LTQ at T14-15.

<sup>96</sup> Private examination LTQ at T15.

<sup>97</sup> Private examination LTQ at T15.

- (z) He did not announce his office or say anything to Civilian MOK1 before he performed the take-down of her.<sup>98</sup>
- (aa) When shown the video footage he acknowledged that he had kicked Civilian MOK1 when she was on the ground after the take-down.<sup>99</sup>
- (bb) He maintained that Civilian MOK1 had her weight towards the back of her body, and that this momentum “*contributed to her falling on to the ground harder than I had anticipated*”.<sup>100</sup>
- (cc) He stated that despite what was shown in the CCTV footage, he took Civilian MOK1 to the ground in one motion and there was no pause.<sup>101</sup>
- (dd) He made a split-second decision to perform a leg sweep despite knowing that Civilian MOK1 was aged in her 50’s, was thin, was not running, that she could not beat him in an arm wrestle and that Officer MOK4 was outside the supermarket.
- (ee) As far as he was aware, Civilian MOK1 did not know that he and Officer MOK4 were police officers.<sup>102</sup>
- (ff) He did not agree that his decision was unreasonable.<sup>103</sup>
- (gg) He performed the take-down because he believed Officer MOK2 had already utilised the next level of options, which was communication, and that that had not been effective.<sup>104</sup>
- (hh) He agreed that he did not attempt to obtain compliance himself.<sup>105</sup>
- (ii) He had assumed that communication was ineffective.<sup>106</sup>
- (jj) He has never been in a situation where when one officer is already interacting with a violent offender and another officer attempts to get compliance by communication.<sup>107</sup> He stated that

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<sup>98</sup> Private examination LTQ at T16.

<sup>99</sup> Private examination LTQ at T17.

<sup>100</sup> Private examination LTQ at T18.

<sup>101</sup> Private examination LTQ at T19.

<sup>102</sup> Private examination LTQ at T20-21.

<sup>103</sup> Private examination LTQ at T19-20.

<sup>104</sup> Private examination LTQ at T21.

<sup>105</sup> Private examination LTQ at T21.

<sup>106</sup> Private examination LTQ at T21-22.

<sup>107</sup> Private examination LTQ at T22.



if one officer's communication is not effective in affecting an arrest, then the next move is weapon-less control.<sup>108</sup>

- (kk) He believed that Civilian MOK1 on that day was displaying "*violent resistance*" and "*I wouldn't know any other way to describe that action*".<sup>109</sup>
- (ll) He stated that there are only two ways to handcuff a non-compliant person, being either an arm bar take-down or a leg sweep.<sup>110</sup>
- (mm) He agreed that "*the outcome's not desirable*" when asked about Civilian MOK1 ending up on the ground.<sup>111</sup>
- (nn) He agreed that in hindsight a different approach might have produced a better outcome.<sup>112</sup>
- (oo) He agreed that there are different degrees of violence, but disagreed that Civilian MOK1's pulling away from Officer MOK2 was on the lower end.<sup>113</sup>
- (pp) His evidence was that Civilian MOK1 demonstrated violence at the "*mid-range*", and that "*if someone is pulling away and trying to run, I would say that's on the mid-range of violence*".<sup>114</sup>
- (qq) He stated that "*if she was standing up trying to lash out, there's no way we can put her in cuffs while she's standing up because she's not compliant. So the only method of handcuffing is putting her to the ground, with her face to the ground, her hands behind her back. There is just no other way that we get taught, to handcuff someone if they are not compliant*".<sup>115</sup>
- (rr) He disagreed Civilian MOK1 used a very low level of physical force, stating "*if you say to her compared to a large male, then it's low level, but the fact that she's trying to pull away and [Officer MOK2] is having difficulty holding on to her, that's definitely in my eyes to be a mid-range of violent resistance*".<sup>116</sup>

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<sup>108</sup> Private examination LTQ at T22.

<sup>109</sup> Private examination LTQ at T22.

<sup>110</sup> Private examination LTQ at T22.

<sup>111</sup> Private examination LTQ at T23.

<sup>112</sup> Private examination LTQ at T23.

<sup>113</sup> Private examination LTQ at T23.

<sup>114</sup> Private examination LTQ at T24.

<sup>115</sup> Private examination LTQ at T24.

<sup>116</sup> Private examination LTQ at T25.

- (ss) He saw Officer MOK2 as one of the “*senior guys in the team despite her rank and years of service*”. He was not aware that this was her first such operation.<sup>117</sup>
- (tt) He categorised the level of threat posed by Civilian MOK1 to be a “*medium threat*” because he did not know if she had any weapons or syringes on her. He did not know what she had done in the past and whether she would spit or bite at the officers.<sup>118</sup>
- (uu) When asked if there were other alternatives he could have used he responded “*if I was to grab her hand, she comes and head-butts me or bites me or what-not.*”<sup>119</sup>
- (vv) He knew that Officer MOK4 was nearby but did not know where he was specifically.<sup>120</sup>
- (ww) He believed he kicked Civilian MOK1 because he thought she was trying to get back up.<sup>121</sup>
- (xx) He stated that in hindsight there was no need to kick her because Civilian MOK1 was surrounded by police officers.<sup>122</sup>
- (yy) He agreed that his kick was unreasonable, unnecessary and excessive, but from his angle at the time it looked like she was trying to get back up.<sup>123</sup>
- (zz) He stated that a 50 year old woman on drugs could get up “*pretty quickly*” and that he had formed a view that she may have been on drugs.<sup>124</sup>
- (aaa) His evidence was that anyone who resisted police in a certain way would have some level of criminal history and he was surprised she had none.<sup>125</sup>
- (bbb) He did not refer to the kick in his statement because he could not recall it at the time and he had not downloaded the CCTV footage.<sup>126</sup>

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<sup>117</sup> Private examination LTQ at T25.

<sup>118</sup> Private examination LTQ at T25-26.

<sup>119</sup> Private examination LTQ at T26.

<sup>120</sup> Private examination LTQ at T26.

<sup>121</sup> Private examination LTQ at T27-28.

<sup>122</sup> Private examination LTQ at T28.

<sup>123</sup> Private examination LTQ at T28-29.

<sup>124</sup> Private examination LTQ at T29.

<sup>125</sup> Private examination LTQ at T30.

<sup>126</sup> Private examination LTQ at T31.

- (ccc) He did not believe that he made contact with Civilian MOK1's neck whilst performing the leg-sweep but conceded that this can sometimes happen inadvertently.<sup>127</sup>
- (ddd) He could not recall being taught in training what happens to the subject's neck when performing a leg-sweep. He said "*every time we'd fall when we practised on each other, we just braced, just like – you know, I mean, you put your head forward and it's just a reflex action if you fall. You know, if you fall on your back, you automatically stop your head from hitting the ground or if you fall on your foot you brace yourself*".<sup>128</sup>
- (eee) A week after the incident, his crime manager mentioned to him that he had seen the video footage and stated that "*just be more mindful of the public perception of things*".<sup>129</sup>
- (fff) He did not receive any criticism for his use of force, but Officer MOK4 told him that he was shocked, soon after the incident.<sup>130</sup>
- (ggg) He agreed that the public became "*quite difficult*" as a consequence of his actions.<sup>131</sup>

## 4. Analysis of Evidence

### 4.1 The Commission makes the following findings of fact:

- (a) Civilian MOK1 exited the supermarket without paying for certain items in her possession.
- (b) Officer MOK2 placed Civilian MOK1 under arrest and escorted her back inside the supermarket.
- (c) Civilian MOK1 resisted arrest by pulling away from Officer MOK2's hold on her arm and attempted to exit the supermarket again.
- (d) Civilian MOK1's resistance was minimal and unlikely to be successful.
- (e) Officer MOK3 approached Civilian MOK1 from behind and, without announcing his office or issuing any warning,

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<sup>127</sup> Private examination LTQ at T32.

<sup>128</sup> Private examination LTQ at T32.

<sup>129</sup> Private examination LTQ at T33.

<sup>130</sup> Private examination LTQ at T33.

<sup>131</sup> Private examination LTQ at T34.

performed a leg-sweep on her. The leg-sweep caused her to fall and her head to hit the ground.

- (f) At the time of the leg-sweep, Officers MOK2 and MOK4 were in the immediate vicinity of Civilian MOK1.
- (g) Officer MOK3's leg-sweep of Civilian MOK1 caused Civilian MOK1 to complain of pain and become upset whilst bystanders were agitated and expressed concern.

- 4.2 The Commission rejects Officer MOK3's characterisation of Civilian MOK1's conduct as being on the "*mid-range of violent resistance*". Civilian MOK1 demonstrated a very low level of resistance. Civilian MOK1 was a small woman aged in her 50's. She was pulling away from Officer MOK2 and attempting to pay for the goods she had stolen. Officer MOK2 did not have a very strong grip on Civilian MOK1. This is evident from her body-worn camera footage and she was experiencing some minor difficulty in restraining Civilian MOK1. She may well have needed some minimal assistance. Her difficulties did not warrant a violent intervention.
- 4.3 Officer MOK3 failed to make any effort to communicate with Civilian MOK1, either by announcing his office or telling her to stop pulling away. His immediate reaction was to perform a leg-sweep from behind, causing her to fall to the ground and hit her head. There were many alternatives open to Officer MOK3. He could have announced his office and spoken to her, he could have held onto her with one or both of his arms, he could have blocked her departure with his body or he could have utilised the assistance of Officer MOK4 who was standing nearby at the exit from the supermarket.
- 4.4 Civilian MOK1 was a slim middle aged woman, she was displaying a low level of resistance, there were a total of three police officers surrounding her and she obviously did not have the physical capacity to escape these officers.
- 4.5 Officer MOK3's attempts to justify his behaviour by describing the possible dangers represented by Civilian MOK1 lack credibility.
- 4.6 The Commission rejects Officer MOK3's explanation that he kicked Civilian MOK1 because he thought she was trying to get back up. It is evident from the video footage that Officer MOK3's kick immediately followed Civilian MOK1's fall to the ground. The video footage establishes that she was not making any attempt to get back up. She was crying and complaining about the blow to her head.
- 4.7 Had Officer MOK3 actually been fearful that Civilian MOK1 was about to leap to her feet and escape, that fear would have been entirely

unreasonable. No woman in her 50's, unless she was an elite athlete, which this woman clearly was not, would have been unlikely to get themselves up immediately after unexpectedly falling to the ground and striking their head. Officer MOK3's kick can only be characterised as gratuitous violence.

- 4.8 The legal representatives for Officers MOK2, MOK3 and MOK4 were provided with a draft version of this report and invited to make submissions. The legal representatives for all officers chose not to make any submissions.

## 5. Affected Persons

- 5.1 In Part 2 of this Report the Commission set out the provisions of s 133 of the LECC Act dealing with the contents of reports to Parliament. Subsections (2), (3) and (4) relate to "*affected persons*".
- 5.2 The Commission is of the opinion that Officer MOK3 is an affected person within the meaning of subsection 133(2) of the LECC Act, being a person against whom, in the Commission's opinion, substantial allegations have been made in the course of the investigation.

## 6. Findings

- 6.1 Officer MOK3's leg-sweep of Civilian MOK1 was an unreasonable, unnecessary and excessive use of force.
- 6.2 Officer MOK3's kick of Civilian MOK1 was an unreasonable, unnecessary and excessive use of force.
- 6.3 Officer MOK3's leg sweep and kick of Civilian MOK1 separately and together constitute serious misconduct which brought the NSWPF into disrepute.
- 6.4 Officer MOK3 engaged in serious misconduct in conducting the leg sweep and kick to Civilian MOK1.

## 7. Recommendations

- 7.1 On 18 February 2022 the Superintendent of Officer MOK3's Command advised the Commission that the following steps had been implemented in relation to remediating the conduct of Officer MOK3.

- A complaint had been initiated and referred to the relevant Police Area Command. That complaint had been suspended until the outcome of the Commission report into Officer MOK3's conduct.
- The Leading Senior Constable status of Officer MOK3 had been revoked. Should the Commission issue a finding of misconduct against Officer MOK3 it is proposed that he would not be reconsidered for the position of Leading Senior Constable for a period of six months. Any return to Leading Senior Constable status would depend on his ability to satisfy the criteria of the position under the NSWPF Leading Senior Constable guidelines.
- Arrangements have been made for Officer MOK3 to undertake remedial training in relation to his decision-making around the use of force and application of the tactical options model.

7.2 The Commission recommends that the Commissioner of Police should give consideration to the taking of non-reviewable action against Officer MOK3 pursuant to section 173 of the *Police Act 1990* by accepting the proposals from the Superintendent for remediation of this officer but that the period of suspension from the possibility of promotion contemplated by the Superintendent be extended to 12 months.

7.3 The Commission recommends that the lack of action undertaken by the local professional standards officer when Officer MOK3's conduct came to his attention be investigated.

## Operation Mokeno

Report pursuant to s 132

*Law Enforcement Conduct Commission Act 2016*

March 2022

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