



Law Enforcement  
Conduct Commission

## OPERATION BALTRA

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

SEPTEMBER 2018



Law Enforcement  
Conduct Commission

## OFFICE OF COMMISSIONER FOR INTEGRITY

20 September 2018

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

The Hon Shelley Hancock MP  
Speaker  
Legislative Assembly  
Parliament House  
SYDNEY NSW 2000

Dear Mr President and Madam 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 Baltra.

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

Yours sincerely

A blue ink signature, appearing to read 'Lea Drake', is written in a cursive style.

The Hon Lea Drake  
Commissioner for Integrity

Encl.

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## 1. Introduction

1.1 Operation Baltra was an investigation by the Law Enforcement Conduct Commission (the Commission) into the conduct of a Leading Senior Constable, **Officer A**, following the arrest of a young woman, **Ms Z**, on 15 September 2017.<sup>1</sup>

1.2 The Commission gave consideration to the relevant provisions of the *Law Enforcement Conduct Commission Act 2016* (LECC Act) and determined that a private examination would occur.

1.3 On 26 June 2018, Officer A gave evidence at a private examination before the Commission. The general scope and purpose of the examination was:

*To investigate whether Leading Senior Constable (Officer A) engaged in serious officer misconduct in relation to his treatment of Ms Z following her arrest and detention on 15 September 2017.*

1.4 The focus of the private examination of Officer A was:

- i. Whether Officer A used excessive force when he punched Ms Z to the head with a closed fist whilst she was handcuffed to the rear in the custody dock at Police Station X.
- ii. Whether Officer A breached NSWPF policies and guidelines when he recorded the CCTV footage of the incident on his mobile phone and subsequently shared that footage with a Snapchat group, which comprised other police officers from Police Station X.

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

1.6 For the reasons set out later in this Report, the Commission is of the view that Officer A engaged in serious police misconduct when he struck Ms Z to the head with a closed fist. The Commission is also concerned with the practice of police officers sharing unauthorised information, such as CCTV footage from within police stations, on social networking sites such as Snapchat.

1.7 The CCTV footage obtained 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.

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<sup>1</sup> Codenames have been used in this Report to protect the identities and privacy of all the witnesses.

## 2. The Commission's Report

2.1 This report is made pursuant to Part 11 of the LECC Act. Section 132(1) provides that the Commission may prepare reports "*in relation to any matter that has been or is the subject of investigation under Part 6*".

2.2 Section 133 (Content of reports to Parliament) provides that:

*(1) The Commission is authorised to include in a report under section 132:*

*(a) statements as to any of the findings, opinions and recommendations of the Commission, and*

*(b) statements as to the Commission's reasons for any of the Commission's findings, opinions and recommendations.*

*(2) The report must include, in respect of each affected person, a statement as to whether or not in all the circumstances the Commission is of the opinion that consideration should be given to the following:*

*(a) obtaining the advice of the Director of Public Prosecutions with respect to the prosecution of the person for a specified criminal offence,*

*(b) the taking of action against the person for a specified disciplinary infringement,*

*(c) the taking of action (including the making of an order under section 181D of the Police Act 1990) against the person as a police officer on specified grounds, with a view to dismissing, dispensing with the services of or otherwise terminating the services of the police officer,*

*(d) the taking of reviewable action within the meaning of section 173 of the Police Act 1990 against the person as a police officer,*

*(e) the taking of action against the person as a Crime Commission officer or an administrative employee on specified grounds, with a view to dismissing, dispensing with the services of or otherwise terminating the services of the Crime Commission officer or administrative employee.*

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

*(3) An "affected person" is a person against whom, in the Commission's opinion, substantial allegations have been made in the course of or in connection with the investigation (including examination) concerned.*

*(4) Subsection (2) does not limit the kind of statement that a report can contain concerning any affected person and does not prevent a report from containing a statement described in that subsection in respect of any other person.*

2.3 Part 4 of the LECC Act sets out the functions of the Commission. Pursuant to section 29 the Commission may, *inter alia*, make findings and form opinions on the basis of its investigations as to whether officer misconduct occurred and to make recommendations as to whether the advice of the Director of Public Prosecutions should be sought in relation to the commencement of proceedings against particular persons for criminal offences or whether consideration should be given to the taking of action under Part 9 of the *Police Act 1990*. However, the Commission cannot include in a report under Part 11 of the LECC Act a finding or opinion that any conduct of a specified person is officer misconduct unless the conduct is serious misconduct.

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

*(1) For the purposes of this Act, "serious misconduct" means any one of the following:*

*(a) conduct of a police officer, administrative employee or Crime Commission officer that could result in prosecution of the officer or employee for a serious offence or serious disciplinary action against the officer or employee for a disciplinary infringement,*

*(b) a pattern of officer misconduct, officer maladministration or agency maladministration carried out on more than one occasion, or that involves more than one participant, that is indicative of systemic issues that could adversely reflect on the integrity and good repute of the NSW Police Force or the Crime Commission,*

*(c) corrupt conduct of a police officer, administrative employee or Crime Commission officer.*

*(2) In this section:*

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

*"serious offence" means a serious indictable offence and includes an offence committed elsewhere than in New South Wales that, if committed in New South Wales, would be a serious indictable offence.*

2.5 The Commission may hold an examination for the purpose of an investigation into conduct that it has decided is (or could be) serious misconduct or serious maladministration: section 61 (a).

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

of the relevant facts, applying the civil standard of proof in the manner suggested by Dixon J in *Briginshaw v Briginshaw*.<sup>2</sup> His Honour said:

*The seriousness of an allegation made, the inherent unlikelihood of any occurrence of a given description, or the gravity of the consequences flowing from a particular finding are considerations which must affect the answer to the question whether the issues had been proved to the reasonable satisfaction of the tribunal. In such matters "reasonable satisfaction" should not be produced by inexact proofs, indefinite testimony or indirect inferences.*<sup>3</sup>

- 2.7 Section 143 (Persons to be heard) requires the Commission, before including in a report under Part 11 any comment about a person that the Commission considers adverse, so far as practicable, to inform that person of the substance of the grounds of the adverse comment and give the person an opportunity to make submissions.<sup>4</sup>
- 2.8 The Commission is taken to have complied with section 143 if it has held an examination at which the person who is the subject of the adverse comment concerned was informed of the substance of the grounds of the adverse comment and given an opportunity to make submissions.<sup>5</sup>
- 2.9 The Commission provided Officer A (through his legal representative) with a copy of the Commission's draft report and invited him to make submissions in response. The legal representative informed the Commission that Officer A did not wish to make any submissions in response. The Commission considers that it has complied with section 143 of the LECC Act.

### 3. Background Facts

- 3.1 On 15 September 2017 police were called to attend a Sydney hotel, where an intoxicated female, Ms Z, was creating a disturbance and behaving aggressively after she had been asked to leave the premises due to the level of her intoxication. Initially, 3 police officers from the local Police Area Command attended. They were Officer A, another Senior Constable, **Officer B**, and a Probationary Constable, **Officer C**.
- 3.2 On arrival at the premises, police officers observed security guards physically restraining Ms Z. Officer B asked Ms Z whether she would quit the premises and go home. She responded by yelling abuse at the police officers. Officers B and A moved Ms Z away from the front of the venue to a quieter area as her behaviour was causing a disturbance. Officer B made further attempts to calm Ms Z and convince her to go home. She responded by kicking him in the leg with enough force to cause pain and draw blood. As a result of this assault, Officer B informed Ms Z that she was under arrest.

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<sup>2</sup> (1938) 60 CLR 336.

<sup>3</sup> Ibid, at p.361.

<sup>4</sup> LECC Act, section 143(1).

<sup>5</sup> LECC Act, section 143(2).

- 3.3 Following her arrest, a police van with 2 other police officers arrived to transport Ms Z to Police Station X. A third police vehicle also attended, containing 2 female Senior Constables, **Officer D**, and **Officer E**. Officer D searched Ms Z prior to her transportation to Police Station X. Ms Z assaulted Officer D whilst she was searching her, by forcefully stepping down twice on Officer D's foot with the heel of her shoe, leaving a bruise.
- 3.4 Ms Z was transported back to Police Station X and charged with 6 counts. These were 3 assault police on Officers B, A and D, one of resist arrest, one of offensive language and one of attempting to re-enter premises after being told to move on in breach of the *Liquor Act 2007*.
- 3.5 Ms Z ultimately pleaded guilty to assaulting Officer B and using offensive language. The resist arrest charge was withdrawn. The remaining 3 charges, which included the assaults on Officers A and D, were taken into account on a Form 1. Ms Z was convicted, fined a total of \$1300 and placed on a 2-year good behaviour bond. The Facts Sheet presented to the Local Court detailed the 3 assaults on the police officers, including a kick to the "stomach area" of Officer A whilst he was trying to move Ms Z to the observation cell. The Facts Sheet also acknowledged that after Ms Z kicked Officer A, he had reacted by striking Ms Z "towards the facial area of the accused with contact being made".

## 4. The Evidence

### A. The Punch by Officer A

- 4.1 Direct evidence of the incident in question was obtained by the Commission from the CCTV recording made from within Police Station X. The Commission relied on footage from 3 separate cameras in the station: (1) a camera looking directly at the holding dock;<sup>6</sup> (2) a camera from the area of observation cell 3;<sup>7</sup> and (3) a camera from the custody assist area of the station.<sup>8</sup>
- 4.2 Officer A gave evidence to the Commission on 26 June 2018 that he was a Leading Senior Constable and that he had been a police officer since 29 August 2008. He was promoted to Senior Constable in August 2013. He had been stationed at Police Station X for all of his service, but he was currently "on loan" to Police Station Y.
- 4.3 Officer A gave evidence that after Ms Z had urinated on the seat and the floor of the holding dock at Police Station X, a direction was given by the Custody Manager, Officer F, to move her to observation cell number 3, where she would be more comfortable, as it contained a bed and a toilet. This direction was not issued to any specific officer.

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<sup>6</sup> Exhibit BHK8.

<sup>7</sup> Exhibit BHK9.

<sup>8</sup> Exhibit BHK7.



- 4.4 The CCTV footage<sup>9</sup> appears to show that, after the direction was made to move Ms Z, Officers B, C and another officer, Officer G, approached the holding dock and made several requests for Ms Z to get up and walk the 5 metres or so to the observation cell. The CCTV footage shows Officer B opening the door to the dock and pointing the way to the door of the other cell which was diagonally opposite the dock. The footage shows that Ms Z did not comply with the requests. The police officers stated in their written court statements that Ms Z continued to verbally abuse them in response to their requests for her to get up and walk to the other cell.
- 4.5 Officer A can be seen in the CCTV footage<sup>10</sup> to be observing the other police officers' attempts to move Ms Z for about 30 seconds. After this he moved from the custody assist area to the doorway of the dock. Officer A can be seen to point to the floor of the dock and then to step in and grab Ms Z behind her left shoulder in what appears to be an attempt to get her to move. Officer A makes another attempt to move Ms Z. He can then be observed to momentarily step backwards and then step into the dock with his right arm raised.
- 4.6 The actual strike to Ms Z was not captured on the CCTV as both Officers C and A were standing between Ms Z and the camera. However, immediately after the strike, Ms Z's head can be seen to move rapidly to her right (or to the left on the CCTV footage) and her body seen to move forward. Officers C and A are then seen to each take an arm of Ms Z and pull her out of the dock area and onto the floor immediately outside the dock. Ms Z's hands were handcuffed behind her back at all relevant times.
- 4.7 Officer A gave evidence that he was not specifically asked to move Ms Z. He was asked why he intervened to move her after only about 30 seconds, given that there were 3 other police officers (B, C and G) handling the situation. Officer A stated that he intervened as it was not happening fast enough<sup>11</sup> and when further questioned about his decision to intervene he gave the following evidence:<sup>12</sup>
- Q: *It had only been, I think, a few – I think you said about 30 seconds?*
- A: *It was about 30 seconds.*
- Q: *Why did you feel you had to step in at that point in time?*
- A: *Because communications were failing.*
- Q: *How do you know they were failing?*
- A: *Because she wasn't moving.*
- Q: *It was 30 seconds.*
- A: *I understand that.*
- Q: *What about another 30 seconds to see whether she would get up?*
- A: *Yep, I understand that, but it wasn't working, so I walked in to try talk her into moving and she refused further.*

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<sup>9</sup> Exhibit BHK8.

<sup>10</sup> Exhibit BHK7.

<sup>11</sup> Private examination of Officer A at T 23.

<sup>12</sup> Private examination of Officer A at T 27.

- 4.8 Officer A was questioned in more detail about what transpired when he attempted to move Ms Z from the dock area. He stated that he attempted to get Ms Z to move by grabbing her shoulder and pushing her forward. He gave evidence that after making another attempt to move Ms Z, she kicked him with some force. A kick by Ms Z was not captured on the footage but, as has been mentioned, Officers C and A were standing directly in the line of sight of the camera. Officer A stated that, after he was kicked, he reached in and punched Ms Z to the side of her face with a closed fist.<sup>13</sup> Officer A gave evidence that the strike “*was reactionary in self-defence*”<sup>14</sup>.
- 4.9 The footage<sup>15</sup> shows that just prior to Officer A striking Ms Z, Officer C had entered the dock and moved to the left (which was to Ms Z’s right). Officer A gave evidence that he did not enter the dock as he did not want to step into the urine on the floor (notwithstanding that he was wearing heavy-soled police-issue boots). He did, however, step in after Ms Z kicked him, in order to strike her.
- 4.10 Officer A stated that after he punched Ms Z, her “*face turned to the side and that was the opportunity where we were able to pull her out of the cell*”.<sup>16</sup> He did not agree that his punch had the effect of propelling Ms Z forward onto the floor but rather that it allowed Officer C and himself to then pull Ms Z out of the dock.
- 4.11 Later in CCTV footage,<sup>17</sup> Officer A can be seen to take off his glove, look at the knuckles of his right hand and shake that hand. He explained during questioning that he did this as his hand was sore and he was looking to see if he had injured it. He conceded that he hit Ms Z with enough force to hurt his hand but not cause any marks or long lasting pain.<sup>18</sup> When asked why he didn’t use a police approved palm strike, Officer A said that he didn’t have an answer and that the punch was “*straightaway*” and “*reactionary*”.<sup>19</sup>
- 4.12 Officer A was asked on 3 occasions during the private examination whether with the benefit of hindsight he would do anything differently. His responses were as follows:

Q: *But given your training and experience, what would have been the appropriate way to deal with her in this situation?*

A: *Exactly what I did. I wouldn’t change a thing.*

Q: *You’d punch her again?*

A: *In those circumstances, yes.*<sup>20</sup>

When questioned about whether a better course may have been to disengage to avoid escalation of the incident, Officer A stated:

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<sup>13</sup> Private examination of Officer A at T 14, line 41-46.

<sup>14</sup> Private examination of Officer A at T 18, line 41.

<sup>15</sup> Exhibit BHK8.

<sup>16</sup> Private examination of Officer A at T 20.

<sup>17</sup> Exhibit BHK7.

<sup>18</sup> Private examination of Officer A at T 51.

<sup>19</sup> Private examination of Officer A at T 52.

<sup>20</sup> Private examination of Officer A at T 25.

A: *"I wouldn't change a thing. I'd do exactly the same thing again, sorry, for the safety of us and other police, I suppose."*<sup>21</sup>

And later in evidence:

Q: *With the benefit of hindsight and drawing on your experience and training as a police officer, do you now think that you should have done things differently?*

A: *Absolutely not.*<sup>22</sup>

## B. Mobile phone recording of the CCTV footage

4.13 Officer A gave evidence that whilst the CCTV footage of the incident was being played at the station, he looked over someone's shoulder and recorded it on his phone. When asked what he did with the footage, he replied: *"We have a group with our team members that we share incidents and videos and photos with. I've forwarded it to my work colleagues at work."*<sup>23</sup>

4.14 Officer A conceded that nobody authorised him to send it to anybody and thus, his filming of the footage was *probably* not authorised. When pressed as to why he forwarded it on to his colleagues, Officer A replied: *"We just send footage to each other, not necessarily recorded footage of CCTV but just video footage of each other at work, It's just like a morale team building, I don't know how else to describe it. That's just what we do, we send each other stuff."*<sup>24</sup> He further explained that it was a Snapchat group comprising only police officers in his team from Police Station X.

4.15 Officer A asserted that he sent the footage to his colleagues as it depicted him being assaulted, notwithstanding that the kick to his stomach is not visible in the footage. Officer A stated that *"In my mind I can see it because I know how I reacted and I saw myself kicking back but someone else."*<sup>25</sup> He also stated that he could not comment on what somebody else perceives when viewing the footage.

4.16 Officer A gave further evidence that he had left the Snapchat group at Police Station X because of his move to Police Station Y and to distance himself from anyone involved in the incident as he was aware that it was being investigated. He stated, however, that he was now part of a Snapchat group at Police Station Y and that he supposed that it was a usual practice for police to be involved in such social media group chats. Officer A conceded that in hindsight sharing the kind of material he had shared with others was not appropriate. However, he also stated that *"if it was just normal police business which is what I thought it was at the time, I'd probably still share it, but because it was other police, I don't share anything with the public."*<sup>26</sup>

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<sup>21</sup> Private examination of Officer A at T 44.

<sup>22</sup> Private examination of Officer A at T 55.

<sup>23</sup> Private examination of Officer A at T 21.

<sup>24</sup> Private examination of Officer A at T 22.

<sup>25</sup> Private examination of Officer A at T 30.

<sup>26</sup> Private examination of Officer A at T 59.

## 5. Findings

### A. Use of Force

- 5.1 Section 230 of the *Law Enforcement (Powers and Responsibilities) Act 2002* (LEPRA) makes it lawful for a police officer in the execution of his duty such as an arrest “*to use such force as is reasonably necessary to exercise the function.*”
- 5.2 Section 231 of LEPRA provides that “*a police officer who exercises a power to arrest another person may use such force as is reasonably necessary to make the arrest or to prevent the escape of the person after arrest.*”
- 5.3 When determining whether reasonable force was exercised, there are two questions to be asked:
- i. Did the officer ‘reasonably believe’ that the force that he or she exercised was necessary? and
  - ii. Would a reasonable person in the same position as the officer believe that such force was proportionate to the suspect’s actions?
- 5.4 Since the unlawful use of force is a criminal offence, the Commission can only find such conduct occurred in accordance with the standard of proof as referred to in *Briginshaw v Briginshaw*.<sup>27</sup> An answer to the questions before the Commission can only be determined on the balance of probabilities on the basis that the more serious the matter is under consideration, the more stringent is the requisite degree of satisfaction.
- 5.5 The Commission accepts that the arrest of Ms Z was appropriate and that the police officers involved in the arrest, including Officer A, acted in accordance with LEPRA. The Commission is satisfied on the available material, including police statements prepared in the prosecution of Ms Z, that she was aggressive and non-compliant when police officers arrived at the hotel. Security guards had to physically restrain her due to her level of aggression and abuse. She assaulted 2 police officers during her arrest. The Commission also accepts that Ms Z continued to resist and be abusive even after being placed in the holding dock at the police station. As a result of her behaviour, police officers did not attempt to interview her, photograph or fingerprint her at that point in time. When dealing with Ms Z at the hotel, Officer B had called paramedics to attend to her as there was concern about her level of intoxication and that she may have taken an illicit drug. When paramedics arrived at the police station they were informed that Ms Z was aggressive and that it was not safe for them to assess her at that stage and they therefore left.
- 5.6 Whilst the Commission is satisfied that all police officers acted appropriately and within the law when arresting Ms Z, the conduct of Officer A in striking Ms Z whilst she was seated in the holding dock at Police Station X is in a different category.

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<sup>27</sup> See citation at 1.

- 5.7 Officer A stated that he punched Ms Z in reaction to her kicking him with some force in the stomach area. He also stated that his punch allowed him and Officer C to move her from the dock. Officer A maintained throughout his evidence that he was justified in punching Ms Z and that with the benefit of hindsight, he would not change anything.
- 5.8 The Commission has considered Officer A's previous good record and his appropriate conduct towards Ms Z outside the hotel, during which interaction he took the full weight of her fall. These matters stand in contrast to his conduct towards Ms Z at the X Police Station and his adherence to his evidence that he punched Ms Z in self-defence and would do so again.
- 5.9 On balance the Commission is not satisfied that Officer A reasonably believed that the force he exercised against Ms Z was necessary.
- 5.10 The Commission is further satisfied that no reasonable person in the same position as Officer A would believe that the force used by him was a proportionate response to Ms Z's action for the following reasons:
- i. Ms Z was handcuffed to the rear, sitting down in the dock and posed no threat to any officer.
  - ii. The Commission accepts the estimate of Ms Z's weight at 50 to 60 kilograms entered into the COPS Event<sup>28</sup> by Officer B. The Commission is satisfied that Officer A's estimate of 80 to 90 kilograms was a self-serving representation of her body weight to justify his need for self-defence.
  - iii. Whilst the Commission accepts that Ms Z swung her leg in an attempt to kick Officer A, the Commission does not accept that a woman of Ms Z's weight, height and level of intoxication, handcuffed and seated at the level required by the seating in a holding dock, was capable of causing any injury to Officer A, or that he would have any reasonable apprehension of harm sufficient to justify a punch in self-defence.
  - iv. Nor does the Commission consider that Officer A's evidence about the kick to be reliable. The CCTV footage demonstrated that it had only minimal effect if any. This conclusion is drawn by applying the *Briginshaw* standard. If Officer A acted in self-defence, the force used was plainly disproportionate. However, the Commission's conclusion is that the punch was delivered in retribution and was not defensive.
  - v. Officer A took it upon himself to intervene in the attempts by the other police officers to move Ms Z after only 30 seconds. His decision to intervene was, by any standard, premature. There were 3 able-bodied police officers already handling the movement of Ms Z. There was no time limit imposed by the Custody Manager and no time pressure generally. The move had been suggested for achieving

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<sup>28</sup> Exhibit BHK6C.

a greater level of comfort and hygiene for Ms Z. If she refused to move she could have remained without detriment.

- vi. Officer A's action in trying to force Ms Z out of the dock by attempting to move her physically, by putting his hand behind her shoulder and trying to force her up and out, was unnecessarily physical and had the effect of escalating a situation which up until then had been under control.
  - vii. Officer A's action in punching Ms Z was an unjustified act of violence against a young woman under restraint and without any defence.
  - viii. Officer A did not at the time, and still does not, appreciate his failure to meet his obligations of care in custody. The CCTV footage of him removing his glove, shaking his hand and laughing as he checked his hand for injuries is not only evidence of the force with which he punched Ms Z, but also demonstrates the lack of concern he had for the violence he had inflicted upon her. It demonstrates his lack of respect for and consideration of his responsibilities.
  - ix. If Officer A considers a punch to the head is justifiable in these circumstances it must be a matter of concern to consider what he might think is a reasonable response in circumstances where there is an actual threat to his safety or that of other officers.
- 5.11 The Commission has concluded that the punch with a closed fist by Officer A to the side of Ms Z's head was an unreasonable use of force and, consequently, the Commission finds that Officer A engaged in serious misconduct as defined in section 10 of the LECC Act.

## **B. Sharing of the CCTV footage**

- 5.12 As noted above, Officer A gave evidence that he used to be part of a police Snapchat group at Police Station X and that he was now part of an unofficial Snapchat group at Police Station Y, comprising police officers from Officer A's team who share their daily experiences on the job.
- 5.13 The Commission ascertained that the NSWPF has issued the following relevant publication: "*Personal Use of Social Media Policy and Guidelines (14 August 2015)*". In addition it has a policy relating to official use of social media; "*Official Use of Social Media Policy and Procedures (18 January 2018)*". The personal use policy states that "*the unauthorised disclosure of confidential police information by uploading operational material (crime scene photos, in-car video footage, CCTV footage or video of police training exercises etc.) onto social media sites is a serious breach of legislation and policy and may lead to criminal charges being laid against offending employees.*"
- 5.14 The Commission is satisfied that Officer A was in breach of the NSWPF policies and guidelines with respect to his filming of the CCTV footage and that the dissemination of it to other police officers via Snapchat was unauthorised. Notwithstanding this finding, the Commission is satisfied that

Officer A genuinely believed that he was not breaching any policies or guidelines by sharing the information with other police officers in his team, although he conceded that it was “*probably not authorised*”. He appeared to see no harm in the dissemination of such material as it was only to other police officers within his team and for the purposes of “*morale team building*”. The disrespect towards a person in his care and custody, however, seems to have escaped him.

- 5.15 The Commission is concerned about the practice of police officers sharing such information with each other through social media sites such as Snapchat. Concerns include the dissemination of unauthorised material in breach of the law, breach of privacy guidelines, potential for such material to be forwarded on to members of the public and the potential damage of reputation to the NSWPF if such material, or the practice amongst police officers of sharing such material, becomes public.

## 6. Affected Persons

- 6.1 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*”.
- 6.2 The Commission is of the opinion that Officer A 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.

## 7. Recommendations

- 7.1 The Commission is not of the opinion that consideration should be given to the obtaining of advice of the Director of Public Prosecutions with respect to the prosecution of Officer A.
- 7.2 The Commission is of the opinion that consideration should be given to the taking of action against Officer A pursuant to section 181D of the *Police Act 1990*.

**Operation Baltra**  
**Report to Parliament Pursuant to Section 132**  
***Law Enforcement Conduct Commission Act 2016***  
**September 2018**

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**Hours of operation**

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