

**OPERATION CARLOW**

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

**JANUARY 2019**

16 January 2019

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 Carlow.

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

Yours sincerely

A handwritten signature in black ink, appearing to read 'M F Adams', with a stylized flourish at the end.

The Hon M F Adams QC  
Chief Commissioner

Encl.

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# 1. Introduction

## The Complaint

- 1.1. The Commission's Operation Carlow arose from complaints made that Officer B of the New South Wales Police Force ('NSWPF') was involved in the use and/or sale of illegal drugs and associated with persons who were known to be or suspected of being involved in the distribution of illegal drugs or had been convicted of criminal offences. During the course of investigating these complaints, the Commission ascertained that, in an unrelated matter, Officer B had given false evidence in proceedings in the Magistrates Court of the Australian Capital Territory ('ACT'). He disclosed this to a more senior officer, Officer C, who commended him, gave him no instruction to correct it and failed to report it in accordance with his legal obligation to do so under s 211F of the *Police Act 1990*.

## 2. Legislation

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

## **Assessments and Opinions - Legal Framework**

- 2.4. Section 29 of the LECC Act provides –

(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.*

2.5. 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 articulated by Dixon J in *Briginshaw v Briginshaw*.<sup>1</sup>

## Report under the *Law Enforcement Conduct Commission Act 2016*

2.6. This report is made under the LECC Act. Part 11 of the LECC Act is headed “*Reports*”. Division 1 of Part 11 is headed “*Reports by Commission*”. Section

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<sup>1</sup> (1938) 60 CLR at 361.

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*”.

2.7. Section 133 (Content of report 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 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 the 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.*

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.*

2.8. Section 143 in Part 11 of the LECC Act is headed “*Persons to be heard*” and provides as follows –

- (1) *Before including in a report under section 27 or 32 or this Part any comment about a person that the Commission or the Inspector*

*considers is adverse, the Commission or Inspector must, so far as practicable:*

*(a) inform that person of the substance of the grounds of the adverse comment, and*

*(b) give the person an opportunity to make submissions.*

*(2) The Commission is taken to have complied with this section if the Commission 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.*

2.9. The Commission considers that it has complied with s 143 of the LECC Act.

2.10. The Commission determined after conducting several private examinations that whilst it was appropriate to provide a report to Parliament, having regard to the provisions of s 63(5)(d) of the LECC Act, the identity of the witnesses and persons referred to in the examinations, and the locations of police stations, should be suppressed, and accordingly codenames have been issued for the purposes of this report. There is to be no publication of the actual name of any person referred to in this report in relation to the person's conduct discussed in this report.

### 3. Witnesses

3.1. The following witnesses gave evidence –

- (a) Officer A, NSW Police Force Constable,
- (b) Officer B, NSW Police Force Constable, and
- (c) Officer C, NSW Police Force Senior Constable.

### 4. Examinations of the Commission

4.1. The Commission held private examinations on 28 June 2018, 2 July 2018 and 20 August 2018.

4.2. The scope and purpose of the private examinations was –

*To investigate whether Officer B of the NSW Police Force or any serving or former police officer or any other person associated with him is or has been involved in serious misconduct:*

- *arising from the purchase, possession, use or distribution of illegal drugs; or*
- *arising from the arrest of Civilian 2 in the ACT on 28 April 2017 and his subsequent prosecution in the ACT Magistrates Court.*

- 4.3. The persons summoned to be examined were Officer A, Officer B and Officer C.
- 4.4. Each of the witnesses requested and was granted a declaration pursuant to s 75 of the *LECC Act*, that all evidence adduced would be regarded as having been given on objection by the witness.
- 4.5. Authorisation was sought and granted by the Commission for all police officers to be represented by Australian legal practitioners during the examinations. Below is a summary of the evidence given by each witness.

## 5. Factual Background

- 5.1. In the early hours of 22 April 2017 in the ACT, Officer B was observed by two police officers from the ACT to hand a small object to a man, later identified as Civilian 1, outside the front of Mooseheads Nightclub at Gungahlin in the ACT. Civilian 1 was known to police as a person involved in the use and distribution of illegal drugs and had convictions for a variety of criminal offences. The incident was investigated by ACT police and no criminal offence was uncovered.
- 5.3. On 12 May 2017 a formal complaint was made by the Australian Federal Police to the NSWPF in which it was alleged that Officer B may have been involved in the distribution of illegal drugs on 22 April 2017 and that he may have been associating with a person known to be involved in criminal activities.
- 5.4. The complaint was investigated by NSWPF, Monaro Local Area Command. In relation to each allegation of misconduct a finding of “Not Sustained” was made. A copy of the complaint and subsequent investigation records were uploaded onto the NSWPF complaints management database, “c@tsi”. The NSWPF also notified the Office of the NSW Ombudsman of the complaint and the outcome of its investigation.
- 5.5. On 1 June 2017, the complaint file was downloaded from c@tsi. Preliminary inquiries by the Commission revealed Officer B was known to associate with persons suspected of involvement in the sale and use of illegal drugs and/or had a record of having committed criminal offences.

## 6. Allegation of Illegal Drug Use and Improper Associations

- 6.1. On 27 October 2017 a decision was made pursuant to sections 44 (1)(a) and 19 (2) of the *LECC Act*, to investigate the complaints of illegal drug use and inappropriate associations made against Officer B. The NSWPF was notified accordingly.
- 6.2. Following a successful application to the Administrative Appeals Tribunal for the issue of a warrant for the interception of a mobile telephone service subscribed to and used by Officer B, the monitoring of his phone calls



commenced in January 2018. As a result, the Commission obtained information that Officer B was associating with persons who, to his knowledge, had a drug/criminal related history.

- 6.3. Officer B travelled to his hometown on Friday 5 May 2018 for the purpose of socializing with a number of friends over the weekend, during which he used the illegal drug, cocaine.
- 6.4. Acting upon information provided by the Commission, the NSWPF arranged for Officer B to be recalled to duty at Police Station X on 7 May 2018 for the purpose of undergoing targeted drug testing. Urine and hair samples were taken for analysis.
- 6.5. Analysis of Officer B's urine sample returned a positive result for cocaine. The hair sample analysis revealed the presence of cocaine.
- 6.6. Officer B was notified that he had returned a positive finding to his urinalysis but was not informed of the substance involved. He was suspended from duty without pay.

## **7. Evidence given by Officer B in proceedings before the Magistrates Court of the ACT**

- 7.1. On 23 February 2018 Civilian 2 appeared in the Magistrates Court of the ACT, having been charged with refusing to provide a breath sample as directed.
- 7.2. The charge related to events which occurred on 28 April 2017 when Officer B and Officer A were conducting mobile patrols in an unmarked police car and Officer A and Officer B observed a black utility motor vehicle which they commenced to pursue. The utility accelerated at speed. Police followed the utility over the border into the ACT where it was stopped.
- 7.3. The driver of the utility was identified as Civilian 2. He was subjected to a roadside breath test by Officer A and Officer B, which returned a positive reading to alcohol. Civilian 2 was detained by Officer A and Officer B until officers from the ACT Police Force arrived. He was then taken into custody and conveyed to a police station in the ACT, where he refused to provide a breath sample. He was subsequently charged with the abovementioned offence.
- 7.4. Civilian 2 entered a not guilty plea to the charge and the matter was fixed for hearing in the Magistrates Court of the ACT on 23 February 2018 before Magistrate Morrison.
- 7.5. Officer A and Officer B attended court for the purpose of giving evidence on behalf of the prosecution.
- 7.6. Prior to being called to give evidence, Officer B was spoken to by counsel appearing on behalf of the Defendant, Civilian 2. Also present was the Defendant's solicitor and the prosecutor. Counsel asked Officer B if he

knew what powers he had as a NSW police officer to stop a motor vehicle in the ACT. Officer B replied that he did not know.

7.7. During the cross examination of Officer B by counsel for the Defendant the following exchange took place<sup>2</sup> –

Q *“Okay. Have you discussed your evidence with anyone leading up ...?”*

A *“No”*

Q *“Have you discussed your evidence with Officer A?”*

A *“No”*

Q *“Or the traffic stop in general?”*

A *“No”*

Q *“Are you aware of what power it was that you and Officer A had to stop the motor vehicle in the ACT?”*

A *“Yes. So we’ve got the power to stop any person on road related area under the Road Transport (sic) Act”*

Q *“Right. Would you agree that earlier this morning when I asked you if you knew what the power was you didn’t know?”*

A *“That’s correct”*

Q *“How is it that you’ve come to now know?”*

A *“Just by thinking about it. You just got me on the spot and took me by surprise.”*

Q *“All right. You haven’t discussed that with anyone else?”*

A *“No”*

Q *“So you didn’t have a conversation with Officer A about your powers under the Road Transport Act in the foyer of the court?”*

A *“No?—Not that I can – no.”*

7.8. Officer A was not asked any questions in evidence as to whether he had spoken with Officer B about the powers of NSW police to stop a car in the ACT.

7.9. Following the evidence of Officer A and Officer B, the Local Court proceedings were adjourned for mention on 28 March 2018 to fix a further hearing date.

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<sup>2</sup> Ex BHM13C Transcript of evidence in ACT Magistrates Court.

- 7.10. The hearing of the case against Civilian 2 is due to resume on 5 March 2019. The Commission has provided copies of the intercepted conversations reproduced below to the prosecutor and the lawyers for Civilian 2.

## 8. Intercepted telephone calls

- 8.1. On 23 February 2018 the Commission legally intercepted the following telephone call between Officer B and his work colleague, Officer C<sup>3</sup> –

*Officer B (B) "Mate I had, I w-, I just had court mate in the ACT."*

*Officer C (C) "What'd you do over there mate?"*

*B "Me and [Officer A] were on the stand for like half an hour each."*

*C "Bullshit."*

*B "Just for a, drink driving thing. Fuckin' I lied. I lied hard too."*

*C "Good on ya mate, I'm proud of ya."*

*.....*

*B "Yeah oh well this chick comes up to me she goes on what was your um power of um, breath testing him over the border? And she got me on the spot, and I was like oh, I don't know. I knew I had the power. And um." (laughter)*

*B "And then, and then and then she asked me when I was in the box, I'm like oh, road tran- oh you know driver of a motor vehicle and road rel-, road related area, um, fuckin,"*

*C Laughs*

*B "Traffic this, traffic nailed the um Act and that. She goes, oh you b-, you been speaking to someone about this have you? And I went (ui)"*

*C "Yeah I'd just be like well I went and sought advice."*

*B Laughs*

*C "I just went, oh no, you w-, you asked me the question and because I wasn't sure of the answer I went and found out."*

*B (laughs) "Yeah well I knew I should of did that but I just was like full on going nup, didn't speak to [Officer A] about it, nup."*

- 8.2. Later, on 23 February 2018 the Commission lawfully intercepted the following telephone conversation between Officer B and his girlfriend, Civilian 3 (referring to the evidence Officer B had given earlier that day in the Magistrates Court of the ACT)<sup>4</sup> –

*Officer B (B) "...And she's like, so what power did you arrest him on, um*

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<sup>3</sup> Ex BHM14C audio recording, EX BHM15C transcript of audio recording.

<sup>4</sup> Ex BHM16C audio recording, Ex BHM17C transcript of audio recording.

*what's, what was your power to breath test him? And I was like oh, um he was on a road related area, um, and under the um Drug Misuse and Trafficking Act.*

*And she goes, who told you that? Fuck I don't know. She goes you, I'd, would you agree I asked you before and you didn't know? I'm like yeah well I had time to think about it and that's it. So, so you didn't go to [Officer A] or your able, anyone else? I'm like nup. Then, and she goes are you sure about that? I'm like yep. I did. (laughs)"*

Civilian 3 (C3) *"You spoke to [Officer A]?"*

B *"Yeah, and everyone else."*

C3 *"[Officer B]"*

B *"I'm just like thinking fuck I'm in too deep here, I'm in too deep, I gotta keep saying no. Then I talked to Officer A after I'm like fuck, he goes, oh, I said did they ask you that talk-, you just spoke to me, and he goes nup. I'm like good then."*

C3 *"Mmm."*

B *"Shit meself."*

C3 *"You gotta prepare yourself [Officer B], Jesus."*

B *"(laughs) I'm just like fuck I'm under oath here I can't lie, would I, I'm fuckin lying out of me teeth."*

C3 *"Mmm."*

B *"Like (ui) fuck, its just a breath test guys, (ui)."*

## 9. Evidence of Officer A

9.1. Officer A was called to give evidence before the Commission in a private examination on 28 June 2018. In summary, his evidence was as follows –

- (a) he joined the NSWPF on 21 August 2015 and was stationed at Police Station Y where he had continued up to the present time,
- (b) Officer A first met Officer B when he went to Police Station Y and became a personal "mate" of Officer B apart from being a work colleague<sup>5</sup>,
- (c) on 28 April 2017, Officer A and Officer B became involved in the pursuit of a vehicle from NSW into the ACT where the car stopped and the driver, Civilian 2, was subjected to a roadside breath test which proved positive to alcohol<sup>6</sup>,

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<sup>5</sup> Examination BHN at T5-6.

<sup>6</sup> Examination BHN at T5-6.

- (d) he said that police from the ACT attended and arrested Civilian 2 and subsequently charged him with refusing to provide a breath sample<sup>7</sup>,
- (e) Civilian 2 pleaded not guilty to the criminal charge, and consequently, Officer A and Officer B attended the Magistrates Court of the ACT on 23 February 2018, for the purpose of giving evidence on behalf of the prosecution<sup>8</sup>,
- (f) before either he or Officer B were called to give evidence, he saw Officer B speaking with defence counsel and the prosecutor, in the general public area, outside the witness room. He was out of earshot and did not hear the conversation<sup>9</sup>,
- (g) subsequently, Officer B came over and spoke with him. Initially, he could not recall exactly the conversation but said Officer B asked him the definition of something and it was a legal question. He presumed the question had something to do with the conversation Officer B had just had with the defence counsel<sup>10</sup> and that it had something to do with the court matter<sup>11</sup>,
- (h) upon further questioning he said he recalled a conversation at some point in time at court, where Officer B asked him about their powers as NSW police officers to detain or arrest someone in the ACT<sup>12</sup>,
- (i) after giving his evidence, he recalled Officer B asking him if he had been questioned about whether or not he and Officer B had discussed the powers of NSW police officers to stop and detain drivers in the ACT<sup>13</sup>. Officer A later confirmed that such a conversation did take place<sup>14</sup>,
- (j) a transcript of the intercepted telephone call between Officer B and Civilian 3 on 23 February 2018 was tendered in evidence and shown to Officer A.<sup>15</sup> The audio recording was also tendered,<sup>16</sup> but not played,
- (k) he was not aware of Officer B having taken illegal drugs<sup>17</sup>, but had been told by Officer B that he had been suspended from work after returning a positive result to a drug test,
- (l) Officer A was asked to read a transcript of a telephone intercept between himself and Officer B on 10 May 2018<sup>18</sup>. Officer A recalled that in discussing his suspension from work as a result of the drug test, Officer B did not seem upset, which he thought was strange. He was told by Officer B that

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<sup>7</sup> Examination BHN at T7.

<sup>8</sup> Examination BHN at T7.

<sup>9</sup> Examination BHN at T7.

<sup>10</sup> Examination BHN at T10.

<sup>11</sup> Examination BHN at T 11.

<sup>12</sup> Examination BHN at T12-13.

<sup>13</sup> Examination BHN at T14.

<sup>14</sup> Examination BHN at T 16.

<sup>15</sup> Ex BHN1C.

<sup>16</sup> Ex BHN 2C.

<sup>17</sup> Examination BHN at T21.

<sup>18</sup> Ex BHN3C.



he was looking for other jobs, from which Officer A concluded that Officer B was expecting to be dismissed from the NSWPF<sup>19</sup>, and

- (m) he was aware the NSWPF had a policy that it was totally unacceptable for an officer to use illegal drugs.

## 10. Evidence of Officer B

10.1 Officer B was called to give evidence before the Commission in a private examination on 2 July 2018. In summary, his evidence was as follows –

- (a) he joined the NSWPF on 24 August 2012<sup>20</sup>,
- (b) whilst attending university at Goulburn, he received training in relation to the policies of the NSWPF regarding Conduct and Ethics, Drugs and Alcohol and Declarable Associations,
- (c) he acknowledged that upon joining the NSWPF he had signed documents<sup>21</sup>, acknowledging that if he failed to comply with NSWPF policies in relation to drugs and alcohol and conflicts of interest, he may be subject to management action,
- (d) in relation to illegal drugs, he understood the NSWPF had a zero tolerance policy in relation to their purchase, use or distribution<sup>22</sup>,
- (e) in regard to the use of “over the counter products containing any prohibited drug, steroid or restricted substance”, he did not know that as a police officer, he was responsible for determining whether the product contained such additives. Furthermore, he did not know that, because a product could be purchased over the counter, it did not absolve an officer from liability for a positive drug test<sup>23</sup>,
- (f) Officer B was questioned in relation to his understanding of the NSWPF Declarable Associations policy. He said it applied to anyone an officer associated with if that person was involved in crime. He said he had never made such a declaration<sup>24</sup>,
- (g) he also understood that a declarable association would exist in relation to a person suspected of being engaged in criminal activity, including social drug use, or a person who was a former police officer who was dismissed or resigned whilst under investigation<sup>25</sup>,
- (h) he said that in May 2018, he was stationed at Police Station Y and on Friday 4 May 2018, he travelled to his hometown to spend 6 days

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<sup>19</sup> Examination BHN at T24.

<sup>20</sup> Examination BHM at T4.

<sup>21</sup> Ex BHM2C & BHM3C.

<sup>22</sup> Examination BHM at T8.

<sup>23</sup> Examination BHM at T10.

<sup>24</sup> Examination BHM at T12-13.

<sup>25</sup> Examination BHM at T14.

leave with his family and also attend a wake for a friend's mother who had passed away,

- (i) he grew up in that town and apart from his parents and relatives, he had a lot of friends there,
- (j) on Saturday 5 May 2018, he attended the wake and later, went to a Tavern. At both venues there were about 20 people.
- (k) he knew some of those people, including Civilian 4, a former police officer who had resigned from the force, whom he expected would be present<sup>26</sup>,
- (l) also present was his best mate, Civilian 5, whom Officer B knew had a criminal record. Officer B explained he did not declare his association with Civilian 5 to the NSWPF as he had been previously questioned by police about incidents involving Civilian 5 and it had never been suggested that he should declare such an association<sup>27</sup>,
- (m) Officer B named a number of other persons he knew that attended the celebrations, including Civilian 6, a mate he had known years ago,
- (n) on Monday 7 May 2018, whilst attending a local gym, he was informed by local police that he was required to immediately attend Police Station X. He attended and underwent drug testing which involved providing a urine and hair sample. At the time, he declared that he had been taking a pre-workout supplement that he had purchased from a shop and he had also taken, that weekend, tablets containing codeine to treat a headache and sore throat. He obtained these tablets from his mother and did not think they could be purchased "over the counter"<sup>28</sup>,
- (o) a few days later he received a phone call from his commanding officer and was told that he was being stood down from duty until the results of the drug tests came back. Subsequently, he received a second call and was informed the urine test had proved positive and he was being suspended from duty without pay, a state which had continued up until the time of his giving evidence before the Commission<sup>29</sup>,
- (p) he was not surprised the urine test returned a positive result. He admitted to using MDMA ('ecstasy') since he was about 19 years of age at the rate of about two tablets a year, with the last occasion being August 2017<sup>30</sup>,

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<sup>26</sup> Examination BHM at T18.

<sup>27</sup> Examination BHM at T18.

<sup>28</sup> Examination BHM at T23.

<sup>29</sup> Examination BHM at T27.

<sup>30</sup> Examination BHM at T27-28.

- (q) he also admitted to using cocaine since the age of about 20 years. Since that time his use of the drug had been infrequent and in the twelve month period May 2017 to May 2018, maybe once<sup>31</sup>. However, after admitting to using cocaine on Saturday 5 May 2018, he was asked when, before that occasion, he had last used cocaine, to which he answered "*Oh, months, yeah.*"<sup>32</sup>,
- (r) toxicology and urine drug analysis reports conducted on samples provided by Officer B proved positive to cocaine<sup>33</sup>,
- (s) on the evening of 5 May 2018 he attended the home of his friend Civilian 5 where about another 20 people were present. He entered a bedroom where he saw Civilian 7, whom he'd only met that night, and his girlfriend, Civilian 8. Three lines of cocaine had been laid out on a plate. He presumed this had been done by Civilian 7. He was invited to inhale one line of the drug, which he did. He did not have to pay for the drug<sup>34</sup>,
- (t) he assumed Civilian 7 had found out, maybe beforehand, that he was a police officer<sup>35</sup>,
- (u) he had never had to buy drugs before and had been given them for free by his mates<sup>36</sup>. He assumed this was because he was a police officer,
- (v) apart from Civilian 7, he was only able to nominate a Civilian 9, as people who had given him drugs<sup>37</sup>,
- (w) he had previously seen Civilian 5 use cocaine<sup>38</sup>,
- (x) he had seen other mates use cocaine and although they were breaking the law, he never reported it. These mates included: Civilian 6 and Civilian 10. He also suspected Civilian 4, Civilian 11 and Civilian 12 of using drugs<sup>39</sup>,
- (y) he did not know any serving police officers who used illegal drugs. He was aware of rumours that Officer D used drugs. He denied telling anyone that Officer D was corrupt but after being shown transcript of a telephone intercept between himself and Officer A on 10 May 2018<sup>40</sup>, he agreed that he had referred in the call to the

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<sup>31</sup> Examination BHM at T30.

<sup>32</sup> Examination BHM at T31.

<sup>33</sup> Ex BHM10 & BHM11C.

<sup>34</sup> Examination BHM at T35-35.

<sup>35</sup> Examination BHM at T37.

<sup>36</sup> Examination BHM at T38.

<sup>37</sup> Examination BHM at T38.

<sup>38</sup> Examination BHM at T39.

<sup>39</sup> Examination BHM at T41.

<sup>40</sup> Ex BHM12C.

officer as “heaps corrupt” and was “doing drugs”<sup>41</sup>, however, that was just what people were saying in the local community.

- (z) he agreed that he and Officer A attended the Magistrates Court of the ACT on 23 February 2018 to give evidence in relation to the pursuit of a car driven by Civilian 2 from NSW into the ACT on 28 April 2017. Civilian 2 was detained by him and Officer A until police from the ACT arrived. They later charged him with failing to provide a breath sample as directed. Civilian 2 pleaded not guilty to the charge,
- (aa) before giving evidence at the prosecution of Civilian 2 he was approached by counsel representing Civilian 2, his solicitor and the prosecutor. A discussion took place in the general foyer area of the court complex,
- (ab) counsel for Civilian 2 asked him what powers he had as a NSW police officer to stop Civilian 2’s car and administer a breath test. He replied that he did not know,
- (ac) at the Commission Officer B was directed to a transcript of his evidence before the Magistrate<sup>42</sup>. In response to a question from Civilian 2’s counsel he agreed that he said he had the power to “*stop any person on road related area under the Road Transport Act.*”,
- (ad) Officer B agreed he was then questioned by counsel for Civilian 2 as to whether he had discussed his evidence beforehand with anyone else and in particular with Officer A, to which he replied “*No. Not that I can – no.*”<sup>43</sup>,
- (ae) Officer B agreed before the Commission that his evidence in the Magistrates Court, that he had not spoken to Officer A, was false and he knew it to be so<sup>44</sup>,
- (af) he agreed that after giving evidence he spoke to Officer A, enquiring whether he had been questioned about what he and Officer B discussed beforehand, as he wanted to know if Officer A’s evidence exposed his lie<sup>45</sup>,
- (ag) before leaving the Magistrates Court, or since, he had not sought to tell the prosecutor or the ACT police that he had lied in his evidence<sup>46</sup>,
- (ah) after leaving court he was worried that he had given false evidence and would not brag to anyone about having lied under oath,

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<sup>41</sup> Examination BHM at T44.

<sup>42</sup> Ex BHM 13C.

<sup>43</sup> Examination BHM at T52-53.

<sup>44</sup> Ibid.

<sup>45</sup> Examination BHM at T53-54.

<sup>46</sup> Examination BHM at T54.

- (ai) at Police Station Y he worked with Officer C. He looked upon Officer C as a mentor,
- (aj) apart from being a professional colleague, Officer C was also a mate,
- (ak) he had no recollection of speaking by telephone on 23 February 2018 with Officer C after he had finished giving his evidence in the Magistrates Court. The telephone intercept of his conversation with Officer C was then played <sup>47</sup> and that, together with a transcript of the call, were tendered in evidence<sup>48</sup>,
- (al) he maintained he had no recollection of the call but did not dispute it. He agreed that in the call he did not seek advice from Officer C about what he should do. He further agreed that one could form the impression from the call that he seemed to be relieved at having gotten away with the lie<sup>49</sup>,
- (am) the recorded telephone intercept between Officer B and his girlfriend, Civilian 3 on 23 February 2018 was played and a transcript of the call, were tendered in evidence<sup>50</sup>,
- (an) he agreed that, in telling Civilian 3 he had lied when giving evidence in court earlier that day, he did not sound in the recording to be ashamed<sup>51</sup>, and
- (ao) he could not recall if after his call to Officer C on 23 February 2018, he subsequently spoke to him about his evidence in court, but said he probably would have. He could not recall if Officer C had tried to counsel him about the matter.<sup>52</sup>

## 11. Evidence of Officer C

- 11.1. Officer C was called to give evidence before a private examination on 20 August 2018. In summary, his evidence was as follows –
- (a) he joined the NSWPF on 30 August 2002, after attending Charles Sturt University at Goulburn,
  - (b) whilst at university he was taught and understood the NSWPF Code of Conduct and Ethics<sup>53</sup>,
  - (c) amongst other things, the Code required an employee of the NSWPF to report the misconduct of other NSWPF employees,

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<sup>47</sup> Ex BHM14C.

<sup>48</sup> Ex BHM 15C.

<sup>49</sup> Examination BHM at T60.

<sup>50</sup> Ex BHM 16C & 18C.

<sup>51</sup> Examination BHM at T62.

<sup>52</sup> Examination BHM at T63-64.

<sup>53</sup> Examination BHL at T6.



- (d) he was aware that failure to comply with the duty under the Code to report NSWPF employee misconduct could result in management action being taken against him,
- (e) after becoming a police officer, he undertook further mandatory training from time to time which reinforced the Code of Conduct and Ethics he learnt at university. Specifically he completed training modules on the Code on 19 June 2007 and 10 April 2013<sup>54</sup>,
- (f) he agreed the NSWPF issued information sheets periodically, informing officers of practices and their changes, which were accessed by police officers when undertaking online training. He was not however aware of an Information Sheet titled “*17/01 Duty to Report Misconduct*”<sup>55</sup>,
- (g) in addition to understanding his duty to report officer misconduct, he was aware of the procedure to be adopted when doing so<sup>56</sup>,
- (h) in the course of his career as a police officer he had never reported an officer for misconduct,
- (i) as a police officer he had undertaken courses which enabled him to train or supervise junior or probationary constables,
- (j) he had known Officer B since August 2012 when Officer B arrived at Police Station Y as a probationary constable. He was assigned the task of being one of Officer B’s field training officers,
- (k) in his role as a trainer, he provided guidance and support to Officer B and also served as a professional role model<sup>57</sup>,
- (l) following Officer B’s probation period, they worked together in the same team from time to time over the following years. During those times, he was Officer B’s senior officer,
- (m) his impression was that Officer B was a good, dedicated officer who approached his job in a professional manner, a quiet achiever who plodded along,
- (n) apart from being a professional colleague, he socialized with Officer B and they became friends,
- (o) on 23 February 2018 he recalled receiving a telephone call from Officer B. At that time, Officer C had been absent from work on stress leave for a few months,
- (p) from memory, he said Officer B had told him he had given evidence in the Magistrates Court in the ACT during which he had said he had not

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<sup>54</sup> Examination BHL at T 6.

<sup>55</sup> Ex BHL 3C.

<sup>56</sup> Examination BHL at T10.

<sup>57</sup> Examination BHL at T12.

spoken to someone at court, when in fact he had. Officer C believed Officer B was worried about getting into trouble from management and so his advice was focussed on what he should say in that event. At one point he said to Officer B –

*“I don’t care, whatever. Just fuck them and stick to your story and stuff them.”*

He volunteered to the Commission –

*“And there’s no excuse for what I did.”<sup>58</sup>*

- (q) the recording of the intercepted telephone call between Officer C and Officer B on 23 February 2018 was played to Officer C during his evidence.<sup>59</sup> In the call Officer B could be heard saying how he had lied when giving evidence in court earlier that day –

*“Fuckin I lied. I lied hard too.”*

In response to which Officer C said –

*“Good on ya mate, I’m proud of ya.”*

When asked whether he thought his response was highly inappropriate, he said –

*“It’s ridiculous.”<sup>60</sup>*

- (r) although he acknowledged speaking with Officer B on the telephone, Officer C said he did not recall the things said in the recording. He agreed that in the recording he was not heard to say to Officer B that by lying in court he had breached the NSWPF Code of Conduct and Ethics or that it was a serious matter and should seek advice from a more senior officer<sup>61</sup>,
- (s) he further agreed that his reply to Officer B upon being informed that Officer B had given false evidence appeared to indicate his approval for what Officer B had done,
- (t) he agreed that from the recording it appeared that, if he was not initially fully aware that Officer B had given false evidence in court, by the end of the conversation, he knew and understood what the lie was about and that he provided advice as to what Officer B should have said in court<sup>62</sup>, and
- (u) at the conclusion of the Commission’s examination of Officer C, he said that as his recollection of his conversation with Officer B was different to that in the recording, there must have been two occasions

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<sup>58</sup> Examination BHL at T16-17.

<sup>59</sup> Ex BHL 4C.

<sup>60</sup> Examination BHL at T19.

<sup>61</sup> Examination BHL at T21.

<sup>62</sup> Examination BHL at T21.

that he spoke with Officer B about Officer B giving false evidence in court. He then agreed that on both occasions he should have reprimanded Officer B for his conduct and on two occasions should have taken the matter up with a senior officer in accordance with the NSWPF Code of Conduct and Ethics.<sup>63</sup>

## 12. Submissions

- 12.1 On 30 August 2018, a copy of a draft report in Operation Carlow was forwarded to the legal representatives of Officer B and Officer C, inviting submissions in response.
- 12.2 Officer B's legal representative informed the Commission that Officer B did not wish to make any submissions in relation to the content of the draft report.
- 12.3 Officer C's legal representative provided written submissions in response dated 19 September 2018. In summary, he submitted the following:
- (a) whilst Officer C acknowledged his unsatisfactory conduct and accepted that disciplinary action was warranted, the Commission should not recommend a criminal prosecution nor his removal from the NSWPF,
  - (b) Officer C's prior good professional conduct over his 16-year career as a police officer should be taken into account, including the fact that he was a recipient of the following –
    - (i) a Region Commander's Commendation for bravery in 2011,
    - (ii) a Commander's Certificate of Merit in 2012;
    - (iii) NSW Police Medal for 15 years of ethical and diligent service; and
    - (iv) recognition by the Deputy State Coroner for professionalism in the investigation of the death of a 14 year old boy,
  - (c) the Commission should take into account that at the time of the events Officer C was absent from work on sick leave as a result of being struck by a car in the course of performing his duties which left him with physical and psychological trauma. In addition he experienced unrelated personal issues which exacerbated his psychological trauma.

## 13. Findings

- 13.1 Officer B engaged in serious misconduct whilst a serving officer of the NSWPF, by knowingly using the illegal drugs MDMA ('ecstasy') and cocaine, with the last occasion being Saturday 5 May 2018 when the officer used a quantity of cocaine.

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<sup>63</sup> Examination BHL at T22-23.

- 13.2 Officer B used illegal drugs whilst a serving police officer, which was a clear breach of the NSWPF Drug and Alcohol Policy<sup>64</sup>.
- 13.3 Officer B engaged in serious misconduct by initiating or maintaining personal friendships with people whom Officer B was aware used illegal drugs and/or had a criminal history. This association and the failure by Officer B to report it to his supervisor was a clear breach of the NSWPF Declarable Associations Policy<sup>65</sup>.
- 13.4 On 23 February 2018 in the Magistrates Court of the ACT, Officer B engaged in serious misconduct by giving sworn evidence which he knew at the time to be untruthful and failed to take any steps to correct the falsity.
- 13.5 By failing to report to his supervising officer his conversation with Officer B on 23 February 2018 in which Officer B admitted giving false evidence before a court whilst under oath, Officer C engaged in serious misconduct.
- 13.6 Officer C engaged in conduct amounting to unsatisfactory performance by failing to admonish, reprimand or counsel Officer B for giving false evidence whilst under oath before a court. Instead he improperly commended him.
- 13.7 At no time was an allegation of serious officer misconduct or officer misconduct made against Officer A and the Commission found no evidence of such.

## 14. Affected Persons

- 14.1. In Part 2 of this report the Commission set out the provisions of section 133 of the LECC Act dealing with the content of reports to Parliament. Subsections (2), (3) and (4) relate to “*affected persons*”.
- 14.2 The Commission is of the opinion that Officer B is an affected person within the meaning of section 133(3) 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.
- 14.3. The Commission is of the opinion that Officer C is an affected person within the meaning of section 133(3) 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.

## 15. Recommendations

- 15.1. The Commission is of the opinion that a brief of evidence should be delivered to the ACT Director of Public Prosecutions for consideration as to whether or not Officer B should be prosecuted for the following offences in the ACT:

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<sup>64</sup> Ex BHM4C.

<sup>65</sup> Ex BHM6C.

- Perjury under s 703 of the *Criminal Code 2002* (ACT);
  - Make false statement under oath under s 336A of the *Criminal Code 2002* (ACT).
- 15.2 Officer B has resigned from the NSWPF. There is therefore no requirement for the Commission to include a statement as to whether or not consideration should be given to the matters listed at s 133(2)(b) to (d) of the LECC Act.
- 15.3 The Commissioner of Police should give consideration to the matters listed at s 133(2)(c) and (d) of the LECC Act, namely taking dismissal action against Officer C pursuant to s 181D of the *Police Act 1990*, or management action pursuant to s 173 of the *Police Act 1990*, for his breach of the NSWPF Code of Conduct and Ethics by failing to report the conduct of Officer B giving false evidence in the Magistrates Court of the ACT.
- 15.4 A copy of this report and details of the identities of all involved individuals have been provided to the Commissioner of Police for consideration of the recommended disciplinary action. The Commission will deliver a brief of evidence to the ACT Director of Public Prosecutions for advice with respect to the prosecution of Officer B.



**Operation Carlow**  
**Report pursuant to s 132**  
***Law Enforcement Conduct Commission Act 2016***  
**January 2019**

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