



Law Enforcement
Conduct Commission

OPERATION CORWEN

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

SEPTEMBER 2018

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 Corwen.

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

Yours sincerely



The Hon Lea Drake
Commissioner for Integrity

Encl.

TABLE OF CONTENTS

Report of the Law Enforcement Conduct Commission on Operation Corwen...	1
A. The investigation.....	4
B. The offences referred to in the Submissions of Counsel Assisting	5
C. Background.....	6
D. Events at the Local Police Station Garage	8
E. Local Court proceedings	9
F. Evidence and Submissions	9
Officer 1.....	10
<i>Evidence of Officer 1 before the Local Court.....</i>	<i>10</i>
<i>Evidence of Officer 1 before the Commission</i>	<i>14</i>
<i>Submissions of Counsel Assisting Regarding Officer 1.....</i>	<i>15</i>
<i>Submissions by Officer 1's Representative</i>	<i>15</i>
Officer 2.....	16
<i>Evidence of Officer 2 before the Local Court.....</i>	<i>16</i>
<i>Evidence of Officer 2 before the Commission</i>	<i>18</i>
<i>Submissions of Counsel Assisting regarding Officer 2.....</i>	<i>19</i>
<i>Submissions by Officer 2's Representative</i>	<i>19</i>
Officer 3.....	20
<i>Evidence of Officer 3 before the Local Court.....</i>	<i>20</i>
<i>Evidence of Officer 3 before the Commission</i>	<i>21</i>
<i>Submissions of Counsel Assisting regarding Officer 3.....</i>	<i>22</i>
<i>Submissions by Officer 3's Representative</i>	<i>22</i>
Officer 4	23
<i>Evidence of Officer 4 before the Local Court</i>	<i>23</i>
<i>Evidence of Officer 4 before the Commission.....</i>	<i>26</i>
<i>Submissions of Counsel Assisting regarding Officer 4.....</i>	<i>27</i>
<i>Submissions by Officer 4's Representative</i>	<i>28</i>
Officer 5.....	28
<i>Evidence of Officer 5 before the Local Court.....</i>	<i>28</i>
<i>Evidence of Officer 5 before the Commission</i>	<i>31</i>
<i>Submissions of Counsel Assisting regarding Officer 5.....</i>	<i>32</i>
<i>Submissions by Officer 5's Representative</i>	<i>32</i>
Officer 6.....	33
<i>Evidence of Officer 6 before the Commission.....</i>	<i>33</i>
<i>Submissions of Counsel Assisting regarding Officer 6.....</i>	<i>35</i>
<i>Submissions by Officer 6's Representative</i>	<i>35</i>
Officer 7.....	35
<i>Evidence of Officer 7 before the Commission</i>	<i>35</i>

<i>Submissions of Counsel Assisting regarding Officer 7</i>	36
<i>Submissions by Officer 7's Representative</i>	36
Officer 8.....	37
<i>Evidence of Officer 8 before the Commission</i>	38
<i>Submissions of Counsel Assisting regarding Officer 8</i>	40
<i>Submissions by Officer 8's Representative</i>	40
Officer 9.....	40
<i>Evidence of Officer 9 before the Commission</i>	40
<i>Submissions of Counsel Assisting regarding Officer 9</i>	42
<i>Submissions by Officer 9's Representative</i>	42
Officer 10.....	43
<i>Evidence of Officer 10 before the Commission</i>	43
<i>Submissions of Counsel Assisting regarding Officer 10</i>	44
<i>Submissions by Officer 10</i>	44
G. Findings and Recommendations	44
Officer 1.....	44
Officer 2.....	47
Officer 3.....	48
Officer 4	48
Officer 5.....	49
Officer 6.....	50
Officer 7.....	50
Officer 8.....	50
Officer 9.....	50
Officer 10.....	52

Report of the Law Enforcement Conduct Commission on Operation Corwen

Statutory Framework

This Report is made pursuant to Part 11 of the *Law Enforcement Conduct Commission Act 2016* ('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*".

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.

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.*

Part 4 of the *LECC Act* sets out the functions of the Commission. Pursuant to s 29 the Commission may, *inter alia*, make findings and form opinions on the basis of its investigations as to whether officer misconduct occurred, 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.

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.*

- (3) *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.*

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) of the *LECC Act*). The Commission held a number of private hearings for the purpose of its investigation.

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*.¹ His Honour said:

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

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.*

The Commission provided all officers involved (through their legal representatives) with a copy of Counsel Assisting's submissions and invited them to make submissions in response. The Commission considers that it has complied with s 143 of the *LECC Act*.

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

¹ (1938) 60 CLR 336.

² *Ibid*, at p.361

A. The investigation

The CCTV footage examined in the hearings conducted 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.

Operation Corwen arose out of events at a Sydney police station on 9 April 2016 and the subsequent prosecution of Ms A for offences allegedly committed on that date.

The focus of this Report is on the movement of Ms A by Officers 1 and 6 in the police station garage, the failure of those officers to manage that movement in a safe or appropriate manner, the failure of other officers to intervene or assist in that movement, the creation of statements by police officers in the prosecution of Ms A, the evidence given by officers in the Local Court and the possible use of excessive force by Officer 1 against Ms A. These matters are within the stated scope and purpose of the private hearings.

During the course of this investigation the relevant CCTV footage was shown to an orthopaedic surgeon, Doctor Quain, and a report obtained. A copy of his report was forwarded to the Commissioner of Police. Dr Quain's conclusion is extracted below:

"..... I have viewed several times the CCTV footage from the 9 April 2016 regarding this matter in which an adult who is handcuffed behind her back from outside the custody room is dragged across a concrete floor by police officers using the point of contact with her as the cuffs and her right arm. Another police officer for several seconds is attempting to lift her right leg.

I make the following comments:

In my opinion it is inappropriate to drag a patient prone particular using the point of contact as the handcuffs or the junction of the cuff and the right arm. I cannot understand why the woman was not assisted to her feet. If her level of consciousness was such that she could not walk, then in my opinion managing her at a Police Station was inappropriate and she should have been assessed in an Emergency Department of a Hospital.

Whilst the position of handcuffing behind her back does not of itself cause any increased strain on the shoulder, (holding the shoulder in a degree of internal rotation), traction or pulling on the shoulder in that position does run the risk of possible dislocation or in an older age group damage to the rotator cuff muscles and tendon at their point of insertion onto the humerus (arm bone).

I would further add that had this person sustained any significant injury to her shoulders and in particular from the footage to her right shoulder, I believe her management would be indefensible.

I make these comments having been a qualified specialist orthopaedic surgeon with a subspecialist interest in shoulder surgery and injury over a period of some 30 years and having been an orthopaedic surgeon to the St Vincents Campus over that period and managing trauma through St Vincents General Hospital from 1985 to 2014."

On 9 April 2016 Officers 1 and 4 were Constables. At the time they gave their evidence in the private hearing before the Commission on 12 December 2017 they had been promoted to the rank of Senior Constable. Any reference to Officers 1 or 4 as a Constable in this Report is a reference to the rank they held previously.

Written submissions by Counsel Assisting were served on all legal practitioners who represented the police officers in private hearing. Submissions in reply, both written and oral, were received from the legal practitioners representing Officers 1, 2, 3, 4, 5, 7, 8 and 9. The legal practitioner representing Officer 6 did not wish to make any submissions. Officer 10 did not appear at the public listing for submissions, nor did he have any person appear on his behalf.

In preparing this Report the Commission has taken into account all of the submissions received.

B. The offences referred to in the Submissions of Counsel Assisting

Section 317 of the *Crimes Act 1900* provides:

A person who, with intent to mislead any judicial tribunal in any judicial proceeding:

(a) suppresses, conceals, destroys, alters or falsifies anything knowing that it is or may be required as evidence in any judicial proceeding, or

(b) fabricates false evidence (other than by perjury or suborning perjury), or

(c) knowingly makes use of fabricated false evidence,

is liable to imprisonment for 10 years.

The making of a statement by a prospective witness can amount to the fabrication of evidence.³ Conduct can amount to the commission of an offence pursuant to s 317(c) whether or not the evidence is ever tendered before a judicial tribunal in a judicial proceeding.⁴

Section 319 of the *Crimes Act 1900* provides:

A person who does any act, or makes any omission, intending in any way to pervert the course of justice, is liable to imprisonment for 14 years.

In Part 7 of the *Crimes Act 1900*, which includes s 319, a reference to perverting the course of justice is a reference to obstructing, preventing, perverting or defeating the course of justice or the administration of the law.⁵

³ *Director of Public Prosecutions v Aydogan* (2006) 67 NSWLR 727 at 733.

⁴ *Director of Public Prosecutions v Aydogan* (2006) 67 NSWLR 727 at 734.

⁵ *Crimes Act 1900*, s 312.

Section 327(1) of the *Crimes Act 1900* provides:

Any person who in or in connection with any judicial proceeding makes any false statement on oath concerning any matter which is material to the proceeding, knowing the statement to be false or not believing it to be true, is guilty of perjury and liable to imprisonment for 10 years.

In a prosecution for perjury it is necessary to prove that the accused person knew that the statement was false or did not believe it to be true. An honest mistake, inadvertence, carelessness or a misunderstanding leading to a statement which is objectively untrue is not sufficient.⁶

In order for there to be a conviction on a charge of perjury there must be evidence proving the falsity of the statement by at least two witnesses or by one witness whose evidence is corroborated.⁷

Section 61 of the *Crimes Act 1900* provides:

Whosoever assaults any person, although not occasioning actual bodily harm, shall be liable to imprisonment for two years.

A person committing what would otherwise be a criminal assault is not liable if the application of force was legally justified. Sections 230 and 231 of the *Law Enforcement (Powers and Responsibilities) Act 2002* (NSW), which apply to police officers, provide:

230 Use of force generally by police officers

It is lawful for a police officer exercising a function under this Act or any other Act or law in relation to an individual or a thing, and anyone helping the police officer, to use such force as is reasonably necessary to exercise the function.

231 Use of force in making an arrest

A police officer or other person 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.

C. Background

On the evening of 8 April 2016 Ms A was out with two friends, Mr S and Ms T, in a suburb in Sydney. At around 2 a.m. on 9 April 2016, having had a number of drinks, Ms A and her two friends went to a kebab shop to purchase some food where they were alleged to have engaged in an argument with a group of unrelated people. This group reported the interaction to Officers 2 and 3, who were patrolling the suburb in question that night.

⁶ *R v Liristis* (2004) 146 A Crim R 547 at 570 (Kirby J); *Mackenzie v The Queen* (1996) 90 A Crim R 468 at 488 (Gaudron, Gummow and Kirby JJ).

⁷ *R v Muldoon* (1870) 9 SCR (NSW) 116.

Officers 2 and 3 went in search of Ms A and her friends and found them on a street. Officer 2 had a conversation with Mr S. It was allegedly interrupted by Ms A yelling. Officer 2 observed that Ms A appeared to be under the influence of alcohol, and requested to see her identification. Ms A provided her driver's licence. Officer 2 then issued a direction for her to move on.

Ms A allegedly continued yelling and swearing at Officer 2. Her friends flagged down a taxi and Ms A sat in the front passenger seat of the taxi. Officer 2 returned Ms A's driver's licence to her, which prompted Ms A to exit the taxi. Officer 2 again issued her with a direction to move on. When she failed to comply she was placed under arrest by Officer 2. Ms A's version of events, given in subsequent Local Court proceedings, differed somewhat, but those differences are not pertinent to the purpose of the Commission's investigation.

Ms A was transported to the local police station in a police caged vehicle driven by Officer 6, with Officer 5 in the passenger seat. The caged vehicle was parked inside the garage of the police station. Ms A was then removed from the rear of the caged vehicle. Following her removal from the vehicle she was face down on the floor of the garage.

CCTV footage showed Ms A surrounded by Officers 2, 3, 5 and 6. Officers 1, 4 and 7, all of whom had been attending to other duties earlier within the police station, surrounded Ms A as she lay on the floor.

Some of the officers appeared to be restraining Ms A while she was on the floor and handcuffing her from behind. Officer 1 began pulling Ms A along the ground towards the search room. He used one hand to hold Ms A around the upper arm area. Officer 6 took hold of Ms A's right foot as she was pulled along the ground by Officer 1. The remaining officers trailed behind and observed.

It was later alleged that whilst Ms A was being restrained she had struck out and hit Officers 1 and 3. This resulted in Ms A being charged with two offences of assault, in addition to the offences of behaving in an offensive manner and refusing to comply with a direction to move on.

The criminal proceedings against Ms A were heard in the Downing Centre Local Court on 28 October 2016 and 2, 3 and 20 March 2017. Ms A was represented in those proceedings by a solicitor. The prosecutor was Officer 8. As Officer 8 was still undergoing training, he was supervised by Officer 9 and then by Officer 10.

Officers 1, 2, 3, 4 and 5 prepared statements and were called to give evidence during the course of the proceedings. Ms A and Ms T also gave evidence. CCTV footage of the garage area within the police station was subpoenaed by the defence and tendered in the proceedings. The officers were cross-examined regarding that footage.

The Magistrate dismissed all charges against Ms A and expressed concern regarding the inconsistency of the evidence given by the police and the actions of the officers as depicted on the CCTV footage. The Magistrate requested that the parties refer the proceedings to the appropriate authority. This was not done.

The attempted referral came to the Commission's attention. The Commission decided to conduct this investigation into whether there had been police

misconduct in the handling of Ms A on 9 April 2016 and her subsequent prosecution. Private hearings were held on 12 December 2017, 13 December 2017 and 14 February 2018. The scope and purpose of the hearings were:

To investigate whether any NSWPF officer has been involved in serious misconduct in relation to the arrest of Ms A on 9 April 2016 and the subsequent prosecution of Ms A for offences allegedly committed on 9 April 2016.

The persons who gave evidence in the private hearings were Officers 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10. The Commission authorised all officers to be represented by legal practitioners. All officers were legally represented except for Officer 10.

After the private hearings had concluded submissions were received in public on 13 June 2018. The written submissions of Counsel Assisting were served on all relevant parties prior to the hearing date.

D. Events at the Local Police Station Garage

Officers 5 and 6 arrived on the street in a police caged vehicle and transported Ms A to the local police station.

Once the vehicle arrived in the garage of the police station all events were recorded by two CCTV cameras. One camera had a partially obstructed view due to the placement of ventilation equipment. Because of this partially obstructed view, the removal of Ms A from the police vehicle cannot be seen. However, it is clear that once Ms A was removed from the vehicle she was laying on the ground.

At 3:28:53 a.m. Officers 5 and 6 can be seen restraining Ms A as she lay on the ground.

At 3:28:56 a.m. Officer 3 can be seen to be involved in the restraining of Ms A. Officer 7 enters into the camera view and can be seen to be walking towards Ms A and the other officers.

At 3:29:04 a.m. Officer 7 is standing next to Ms A's body. He is looking down at her. The other officers are kneeling down, surrounding Ms A as she lay on the ground.

At 3:29:16 a.m. Officer 2 appears from behind the ventilation equipment. He had been on the other side of Ms A's body. Officer 2 walks around Ms A and stands next to Officer 7 and the two officers appeared to engage in conversation.

At 3:29:30 a.m. Officer 7 reaches down and appears to point at Ms A, before resuming his standing position and continuing his apparent conversation with Officer 2.

At 3:29:45 a.m. Officer 6 stands up, followed by Officer 3 about four seconds later.

At 3:29:52 a.m. Officer 1, who had entered the garage area and joined the other officers, makes a sudden movement and begins to walk backwards, pulling Ms A with his right hand and momentarily using his left hand to touch Officer 6 around the lower waist area for support.

At 3:29:53 a.m. Officer 1 switches hands to hold Ms A with his left hand as he spins around. Officer 1 has his grip on Ms A's wrist area while she was handcuffed behind her back.

Officer 1 walks forward, pulling Ms A along the ground with his left hand. Officer 6 makes an attempt to take hold of Ms A's arm, but was unable to manage a proper grip given the pace at which she was pulled. Officer 6 then takes hold of Ms A's right foot as Officer 1 continues walking forward, pulling Ms A with him. Officers 2, 3, 5 and 7 trail behind and observe, while Officer 4 walks alongside Officer 6.

At 3:30:05 a.m. Officer 1 pulls Ms A into the search room using two hands, while Officer 6 still has a hold of her right foot.

At 3:30:40 a.m. Officers 3 and 5 help Ms A to stand up by lifting her arms together in unison and they then walk Ms A into the charge room.

There is additional CCTV footage of the charge room which is of no relevance to the Commission's investigation.

E. Local Court proceedings

Ms A was charged with the following:

1. Behave in an offensive manner, pursuant to s 4(1) of the *Summary Offences Act 1988*;
2. Refuse or fail to comply with a direction, pursuant to s 199(1) of the *Law Enforcement (Powers and Responsibilities) Act 2002*;
3. Assault officer while in the execution of his or her duty, pursuant to s 58 of the *Crimes Act 1900*; and
4. Assault officer while in the execution of his or her duty, pursuant to s 58 of the *Crimes Act 1900*.

The first two charges related to the events that occurred on the street, while the latter two charges related to events which were alleged to have occurred while Ms A lay on the ground inside the police station garage. Ms A pleaded not guilty to all the charges.

One of the issues raised in the Local Court hearing was how Ms A was moved by the police officers in the police station garage.

F. Evidence and Submissions

Counsel Assisting has summarised the evidence given by, and submissions made on behalf of, all relevant officers. I have adopted those summaries.

Officer 1

Evidence of Officer 1 before the Local Court

For the purpose of the proceedings in the Local Court Officer 1 prepared a statement dated 25 July 2016, which stated:⁸

At this time I carried the accused, with the assistance of other police into the charge room. The accused was placed into the cells and I returned to my unrelated duties within the charge room.

Officer 1 gave evidence on this issue in the Local Court:⁹

Q: *What occurred after that?*

A: *After that, so we managed to place her in handcuffs. I then proceeded to lift her and attempt to carry her in towards the custody area. I believe other police were trying to lift her as well, at that point.*

Q: *Were you able to lift her?*

A: *Not completely off the ground, no.*

Q: *Can you describe what occurred next?*

A: *Sort of had a hold of her arm, lifted up and started pulling and carrying towards the custody area. The other officers were either around her or at the feet, I'm not sure, but I remember getting assistance from somewhere in trying to carry her.*

Q: *You say you had a hold of her arm. Do you recall where you had a hold of her?*

A: *I'm not a 100% sure, to be honest, it's somewhere on her arm.*

Q: *What occurred next?*

A: *Carried her towards the custody area. From there I can't recall whether she was, put in the search room to be searched, or whether she was taken straight into the cells.*

In cross-examination, the issue was put to him again:¹⁰

Q: *You stand up and actually show [the Magistrate]?*

⁸ Exhibit BGS1C.

⁹ Local Court transcript at T122-123.

¹⁰ Local Court transcript at T124.

A: *Yeah, so at the time of grabbing her, she would have been laying probably so, and I managed to grab her arm and then walk towards the custody area.*

Q: *You're walking towards the custody area with your shoulders at a 45 degree angle? Or are you facing her?*

A: *I can't go on with angles, but I was, I would have had my back or shoulder facing towards the custody area. I certainly wasn't walking forwards.*

Q: *It's not like you were telling her? With your face towards the charge room?*

A: *I would have been trying to get momentum, to get towards the charge room.*

And, later in cross-examination:¹¹

Q: *You were trying to lift her?*

A: *Correct, yes.*

Q: *On your evidence?*

A: *Yes.*

Q: *You and one other officer?*

A: *As I said, there was multiple officers around, I don't recall who was helping me lift her, I know there was somebody at least one, helping me.*

Q: *At least one?*

A: *Yes.*

Q: *Possibly more?*

A: *There was at least one, from what I can remember.*

Q: *Did you struggle?*

A: *Yes.*

¹¹ Local Court transcript at T130.

Q: *Did you struggle? You had to exert a lot of pressure to move her?*

A: *I, dead weight's very hard to move.*

Q: *Did it feel like you were moving it on your own?*

A: *I tried my best to move her, I'm not the strongest of people.*

Q: *Do you recall having difficulty in moving her because of flailing?*

A: *No.*

Q: *You say it was pure dead weight that you were trying to move?*

A: *Yes, dead weight, yeah.*

It was then put to Officer 1 that he had dragged Ms A:¹²

Q: *Yet, you find it necessary to drag her, on your own, or and possibly with the assistance of one other officer?*

A: *Attempting to carry her in to the custody area, as her, what, her behaviour before that had been as such, it wasn't reasonable, we needed to get her in to the custody area as quick as possible to stop her hurting herself or anybody else, and be able to bring other people in to custody and out of custody.*

Q: *But she stopped flailing, once you cuffed her, on your evidence?*

A: *That's what I've said, yes.*

Q: *In fact, she wasn't flailing, even when she was on the floor, after she'd pulled out of the van, up until the point that you touched her?*

A: *As I said, as I've gone to approach her, she started flailing.*

Later, in cross-examination, he was asked:

¹² Local Court transcript at T131.

Q: *While [Ms A] is on the floor, and you begin dragging, yes?*

A: *Yes, attempting to carry her towards the custody area.*

Q: *You're attempting to carry her?*

A: *Yep.*

Q: *Do you tell the Court that, based on the footage you've just seen, you've attempted to help her stand up?*

A: *I've attempted to carry her in towards the custody area.*

Q: *When you say, "attempted to carry her", is that different to "attempting to help her stand up", so she could walk into the charge room?*

A: *As I said before, it's dead weight.*

Q: *Just answer my question. Do you differentiate between "attempting to carry" and "attempting to help her stand"?*

A: *Attempt to carry and stand?*

Q: *Yes. Is there a difference between the two concepts in your mind?*

A: *Yes.*

Q: *You weren't trying to help her stand, correct?*

A: *No, because she wasn't helping herself stand. I could not physically pull her up myself.*

Q: *You did not attempt to help her stand, do you agree with that?*

A: *No. Previously before her being handcuffed, yes I had.*

Q: *After she had been handcuffed?*

A: *No.*

Evidence of Officer 1 before the Commission

In summary, his evidence was:

1. He joined the NSWPF in December 2012;
2. In the early hours of 9 April 2016 he was in the charge room after having arrested someone as part of an earlier drug dog operation;¹³
3. He heard the caged vehicle enter the garage and went to inspect what was happening. He observed some police officers removing Ms A from the vehicle and Ms A then fall onto the ground;¹⁴
4. He and other officers requested Ms A to stand up but she refused. He made an attempt to grab her right arm but she began flailing and, in the process, one of her fists hit his right thigh. Eventually she was restrained and handcuffed to the rear;¹⁵
5. He took hold of Ms A's upper arm and attempted to pick her up, but pulled her towards the custody area;¹⁶
6. He maintained that what he had said in his statement tendered before the Local Court, namely that he carried Ms A with the assistance of other police, was consistent with his evidence that he pulled Ms A;¹⁷
7. He was not strong enough to lift Ms A off the ground completely, but did lift her somewhat off the ground;¹⁸
8. He attempted to carry Ms A by taking hold of her arm and pulling upwards, moving towards the custody area. He managed to get the top half of Ms A's torso off the ground and her bottom half remained on the ground;¹⁹
9. He made the decision to move Ms A without any prior consultation with the other officers and assumed they would provide assistance in moving Ms A;²⁰
10. In hindsight the best option would have been to ask the other officers to help in lifting Ms A's arms;²¹
11. It was possible that Ms A could have been injured as a result of being pulled by him;²²

¹³ Examination PGQ at T8.

¹⁴ Examination PGQ at T8-9.

¹⁵ Examination PGQ at T11.

¹⁶ Examination PGQ at T11.

¹⁷ Examination PGQ at T13-14.

¹⁸ Examination PGQ at T16 on.

¹⁹ Examination PGQ at T17-18.

²⁰ Examination PGQ at T18-19.

²¹ Examination PGQ at T22.

²² Examination PGQ at T28.

12. He made the decision to move Ms A to prevent any injury to the other officers present but, in hindsight, it was not the best way to move her;²³ and

13. He did cause part of Ms A's body to be dragged across the ground.²⁴

Submissions of Counsel Assisting Regarding Officer 1

Counsel Assisting submitted that it would be open for the Commission to find that the version of events in Officer 1's statement was untruthful. Officer 1 maintained this version of events in the Local Court. His assertion that he had carried Ms A is not supported by the CCTV footage. Counsel Assisting submitted that his evidence was untruthful and that Officer 1 knew it to be so.

Counsel Assisting also submitted that it would be open for the Commission to find that Officer 1 had used excessive force and employed an inappropriate and dangerous method of handling Ms A, as she posed almost no threat to the safety of the officers once she was handcuffed.

For the above reasons, Counsel Assisting submitted that it would be open for the Commission to find that Officer 1 had engaged in serious misconduct.

Submissions by Officer 1's Representative

Officer 1 was legally represented. In oral submissions made on 13 June 2018 the following submissions were made:

- In his evidence before the Local Court and Commission, Officer 1 stated that his actions could be described as carrying and/or dragging;
- It would not be open on the evidence to find that Officer 1 misled the Court or gave false evidence merely because of one word; and
- Ms A was a difficult person to deal with and the police had to deal with her in the best way that they could, but what was done did not amount to excessive force.

Written submissions were received on 6 July 2018 in which the Commission was asked to reject all the submissions of Counsel Assisting. It was submitted:

- Counsel Assisting has recommended that Officer 1 be referred to the DPP for consideration of offences related to his statement and Local Court evidence. Other officers made similar statements and no such recommendation has been made. The DPP will not engage in a selective prosecution;
- Consideration should be given to the fact that Ms A was belligerent and offensive, in addition to the difficulty of policing in general;

²³ Examination PGQ at T28.

²⁴ Examination PGQ at T32.

- An objective view of the CCTV footage does not, and cannot, contradict Officer 1's evidence that he was attempting to carry or lift Ms A;
- The difference between dragging and lifting is a question of semantics;
- There is not a scintilla of evidence that Officer 1 knew his evidence to be false, or that he prepared a statement knowing it to be untruthful, or that he did it to present his treatment of Ms A in a favourable light;
- Counsel Assisting's assertion that Officer 1 prepared a false statement is based on the premise that he must have known the entire area was covered by a CCTV camera; and
- The other involved officers were also of the impression that Ms A had been carried, or an attempt was made to carry her. Given there was no evidence of collaboration, this must mean that all the police officers were innocently mistaken about what they perceived Officer 1 had done.

Officer 2

Evidence of Officer 2 before the Local Court

For the purpose of the proceedings in the local Court, Officer 2 prepared a statement dated 7 June 2016 which stated:²⁵

Police told the accused to calm down several times and directed her to stop flailing around however she continued and then struck [Officer 3] with a closed fist. [Officer 3] immediately felt pain radiate up her arm. After further struggling, the accused was handcuffed to the rear and carried into the police cells.

Officer 2 gave evidence on 28 October 2016 and 2 March 2017. In examination-in-chief, he described the handling of Ms A as follows:²⁶

Q: Immediately after that, what occurred?

A: At that point, [Officer 3], [Officer 1], I think, [Officer 5] restrained the accused and handcuffed her to the rear. Once she was handcuffed, she continued yelling and abusing and starting spinning around. At that point, [Officer 1] and [Officer 5] picked up the accused and dragged her into the cells – into the dock, sorry.

In cross-examination, Officer 2 again agreed that Ms A had been dragged:²⁷

²⁵ Exhibit BGT1C.

²⁶ Local Court transcript at T16.

²⁷ Local Court transcript at T46.

Q: *Do you agree that she does not appear to be resisting, and she's now been dragged by [Officer 1], is that correct?*

A: *That's correct.*

Later, however, Officer 2 appeared to not realise the distinction between carrying and dragging:²⁸

Q: *Do you agree with the statement that Ms A was carried back to the police dock?*

A: *Can you be more specific, from where.*

Q: *If one was to say Ms A was carried back to the police dock based on what you've seen in the video would you agree that that's an accurate statement?*

A: *From the caged truck?*

Q: *Yes.*

A: *Yes.*

Q: *You agree that that's carrying her back, what you've seen on the CCTV?*

A: *Yes.*

Q: *I suggest to you she was dragged back?*

A: *Okay.*

Q: *Do you accept that?*

A: *I don't really see the difference.*

Q: *You don't see the difference; you can carry a bag or you can drag a bag, do you recognise the difference between that?*

A: *In that context, yes.*

Q: *Would you describe what occurs to Ms A in the footage as dragging or carrying?*

A: *Well at one point both the officers are carrying her.*

²⁸ Local Court transcript at T47.

Q: You say her body had no contact with the floor at that point?

A: It did at some point, yeah, we just watched the footage.

Evidence of Officer 2 before the Commission

In summary, his evidence was:

1. He joined the NSWPF in December 2012;
2. He arrested Ms A during the early hours of 9 April 2016;²⁹
3. Whilst in the garage area of the police station, he saw Officer 4 and another officer pull Ms A out from the caged police vehicle;³⁰
4. Ms A was slumped on the ground and refused to stand up therefore Officers 1 and 6 “*basically dragged or carried her through to the search room*”;³¹
5. He had no physical involvement in moving Ms A and was just observing “*some parts*” of it;³²
6. He did not have any concerns about Ms A being dragged and at the time of the incident believed it was necessary. However, in hindsight, he concedes it could have been handled differently³³ or there could have been a better way of doing it;³⁴
7. Specifically, he conceded that the carrying could have been coordinated, more officers could have been involved and the carrying could have been timed better;³⁵
8. Officers 1 and 6 initially dragged Ms A for a couple of seconds and then they managed to lift her up;³⁶
9. He cannot think of any reason why Officer 1 took over the removal of Ms A;³⁷
10. At the time of the incident he did not think that Officer 1’s actions were excessive;³⁸

²⁹ Examination BGT at T7.

³⁰ Examination BGT at T7-8.

³¹ Examination BGT at T8.

³² Examination BGT at T9.

³³ Examination BGT at T10.

³⁴ Examination BGT at T19.

³⁵ Examination BGT at T10.

³⁶ Examination BGT at T11.

³⁷ Examination BGT at T16.

³⁸ Examination BGT at T17.

11. The context of the situation that night was that Ms A had been abusive towards the police, she was quite aggressive, she refused to exit the police vehicle and comply with police directions;³⁹
12. In preparation for the Local Court proceedings, there was no discussion among the officers about what evidence they were to give, namely that Ms A was carried, and the fact that all officers gave this evidence except Officer 3 was just a coincidence;⁴⁰
13. At the time of the incident it looked to him like Ms A had been carried;⁴¹
14. At the time he prepared his statement he did not recall the dragging but he did recall the carrying;⁴² and
15. Once inside the charge room he spoke to Ms A several times and asked if she wanted an ambulance.⁴³

Submissions of Counsel Assisting regarding Officer 2

Although, in his statement, Officer 2 stated that Ms A had been carried, he retreated from this version in the Local Court and before the Commission. Also, Officer 2 was not involved in the physical movement of Ms A. For these reasons it was submitted by Counsel Assisting that Officer 2 had not engaged in serious misconduct.

Counsel Assisting submitted that it would be open for the Commission to find that Officer 2's conduct amounted to unsatisfactory performance in relation to the preparation of his statement for tender in the Local Court and his adherence to the version of events contained therein, to some extent in the Local Court, and then before the Commission.

Submissions by Officer 2's Representative

Officer 2 was legally represented. It was submitted on his behalf that his conduct did not amount to unsatisfactory performance for three reasons.

Firstly, Officer 2 did not include the word "*drag*" in his statement because he did not recall it when making the statement. This should be accepted given the relatively short time it took for police to move Ms A into the search room. Further, Officer 2 was trained to prepare statements which contained a summary of events as opposed to every single detail. The statement was indeed a summary of what occurred based on his recollection some six weeks after the event and he did not review the CCTV footage prior to making the statement.

Secondly, it was submitted that Officer 2 did not adhere to an inaccurate version of events in the Local Court. He clearly and unequivocally stated that Ms A was dragged by two other Constables. It could not therefore be said that Officer 2 had retreated from this position in cross-examination, as was submitted by Counsel Assisting.

³⁹ Examination BGT at T18.

⁴⁰ Examination BGT at T19.

⁴¹ Examination BGT at T17 and T21.

⁴² Examination BGT at T24.

⁴³ Examination BGT at T25.

Thirdly, Officer 2 did not adhere to an inaccurate version of events before the Commission. He stated that Ms A had been dragged or carried by two other officers. He was prepared to make appropriate concessions and gave evidence to the best of his ability.

Subsequent to the public listing for submissions, Officer 2's legal representative was put on notice that the Commission was considering a finding of serious misconduct for his alleged failure to intervene in the movement of Ms A and provided with an opportunity to make further submissions.

Further submissions were made. These can be summarised as follows:

1. The gravity of the consequences of an adverse finding against Officer 2 means the Commission should not rely on inexact proofs, tenuous or slight evidence, indirect inferences and/or evidence that is not clear and cogent;
2. Officer 2 had an obscured view of the incident and did not see the entirety of the incident;
3. Officer 2 did not have an opportunity to intervene, given the incident took place within a relatively short period of time. His physical location was distant from Officer 1, whose actions were swift and of his own volition without any consultation with the other police officers at the scene; and
4. It was reasonable for Officer 2 to await direction from Officer 7, as Officer 7 was the most senior officer present.

Officer 3

Evidence of Officer 3 before the Local Court

For the purposes of the Local Court proceedings, Officer 3 prepared a statement dated 12 July 2016 which provided the following account in respect of the handling of Ms A:⁴⁴

[Officer 5], [Officer 2], [Officer 1] and myself continued to struggle to handcuff the accused as she continued to kick and throw her arms about. After some time she was handcuffed and carried into the police cells.

Officer 3 gave evidence in the Local Court on 2 March 2017 and conceded that Ms A had been dragged:⁴⁵

Q: *How did she get from where you were to the dock?*

A: *She was dragged by [Officer 1] and I don't remember who else.*

⁴⁴ Exhibit BGX1C.

⁴⁵ Local Court transcript at T61.

Evidence of Officer 3 before the Commission

In summary, her evidence was:

1. She joined the NSWPF in August 2015;⁴⁶
2. She was involved in the arrest of Ms A;⁴⁷
3. At the police station, she saw some officers pull Ms A out from the caged police vehicle;⁴⁸
4. Ms A began kicking and thrashing around before she was handcuffed;⁴⁹
5. She was punched in the arm by Ms A when attempting to restrain her;⁵⁰
6. Officer 1 then dragged Ms A to a dock with Officer 6 holding her foot at one point;⁵¹
7. She could not explain why she described Ms A as being carried in her statement;⁵²
8. She agreed that being dragged and being carried were two different concepts and that her statement, by describing it as an act of being carried, gave the impression that Ms A had been lifted off the ground when in fact Ms A had not been lifted off the ground;⁵³
9. She could not explain why in the Local Court proceedings she described Ms A as being dragged rather than carried;⁵⁴
10. She watched the CCTV footage after she prepared her statement and before the Local Court proceedings;⁵⁵
11. She considered Officer 1's act of dragging Ms A to be appropriate because Ms A had been kicking out at the officers earlier;⁵⁶
12. She did not consider Officer 1's actions to be misconduct, but she identified it as perhaps being an error of judgment;⁵⁷ and

⁴⁶ Examination BGX at T5.

⁴⁷ Examination BGX at T7.

⁴⁸ Examination BGX at T7.

⁴⁹ Examination BGX at T7.

⁵⁰ Examination BGX at T21.

⁵¹ Examination BGX at T7-8.

⁵² Examination BGX at T8.

⁵³ Examination BGX at T9.

⁵⁴ Examination BGX at T10.

⁵⁵ Examination BGX at T10.

⁵⁶ Examination BGX at T14.

⁵⁷ Examination BGX at T17.

13. It was a pure coincidence that all of the statements of the various officers described Ms A as having been carried.⁵⁸

Submissions of Counsel Assisting regarding Officer 3

Counsel Assisting noted that although Officer 3 described Ms A as having been carried in her statement, she volunteered in her Local Court evidence that Ms A had been dragged. For this reason, Counsel Assisting submitted that Officer 3 had not engaged in serious misconduct.

However, it was submitted that it would be open for the Commission to find that Officer 3's conduct amounted to unsatisfactory performance in relation to the preparation of her statement for tender in the Local Court.

Submissions by Officer 3's Representative

Officer 3 was legally represented and submissions were made on her behalf. The submissions note that Officer 3 was, at the time, a Probationary Constable and one of the most junior officers present at the scene. It further notes that although her statement used the word "*carried*", she used the word "*dragged*" in her Local Court evidence and she should deserve credit for amending her evidence appropriately.

It was submitted that if a finding of unsatisfactory performance could be made "*based upon inexperience and/or the use of a less appropriate word in a written statement, subsequently corrected voluntarily, then there would be very few police officers against whom such a finding had not or could not be made*". It was further submitted that such a finding would be unreasonable.

If a finding of unsatisfactory performance was made, it was submitted, the appropriate sanction would be no more than a requirement to participate in a remedial performance program.

The submissions did not oppose a recommendation for Officer 3 to undergo re-training and counselling, but did note that Officer 3 did not have the sole care and custody of Ms A at the time and that it would be expecting perfection if she was expected to intervene in the events that had occurred.

Subsequent to the public listing for submissions, Officer 3's legal representative was put on notice that the Commission was considering a finding of serious misconduct for her alleged failure to intervene in the movement of Ms A and provided an opportunity for further submissions to be made.

Submissions were made in response, which can be summarised as follows:

1. It would be extraordinary for a junior officer, who was a Probationary Constable at the time, to be guilty of a serious offence or be subject to serious disciplinary action on the basis of an alleged failure to intervene in the movement of Ms A;
2. Counsel Assisting did not put such a positive case to Officer 3; and

⁵⁸ Examination BGX at T18.

3. There are weighty public policy reasons why a finding of serious misconduct should not be made, including the operational morale of the Police Force, and to set the standard so high may result in far fewer persons willing to serve as police officers.

Officer 4

Evidence of Officer 4 before the Local Court

For the purposes of the Local Court proceedings Officer 4 prepared a statement dated 8 October 2016 in which she stated:⁵⁹

"After a short struggle the accused was handcuffed and carried into a waiting cell."

Officer 4 gave evidence in the Local Court on 3 March 2017 and when she was asked about the movement of Ms A, she stated the following:⁶⁰

Q: *Can you tell the Court how she was taken into the dock?*

A: *She was carried and dragged.*

Q: *Who carried and dragged?*

A: *[Officer 3], [Officer 1], [Officer 6] and [Officer 2]. They tried to carry her, but when someone is non-complying and thrashing around and also of a larger build, it can be quite difficult.*

...

Q: *Can you explain to the Court exactly what you saw, when you say she was being carried away?*

A: *They all took a limb. There was four of them, four limbs, and then after a short time she was dragged, for part of it, and then lifted again, and carried again.*

She was later cross-examined, to some extent, on this version of events:⁶¹

Q: *In relation to your evidence about [Ms A] being carried by four, well initially dragged, then lifted again and then carried, by four officers each taking a limb, when did you commence making observations of the four officers taking a limb, at what point in time?*

A: *When they initially picked her up.*

Q: *We're talking in the proximity of the roller door, correct?*

⁵⁹ Exhibit BGV1C.

⁶⁰ Local Court transcript at T103.

⁶¹ Local Court transcript at T104-106.

A: Yes.

Q: *In that point in time, your evidence is you see four officers each take a limb?*

A: Yep.

Q: *At that point in time, is she being dragged or lifted or carried?*

A: *So they've picked her up, and tried to, well they've gone to walk with her, but -*

Q: *When you say they've picked her up?*

A: *Like picked her up by a limb.*

Q: *They've lifted her off the floor, she's not standing, you don't mean picked her up?*

A: No.

Q: *Each one has grabbed a limb?*

A: Yep.

Q: *You say they lifted her body off the floor, is that correct?*

A: Yes.

Q: *How far do they get before you say she began being dragged?*

A: *A couple of steps, maybe.*

Q: *At that point in time they start dragging her?*

A: Yep.

Q: *All four of them?*

A: *I don't know.*

Q: *Your evidence was earlier they each took a limb?*

A: Yes.

Q: *They, you're talking about more than one person?*

A: *Yes.*

Q: *Dragged for part of it, lifted again, and then carried again?*

A: *Yes.*

Q: *Just try and understand, when you say "they dragged her", how many people were dragging her?*

A: *I don't know exactly how many.*

Q: *Why?*

A: *But the four of them went with [Ms A] towards the dock door.*

Q: *Each one standing near a limb, is that correct?*

A: *Yes.*

Q: *How long would you say she was dragged? Because you said "a couple of steps she was lifted", so from the couple of steps, which is almost still the garage door, how long would you say she was dragged?*

A: *For maybe half of the car space.*

Q: *Half of the car space?*

A: *Yes.*

Q: *Before the search room?*

A: *Yeah, around there.*

Q: *How far from the search room, a metre or two?*

A: *I couldn't say.*

Q: *Then you say she was lifted again?*

A: *Yes.*

Q: *By all four of them?*

A: *From this point I'm still at the garage door, so I can't say if three or four, I don't know, but they were all together.*

Q: *At the garage door, how many metres away are you?*

A: *Seven.*

Q: *You're making these observations from seven metres away, but you can see that she's being lifted off the floor?*

A: *Yes.*

Q: *Then you say she's carried, so above, off the floor, she's carried?*

A: *Again, I don't know.*

Q: *You distinguished between carry and drag, correct?*

A: *Yes, but in that situation, it's moving one person from one place to another, and it involves lifting and sometimes, depending on how the person nature is, there's only one way to get them there, and it's carrying, dragging –*

Q: *You're using carry and drag in the same meaning, is that what you're trying to say?*

A: *No, but if three people are carrying someone, part of their body could possibly still be dragging along the ground.*

Q: *Where was she carried or dragged to?*

A: *To the charge room.*

Evidence of Officer 4 before the Commission

In summary, her evidence was:

1. She joined the NSWPF in August 2012;
2. She was in the charge room when Ms A was brought to the police station and assisted by pulling Ms A out of the back of the police vehicle;⁶²

⁶² Examination BGV at T6-7.

3. Ms A fell to the ground after being pulled out of the police vehicle;⁶³
4. Ms A was handcuffed and then dragged to the search room by Officer 1, with another officer trying to assist;⁶⁴
5. There was no reason she used the word “*carried*” in her statement instead of “*dragged*” and concedes that “*dragged*” would have been more appropriate;⁶⁵
6. She concedes that the evidence she gave in the Local Court proceedings, namely that the police officers each took a limb of Ms A and carried her, was incorrect as she had a chance to view the CCTV footage before the private examination;⁶⁶
7. She was able to see the CCTV footage at the time she made her statement however, some parts were difficult to view because the computer system was not working;⁶⁷
8. Her recollection was that Ms A was carried into the search room and she saw from the CCTV footage that Ms A was dragged. However, in preparing her statement she chose to go with her recollection and not the CCTV footage;⁶⁸
9. She initially took the position that Officer 1’s conduct in dragging Ms A was not inappropriate due to Ms A’s behaviour⁶⁹. However, later in the examination, she conceded that it was not appropriate because it could have been handled a different way;⁷⁰
10. She did not consider Officer 1’s actions to be misconduct;⁷¹ and
11. If this same situation were to arise again, she would try to help by alleviating the dragging and turning it into an act of carrying.⁷²

Submissions of Counsel Assisting regarding Officer 4

Counsel Assisting submitted that Officer 4 had not engaged in serious misconduct on the basis that Officer 4 had conceded that Ms A had been dragged despite asserting in her statement that Ms A had been carried. Furthermore, in giving evidence before the Commission, Officer 4 admitted that the evidence she gave in the Local Court had been incorrect and she also conceded that “*drag*” was the more appropriate term to describe what had happened with Ms A.

⁶³ Examination BGV at T7.

⁶⁴ Examination BGV at T7.

⁶⁵ Examination BGV at T8.

⁶⁶ Examination BGV at T9.

⁶⁷ Examination BGV at T10.

⁶⁸ Examination BGV at T12.

⁶⁹ Examination BGV at T13.

⁷⁰ Examination BGV at T20.

⁷¹ Examination BGV at T20.

⁷² Examination BGV at T16.

However, it was submitted that it would be open for the Commission to find that Officer 4's conduct amounted to unsatisfactory performance in relation to the preparation of her statement for tender in the Local Court.

Additionally, Counsel Assisting submitted that it would be open for the Commission to find that Officer 4 did not understand her obligations in relation to persons in her care and custody at the time, and accordingly requires re-training and counselling.

Submissions by Officer 4's Representative

Officer 4 was legally represented and submissions were made on her behalf. In summary, it was submitted that there should be no finding of unsatisfactory performance in relation to the statement prepared by Officer 4 as she prepared it in circumstances where she encountered difficulties in viewing the CCTV footage.

Further, it was noted that although there was no opposition to re-training and counselling, there were insufficient grounds to conclude that Officer 4 did not understand her obligations in relation to persons in her care and custody.

Subsequent to the public listing for submissions, Officer 4's legal representative was put on notice that the Commission was considering a finding of serious misconduct for her alleged failure to intervene in the movement of Ms A and provided an opportunity for further submissions to be made.

Submissions were made in response. These can be summarised as follows:

1. Counsel Assisting did not make any submissions regarding the alleged failure to intervene;
2. For a finding of serious misconduct to be made, there must be evidence that the actions of Officer 4, at the time of the incident, were intentional;
3. CCTV footage shows that Officer 4's attention was not at all times focused on the movement of Ms A;
4. The movement of Ms A took place in a very short space of time and there is insufficient evidence to support a finding that Officer 4 had sufficient opportunity to intervene; and
5. It was not put to Officer 4 during the private examination that she had an opportunity to intervene or assist.

Officer 5

Evidence of Officer 5 before the Local Court

For the purposes of the Local Court proceedings Officer 5 prepared a statement dated 18 June 2016, in which she described the movement of Ms A:

Myself, [Officer 3], [Officer 2] and [Officer 1] then carried [Ms A] to the police dock.

She gave evidence in the Local Court on 2 March 2017, and gave the following account of how Ms A was moved:⁷³

Q: *For the record, your Honour, the witness is indicating a closed fist push in out towards the side of the body. And Constable just for [the Magistrate's] benefit, can you show that motion you observed? Now what occurred next?*

A: *We all attempted to then move the accused again and [Officer 1] took hold of the accused and we all assisted him by picking up different limbs; I can't recall who had what limb exactly. We then moved the accused approximately five to seven metres towards the custody room and then she began to kick her legs out, and arms out again as the same as previously, so she was placed back on the ground, I believe on her stomach at that time.*

She was later asked again about the movement of Ms A, where she stated:⁷⁴

Q: *What occurred after that?*

A: *The accused was handcuffed and then myself, [Officer 3], [Officer 2] and [Officer 1] lifted her up off the ground, I believe - I'm not sure who took what limb again but two officers held her under her arms and the other two, I think, took hold of her legs and we carried her into the dock.*

In cross-examination she maintained the same position:⁷⁵

Q: *Just so we're clear, after she's handcuffed does she continue to kick?*

A: *We carried her, the four of us, so she may have been moving her legs but I wouldn't say kicking necessarily.*

Q: *When you say the four of you carried her, who were the four people?*

A: *So, myself, [Officer 1], [Officer 2], and [Officer 3].*

Q: *What part of her body were you touching?*

A: *One of her legs, I can't recall which one.*

Q: *[Officer 1], what part of her body was he touching?*

A: *Upper body but I can't recall what side.*

⁷³ Local Court transcript at T84.

⁷⁴ Local Court transcript at T85.

⁷⁵ Local court transcript at T93.

Q: *The other two officers, who were they?*

A: *I can't recall whether [Officer 2] or [Officer 3] had the upper body or vice versa.*

Q: *One of them had the upper body and one of them had?*

A: *The other leg.*

Q: *The image conjured in my mind, and correct me if I'm wrong, is an officer on each leg and an officer on each shoulder or upper body area, correct?*

A: *Correct.*

Q: *You say she's carried in towards the dock area?*

A: *That's correct.*

Q: *Off the floor?*

A: *That's correct.*

Q: *That's your independent recollection?*

A: *Sorry I don't understand.*

Q: *That is what you recollect independently?*

A: *That's what I recall, yes.*

When Officer 5 was shown the CCTV footage, she had another opportunity to explain the evidence she had given:⁷⁶

Q: *No, when you carry her. You refer the word "you carried her to the dock?"*

A: *Yes, so I believe that when we began to carry her it could have been that it started as we're going into the custody room; I'm not sure if you have the footage from that, but - do you have the footage from in the custody area?*

⁷⁶ Local Court transcript at T94.

Q: *But do you agree at this point in time nobody's carrying her?*

A: *Well she's lifted off the ground there, so.*

Q: *Can you tell me where at any point in time you see her lifted off the ground, and I suggest to you that her buttocks are being dragged across the ground? You agree she's still on the ground –*

A: *Well she's off the ground there.*

Q: *She's off the ground?*

A: *And then she's on the ground there again, yes.*

Q: *Do you agree in that footage that I've just shown you no indication that there are four officers involved in carrying her towards the dock?*

A: *In that part of the footage, that's correct, however in the custody area four officers did lift her and carried her. I'm not sure if you have the footage of that.*

Evidence of Officer 5 before the Commission

In summary, her evidence was:

1. She joined the NSWPF in December 2015;⁷⁷
2. She was involved in the transportation of Ms A back to the police station after the arrest;⁷⁸
3. Once inside the police station, she asked Ms A to get out of the police vehicle but Ms A refused and was verbally abusive towards the officers. Ms A was then slid out of the vehicle by various police officers;⁷⁹
4. Police were trying to pick Ms A up but she was using her weight against them and flailing around. At the suggestion of Officer 2, the officers handcuffed Ms A to the rear;⁸⁰
5. Officer 1 dragged Ms A by the upper body to the search room and Officer 6 attempted to help by grabbing one of Ms A's legs;⁸¹

⁷⁷ Examination BGW at T5.

⁷⁸ Examination BGW at T7.

⁷⁹ Examination BGW at T7.

⁸⁰ Examination BGW at T8.

⁸¹ Examination BGW at T8.

6. At the time she made her statement she believed Ms A had been carried by the police officers. However, after reviewing the CCTV footage, she realised she was mistaken;⁸²
7. She cannot explain why she gave evidence in the Local Court to the effect that Ms A was carried and admitted that it was incorrect;⁸³
8. There was no discussion amongst the officers beforehand about how Ms A should be moved into the search room;⁸⁴
9. It did not occur to her that Ms A could have suffered injury as a result of being dragged by Officer 1. However, she conceded this possibility in hindsight;⁸⁵
10. She agreed that having Officer 1 drag Ms A was not the most appropriate way to move her into the search room;⁸⁶ and
11. Ms A's earlier behaviour prior to being dragged provided a context for Officer 1's conduct.⁸⁷

Submissions of Counsel Assisting regarding Officer 5

Counsel Assisting submitted that Officer 5 had not engaged in serious misconduct as she had no physical role in the movement of Ms A and, in appearing before the Commission, she admitted that the evidence in her statement and given in the Local Court had been incorrect.

However, it was submitted that it would be open for the Commission to find that Officer 5's conduct amounted to unsatisfactory performance in relation to the preparation of her statement for tender in the Local Court and in giving inaccurate evidence in the Local Court.

Additionally, Counsel Assisting submitted that it would be open for the Commission to find that Officer 5 did not understand her obligations in relation to persons in her care and custody at the time, and accordingly requires re-training and counselling.

Submissions by Officer 5's Representative

Officer 5 was legally represented and submissions were made on her behalf. The submissions requested the Commission to decline making a finding of unsatisfactory performance and the need for re-training and counselling, but offered for Officer 5 to voluntarily engage in re-training and counselling. In summary, the grounds for making such submissions were as follows:

- She was a novice Constable at all relevant times;

⁸² Examination BGW at T9.

⁸³ Examination BGW at T13-14.

⁸⁴ Examination BGW at T14.

⁸⁵ Examination BGW at T15.

⁸⁶ Examination BGW at T16.

⁸⁷ Examination BGW at T19.

- She was candid to the Commission;
- She has never before been the subject of a Commission investigation;
- She volunteered to be informally re-trained and counselled so as to improve her understanding of her obligations towards persons in her care and custody;
- The findings would taint her employment record, hindering her promotional prospects; and
- The findings would taint her reputation.

Subsequent to the public listing for submissions, Officer 5's legal representative was put on notice that the Commission was considering a finding of serious misconduct for her alleged failure to intervene in the movement of Ms A, and provided with an opportunity for further submissions to be made.

Submissions were made in response, which can be summarised as follows:

1. Officer 5's conduct in not intervening is to be categorised as an oversight, not a failure, and such an oversight falls outside of the definition of serious misconduct;
2. Officer 5's conduct occurred when she was quite inexperienced;
3. During the private examination, the Commissioner for Integrity considered Officer 5's inexperience contributed to her conduct;
4. Other, and more experienced, officers did not intervene; and
5. A finding of serious misconduct would blight Officer 5's burgeoning police career.

Officer 6

Evidence of Officer 6 before the Commission

In summary, his evidence was:

1. He joined the NSWPF in December 2014;⁸⁸
2. He was involved in the transportation of Ms A to the police station after her arrest;⁸⁹
3. At the police station Ms A was not compliant and had to be removed from the police caged vehicle by various officers;⁹⁰

⁸⁸ Examination BGU at T5.

⁸⁹ Examination BGU at T6.

⁹⁰ Examination BGU at T7.

4. A brief wrestle between Ms A and police officers ensued on the ground, resulting in her being handcuffed;⁹¹
5. Officer 1 commenced pulling Ms A towards the custody area using one arm while holding onto the handcuffs that had been fixed onto Ms A;⁹²
6. He agreed that this act could also be described as dragging;⁹³
7. He involved himself by taking hold of Ms A's right leg to assist in carrying her into the custody area;⁹⁴
8. He was never requested to provide a statement in the matter;⁹⁵
9. There were more appropriate ways of moving Ms A into the custody area, such as having multiple people carry her so as to avoid injury to her and the other officers;⁹⁶
10. He cannot recall if there was any prior discussion about moving Ms A into the custody area, but he was not expecting Officer 1's actions that followed;⁹⁷
11. He took hold of Ms A's leg so that Officer 1 was not taking her entire weight, to avoid all the weight being placed on the handcuffs and to control her leg;⁹⁸
12. He considered the dragging of Ms A to be inappropriate because there were numerous officers present and she could have been moved with minimal injury to herself and others;⁹⁹
13. He did not consider Officer 1's actions to be misconduct or serious misconduct;¹⁰⁰
14. He did not think people should be treated differently in terms of how they are taken into the custody area, unless they had been violent, but he accepted that the struggling had ceased after Ms A was handcuffed;¹⁰¹ and
15. Having someone dragged along, as Ms A was in this instance, was not a common occurrence at the police station, but this incident was not one which stuck out for him.¹⁰²

⁹¹ Examination BGU at T7.

⁹² Examination BGU at T7.

⁹³ Examination BGU at T8.

⁹⁴ Examination BGU at T8.

⁹⁵ Examination BGU at T9.

⁹⁶ Examination BGU at T9.

⁹⁷ Examination BGU at T11.

⁹⁸ Examination BGU at T11.

⁹⁹ Examination BGU at T11.

¹⁰⁰ Examination BGU at T12.

¹⁰¹ Examination BGU at T15.

¹⁰² Examination BGU at T16.

Submissions of Counsel Assisting regarding Officer 6

Counsel Assisting submitted that Officer 6 had not engaged in serious misconduct as he was the only person to provide assistance when Officer 1 was moving Ms A and he was forthcoming in his evidence before the Commission.

Submissions by Officer 6's Representative

Officer 6 was legally represented and no submissions were made on his behalf.

Officer 7

Evidence of Officer 7 before the Commission

In summary, his evidence was:

1. He joined the NSWPF in January 2007;¹⁰³
2. He was acting in the capacity of Custody Manager on the night Ms A was arrested and brought back to the police station;¹⁰⁴
3. He had engaged in training as a Custody Manager about three or four years ago;¹⁰⁵
4. He stated that the duties of the Custody Manager are to ensure the rights of the person in custody are maintained, adhered to or are protected and that their health and safety are maintained;¹⁰⁶
5. He could remember Ms A, but he could not recall any of the events that took place that night;¹⁰⁷
6. He was aware of some form of incident happening near the vehicle and went out to investigate;¹⁰⁸
7. It was his opinion that Officer 1's actions were not necessary;¹⁰⁹
8. He stated that it would have been more appropriate for officers to take hold of Ms A on either side and lift her to her feet;¹¹⁰
9. He conceded that perhaps he should have intervened but no one could have foreseen the actions of Officer 1;¹¹¹

¹⁰³ Examination BGR at T5.

¹⁰⁴ Examination BGR at T8.

¹⁰⁵ Examination BGR at T8.

¹⁰⁶ Examination BGR at T5-6.

¹⁰⁷ Examination BGR at T8.

¹⁰⁸ Examination BGR at T13.

¹⁰⁹ Examination BGR at T14.

¹¹⁰ Examination BGR at T14.

¹¹¹ Examination BGR at T15.

10. He agreed that by not intervening he failed to positively perform his obligations towards Ms A;¹¹²
11. He agreed that it was possible for Ms A to have suffered an injury as a result of being dragged by Officer 1;¹¹³
12. If the same incident happened again he would intervene and stop the dragging as it is not something he would condone;¹¹⁴
13. As the Custody Manager he had an obligation to report the use of violence in the police station but, in this instance, he did not make any report of the incident;¹¹⁵
14. He stated that he performed his duties as a Custody Manager for Ms A that night but, at that “*small stage*”, he probably failed to take adequate action;¹¹⁶ and
15. He did not think Officer 1 should have intervened as he was not involved in the arrest and by that stage things had resolved.¹¹⁷

Submissions of Counsel Assisting regarding Officer 7

Counsel Assisting submitted that Officer 7 had engaged in serious misconduct, on the basis that he had manifestly failed to perform the duties of a Custody Manager. It was submitted that, despite being the most senior and experienced officer at the scene, Officer 7 failed to intervene and to prevent the inappropriate movement of Ms A and the use of excessive force, nor did he provide any assistance or feedback to Officer 1 about his actions. In effect, it was submitted, Officer 7 chose to be a bystander.

Submissions by Officer 7’s Representative

Officer 7 was legally represented. No submissions were made on his behalf at the public listing for submissions.

Subsequent to the public listing for submissions, Officer 7’s legal representative was put on notice that the Commission was considering a finding of serious misconduct for his alleged failure to intervene in the movement of Ms A and provided an opportunity for further submissions to be made.

Submissions were made in response, which can be summarised as follows:

1. Officer 7 did not physically deal with Ms A;
2. Officer 7’s evidence was characterised by his frankness and honest endeavours to assist the Commission;

¹¹² Examination BGR at T15.

¹¹³ Examination BGR at T15-16.

¹¹⁴ Examination BGR at T16-17.

¹¹⁵ Examination BGR at T17.

¹¹⁶ Examination BGR at T18.

¹¹⁷ Examination BGR at T18.

3. Officer 7's attention was diverted as he spoke with Officer 2;
4. There was no indication that Officer 1 would behave in such a fashion;
5. A finding of serious misconduct would require proof of direct action towards or against a member of the public or some other deliberate and positive act; and
6. Even if an omission can be considered to be serious misconduct, Officer 7's omission in this instance does not rise to the level of serious misconduct given the unannounced and impulsive actions of Officer 1.

Officer 8

The Magistrate delivered judgment in the Local Court proceedings on 20 March 2017, dismissing all charges against Ms A. In giving reasons for the decision, the Magistrate expressed concerns about the inconsistencies in the evidence of the various officers. Further, the Magistrate found that Ms A had been dragged by Officer 1 inside the police station.¹¹⁸

The evidence seems to suggest that she was pulled out and it was part of a fairly seamless movement that she then landed on the ground. A couple of the witnesses talked about [Ms A] being held by four of them by each limb. This, if it occurred in the out of view area, was not apparent on the CCTV but certainly, what was apparent, she certainly was not picked up by all four. What is apparent was [Officer 1] was dragging her and turning her over and at one point, one officer had picked up a leg.

The Magistrate expressed a desire for the matter to be referred elsewhere for further investigation.¹¹⁹

Magistrate: Before I move on, I want to give you both the chance to be heard. This case, I think, needs to go elsewhere and I propose taking out transcripts and asking you to refer it to the appropriate people and for that reason I am not returning exhibits because they need to stay with the file.

Solicitor: I agree, your Honour. The problem I understand is that the authority that regulated police has recently been dissolved and there is a new authority -

Magistrate: There is the new authority. Could you both make inquiries, we will keep the file intact. What will be apparent is, it is more important that I got the case finished than I took the luxury of doing the really detailed analysis. It is why I have purposely not made findings about execution of duty and things like that, because I did not need to. The evidence was inconsistent enough and problematic enough that I could find that it did not

¹¹⁸ Local Court transcript at T201-202.

¹¹⁹ Local Court transcript at T203.

meet the standard but I think somebody else needs to look at this, and can I leave that with both of you to take it forward.

Officer 8: I will make an inquiry as to what the appropriate -

Despite this exchange, no referral of the matter was made to the Commission by Officer 8 or Ms A's legal representative.

Evidence of Officer 8 before the Commission

In summary, his evidence was:

1. He joined the NSWPF in May 2014;¹²⁰
2. He commenced training as a prosecutor in February 2016. He was admitted to practice as a solicitor in 2012;¹²¹
3. In order to become a qualified prosecutor, he needed to complete five informal hearings to be assessed or supervised by a qualified prosecutor. The prosecution of Ms A was one of those informal hearings;¹²²
4. During the Local Court hearing he was supervised by Officer 9 and then by Officer 10;¹²³
5. Officer 9 originally had carriage of the prosecution against Ms A. It was delegated to him on the first day of the hearing;¹²⁴
6. He had very little preparation time for the hearing. He received an overview of the matter from Officer 9 and had limited time to review the brief of evidence;¹²⁵
7. He believed he did not have an opportunity to view the CCTV footage before the hearing commenced and that the first time he viewed the footage was during the hearing;¹²⁶
8. He recalled that the CCTV footage depicted Officer 1 dragging Ms A from the rear of the police vehicle and into a search room;¹²⁷
9. The Magistrate expressed concerns in the judgment regarding the inconsistencies in the evidence and stated that somebody else should look into the matter. He was unsure what this meant and sought advice from his supervisors. He was told to complete a

¹²⁰ Examination BGQ at T5.

¹²¹ Examination BGQ at T5.

¹²² Examination BGQ at T7-8.

¹²³ Examination BGQ at T8.

¹²⁴ Examination BGQ at T8.

¹²⁵ Examination BGQ at T8.

¹²⁶ Examination BGQ at T9.

¹²⁷ Examination BGQ at T10.

failed prosecution report and another report regarding adverse comments made by the Magistrate;¹²⁸

10. He was aware that the Police Integrity Commission had been, or was about to be, abolished and he was aware of a new agency replacing it but did not know the name of the new agency;¹²⁹
11. He could offer no explanation as to why the Police Integrity Commission was not mentioned in his report;¹³⁰
12. He stated in his report that he had no concerns as to corruption or collusion because that was the assessment he made based on the evidence he had heard during the proceedings;¹³¹
13. He agreed that what was depicted in the CCTV footage, namely Ms A being dragged, was not consistent with the statements of Officers 1, 2, 3, 4 and 5 in describing it as Ms A being carried;¹³²
14. He agreed that the statements of the various officers, when viewed in the context of the CCTV footage, would at least indicate a possibility of collusion among the officers;¹³³
15. However he was able to negate this possibility in his report given the various inconsistencies in the evidence given by the officers in the Local Court proceedings;¹³⁴
16. He would not have moved Ms A in the same way, as he would first try to get the person to walk, or have a person carry each shoulder and leg;¹³⁵
17. He considered that what Officer 1 did was inappropriate, subject to anything that happened prior to that;¹³⁶
18. He considered that what Officer 1 did to be potentially misconduct;¹³⁷
19. He agreed that the Magistrate's finding that Ms A was dragged rather than carried should have been mentioned in his report and he is not sure why it was not mentioned;¹³⁸ and

¹²⁸ Examination BGQ at T11 and T28.

¹²⁹ Examination BGQ at T13.

¹³⁰ Examination BGQ at T29.

¹³¹ Examination BGQ at T14.

¹³² Examination BGQ at T15-18.

¹³³ Examination BGQ at T20-21.

¹³⁴ Examination BGQ at T20.

¹³⁵ Examination BGQ at T21-22.

¹³⁶ Examination BGQ at T23.

¹³⁷ Examination BGQ at T23.

¹³⁸ Examination BGQ at T25-26.

20. He conceded that, based on the statements and evidence given by the various police officers, there was an attempt to mislead the court in describing Ms A as being carried instead of dragged.¹³⁹

Submissions of Counsel Assisting regarding Officer 8

Counsel Assisting submitted that Officer 8 had not engaged in serious misconduct and no counselling or re-training was required.

Submissions by Officer 8's Representative

Officer 8 was legally represented. The brief submissions made on his behalf were not contentious and not in opposition to the submissions of Counsel Assisting.

Officer 9

Evidence of Officer 9 before the Commission

In summary, her evidence was:

1. She joined the NSWPF in 1995 and commenced her training as a prosecutor in late 2014;¹⁴⁰
2. Prosecutor training involves doing list work in the Local Court, simple hearings such as traffic matters, five informal hearings which require a legal representative and the defendant to give evidence, and one final hearing which needs to be of substance, meaning witnesses are called and legal arguments are involved;¹⁴¹
3. Most of her informal hearings were given to her on the morning of the hearing;¹⁴²
4. She was aware of the prosecution against Ms A but did not have a memory of any of the evidence given;¹⁴³
5. The matter was allocated to her initially for conduct of the prosecution but, as Officer 8 needed an informal hearing to do, she allocated this matter to him on the morning of the hearing;¹⁴⁴
6. She supervised Officer 8 on the first day of the hearing and then she was transferred to Gosford;¹⁴⁵
7. She had an opportunity to review the brief of evidence and was aware of the contents of the police officers' statements in addition to the CCTV footage;¹⁴⁶

¹³⁹ Examination BGQ at T26.

¹⁴⁰ Examination BGY at T4.

¹⁴¹ Examination BGY at T5-6.

¹⁴² Examination BGY at T7.

¹⁴³ Examination BGY at T7.

¹⁴⁴ Examination BGY at T7-8.

¹⁴⁵ Examination BGY at T25 and T27.

¹⁴⁶ Examination BGY at T8.

8. From her recollection, she had no issues with what the police officers' statements said when compared to what was shown in the CCTV footage;¹⁴⁷
9. The CCTV footage was shown to her and she described Ms A's movement by Officer 1 as a combination of being picked up, carried and possibly pulled along the floor;¹⁴⁸
10. She claimed that at a certain point in the CCTV footage it appeared that Ms A's body was off the floor;¹⁴⁹
11. She stated that she was not able to dispute what the police officers said in their statements based on the CCTV footage alone;¹⁵⁰
12. She disagreed with the proposition that Ms A was dragged, because at least two of the officers could be seen attempting to lift Ms A;¹⁵¹
13. She was of the view that what Officers 1 and 2 said in their statements about carrying Ms A was consistent with the CCTV footage;¹⁵²
14. She was of the opinion that Officer 5's statement in describing Ms A being carried was a reference to Ms A being taken to the police dock rather than the search room;¹⁵³
15. The fact that Officer 5 did not mention Ms A being taken to the search room in her statement was not a concern. This is because police often forget to put things in their statements;¹⁵⁴
16. She conceded that there were not four officers carrying Ms A;¹⁵⁵
17. She conceded that what Officer 5 said in her statement about Ms A being carried could be seen as inaccurate, but it was not necessarily a concern;¹⁵⁶
18. She was aware that the Magistrate had made some adverse comments in the judgment and this was relayed to her by Officer 8;¹⁵⁷
19. She did not see the report drafted by Officer 8 and had no further involvement in the matter after it finished;¹⁵⁸

¹⁴⁷ Examination BGY at T9.

¹⁴⁸ Examination BGY at T10.

¹⁴⁹ Examination BGY at T11-12.

¹⁵⁰ Examination BGY at T12.

¹⁵¹ Examination BGY at T13.

¹⁵² Examination BGY at T14-15.

¹⁵³ Examination BGY at T15-22.

¹⁵⁴ Examination BGY at T22.

¹⁵⁵ Examination BGY at T20 and T23.

¹⁵⁶ Examination BGY at T24.

¹⁵⁷ Examination BGY at T26.

¹⁵⁸ Examination BGY at T28.

20. She was not aware if Officer 10 had any involvement in the matter;¹⁵⁹

21. She did not consider the manner in which Ms A was moved to be inappropriate;¹⁶⁰

22. She agreed that it would be misconduct if the statements of the police officers stated that Ms A was carried but the Magistrate was satisfied that Ms A was in fact dragged;¹⁶¹ and

23. She could see no reason why Officer 7 could not have assisted.¹⁶²

Submissions of Counsel Assisting regarding Officer 9

Counsel Assisting submitted that it would be open for the Commission to find that Officer 9 had engaged in serious misconduct on the basis that she had failed to give candid evidence before the Commission. It was submitted that she refused to concede factual matters obvious in the CCTV footage, she was evasive and uncooperative, and she attempted to avoid providing an opinion when there was no evidentiary difficulty in doing so.

Submissions by Officer 9's Representative

Officer 9 was legally represented and submissions were made on her behalf. It was submitted that no finding of serious misconduct should be made by the Commission for various reasons, including the following:

- A proper reading of her evidence indicates that she gave evidence to the best of her ability and with utmost candour;
- The definition of “*serious misconduct*” in s 10 of the *LECC Act* does not involve any concept of lack of candour or any refusal to adopt a “*descriptor of pictorial conduct*” favoured by Counsel Assisting;
- Her evidence was not germane to either the general purpose of the inquiry or the specific reason she was called;
- The words “*drag*” and “*carry*” are nearly interchangeable and whether the acts shown in the CCTV footage were dragging or carrying is not germane to the issue of whether excessive force was used; and
- There was no basis for suggesting her evidence was designed to protect other police officers.

These reasons were elaborated on in oral submissions made on 13 June 2018.

¹⁵⁹ Examination BGY at T28.

¹⁶⁰ Examination BGY at T30.

¹⁶¹ Examination BGY at T31.

¹⁶² Examination BGY at T32.

Officer 10

Evidence of Officer 10 before the Commission

In summary, his evidence was:

1. He joined the NSWPF in 2010 and had been a prosecutor for about three years;¹⁶³
2. Prosecutor training is for about 12-14 months and involves attending classes, list work and hearings, with a requirement to do five informal hearings and one formal hearing. The difference between an informal and formal hearing is that the latter must involve a sufficient level of complexity;¹⁶⁴
3. About two years ago, a practice management model commenced which was designed so that prosecutors would have all the hearing material from the time the matter is first brought to court, so that the prosecutor is aware of any issues that arise and also the history of the matter. However, in practice, this is not always followed and often prosecutors will be given hearings on the day, leaving them without any time to prepare;¹⁶⁵
4. He was shown the CCTV footage and described Ms A as being dragged into a room;¹⁶⁶
5. He did not believe he had seen the CCTV footage previously and had no recollection of the matter, even after reading the facts sheet;¹⁶⁷
6. He recalled supervising Officer 8 in a hearing but he did not remember which hearing it was;¹⁶⁸
7. He has no memory of giving any advice or instructions to Officer 8 during this hearing;¹⁶⁹
8. He was shown Officer 1's statement and did not believe he had seen it previously;¹⁷⁰
9. He agreed that Officer 1's statement describing Ms A as being carried was misleading;¹⁷¹

¹⁶³ Examination BGZ at T8.

¹⁶⁴ Examination BGZ at T7-8.

¹⁶⁵ Examination BGZ at T9.

¹⁶⁶ Examination BGZ at T5.

¹⁶⁷ Examination BGZ at T10.

¹⁶⁸ Examination BGZ at T10.

¹⁶⁹ Examination BGZ at T11.

¹⁷⁰ Examination BGZ at T12.

¹⁷¹ Examination BGZ at T13.

10. He further agreed that the statements of Officers 2, 3, 4 and 5, insofar as they described Ms A as having been carried, were inaccurate and misleading;¹⁷²
11. He did not have any recollection of the Magistrate stating that the matter should be referred to the new authority. However, he did have a vague memory of hearing or seeing the words “*this case I think needs to go elsewhere*”;¹⁷³
12. When a prosecution fails, the prosecutor is to complete a failed prosecution report on the COPS system which is sent to the crime manager of the relevant police station;¹⁷⁴
13. Where a Magistrate makes an adverse comment, he would relay that to the APC, or an Inspector at the police station, and he believed there was a requirement to do a report as well;¹⁷⁵ and
14. He was not aware of any reports in this matter, or of any reports prepared by Officer 8.¹⁷⁶

Submissions of Counsel Assisting regarding Officer 10

Counsel Assisting submitted that Officer 10 had not engaged in serious misconduct

Submissions by Officer 10

Officer 10 was not legally represented and did not make any submissions to the Commission.

G. Findings and Recommendations

Pursuant to s 133 of the *LECC Act*, the Commission will list below each affected person and the findings and recommendations made in respect of each.

Officer 1

Officer 1’s evidence, contained in his statement provided to the Local Court, was that he carried Ms A with the assistance of other police. In the Local Court and before the Commission, this changed to an attempt to carry.

Officer 1’s Representative submitted that there was no evidence to contradict Officer 1’s assertion that he was attempting to carry Ms A. The Commission rejects that submission. The video footage does not show any attempt to carry Ms A. In any event, if there had been an attempt to carry Ms A that failed and resulted in her being dragged, it could have been easily remedied by assistance from the other officers present. No such assistance was sought or offered.

¹⁷² Examination BGZ at T14-16.

¹⁷³ Examination BGZ at T19.

¹⁷⁴ Examination BGZ at T20.

¹⁷⁵ Examination BGZ at T20-21.

¹⁷⁶ Examination BGZ at T21.

Officer 1's Representative submitted that Officer 1 had given evidence in the Local Court that his actions could be described as dragging. This was presumably a reference to this exchange in cross-examination:¹⁷⁷

Q: *While [Ms A's] on the floor, and you begin dragging, yes?*

A: *Yes; attempting to carry her towards the custody area.*

Q: *You're attempting to carry her?*

A: *Yep.*

The Commission rejects this submission. His answer was a denial of the proposition put by the questioner. Officer 1 was suggesting and agreeing to an alternative – that he had attempted to carry Ms A.

The difference between carrying and dragging is not just a matter of semantics as submitted by Officer 1's representative. They are different actions. They can occur separately. They can occur during the same event.

The CCTV footage shows the fluidity of the motion, the direction of the force, the momentum involved, and the configuration of limbs.

The Commission has considered the CCTV footage, the statement prepared by Officer 1, his subsequent evidence in the Local Court, his evidence before the Commission and the submissions before the Commission and is satisfied that the CCTV footage shows Ms A being dragged by Officer 1. The Commission is not persuaded that there was any attempt to carry Ms A.

The reference to Ms A's conduct and behaviour in Officer 1's submissions are of no assistance. Whatever conduct occurred before Officer 1 laid hands on Ms A, or afterwards, cannot affect the standard of care in custody to which Ms A was entitled. Ms A was not belligerent or offensive when she was dragged, handcuffed behind her back, across the garage floor. In any event, had she been belligerent or offensive, there could be no justification for a lesser standard of care in the absence of a real threat to the safety of an officer. The Commission is satisfied that there was no such threat in the circumstances.

The Commission is not satisfied that Officer 1 prepared his statement for the Local Court with the intention of deceiving the Court as to his conduct. The method of movement of Ms A was not an issue at that stage. It became an issue at the hearing before the Magistrate. The Commission is satisfied that Officer 1's subsequent evidence, wherever given, that he carried Ms A, was not candid evidence. Whilst giving evidence before the Commission he made some appropriate concessions.

With no prior involvement, and no obligation to get involved, Officer 1 rushed forward, grabbed hold of Ms A and removed her from the garage of the police station in an inappropriate manner likely to cause her an injury and in breach of his obligation of care in custody. It is not possible to ascertain what motivated Officer 1 to engage in this conduct. The Commission is inclined towards hubris, youth,

¹⁷⁷ Local Court transcript at T134.

inexperience, a lack of training and, more importantly, a lack of supervision. The intervention of a more senior officer charged with the responsibility for ensuring care in custody could have prevented his engagement. Any intervention by the other officers present, however minor, might have caused him to reconsider his actions. Unfortunately, no one supervised and no one, except Officer 6, intervened.

The Commission is satisfied that Officer 1 engaged in serious misconduct when giving untruthful evidence in the Local Court and using excessive force against Ms A.

It is open to the Commission to request the Director of Public Prosecutions to consider prosecution of Officer 1 for the offences set out below:

1. Knowingly makes use of fabricated false evidence with intent to mislead any judicial tribunal proceeding, contrary to s 317(b) of the *Crimes Act 1900*;
2. Pervert the course of justice, contrary to s 319 of the *Crimes Act 1900*;
3. Making a false statement on oath, contrary to s 327(1) of the *Crimes Act 1900*; and
4. Common assault, contrary to s 61 of the *Crimes Act 1900*.

However, for the reasons set out below, and taking into account all of the circumstances surrounding these events, the Commission does not recommend that there be a referral to the Director of Public Prosecutions arising from Officer 1's conduct. These reasons are:

1. The failure of the senior officer to intervene and prevent Officer 1's conduct condoned his intervention and method of movement;
2. All the other officers, except Officer 6, watched his misconduct with either approval or indifference and did nothing to intervene or assist;
3. No other officer, except Officer 6, demonstrated any concern for the welfare of Ms A. All of those officers were complicit in his misconduct. They failed to intervene and thereby endangered the health and safety of Ms A; and
4. To deal with Officer 1 for his misconduct by referral to the Director of Public Prosecutions, without any consequences at the same level of seriousness for those other officers, would be manifestly unfair.

Despite these issues, the Commission is of the opinion that the conduct of Officer 1 was serious misconduct pursuant to s 10 of the *LECC Act* and that consideration should be given to the taking of reviewable action against him pursuant to s 173 of the *Police Act 1990*.

Whilst the Commission has no role to play in that consideration, the Commission recommends that the possible physical consequences for Ms A, and the reputational consequences for the New South Wales Police Force, should be taken into account. The Commission recommends an outcome that reflects that seriousness.

Officer 2

The Commission is satisfied that Officer 2 provided an inaccurate version of events in relation to the movement of Ms A in his statement prepared for the proceedings in the Local Court and in his evidence before the Local Court. The following exchange in cross-examination is particularly relevant:

Q: *You agree that that's carrying her back, what you've seen on the CCTV?*

A: *Yes.*

Q: *I suggest to you she was dragged back?*

A: *Okay.*

Q: *Do you accept that?*

A: *I don't really see the difference.*

Q: *You don't see the difference; you can carry a bag or you can drag a bag, do you recognise the difference between that?*

A: *In that context, yes.*

Q: *Would you describe what occurs to [Ms A] in the footage as dragging or carrying?*

A: *Well at one point both the officers are carrying her.*

The Commission accepts that before this investigation occurred Officer 2 did not distinguish between the dragging or the carrying of a person in his care or custody. They were either dragged or carried to the custody area. To him there was no relevant difference.

After this issue was dealt with before the Commission, clarifying somewhat the distinction between an act of dragging and an act of carrying, Officer 2 still maintained that “*at one point*” Ms A was carried by both officers. In respect of Officer 2’s evidence before the Commission, I am satisfied that he attempted to maintain a more flattering version of events. In particular, this is the case when he stated “*initially, I would describe it as dragging, and then they managed to lift her up*”.¹⁷⁸ The CCTV footage showed that Ms A was never lifted up by Officer 1 or by Officer 6, or by both.

The Commission is not satisfied that Officer 2 prepared his statement for the Local Court with the intention of deceiving the Court as to Officer 1’s conduct. The method of movement of Ms A was not an issue at that stage. It became an issue at the hearing in the Local Court. The Commission is satisfied that Officer 2’s

¹⁷⁸ Examination BGT at T11.

subsequent evidence that Ms A was carried, was not candid evidence. It reflected Officer 2's indifference to the distinction. Whilst giving evidence before the Commission he made some appropriate concessions.

The Commission is satisfied that Officer 2's adherence to an inaccurate version of events in the Local Court and before the Commission, was conduct which was unsatisfactory performance.

Officer 2 did not demonstrate any concern for the welfare of Ms A until after her movement by Officer 1. He was complicit in Officer 1's misconduct. His failure to intervene or assist endangered the health and safety of Ms A.

The Commission is satisfied that the failure of Officer 2 to intervene reflected a lack of understanding of his obligations in relation to care in custody. Consideration must be given to the failure of Officer 7, being the senior officer, to exercise his obligations, and the speed with which Officer 1 acted. Despite these factors, the Commission recommends consideration be given to the taking of action against Officer 2 pursuant to s 173 of the *Police Act 1990*.

Officer 3

The Commission is not satisfied that Officer 3 prepared her statement for the Local Court with the intention of deceiving the Court as to Officer 1's conduct. The method of movement of Ms A was not an issue at that stage. It became an issue at the hearing before the Magistrate. The Commission is satisfied that Officer 3's subsequent evidence was candid evidence.

Officer 3 did not demonstrate any concern for the welfare of Ms A. She was complicit in Officer 1's misconduct. Her failure to intervene or assist endangered the health and safety of Ms A.

The Commission is satisfied that the failure of Officer 3 to intervene reflected a lack of understanding of her obligations in relation to care in custody. Consideration can be given to the failure of Officer 7, being the senior officer, to exercise his obligations, the speed with which Officer 1 acted, the blow to Officer 3 struck by Ms A and, in particular, Officer 3's junior status as a Probationary Constable. The Commission recommends that Officer 3 receive training and counselling, particularly in regard to her obligations to persons in her care and custody.

Officer 4

The Commission is not satisfied that Officer 4 prepared her statement for the Local Court with the intention of deceiving the Court as to Officer 1's conduct. The method of movement of Ms A was not an issue at that stage. It became an issue at the hearing before the Magistrate. However, the Commission is satisfied that Officer 4's subsequent evidence that Ms A was carried was not candid evidence.

The Commission is satisfied that Officer 4's adherence to an inaccurate version of events in the Local Court and before the Commission, was conduct which was unsatisfactory performance.

It was clear from her evidence before the Commission that Officer 4 did not understand her obligations in relation to persons in her care and custody:¹⁷⁹

Q: *At the time did you consider what [Officer 1] did was inappropriate?*

A: *No.*

Q: *How about now when you look at the footage today, do you consider that what [Officer 1] did was inappropriate?*

A: *No.*

Q: *Why not?*

A: *[Ms A] was extremely violent. She had already assaulted two police officers and it was a means of getting her into a place as – sorry, into the dock. It was unsafe and we had to get her in there as soon as possible and it was the means that he used.*

The Commission finds that Officer 4 considered that it was appropriate and justifiable to drag Ms A because of her prior conduct. Ms A was not resisting when Officer 1 grabbed hold of her. The Commission is satisfied that Officer 4 does not understand her obligations to persons in her care and custody.

Officer 4 did not demonstrate any concern for the welfare of Ms A. She was complicit in Officer 1's misconduct. Her failure to intervene or assist endangered the health and safety of Ms A.

The Commission is satisfied that the failure of Officer 4 to intervene reflected a lack of understanding of her obligations in relation to care in custody. Consideration can be given to the failure of Officer 7, being the senior officer, to exercise his obligations, and the speed with which Officer 1 acted. Despite these factors the Commission recommends the taking of action against Officer 4 pursuant to s 173 of the *Police Act 1990*.

Officer 5

The Commission is not satisfied that Officer 5 prepared her statement for the Local Court with the intention of deceiving the Court as to Officer 1's conduct. The method of movement of Ms A was not an issue at that stage. It became an issue at the hearing before the Magistrate. However, even taking into account her relative inexperience, it is difficult to understand how a sworn officer could have given evidence that four officers carried Ms A into the search room.

The Commission is satisfied that Officer 5's subsequent evidence that Ms A was carried, was not candid evidence.

¹⁷⁹ Examination BGV at T13.

The Commission is satisfied that Officer 5's adherence to an inaccurate version of events in the Local Court and before the Commission is conduct which was unsatisfactory performance.

Officer 5 did not demonstrate any concern for the welfare of Ms A. She was complicit in Officer 1's misconduct. Her failure to intervene or assist endangered the health and safety of Ms A.

The Commission is satisfied that the failure of Officer 5 to intervene reflected a lack of understanding of her obligations in relation to care in custody. Consideration can be given to the failure of Officer 7, the senior officer, to exercise his obligations, and the speed of Officer 1's actions. Despite these factors, the Commission recommends the taking of action against Officer 5 pursuant to s 173 of the *Police Act 1990*.

Officer 6

The Commission is satisfied that Officer 6 did not engage in any misconduct.

The Commission makes no recommendation in relation to Officer 6.

Officer 7

Officer 7's failure to intervene or assist in the movement of Ms A allowed the intervention of Officer 1 to proceed unimpeded. His failure to conscientiously perform his duties endangered the safety of Ms A and led the junior officers into potentially serious misconduct.

The Commission is satisfied that this failure to perform his duties as a Custody Manager was conduct amounting to serious misconduct.

The Commission recommends the taking of reviewable action against Officer 7 pursuant to s 173 of the *Police Act 1990*.

Officer 8

Officer 8 failed to follow the direction of the Magistrate to refer the conduct of Officer 1 to an appropriate oversight body.

When the direction of the Magistrate was issued Officer 8 was inexperienced. He failed to follow through. His obligations have now been explained to him. The Commission is satisfied that, following his experience before the Commission, Officer 8 will not fail in a similar manner in the future.

The Commission makes no recommendation in relation to Officer 8.

Officer 9

Officer 9 had no involvement in the events which occurred at the local Police Station. She was called to the Commission to verify the evidence given by Officer 8 regarding the training provided to junior prosecutors.

Officer 9 had, in the course of her duties, seen the relevant CCTV footage and she was therefore asked questions concerning the conduct of the officers involved.

Her evidence was deeply disappointing. She was at pains to avoid giving evidence on any issue where an adverse finding might arise concerning the conduct of those police officers involved in the movement of Ms A in the local Police Station.

The Commission accepts that witnesses can interpret CCTV footage differently. Those differences of opinion can be significant.

The following exchange is one example of Officer 9's evasive testimony:

Q: *Do you consider moving this woman by the wrist whilst her arms are handcuffed behind her back and the angle to be an appropriate way to move her?*

A: *Well, again, without me being there in that circumstance, it would be difficult for me to pass judgment.*

Q: *You don't have to pass judgment, that's my job. I just want to know whether you consider that is an appropriate way to move a prisoner from that area to another?*

A: *With what I have seen and the statements before me, at that point, and even now, I am not in a position to say whether it's inappropriate or not. I don't –*

Officer 9 attempted to avoid expressing an opinion on the basis that she was not present when the relevant incident occurred. More than that, Officer 9 wanted to avoid the task entirely. She did not wish to express an opinion about those events and was evasive and uncooperative.

Officer 9's evidence was in direct contrast to that of Officer 10. That exchange, after Officer 10 is shown the CCTV footage, is set out below:

Commissioner Drake:

Q. *[Officer 10], would you describe in your own words what the police were doing from commencement of that footage?*

A: *Certainly. It appears they were taking a female person from the rear of a police car into the cell, initially it appears the woman was on the ground, the view was blocked so I didn't see how she got on the ground. She appeared to keep her legs such that she was remaining on the ground and then the police, it would appear, dragged her to a room just before the charge room, in which room she stood up, with the assistance of police officers, and then she was walked into a cell. On being placed in the cell it appears she spat on the screen and was kicking the screen.*

The Commission has concluded that Officer 9 was uncooperative and evasive in her responses. Her conduct in this regard is made more disappointing because she is a prosecutor regularly appearing before the Local Court of New South Wales with all of the obligations that arise from that role.

The Commission finds that Officer 9 engaged in serious misconduct when she failed to give candid evidence before the Commission, and that this was conduct

amounting to serious misconduct. The Commission recommends that consideration be given to the taking of action against Officer 9 pursuant to s 173 of the *Police Act 1990*.

Officer 10

Officer 10 was cooperative before the Commission and gave candid evidence.

Officer 10 did not engage in any misconduct.

The Commission makes no recommendation regarding Officer 10.

A copy of this Report and the identities of all involved officers have been provided to the Commissioner of Police for consideration of the recommended action.

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