

# LECC

Law Enforcement  
Conduct Commission

## OPERATION KIMBLA

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

---

April 2022

# LECC

## Law Enforcement Conduct Commission

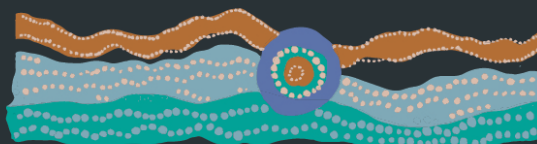
Level 3, 111 Elizabeth Street  
Sydney NSW 2000  
Email: [contactus@lecc.nsw.gov.au](mailto:contactus@lecc.nsw.gov.au)  
**Postal address**  
GPO Box 3880  
Sydney NSW 2001  
Phone: (02) 9321 6700  
Toll free: 1800 657 079  
Fax: (02) 9321 6799

Copyright: © State of New South Wales through the Law Enforcement Conduct Commission, NSW, Australia, 2000. You may copy, distribute, display, download and otherwise freely deal with this work for any purpose, provided that you attribute the Law Enforcement Conduct Commission as the owner. However, you must obtain permission from the Commission if you wish to (a) charge others for access to the work (other than at cost), (b) include the work in advertising or a product for sale, or (c) modify the work.

Disclaimer: This document has been prepared by the Law Enforcement Conduct Commission for general information purposes. While every care has been taken in relation to its accuracy, no warranty is given or implied. Further, recipients should obtain their own independent advice before making any decision that relies on this information. This report is available on the Commission's website: [www.lecc.nsw.gov.au](http://www.lecc.nsw.gov.au). For alternative formats such as large print or computer disk, contact by email: [media@lecc.nsw.gov.au](mailto:media@lecc.nsw.gov.au) or phone: (02) 9321 6700, toll free: 1800 657 079 or fax: (02) 9321 6799.

**ISBN 978-1-74003-048-9**

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



**Office of Commissioner**

5 April 2022

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

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

Dear Mr President and Mr Speaker,

In accordance with section 132(3) of the *Law Enforcement Conduct Commission Act 2016* ('the Act'), the Commission hereby furnishes to you a Report in relation to its investigation in Operation Kimbla.

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

Yours sincerely,



**The Hon Lea Drake**  
Commissioner

## Table of Contents

1. Introduction .....	5
2. The Commission's Statutory Functions .....	6
3. The Commission's Investigation.....	12
4. Analysis of Evidence .....	44
5. Affected Persons .....	46
6. Findings .....	46
7. Recommendations .....	46

## 1. Introduction

- 1.1 The Commission's investigation in Operation Kimbla arose from a complaint submitted to the Law Enforcement Conduct Commission ('the Commission') by a solicitor from Aboriginal Legal Services ('ALS') on behalf of a young person, Civilian KIM1 arising from his treatment in custody at LOC1 on 14 and 15 February 2021.
- 1.2 Civilian KIM1 is an Aboriginal male who was 15 years old on 14 February 2021.
- 1.3 The Commission was provided with CCTV footage from inside LOC1 which showed Civilian KIM1 being restrained to an ambulance stretcher, officers lunging at Civilian KIM1, placing a towel or blanket over his head and one police officer placing their hands around Civilian KIM1's neck. Whilst restrained to the ambulance stretcher and his face covered by a towel, a police officer could be seen touching Civilian KIM1's exposed nipple, repeating this action and then laughing with other officers.
- 1.4 Subsequent enquiries with the ALS revealed the following facts and issues for investigation and resolution arising from the events which occurred whilst Civilian KIM1 was in police custody on 14 and 15 February 2021 and were the subject of complaint:
  - Civilian KIM1 may have attempted to self-harm in his cell by using his pants to hang himself. When the police entered the cell did they use excessive force on Civilian KIM1? Did this cause Civilian KIM1 to defend himself against the force used by the officers thereby striking Officer KIM3 in the face?
  - Civilian KIM1 was subsequently charged with assault police. CCTV footage from inside the cell was produced in the hearing at Parramatta Children's Court on 22 June 2021, resulting in the charge of assault Police being dismissed by the presiding Magistrate. The ALS solicitor alleged that the Magistrate made adverse comments about the conduct of the police officers, stating that the force used by the officers against Civilian KIM1 was excessive.
  - NSW Ambulance was called to attend LOC1 due to the alleged attempted self-harm.

- Ambulance officers administered a sedative to Civilian KIM1 while he was restrained on a stretcher.
- The ALS solicitor was unsure why the officers placed a towel or cloth over Civilian KIM1's face. From her observations of the footage she felt there was no evidence that Civilian KIM1 had or was about to spit at the police or ambulance officers.
- The ALS solicitor believed there was no lawful or justifiable reason for the officer to touch Civilian KIM1's nipple.
- The footage of the officer touching Civilian KIM1's nipple was not produced in Court. However, it was provided to ALS in the Brief of Evidence.

1.5 For the reasons set out later in this Report, the Commission has found that Officer KIM4 engaged in serious misconduct when he touched the left nipple of Civilian KIM1, made a turkey gobbler noise and laughed whilst Civilian KIM1 was restrained to an ambulance trolley.

## 2. The Commission's Statutory Functions

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

2.2 Section 10 of the LECC Act defines "*serious misconduct*":

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

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

(b) *a pattern of officer misconduct, officer maladministration or agency maladministration carried out on more than one occasion, or that involves more than one participant, that*

*is indicative of systemic issues that could adversely reflect on the integrity and good repute of the NSW Police Force or the Crime Commission,*

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

(2) *In this section:*

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

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

2.3 “Officer maladministration” and “agency maladministration” are both defined in s 11 of the LECC Act. “Officer maladministration” is defined in s 11(2) in these terms:

(2) *Officer maladministration means any conduct (by way of action or inaction) of a police officer, administrative employee or Crime Commission officer that, although it is not unlawful (that is, does not constitute an offence or corrupt conduct):*

(a) *is unreasonable, unjust, oppressive or improperly discriminatory in its effect, or*

(b) *arises, wholly or in part, from improper motives, or*

(c) *arises, wholly or in part, from a decision that has taken irrelevant matters into consideration, or*

(d) *arises, wholly or in part, from a mistake of law or fact, or*

(e) *is conduct of a kind for which reasons should have (but have not) been given.*

2.4 The conduct of an officer or agency is defined as “*serious maladministration*” if the conduct, though not unlawful, is conduct of a serious nature which is unreasonable, unjust, oppressive or improperly discriminatory in its effect or arises wholly or in part from improper motives: LECC Act, s 11(3).

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

2.6 Section 29 provides the authority for the Commission to make findings and express opinions:

(1) *The Commission may:*

(a) *make findings, and*

(b) *form opinions, on the basis of investigations by the Commission, police investigations or Crime Commission investigations, as to whether officer misconduct or officer maladministration or agency maladministration:*

(i) *has or may have occurred, or*

(ii) *is or may be occurring, or*

(iii) *is or may be about to occur, or*

(iv) *is likely to occur, and*

(c) *form opinions as to:*

(i) *whether the advice of the Director of Public Prosecutions should be sought in relation to the commencement of proceedings against particular persons for criminal offences against laws of the State, or*



- (ii) *whether the Commissioner of Police or Crime Commissioner should or should not give consideration to the taking of other action against particular persons, and*
  - (d) *make recommendations as to whether consideration should or should not be given to the taking of action under Part 9 of the Police Act 1990 or under the Crime Commission Act 2012 or other disciplinary action against, particular persons, and*
  - (e) *make recommendations for the taking of other action that the Commission considers should be taken in relation to the subject-matter or opinions or the results of any such investigations.*
- (2) *Subsection (1) does not permit the Commission to form an opinion, on the basis of an investigation by the Commission of agency maladministration, that conduct of a particular person is officer maladministration unless the conduct concerned is (or could be) serious maladministration.*
- (3) *The Commission cannot find that a person is guilty of or has committed, or is committing or is about to commit, a criminal offence or disciplinary infringement.*
- (4) *An opinion or finding that a person has engaged, is engaging or is about to engage in:*
  - (a) *officer misconduct or serious misconduct or officer maladministration or serious maladministration (whether or not specified conduct), or*
  - (b) *specified conduct (being conduct that constitutes or involves or could constitute or involve officer misconduct or serious misconduct or officer maladministration or serious maladministration), and any recommendation concerning such a person is not a finding or opinion that*

*the person is guilty of or has committed, or is committing or is about to commit, a criminal offence or disciplinary infringement.*

- (5) *Nothing in this section prevents or affects the exercise of any function by the Commission that the Commission considers appropriate for the purposes of or in the context of Division 2 of Part 9 of the Police Act 1990.*
- (6) *The Commission must not include in a report under Part 11 a finding or opinion that any conduct of a specified person is officer misconduct or officer maladministration unless the conduct is serious misconduct or serious maladministration.*
- (7) *The Commission is not precluded by subsection (6) from including in any such report a finding or opinion about any conduct of a specified person that may be officer misconduct or officer maladministration if the statement as to the finding or opinion does not describe the conduct as officer misconduct or officer maladministration.*

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

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

- (1) *The Commission is authorised to include in a report under section 132:*
  - (a) *statements as to any of the findings, opinions and recommendations of the Commission, and*
  - (b) *statements as to the Commission's reasons for any of the Commission's findings, opinions and recommendations.*
- (2) *The report must include, in respect of each affected person, a statement as to whether or not in all the circumstances the Commission is of the opinion that consideration should be given*

to the following:

- (a) *obtaining the advice of the Director of Public Prosecutions with respect to the prosecution of the person for a specified criminal offence,*
- (b) *the taking of action against the person for a specified disciplinary infringement,*
- (c) *the taking of action (including the making of an order under section 181D of the Police Act 1990) against the person as a police officer on specified grounds, with a view to dismissing, dispensing with the services of or otherwise terminating the services of the police officer,*
- (d) *the taking of reviewable action within the meaning of section 173 of the Police Act 1990 against the person as a police officer,*
- (e) *the taking of action against the person as a Crime Commission officer or an administrative employee on specified grounds, with a view to dismissing, dispensing with the services of or otherwise terminating the services of the Crime Commission officer or administrative employee.*

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

- (3) *An "affected person" is a person against whom, in the Commission's opinion, substantial allegations have been made in the course of or in connection with the investigation (including examination) concerned.*
- (4) *Subsection (2) does not limit the kind of statement that a report can contain concerning any affected person and does not prevent a report from containing a statement described in that subsection in respect of any other person.*

- 2.9 In considering any factual conclusions to be reached in its reports, the Commission applies the civil standard of proof, namely whether the relevant factual matters have been proved to the reasonable satisfaction of the Commission.<sup>1</sup> Accordingly findings can form the basis of opinions and recommendations, even if they do not reach the standard of beyond reasonable doubt.
- 2.10 The Commission has made a determination to protect the identities of all persons involved. Accordingly, all persons and places will be referred to by codenames in this report. There is to be no publication of the name or image of any of the codenamed persons or places in relation to the evidence given in Operation Kimbla or included in this report without further order of the Commission.

### **3. The Commission's Investigation**

- 3.1 On 21 June 2021, pursuant to s 44(1)(a) of the LECC Act, the Commission decided to commence an investigation into whether, on the evening of 14 and 15 February 2021 NSWPF officers used excessive and unreasonable force during the arrest of Civilian KIM1 and whether a NSWPF Officer inappropriately touched Civilian KIM1.
- 3.2 Examination of NSWPF records confirmed that at about 8:45pm on 14 February 2021 Civilian KIM1 was arrested by NSW Police officers from LOC1 in relation to his failure to abide by his bail conditions. Civilian KIM1 was transported to LOC1 where he was placed in a cell.
- 3.3 At about 11:30pm that evening Civilian KIM1 removed his pants and shoved them in the cell toilet, which resulted in water overflowing. Police entered the cell and removed Civilian KIM1 and placed him in another cell. The police report stated that Civilian KIM1 began to verbally abuse and threaten to assault police. It was alleged that Civilian KIM1 put his arms up, threw a punch with his left closed fist hitting Officer KIM3 on the chin and kicking him with his right leg.
- 3.4 Police charged Civilian KIM1 with assault police.
- 3.5 Civilian KIM1 then began to make threats of self-harm. As a result the Custody Manager contacted the NSW Ambulance Service.

---

<sup>1</sup> *Briginshaw v Briginshaw* [1938] 60 CLR 336; *Neat Holdings Pty Ltd v Karajan Holdings Pty Ltd* (1992) 67 ALJR 170.

- 3.6 Civilian KIM1 was sedated and conveyed by ambulance from the police station to LOC2 where he was admitted to the mental health TACT unit.
- 3.7 On 22 June 2021 at the Parramatta Children's Court the charge of assault police against Civilian KIM1 was dismissed by the Magistrate.
- 3.8 In furtherance of its investigation, the Commission served several notices pursuant to section 55 of the LECC Act upon the NSWPF, LOC2, the NSW Ambulance Service and the Children's Court of New South Wales.
- 3.9 A review of the CCTV produced by the NSWPF showed two significant events whilst Civilian KIM1 was restrained to the ambulance trolley prior to being conveyed to LOC2:
- Officer KIM4 touches the exposed nipple of Civilian KIM1 on two occasions whilst Civilian KIM1's head is covered by a blanket and he is restrained to a stretcher. Officer KIM4 along with other officers including Officer KIM3 and Officer KIM6 can be observed laughing in response.
  - Immediately prior to the ambulance trolley being wheeled out of view, Officer KIM7 and Civilian KIM1 can be seen looking at each other. Civilian KIM1 appears to be smiling at Officer KIM7. Officer KIM7 then moves quickly to grab Civilian KIM1 by the throat with his right hand.
- 3.10 The transcript of the court proceedings in the Children's Court of New South Wales relating to the charge of assault police against Civilian KIM1 was obtained and reviewed by the Commission. On the basis that the issue relating to the conduct of Civilian KIM1 and the involved officers whilst inside the cell was already considered by the Court, a decision was made that this issue would be excluded from the scope of the Commission's investigation.
- 3.11 On 24 January 2022 the Commission decided that it would hold examinations and that, due to the nature of the allegations, and after taking into account the factors set out in s 63 of the LECC Act, those examinations would be held in private.
- 3.12 Commissioner Drake held private examinations on 2, 3 and 4 February

2022.

3.13 The scope and purpose of the private examinations was:

*To investigate whether or not on 14 and 15 February 2021 at LOC1 officers from the NSW Police Force were involved in serious misconduct while Civilian KIM1, was in Police custody.*

3.14 The persons summoned to be examined were:

- Paramedic KIM2
- Officer KIM3
- Officer KIM4
- Officer KIM5
- Officer KIM6
- Officer KIM7.

## THE EVIDENCE

### Paramedic KIM2

3.15 Paramedic KIM2 gave the following evidence during his private examination:

- (a) He is a paramedic employed by the NSW Ambulance Service and has been employed by the NSW Ambulance Service for more than six and a half years.<sup>2</sup>
- (b) He was called to attend LOC1 on 14 or 15 February 2021 with another paramedic in response to a young male who was in custody and threatening suicide.<sup>3</sup>
- (c) He prepared the ambulance record relating to that incident.<sup>4</sup>
- (d) The ambulance record was created whilst waiting at the hospital to offload the patient.<sup>5</sup>
- (e) The ambulance attended LOC1 at 00:05. However, there was a delay in the paramedics getting to the patient.<sup>6</sup>
- (f) The ambulance departed LOC1 at 00:52.<sup>7</sup>

---

<sup>2</sup> Private examination NYQ at T6.

<sup>3</sup> Ibid.

<sup>4</sup> Private examination NYQ at T7.

<sup>5</sup> Ibid.

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

<sup>7</sup> Ibid.

- (g) On arrival, the police informed the paramedics that they had made a request pursuant to section 22 of the *Mental Health Act 2007* that Civilian KIM1 be taken to a hospital for a mental health assessment.<sup>8</sup>
- (h) When the paramedics entered the custody management room, Civilian KIM1 was in a cell.<sup>9</sup>
- (i) Paramedic KIM2 observed Civilian KIM1 sitting at the back of the cell, playing with the elastic from his pants.<sup>10</sup>
- (j) Police informed the paramedics that Civilian KIM1 was attempting to remove the elastic from his pants and further, that he had been hitting his head against the door of the cell prior to the paramedics arriving.<sup>11</sup>
- (k) Civilian KIM1 initially presented as agitated. He appeared to be angry towards the police officers that were present. He was yelling using abusive language and inviting officers in the cell to fight one-on-one.<sup>12</sup>
- (l) He attempted to perform a clinical assessment on Civilian KIM1. Civilian KIM1 was non-compliant in response to a lot of the questions posed but did answer some questions enabling the paramedics to determine that Civilian KIM1 was orientated.<sup>13</sup> This ruled out any medical reason as to why Civilian KIM1 would not be able to answer questions appropriately.<sup>14</sup>
- (m) The paramedics were unable to obtain clinical observations, including Civilian KIM1's blood pressure, heart rate, respiratory rate, temperature and blood sugar due to his "*aggressive*" behaviour at that time.<sup>15</sup>
- (n) The paramedics did not form an opinion as to whether Civilian KIM1 was suffering from the effects of intoxication.<sup>16</sup>
- (o) Despite the witness not having any independent recollection of Civilian KIM1's response to questions concerning suicidal thoughts or self-harm, he could conclude from the information

---

<sup>8</sup> Private examination NYQ at T11.

<sup>9</sup> Private examination NYQ at T9.

<sup>10</sup> Ibid.

<sup>11</sup> Ibid.

<sup>12</sup> Private examination NYQ at T9, 11.

<sup>13</sup> Private examination NYQ at T9-10.

<sup>14</sup> Private examination NYQ at T10.

<sup>15</sup> Private examination NYQ at T9-11.

<sup>16</sup> Private examination NYQ at T10.

recorded in his report that Civilian KIM1 denied having any suicidal thoughts and would likely have told him that he wasn't attempting self-harm.<sup>17</sup>

- (p) Civilian KIM1 was very non-compliant when being assessed and escorted to the hospital. Paramedic KIM2 could not recall whether he formed any views about Civilian KIM1's mental health or whether his behaviour could be described as being '*irrational*'.<sup>18</sup>
- (q) He confirmed that Civilian KIM1 was led out of a holding cell by a number of police officers and placed onto an ambulance trolley.<sup>19</sup>
- (r) It was decided to apply the mechanical restraint device (MRD) to Civilian KIM1 whilst on the trolley to facilitate the transport of Civilian KIM1 to the hospital. This was in addition to the seatbelt that is usually used on patients being conveyed to the hospital. The restraints are applied to the wrists and ankles of the person.<sup>20</sup>
- (s) It was necessary to apply the restraints to ensure everyone's safety in the confinement of the ambulance. This was based on the behaviour of Civilian KIM1 who was quite agitated and acting aggressively towards staff. Civilian KIM1 was yelling abusive language towards all staff and whilst in the cell, had been inviting officers in to fight him one-on-one.<sup>21</sup>
- (t) It was necessary to administer three injections to Civilian KIM1. The first injection was administered at 00:30, the second at 00:45 and the third at 00:50.<sup>22</sup>
- (u) The medications administered were to achieve a form of tranquilisation, to calm the patient in order to facilitate safe transport to the hospital.<sup>23</sup>
- (v) In the report he recorded that the first injection had no effect. It did not surprise him that the medication did not have an effect after the first dosage as there had been a number of times when this had occurred in the past.<sup>24</sup>

---

<sup>17</sup> Private examination NYQ at T10.

<sup>18</sup> Ibid.

<sup>19</sup> Ibid.

<sup>20</sup> Ibid.

<sup>21</sup> Private examination NYQ at T12-13.

<sup>22</sup> Private examination NYQ at T13-14.

<sup>23</sup> Private examination NYQ at T13.

<sup>24</sup> Private examination NYQ at T14.



- (w) In his report he recorded that the second dose was “*effective*”. By “*effective*” he recalled that Civilian KIM1 became a lot calmer whilst still being alert and able to communicate.<sup>25</sup>
- (x) The first two injections administered were Droperidol and the final medication was Midazolam.<sup>26</sup>
- (y) The final injection was a different medication as paramedics, pursuant to protocol, are only allowed to administer two doses of Droperidol. If the patient still requires further sedation, Midazolam is the next “*go-to*” medication.<sup>27</sup> It was administered when Civilian KIM1 was in the ambulance.<sup>28</sup>
- (z) In his report he recorded that Civilian KIM1 was spitting at the officers present at the time, in addition to himself and the other paramedic.<sup>29</sup>
- (aa) He recalled that Civilian KIM1 only spat on one occasion after being removed from the cell, whilst on the stretcher. He recalled that there was some spit present in the cell.<sup>30</sup>
- (bb) In response to being shown CCTV footage of the incident he recalled that Civilian KIM1 spat when the stretcher commenced moving out of the charge room, when the footage shows that an officer grabs Civilian KIM1 by the throat.<sup>31</sup>
- (cc) He recalled seeing an officer grab the patient around the head area but wasn’t sure exactly where he was grabbed.<sup>32</sup>
- (dd) He did not see Civilian KIM1 spit. However, just before the officer grabbed Civilian KIM1 he recalled one of the officers saying “*he spat on me.*” He could not recall which officer said this.<sup>33</sup>
- (ee) He did not recall Civilian KIM1 making any noises as if he was going to spit again whilst on the stretcher.<sup>34</sup>
- (ff) When the witness was asked about what steps are usually taken to minimise the risk to others of a patient spitting, he gave evidence that sometimes an oxygen mask can be placed on the

---

<sup>25</sup> Ibid.

<sup>26</sup> Ibid.

<sup>27</sup> Ibid.

<sup>28</sup> Private examination NYQ at T25.

<sup>29</sup> Private examination NYQ at T15.

<sup>30</sup> Private examination NYQ at T15.

<sup>31</sup> Private examination NYQ at T18, 23.

<sup>32</sup> Private examination NYQ at T22-23.

<sup>33</sup> Private examination NYQ at T23.

<sup>34</sup> Private examination NYQ at T15.

patient's face. However, from his previous experience where restraints are applied, the patient is still able to take the mask off their face if they really want to.<sup>35</sup>

- (gg) He could not recall whether there was any attempt by himself or the other paramedic to put a mask or any form of covering over Civilian KIM1's mouth.<sup>36</sup>
- (hh) After being shown the CCTV footage he agreed that a police officer had placed a blanket over the Civilian KIM1's face. He was not involved in that action and had not observed the officer placing the blanket on Civilian KIM1's face.<sup>37</sup>
- (ii) He did not know why the blanket was placed over Civilian KIM1's face but speculated that it was to stop Civilian KIM1 from spitting.<sup>38</sup>
- (jj) The blanket used to cover Civilian KIM1's face was one of two blankets that the paramedics had brought in on the trolley for the comfort of the patient.<sup>39</sup>
- (kk) He has knowledge of the potential medical effects of applying pressure to a person's neck through his medical training. Prolonged pressure to the neck area can cut off blood or oxygen supply to the brain and can result in unconsciousness or death.<sup>40</sup> He agreed that it would not be good practice for anyone to apply pressure to a person's neck.<sup>41</sup> He agreed that the degree of force applied by the officer to Civilian KIM1's neck was significant.<sup>42</sup>
- (ll) Any form of significant pressure to a person's neck can have a detrimental outcome for a person if it is held for a prolonged period of time. There is no particular time limit and it should be avoided.<sup>43</sup>
- (mm) Placing a blanket over someone's face should also be avoided as it could reduce the patient's oxygen supply. The effects of this action would be exacerbated if someone were to put their hand over the blanket covering the patient's mouth or nose.<sup>44</sup>

---

<sup>35</sup> Private examination NYQ at T15.

<sup>36</sup> Ibid.

<sup>37</sup> Private examination NYQ at T16, 18.

<sup>38</sup> Private examination NYQ at T19.

<sup>39</sup> Private examination NYQ at T18.

<sup>40</sup> Private examination NYQ at T19.

<sup>41</sup> Private examination NYQ at T20.

<sup>42</sup> Private examination NYQ at T23.

<sup>43</sup> Ibid.

<sup>44</sup> Private examination NYQ at T20.

- (nn) He agreed that whilst a blanket is over the patient's face, the observer would not be able to monitor the patient's breathing or determine whether the patient was in any distress.<sup>45</sup>
- (oo) He did not have any independent recollection of an officer pointing at or touching Civilian KIM1's nipple. However, after being shown the CCTV footage, he agreed that an officer touched Civilian KIM1's left nipple.<sup>46</sup>
- (pp) He did not recall any of the officers laughing.<sup>47</sup>
- (qq) He agreed that the touching of Civilian KIM1's nipple and the laughter during such process was not likely to reduce Civilian KIM1's agitation and was counterproductive to calming Civilian KIM1 and transporting him safely to hospital.<sup>48</sup>

### Officer KIM3

3.16 Officer KIM3 gave the following evidence during his private examination:

- a) He joined the NSWPF in 2015. He attained the rank of Constable in 2016 and Senior Constable on 12 April 2021.<sup>49</sup>
- b) He is currently stationed at LOC3.<sup>50</sup>
- c) In February 2021, he was working in the custody area of LOC1.<sup>51</sup>
- d) The witness was shown a NSWPF Custody Management Record created on 14 February at 22:25 relating to Civilian KIM1.<sup>52</sup> He confirmed that it would have been generated as a consequence of Civilian KIM1 being brought into LOC1. He did not recall seeing the document before, however confirmed that he was aware of the general process for its creation.<sup>53</sup>
- e) He agreed that the following observations as recorded in the custody management record were accurate.

---

<sup>45</sup> Ibid.

<sup>46</sup> Private examination NYQ at T20-21.

<sup>47</sup> Private examination NYQ at T21.

<sup>48</sup> Private examination NYQ at T25.

<sup>49</sup> Private examination DGX at T4-5.

<sup>50</sup> Private examination DGX at T5.

<sup>51</sup> Ibid.

<sup>52</sup> Private examination DGX at T8.

<sup>53</sup> Private examination DGX at T5-6.

- *“Intoxication level - moderately affected.”*<sup>54</sup>
  - *“Does the person show severe agitation or aggressiveness? Yes.”*<sup>55</sup>
  - *“Has the person made a threat of self-injury in custody? No.”*<sup>56</sup>
  - *“Does the person appear irrational? Yes.”*<sup>57</sup>
- f) Civilian KIM1 made a number of threats and attempted to commit self-harm. However, that occurred after the custody management record was created.<sup>58</sup>
- g) He clarified that although the custody management record is generated when the person first comes in to custody it should be updated if there is a change in the person’s behaviour.<sup>59</sup>
- h) Civilian KIM1’s irrationality persisted throughout the time he was at the police station.<sup>60</sup>
- i) He was aware that Civilian KIM1 was 15 years old at the time.<sup>61</sup>
- j) He was not aware that Civilian KIM1 was Aboriginal.<sup>62</sup>
- k) On the relevant evening he was assisting in custody management as custody assist.<sup>63</sup>
- l) Paramedics were called to LOC1 due to threats of self-harm by Civilian KIM1 and the irate manner in which Civilian KIM1 presented.<sup>64</sup>
- m) The Custody Manager made the decision to call the ambulance.<sup>65</sup>
- n) He prepared a statement pursuant to a Directive Memorandum from the NSWPF in relation to a complaint investigation.<sup>66</sup>
- o) He agreed that the police investigator was looking at the alleged actions of Officer KIM4 in relation to the touching of Civilian

---

<sup>54</sup> Private examination DGX at T6.

<sup>55</sup> Ibid.

<sup>56</sup> Private examination DGX at T7.

<sup>57</sup> Ibid.

<sup>58</sup> Ibid.

<sup>59</sup> Ibid.

<sup>60</sup> Private examination DGX at T8.

<sup>61</sup> Ibid.

<sup>62</sup> Private examination DGX at T9.

<sup>63</sup> Private examination DGX at T8.

<sup>64</sup> Private examination DGX at T24.

<sup>65</sup> Private examination DGX at T24-25.

<sup>66</sup> Private examination DGX at T25.

KIM1's nipple and stomach.<sup>67</sup>

- p) In his statement, he noted that when paramedics arrived Civilian KIM1 became *'irate'*.<sup>68</sup> By *'irate'* he explained that Civilian KIM1 was pacing back and forth and screaming. Civilian KIM1 did not want to be sedated and didn't want to go to hospital.<sup>69</sup>
- q) He recalled the paramedics administering one injection.<sup>70</sup>
- r) In his directed statement he stated that he and Officer KIM4 walked Civilian KIM1 from the cell to the ambulance trolley at which time Civilian KIM1 resisted and attempted to kick and punch him and Officer KIM4.<sup>71</sup>
- s) At this time he recalled that Civilian KIM1 was also trying to spit and was throwing himself on the ground to become a dead weight to avoid going on to the trolley.<sup>72</sup>
- t) He explained that by *'trying to spit'* he meant that Civilian KIM1 was making phlegm noises, drawing back and snorting.<sup>73</sup>
- u) As Civilian KIM1 was being led out of the cell, he was saying, *"I'm not getting sedated. No, don't sedate me. No, don't sedate me."*<sup>74</sup>
- v) In his statement, he provided that a number of other officers attended the custody area to assist in restraining Civilian KIM1.<sup>75</sup>
- w) When shown CCTV footage of the witness pushing Civilian KIM1's head back by the side of his cheek whilst on the trolley, he confirmed that he was doing that because Civilian KIM1 was making spitting noises.<sup>76</sup>
- x) As the footage played on, he explained that because Civilian KIM1's head was facing sideways, he placed a blanket over the side of Civilian KIM1's head to prevent him from spitting at the other officers whilst they were trying to restrain him.<sup>77</sup> He clarified that at this stage Civilian KIM1 was not spitting, just making spitting noises.<sup>78</sup>

---

<sup>67</sup> Private examination DGX at T26.

<sup>68</sup> Ibid.

<sup>69</sup> Private examination DGX at T26-27.

<sup>70</sup> Private examination DGX at T27.

<sup>71</sup> Ibid.

<sup>72</sup> Ibid.

<sup>73</sup> Ibid.

<sup>74</sup> Private examination DGX at T28.

<sup>75</sup> Ibid.

<sup>76</sup> Private examination DGX at T33.

<sup>77</sup> Private examination DGX at T33-34.

<sup>78</sup> Private examination DGX at T34.

- y) After being shown CCTV footage of the incident it prompted him to recall that Officer KIM4 pretended to flick Civilian KIM1's exposed nipple and made an immature noise. He further stated that to his recollection, Officer KIM4 did not touch Civilian KIM1, *"that his finger merely hovered over Civilian KIM1."*<sup>79</sup>
- z) He was standing in close proximity to Civilian KIM1, positioned at Civilian KIM1's left shoulder trying to hold down his arm.<sup>80</sup>
- aa) Whilst he had a clear view of Civilian KIM1's exposed chest, he was concentrating on Civilian KIM1's head and on the spitting noises that he was continuing to make.<sup>81</sup>
- bb) He clarified that the noise Officer KIM4 made at this time was similar to the noise of a turkey, a *"gobble-gobble"*.<sup>82</sup>
- cc) When asked whether, having seen the CCTV footage, he agreed that the footage clearly shows that Officer KIM4 touches Civilian KIM1's nipple, he responded that he could not recall.<sup>83</sup>
- dd) Later, when shown the CCTV footage, he responded to the proposition that the footage shows Officer KIM4 touch Civilian KIM1's nipple twice as follows:
- "No I disagree with that. I don't recall - I don't recall - I had to see this footage myself, but it looks like he hovers over it. To the best of my knowledge and recollection, that's what he's done."*<sup>84</sup>
- ee) When shown the footage in slow-motion he maintained his view that Officer KIM4 appears to hover over Civilian KIM1's nipple.<sup>85</sup> When asked whether that's based on his recollection of events or in viewing the footage, he responded:
- "Both. I feel like if he had touched it, I probably would have remembered that. I didn't remember this happening until I was shown the footage and by the footage, it still looks like he's hovering over it."*<sup>86</sup>
- ff) He agreed that the footage showed Officer KIM4 laughing and

---

<sup>79</sup> Private examination DGX at T29.

<sup>80</sup> Ibid.

<sup>81</sup> Ibid.

<sup>82</sup> Ibid.

<sup>83</sup> Private examination DGX at T30.

<sup>84</sup> Private examination DGX at T34-35.

<sup>85</sup> Private examination DGX at T42.

<sup>86</sup> Private examination DGX at T42-43.

Officer KIM6 either smiling or laughing.<sup>87</sup>

- gg) He agreed that the footage shows him laughing at Officer KIM4.<sup>88</sup>
- hh) In response to be asked what was so funny, he responded:

*“Officer KIM4’s an idiot and in the time we were doing something that - like this, he’s taken the chance to be a clown. I’m not laughing at his actions per se; I’m laughing at - well, laughing at him.”*<sup>89</sup>
- ii) He agreed that Officer KIM4 was making a joke at the expense of Civilian KIM1.<sup>90</sup>
- jj) He agreed that the actions of Officer KIM4 and the officers laughing, including himself, was contrary to their common purpose of making Civilian KIM1 less agitated in order to safely convey him back to hospital.<sup>91</sup>
- kk) He stated that looking back at this incident now, it was a ‘*stupid mistake*’ of him to have laughed. He agreed that it was not funny.<sup>92</sup>
- ll) He did not recall seeing Officer KIM7 grab Civilian KIM1 around the throat.<sup>93</sup>
- mm) After being shown footage of the above incident, he gave evidence that he believed Civilian KIM1 was trying to spit at Officer KIM7 and Officer KIM4, although he didn’t know whether Civilian KIM1 actually spat on that occasion.<sup>94</sup>
- nn) He confirmed that Civilian KIM1 “*attempted*” to spit more than once but he could not recall how many times he spat.<sup>95</sup>
- oo) He could not recall receiving any formal training on any method to prevent a person from spitting or to protect officers from spitting. The blanket was used as the paramedics did not have a spit guard.<sup>96</sup>

---

<sup>87</sup> Private examination DGX at T35.

<sup>88</sup> Ibid.

<sup>89</sup> Private examination DGX at T36.

<sup>90</sup> Ibid.

<sup>91</sup> Ibid.

<sup>92</sup> Ibid.

<sup>93</sup> Private examination DGX at T39.

<sup>94</sup> Private examination DGX at T39-40.

<sup>95</sup> Ibid.

<sup>96</sup> Ibid.

- pp) He was not sure whether there was a spit guard or anything of that nature kept at the police station.<sup>97</sup> He agreed that it would be beneficial for police to be given reminders that if they have someone in custody that is either spitting or threatening to spit, a spit guard should be used.<sup>98</sup>
- qq) He agreed that during the course of his training at the academy he learned the elements of common assault.<sup>99</sup>
- rr) He agreed that the offence of common assault is commonly used by police.<sup>100</sup>
- ss) He agreed that if Officer KIM4 did touch the nipple of Civilian KIM1 intentionally or recklessly, without consent and without lawful excuse, it would constitute a criminal offence.<sup>101</sup>
- tt) He is familiar with the NSWPF Police Force Code of Conduct and Ethics.<sup>102</sup>
- uu) He was not aware that employees are encouraged to challenge inappropriate behaviour, however he stated that it made sense.<sup>103</sup>
- vv) Based on the assumption that Officer KIM4 hovered over Civilian KIM1's nipple and made an immature sound, he agreed with the following propositions.<sup>104</sup>
- Officer KIM4 was not behaving with courtesy or respect towards Civilian KIM1.
  - The actions of Officer KIM4 were disrespectful and demeaning.
  - That type of conduct brings the reputation of the NSWPF into disrepute.
- ww) At no stage did he say anything to Officer KIM4 about his actions or challenge his conduct.<sup>105</sup>

---

<sup>97</sup> Ibid.

<sup>98</sup> Private examination DGX at T41-42.

<sup>99</sup> Private examination DGX at T43.

<sup>100</sup> Ibid.

<sup>101</sup> Private examination DGX at T45.

<sup>102</sup> Ibid.

<sup>103</sup> Private examination DGX at T47.

<sup>104</sup> Private examination DGX at T48.

<sup>105</sup> Private examination DGX at T48-49.



- xx) He did not hear any other officers' comment on Officer KIM4's behaviour.<sup>106</sup>

#### Officer KIM4

3.17 Officer KIM4 stated the following during his private examination:

- a) He joined the NSWPF as a Probationary Constable in 2019 and attained the rank of Constable in 2020.<sup>107</sup>
- b) He is currently stationed at LOC3.<sup>108</sup>
- c) Prior to giving evidence before the Commission, he reviewed the event relating to the relevant incident, the run sheets of the car crews for the night and his reply in relation to a former complaint that had previously been put to him.<sup>109</sup>
- d) At the time Civilian KIM1 came into custody, he was aware that Civilian KIM1 was a juvenile however he did not know his exact age. He had dealt with Civilian KIM1 prior to 14 and 15 February 2021.<sup>110</sup>
- e) He was aware that Civilian KIM1 is Aboriginal.<sup>111</sup>
- f) He confirmed that he filled out the document titled 'Request by a member of the NSWPF for assessment of a detained person.'<sup>112</sup> He understood that the document permits Civilian KIM1 to be taken to hospital pursuant to section 22 of the *Mental Health Act 2007* for a mental health assessment.<sup>113</sup>
- g) He completed the document whilst at the hospital.<sup>114</sup>
- h) In relation to the notes he recorded concerning Civilian KIM1's threats and actions of self-harm, he could not recall whether he had observed the behaviour firsthand or whether he was told about the behaviour. It was his belief at the time that he signed the document that Civilian KIM1's behaviour was such that he required a mental health assessment.<sup>115</sup> He could not recall whether he heard Civilian KIM1 make any threats that he wanted

---

<sup>106</sup> Private examination DGX at T49.

<sup>107</sup> Private examination ISG at T5.

<sup>108</sup> Ibid.

<sup>109</sup> Ibid.

<sup>110</sup> Ibid.

<sup>111</sup> Private examination ISG at T8-9.

<sup>112</sup> Private examination ISG at T9.

<sup>113</sup> Private examination ISG at T10.

<sup>114</sup> Private examination ISG at T47.

<sup>115</sup> Private examination ISG at T10.

to self-harm. He could not recall whether he witnessed Civilian KIM1 put any item of clothing around his neck.<sup>116</sup>

- i) He clarified, later in his evidence, that when he was involved in restraining Civilian KIM1 to the stretcher, he didn't think he was aware of any attempts or suggestion of Civilian KIM1 self-harming.<sup>117</sup>
- j) He was "*pretty sure*" that he learned the information conveyed in the section 22 notice after the CCTV footage ended, being at the point that the ambulance trolley was wheeled out of the custody room.<sup>118</sup>
- k) From dealings with Civilian KIM1 he had formed the view that Civilian KIM1 was affected by alcohol.<sup>119</sup> From his observations of Civilian KIM1 at LOC1, he agreed with the assessment contained in the custody management record that Civilian KIM1 showed severe agitation or aggression, and stated that Civilian KIM1 was "*very aggressive*".<sup>120</sup>
- l) Civilian KIM1 was banging, screaming and yelling whilst in the holding cell. He agreed that Civilian KIM1's behaviour could be described as erratic or irrational.<sup>121</sup>
- m) He clarified his evidence and advised that, prior to the commencement of the CCTV footage which depicts Civilian KIM1 being restrained to the ambulance trolley, he had dealt with Civilian KIM1 that night for approximately ten minutes.<sup>122</sup>
- n) He was then made aware that Civilian KIM1 had assaulted Officer KIM3.<sup>123</sup>
- o) He agreed that the CCTV footage showed that Civilian KIM1 wasn't being uncooperative at all times. Civilian KIM1 got on to the trolley on his own without needing to be picked up or assisted by police.<sup>124</sup>
- p) In response to the CCTV footage of Officer KIM3 placing his hand on the face and jaw of Civilian KIM1, he suggested that Officer KIM3 may have done that because Civilian KIM1 was likely

---

<sup>116</sup> Ibid.

<sup>117</sup> Private examination ISG at T47.

<sup>118</sup> Ibid.

<sup>119</sup> Private examination ISG at T11.

<sup>120</sup> Ibid.

<sup>121</sup> Private examination ISG at T11-12.

<sup>122</sup> Private examination ISG at T45-46.

<sup>123</sup> Private examination ISG at T46.

<sup>124</sup> Private examination ISG at T17.

to spit. However, he could not recall whether he was spitting at that point in time.<sup>125</sup> He was aware that Civilian KIM1 liked to spit as he spat numerous times at him and other officers whilst in custody that night, as well as during his previous dealings with Civilian KIM1.<sup>126</sup>

- q) When shown the CCTV footage of a blanket being placed over Civilian KIM1's face by Officer KIM3, he explained that this was done because Civilian KIM1 had just spat at the officers.<sup>127</sup> Although, he could not recall whether Civilian KIM1 actually spat or whether he was making noises that indicated that he was about to spit.<sup>128</sup>
- r) He had never seen a spit guard used at LOC1 before and was unsure whether or not a spit guard was kept at the station.<sup>129</sup>
- s) The witness was shown a statement that he had provided in response to a Directive Memorandum and confirmed that he understood the direction he was given which read as follows.

*"You are directed to give a complete and accurate account of your actions in LOC1 in relation to YP: Civilian KIM1. In particular, your actions in restraining the YP on the ambulance trolley and the nipple and stomach area of the YP."<sup>130</sup>*

- t) He agreed that up until the time he was shown CCTV footage on 5 June 2021 he had had no recollection of those two specific allegations.<sup>131</sup>
- u) He agreed that he wrote the following in his statement after viewing the CCTV footage.

*"I agree I observed myself standing alongside other officers and point in the direction of Civilian KIM1's chest. I did not touch his chest, nipple or stomach region. I do not recall what was said between myself and other officers."<sup>132</sup>*

- v) He agreed that he came to the view that he didn't touch Civilian KIM1's chest, nipple or stomach because of his viewing of the CCTV footage.<sup>133</sup> He had no independent recollection of those

---

<sup>125</sup> Private examination ISG at T17-18

<sup>126</sup> Private examination ISG at T18.

<sup>127</sup> Private examination ISG at T20.

<sup>128</sup> Ibid.

<sup>129</sup> Private examination ISG at T20-21.

<sup>130</sup> Private examination ISG at T8.

<sup>131</sup> Private examination ISG at T14.

<sup>132</sup> Ibid.

<sup>133</sup> Ibid.

events.<sup>134</sup>

- w) When he was later shown CCTV footage of these events, he agreed that the footage appeared to show that he made contact with Civilian KIM1's nipple on one or two occasions.<sup>135</sup>
- x) When again shown the footage in slow motion, he agreed that the footage clearly depicts him touching Civilian KIM1 lightly on the nipple on two occasions.<sup>136</sup>
- y) The CCTV footage that he was shown for the purposes of preparing his response to the Directive Memorandum was different to the footage he was shown during the examination. The footage was from a different camera angle.<sup>137</sup>
- z) He confirmed that the footage shown during his examination provided a much clearer view than the footage he had previously viewed.<sup>138</sup>
- aa) He agreed that after his actions in touching Civilian KIM1'S nipple, the CCTV footage appears to show him lifting up his head and laughing.<sup>139</sup>
- bb) He agreed that the footage also showed officers KIM3 and KIM6 laughing.<sup>140</sup>
- cc) He recalled that he said something funny to "*lighten the mood*" which made him and several other officers laugh.<sup>141</sup>
- dd) Later in his evidence when asked by the Commissioner why he felt the need to lighten the mood, he responded:

*"A: Because it was tense. I just - everyone was sort of a bit heated. I just thought it was necessary to lighten the mood."*<sup>142</sup>
- ee) It was put to the witness that a light-hearted mood or joke might not be useful in this situation in relation to the care and custody of Civilian KIM1 and further, that it did not convey a very caring attitude in line with the Code of Conduct and Ethics of the

---

<sup>134</sup> Private examination ISG at T14.

<sup>135</sup> Private examination ISG at T21.

<sup>136</sup> Private examination ISG at T29.

<sup>137</sup> Private examination ISG at T22.

<sup>138</sup> Ibid.

<sup>139</sup> Private examination ISG at T21, 29.

<sup>140</sup> Private examination ISG at T22.

<sup>141</sup> Private examination ISG at T15.

<sup>142</sup> Private examination ISG at T25.

NSWPF, he responded *“that’s fair to say.”*<sup>143</sup>

- ff) He did not recall what he said and furthermore, could not recall whether he made a noise or used words.<sup>144</sup>
- gg) In response to the suggestion that he made a turkey gobbler noise he could not recall, but stated that he thought it wasn’t something he would do.<sup>145</sup>
- hh) He agreed that the footage showed that he lightly tapped Civilian KIM1 twice on the stomach or abdomen using the back of his right hand.<sup>146</sup>
- ii) When asked whether he thought that touching Civilian KIM1 on the nipple or pointing at Civilian KIM1’s nipple and laughing was appropriate in the circumstances, he stated the following.

*“No, I don’t think it was appropriate. I think I was just trying to make a joke amongst the officers.”*<sup>147</sup>
- jj) He initially would not agree that Civilian KIM1 would have heard the officers laughing as his face was under a towel but he conceded that it is probable that he did.<sup>148</sup>
- kk) Later in his evidence, when asked about whether the laughter was intended to ridicule or offend Civilian KIM1 he responded:

*“A – No, there was no ridicule. I wasn’t trying to offend him in any way at all.”*<sup>149</sup>
- ll) He confirmed that, as a police officer, he had never done that to persons that he had dealt with.<sup>150</sup>
- mm) He was familiar with the NSWPF Code of Conduct and Ethics.<sup>151</sup>
- nn) He agreed that his behaviour in either touching or pointing at Civilian KIM1’s nipple and then laughing was not acting in a manner that protects the reputation of the NSWPF.<sup>152</sup>
- oo) Furthermore, he agreed that his conduct did not amount to

---

<sup>143</sup> Private examination ISG at T26.

<sup>144</sup> Private examination ISG at T15.

<sup>145</sup> Ibid.

<sup>146</sup> Private examination ISG at T22, 29.

<sup>147</sup> Private examination ISG at T38.

<sup>148</sup> Ibid.

<sup>149</sup> Private examination ISG at T48.

<sup>150</sup> Ibid.

<sup>151</sup> Private examination ISG at T39.

<sup>152</sup> Private examination ISG at T40.

treating Civilian KIM1 with respect, courtesy or fairness.<sup>153</sup>

- pp) Having been shown the video footage of Officer KIM7 grabbing Civilian KIM1 by the throat, he responded that this was a reaction to Civilian KIM1 spitting at Officer KIM7.<sup>154</sup>
- qq) He recalled that he then covered Civilian KIM1's mouth to prevent any further spitting by Civilian KIM1.<sup>155</sup>
- rr) He believed the spit landed on Officer KIM7's chin and mouth region.<sup>156</sup>
- ss) When shown video footage of this event at a slow speed, he agreed that on the footage you cannot see any spit flying through the air. However, he maintained that he was "*pretty sure*" Civilian KIM1 spat on Officer KIM7 as he recalled Officer KIM7 wiping his face later when they were in the ambulance.<sup>157</sup>
- tt) He and Officer KIM7 conveyed Civilian KIM1 to the hospital in the ambulance.<sup>158</sup> He recalled that Civilian KIM1 spat at Officer KIM7 for a second time when the trolley was in the back of the ambulance.<sup>159</sup>
- uu) He confirmed that at the Police Academy, officers are taught how to use various forms of force upon persons, including force involving weapons, as well as weaponless control. During the course of that training, police are advised to avoid using certain types of restraints or touching certain parts of the body, including a person's neck, unless absolutely necessary. He was asked whether the reason that police should avoid the neck area is because it can potentially have serious health consequences to a person, he replied that he would assume so.<sup>160</sup>
- vv) The witness was taken to an extract from the NSWPF document entitled 'Weapons and Tactics Policy and Review, Weaponless Control', specifically to the section headed 'Defence against Chokes' which describes the potential health risks to officers if they are choked. The witness agreed with the content of the extract and stated that he vaguely remembered being made aware of the consequences of a choke hold during his training.<sup>161</sup>

---

<sup>153</sup> Private examination ISG at T41.

<sup>154</sup> Private examination ISG at T26, 43.

<sup>155</sup> Private examination ISG at T27.

<sup>156</sup> Private examination ISG at T26-27.

<sup>157</sup> Private examination ISG at T42.

<sup>158</sup> Ibid.

<sup>159</sup> Ibid.

<sup>160</sup> Private examination ISG at T32.

<sup>161</sup> Private examination ISG at T33-34.

- ww) In response to the witness being shown an extract from the NSWPF Handbook under the heading 'Custody' he agreed that choke holds should be avoided.<sup>162</sup>
- xx) He supported the idea of a spit guard when dealing with a person who spits as it would protect the officers from being spat at, and prevent the risk of injury to the person who is spitting.<sup>163</sup>

## Officer KIM5

3.17 Officer KIM5 gave the following evidence during his private examination:

- a) He joined the NSWPF in 2019 and currently holds the rank of Constable at LOC3.<sup>164</sup>
- b) Prior to attending the private examination he viewed CCTV footage relating to the incident. The footage was from only one camera angle and ran for a few seconds. He viewed this footage to assist in responding to a Directive Memorandum that he had received relating to these events.<sup>165</sup>
- c) He provided a statement on 7 April 2021 in the prosecution of Civilian KIM1 relating to a charge of assault police which allegedly occurred on 14 February 2021.<sup>166</sup>
- d) He was aware that the charge against Civilian KIM1 was dismissed by the Magistrate in the Parramatta Children's Court on 22 June 2021.<sup>167</sup>
- e) On 14 February 2021, after Civilian KIM1 had been apprehended he drove to the location and conveyed Civilian KIM1 to LOC1 in his caged vehicle.<sup>168</sup>
- f) He then left LOC1 to attend to other duties before being recalled some time later to assist with restraining Civilian KIM1 for paramedics.<sup>169</sup>
- g) The witness was shown a document that he acknowledged he provided in response to the Directive Memorandum.<sup>170</sup>

---

<sup>162</sup> Private examination ISG at T35.

<sup>163</sup> Private examination ISG at T44-45.

<sup>164</sup> Private examination CFC at T5.

<sup>165</sup> Private examination CFC at T5-6.

<sup>166</sup> Private examination CFC at T6.

<sup>167</sup> Private examination CFC at T6.

<sup>168</sup> Private examination CFC at T7.

<sup>169</sup> Ibid.

<sup>170</sup> Private examination CFC at T7-8.

- h) He could not recall whether, when he was called to assist with restraining Civilian KIM1, Civilian KIM1 was on the ambulance trolley or in the cell. He thought that Civilian KIM1 may have been in the cell when he arrived.<sup>171</sup>
- i) He believed that he may have assisted in extracting Civilian KIM1 from the cell and on to the ambulance stretcher.<sup>172</sup>
- j) When restraining Civilian KIM1 to the ambulance trolley, he restrained the top half of Civilian KIM1 before moving down to his lower half to restrain his legs.<sup>173</sup>
- k) It had been explained to him that Civilian KIM1 was being taken by paramedics to the hospital because he had attempted to self-harm with his shirt.<sup>174</sup>
- l) He was not aware of any other behaviour exhibited by Civilian KIM1 in custody that night prior to his involvement with him. However, during his interaction with Civilian KIM1, he observed him as being “*pretty violent*”.<sup>175</sup> Specifically, whilst in the cell, he recalled Civilian KIM1 pacing, threatening to fight the officers, spitting at the cell door and being verbally abusive.<sup>176</sup>
- m) He was not aware that Civilian KIM1 had allegedly punched another officer.<sup>177</sup>
- n) He was not aware that Civilian KIM1 was being held in custody as a result of being in breach of his bail conditions. He believed that Civilian KIM1 was in custody arising from an incident that he had attended earlier in the evening, related to Civilian KIM1 abusing or intimidating a member of the public.<sup>178</sup>
- o) He understood that Civilian KIM1 was under 18 years old at the time, but did not know his specific age.<sup>179</sup>
- p) He was not aware that Civilian KIM1 is Aboriginal.<sup>180</sup>

---

<sup>171</sup> Private examination CFC at T9-10.

<sup>172</sup> Private examination CFC at T10.

<sup>173</sup> Private examination CFC at T9.

<sup>174</sup> Private examination CFC at T10.

<sup>175</sup> Ibid.

<sup>176</sup> Ibid.

<sup>177</sup> Private examination CFC at T10.

<sup>178</sup> Private examination CFC at T11.

<sup>179</sup> Ibid.

<sup>180</sup> Ibid.



- q) He described Civilian KIM1 as having a slim build, weighing approximately 70 kilograms with a height of approximately 160-170 centimetres.<sup>181</sup>
- r) After being shown CCTV footage of a blanket being placed over Civilian KIM1's face whilst on the ambulance trolley, he stated that he did not have any recollection of that occurring.<sup>182</sup>
- s) After having been shown CCTV footage, he acknowledged that he could see Officer KIM4's hand motion towards Civilian KIM1's left nipple on two occasions. However he could not confirm whether or not physical contact was made and had no independent recollection of this event.<sup>183</sup>
- t) He acknowledged that on the CCTV footage, several officers including Officers KIM3, KIM4 and KIM6 appear to be laughing, and that he looks up at the officers at the time. However, he did not have any independent recollection of those officers laughing.<sup>184</sup>
- u) He could not recall having heard any particular noise when he looked up at the officers laughing.<sup>185</sup>
- v) He could not recall smiling or laughing.<sup>186</sup>
- w) He could not recall anything amusing that may have happened at the time to cause the officers to laugh.<sup>187</sup>
- x) He agreed that this situation would have been "*worrisome*" for Civilian KIM1 and agreed that the laughter and behaviour of the officers was counterproductive to the purpose of the ambulance officers in attempting to calm Civilian KIM1 to transport him safely to the hospital.<sup>188</sup>
- y) He was familiar with the NSWPF Code of Conduct and Ethics as he was taught it at the Police Academy and has been reminded of this policy on multiple occasions throughout his career as a police officer.<sup>189</sup>

---

<sup>181</sup> Ibid.

<sup>182</sup> Private examination CFC at T15.

<sup>183</sup> Ibid.

<sup>184</sup> Private examination CFC at T15-16.

<sup>185</sup> Private examination CFC at T23.

<sup>186</sup> Private examination CFC at T17.

<sup>187</sup> Private examination CFC at T17.

<sup>188</sup> Ibid.

<sup>189</sup> Private examination CFC at T18.

- z) He agreed, having viewed the CCTV footage, that Officer KIM4's conduct was disrespectful and demeaning towards Civilian KIM1.<sup>190</sup>
- aa) He agreed that Officer KIM4's actions brought the NSWPF into disrepute.<sup>191</sup>
- bb) At the time he thought the officers must have had a joke with each other. He didn't "*think anything*" of the officer's laughing or joking.<sup>192</sup>
- cc) It was put to the witness that the officers who were not laughing or joking had an obligation to challenge that conduct. He agreed that, in the context in which it was presented, the officers did have such an obligation.<sup>193</sup>
- dd) He stated that Civilian KIM1 was continuously spitting at the officers and stated that the reason that he was asked to assist in restraining Civilian KIM1 was because "*at every single point he was violent and resistive.*"<sup>194</sup>
- ee) When he was asked about how relevant Civilian KIM1's behaviour was in this context, he acknowledged that the officers were not entitled to behave in that manner due to Civilian KIM1's bad behaviour.<sup>195</sup>
- ff) He then conceded that the conduct of the officers in laughing whilst Civilian KIM1 had a blanket over his head was not satisfactory.<sup>196</sup>
- gg) He agreed that an officer in that situation ought to have challenged the conduct of the officers laughing.<sup>197</sup>

### Officer KIM6

3.18 Officer KIM6 gave the following evidence during his private examination:

- a) He joined the NSWPF as a Probationary Constable in 2020 and attained the rank of Constable on 19 June 2021.<sup>198</sup>

---

<sup>190</sup> Private examination CFC at T20.

<sup>191</sup> Ibid.

<sup>192</sup> Ibid.

<sup>193</sup> Private examination CFC at T20-21.

<sup>194</sup> Private examination CFC at T21-22.

<sup>195</sup> Private examination CFC at T22.

<sup>196</sup> Private examination CFC at T22-23.

<sup>197</sup> Private examination CFC at T23.

<sup>198</sup> Private examination SPV at T5.

- b) He is currently stationed at the LOC3.<sup>199</sup>
- c) Prior to attending the private examination he had refreshed his recollection of the events of 14 and 15 February 2021 with a response he provided to a Directive Memorandum in June 2021.<sup>200</sup>
- d) He recalled providing a statement on 6 March 2021 for the prosecution of Civilian KIM1 relating to a charge of assault police that occurred on 14 February 2021.<sup>201</sup>
- e) He was aware that the charge against Civilian KIM1 was dismissed by the Magistrate in the Parramatta Children's Court on 22 June 2021.<sup>202</sup>
- f) On the night of 14 February 2021 he recalled receiving a call about people breaking into cars or a house. He was the second car crew to arrive at the location and assisted another car crew in restraining Civilian KIM1 until another caged vehicle arrived to convey Civilian KIM1 to the police station.<sup>203</sup>
- g) He did not know Civilian KIM1 at the time.<sup>204</sup>
- h) Later that night, or in the early hours of 15 February 2021, he was involved in restraining Civilian KIM1 to an ambulance trolley at LOC1.<sup>205</sup>
- i) He was not aware why Civilian KIM1 was being taken from the station by ambulance.<sup>206</sup> He recalled being told that Civilian KIM1 was making threats of self-harm so he guessed that was why Civilian KIM1 was being taken to hospital.
- j) He was not aware of Civilian KIM1's behaviour whilst in custody.<sup>207</sup>
- k) He believed that Civilian KIM1 was under arrest for stealing a bike and assaulting police during arrest.<sup>208</sup>
- l) He was aware that Civilian KIM1 was 15 years old at the time.<sup>209</sup>

---

<sup>199</sup> Private examination SPV at T6.

<sup>200</sup> Ibid.

<sup>201</sup> Private examination SPV at T7.

<sup>202</sup> Ibid.

<sup>203</sup> Private examination SPV at T8.

<sup>204</sup> Ibid.

<sup>205</sup> Private examination SPV at T10.

<sup>206</sup> Ibid.

<sup>207</sup> Ibid.

<sup>208</sup> Private examination SPV at T10-11.

<sup>209</sup> Private examination SPV at T11.

- m) He was not aware that Civilian KIM1 is Aboriginal.<sup>210</sup>
- n) He described Civilian KIM1's build as thin and small.<sup>211</sup>
- o) After viewing the CCTV footage he agreed that Officer KIM4 appeared to make contact with Civilian KIM1's left nipple on two occasions. However, he had no independent recollection of this incident.<sup>212</sup>
- p) He conceded that it is clear in the CCTV footage that Officer KIM4 touches Civilian KIM1's nipple.<sup>213</sup>
- q) He agreed that Officer KIM4 appears to smile or laugh along with the other officers, including turning around to look at Officer KIM8.<sup>214</sup>
- r) He could not recall what joke was made, any words that were said or any noises that were made. He could not recall what was funny, however he believed that someone was trying to make light of a bad situation. In looking back at the circumstances now he conceded that it was not the right thing.<sup>215</sup>
- s) He agreed that it was inappropriate for Officer KIM4 to touch Civilian KIM1's nipple.<sup>216</sup>
- t) He agreed that it was also inappropriate for him and the other officers to laugh at that moment.<sup>217</sup>
- u) He agreed that the actions of Officer KIM4 were degrading and dehumanising, and further that the laughter only served to exacerbate such conduct.<sup>218</sup>
- v) He conceded that in that moment one of the officers should have told the officers to stop laughing.<sup>219</sup>
- w) He agreed that the ambulance officer's purpose was to calm Civilian KIM1 in order to escort him safely to hospital and the conduct of the officers did not contribute to that process.<sup>220</sup>

---

<sup>210</sup> Ibid.

<sup>211</sup> Ibid.

<sup>212</sup> Private examination SPV at T13.

<sup>213</sup> Ibid.

<sup>214</sup> Ibid.

<sup>215</sup> Private examination SPV at T13-14.

<sup>216</sup> Private examination SPV at T14.

<sup>217</sup> Private examination SPV at T14-15.

<sup>218</sup> Private examination SPV at T15.

<sup>219</sup> Ibid.

<sup>220</sup> Private examination SPV at T16.

- x) He stated that it was not good behaviour by any of the officers involved. If the situation were to arise in the future, he would either speak to the officer involved or raise it with a senior officer. He also agreed that at first instance it would be effective to challenge the officer.<sup>221</sup>
- y) He was familiar with the NSWPF Code of Conduct and Ethics as he was taught it at the Police Academy and was reminded of this policy after graduating from the Academy.<sup>222</sup>
- z) He was aware of the obligation on NSWPF employees to behave honestly and in a way that upholds those values and the good reputation of the NSWPF.<sup>223</sup>
- aa) He agreed that Officer KIM4's conduct in touching Civilian KIM1's nipple is conduct which did not uphold the good reputation of the NSWPF and could bring the NSWPF into disrepute. He agreed that his conduct in laughing did not uphold the values and good reputation of the NSWPF.<sup>224</sup>
- bb) He was aware of the obligation to treat everyone with respect, courtesy and fairness and agreed that the conduct of Officer KIM4, and the conduct of officers laughing at that conduct was not respectful, courteous or fair to Civilian KIM1.<sup>225</sup>
- cc) He was aware that officers are encouraged to challenge inappropriate behaviour however, he did not challenge Officer KIM4 at the time or at any time after the incident.<sup>226</sup>

## Officer KIM7

3.19 Officer KIM7 gave the following evidence during his private examination:

- a) He joined the NSWPF as a Probationary Constable in 2018 and attained the rank of Constable, assigned to LOC3, in 2019.<sup>227</sup>
- b) For the purpose of giving evidence he had refreshed his recollection of the events that occurred at LOC1 on 14 and 15 February 2021 with a Directive Memorandum, the COPS event

---

<sup>221</sup> Ibid.

<sup>222</sup> Ibid.

<sup>223</sup> Private examination SPV at T17.

<sup>224</sup> Ibid.

<sup>225</sup> Private examination SPV at T18.

<sup>226</sup> Ibid.

<sup>227</sup> Private examination KEC at T5.

and the charge relating to the matter.<sup>228</sup>

- c) In relation to the Directive Memorandum he agreed police were looking at the actions of Officer KIM4 in relation to the possible touching of young person's nipple and stomach.<sup>229</sup>
- d) He was not involved in the initial arrest of Civilian KIM1. His first interaction with Civilian KIM1 was when Civilian KIM1 was in custody at LOC1.<sup>230</sup>
- e) He was in LOC1 for an unrelated matter when he was required to assist with Civilian KIM1 as a result of his behaviour.<sup>231</sup>
- f) At this time Civilian KIM1 was in one of the holding cells. He was yelling and screaming.<sup>232</sup>
- g) He described Civilian KIM1's behaviour as "*quite hysteric*" and "*quite manic*".<sup>233</sup> He agreed that Civilian KIM1 was acting in a fairly irrational way.<sup>234</sup>
- h) He received information that paramedics were going to be called to convey Civilian KIM1 to the hospital for the purpose of conducting a mental health assessment.<sup>235</sup>
- i) He agreed that he would have been told that Civilian KIM1 was going to the hospital for a mental health assessment under section 22 of the *Mental Health Act 2007*.<sup>236</sup>
- j) A number of assessments recorded in the custody management record were put to the witness. The witness agreed that the following assessments made when Civilian KIM1 was being booked into custody accorded with his recollection of Civilian KIM1 in custody:
  - "*Aggressive behaviour - Yes*"
  - "*Self-harm - No*"
  - "*Does the person show severe agitation or aggressiveness? Yes*"
  - "*Comments: the POI is highly agitated and screaming - he*

---

<sup>228</sup> Private examination KEC at T5-6.

<sup>229</sup> Private examination KEC at T6.

<sup>230</sup> Private examination KEC at T7-8.

<sup>231</sup> Private examination KEC at T7.

<sup>232</sup> Private examination KEC at T8.

<sup>233</sup> Ibid.

<sup>234</sup> Ibid.

<sup>235</sup> Private examination KEC at T8.

<sup>236</sup> Private examination KEC at T9.

*is kicking inside his cell and screaming.”<sup>237</sup>*

- k) In relation to the assessment in the Custody Management Record, “*Intoxication level – moderately affected*”, he stated that he was not aware that Civilian KIM1 was under the influence of alcohol.
- l) He became aware that whilst in police custody Civilian KIM1 had been threatening self-harm.<sup>238</sup> Whilst he couldn’t recall exactly when he became aware of the above he stated the following:

*“But in saying that, there were a number of officers in the custody room at that time, and it’s not like anyone’s whispering about what’s going on, so it would have been common knowledge, I believe, and more than definite – I’m sure I would have known at the time.”<sup>239</sup>*
- m) Whilst he could not specifically recall Civilian KIM1 being taken out of the cell and escorted onto the ambulance trolley, he agreed that he would have seen it.<sup>240</sup>
- n) After reviewing the CCTV footage he agreed that Civilian KIM1 gets onto the trolley himself without police needing to assist him.<sup>241</sup>
- o) He agreed that he assisted other officers in restraining Civilian KIM1 to the ambulance trolley.<sup>242</sup>
- p) He recalled that Civilian KIM1 was threatening to spit at the officers and made attempts to spit in anyone’s direction. He also recalled that young person did actually spit and after being told not to spit, he continued.<sup>243</sup>
- q) There were two specific instances that he could recall where Civilian KIM1 spat at him.<sup>244</sup>
- r) He was shown CCTV footage of Officer KIM3 pushing Civilian KIM1’s head down and to the side with the palm of his hand. He stated that whilst he did not recall that precise moment, based on the surrounding context of witnessing Civilian KIM1 spitting and saying that he did not want to go to hospital, he suggested

---

<sup>237</sup> Private examination KEC at T10-11.

<sup>238</sup> Private examination KEC at T12-13.

<sup>239</sup> Private examination KEC at T13.

<sup>240</sup> Private examination KEC at T13-14.

<sup>241</sup> Private examination KEC at T20.

<sup>242</sup> Private examination KEC at T14.

<sup>243</sup> Private examination KEC at T13-14.

<sup>244</sup> Private examination KEC at T14.

that Civilian KIM1 was not being compliant with paramedics or police in being restrained to the ambulance trolley.<sup>245</sup>

- s) He confirmed that they were attempting to restrain Civilian KIM1 by his being strapped down by his wrist and ankles, a restraint distinct from a belt that is used to put across the patient's waist.<sup>246</sup>
- t) He was positioned near Civilian KIM1's feet to prevent Civilian KIM1 from kicking the officers whilst they were trying to restrain him.<sup>247</sup>
- u) After being shown CCTV footage of Officer KIM3 placing a blanket over Civilian KIM1's head, he considered action would have been likely to be undertaken to prevent Civilian KIM1 from spitting.<sup>248</sup>
- v) In relation to the allegation that Officer KIM4 touched Civilian KIM1's nipple and chest area, the witness was read the following extract from his statement:

*"I viewed footage which appeared to be Constable KIM4 pointing at [Civilian KIM1], and his chest and nipple area. I do not recall this specific incident occurring as it appears that I am leaning forward and looking down over [Civilian KIM1'S] legs."*<sup>249</sup>
- w) He clarified that the comment provided in his statement was based on his observation of the footage, not on his independent recollection.<sup>250</sup>
- x) He did not have any independent recollection of this incident.<sup>251</sup>
- y) After viewing the CCTV footage he agreed that Officer KIM4 appears to touch Civilian KIM1's nipple on two occasions and further, that several of the officers appear to be laughing in response.<sup>252</sup>
- z) As he was looking down at the time he did not see this occur.<sup>253</sup>
- aa) In response to being asked why he looked up at the time, he

---

<sup>245</sup> Private examination KEC at T19.

<sup>246</sup> Ibid.

<sup>247</sup> Private examination KEC at T22.

<sup>248</sup> Ibid.

<sup>249</sup> Private examination KEC at T15-16.

<sup>250</sup> Ibid.

<sup>251</sup> Private examination KEC at T16.

<sup>252</sup> Private examination KEC at T23-24.

<sup>253</sup> Private examination KEC at T24.



surmised from the footage that it is possible that he looked up because he heard laughing.<sup>254</sup>

- bb) He did not know why the officers were laughing.<sup>255</sup>
- cc) At the Police Academy he had been taught about the NSWPF Standards of Professional Conduct.<sup>256</sup>
- dd) He agreed that the actions of Officer KIM4, irrespective of whether he made physical contact with Civilian KIM1's nipple, and the response of the other officers laughing, was not appropriate behaviour by police and did not uphold the good values and reputation of the NSWPF.<sup>257</sup>
- ee) He agreed that Officer KIM4's conduct and the actions of the officers laughing was not conduct treating Civilian KIM1 with respect, courtesy and fairness.<sup>258</sup>
- ff) To his knowledge, nobody made any comment or criticised Officer KIM4 or the other officers that were laughing at the time.<sup>259</sup>
- gg) He agreed that the CCTV footage showed him grabbing Civilian KIM1 by the throat. His evidence was that this action was in response to Civilian KIM1 spitting at him.<sup>260</sup> He explained that prior to grabbing hold of Civilian KIM1's throat, Civilian KIM1 was telling the witness through clenched teeth that he was going to spit at him and was drawing up saliva in preparation to spit. In the moment as he was looking at Civilian KIM1 he was thinking "*are you seriously doing this right now?*"<sup>261</sup>
- hh) Looking at the CCTV footage from the point at which Civilian KIM1 and the witness are looking at each other, he explained the situation as it unfolded.

*"A. So if you pause there, [Civilian KIM1] at that point in time, what - I don't know if I was talking to him just there, but from him being manic and angry to then compliant after he's been placed into straps, and then all of a sudden he's looking at me like that, with that smile, I think it's more I'm looking at him in, like, disbelief, of, like, I can't believe that is going on right now.*

---

<sup>254</sup> Private examination KEC at T24-25.

<sup>255</sup> Private examination KEC at T25.

<sup>256</sup> Private examination KEC at T33.

<sup>257</sup> Private examination KEC at T34-35.

<sup>258</sup> Private examination KEC at T37.

<sup>259</sup> Private examination KEC at T38.

<sup>260</sup> Private examination KEC at T27.

<sup>261</sup> Private examination KEC at T28.

*And then if you play for maybe a second, do you see - - .*

*The Commissioner: Right there, yes.*

*The Witness: Do you see there?*

*Counsel Assisting: Q: You can see some change in his facial configuration, if I can put it that way.*

*A: You could, but you can also see his throat preparing to - like, that phlegmy - you know what I'm saying. My reaction to that is I would say through my experience as a police officer, only through officers do you react and can you prevent yourself from being assaulted by taking action quicker than other person can to assault you."<sup>262</sup>*

- ii) When asked if he thought Civilian KIM1 was going to spit on him, he responded:

*"Yes. Pausing there, it was more so instead of - the amount of times that us as a collective of officers, everyone would have already been telling him "Don't you dare spit, don't you" - you know, it was quite loud, but - - ."<sup>263</sup>*

- jj) From his knowledge of officers in his command that had dealt with Civilian KIM1 previously, he was aware that Civilian KIM1 had a reputation of spitting.<sup>264</sup>

- kk) Armed with this knowledge, he was aware that Civilian KIM1 may spit or was going to spit.<sup>265</sup>

- ll) When asked why he grabbed him around the throat rather than putting his hand over his mouth, he responded.

*"A. So why my hand grabbed his throat? That's maybe - that's possibly where my hand - I don't think I was aiming specifically for his throat, but at the tame [sic] time I'm moving myself away from him to prevent myself being spat on."<sup>266</sup>*

- mm) He agreed that he also turned Civilian KIM1's head.<sup>267</sup>

- nn) After that action, the trolley continued out the door of the

---

<sup>262</sup> Private examination KEC at T30.

<sup>263</sup> Private examination KEC at T29.

<sup>264</sup> Private examination KEC at T29-30.

<sup>265</sup> Private examination KEC at T30.

<sup>266</sup> Ibid.

<sup>267</sup> Ibid.

custody room and into the van dock of LOC1.<sup>268</sup>

- oo) Civilian KIM1 spat on the witness for a second time as he was assisting paramedics in loading Civilian KIM1 into the ambulance. The second spit landed on the witness' face, on his beard and on his ballistic vest.<sup>269</sup>
- pp) At the Police Academy, he received training in relation to weaponless control techniques.<sup>270</sup>
- qq) He agreed that during the training he was taught that some holds, such as applying force around someone's neck should be avoided where possible. He agreed that it should be avoided because applying pressure to someone's neck can have serious health consequences for that person.<sup>271</sup>
- rr) He agreed that he was made aware of the risks to officers if someone attempts to choke or apply pressure to their throat.<sup>272</sup>
- ss) He agreed with an extract from the 'NSW Police Handbook - Custody' in relation to violent people which read.

*If a detained person is violent and objects to being searched, you may use reasonable force. Do not however, use restraints which constrict air supply or blood flow, such as 'choke holds', neck restraints for pressure point holds applied above the neck. Use restraint in the most humane way possible.*<sup>273</sup>

- tt) Later in his evidence, he clarified the action he took against Civilian KIM1 in reference to the definition of a chokehold.

*"A. ... But just in reference to the definition of what a choke is, it would also imply pressure or a contraction to stop the respiratory system from working, for lack of better words.*

*My action did not do that. I can specify and confidently say that that was - as you've said, Commissioner, that was just a point for whatever I can do to stop him from spitting at me, but by no means was there any compression or contraction of his neck to affect his respiratory system. I just wanted to make that clear, so that's understood."*<sup>274</sup>

---

<sup>268</sup> Private examination KEC at T31.

<sup>269</sup> Private examination KEC at T31-32.

<sup>270</sup> Private examination KEC at T38.

<sup>271</sup> Ibid.

<sup>272</sup> Private examination KEC at T39-40.

<sup>273</sup> Private examination KEC at T40.

<sup>274</sup> Private examination KEC at T43.

- uu) He agreed that officers in the course of their work often encounter people spitting at them. He confirmed that whilst spitting at a police officer is a criminal offence, Civilian KIM1 was not charged with that offence.<sup>275</sup>
- vv) He wasn't sure whether or not there was a spit guard at LOC1. He agreed, in principle, that a spit guard, depending on the situation is a tool that could assist. He agreed that applying a spit guard to a person who is spitting, such as Civilian KIM1, would protect the police officer from being spat on. Furthermore, he agreed that a spit guard could also benefit the person who is doing the spitting by overcoming any potential risk to the person's health.<sup>276</sup>

## 4. Analysis of Evidence

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

- (a) Whilst assisting other officers to restrain Civilian KIM1 to an ambulance trolley Officer KIM4 made a turkey gobbler noise. He also touched the stomach and left nipple of Civilian KIM1 whilst laughing.
- (b) Officers KIM3 and KIM6 were amused and laughed at Officer KIM4's antics.
- (c) Civilian KIM1 needed to be transported to hospital for assessment. His conduct was bad. He spat continuously. It was a difficult situation for the officers. However, there was nothing amusing about it. His situation was, if anything, tragic.
- (d) It is not clear why Civilian KIM1 was charged with assault. As an aggressor he was a skinny, ineffective but objectionable child. Given his physical and mental state it is highly unlikely that it could have had the necessary intention. However that is not a matter the Commission has to deal with.
- (e) There is no basis for criticising the conduct of the officers in taking steps to prevent Civilian KIM1 from spitting on them. I am not satisfied that placing a blanket across his face was a safe procedure but I can understand its practicality. They needed to protect themselves. In particular, Officer KIM7's reaction was a reasonable response to prevent his being further spat upon by Civilian KIM1.

---

<sup>275</sup> Private examination KEC at T40-41.

<sup>276</sup> Private examination KEC at T41.

- (f) Officer KIM4's conduct occurred whilst Civilian KIM1, a gangly, slightly built 15 year old Aboriginal boy, who was being restrained for the purpose of being transported to hospital because of mental health and self-harm concerns, was struggling against being restrained.
- (g) He was begging not to be restrained or sedated. Because he had his face covered by a blanket he could not see what was happening around him. He was surrounded by six adult police officers. He could hear Officer KIM4 making an offensive and demeaning silly turkey gobbler noise. He could feel the officers touching him including Officer KIM4's touch to his stomach and nipple. He could hear the officers laughing in response to Officer KIM4's conduct.
- (h) This incident involved disgraceful conduct by Officer KIM4 and all those officers who laughed with and at him. It was conduct that paid no regard to the feelings of the child who was in their custody. No one seemed to remember that Civilian KIM1 was just that, a child.
- (i) Civilian KIM1 is someone who is in regular trouble with the police. He lives in difficult circumstances. He is unlikely to forget the unsympathetic way in which he was treated and his relationship with the police is probably incapable of rehabilitation.
- (j) This type of conduct is not only likely to affect the attitude of the particular young person towards the police but carries the risk of damaging the relationship of the police with the local Aboriginal community damaging the hard work and effort of senior police to improve that relationship.
- (k) Whilst, to some extent, this sort of heedless jocularity arises out of the stressful circumstances of policing at the coalface, combined with on-the-job inexperience, there is an obligation on officers performing this face-to-face work to behave sensitively and responsibly, particularly when dealing with children, and to maintain the standards and reputation of the NSWPF.
- (l) The legal representatives for Officers KIM3, KIM4, KIM5, KIM6 and KIM7 were provided with a draft version of this report and invited to make submissions. The legal representatives for all officers chose not to make any submissions.

## 5. Affected Persons

- 5.1 In Part 2 of this Report the Commission set out the provisions of s 133 of the LECC Act dealing with the contents of reports to Parliament. Subsections (2), (3) and (4) relate to “*affected persons*”.
- 5.2 The Commission is of the opinion that Officers KIM3, KIM4, KIM5, KIM6 and KIM7 are affected persons within the meaning of subsection 133(2) of the LECC Act, being persons against whom, in the Commission’s opinion, substantial allegations have been made in the course of the investigation.

## 6. Findings

- 6.1 Officer KIM4 engaged in serious misconduct in his treatment of Civilian KIM1.

## 7. Recommendations

- 7.1 The Commission recommends that the Commissioner of Police should give consideration to the taking of non-reviewable action against Officer KIM4 pursuant to section 173 of the Police Act 1990.
- 7.2 Whilst the Commission makes no finding of serious misconduct against any other officers it recommends that counselling and further training be undertaken in relation to all officers.

# LECC

Law Enforcement  
Conduct Commission

Level 3, 111 Elizabeth Street  
Sydney NSW 2000  
Email: [contactus@lecc.nsw.gov.au](mailto:contactus@lecc.nsw.gov.au)

**Postal address**

GPO Box 3880  
Sydney NSW 2001  
Phone: (02) 9321 6700  
Toll free: 1800 657 079  
Fax: (02) 9321 6799