LECC
Law Enforcement
Conduct Commission

# OPERATION KROSNO

## REPORT PURSUANT TO S 132 LAW ENFORCEMENT CONDUCT COMMISSION ACT 2016

October 2021

Operation Krosno

Report pursuant to s 132
*Law Enforcement Conduct Commission Act 2016*
October 2021

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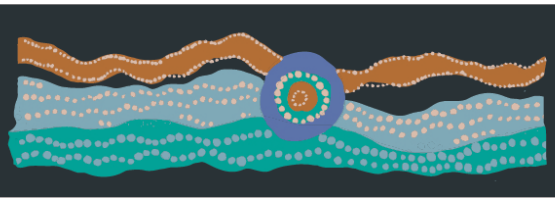

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## Office of Commissioner

26 October 2021

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 Krosno.

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

Yours sincerely

The Hon Lea Drake
Commissioner

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# 1. Introduction

1.1 The Commission's investigation in Operation Krosno arose from a complaint submitted to the NSW Police Force (NSWPF) on 20 August 2020 by Family and Community Services (FACS), of an alleged police assault on Civilian KRO1 (hereafter referred to as 'KRO1'), a 14 year old male Aboriginal youth.

1.2 On 18 August 2020, KRO1 was arrested with four other young persons, following the pursuit of a stolen vehicle in western Sydney. He sustained serious injuries to his face during the arrest. He was subsequently admitted to Westmead Children's Hospital. KRO1 informed medical staff that police had repeatedly kicked and punched him and that they had hit him in the face and head with their police radios.

1.3 Medical records obtained by the Commission pursuant to a statutory notice noted that KRO1 had the following injuries:

- 1.5cm laceration to the lateral left eyebrow - full thickness in depth down to the bone;
- 4cm laceration to the left cheek - full thickness to buccal space;
- 3cm abrasion to the left temple - partial thickness;
- 1cm laceration to the right parietal scalp - full thickness through temporalis muscle down to the bone;
- Minor abrasions to other parts of the face;
- Minor bruising to the left shoulder;
- Soft tissue injury to the left hand;
- Bilateral boggy swellings to the scalp.

1.4 The Consultant Paediatrician reported that KRO1's injuries were *"extensive and severe"* requiring "*surgical repair under general anaesthetic*". She opined that KRO1's "*injuries could have been sustained in the manner described by him* (kicked, punched and hit with a walkie-talkie while being arrested). She also expressed concern that KRO1's injuries were not "*adequately explained by a single forceful impact against a firm surface in the absence of any other external force*" and that "*further information from police (in relation to the details of the arrest) would be needed to fully correlate the injury*

*findings with potential mechanisms of injury".*[1]

1.5 On 17 September 2020, pursuant to s 44(1)(a) of the *Law Enforcement Conduct Commission Act 2016* ('the LECC Act'), the Commission decided to commence an investigation to determine how KRO1 sustained his injuries. In particular, the Commission was concerned with whether any NSWPF officer had used excessive force during KRO1's arrest.

## 2. The Commission's Statutory Functions

2.1 The LECC Act lists among the Commission's principal functions the detection and investigation of serious misconduct and serious maladministration: s 26.

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

> *(1) For the purposes of this Act,* ***serious misconduct*** *means any one of the following:*
>
> *(a) conduct of a police officer, administrative employee or Crime Commission officer that could result in prosecution of the officer or employee for a serious offence or serious disciplinary action against the officer or employee for a disciplinary infringement,*
>
> *(b) a pattern of officer misconduct, officer maladministration or agency maladministration carried out on more than one occasion, or that involves more than one participant, that is indicative of systemic issues that could adversely reflect on the integrity and good repute of the NSW Police Force or the Crime Commission,*
>
> *(c) corrupt conduct of a police officer, administrative employee or Crime Commission officer.*
>
> *(2) In this section:*

[1] Confidential report dated 20 August 2020 from a Consultant Paediatrician of Westmead Children's Hospital.

***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 a report, the Commission will apply the civil standard of proof, namely whether the relevant factual matters have been proved to the reasonable satisfaction of the Commission.[2] Accordingly findings can form the basis of opinions and recommendations, even if they do not reach the standard of beyond reasonable doubt.

[2] *Briginshaw v Briginshaw* [1938] 60 CLR 336; *Neat Holdings Pty Ltd v Karajan Holdings Pty Ltd* (1992) 67 ALJR 170.

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 Krosno or included in this report without further order of the Commission.

# 3. The Commission's Investigation

3.1 The initial scope and purpose of the Commission's investigation in Operation Krosno was to investigate allegations that on 18 August 2020, KRO1 was physically assaulted by police officers. On 13 May 2021, the Commission expanded the scope and purpose of its investigation to include whether "*there was conduct that is or could be serious maladministration in connection with the reporting of 'use of force'*".

3.2 In furtherance of its investigation, the Commission issued the following notices pursuant to s 55 of the LECC Act:

(i) a notice to the NSWPF requesting information, documentation and any footage of the arrest of KRO1, including any body-worn video footage;[3]

(ii) A notice to Westmead Children's Hospital seeking records in relation to KRO1's admission and the treatment of his injuries on 18 August 2020;[4] and

(iii) A notice to the NSW Ambulance Service seeking records in relation to the treatment of KRO1 on 18 August 2020.[5]

3.3 In response to the notice, the NSWPF produced to the Commission POLAIR (police helicopter) footage which captured part of the incident. There was no body-worn video footage of the incident.

3.4 The Commission also obtained CCTV footage from adjoining business premises and mobile phone footage taken by one of the staff members of the business on which premises the arrest of KRO1 took place.

[3] s55 Notice 341 of 2020.
[4] s55 Notice 342 of 2020.
[5] s55 Notice 343 of 2020.

3.5 Unfortunately, none of the footage captured the moment of arrest nor how KRO1 sustained his injuries.

3.6 The POLAIR footage relevantly captured the following events from 4:57 to 5:36. The sequence of events is best understood by reading this report with Annexure A to hand.

(i) A stolen vehicle containing 5 occupants, including KRO1 in the front passenger seat, is seen travelling down a street and turning into a business premises at the end of the street, which is a dead-end. The vehicle slows down and then comes to a stop. An unmarked police vehicle containing two police officers (Officer KRO3, the driver, and Officer KRO2) follows closely behind the stolen vehicle and pulls up about five metres from the stolen vehicle.

(ii) The two officers exit the police vehicle. Officer KRO2 is seen running towards the stolen vehicle. The driver of that vehicle exits and immediately gets down on the ground with his arms raised to his head. Officer KRO3 runs towards the front seat passenger, KRO1, who side steps him and runs towards the street entrance of the business premises.

(iii) The POLAIR footage pans out at 5:25 and then zooms back a few seconds later, capturing KRO1 running around three shipping containers and being pursued by Officers KRO3 and KRO4, who are on foot.

(iv) KRO1 runs between a black utility and a white car parked adjacent to the shipping containers. Officers KRO5 and KRO6 run towards the shipping containers from the direction of the entrance to the business premises. Officer KRO3 chases after KRO1 and can be seen between the dark utility and the white car at the boundary fence end. KRO1 runs behind the white car. Officer KRO4 runs behind the shipping container.

(v) The footage pans out when the officers are converging on KRO1. The arrest of KRO1 is not captured.

(vi) The final still taken from the POLAIR footage before it pans out (at 5:36), shows KRO1 standing behind the white car. Officer KRO3 is situated between the black utility and the white car at the boundary fence end. Officers KRO5 and KRO6 are running towards the shipping containers from the opposite direction. Officer KRO5 is slightly in front of Officer

KRO6. Officer KRO4 is behind the shipping containers. A diagrammatic representation of that still is at Annexure A to this report.

3.7 The other available footage (CCTV footage from adjoining business premises and the business employee's mobile phone footage) do not capture the moment that KRO1 was captured and arrested by the police nor does it show how he sustained his injuries.

3.8 The mobile phone footage relevantly shows KRO1 emerging from the shipping container area, which is in shadow. There is little visibility to the viewer until KRO1 emerges into the open space in front of the containers. KRO1 is supported by two police officers and has blood streaming down his face. He looks very dazed. At one point, KRO1 appears to almost pass out. He then sits down on the ground, supported by police officers.

3.9 On 26 February 2021, the Commission decided that it would hold examinations and that, because of 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.

3.10 The scope and purpose of the private examinations were:

> *To investigate whether any NSW Police Force officer used excessive force during the arrest of [KRO1] at [western Sydney location] on 18 August 2020.*

3.11 The following witnesses were called to give evidence in private examinations before the Commission:

1. Officer KRO3
2. Officer KRO4
3. Officer KRO6
4. Officer KRO7
5. Officer KRO8

3.12 Examinations were held on 29 and 30 April 2021.

3.13 KRO1 was interviewed by Commission investigators. He was prepared to appear before the Commission to give evidence. However, several listings had to be vacated because of COVID-19 restrictions and KRO1's personal circumstances. In light of COVID lockdowns and restrictions, and given KRO1's age and circumstances, the Commission decided that it would instead rely on KRO1's interview, which he

adopted as a true and accurate record of what he had told Commission investigators.

3.14 During their examinations, Officers KRO3, KRO4 and KRO6 were provided with a copy of the POLAIR still and asked to confirm where they were positioned in that still. Each officer confirmed that they were in the positions described above at paragraph 3.6(vi). Officer KRO6 gave evidence that when he was running towards the shipping containers, Officer KRO5 was slightly ahead of him. However, Officer KRO5 ran straight ahead to deal with the other offenders and he had no role in the arrest of KRO1. Officer KRO5 was summonsed to appear before the Commission but, after hearing the testimony of the other police officers, the Commission determined that Officer KRO5 was unlikely to shed any light on how KRO1 sustained his injuries and he was no longer required to give evidence.

3.15 The examination of the five police officers focused on what occurred after KRO1 was seen standing behind the white car and particularly, how KRO1 sustained his serious injuries.

## THE EVIDENCE

### Officer KRO4

3.16 At the time of KRO1's arrest Officer KRO4 was at the rank of Constable. He had attested from the Police Academy in August 2016 and was a new member of the North-West Metropolitan Operations Support Group (NW OSG). At the time he commenced working there, he already knew Officers KRO5, KRO6, KRO7, and KRO8. *"I didn't know them well, but I knew them, yes".*[6]

3.17 Officer KRO4 explained that the OSG members wear the dark blue police overalls and not the usual two-tone uniform. On the day of KRO1's arrest, he was wearing his appointments belt containing his firearm, handcuffs and OC spray. He was also wearing his police radio within a pouch on the front of his vest. Officer KRO4 explained that there were two holdings for the radio and that in order to pull out the radio a button first had to be unclipped, followed by pulling apart a velcro strap to which the radio was attached.[7] His evidence was that his radio remained in his pouch at all times on the morning of KRO1's arrest.

3.18 Officer KRO4 was in an unmarked police vehicle with Officer KRO6, who was driving, and Officers KRO5 and KRO8. They were following the police radio updates as to the whereabouts of the stolen vehicle,

[6] Private examination FJH at T5.
[7] Private examination FJH at T7.

as a result of which they arrived at the entrance of the business premises where the stolen vehicle was located. On arrival, Officer KRO4 saw an Aboriginal male, who was later identified as KRO1, running down the driveway towards the entrance to the street being pursued by a police officer who was later confirmed to be Officer KRO3.

3.19 Officer KRO4 exited the police vehicle and ran behind the shipping containers after KRO1. Another officer was in front of him but he could not recall if it was Officer KRO3 or someone else. Officer KRO4 ran around the containers and turned right between the shipping containers and a parked black utility.

3.20 Officer KRO4 was shown the still from the POLAIR footage and he identified himself as being the person between the shipping container and the fence (figure 2 on Annexure A).

3.21 Officer KRO4 stated that, as he turned right between the shipping container and the white car, he saw Officer KRO6 tackle KRO1, who fell against the second shipping container.[8]

3.22 Officer KRO4 was shown a still from the POLAIR footage on which he identified himself, Officer KRO3 and KRO1. They are represented in corresponding order by the numbers 2, 1 and 5 in Annexure A.

3.23 Officer KRO4 recalled Constable KRO6 tackling KRO1 and both of them colliding harshly with the shipping container. He both saw and heard the collision. He heard a "*thud*".[9] KRO1 landed face down and Officer KRO6 landed to the left of KRO1, on the container side.[10] Officer KRO4 later said that the tackle and fall was very quick and he "*saw them both sort of bounce off it... As soon as they hit it they both fell to the ground"*. The tackle was *"more sort of a bear hug"*.[11]

3.24 Officer KRO4 knelt down to KRO1's right side and took hold of his upper right arm. KRO1 was "*thrashing about, moving... like kicking out, left to right*." He attempted to pull KRO1's arm from under his body.[12] He succeeded in pulling KRO1's arm out after about 20 seconds. He could only recall Officer KRO6 and himself being present at that time.

3.25 Later in evidence, Officer KRO4 recalled that Officer KRO7 came to assist "*only momentarily and he just grabbed his legs*". He recalled that Officer KRO7 appeared "*on the back end. At one stage* [Officer KRO6] *either lost his balance or fell to the side into the shipping container and*

[8] Private examination FJH at T16.
[9] Private examination FJH at T17-18.
[10] Private examination FJH at T24.
[11] Private examination FJH at T39.
[12] Private examination FJH at T24.

*that's when I looked up and I saw* [Officer KRO7]. *There were other officers around*."[13]

3.26 Officer KRO4 described KRO1 as having a thin build, about 160 cm tall and about 60kg in weight. Officer KRO4 said that he weighed 80kg and he was 183 cm tall.

3.27 Whilst he was attempting to take KRO1's arms from underneath his body, Officer KRO6 was doing the same. Ultimately they succeeded after about 20 seconds and Officer KRO4 then placed the handcuffs on KRO1. He was aware that somebody told KRO1 that he was under arrest but it was not him.[14]

3.28 Officer KRO4 only noticed that KRO1 had been injured when they had placed handcuffs on him and sat him up. Officer KRO4 did not see anybody strike or kick KRO1. He could not recall anyone having a radio in their hand at the time of KRO1's arrest.

3.29 Officer KRO4 rejected the suggestion that KRO1 complied with directions to get down on the ground and that he put his hands behind his back compliantly.[15]

3.30 Officer KRO4 noticed that KRO1 had a laceration to one of his cheeks and the top of his head. He was not surprised to see that KRO1 was injured. He believed that his injuries had been sustained "*during the scuffle on the ground and him hitting the shipping container*". Officer KRO4 indicated in his written statement that there were several exposed metal hinges and poles running both horizontally and vertically on the container, which he noticed at the time.[16]

3.31 Officer KRO4 recalled Officer KRO6 offering to render first-aid to KRO1, in the form of a bandage pad, which KRO1 declined.

3.32 Officer KRO4 travelled in the back of the ambulance with Officer KRO8 and KRO1. He gave the ambulance officers a brief version of how KRO1 sustained his facial injuries. "*I would have said something along the lines of he was tackled into the shipping container and we sort of had him on the ground for about 10 seconds.*" Officer KRO4 was confident that that was how KRO1 sustained those injuries. He recalled that KRO1 was upset and crying in the back of the ambulance but he could not recall KRO1 saying anything.[17]

[13] Private examination FJH at T40.
[14] Private examination FJH at T27.
[15] Private examination FJH at T27.
[16] Private examination FJH at T28.
[17] Private examination FJH at T36.

3.33 Officer KRO4 explained that once KRO1 had been searched by Officer KRO6 and it was confirmed that he had nothing on his person, they stood him up in order to change his handcuffs to the front. KRO1 was angry at that time but, a few minutes after that, he appeared dazed.[18]

3.34 Officer KRO4 was not wearing his body-worn video at the time of KRO1's arrest. He explained that it was his first official day in that office and his plan was "*not to go out, to sort out some old briefs and old matters from my previous station, so I didn't put it on*". He was subsequently called out to this event.[19]

Officer KRO7

3.35 At the time of KRO1's arrest Officer KRO7 was at the rank of Senior Constable. He had attested from the Police Academy in August 2012. He was at the Academy with Officers KRO5 and KRO8. At the time of KRO1's arrest he was a member of the NW OSG, having become a full-time member in 2018.

3.36 Officer KRO7 had commenced his shift at 6am. He was patrolling the area in a police van with four other police officers. Their van was the last to arrive at the scene. He initially ran out to the adjoining premises. On realising that there were no offenders there, he ran back to the premises. On running past the shipping containers, which were to his left, he saw a person on the ground and several police officers wrestling with that person. He heard someone yelling "*Get your hands behind your back."* His evidence was that "*I've run back, like, within seconds I have just come back, seen legs, like, kicking from the hip, like scissoring kind of action. That's what drew my attention, so I've gone in then and grabbed the legs."*[20] He described the person on the ground as being "*pretty much almost chest over, kind of on his side, and basically from the waist down was all free, legs kicking*".[21] Officer KRO7 recalled that there were three police officers who were wrestling with the person from the waist up. He did not know any of those other officers but he confirmed later, when preparing his statement for court proceedings, that they were Officers KRO3, KRO4 and KRO6. He was not aware then that the person on the ground was KRO1.

3.37 Officer KRO7 held KRO1's legs for about 10 seconds and then let go when he heard someone say that he was cuffed.[22] Officer KRO7 described the offender as being non-compliant with directions. He said

[18] Private examination FJH at T38.
[19] Private examination FJH at T38.
[20] Private examination PLK at T9.
[21] Private examination PLK at T9.
[22] Private examination PLK at T10.

that it was "*a struggle to get his legs crossed over to begin with, but then once I put my weight on there, I can just lie on them –"*

3.38 Officer KRO7 stated that during the short time he was involved in the arrest of KRO1, he did not see any police officer holding radios in their hands nor striking KRO1. Immediately after letting go of KRO1's legs he attended to other duties and had nothing more to do with the arrest of KRO1 nor his transportation to hospital.

3.39 Officer KRO7 became aware that KRO1 was injured some time later when he was walking past him. An officer was cleaning KRO1's wound and saying "'*It's all right mate', kind of comforting him, I think, cleaning his face*".[23] Officer KRO7 did not discuss KRO1's injuries with anyone and had no idea how KRO1 sustained his injuries.[24]

### Officer KRO8

3.40 At the time of KRO1's arrest Officer KRO8 was at the rank of Senior Constable. He had attested from the Academy in August 2012 with Officers KRO5 and KRO7.

3.41 On the morning of KRO1's arrest, Officer KRO8 commenced his shift at 6am. He was working with Officers KRO4, KRO5, and KRO6. They were travelling in an unmarked police vehicle and they were all wearing the OSG dark blue overalls police uniform. Officer KRO8 was wearing his appointments belt containing his firearm, handcuffs and spray. He did not have a police radio and he was not wearing a body-worn video camera. He explained that his commander instructed that there was to be only one body-worn video per vehicle. Officer KRO6 was wearing his body-worn on the day. He was "*pretty sure"* that Officer KRO6 was wearing body-worn but he did not know if it was activated.[25]

3.42 Officer KRO8 was travelling in an unmarked police vehicle with Officers KRO6, who was driving, KRO4 and KRO5. They were listening to police radio updates and were looking for the vehicle containing KRO1 as he was wanted by police in relation to an earlier incident.[26]

3.43 On arriving at the premises where the stolen vehicle had stopped, Officer KRO8 saw KRO1 running down the driveway of the premises towards the front gate. KRO1 was being pursued by a plainclothes police officer.[27] Officer KRO8 opened the car door (he was sitting in the back left of the vehicle) and upon seeing him, KRO1 turned to his right. Officer KRO8 thought that KRO1 was going to jump the fence

[23] Private examination PLK at T19.
[24] Private examination PLK at T20.
[25] Private examination ZNF at T6.
[26] Private examination ZNF at T7.
[27] Private examination ZNF at T10.

into the adjoining field and so he jumped a concrete barrier and then a mesh fence to run into the field. He ran around to his right past the shipping container. He then saw KRO1 and other police between the shipping container and another vehicle. He then back-tracked *"just a second and looked*". He saw Officer KRO4, who had his back to him. Officer KRO6 was to his left and there was a plainclothes officer in front of Officer KRO4 (from Officer KRO8's vantage point).[28]

3.44 At that point, KRO1 was handcuffed to the back and was on the ground. He was lying down on his right side and facing the shipping container. He was "*kicking and screaming*" and there was "*a bit of a struggle*".[29] Officer KRO8 heard someone say *"stop"* but did not know who said it. He did not see any police officer strike KRO1 and he could not recall any police officer holding a police radio.

3.45 Officer KRO8 estimated that it was about 30 seconds between him seeing KRO1 running towards the entry of the business premises being chased by Officer KRO3 (whom he did not know at the time) and seeing, from the other side of the fence, KRO1 on the ground and handcuffed.[30] After viewing the CCTV footage, Officer KRO8 agreed that he stood behind the fence for about 18 seconds, which was longer than he had initially thought.

3.46 Officer KRO8 then ran back, jumped the fence and ran around to the other side of the premises to assist the other police officers with KRO1. He saw KRO1 laying on the ground and he saw blood on the ground. He told Officer KRO4 to sit KRO1 up, which he did. He noticed blood on KRO1's face and on the ground. There was a lot of blood.[31] Officer KRO8 then returned to the police car to get a first-aid kit. On his return, he gave the first-aid kit to another officer who was by that time assisting KRO1. Officer KRO8 then stepped back and waited until KRO1 was taken to hospital.

3.47 Officer KRO8 recalled another officer rendering assistance to KRO1, including getting a silver blanket for him.

3.48 Officer KRO8 stated that he and Officer KRO4 went into the ambulance but that *"amongst all of this, I went up to* [Officer KRO6] *and I'm like, 'Mate, what happened? What's going on?' And he told me when he's tackled him, they've gone-they went into the shipping container and they've fallen into the concrete. I said 'Okay', and I relayed that to the nurse because I was the one going to the hospital.*

[28] Private examination ZNF at T10.
[29] Private examination ZNF at T11.
[30] Private examination ZNF at T14.
[31] Private examination ZNF at T18.

*I knew they were going to ask how did he get the injuries and that's what I told them".*[32]

3.49 Officer KRO8 recalled that the conversation with Officer KRO6 took place away from the scene but still in the car park of the premises. Officer KRO6 did not show him where they fell and he did not return to the containers himself to see whether he could see blood anywhere on the containers or whether there were any protruding objects which may have caused the injuries. He said "*It definitely concerned me, and that's why I asked* [Officer KRO6]. *I suppose I just went off what he told me, yes, and that information that he told me is the information that I relayed to the nurses."*[33]

3.50 One officer told Officers KRO4 and KRO8 that they would be going to the hospital with KRO1 in the ambulance. Whilst in the ambulance, Officer KRO8 could not recall any conversation with the ambulance officers. When KRO1 was in the bed at the hospital, Officer KRO8 heard him tell a family member that "*he hit me with a radio*". Officer KRO8 gave evidence that he did not see anybody hit KRO1 with a radio.[34] He did not discuss KRO1's allegation with anyone. The only conversation he could recall after the event occurred a few days later when a discussion to the following effect took place in the police station with a number of police officers: "*What's happening with it? A few guys thought or heard a complaint was going to come through. There was just kind of banter about that, and that was it."*[35]

### Officer KRO3

3.51 At the time of KRO1's arrest Officer KRO3 was at the rank of Senior Constable. He had attested from the Academy in August 2015. He was then in the pro-active team at Mount Druitt Police Station.

3.52 On the morning of KRO1's arrest, Officer KRO3 was patrolling in a police vehicle with Officer KRO2. Officer KRO3 was driving. He was aware of a number of stolen motor vehicles and at one point in time, they spotted the stolen vehicle. They initiated a pursuit but then terminated it because of safety concerns. Shortly thereafter, as a result of live updates from the police helicopter, they followed the stolen vehicle carrying KRO1 into the business premises. Officer KRO3 was aware that KRO1 was in the vehicle. He had prior knowledge of KRO1, having received reports during the week about KRO1's conduct. Officer KRO3 had not had any previous interaction with KRO1. Officer KRO3 had also accessed records on the police mobile which contained

[32] Private examination ZNF at T18.
[33] Private examination ZNF at T19.
[34] Private examination ZNF at T24.
[35] Private examination ZNF at T27.

warnings in relation to KRO1 that *"he was known to be armed with a knife"* and to exercise officer safety.[36]

3.53 Officer KRO3 exited the vehicle. KRO1 ran towards him and then side-stepped him. Officer KRO3 ran in pursuit of KRO1. He followed KRO1 behind the shipping containers and ran between two vehicles parked nearby. He identified himself on the POLAIR still as being between the white car and a black utility and KRO1 being between the cars and the shipping container. Officer KRO3 recalled running between the black utility and the white vehicle. He then saw Officer KRO6 tackle KRO1 in the *"confined space in between the container and that white car"*.[37] The width of the space was maybe a metre.[38] Officer KRO3 was running up on the other side between the utility and the white car when the tackle by Officer KRO6 occurred. He did not have clear sight of how Officer KRO6 and KRO1 fell after the tackle as the white car was in the way. He heard Officer KRO6 yelling for KRO1 to stop resisting and he then saw them on the ground. *"I know there was a bit of a struggle, but by the time I got around to it, to where they were, he was on the ground"*[39] and Officer KRO6 was kneeling to the right of KRO1. Officer KRO3 said that at that point "*I observed that – oh, I feared, because he wasn't complying with the senior constable's instructions to stop resisting at that time, I feared, because he was on his stomach, and I guess his hands – I couldn't see his hands, and I feared at the time, in my mind, that he was – could possibly have a weapon, or a knife, and that's when I approached and, I guess, used approved strikes and struck him to the back, I dare say the left side, shoulder and back*." He used hammer strikes with a closed fist. He was not wearing gloves at the time.[40]

3.54 Officer KRO3 struck KRO1 no more than three (3) times, after which they managed to get his hands out from under him.

3.55 Officer KRO3 could only recall Officer KRO6 being present at the time. "*I can just remember* [Officer KRO6]*, because he had struggled with him at the time – this is before I approached and he was trying to control him and I could see that he fell forward, or fell, was unbalanced somehow, and he hit his head on the shipping container at the same time. I believe he didn't have effective control of* [KRO1] *to effect the arrest, so that's another reason why I stepped in to assist."* He delivered the strikes to effect the arrest and to maintain control.[41] After the strikes were delivered, "*he's not thrashing his body or arms about as*

[36] Private examination YLT at T8.
[37] Private examination YLT at T10.
[38] Private examination YLT at T12.
[39] Private examination YLT at T11.
[40] Private examination YLT at T12.
[41] Private examination YLT at T13.

*seconds before that"* and they managed to get his hands out from underneath him and to secure them to the back.[42]

3.56 Officer KRO3 could not recall who handcuffed KRO1 but was aware that by that time, there were other officers present. He did not know who the other officers were.

3.57 Once handcuffed, Officer KRO3 cautioned him and placed him under arrest. Officer KRO3 then noticed that KRO1 had lacerations to his face. He got onto the police radio and called for an ambulance. Officer KRO3 moved away from KRO1 to take out his radio and to place the call. Prior to that, he did not see anyone with a police radio in their hand. He did not see anyone else strike KRO1. He did not see anyone kick KRO1.[43]

3.58 Officer KRO3 could not see the extent of KRO1's injuries but he called an ambulance as that was standard procedure if anyone sustained an injury upon arrest.[44] He recalled Officer KRO7 being there but he was not sure how close he was to when the struggle was happening.

3.59 Officer KRO3 was not sure whether Officer KRO6's tackle or his strikes brought KRO1 down. He agreed, with the benefit of hindsight, that choices other than tackling or striking KRO1, could have been made. The following exchange took place:[45]

> *Q:* *A container. So we have a container,* [Officer KRO4], *yourself and* [Officer KRO6], *and I understand it is all happening very quickly and you've been informed he might be armed, so he needs to be grabbed. But why did you think he was likely to get away surrounded by the three of you and the shipping container, because he's 14?*
>
> *A:* *Yes, yes, Commissioner.*
>
> *Q:* *Do you think, with hindsight, perhaps a cooler head on that occasion, if you weren't so worried about him being armed, you might not have needed to use any of that force?*
>
> *A:* *Yes, I agree with you, Commissioner and --*
>
> *Q:* *They are all factors that influence what you do on the day, so I'm not in any way lessening the impact of those, but a skinny 14-year-old, a container and three police officers surrounding*

[42] Private examination YLT at T14.
[43] Private examination YLT at T14.
[44] Private examination YLT at T15.
[45] Private examination YLT at T17.

*him, it seems to me that other choices could have been made on this occasion; do you agree with that?*

*A: I agree with you one hundred per cent, Commissioner.*

3.60 Once KRO1 was handcuffed and Officer KRO3 had placed him under arrest, he returned to assist his partner, Officer KRO2. Sometime later he checked on the situation and he recalled seeing blood on the concrete near KRO1. He believed it was there as a result of the struggle. He did not see any police officers deliberately striking KRO1 in the face with police radios or any other object.[46] He had thought of KRO1's injuries since and thought about whether he was injured during the arrest by being tackled or wrestled to the ground and being struck "*by me with my fist. I hit him to the back. He was on his stomach. I hit him to the back left shoulder and I possibly could have struck his face. That's a possibility"*.[47] Officer KRO3 contemplated whether the force of his punch could have forced his head or face to hit the concrete. Officer KRO3 said that he was not worried initially at the scene but "*I was thinking about it after, later on in the day, when I was driving home"* and that he felt "*I guess just remorse –not remorse, but – not a positive feeling"* and that he was concerned because KRO1 was "*an Aboriginal minor*".[48]

3.61 Officer KRO3 said that KRO1 was already on the ground when he struck him but that he was thrashing about. He said that there was a possibility that KRO1 hit the edge of the shipping container when he struck him but he could not say. He was asked whether "*it's possible that either he hit the container when you hit him or the force of your blow bounced his head on the ground? Either/or?*" to which he replied, "*Yes. Either/or*". He recalled that KRO1 was face down and he was moving his head but he could not say whether it was to the right or the left.[49]

3.62 Officer KRO3 was not aware of the extent of KRO1's injuries until he was shown photographs during his examination. He confirmed that he only struck KRO1 on the back and shoulders and not on his face. He thought it was possible that his strikes may have caused injuries to his face but that he could not say.[50]

3.63 Officer KRO3 discussed his concern that he may have caused KRO1's injuries with his supervisor and with Officer KRO2. He could not recall what his supervisor said in response.

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[46] Private examination YLT at T20.
[47] Private examination YLT at T20.
[48] Private examination YLT at T21.
[49] Private examination YLT at T22-23.
[50] Private examination YLT at T24-25.

3.64 Officer KRO3 was not wearing body-worn video at the time of the incident. He explained that "*I guess because of the nature of the – or the job that was occurring at the time, or resources just flooding the area where he may have – or where this vehicle was, and that we had to get up and leave and try and locate this vehicle"*. It was put to Officer KRO3 that he did not worry about body-worn video because he had left in a hurry, he confirmed *"Yes, situations like this, its' just a flow-on effect and you think on your feet and you just try to - yes, that's what happened."*[51]

## Officer KRO6

3.65 At the time of KRO1's arrest Officer KRO6 was at the rank of Senior Constable. He attested from the Academy in 2014. He is presently in the NSW OSG, having commenced there on secondment in about 2017. He has worked with Officers KRO5, KRO7, and KRO8 since that time.

3.66 On the morning of KRO1's arrest, he commenced his shift at 6am. He was rostered on with Officers KRO4, KRO5 and KRO8. He was travelling with them in an unmarked police vehicle where he was the driver. During that morning, they were listening to police radio updates and became aware that a stolen car containing a number of involved persons was in the area. Officer KRO5 made further inquiries through the police mobile radio (MobiPol) and they became aware that KRO1 was wanted in relation to an aggravated robbery, using a weapon to take cars and that he was in the stolen car. They were made aware that he had used a knife on the previous evening. As a result of following the POLAIR updates, they ended up at the business premises of the relevant location. As they pulled up in the police vehicle, they heard on the radio a reference to a foot pursuit. He therefore blocked the driveway with the car. He saw KRO1 and Officer KRO3 running towards them. KRO1 saw them when he was about 20 metres in front of them and then turned to his right towards the fence. There was a shipping container. Officer KRO4 immediately went after them. Officer KRO8 jumped the fence. Officer KRO6 ran back up the driveway on the other side of the shipping container. He saw that KRO1 could not get past the fence so he thought he would try to cut him off.[52]

3.67 Officer KRO6 was shown a still from the POLAIR footage and he identified the police officers as being in the positions represented in Annexure A. Officer KRO6 identified Officer KRO5 as being ahead of him as they ran towards and then past the shipping container. Officer

[51] Private examination YLT at T30.
[52] Private examination AXZ at T9.

KRO5 continued on to where the stolen vehicle had stopped but he turned left after the shipping container.

3.68 Officer KRO6 saw KRO1 between the black utility and a white car. KRO1 appeared to be playing "*cat and mouse*" as he was looking behind him. Officer KRO6 only realised afterwards that Officer KRO3 was there. Officer KRO6 stopped to assess the situation. He saw KRO1 running towards the shipping container and he yelled out to him "*police*". KRO1 saw Officer KRO6 and "*it looks like he's seen me and then I'm guessing he's made a decision to try to get away in between the shipping container and that. That's when I tried to chase him – or I have chased him.*"[53] He said that KRO1 turned around to head towards the fence and he went forward. Officer KRO6 described his movement as "*it was a body - just a whole body bear-hug kind of motion, but I did lunge at him, in a lunging motion… I'm not sure I even got hold of him because my whole body has hit his and we've gone forward as a result and hit the container and then the ground*."[54]

3.69 Officer KRO6 explained that he did not use an ankle tackle as "*I am a big person, so I just like to use my weight in them scenarios to try and detain the persons, because I thought that was the safest option, just take him down, to tackle him.*"[55]

3.70 Officer KRO6 gave evidence that at the time of KRO1's arrest he weighed about 105 kg and he was 184 cm tall. He described KRO1's build to be slender and his height to be about 170cm. He could not estimate KRO1's weight.

3.71 Officer KRO6 thought that he tackled KRO1 close to the middle of the three shipping containers. He hit KRO1's body with his right shoulder and as they both fell, they both hit the shipping container at about 1 metre from the ground. He sustained a graze to his head as a result of the fall. He did not require any first-aid and it healed after a few days.[56]

3.72 After they both fell, Officer KRO6 got up. Officer KRO4 had arrived by that time and he was grabbing hold of KRO1 trying to arrest him. KRO1 was face-down with his hands underneath him. Officer KRO6 was on the left hand side of KRO1 and was attempting to grab KRO1's left arm. He said numerous times "*Give me your hands. Stop resisting*". Whilst he and Officer KRO4 were trying to pull his hand out, KRO1 kept tucking it back underneath. At some point, Officer KRO6 fell into the shipping container again. Whilst he was getting back up, Officer KRO7 came in and grabbed KRO1's legs. Officer KRO6 was only aware later

[53] Private examination AXZ at T16.
[54] Private examination AXZ at T17.
[55] Private examination AXZ at T17.
[56] Private examination AXZ at T19.

that it was Officer KRO7 but he knew somebody had grabbed KRO1's legs because "*generally when we are in them situations, if you take away someone's legs, you gain control of the situation a lot easier, because they can't move their body and thrash out as much".*[57]

3.73 Officer KRO6 recalled that Officer KRO3 had also arrived. Officer KRO6 described it as "*a struggle to get his hands behind him to arrest him".* After a while they were able to get hold of KRO1's hands and handcuffed them to the back. Officer KRO6 could not recall who handcuffed KRO1. Officer KRO6 did not remember seeing Officer KRO3 strike KRO1. *"I know we were pulling arms, we were grabbing – I was holding his arm and twist – like pulling and twisting trying to get it out. To be honest, I didn't pay attention as to what other people were doing, because I was more worried about getting my hand out, because I was struggling… Yes, I struggled a lot. It's not good to say I struggled, but I did. Unfortunately in that position, if someone has their hands tight underneath, it's not easy to pull an arm out, get it behind their back, without breaking or popping things, if we are trying to get it out."*[58]

3.74 Officer KRO6 did not have a police radio in his hand at the time of KRO1's arrest. He carries it in his pouch at all times. He could not recall any other police officer present at the arrest of KRO1 having a police radio in their hand. He explained that "*I don't think we could have arrested him if we had a radio in our hands. I was using both of my hands and I was struggling big time*". Officer KRO6 could not recall if he hit KRO1's arm in an attempt to get his hand out from under him. He said *"I don't remember doing it, because I was just trying to pull it out, but, yeah, I can't say if I did or I didn't".*[59]

3.75 Officer KRO6 rejected the suggestion that KRO1 was compliant with all police directions. "*Definitely not. I wouldn't have tackled him in the container then. I would not have hurt myself in that scenario.*"[60] He also rejected the allegation that KRO1 was hit with police radios, kicked and punched by police officers.[61]

3.76 After handcuffs were placed on KRO1, the officers conducted a cursory search and nothing was found. They sat KRO1 up and it was at that point that he realised that KRO1 had a cut around his cheek region. Officer KRO6 was shown photographs of KRO1's injuries. At the time, he did not notice the injury around his eye but he saw the cut to KRO1's cheek, which was "*a good cut"*. Officer KRO6 surmised that the injury occurred when KRO1 made contact with the container but he was not

[57] Private examination AXZ at T22.
[58] Private examination AXZ at T22.
[59] Private examination AXZ at T23.
[60] Private examination AXZ at T23.
[61] Private examination AXZ at T24.

sure.[62] Officer KRO6 stated that he noticed that the shipping container was "*rugged, as most shipping containers are, with a lot of metal objects on it*".[63]

3.77 Officer KRO6 left KRO1 in the custody of, possibly Officer KRO4, in order to get a first-aid kit from the vehicle. He returned with padding and gauze and offered to administer first-aid but KRO1 refused his assistance. Officer KRO6 then moved his handcuffs from the back to the front, for KRO1's comfort and so that he could pat his own face if needed.[64] After that, Officer KRO6 had nothing more to do with KRO1. There were other police officers there and someone obtained a foil blanket for KRO1.

3.78 Officer KRO6 did not know who called the ambulance. He was there when ambulance officers arrived but he could not recall any discussion as to how KRO1 sustained his injuries nor was he aware of the extent of the injuries. He saw the ambulance officers look at the right side of KRO1's head but he did not see them treat it. Officer KRO6 moved away and returned to the police station.

3.79 Officer KRO6 was not wearing his body-worn video at the time of KRO1's arrest. He had a satisfactory operational reason not having the body-worn video on him at the time. He was not sure whether any of the other officers had their body-worn video with them. He stated that he wished that he had had it on him and said, "*I believe that it would cover myself more now, because obviously we wouldn't have got to this stage if I had got it on me. It would have been – I believe it would have been dealt with then and there*".[65] Officer KRO6 was not aware of any policy about wearing body-worn video.

3.80 Officer KRO6's evidence was that, with hindsight, he may not have tackled KRO1 but he still would have tried to grab him as he was worried that he could have still got away. He had not seen Officer KRO4 at that stage and KRO1 had been well in front of Officer KRO3 as he pursued him. He was also concerned that KRO1 may have had a weapon on him.[66]

3.81 Officer KRO6 did not look at the shipping container to see whether there was any blood on it. He recalled there being a pool of blood on the ground. With hindsight he should have taken photographs of the shipping container but as they were not investigating, he thought the better thing to do was to leave it to the investigators.[67] Also he did not

[62] Private examination AXZ at T25.
[63] Private examination AXZ at T40.
[64] Private examination AXZ at T27.
[65] Private examination AXZ at T31.
[66] Private examination AXZ at T32.
[67] Private examination AXZ at T40.

think that the injuries were as significant as they appeared in the photographs.

3.82 Officer KRO6 could not recall speaking to anyone at the scene about KRO1's injuries or how they were sustained.[68]

3.83 When he returned to the police station, Officer KRO6 prepared his statement about the event. He made his statement based on his own recollection. Some time later, he was made aware of KRO1's injuries and he was told that the hospital were making inquiries of various police officers as to how the injuries were sustained.[69]

3.84 Officer KRO6 stated that there were a number of teams involved in investigating different parts of the matter. *"Unfortunately there was not one person saying 'This is my job, I'll do everything', it was a bit of everyone".*[70]

KRO1

3.85 At the time of his arrest, KRO1 was 14 years old. He told the Commission investigators that, after the car in which he was travelling pulled up into the business premises, *"I got out ran and then the police officer chased me and told me get on the ground. So I got on the ground and then he put the handcuffs on me and he went back to the other car to get the other kids, the four other kids out and then these two black utes pulled up. They jumped out and then there was like I don't know how many but like five or like ten people jumped out and then they were in black suits and then one jumped on me, put his knees into my neck and then he jump, then he jumped on me and another one came over and he started hitting me in the face and kicking me and then more come over that were hitting me with like I think radios or something. And I was getting hit and then this, getting hit and hit and I got kicked in the stomach and my face was hur- like I couldn't feel nothin', it wasn't hurting I couldn't feel nothin'... My ear was hurting and then they left me and then like I was on the ground and I was, sitting on my bottom and then I put my back up against like the crate... this lady police officer came over to me and said to me, oh um, she said, she helped me sit up and then um and the she helped, yeah she helped me sit up... I couldn't speak and I was like I was, I couldn't say*

[68] Private examination AXZ at T38.
[69] Private examination AXZ at T42.
[70] Private examination AXZ at T44.

*anything 'cause like my voi- my mouth, I couldn't move my mouth or anything."*[71]

3.86 KRO1 recounted that when he got out of the car he was not thinking. "*I got out of the car and ran that's' all I know what to do".*[72] He did not recall making contact with the container and said that he only came into contact with the floor. He said that he was about a metre and a half to two metres from the shipping container when he was on the ground. He was lying with the right side of his face on the ground.[73]

3.87 KRO1 stated that the first officer placed handcuffs on him and left him to attend to the other occupants of the vehicle. It was shortly thereafter that the other police officers came and began hitting him. "*I could see like stuff hitting me in the head, like black stuff hitting me in the head."*[74] KRO1 thought that they were hitting him with police radios. He was then left there until the ambulance officers arrived. KRO1 recalled that he could see blood dripping off him. He was only wearing long pants and white shoes at the time. He was not injured prior to his arrest[75].

3.88 KRO1 said that he was not tackled. "*I was scared like, I was scared so I listened to the officer and when he told me to get on the ground, I got on the ground, I didn't get tackled".*[76]

# 4. Analysis of Evidence

4.1 The Commission is satisfied that the evidence supports the following findings of fact.

4.2 When the stolen vehicle pulled up in the driveway of the business premises, KRO1 got out of the front passenger side and ran towards Officer KRO3, who was running towards KRO1. KRO1 side-stepped Officer KRO3 and ran around the back of the shipping containers, followed closely by Officer KRO3. On arriving at the premises Officers KRO4, KRO6 and KRO8 saw KRO1 running down the driveway, being pursued on foot by Officer KRO3. Officer KRO4 got out of the car and followed KRO1 and Officer KRO3 around the shipping container.

4.3 POLAIR captured the moment that KRO1 was essentially cornered between two vehicles, the shipping containers and the three police officers. Officer KRO6 was approaching from the front of the

[71] Record of interview on 9 December 2020 at 3-4.
[72] Record of interview on 9 December 2020 at 10.
[73] Record of interview on 9 December 2020 at 11.
[74] Record of interview on 9 December 2020 at 13.
[75] Record of interview on 9 December 2020 at 8.
[76] Record of interview on 9 December 2020 at 16.

shipping container (number 4 in Annexure A); Officer KRO4 was behind the shipping container on the opposite side by the fence line (number 2 in Annexure A); and Officer KRO3 was behind KRO1 between the black utility and the white car (number 1 in Annexure A).

4.4 At the point in time captured by the still from the POLAIR footage, Officers KRO3 and KRO6 would have been visible to KRO1. However, Officer KRO4 was still coming from behind the shipping container and was most likely hidden from KRO1's line of sight.

4.5 On seeing Officer KRO6, KRO1 ran towards the shipping container and appeared to be turning to his right to run towards the fence line. At that point, Officer KRO6 lunged at KRO1 and brought him down to the ground. Whether his movement could be described as a tackle or a bear hug has no consequence. The Commission accepts that Officer KRO6 came into bodily contact with KRO1 and they both fell to the ground, hitting the shipping container on the way down.

4.6 Officers KRO3, KRO4 and KRO6 all gave consistent evidence as to where KRO1 landed on the ground by the second shipping container. This also correlates with where the pool of blood can be seen on the mobile phone footage.

4.7 Officers KRO3 and KRO4 corroborated Officer KRO6's evidence that he tackled or "*bear hugged*" KRO1 as he ran towards the shipping containers. They both saw the tackle and then both KRO1 and Officer KRO6 falling firstly against the shipping container and then onto the ground. In addition, Officer KRO4 heard a *"thud"* as they landed against the container.

4.8 Whilst his injury was minor compared to those sustained by KRO1, Officer KRO6 also sustained a mild graze on the top of his head from falling against the shipping container.

4.9 The shipping container had several exposed metal hinges and poles running both horizontally and vertically. Photographs of the shipping container show sharp metal handles at about the point where Officer KRO6 says he and KRO1 landed against the container.

4.10 Once on the ground, all five officers gave evidence that KRO1 was moving his legs about and that he had his hands underneath his body. Officers KRO3, KRO4 and KRO6 all gave evidence that they were aware that KRO1 had used a knife the evening before and they were concerned that he may still have a weapon on his person. For this reason, they were determined to get KRO1's arms out from underneath his body.

4.11 Officer KRO7, on running past the shipping container, observed that KRO1 was on the ground and that Officers KRO3 and KRO6 were trying to restrain him. He assisted by holding KRO1's legs, which had the desired effect. The officers were able to take his hands out from underneath his body and to apply handcuffs to the rear. Officer KRO7 then left the scene.

4.12 Prior to KRO1 being handcuffed and removed Officer KRO3 struck KRO1 three times with a hammer (closed fist) strike in an attempt to gain control. It is possible that KRO1 sustained some of his injuries as a result of this action by Officer KRO3. Officer KRO3 questioned whether he may have contributed to KRO1's injuries, given that he had struck him on the left shoulder whilst he was lying face down on the ground.

4.13 Officer KRO3 was the only officer to give evidence that he struck KRO1. He did so three times in order to gain compliance.

4.14 No other officer recalled seeing Officer KRO3 strike KRO1. This is not necessarily surprising, given that each officer was focussed on the task at hand, to gain control of KRO1 and to arrest him. They were not, therefore, observing what the other officers were doing.

4.15 There is no evidence that any of the police officers had police radios in their hands during the arrest of KRO1 and it follows that there is no evidence that they used their radios to hit KRO1.

4.16 The Commission accepts that KRO1's version of events is at odds with the accounts given by the police officers. Evidence was heard that KRO1 was a thin, possibly 60kg, average height youth of 14. Officer KRO6 was 183 cm tall and weighed about 105 kg at the time. Officer KRO3 was also a much larger person than KRO1. KRO1 was tackled to the ground by Officer KRO6 and fell heavily against the shipping container, and most likely against the sharp metal handle, with the full weight of Officer KRO6 behind him, causing serious injury to his face. Officer KRO3 struck KRO1 three times possibly causing injury to his face when it came into contact with the ground as a result of that force. The injuries described by the hospital paediatrician are consistent with both these events.

4.17 Having then fallen on the ground KRO1 struggled with Officer KRO6, who was trying to gain control of him. Officer KRO6 could not recall whether he struck KRO1's arm in an attempt to gain control but conceded that he may have. Officer KRO4 then arrived on the scene. He also tried to wrestle KRO1's arms from underneath his body.

4.18 Thereafter, Officer KRO3, also a much larger person than KRO1, also tried pull KRO1's arm from under him. In addition, he struck KRO1

three times on the shoulder with a closed fist. At some point Officer KRO7 also assisted by holding KRO1's legs down.

4.19 Thus, KRO1, a young slightly built adolescent had at one point four police officers wrestling with him with at least one of them striking him three times. To KRO1 this may well have felt like he was being punched and attacked by several police officers, possibly with police radios. The Commission takes into account KRO1's youth and the circumstances of his arrest and accepts that he told the Commission what he believed to have been the truth in this respect.

4.20 Any struggling and screaming done by KRO1 following his being tackled by Officer KRO6 can only be considered a reasonable reaction to having his cheek torn apart on the container.

4.21 The Commission is satisfied that KRO1 sustained his injuries during his arrest and that the injuries were caused in the 30 seconds or so between the POLAIR footage panning out and the handcuffing and arrest of KRO1. The Commission is satisfied that the injuries were unnecessary but not intentional.

# 5. Submissions

5.1 The legal representatives for all NSWPF officers examined were provided with a draft version of this Report and invited to make submissions. No submissions were received.

5.2 The legal representatives for KRO1 were also invited to make submissions and detailed submissions were received by the Commission.

5.3 The submissions on behalf of KRO1 disputed the Commission's draft findings. This was done predominantly based on the disparity in size between the involved officers and KRO1, the nature of KRO1's injuries, and the force used by the officers during his arrest.

5.4 The Commission has carefully considered the submissions made on behalf of KRO1 but has not been persuaded to amend its findings.

# 6. Affected Persons

6.1 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*".

6.2 The Commission is of the opinion that Officers KRO3, KRO4, KRO6, KRO7, and KRO8 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.

# 7. Findings

7.1 The Commission finds that KRO1 sustained serious injuries to his face during his arrest. These injuries were as a result of being tackled by Officer KRO6 and falling with Officer KRO6 against a shipping container, which contained metal handles and hinges and also possibly as a result of KRO1 being struck by Officer KRO3.

7.2 The Commission finds that the tackle by Officer KRO6 was not necessary in the circumstances. KRO1 was effectively surrounded by police officers, with more continuing to arrive on the scene, and had no means of escape. Officer KRO6 should have taken longer to assess the situation and to consider alternatives, including the possibility of doing nothing since would KRO1 would inevitably have had to stop running.

7.3 Officer KRO3 should have taken longer to assess the situation before striking KRO1.

7.4 Notwithstanding these findings, the Commission is satisfied that the injuries caused to KRO1 were not inflicted intentionally or as a result of unreasonable use of force and the evidence does not support a finding that any police officer engaged in serious misconduct.

7.5 The use of force on KRO1 was significant and as is demonstrated resulted in significant injuries to his head and face.

7.6 The relevant references in the COPS event are as follows:

> *"Young Person* [KRO1] *was in the front passenger seat of the motor vehicle. He exited the front passenger seat and ran down the driveway. Police engaged in a foot pursuit with him until he reached* [name of road] *where further police approached from the street*. [KRO1] *turned and ran around a series of shipping containers before being cornered. Police directed* [KRO1] *to get on the ground however he refused, attempting to run around police.* [KRO1] *was taken to the ground and after violently resisting, was eventually handcuffed. As a result of the arrest, he sustained a head and face injury."*

7.7 There was no mention of use of force in this COPS event. The COPS event details KRO1's injuries but did not identify the cause. This is a significant omission. The investigation of these events arising out of the scope and purpose issued on 13 May 2021 involves a

consideration of the reporting of use of force. Whilst the Commission is satisfied that there was no maladministration in this instance involved in the failure to note a use of force, the Commission intends to continue to consider this issue in a wider context and this will form the basis of further consideration.

7.8 In June 2021 the Commission sought extensive material relating to the use of force by the NSWPF. In August 2021 a meeting was held between the Commission, Deputy Commissioner Lanyon and Assistant Commissioner Pisanos. On 1 September 2021 correspondence was received from Assistant Commissioner Pisanos, extracted below:

> *"...I can confirm that the Police Powers Executive Committee (PPEC) will function as the governance framework to oversight the guidance relating to the use of police powers and the appropriate recording of such powers.*
>
> *It is the intent of the PPEC to initiate a project to develop an overarching manual relating to police powers. It is anticipated that the PPEC will collaborate with the Law Enforcement Conduct Commission (LECC) in developing this comprehensive and collaborative approach, which will also provide certainty and consistency around the use of police powers and the manner in which it is to be recorded.*
>
> *While I understand the objective of Operation Krosno was to examine any deficiencies relating to the recording of use of force and provide recommendations; I am confident that a collaborative approach to develop comprehensive guidance regarding the use of force and record keeping will be a very useful way forward.*
>
> *Accordingly, I respectfully request that Operation Krosno be absorbed into a collaborative partnership between LECC and the NSWPF to develop an overarching doctrine around the use of police powers, which will provide guidance on the use of force and record keeping."*

7.9 The collaborative proposal outlined by Assistant Commissioner Pisanos is a very encouraging and appropriate response to the issues identified in this report and the Commission's findings and recommendations.

# 8. Recommendations

8.1 None of the police officers involved in the pursuit and arrest of KRO1 were wearing body-worn video. This is regrettable. Had his arrest

been captured on video, it is likely that there would have been no need for the Commission to examine the involved police officers. Greater use of body-worn video in circumstances such as these is recommended. There was no material before me to explain why officers would have been directed to only have one body worn video in each vehicle. Any shortage in such equipment should be addressed.

8.2 No officer took photographs of the area where KRO1 was arrested. The mobile phone footage obtained by the Commission clearly shows a pool of blood at the site where KRO1 was arrested. KRO1 was a 14-year old Aboriginal youth. He had sustained very serious facial injuries during a police operation which required treatment in hospital. Photographs should have been taken of the shipping container, including the handles and any other relevant surfaces to ascertain what had occurred and in the best interests of KRO1 and the police officers involved in the arrest. The Commission recommends that these investigative steps be undertaken whenever there is an injury to a suspect, particularly if the injured person is a juvenile and an Aboriginal.

8.3 Watching the POLAIR footage gives the impression of individual officers doing their best but there appears to be a lack of command and control of the scene.

8.4 There appears to have been no officers in command and control of the site when the stolen vehicle in which KRO1 and the other occupants were driving came to a halt. The apparent absence of such command and control at the scene resulted in a void in which no rational decisions could be made about what was necessary to secure KRO1 and his fellow car thieves and how the arrest could be effected without injury.

8.5 The following exchange between the Commissioner and Officer KRO6 took place:[77]

Commissioner: *Can I just ask you, who was the team that was investigating this arrest? Who was that?*

Officer KRO6: *This is where I struggle to find - because there's* [names of two suburbs in western Sydney] *investigating numerous other things, and then* [name of suburb in western Sydney] *proactive I believe took the arrest part of it, the pursuit. So a lot of different ones tied in.*

[77] Private examination AXZ at T43-44.

Commissioner: *It seems to me, just setting aside how this occurred, that if I was a police officer who tackled somebody and the person got injured on the side of a container, and that arrest was being investigated by a team of officers, then I would want them to examine the container and check if there was blood on it, take some photographs, for no other purpose than to ensure that that was the cause of the injuries, or to investigate whether it was or wasn't. The absence of those photographs in an investigation going to the cause of the injury leaves you and, say*, [Officer KRO3] *and* [Officer KRO4] *- I say "Mr" not disrespectfully, but I can never remember the rank - in the position of there being no explanation except what you say, when there might have been a very good explanation if bits and pieces of poor* [KRO1] *had been left on the container. If someone had done an investigation of that, there might be an explanation, or there might not. In any event, it would have been looked at. Do you think that that is a fair comment?*

Officer KRO6: *Oh, definitely, yes. Definitely.*

Commissioner: *So having about five commands floating around here doing different jobs isn't necessarily something that assists you?*

Officer KRO6: *No, unfortunately there was not one person saying "This is my job, I'll do everything", it was a bit of everyone –"*

Commissioner: *"Shemozzle" comes to mind.*

Officer KRO6: *That's a good way to describe it, yes.*

Commissioner: *The arrest of* [KRO1] *is one thing, but an officer in this position needs some protection, does he not, or she?*

Officer KRO6: *Definitely.*

8.6 Every officer did what they considered to be best done in the circumstances. However, had the effective practice of command and control directed teams on the ground it is likely that an arrest of KRO1 could have been effected with a lower risk of confrontation.

8.7 KRO1 said that running is the only thing he knows how to do. When he was tackled he, a skinny 14 year old, was surrounded by three shipping containers and two cars and he was blocked by Officers KRO3, KRO4 and KRO6 all of whom are large and relatively fit officers. Effective use of force in that controlled environment could then have been exercised to minimise threat of harm to both KRO1 and to officers.

8.8 The Commission recommends that this method of operation be reviewed and consideration be given to the allocation of command and control responsibilities where there are multiple teams involved in any one operation.

8.9 The Commission recommends that operational checks be instituted to ensure that where injuries arise out of the course of a police operation that the use of that force is recorded.

Annexure A


White Sedan
Black Ute
Black car
White Car
1
2
3
4
5
95cm
97cm
2.4 m
Container 1
Container 2
Container 3
8.4m
7.6m
Drive-way
Fence
Fence