

OPERATION RAMBERG

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

JANUARY 2019

16 January 2019

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

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

Dear Mr President and Madam Speaker

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

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

Yours sincerely



The Hon M F Adams QC
Chief Commissioner

Encl.

Table of Contents

1.	Introduction	1
2.	The Commission's Report.....	2
3.	Allegations of misconduct	4
	A. Inspections at the local hotel.....	4
	B. Applications for finance.....	6
	C. The self-managed super fund.....	12
	D. Improper COPS access	15
	E. False signature on RMS form.....	16
	F. False signature on subpoena.....	16
	G. Failure to take action on firearm information	17
	H. Misuse of Police-issued Opal card.....	19
4.	Findings and Recommendations.....	19
	Inspections at the local hotel.....	19
	Application for finance - ANZ home loan.....	19
	Application for finance - Bank Australia home loan.....	19
	Application for finance - GO Mastercard.....	20
	Application for finance - Mercedes-Benz car loan.....	20
	Application for finance - GEM Visa credit card.....	20
	Application for finance - Pepper Group home loan.....	20
	The self-managed family super fund.....	20
	Improper COPS access.....	20
	False signature on RMS form	20
	False signature on subpoena.....	20
	Failure to take action on firearm information.....	21
	Misuse of Police-issued Opal card	21
	Further action.....	21

1. Introduction

- 1.1 Operation Ramberg was an investigation into the conduct of Officer 1, a Senior Constable who joined the New South Wales Police Force ('NSWPF') in 2003 and is married to Mrs B. Officer 1 was also in a relationship with Ms A who is the owner of a hotel.
- 1.2 The relationship with Ms A commenced in about 2011 when Officer 1 was based at a country police station in the vicinity of Ms A's hotel. He was based there between January 2011 and September 2015. Thereafter he transferred to two other country stations. His role at all three stations was to perform general duties.
- 1.3 As part of his duties, Officer 1 conducted inspections of Ms A's hotel at various times between 2011 and 2015, when at all relevant times (except possibly on one occasion, discussed below) he was in a relationship with her.
- 1.4 The relationship between Officer 1 and Ms A involved the lending of significant amounts of money by Ms A to Officer 1. For example, she provided financial assistance to him in 2013 for the purchase of a Holden Omega sedan, and again in 2015 for the purchase of a VW Golf. Additionally, she provided large sums in 2014 for Officer 1's purchase of land in nearby property.
- 1.5 Ms A also played a significant role in enabling Officer 1 to prematurely access the funds from his self-managed superannuation fund held jointly with Mrs B since 2016.
- 1.6 Officer 1 also provided false or misleading information, on various occasions, in applications for finance, including credit cards, home loans and car loans.
- 1.7 In respect of his duties as a police officer, Officer 1 improperly accessed records on the COPS system, gave other officers instructions to forge his signature, failed to take action on information received regarding a firearm, and made improper use of his NSWPF issued Opal card.
- 1.8 The Commission gave consideration to the relevant provisions of the *Law Enforcement Conduct Commission Act 2016* ('the LECC Act') and determined that private examinations would occur.
- 1.9 On 3 July 2018, both Officer 1 and Ms A gave evidence at separate private examinations before the Commission. The general scope and purpose of the examinations was:

To investigate whether [Officer 1] of the NSW Police Force or any former or serving police officer or other person associated with him, is or has been involved in serious misconduct as a police officer and in respect of his personal financial dealings.

- 1.10 For the reasons set out later in this Report, the Commission is of the view that Officer 1 engaged in serious police misconduct and consideration should be given to prosecution of Officer 1 for specified criminal offences.

2. The Commission's Report

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2.3 Part 4 of the LECC Act sets out the functions of the Commission. Pursuant to s 29 the Commission may, *inter alia*, make findings and form opinions on the basis of its investigations as to whether officer misconduct occurred and to make recommendations as to whether the advice of the Director of Public Prosecutions should be sought in relation to the commencement of proceedings against particular persons for criminal offences or whether consideration should be given to the taking of action under Part 9 of the *Police Act 1990*. However, the Commission cannot include in a report under Part 11 of the LECC Act a finding or opinion that any conduct of a specified person is officer misconduct unless the conduct is serious misconduct.¹

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

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

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

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

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

(2) In this section:

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

¹ Law Enforcement Conduct Commission Act 2016, s 29(6).

to the officer or employee.

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

2.5 Pursuant to s 61, 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.

2.6 Before expressing any opinion that serious misconduct has, or may have occurred, or that in all the circumstances it is of the opinion that consideration should be given to the prosecution of any person for a specified criminal offence, the Commission should be comfortably satisfied of the relevant facts, applying the civil standard of proof in the manner suggested by Dixon J in *Briginshaw v Briginshaw*.² His Honour said:

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

2.6 Section 143 requires the Commission, before including in a report under Part 11 any comment about a person that the Commission considers adverse, so far as practicable, to inform that person of the substance of the grounds of the adverse comment and give the person an opportunity to make submissions.

2.7 The Commission is taken to have complied with s 143 if it has held an examination at which the person who is the subject of the adverse comment concerned was informed of the substance of the grounds of the adverse comment and given an opportunity to make submissions.

2.8 The Commission has provided the Counsel for Officer 1 with a copy of the submissions of Counsel Assisting, and an invitation to make submissions in response. The Commission considers that it has complied with s 143 of the LECC Act.

3. Allegations of misconduct

A. Inspections at the local hotel

3.1 Ms A applied for a liquor licence in respect of her hotel on 30 December 2005,⁴ and at that time, her then partner was recorded as also having a

² (1938) 60 CLR 336.

³ *Ibid*, at p.361.

⁴ Exhibit BHO14C.

financial interest in the hotel.⁵ It appears from records obtained by the Commission that her partner ceased having a financial interest in the hotel on 13 December 2013⁶ due to a relationship breakdown and Ms A had sole control of it from 19 May 2014 onwards.⁷

3.2 Officer 1 commenced his relationship with Ms A in 2011.⁸ COPS Event records show that Officer 1 conducted an inspection of her hotel by himself on 25 January 2011.⁹ He conducted additional inspections of the hotel in the company of other officers on the following dates when Ms A was listed as the licensee or manager:

- (a) 1 May 2011;¹⁰
- (b) 29 July 2011;¹¹
- (c) 23 December 2011;¹²
- (d) 24 February 2012;¹³
- (e) 14 February 2013;¹⁴
- (f) 16 January 2015;¹⁵
- (g) 18 January 2015;¹⁶ and
- (h) 18 January 2015.¹⁷

3.3 Additionally, at various times Ms A provided financial assistance to Officer 1 by way of loans. These included \$10,000 on 28 October 2013 for the purchase of a Holden Commodore motor vehicle, \$34,100 in July to October 2014 for the purchase of land, \$4,600 on 1 November 2015 for the purchase of a VW Golf motor vehicle, and \$8,000 on 6 May 2016 for an unknown purpose.

3.4 During the private examination, Officer 1 agreed that his inspections of the hotel constituted a conflict of interest, but appeared to mitigate this by saying he had another police officer conduct the inspections. However, when questioned further, he said he *“could have been”* present or absent during those inspections.¹⁸ He also claimed that he informed senior officers of this conflict of interest and that he received approval from *“a Senior Sergeant”* to proceed with the inspections.¹⁹

3.5 Counsel Assisting noted that Officer 1 commenced receiving financial assistance from Ms A in October 2013 and, given the added element of their intimate relationship, submitted that the officer placed himself in a real position of conflict of interest when he conducted inspections at the hotel

⁵ Exhibit BHO15C.

⁶ Exhibit BHO16C.

⁷ Exhibit BHO17C.

⁸ Examination BHO at T10.

⁹ Exhibit BHO18C.

¹⁰ Exhibit BHO19C.

¹¹ Exhibit BHO20C.

¹² Exhibit BHO21C.

¹³ Exhibit BHO22C.

¹⁴ Exhibit BHO23C.

¹⁵ Exhibit BHO24C.

¹⁶ Exhibit BHO25C.

¹⁷ Exhibit BHO26C.

¹⁸ Examination BHO at T20-21.

¹⁹ Examination BHO at T21.

owned and operated by Ms A. As a result, Counsel Assisting submitted that consideration should be given to the taking of non-reviewable action pursuant to s 173 of the *Police Act 1990*.

- 3.6 In written submissions provided to the Commission, Counsel for Officer 1 submitted that there was no impropriety in the fact that Ms A lent money to Officer 1. It was not submitted that Officer 1's indebtedness to Ms A did not create a potential for a conflict of interest, but Officer 1 denied having ever done any favours for Ms A.²⁰
- 3.7 Counsel for Officer 1 also submitted that there was no evidence of Officer 1 failing to properly perform his duties in respect of the inspections at the hotel. Further, it was said that Officer 1 disclosed his relationship with Ms A and was informed that approval was given to conduct the inspections provided he had another officer with him.
- 3.8 The Commission considers that the intimate relationship between Officer 1 and Ms A, and the significant financial assistance provided by Ms A to Officer 1, placed him in an actual position of conflict.
- 3.9 Moreover, the well-known circumstances of their relationship generated a perception of conflict of interest which Officer 1 had a duty to avoid. Such perceptions can adversely affect public confidence in the integrity of police officers in general, in addition to that of the officer concerned.
- 3.10 Accordingly the Commission recommends that consideration should be given to the taking of non-reviewable action pursuant to s 173 of the *Police Act 1990* in respect of this conduct.

B. Applications for finance

- 3.11 The Commission's investigation revealed that Officer 1 had made six applications for finance in which he provided false or misleading information. These applications are set out below.

ANZ home loan

- 3.12 In order to purchase the property in question, Officer 1 was required to obtain a home loan, and he did this with ANZ Bank. In various versions of a statement of financial position (required for the home loan application) dated 3 and 4 July 2014, liabilities on the application were stated to be nil. However, this was not true given that at this stage, as far as the Commission is aware, Ms A had loaned him \$10,000 for the Holden Commodore.
- 3.13 In evidence to the Commission, Officer 1 stated that there were no declarations as to liabilities because his understanding was that it was a reference only to liabilities from banks, and not personal matters.²¹ He maintained that this was an honest belief but also conceded that it was his

²⁰ Examination BHO at T18.

²¹ Examination BHO at T23.

decision not to disclose any loans from Ms A.²² He further agreed that the purpose of the disclosure was to inform the bank of his true financial position so that an assessment could be made of his reliability as a borrower.²³

- 3.14 Another version of the application, dated 3 September 2014, was not put to Officer 1 in the private examination, but reference was made to it in the submissions of Counsel Assisting. This version of the application listed nil liabilities and an amount of \$25,028 cash as an asset, but Counsel Assisting submitted that this was false because it was in fact a liability as Ms A had loaned \$24,000 to Officer 1 in August 2014.
- 3.15 As a result of this application, Officer 1 was able to obtain a home loan from ANZ Bank in the amount of \$186,964.60.
- 3.16 Counsel Assisting submitted that Officer 1 knew that a document such as a statement of financial position would contain crucial information a credit supplier would use to assess whether a loan should be granted, and because of this, he had provided false information to obtain a loan, which would constitute a criminal offence of fraud under s 192E of the *Crimes Act 1900*.
- 3.17 Counsel Assisting submitted that in this respect, Officer 1 had engaged in serious police misconduct and consideration should be given to the obtaining of advice from the Director of Public Prosecutions ('DPP') for the prosecution of an offence under s 192E of the *Crimes Act 1900*.

Bank Australia home loan

- 3.18 On 20 December 2016 Officer 1 made an inquiry with Mecu Ltd, subsequently known as Bank Australia, in relation to a real property mortgage of \$440,295. Counsel Assisting submitted that the purpose of this enquiry was to re-finance the ANZ home loan obtained in September 2014.
- 3.19 An undated loan application was made on behalf of Officer 1 and Mrs B. Counsel Assisting submitted that this application contained false information in two respects. First, it stated that both applicants had separate superannuation balances of \$64,000 and \$32,000, but the balance of their joint self-managed superannuation fund as at 30 December 2016 was only \$12.29. Secondly, the application listed only one credit card as a liability with a debit balance of \$19,000, but it had failed to disclose Officer 1's Commonwealth Bank Awards credit card with a debit balance of \$3,186.62 and Police Bank credit card with a debit balance of \$1,827.80. Further, the application did not disclose any of the loans from Ms A.
- 3.20 When giving evidence to the Commission, Officer 1 was asked whether he was truthful in his application to Bank Australia, and he stated "*well, according to this document, no*" and "*according to this document and - I*

²² Examination BHO at T24-25.

²³ Examination BHO at T24.

would have answered similar questions with the liabilities. I don't think I was, no".²⁴

- 3.21 Counsel Assisting submitted that Officer 1 had engaged in serious police misconduct in providing false information to, or omitted relevant information from, Bank Australia.

GO Mastercard

- 3.22 On or around 8 September 2017, Officer 1 applied for a GO Mastercard. On the application form, he stated that he had a credit card balance of \$3,000 with a limit of \$4,000. However, Counsel Assisting submitted that this was false as Officer 1 had the following undisclosed credit card debts:

- (a) American Express - \$4,775.87 as at 23 August 2017;²⁵
- (b) ANZ - \$18,256.43 as at 14 August 2017;²⁶
- (c) Commonwealth Bank - \$3,034.11 as at 6 September 2017;²⁷
- (d) Police Bank - \$1,963.84 as at 1 September 2017.²⁸

- 3.23 Officer 1 admitted in the examination that he had been untruthful in his application for a GO Mastercard.

- 3.24 Counsel Assisting submitted that Officer 1 had engaged in serious police misconduct when he provided false information, or omitted relevant information, in the application form. Counsel Assisting submitted that consideration should be given to obtaining the advice of the DPP with respect to the prosecution for an offence under s 192E of the *Crimes Act 1900*.

Mercedes-Benz car loan

- 3.25 On 13 November 2017 Officer 1 applied for finance from Star Auto (Australia) Pty Ltd ('Star Auto') in the amount of \$31,217 for the purchase of a Mercedes-Benz sedan. On the application form, the only liability listed was a mortgage of \$307,000, but Counsel Assisting submitted that the following credit card debts had been omitted:

- (a) American Express - \$4,755.96 as at 23 October 2017;²⁹
- (b) ANZ - \$20,746.21 as at 13 November 2017;³⁰
- (c) Commonwealth Bank - \$3,073.55 as at 4 November 2017;³¹
- (d) Go Mastercard - \$14,494.63 as at 1 November 2017;³²
- (e) Police Bank - \$1,990.97 as at 1 November 2017;³³ and

²⁴ Examination BHO at T26.

²⁵ Exhibit BHO68C.

²⁶ Exhibit BHO69C.

²⁷ Exhibit BHO70C.

²⁸ Exhibit BHO71C.

²⁹ Exhibit BHO5C.

³⁰ Exhibit BHO6C.

³¹ Exhibit BHO6C.

³² Exhibit BHO6C.

³³ Exhibit BHO59C.

(f) Suncorp Bank - \$5,545.39 as at 23 November 2017.³⁴

3.26 During the private examination, Officer 1 initially claimed that he had unintentionally omitted these credit card balances on his application form, but later conceded that this was intentional and that he did it in order to secure finance for the vehicle.³⁵

3.27 Counsel Assisting submitted that a finding of serious police misconduct should be made against Officer 1 in respect of the application for finance to Star Auto, and further that consideration should be given to obtaining the advice of the DPP with respect to the prosecution for an offence under s 192E of the *Crimes Act 1900*.

GEM Visa credit card

3.28 On or around 2 December 2017, Officer 1 applied for a GEM Visa credit card. On the application form, he stated that he had a credit card balance of \$15,500 with a limit of \$16,000. However, Counsel Assisting submitted that this was false as he had failed to disclose the following credit card debts:

3.29

- (a) American Express - \$4,905.76 as at 23 November 2017;³⁶
- (b) ANZ - \$20,746.21 as at 13 November 2017;³⁷
- (c) Commonwealth Bank - \$3,115.65 as at 5 December 2017;³⁸
- (d) Police Bank - \$2,001.62 as at 1 December 2017;³⁹ and
- (e) Suncorp - \$5,545.39 as at 24 November 2017.

3.30 Officer 1 admitted during the private examination that he had failed to disclose certain liabilities on this application form.⁴⁰

3.31 Counsel Assisting submitted that Officer 1 engaged in serious police misconduct by providing false information, or omitting relevant information, on the application form, and that consideration should be given to the prosecution of an offence under s 192E of the *Crimes Act 1900*.

Pepper Group home loan

3.32 On 6 April 2018, Officer 1 and Mrs B applied for a \$491,062.50 home loan from Pepper Group Limited through mortgage broker Home Loan Experts. On the application form, the following debts were disclosed as liabilities:⁴¹

- (a) GO Money credit card - \$16,477.38;
- (b) GEM Visa credit card - \$10,163.16;
- (c) AMEX credit card - \$4,791.57;
- (d) ANZ credit card - \$20,703.33; and
- (e) Bank Australia mortgage - \$430,465.47.

³⁴ Exhibit BHO6C.

³⁵ Examination BHO at T26-33.

³⁶ Exhibit BHO73C.

³⁷ Exhibit BHO74C.

³⁸ Exhibit BHO75C.

³⁹ Exhibit BHO76C.

⁴⁰ Examination BHO at T35.

⁴¹ Exhibit BHO7C.

3.33 However, Counsel Assisting submitted that Officer 1 had failed to disclose personal loans from Ms A and the following:

- (a) Mercedes-Benz car loan - \$29,569.34 as at 3 April 2018;⁴²
- (b) Commonwealth Bank credit card - \$3,074.19 as at 4 April 2018;⁴³
- (c) Police Bank - \$2,014.94 as at 1 April 2018;⁴⁴
- (d) Suncorp Bank credit card - \$11,279.55 as at 23 March 2018.⁴⁵

3.34 During the private examination, Officer 1 admitted that he would have had more credit cards to add to the list contained on the application but he received advice from the person he was dealing with to the effect that they could only re-finance the debts that were listed.⁴⁶ He also insisted that he would have informed the person he was dealing with of the other debts and that he was not the one who filled in the application.⁴⁷

3.35 Counsel Assisting submitted that despite the possibility that the form could have been completed by an employee of Home Loan Experts or Pepper Group Limited, it was nevertheless the duty of Officer 1 and his wife to ensure the form was correct. Counsel Assisting submitted that Officer 1 had engaged in serious police misconduct when he signed the application form knowing it to contain false information, or omitting relevant information.

Officer 1's submissions on applications for finance

3.36 In submissions made on behalf of Officer 1, Counsel conceded that in relation to some credit card applications, his client did not disclose debts on credit cards issued by other lending institutions. However, it was submitted that there was no evidence that in doing so Officer 1 had engaged in any dishonest deception.

3.37 Additionally, there is no evidence that he defaulted on any of the particular loans, or that the lending authorities would not have provided the financing had they known the true state of Officer 1's finances. It is said that the evidence would not establish that Officer 1 knew that such omission from the various applications would amount to dishonesty in the relevant sense. Accordingly, it is submitted that the Commission could not be satisfied that Officer 1 had committed an offence under s 192E of the *Crimes Act 1900* or that he had engaged in serious police misconduct.

Fraud – Relevant principles

3.38 Section 192E of the *Crimes Act 1900* provides as follows:

(1) A person who, by any deception, dishonestly:

⁴² Exhibit BHO60C.

⁴³ Exhibit BHO62C.

⁴⁴ Exhibit BHO65C.

⁴⁵ Exhibit BHO66C.

⁴⁶ Examination BHO at T34.

⁴⁷ Examination BHO at T35.

(a) obtains property belonging to another, or

(b) obtains any financial advantage or causes any financial disadvantage,

is guilty of the offence of fraud.

Maximum penalty: Imprisonment for 10 years.

3.39 Section 192B defines “deception” as follows:

(1) In this Part,

“deception” means any deception, by words or other conduct, as to fact or as to law, including:

(a) a deception as to the intentions of the person using the deception or any other person, or

(b) conduct by a person that causes a computer, a machine or any electronic device to make a response that the person is not authorised to cause it to make.

(2) A person does not commit an offence under this Part by a deception unless the deception was intentional or reckless.

3.40 Section 4B provides that “dishonest” means “dishonest according to the standards of ordinary people and known by the defendant to be dishonest according to the standards of ordinary people”.

3.41 Section 192D elaborates on the element of obtaining a financial advantage and causing a financial disadvantage:

(1) In this Part,

“obtain” a financial advantage includes:

(a) obtain a financial advantage for oneself or for another person, and

(b) induce a third person to do something that results in oneself or another person obtaining a financial advantage, and

(c) keep a financial advantage that one has

whether the financial advantage is permanent or temporary.

(2) In this Part,

“cause” a financial disadvantage means:

(a) cause a financial disadvantage to another person, or

(b) induce a third person to do something that results in another person suffering a financial advantage,

whether the financial disadvantage is permanent or temporary.

- 3.42 Counsel Assisting noted that deception is the intentional inducing in another of a state of mind which an accused knows does not accord with fact.⁴⁸ Further, it was noted that it is no defence to a claim of deceptively obtaining a loan that the recipient intended to repay it.⁴⁹
- 3.43 Perhaps importantly, deception can still be made out even if at the time the property was obtained the party deceived suspected that he was being deceived.⁵⁰ Additionally, it has been held that obtaining a loan on ordinary commercial terms constitutes a financial advantage.⁵¹
- 3.44 Having considered the matter, the Commission rejects the submissions made on behalf of Officer 1. It was clear that Officer 1 was engaging in dishonest conduct and deception, by way of putting forward a financial image of himself that did not reflect the complete picture. He understated his liabilities to increase the likelihood of his applications being successful.
- 3.45 Whether he defaulted on the loans or whether it was known that the institutions would not have provided the finance had they known the truth is not relevant. The only relevant conduct to be assessed is the deception that Officer 1 engaged in with respect to his applications for finance.
- 3.46 Accordingly, the Commission rejects the submissions made on behalf of Officer 1 and accepts the submissions of Counsel Assisting.

C. The self-managed super fund

- 3.47 On 25 October 2016 a self-managed superannuation fund ('the super fund') was created by the execution of a trust deed signed by both Officer 1 and Mrs B. Page 17 of this document states that *"the trustee must not invest in any investment that is not permitted by superannuation law. The trustee must not make an investment in the form of a loan or other financial assistance to a Member or a relative of a Member."*
- 3.48 An ANZ 'V2 Plus' account ('the V2 Plus account') was opened on 7 November 2016 to operate the super fund. On 11 November 2016, a Westpac debit account was opened in Ms A's name. Counsel Assisting submitted that the Westpac account was in fact operated by Officer 1 and used by him to access his superannuation funds which he wasn't otherwise entitled to access at the time.

⁴⁸ *Welham v Director of Public Prosecutions* [1961] AC 103.

⁴⁹ *R v McCall* (1970) 55 Cr App R 175 at 180.

⁵⁰ *R v Miller* (1992) 95 Cr App R 744 (CA).

⁵¹ *Elias v Director of Public Prosecutions* (2012) 222 A Crim R 286.

- 3.49 In support, Counsel Assisting noted that a loan contract between the super fund and Ms A was created on 20 November 2016 whereby \$120,000 would be loaned to her with an interest rate of 4.02% per year for 360 months. In order to first obtain this \$120,000, Officer 1 had to roll over superannuation from existing funds into the super fund.
- 3.50 This included an amount of \$50,000 rolled over from Officer 1's BT Super fund, received into the V2 Plus account on 24 November 2016 and then transferred into Ms A's Westpac account four days later on 28 November 2016. On 29 November 2016, \$50,000 was withdrawn from Ms A's Westpac account by way of a bank cheque in favour of Officer 1, and this was later deposited into his Suncorp Bank account.
- 3.51 Once received into the Suncorp Bank account, Officer 1 used \$30,000 to reduce his ANZ mortgage on 2 December 2016, \$13,037.81 to discharge Mrs B's car loan on 2 December 2016, and \$4,950 to pay the construction company responsible for building property on the land previously purchased.
- 3.52 Officer 1 also rolled over \$10,398.57 from his FSS superannuation fund, received into the V2 Plus account on 17 November 2016. Four days later, on 21 November 2016, this amount was transferred into Ms A's Westpac account, and on the next day it was withdrawn and subsequently deposited into Officer 1's Westpac account for personal expenditure.
- 3.53 Mrs B had \$32,622.64 rolled over from her Hesta superannuation fund, which was received into the V2 Plus account on 2 December 2016. Four days later, on 6 December 2016, an amount of \$25,000 was transferred from the V2 Plus account into Ms A's Westpac account. This was then withdrawn the next day on 7 December 2016 by way of a bank cheque payable to Officer 1. It was deposited into his Suncorp Bank account and on 8 December 2016 he transferred \$24,500 into his ANZ home loan account to reduce his mortgage.
- 3.54 In evidence to the Commission, Officer 1 admitted that he had not complied with the restrictions and regulations administering access to superannuation, citing the reason as financial stress.⁵² He also admitted to utilising Ms A's Westpac account and the loan agreement in an attempt to mask his access to the superannuation funds.⁵³ Furthermore, he stated that he had forged Ms A's signature on the loan agreement.⁵⁴
- 3.55 Counsel Assisting submitted that the loan agreement was a sham used to enable Officer 1 to indirectly access his superannuation fund, and that his actions constituted a breach of s 65(1) of the *Superannuation Industry (Supervision) Act 1993* and the terms and conditions of the super fund. For these reasons it was submitted that Officer 1 had engaged in serious police misconduct.

⁵² Examination BHO at T36-37.

⁵³ Examination BHO at T41-42.

⁵⁴ Examination BHO at T41-42.

3.56 Section 65(1) of the *Superannuation Industry (Supervision) Act 1993* provides as follows:

(1) A trustee or an investment manager of a regulated superannuation fund must not:

(a) lend money of the fund to:

(i) a member of the fund; or

(ii) a relative of a member of the fund; or

(b) give any other financial assistance using the resources of the fund to:

(i) a member of the fund; or

(ii) a relative of a member of the fund.

3.57 Section 166 of that Act provides an administrative penalty of 60 penalty units for such a breach.

3.58 Counsel for Officer 1's submissions made reference to the collective evidence of Ms A and Officer 1 explaining the role of the loan agreement, namely that Ms A wanted to carry out renovations to her hotel and that, at least initially, there was a genuine intention for the super fund to lend her money as an investment for this purpose.

3.59 This intention changed when the builder for the property went into liquidation and Officer 1 needed funds to complete the work using another builder. Additionally, Officer 1's father was ill in another country and provided financial assistance to his family.

3.60 It was submitted that although the timing of the transactions may appear to raise suspicions, it did not *per se* establish that the creation of the super fund was always a ruse to allow Officer 1 early access to his superannuation funds. Further, the evidence available does not establish that the loan agreement was falsely created for the purpose of circumventing superannuation laws. In this respect it was submitted that Ms A consented to Officer 1 signing her name on the loan agreement.

3.61 The Commission does not accept these submissions. The loan agreement was created on 20 November 2016, and the first batch of superannuation funds that was transferred was received by Officer 1 on 29 November 2016. When considering how the loan agreement was executed, namely Officer 1 signing Ms A's name, the timing of the transactions, and the subsequent purposes for which the funds were used (which contradicts the explanations given in evidence), the Commission is satisfied that the purpose at all times was to create the super fund and the loan agreement solely for Officer 1 to access his funds prematurely and in breach of superannuation regulations.

- 3.62 In any event, even assuming that there was a genuine intention initially which changed at some unknown time, the Commission is of the view that this can only go to the degree of culpability. The result was that Officer 1 nevertheless accessed the funds which he was not entitled to access, and he did so in a way which can only be described as an attempt to evade detection by the relevant authorities. The intention to deceive these authorities was present, the timing of which can only mitigate or aggravate culpability minutely.
- 3.63 The Commission is satisfied that Officer 1 has engaged in serious police misconduct in respect of his conduct in prematurely accessing his superannuation funds.

D. Improper COPS access

- 3.64 On 2 July 2017 at around 6:30 a.m., Officer 1 was accessing records stored on the COPS system in relation to a matter that occurred on the previous night. However, during this process, he also accessed records of Ms A's former partner, who had no involvement in the matter that occurred on the previous night and was not related to any of the persons involved.
- 3.65 Counsel Assisting submitted that this was an improper access of records and that the Commissioner of Police should give consideration to the taking of non-reviewable action against Officer 1 pursuant to s 173 of the *Police Act 1990*.
- 3.66 In evidence, Officer 1 could proffer no reason for accessing the records of Ms A's former partner, apart from "*I may have thought about the matter that occurred years ago and just had a read*". He conceded that he had no legitimate reason to access those records and was aware that he should not have done so.
- 3.67 Counsel for Officer 1 submitted that there was no evidence of any improper motive or of any personal purpose in accessing the records of Ms A's former partner. Further, there was no evidence that he accessed it for Ms A. Although Officer 1 could not recall during the examination the purpose for accessing such records, it did not necessarily follow that such access was unauthorised.
- 3.68 The Commission rejects these submissions. Records held by the Commission and shown to Officer 1 during the private examination⁵⁵ reveal a log of constant access by him of records relating to the matter that occurred on 1 July 2017. In the midst of this access, he accessed records of Ms A's former partner. The mere fact that Ms A's former partner was wholly unconnected with the matter, or any other matter being investigated, can only mean that the access was improper and unauthorised.
- 3.69 The Commission is of the view that consideration should be given to the taking of non-reviewable action against Officer 1 pursuant to s 173 of the *Police Act 1990*.

⁵⁵ Exhibit BHO9C.

E. False signature on RMS form

- 3.70 On 19 December 2017 as part of his duties, Officer 2, a Constable, was to lodge a form with Roads & Maritime Services. This form required the signature of an authorised officer.
- 3.71 The authorised officer listed on the form was Officer 1 with the first name misspelt and a signature appeared to correspond to that name. However, Counsel Assisting submitted that this was not the signature of Officer 1, as it bore little resemblance to his signature on other documents, and the spelling of his first name was incorrect.
- 3.72 Officer 1's explanation to the Commission was that at the time he was an Acting Sergeant and that *"possibly yes, if I had a conversation with [Officer 2], I probably would have said - I don't really recall where I was on this day. I probably would have said, 'yeah, just sign my name. It's authorised.'"*⁵⁶
- 3.73 Counsel Assisting submitted that consideration should be given to the taking of non-reviewable action pursuant to s 173 of the *Police Act 1990* for this conduct.
- 3.74 Counsel for Officer 1 submitted that although it was not appropriate for one officer to sign another officer's name, it was apparently done as a matter of expedience and there was no evidence of any improper purpose, and that the circumstances would not justify the taking of any action against Officer 1 under s 173.
- 3.75 The Commission rejects these submissions. In the Commission's view it is highly inappropriate for officers to sign official documents under another officer's name. In the usual course when an officer is unavailable to sign and consents to another officer signing on behalf of them, this is indicated on the document. In this case, however, a person reading the document would understand it to have been signed by Officer 1, when in actual fact it was not.
- 3.76 The Commission accepts the submissions of Counsel Assisting in that consideration should be given to the taking of non-reviewable action against Officer 1 under s 173 of the *Police Act 1990*.

F. False signature on subpoena

- 3.77 A subpoena dated 14 April 2018 is purported to have Officer 1's signature under the words *"this subpoena was issued by [Officer 1]"*. However, Counsel Assisting submitted that this was a signature of Officer 3, a Constable, and not Officer 1.
- 3.78 Counsel Assisting submitted that the signature bore little resemblance to Officer 1's signature on other documents, and a lawfully intercepted telephone call between the two officers was further proof of this:

⁵⁶ Examination BHO at T55.

Officer 3: But I put all your subpoenas, are in your pigeon hole.

Officer 1: Thank you.

*Officer 3: And you just gotta, I forged your signature on a few um
-laughs-*

Officer 1: Oh that's alright.

- 3.79 During the private examination, Officer 1 stated *"I would have asked [Officer 3] to sign it on my behalf, yes, it's okay"*.⁵⁷
- 3.80 Counsel Assisting submitted that consideration should be given to the taking of non-reviewable action pursuant to s 173 of the *Police Act 1990*.
- 3.81 Counsel for Officer 1 made the same submission as with the RMS document, namely that it was done as a matter of expedience and there was no evidence of any improper purpose.
- 3.82 The Commission rejects these submissions for the same reasons stated above, and is of the view that consideration should be given to the taking of non-reviewable action pursuant to s 173 of the *Police Act 1990*.

G. Failure to take action on firearm information

- 3.83 During a lawfully intercepted telephone conversation on 27 February 2018 at about 8:48 a.m. Ms A relayed information to Officer 1 about a firearm:

Ms A: Okay there's another incident but I swore I wasn't gonna tell you this one. She, she turned up down at the farm and she had a, a weapon.

Officer 1: Like what?

Ms A: A gun.

Officer 1: What?

Ms A: She had a gun. See I shouldn't

Officer 1: A real gun or is it a replica?

Ms A: Nah.

Officer 1: Or looked like a real gun?

Ms A: Well I didn't see it, and Darren turned around, went ballistic there and told her to fuck off. How dare she, um even if you get caught with that Taylor in the car, you know that's five years jail, blah, blah, blah, blah. Get rid

⁵⁷ Examination BHO at T53.

of it, don't want it down here, you're a fuckin' fuck head and then called em' on that.

Officer 1: Like a pistol, my love? Like a pistol or rifle?

Ms A: Ah it, is there a twenty-two sawn off shot gun that's been

Officer 1: No got, the twenties, the twenties no, oh right. Wow.

Ms A: Don't, don't, don't, don't. You can't do anything yet.

Officer 1: No, oh stop it. I'm talking.

Ms A: Yeah you can't do anything yet. Anyway

Officer 1: Hello, hello, hello, I'm talking to you as, my love as your partner

Ms A: Ok

Officer 1: I'm not talking to you as a cop.

- 3.84 Officer 1 was asked during the private examination why he took no action in relation to this information, and he stated that he *"assumed the information is not a hundred per cent or it's not real"* and that he *"didn't believe that she had sighted the firearm"*.⁵⁸ He also disagreed when the proposition was put to him that his relationship with Ms A compromised his duties as a police officer.⁵⁹
- 3.85 Counsel Assisting submitted that this was information which Officer 1 should have reported, and that he failed in his duties by not doing so. Further, it was submitted that his failure to do so was actuated by his relationship with Ms A. Counsel Assisting submitted that consideration should be given to the taking of non-reviewable action pursuant to s 173 of the *Police Act 1990*.
- 3.86 Counsel for Officer 1 submitted that Officer 1 did not believe Ms A had sighted the firearm, and that he did not believe the information was legitimate. Officer 1 applied his knowledge of the parties involved when making a decision about what to do with the information. Additionally, he was on leave at the time of the telephone conversation.
- 3.87 The Commission rejects these submissions. The role of a police officer is to investigate potential breaches of the criminal law, and this requires assessing information received about such possible breaches. There is nothing in the telephone conversation which would indicate Ms A was lying to Officer 1.

⁵⁸ Examination BHO at T57.

⁵⁹ Examination BHO at T58.

3.88 Accordingly, the Commission is of the view that consideration should be given to the taking of non-reviewable action pursuant to s 173 of the *Police Act 1990*.

H. Misuse of Police-issued Opal card

3.89 During the private examination, Officer 1 was asked whether he had given his police-issued Opal card to other people for use. He admitted that he had given it to his daughter for her to use when she was in Sydney “a few months ago” and that she used it “a couple of weeks – two, three weeks”.

3.90 Counsel Assisting submitted that this was an improper use and that consideration should be given to the taking of non-reviewable action under s 173 of the *Police Act 1990*.

3.91 Counsel for Officer 1 conceded that this was not appropriate and submitted that it would justify Officer 1 being counselled over the use of Opal cards, but not any action under s 173 of the *Police Act 1990*.

3.92 The Commission rejects this submission on the basis that it was not a once-off use by Officer 1’s daughter, but she had it for a relatively prolonged period of time of about two or three weeks. This was both a misuse of police resources and a breach of trust placed in him by the NSW Police Force.

3.93 Accordingly the Commission is satisfied that consideration should be given to the taking of non-reviewable action pursuant to s 173 of the *Police Act 1990*.

4. Findings and Recommendations

4.1 Pursuant to s 133 of the LECC Act, the Commission finds that Officer 1 is an affected person, and the findings and recommendations made in respect of Officer 1 are listed below.

Inspections at the local hotel

4.2 The Commission recommends that consideration should be given to the taking of non-reviewable action pursuant to s 173 of the *Police Act 1990*.

Application for finance – ANZ home loan

4.3 The Commission finds that Officer 1 engaged in serious police misconduct and consideration should be given to the obtaining of advice from the DPP for the prosecution of an offence under s 192E of the *Crimes Act 1900*.

Application for finance – Bank Australia home loan

4.4 The Commission finds that Officer 1 engaged in serious police misconduct.

Application for finance – GO Mastercard

4.5 The Commission finds that Officer 1 engaged in serious police misconduct and consideration should be given to the obtaining of advice from the DPP for the prosecution of an offence under s 192E of the *Crimes Act 1900*.

Application for finance – Mercedes-Benz car loan

4.6 The Commission finds that Officer 1 engaged in serious police misconduct and consideration should be given to the obtaining of advice from the DPP for the prosecution of an offence under s 192E of the *Crimes Act 1900*.

Application for finance – GEM Visa credit card

4.7 The Commission finds that Officer 1 engaged in serious police misconduct and consideration should be given to the obtaining of advice from the DPP for the prosecution of an offence under s 192E of the *Crimes Act 1900*.

Application for finance – Pepper Group home loan

4.8 The Commission finds that Officer 1 engaged in serious police misconduct.

The self-managed family super fund

4.9 The Commission finds that Officer 1 engaged in serious police misconduct.

Improper COPS access

4.10 The Commission is of the view that consideration should be given to the taking of non-reviewable action pursuant to s 173 of the *Police Act 1990*.

False signature on RMS form

4.11 The Commission is of the view that consideration should be given to the taking of non-reviewable action pursuant to s 173 of the *Police Act 1990*.

False signature on subpoena

4.12 The Commission is of the view that consideration should be given to the taking of non-reviewable action pursuant to s 173 of the *Police Act 1990*.

Failure to take action on firearm information

- 4.13 The Commission is of the view that consideration should be given to the taking of non-reviewable action pursuant to s 173 of the *Police Act 1990*.

Misuse of Police-issued Opal card

- 4.14 The Commission is of the view that consideration should be given to the taking of non-reviewable action pursuant to s 173 of the *Police Act 1990*.

Further action

- 4.15 A copy of this Report and the identities of all involved individuals have been provided to the Commissioner of Police for consideration of the recommended managerial action.
- 4.16 The Commission will provide a brief of evidence to the DPP for consideration of prosecution.

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

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