

OPERATION TABARCA
REPORT PURSUANT TO S 132 *LAW ENFORCEMENT
CONDUCT COMMISSION ACT 2016*

May 2020

LECC

Law Enforcement
Conduct Commission

Office of Commissioner for Integrity

8 May 2020

43043/808

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

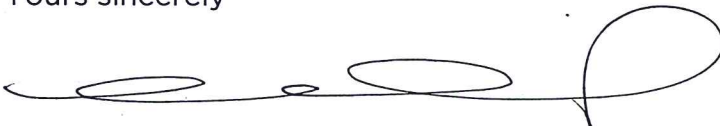
The Hon Jonathan O'Dea MP
Speaker
Legislative Assembly
Parliament House
SYDNEY NSW 2000

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 Tabarca.

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

Yours sincerely



The Hon Lea Drake
Commissioner for Integrity

Encl.

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1. Introduction

The Law Enforcement Conduct Commission's ('the Commission') Operation Tabarca, arose from complaints made by a number of NSW Police Force ('NSWPF') officers and civilian officers stationed at LAC1, following the appointment of BKJ as the area Commander in 2013, up until his departure on sick leave on or about 25 March 2019. The focus of the investigation was BKJ's treatment of his officers and, in particular, allegations made against him of bullying, harassment and discrimination.

2. The Commission's Statutory Functions

2.1 The *Law Enforcement Conduct Commission Act 2016* (NSW) (the LECC Act), lists among the Commission's principal functions the detection and investigation of serious misconduct and serious maladministration: 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 NSWPF or the Crime Commission,*

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

(2) *In this section:*

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

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

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

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

- (a) *Is unreasonable, unjust, oppressive or improperly discriminatory in its effect, or*
- (b) *arises, wholly or in part, from improper motives, or*
- (c) *arises, wholly or in part, from a decision that has taken irrelevant matters into consideration, or*
- (d) *arises, wholly or in part, from a mistake of law or fact, or*
- (e) *is conduct of a kind for which reasons should have (but have not) been given.*

2.4 The conduct of an officer or agency is defined as “serious maladministration” if the conduct, though not unlawful, is conduct of a serious nature which is unreasonable, unjust, oppressive or improperly discriminatory in its effect or arises wholly or in part from improper motives: 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 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.¹ Accordingly findings can form the basis of opinions and recommendations, even if they do not reach the standard of beyond reasonable doubt.
- 2.10 The Commission has made a determination to protect the identities of all persons involved. Accordingly, all persons 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 in relation to the evidence given in Operation Tabarca or included in this report without further order of the Commission.

3. The Commission's Investigation

- 3.1 In February 2018, the Commission decided to commence a preliminary investigation into complaints made by a number of police officers alleging that between 2002 and 2016, BKJ had been involved in the sexual harassment, harassment, bullying and victimisation of staff. The Commission found the NSWPF had investigated a number of complaints made against BKJ, two of which were sustained (harassment/bullying) and resulted in him receiving one counselling session. Analysis of records revealed there had been 15 staff terminations at LAC1 between January 2014 and July 2018 whilst BKJ was the Commander.

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

- 3.2 In light of the matters revealed during the preliminary investigation, the Commission decided in August 2018, to commence a full investigation, which became known as Operation Tabarca. During the course of its investigation a further issue that arose was compliance with the *Crown Employees (Police Officers- 2017) Award* ('the Award') provisions, particularly relating to staff overtime, managed time and the rostering system.
- 3.3 In furtherance of its investigation, the Commission considered that it was necessary to examine several witnesses and, after taking into consideration the provisions of s 63 of the LECC Act, it determined that this should be conducted in private. A summary of the evidence adduced by these witnesses is reproduced in Paragraph 6 of this Report.
- 3.4 The Hon Lea Drake, Commissioner for Integrity, held private examinations on 22 November 2018; 7, 8, 12 February 2019; 25, 26, 27, 28, 29 March 2019; 2 April 2019; 28, 29 May 2019; 22, 23 July 2019; 15 August 2019 and 27 September 2019.

4. Examinations

- 4.1 The Commission held private examinations on the dates identified in Paragraph 3.4 above.
- 4.2 Pursuant to section 64 of the LECC Act, Ms Lucy Saunders was appointed as Counsel Assisting the Commission in Operation Tabarca.
- 4.3 The initial Scope and Purpose of the private examinations regarding the investigation into the conduct of BKJ is set out below:
1. *To investigate whether [BKJ] or any other NSWPF officer engaged in serious misconduct by way of workplace bullying, harassment and/or discrimination.*

This was subsequently expanded as follows:

2. *To investigate whether [BKJ] or any other NSWPF officer engaged in serious misconduct by failing to ensure compliance with the Crown Employees (Police Officers) Award in relation to police officers in his command.*
- 4.4 As its investigation continued, the Commission expanded the scope and purpose of its investigation to consider whether there were systemic failures within the NSWPF as to how it dealt with complaints regarding staff workplace behaviour, specifically:

To investigate whether there has been, or is continuing, any conduct by the NSWPF in relation to dealing with workplace bullying, harassment and/or discrimination which was, or is unreasonable or oppressive in its effect, or arises wholly or in part from a mistake of law or fact or indicative of systemic issues that could adversely reflect on the integrity of the NSWPF.

This issue is to be the subject of a Supplementary Report by the Commission.

5. Police Officer Witnesses

A. BKJ

- 5.1 BKJ joined the NSWPF in 1987. After being dismissed for misconduct in 1992 he was reinstated by the New South Wales Industrial Relations Commission in 1995.
- 5.2 In 2013 he was promoted to Superintendent and appointed as the Commander of LAC1. BKJ completed a two-week leadership program and 12 months of ongoing workshops before commencing in this role.
- 5.3 On 14 March 2019, BKJ was informed that the Commission would be conducting a number of private examinations in connection with its investigation of complaints made of bullying and harassment at the LAC1. On 25 March 2019 BKJ consulted his doctor and subsequently he reported off sick with anxiety and stress related to work issues. BKJ has not resumed work and is reportedly continuing to receive treatment from his doctor, psychologist and psychiatrist.
- 5.4 In 2013 the LAC1 area was going through a period of growth and demographic change. The Command was, in BKJ's view, understaffed, and had been for a number of years. As well as having the smallest workforce in the region, it had the largest number of permanent restricted duty and part-time officers. This created staffing and budgetary challenges in the Command. An additional management challenge was the relatively low sergeant-to-constable ratio.
- 5.5 BKJ introduced a number of new measures in line with the corporate templates and frameworks used at the larger commands. He introduced a Proactive Crime Team ('PACT') work group, an intelligence response team and a domestic violence intervention team. In addition he established morning communication briefings and a range of other reporting requirements, systems and processes.

5.6 As a result of his focus on pro-active policing, BKJ removed 'correspondence days' from the roster of general duties staff.² He had significant difficulty accepting that this would increase the workload of these officers despite the paperwork which would otherwise have been completed on these days. He accepted that it would be 'arguable' that this would increase workload. He estimated that 20% of the workforce was not on board with these changes.³ He also introduced leave rules supplementing corporate policies and the award, adopted from other commands.⁴

B. BJH

5.7 BJH, a police officer since 2010, was assigned to LAC1 from 16 December 2011 to 4 November 2018. On 16 March 2018, BJH contacted the Commission and made an official complaint of bullying and harassment against BKJ.

C. BJJ

5.8 BJJ, a police officer since 2014, was based at LAC1 since graduation from the Police Academy ('the Academy'). In approximately March 2014 she became involved in a relationship with BJK. She fell pregnant in around April 2018.

D. BIX

5.9 BIX joined the NSWPF in 1994. He was assigned to LAC1 on 8 June 2014 where he remains as a duty officer. Until shortly after the hearing, he was the Professional Standards Duty Officer, a position which involved, among other things, oversight of rostering and annual leave requests.

E. BLG

5.10 BLG, a police officer since 1998, was assigned to LAC1 on 30 January 2011. He continues to work in that Command as the custody officer. At the time of examination he was on a return-to-work plan, having returned to work in November 2018 following an injury in March 2018.

F. BJF

5.11 BJF joined the NSWPF in 1996. He was first assigned to LAC1 on 21 November 2008. He still continues in the Criminal Investigation Team there.

² Examination BKJ at T30.

³ Examination BKJ at T22.

⁴ Examination BKJ at T28.

G. BJB

5.12 BJB, a member of the NSWPF since 23 July 1992, moved to LAC1 on loan as Crime Manager in December 2013 and was given the position permanently in October 2014. BHU and BIU reported to her. As Crime Manager, BJB was a member of the Senior Management Team and worked closely with BKJ until her transfer on 20 January 2019.

H. BKK

5.13 BKK joined the NSWPF in 1989. He has been attached to LAC1 since 2000. As a member of the Senior Management Team, he worked closely with BKJ. BKK remains at LAC1.

I. BIW

5.14 BIW, a police officer since 1987, was assigned to LAC1 on 11 July 2010. At the time of hearing she remained a duty officer there. She had had previous experience working with BKJ in Goulburn in approximately 2006.

J. BJK

5.15 BJK, a police officer since 2007, joined LAC1 in 2015 as part of a return-to-work plan. He was the Team Leader in the PACT from May 2017. At the time of hearing, he was unfit for work due to a work-related injury.

K. BJC

5.16 BJC joined the NSWPF in 2001 and moved to LAC1 in May 2012. He relocated to the St George Command in August 2017.

L. BHU

5.17 BHU, a member of the NSWPF since 1994, was attached to LAC1 from 27 July 2008 to 26 March 2016, at the rank of Sergeant, and was engaged as the Crime Co-Ordinator.

5.18 BHU was ultimately successful in obtaining a promotion to Inspector and a transfer to Detectives. She transferred to Green Valley on 13 March 2016.

M. BJI

5.19 BJI, a police officer since 1990, joined LAC1 in June 2007. He transferred to Burwood in September 2018, after a period of absence from duty from November 2016.

N. BJD

5.20 BJD joined the NSWPF in 1982. He has been a duty officer at LAC1 since July 2006.

O. BJA

5.21 BJA, a police officer since 2002, commenced at LAC1 in 2002. This included a period in the PACT in 2015. He moved to the Eastern Beaches Command in October 2015. He then returned to LAC1 in September 2017, where he remains.

P. BJT

5.22 BJT, a police officer since 2006, has been stationed at LAC1 since August 2007. He has been the local New South Wales Police Association ('NSWPA') representative since approximately 2014.

Q. BIU

5.23 BIU joined the NSWPF on 19 December 1986. She was attached to LAC1 as an Intelligence Agent from 2003. After suffering a work-related injury to her shoulder, she was placed on permanent restricted duties in 2006.

5.24 BIU suffered a psychological injury, alleged to be as a result of BKJ's conduct toward her. She submitted a hurt-on-duty claim on 22 November 2016 and was discharged from the NSWPF in early 2018.

6. Civilian Witnesses

A. Mr BIY

6.1 Mr BIY joined the NSWPF in 2003, and was assigned to LAC1 in 2013. When BKJ commenced as Commander, he was a Senior Constable.

B. Ms BJE

6.2 Ms BJE, a civilian officer since 2002, has been the Local Area Manager at LAC1 since 2003.

C. Ms BJU

6.3 Ms BJU is a civilian officer who has been part of the NSWPF since 2008, after a previous period of service from 2003 to 2005. She is engaged as a General Administrative Support Officer. She was at LAC1 in this role from approximately May 2017 to November 2018 as the roster clerk.

D. Ms BJV

6.4 Ms BJV, the Assistant Secretary – Industrial, of the NSWPA gave evidence regarding the negotiation and operation of the *Crown Employees (Police Officers – 2017) Award* (‘the Award’).

E. Mr BIV

6.5 Mr BIV joined the NSWPF in 2001 at the age of 50. He is approximately 5’2” tall. He moved to LAC1 in late 2012. He moved from general duties to restricted duties after about seven months, as a result of an aggravation of a post-traumatic stress disorder.

F. Mr BLC

6.6 Mr BLC was formerly Secretary of the NSWPA for approximately 20 years until November 2018, when he went on long service leave and, at the time of giving evidence, was awaiting formal exit from his employment. Over the years he was from time to time a member of the Medical Discharge Review Panel and he gave evidence as to advice the Panel gave regarding the medical discharge of officers and his experience with bullying in the workplace.

7. Allegations and Evidence

A. General Demeanour Towards Staff

(i) BJB

7.1 BJB gave evidence before the Commission on 28 March 2019, that BKJ, at least at the start of his time in LAC1, regularly:

- raised his voice, particularly when challenged or unhappy with an answer, and spoke over people in an overpowering manner;
- pointed, raised his hand at people in a ‘stop’ gesture to interrupt, and waved his hand at people dismissively;
- rolled his eyes, and
- otherwise reacted in a strongly negative manner that, in her view, caused upset. BJB described ‘...*he was unpredictable in that manner...there were less blow-ups towards the end.*⁵

⁵ Examination BJB at T12.

- 7.2 BJB confirmed that BKJ behaved in this manner toward BHU and BIU, among others.
- 7.3 She further confirmed that BHU was allocated additional work and was assigned supervisory responsibilities for restricted duties staff outside the usual scope of the Crime Coordinator role.
- 7.4 Her relationship with BKJ was at first quite up and down, but in recent years it was a lot more amicable.

(ii) BKK

- 7.5 BKK gave evidence before the Commission on 15 August 2019. He described BKJ's predecessor as a *'lovely, very approachable sort of man... highly regarded'*.⁶ He described BKJ's management style as *'completely different... he had the right messages but his delivery was... off the mark'*.⁷ He described him as personable, but often abrupt and terse with a *'my way or the highway'* attitude.⁸ *'[BKJ] did not swear at people or raise his voice... it was his delivery that upset people.'*⁹

(iii) BIW

- 7.6 BIW gave evidence before the Commission on 12 February 2019. She described the LAC1 workplace culture, following BKJ's arrival, as becoming *'toxic'*.¹⁰ He made changes at work that had to be made. Following the investigation into BIU's complaint his conduct improved. However, by February 2019 her view was that:

*'It has reverted back. He's controlling again and he's still trying not to say incorrect things, but they still come out.'*¹¹

- 7.7 BIW confirmed that BKJ would speak rudely, abruptly and aggressively to people. This included interrupting people, raising his voice and repeatedly questioning people. She witnessed this happen to BJB and BHU at the morning meetings. He was not however physically aggressive.
- 7.8 BIW repeatedly described BKJ as controlling. An example of this included his approach to counselling officers. Normally, the Duty Officer holding the Professional Standards portfolio - that is, an Inspector - would deliver these counselling notices to officers. BKJ counselled every single officer himself. BIW noted that this escalated the perceived seriousness of the disciplinary

⁶ Examination BKK at T6.

⁷ Examination BKK at T7.

⁸ Ibid.

⁹ Examination BKK at T9.

¹⁰ Examination BIW at T14.

¹¹ Ibid.

action and its impact on officers. The manner in which BKJ would have these discussions was also inappropriately direct and abrupt.

7.9 BIW referred to discussions amongst officers about the possibility of making a complaint about BKJ and a strong fear of reprisal preventing this from occurring. She participated in the original investigation but was only asked a single question by email about a specific incident. She confirmed that if there had been a general enquiry about BKJ's conduct she would have provided further information.

(iv) BJI

7.10 BJI gave evidence before the Commission on 2 April 2019. He described BKJ's management style as *'appalling...domineering, bullying, lack of consultation, his way or the highway to sum it up'*.¹² In respect to the morning meetings, BKJ conducted them in accordance with a rigid agenda from the head of the table. He described BKJ getting *'stuck into'*¹³ people if dissatisfied with their responses. He described his tone as stern and rude, involving frequent interruptions and dismissive gestures.

(v) BJD

7.11 BJD gave evidence before the Commission on 27 March 2019. He described BKJ as *'fairly blunt, very direct and very precise in what he wanted and expected. He was demanding.'*¹⁴ He described a somewhat negative impact on morale at the station after BKJ arrived, but attributed this to the increased pressures and demands on LAC1 as the area was growing.

(vi) BJC

7.12 BJC gave evidence before the Commission on 26 March 2019. He described BKJ as an *'alpha male [who] didn't like to be challenged'*.¹⁵ BJC made reference to BKJ referring to *'Team [BKJ]'*¹⁶ and expressing the view that only officers considered to be on *'Team [BKJ]'* would be looked after.

(vii) BIU

7.13 BIU gave evidence before the Commission on 7 February 2019. She described BKJ as a *'control freak'*.¹⁷ She described him as aggressive, opinionated and dismissive of different views. She recalled a particular common phrase being *'In my experience and I've got plenty of it'*.¹⁸ She

¹² Examination BJI at T6.

¹³ Examination BJI at T10.

¹⁴ Examination BJD at T8.

¹⁵ Examination BJC at T10.

¹⁶ Examination BJC at T18.

¹⁷ Examination BIU at T35.

¹⁸ Examination BIU at T35.

described his body language. He would stand up and lean forward with his hands on the table, hold up his hands in a stop gesture or wave his hand to dismiss people.

(viii) BJA

7.14 BJA gave evidence before the Commission on 26 March and 2 April 2019. He described BKJ as ‘a strong leader’¹⁹ and his mentor. BJA observed that ‘he has come into the command and has made the command a better place by implementing certain things that weren’t there prior to him’.²⁰ He said that he was not rude but he could be ‘short’ with people. He described his relationship as ‘pretty good... I don’t have a problem with him’,²¹ but he was ‘absolutely’²² aware of people who did. He nominated BIU and BHU as examples.

(ix) BJH

7.15 BJH gave evidence before the Commission on 28 March 2019. She described BKJ’s general demeanour as intimidatory and abrupt. She described an instance where he waved her dismissively out of his office.

(x) Mr BIV

7.16 Mr BIV gave evidence before the Commission on 8 February 2019. He said that he had seen and overheard BKJ speaking rudely and aggressively to female officers. In particular, he recalled an incident when he overheard BKJ go ‘right off’²³ shouting at BHU.

(xi) Mr BIY

7.17 Mr BIY gave evidence before the Commission on 25 March 2019. He described BKJ as making him ‘feel like I didn’t really know what I was doing... he was very short with you, he was very – he talked down towards you. There was no interaction, it was his way or the highway, so to speak.’²⁴

(xii) Ms BJE

7.18 Ms BJE gave evidence before the Commission on 27 March 2019. She described BKJ’s management style as intrusive and ‘autocratic’.²⁵ She agreed that it could also be described as micromanaging. She gave

¹⁹ Examination BJA at T12.

²⁰ Examination BJA at T15.

²¹ Ibid.

²² Ibid.

²³ Examination BIV at T32.

²⁴ Examination BIY at T7.

²⁵ Examination BJE at T7.

evidence of 'terse words'.²⁶ She stated that she had simply learned to do things his way. She described the following kind of exchange:

*'He would tell you something and then he would ask my opinion, and if my opinion differed to what he liked then he raised his voice and he got angry... that was an exchange at one point in time when we disagreed over something and he was obviously angry at me and so I raised my voice back to him and said 'Don't ask my opinion if you don't want to hear it'... he would lean in, lean in toward me I suppose... the tone of voice and the aggression with which he spoke to me, you know, like he just wasn't pleased with me.'*²⁷

- 7.19 She described his favourite gesture in the early years of his command as putting his hand up in front of a person's face and interrupting them. Ms BJE gave evidence that she had seen BKJ interact with other people in this manner, including BJB and BHU. She gave evidence that *'if you were an assertive female in the command you - he - you copped it a bit'*.²⁸
- 7.20 She described her relationship with BKJ as *'very good at the moment'*.²⁹ He had been extremely supportive during her husband's recent battle with cancer. She also observed that BKJ *'was very friendly with the administrative officers and often thanked us for the work that we were doing'* and *'from what I could see he had a very good rapport and relationship with his senior management team and often officers would come by and stop by his office... and he always took a keen interest in people and asked how they were going'*.³⁰

(xiii) BJT

- 7.21 BJT gave evidence before the Commission on 28 May 2019. As a Leading Senior Constable, BJT said that he regularly attended the morning meetings. His evidence regarding BKJ's demeanour when conducting these meetings was as follows.

*'it depends on the day. Some days he's good, some days he's - you know, you can tell he's got the shits... a good day? He'll just sit there and he'll - if you make a suggestion he might say 'yep, we will do that' or something like that and he'll - you know, he's relatively calm about things... A bad day, he'll give you a serving... He'll yell at people, he'll tell them they're incompetent sometimes, things like that.'*³¹

²⁶ Examination BJE at T8.

²⁷ Ibid.

²⁸ Examination BJE at T9.

²⁹ Examination BJE at T6.

³⁰ Examination BJE at T13.

³¹ Examination BJT at T27.

As union representative, the officer said that no one raised with him allegations of bullying by BKJ. He said *'some of the people who didn't perform well were managed and may well complain about being bullied'* and *'they're actually being managed because they are not performing'*.³²

(xiv) BKJ

- 7.22 BKJ gave evidence before the Commission on 22 and 23 July 2019. He described himself as a *'strong leader'*, with a *'direct'* style. His focus was on *'performance, attendance and conduct'*, and described his concerns with officers manipulating sick, carer's or FACS leave entitlements.³³ He would not support officers with high personal leave levels in applications for relieving in positions or positions in particular teams.
- 7.23 He denied ever speaking aggressively to staff, or raising his voice. Although he acknowledged one exception in respect of Mr BIY discussed later in this report. Instead, he described himself as *'strong and dominant'*.³⁴ As an example, in response to a proposal from staff saying *'look, we've got this and we're going to do it this way'*, he would respond with *'Well, no, let's do it this way...we're going to do it this way'*.³⁵ He denied ever pointing at people, but agreed that he would hold his hand up in a *'stop'* gesture, and from time to time interrupt people.
- 7.24 In response to a suggestion that he reacted strongly to being challenged or questioned, he described himself as being a *'good negotiator'*.³⁶ He ultimately agreed that if people became argumentative he would argue back or stop the argument by talking over them.
- 7.25 He agreed that his management style could be described as *'hands-on'*, with him being involved in processes and work that at other commands a person of his rank would not undertake. An example of that involvement was formal counselling, which at other commands was delegated to Professional Standards Duty Officers and approval of leave or rostering.³⁷
- 7.26 BKJ denied that he was a micromanager, although accepted that some people would describe him as this. He preferred the term *'hands-on leader'* with a *'high attention to detail'*.³⁸

³² Examination BJT at T21.

³³ Examination BKJ at T24.

³⁴ Examination BKJ at T53.

³⁵ Examination BKJ at T52.

³⁶ Examination BKJ at T53.

³⁷ Examination BKJ at T26-27.

³⁸ Examination BKJ at T44.

B. PACT Rosters

(i) BJK

- 7.27 BJK gave evidence before the Commission on 3 April 2019. He described BKJ as having a high level of involvement with rostering, to the point of micromanagement.³⁹ He provided an example of a weekly roster which had been extensively marked up by BKJ.⁴⁰
- 7.28 BJK recounted issues with fatigue management and possible award non-compliance in the PACT which was regularly rostered from Wednesday to Saturday, preventing them from having the requisite mandatory number of full weekends off per month.
- 7.29 Despite some of the officers in the PACT being rostered to work up to twelve weekends straight, he said this was not raised by the union at any stage because it was an ingrained culture that the PACT worked every weekend.⁴¹
- 7.30 He said that he did speak to the local union delegate, BJT. However as far as he was aware BJT did not raise it industrially.

(ii) BKK

- 7.31 BKK had oversight of the PACT. He described BKJ as *'keep[ing] a very close observation on what happens everywhere'* with an unusually high level of engagement.⁴² BKJ was inflexible in that he required that the four PACT members to work on Friday and Saturday night.⁴³

(iii) Ms BJU

- 7.32 Ms BJU gave evidence before the Commission on 28 May 2019. She agreed that BKJ would regularly engage in roster alterations and otherwise participate in the process to a significantly higher level than commanders in other commands where she had worked.
- 7.33 She described BKJ as *'always very professional with me. He was very supportive'* and as having a good rapport with his Senior Management Team, although she was aware of complaints.⁴⁴

³⁹ Examination BJK at T35.

⁴⁰ Ex BJK2C.

⁴¹ Examination BJK at T23-24.

⁴² Examination BKK at T21.

⁴³ Examination BKK at T21-22.

⁴⁴ Examination BJU at T12-13.

(iv) Ms BJV

7.33 Ms BJV gave evidence that the Award required employees to have on average, one weekend off out of a four week period. Rosters were typically drawn up over a six week period. She said that the roster should not require an officer to work predominantly Wednesday to Saturday inclusive. A provision had been inserted into the Award in 2017 to permit individual officers to enter into a flexible work arrangement with their Commander.

7.34 She said that roster audits were routinely conducted, paying particular attention if there were complaints about rostered weekends off work. If there was a complaint that an officer had to work six weekends straight, she would audit, not only the roster period the subject of the complaint, but also the one on either side to establish what had occurred before and after. Since the Award was negotiated in 2017, there had not been any continuing disputes over officers getting the required weekend leave.⁴⁵

(v) BKJ

7.34 BKJ accepted that he required the PACT staff to work a Wednesday to Saturday night roster. He appeared to accept that this meant that the award requirement for unrostered weekends would not be met, but he considered that staff had waived this entitlement by choice.

7.35 He agreed that the example roster provided by BJK showed an unusually high level of alteration.

C. Restricted Duties Officers – General Attitude

(i) BIW

7.36 BIW described BKJ as referring to an officer's post-traumatic stress disorder as a justification for not retaining that officer at LAC1.

7.37 He told her that if he had been told that that officer had been suffering from post-traumatic stress disorder he would not have permitted him to return-to-work or accepted him as a transfer to LAC1.

(ii) BJI

7.38 In senior management meetings, BJI recalled hearing comments from BKJ describing an injured staff as *'no good, we don't want her here, we don't need her here, we'll get her replaced'*.⁴⁶

⁴⁵ Examination BJV at T11.

⁴⁶ Examination BJI at T17.

(iii) BIU

7.39 BIU recalled BKJ saying words to her to the effect that he had more restricted girls than anyone else in the region.⁴⁷ She observed a strong dislike for restricted duties officers from BKJ.

(iv) BKJ

7.40 BKJ described the number of restricted duties officers in LAC1 as a problem. He recalled discussing it as a problem with his senior management team. He described a meeting with TAB1, at which he was told to do something about the number of permanent restricted duties officers in his command. He understood this to mean that he needed to reduce the numbers by having them leave the Command somehow.

7.41 He described himself as *'loath'* to take officers with psychological injuries into his command,⁴⁸ but strongly denied making negative comments about officers with psychological injuries. He made reference to his own wife who had been discharged with PTSD.⁴⁹

D. Commander's Morning Briefings

(i) BIX

7.42 BIX gave evidence before the Commission on 25 March 2019. He confirmed that when sick leave was reported at morning meetings BKJ would require that an explanation for the need for the leave be provided. BKJ *'had the same approach with everybody'*.⁵⁰ He described BKJ as direct and firm, with a tendency to become stern with people if his questions were not answered. He described this as a response to BKJ becoming frustrated, expressed as:

*'Just direct. He would say 'come back to me with the answer' or 'you're not telling me the truth' sort of thing.'*⁵¹

(ii) BKK

7.43 BKK described the morning meetings as becoming more formalised under BKJ, with the addition of new paperwork but no substantive changes. BKJ ran a strict agenda and would cut people off if they deviated from it. He disagreed that BKJ would raise his hand in a stop gesture or raise his voice. However, he considered that BKJ would often inadvertently upset people by his manner and the things he said. He also said BKJ *'would never swear*

⁴⁷ Examination BIU at T21-22.

⁴⁸ Examination BKJ at T58.

⁴⁹ Examination BKJ at T60.

⁵⁰ Examination BIX at T26-28.

⁵¹ Examination BIX at T27.

at people, would never raise his voice at people... it was just his delivery that upset people.⁵²

7.44 He recalled an interaction between BKJ and an officer who, on his first day acting up as Sergeant, had made an error answering a question. BKJ described extracting information from this officer as *'like extracting teeth'*,⁵³ which BKK considered belittling.⁵⁴

7.45 BKK gave evidence that sergeants had expressed reservations about attending the morning meetings as a result of BKJ's conduct.⁵⁵ He raised this with BKJ on a number of occasions, including confronting him when he thought he had been particularly abrupt.

(iii) BJC

7.46 He observed BKJ targeting officers, including BHU, and speaking to them in a disrespectful and belittling manner at forums such as the morning meeting. In respect of BHU, he said:

'he would be picking on every little thing that she may or may not have done. If she hadn't done a particular thing that, in essence, was only very minor and potentially an oversight, to me, he made a big issue of it in front of an open forum, and I thought that was quite unprofessional'.⁵⁶

(iv) BJA

7.47 He described occasional *'short'* exchanges and directions to perform work at morning meetings. He gave evidence that BKJ would interrupt, gesture at people to stop talking, and talk in a stern voice: *'stop, let's move on'*, and repeat questions.⁵⁷ In his view *'some people took [BKJ]'s criticisms in the morning meetings as personal when they were not'*.⁵⁸

(v) BJK

7.48 BJK, as PACT Leader, attended the morning meetings. He described BKJ's insistence on sitting at the head of the table and gave evidence that he was:

⁵² Examination BKK at T9.

⁵³ Examination BKK at T8.

⁵⁴ Examination BKK at T10.

⁵⁵ Examination BKK at T11.

⁵⁶ Examination BJC at T17.

⁵⁷ Examination BJA at T24.

⁵⁸ Examination BJA at T22.

*'very volatile. Extremely volatile... you never knew what mood he was going to be in. I know personally I used to be extremely nervous going into those meetings...'*⁵⁹

7.49 BJK described BKJ targeting people during morning meetings with excessive and aggressive questioning, berating people and using derogatory comments like *'are you stupid'* and *'why don't you know this'*. He described this targeting as happening to BHU and BJI, and recalled seeing BHU upset after one such interaction. Describing the interaction between BHU and BKJ he said:

*'Just with her – with his questioning and his answers... sometimes I would just switch off, like, I literally would just switch off because... if you raised your head and looked at him or if you gestured in some way, he would then target you. So sometimes you would literally just switch off.'*⁶⁰

(vi) BJF

7.50 BJF gave evidence before the Commission on 29 March 2019. He said that:

- a. sick leave was discussed at the morning meeting, including individual reasons for leave, beyond the senior management team; and
- b. BKJ would question people making reports and, if dissatisfied, continue to question them in a direct manner with a louder speaking voice than his usual tone. He would roll his eyes, interrupt, raise his hand to stop people talking and make dismissive gestures.

7.51 BJF agreed that BKJ had, on occasion, conducted himself in this way toward BHU, BJB and BJI. He recalled seeing BHU upset after these meetings but he would change the subject to avoid conflict.

(vii) BIU

7.52 BIU, as an intelligence officer, attended the morning meetings. She described BKJ as being *'not necessarily interested in crime...more interested in the statistics around those crimes'*, and recalled him interrupting her with a raised hand and telling her to *'stop, move on'* in a dismissive manner.⁶¹ She described abrupt and dismissive comments, including derogatory remarks. Her evidence was that *'you were made to feel silly or stupid, that he knew better'*.⁶² From time to time BKJ would raise his voice at people.

⁵⁹ Examination BJK at T32.

⁶⁰ Examination BJK at T33-34.

⁶¹ Examination BIU at T12.

⁶² Examination BIU at T13.

- 7.53 BKJ spoke to BHU in the same way and continually challenged or corrected her over minor points in the meetings. He would ask her about why she did a certain thing and, when she referred to a policy, he would say '*I knew that, I just wanted to make sure you knew*'.⁶³
- 7.54 Over time, BIU began to make efforts to sit as far away from BKJ as possible and avoided eye contact. She stopped offering her opinion and participated as little as possible.
- 7.55 BIU described sick leave discussions in morning meetings as being unusually detailed, with the reason for a person's absence openly discussed and questioned.

(viii) Mr BIY

- 7.56 Mr BIY recalled seeing BKJ speaking to BIU and BHU in morning meetings in a dismissive manner, repeatedly questioning them, and otherwise treating them differently to his '*favourites*'.⁶⁴

(ix) BKJ

- 7.57 BKJ described setting up daily morning briefings. Initially these were attended by:
- a. the Crime Manager,
 - b. the Duty Officer of the day,
 - c. the Detective Sergeant,
 - d. the General Duties Team Leader,
 - e. the Crime Coordinator,
 - f. the Intelligence Response Team ('IRT') Leader,
 - g. the PACT Leader,
 - h. the Education and Development officer,
 - i. the Licensing Officer, and
 - j. Intelligence Officers,
- i.e. ranks ranging from Senior Constable to Inspector.

⁶³ Ibid.

⁶⁴ Examination BIY at T10.

- 7.58 BKJ described the format of each meeting. It followed a standard agenda, requiring reports on crime, domestic violence, education and training, sick leave and other absences and other issues.
- 7.59 BKJ agreed that he would sit at the head of the table. The Duty Officer would chair the meeting. As each officer gave their briefing, BKJ would ask clarifying questions, occasionally to a very high level of detail. The purpose of these questions would sometimes be to gather information and sometimes to demonstrate to people what to report on.⁶⁵ He agreed that if he considered someone's answer unclear or unsatisfactory, he would repeatedly question them. He would ask questions about sick leave, including the reason for leave.⁶⁶
- 7.60 BKJ agreed that he would from time to time need to '*directly address the section leader*' to tell them what to do or to correct them.⁶⁷ Before the format change, this would occur in front of officers who reported to the section leaders. This would include redirecting officers who had gone off on what he considered to be tangents, stopping them and redirecting them by saying '*okay, I don't want to know about that part, what happened here?*'⁶⁸ He would '*do a bit of digging*' if he thought answers were evasive.⁶⁹
- 7.61 BKJ accepted that he would become frustrated during the meetings from time to time, and might express that frustration in his body language. Occasionally he would cut people off.
- 7.62 He gave evidence that after BHU's complaint was upheld the format of the meetings was changed so that junior officers would leave before personal issues were discussed. In addition, he would make an effort to delegate more to his leadership team.

E. The Team Building Exercises

(i) BJC

- 7.63 BJC gave evidence that in early 2015 the PACT and the detectives were taken on an overnight training exercise as a reward for good performance.
- 7.64 BJC was a General Duties sergeant at the time and many of his staff questioned why they were not given a similar opportunity. He raised this issue at a meeting with BKJ during a training day. He responded by firmly refusing and insinuating '*that he believed there would be some sort of*

⁶⁵ Examination BKJ at T90.

⁶⁶ Examination BKJ at T81.

⁶⁷ Ex BKJ9C.

⁶⁸ Examination BKJ at T91.

⁶⁹ Examination BKJ at T92.

frivolity, sexual activity between the people going'. This caused significant offence and led to a *'barrage of questions'* from officers.⁷⁰

7.65 This matter was the subject of an internally investigated complaint which was upheld.

(ii) BKJ

7.66 BKJ described his institution of overnight team building programs for the Senior Management Team and other groups. He took the PACT and IRT away to Burrinjuck for an overnight exercise as a reward for their good work, and as a form of farewell for BJA who had recently been promoted and was leaving the Command.

7.67 He discussed the team development review held later that week with General Duties Teams 33 and 4. The Burrinjuck weekend away was discussed. He recalled BJC raising the issue, and recounted a conversation with him to the following effect:

BJC: *'Well, what about the GD's? Why don't you take the GD's away?'*

BKJ: *'Look, I didn't think the rostering could support it... Look, in my experience, it's too high a risk to take police of all ranks away because, in my experience, you see then that someone has too much to drink, someone says or does the wrong thing, and the next minute you have a complaint that, you know, someone has done something inappropriate and it's usually towards a policewoman.'*

TAB2: *'What are you saying, that all policewomen are sluts?'*

BKJ: *'No way, that's not what I'm saying at all. I'm trying to protect policewomen.'*⁷¹

7.68 Ultimately team building weekends were held for the general duties teams. No issue of sexual misconduct arose.

7.69 He gave evidence that the reason he did not have these concerns about the PACT and IRT groups was because there was nobody on those teams on any performance or conduct plans.

7.70 In BKJ's opinion it was inappropriate for BJC to raise the issue in the general meeting, although he accepted that he had invited all present to raise any concerns at the end of the meeting.

⁷⁰ Examination BJC at T10.

⁷¹ Examination BKJ at T116-117.

F. The 2015 Union Campaign

(i) BJT

7.71 BJT described the 2015 NSWPA campaign in relation to staffing levels at LAC1 as well as a number of related disputes. He described BKJ as refusing to negotiate, interrupting him in a meeting with Regional Command to correct him in respect of minor matters, demanding an apology in respect of a reported breach of the first response agreement and watching a union meeting held in the carpark from the air conditioning area on the roof of the station.

7.72 BJT was asked, that as the local union delegate, what issues were brought to him by the officers. He gave a number of examples, none of which included a complaint that PACT officers were required to work an excessive number of weekend shifts, contrary to the provisions of the Award.

(ii) BJK

7.73 BJK's relationship with BKJ deteriorated in early 2018 as a result of his involvement in a NSWPA campaign. BJK described a heated conversation between BKJ and the NSWPA delegate BJT, and confirmed that he had witnessed BKJ standing, partially hidden, on top of the building looking down at a union meeting occurring in the carpark.

(iii) Ms BJV

7.74 Ms BJV gave evidence before the Commission on 29 May 2019. She was asked about the propriety of a Commander watching a union meeting without invitation. She described this as '*a complete breach of confidentiality and privacy*⁷² and said that the only time she had ever heard of this sort of behaviour was BKJ's observation of the LAC1 carpark meeting.⁷³

(iv) BKJ

7.75 BKJ agreed that he went to the air conditioning area to observe the union meeting. His evidence was that he did this to ensure that there was no media on the station grounds. He nevertheless took a note of the number of people present at the union meeting.

7.76 He explained that it was his normal practice when union meetings were held on site to walk past and '*just look in to see how many were there. Just*

⁷² Examination BJW at T26.

⁷³ Examination BJW at T27.

to see how well it was represented and how well it was supported'. He did not consider this to be intimidating.⁷⁴

G. Complaints of Misconduct Towards Individual Officers

(i) BJI

7.77 BJI recalled a comment made by BKJ in a senior management meeting discussing a transfer application, that a statement that an officer would 'benefit from a change of location', means 'they're shit'.⁷⁵

7.78 A number of BJI's CMS reviews were tendered. Despite receiving positive appraisals from his previous commanders, in the first CMS review conducted by BKJ he received relatively poor scores and was denied the opportunity to relieve as Commander. This occurred without BKJ ever raising any concerns with him or, in a departure from the usual process, discussing his Career Management System ('CMS') review outcome with BJI.

7.79 BJI described a conversation with BKJ in the muster room. It was conducted in August 2016 in front of a junior staff member when his contract was due for renewal.

BKJ: *'I have your contract renewal on my desk, it all depends on how the exhibits go, whether I sign it or not'.⁷⁶*

7.80 BJI briefly returned to work in January 2017 after an absence arising from a psychological injury. This injury arose in part from BKJ's conduct.

7.81 He gave evidence that his PTSD had been disclosed by an unknown source to junior officers and was the subject of gossip in the command. He recounted a telephone conversation, based on a file note, that had occurred on 17 January 2017:

BJI: *'I am calling about my return-to-work plan. My work cover certificate was issued today for a restricted duty return from 18 January for four shifts, then annual leave for one week as discussed with the injury management advisor.'*

BKJ: *'All annual leave must be approved by me, not the IMA. A factual investigation is still ongoing, I've returned my statement today to [TAB24] [of the insurance company] and other SMT members have also provided statements. There were conflicts between me and you relayed to me as a part of*

⁷⁴ Examination BKJ T216-217.

⁷⁵ Examination BJI at T17.

⁷⁶ Examination BJI at T39.

*the factual investigation. You have made certain comments about me and we need to talk to see if you wish to continue working for me at LAC1.*⁷⁷

7.82 The comments, as BJI understood it, were those he made to the factual investigator, which had apparently been repeated. At some point BJI became aware that confidentiality in respect of his claim had been breached by a member of the Senior Management Team as it was being discussed in the station.

7.83 On 18 January 2017, BJI met with BKJ and BJD, the welfare officer. He recounted being questioned about his family responsibilities and BKJ requiring him to complete a formal application for leave for the dates of his shoulder operation. This was contrary to what other staff were required to do. He described BKJ's demeanour as intimidatory and belittling. BKJ left the room and BJD and BJI had a conversation to the following effect:

BJD: *'He's the greatest fuckwit there is.'*

BJI: *'Mate, yeah, you're right.'*

BJD: *'Everyone else who changes their leave just sends [BIX] an email to change dates.'*⁷⁸

(a) BIU

7.84 BIU recalled BJI being targeted by BKJ and described him as the '*subject of ridicule*'.⁷⁹ She recalled an exchange where BKJ said to BJI '*the only thing you're capable of being in charge of is the water bottles*'.⁸⁰

(b) BKJ

7.85 BKJ denied ever suggesting that a comment in a mobility request that an officer '*would benefit from a change of command*' '*means they are shit*'.⁸¹

7.86 BKJ gave evidence that he would need to directly address BJI at morning meetings because he would not be across the detail or would need guidance.

7.87 BKJ agreed that he did not support BJI's applications to relieve as a Superintendent. He explained that this was because TAB1 would not

⁷⁷ Examination BJI at T29-30.

⁷⁸ Examination BJI at T34.

⁷⁹ Examination BIU at T14.

⁸⁰ Ibid.

⁸¹ Examination BKJ at T51.

support this relief. He agreed with TAB1's assessment and did not consider BJI suitable to relieve.

- 7.88 He did not specifically recall discussing BJI's 2014 CMS review and, in particular any comment by him indicating a lack of support for BJI's request to relieve. He did state that he would regularly talk to BJI '*...appealing to him to lift his performance*'. He was clear that there was never any raised voices or swearing in those exchanges.⁸²
- 7.89 In addition to performance concerns, one of the reasons BKJ considered BJI unsuitable to relieve was his '*complex personal circumstance*' and his need to take leave to accommodate his family commitments.⁸³
- 7.90 In respect of BJI's mobility applications, BKJ accepted that his comments on the applications were more complimentary than what was recorded in his CMS. He recalled the complaint from BJI's wife delaying these applications. And, while he did not recall how long it took him to deal with the issue, he considered that he would have dealt with it in a timely fashion.
- 7.91 He denied ever saying to BJI that he was only fit to manage the water bottles.
- 7.92 BKJ recalled BJI's P904. He agreed that this occurred after BJI had returned from workers' compensation and received a mobility ranking of 5, making it highly unlikely that he would receive a transfer. He agreed that he had decided that the leave application was to do with personal circumstances, rather than a work-related injury, and he communicated this to the insurer. He provided a copy of the statement he had provided to the insurer, which contained a significant amount of irrelevant and prejudicial information.
- 7.93 BKJ agreed that he telephoned BJI before his return-to-work, but he had no recollection of the discussion. At BJI's return-to-work meeting he drew up a list of tasks for him to perform. He required him to put in a formal leave application for the leave recommended in his return-to-work plan. He denied questioning BJI about his family responsibilities and custody issues. He stated that he was very careful to keep workers compensation matters confidential and he did not know how the information about BJI's psychological injury became known at the station.

(ii) BJH

- 7.94 BJH, who had suffered an injury whilst on duty earlier in her career, was on restricted duties when BKJ started at LAC1. She gave evidence regarding

⁸² Examination BKJ at T124.

⁸³ Examination BKJ at T127.

her first interaction with BKJ. They had met by chance in the hallway and had a conversation to the following effect:

BKJ: *'You're [BJH]?'*

BJH: *'Yes, sir. Welcome to [LAC3].'*

BKJ: *'You've been restricted for some time... I don't need an excuse to get rid of you because you're a probationary Constable.'*⁸⁴

7.95 Shortly after this conversation, BKJ called BJH to his office. They had an exchange to the following effect:

BKJ: *'How long will you be restricted for?'*

BJH: *'I am waiting for the operation.'*

BKJ: *'We'll be looking at getting rid of you...'*⁸⁵

7.96 BJH had a relatively significant disciplinary history whilst at LAC1. She received two Commander's Warnings. The second involved the inappropriate use of a work Opal Card. When BJH became aware of the complaint, she spoke to BKJ, who said words to the following effect:

'I've known about this for months. It came to me and I just sent it off to professional standards.'

and waved his hand dismissively.⁸⁶

(a) BKJ

7.97 In respect of BJH's complaint, BKJ supplied a previous statement which was broadly consistent with his evidence before the Commission.

7.98 BKJ denied the interaction with BJH in the hallway. He recalled a meeting with her and BKK, at which there was a *'...Discussion around her progress with her injury and alternative career options should she be unable to be operational again.'*⁸⁷

7.99 BKJ denied any conversation about the Opal Card complaint on the basis that he is prevented from informing any person that a complaint has been received against them.

⁸⁴ Examination BJH at T8-T9.

⁸⁵ Examination BJH at T9-T10.

⁸⁶ Examination BJH at T15.

⁸⁷ Ex BKJ1C at Pg 3.

(iii) BLG

7.100 BLG gave evidence before the Commission on 28 March 2019. He said that he had declared a relationship with BJH in approximately July 2017. BKJ repeatedly asked him whether he was in a relationship with BJH and referred to station gossip about the relationship.

7.101 BLG gave evidence about a discussion he had had with BKJ, during which he was issued with a Commander's Warning in respect of his conduct at a Christmas Party (the validity of which he did not contest). He recounted the following conversation:

'[Mr BKJ] tells me that he's aware of everything I said and everything I did at the party. [TAB3] was there at the time. He tells me that I should know better, I need to think about what I say, it's not going to go any further, "You have current issues with [BJH] at the moment", and then he got talking about [BJH], that he had a triple O recording of an incident from October '17 where we've had to attend her home, and he wanted to play that triple O recording to me. I pretty much declined to listen to it purely for the fact that if it was still part of an investigation, everybody's got a right to privacy whether they are my partner or not, and I thought at that time that I really can't be listening to evidence that's part of an investigation. That's policy. So I declined that.

*[Mr BKJ] then did say that things with [BJH] weren't going away, that they were only going to get worse and that she would never be returning to the command.'*⁸⁸

(a) BKJ

7.102 BKJ recalled two conversations with BLG, one over the telephone and one in person with BIW, about his relationship with BJH, in which he chased up BLG's disclosure of the relationship.

7.103 He agreed that BJH was a high-risk officer and that he would have identified her as being on a conduct management plan to BLG when discussing their relationship. He denied any further comment.

(iv) BJJ

7.104 BJJ gave evidence before the Commission on 2 April 2019. She said that on 24 November 2018 she submitted a maternity leave report requesting 8 months leave comprising 3 weeks annual leave and 28 weeks maternity leave at half-leave concurrent with 18 weeks' Commonwealth Paid Parental Leave. She wished to maximise the amount of paid leave she could access.

⁸⁸ Examination BJG at T9.

7.105 After filing the report, BJJ knocked on BKJ's door and asked if he wanted it or if it should be left with BIX. BKJ advised that he had just rung down looking for her to discuss this issue and had reviewed the form himself. He advised her that she could not take two types of leave at one time and set out dates for each period of leave (ultimately meaning that BJJ would be away from work longer). He provided her with the HR Advisory Team contact with whom he had discussed the matter and advised that he had taken a similar approach with another officer.

7.106 BJJ described BKJ's demeanour as '*very direct... more being a commander talking down to a constable*'. '*It was a bit like I couldn't get a word in edgeways. Like it didn't matter what I had set out, he was determined to get me to take this particular leave regardless.*'⁸⁹

7.107 The next day, after having received NSWPA advice, BJJ was preparing to meet with BKJ again when he called her supervisor to request a meeting. BJJ, not yet prepared, became distressed and attempted to leave. BKJ came down to the muster room and followed her after she explained she felt unwell. BJJ went into the women's bathroom and BKJ waited just outside. When she came out, he told her that she was right and the Human Resources representative was wrong. He attempted to get her to come to his office. BJJ left the building and BKJ later sent her a message apologising for any distress he might have caused.

(a) BKJ

7.108 BKJ provided a written statement in respect of BJJ's complaint which was prepared in relation to her workers' compensation matter.

7.109 BKJ recalled the meeting with BJJ on 24 November 2018 and agreed that, while he had delegated the matter to BIX, he followed up the matter himself.

7.110 He considered it was normal for a Superintendent to be engaged in the detail of maternity leave requests from Constables and Senior Constables. He further stated that he would usually change them from 12 hour to 9.5 hour shifts.

7.111 He agreed that he had altered the dates on BJJ's form, advising her that she could not take two types of leave at once. He accepted that this advice was wrong and stated that he had been following incorrect advice provided by Human Resources.

7.112 BKJ recalled telling BJJ, after she disagreed with his advice, to ring HR to confirm the advice for herself, giving her the name of his contact. He

⁸⁹ Examination BJJ at T17.

directed her to ring them and speak to him on Thursday, her next rostered shift.

- 7.113 On Thursday, BKJ was advised by BIW that BJJ was not ready to see him, and that she had contacted the NSWPA rather than Human Resources. BKJ considered this to be a *'poor choice'*, because he had instructed her to ring HR (despite accepting that HR's advice on this point was, as a matter of fact, incorrect).
- 7.114 On Friday, BKJ decided to look at the policy himself. At this point, he realised the HR advice was wrong.
- 7.115 He attempted to get BJJ to visit his office, and when this did not occur, he went downstairs to ask her to see him. She advised him that she was sick and had to leave. BKJ pressed the issue, waiting for BJJ outside the toilets to give her the advice and following her as she left the building. He told her to take care of herself and apologised for giving her the wrong advice.
- 7.116 Despite giving evidence that he had never had a performance issue with BJJ, BKJ included a range of unrelated critical material about her in his statement to the insurer. He described this as a *'reasonable explanation and background'*.⁹⁰

(v) BHU

- 7.117 BHU gave evidence before the Commission on 22 November 2018. She outlined BKJ's treatment of her which included:
- speaking to her in a rude and, from time to time, aggressive manner, through the use of aggressive body language such as pointing, waving hands dismissively and rolling eyes;
 - belittling her and subjecting her to excessive questioning in morning meetings in front of peers and junior officers;
 - assigning her additional tasks, usually of an administrative nature and of a type normally performed by more junior officers, without consultation or a corresponding adjustment to her existing workload;
 - failing to organise cover, either at all or to a sufficient level, for long periods of leave or out-of-command relieving, resulting in a backlog of work on her return;

⁹⁰ Examination BKJ at T77.

- excessively monitoring, and commenting on, while not withdrawing, the flexibility of hours that previous commanders had provided to allow her to manage her family commitments; and
- preventing her from participating in particular activities conducted by the Station Command which she had previously performed, either to reassign these to more junior officers or alter their performance entirely.

7.118 The majority of BHU's interactions with BKJ occurred at the daily morning meetings. On his arrival at the Command, BKJ expanded the attendance of the morning meetings to include junior officers who reported to BHU (for example, the licensing officer), as well as the station leadership team. This led to a higher level of scrutiny and what BHU described as micromanaging by BKJ.

7.119 In respect of BKJ's conduct at those meetings, BHU stated:

*'He was always hostile to me in those meetings. His tone would be quite aggressive at times, never - never pleasant... His body language was quite aggressive to me at times, too. He would lean forward, he would point, if he was speaking to me about something he wasn't happy about. He was quite unpleasant in the way that he addressed me, in comparison to how he addressed other people on the same day at the same meetings. His body language would change and be very negative.'*⁹¹

*'When he spoke to me he would lean forward and his voice would raise. When he spoke to other people, he would be more relaxed and even friendly.'*⁹²

*'He would - his voice would raise, he would sit forward, he would be like a parent disciplining a child. 'Why didn't you do this? That's not how it should be, you know I expect something else. Like an angry parent disciplining a child, that's how he would talk to me.'*⁹³

7.120 At these morning meetings BKJ would subject her to extensive questioning about the staff she supervised, including as to their leave. If she was unable to answer, or her answer was not considered satisfactory, BKJ would continue questioning her and belittle her. BHU provided a number of specific examples, including the following:

- On 22 January 2014, a member of BHU's team took leave at very short notice just before the start of the morning meeting, BHU mentioned this to the General Duties supervisor during the morning meeting while leave was being discussed. This was her first opportunity to do so. BKJ

⁹¹ Examination BHU at T9-10.

⁹² Examination BHU at T10.

⁹³ Examination BHU at T35-36.

berated her in the meeting, questioning why the General Duties supervisor had not been notified earlier and reacting with hostility to her explanation;

- On 24 January 2014, after BHU asked the General Duties supervisor about a member of her team's leave (she had not been notified of it previously), BKJ interrupted to insist that BHU ring the officer herself to find the reason for leave, despite it being likely that the information had already been provided. He prevented the General Duties supervisor from answering; and
- In January 2015, during a discussion about a COPS record completed by a Probationary Constable which incorrectly recorded a stolen scissor lift as a vehicle, BKJ interrupted BHU while she was explaining the adjustment and spoke loudly and aggressively to her about the error. BKJ was copied into an email from BHU to the Probationary Constable at 1.06pm on 16 January 2015, instructing him to correct the error and explaining what to do. BKJ himself replied reiterating the instruction at 2.46pm that day, despite the Probationary Constable being absent from work until 20 January 2016. The tone of the email was noticeably friendlier than his correspondence to BHU in evidence – for example, the Probationary Constable is addressed as 'mate'.⁹⁴

7.121 BHU gave evidence that initially this behaviour was directed primarily at her. However, over time his behaviour deteriorated and he started treating other officers in the same way. This group included BIU, BJB, BJI, BJH and Mr BIV.

7.122 In particular, BHU observed a change in BKJ's demeanour toward BJB. He became increasingly dismissive and disrespectful towards her and there was a corresponding increase in her workload. As BHU put it:

*'He would roll his eyes at morning meetings when BJB said things, like he was scoffing at her, "oh", this kind of notion and knock his head back and roll his eyes back, which is what led me to believe he was dismissive and disrespectful of her over a period of time, because it didn't start like that but became more frequent and obvious.'*⁹⁵

7.123 The additional tasks included:

- a range of new reporting requirements, including the compilation of reports and other documents for both the crime management team and the station as a whole, most of which had a substantially

⁹⁴ Ex BHU2C.

⁹⁵ Examination BHU at T32-33.

administrative character and some of which were more usually performed by constables in the Intelligence team;

- other administrative tasks such as the preparation of agendas for meetings;
- mandatory attendance at community engagement activities out of the office (a role more customarily performed by others at constables rank); and
- the supervision of staff on restricted duties performing tasks in and out of her section.

7.124 BHU gave as an example the need to review domestic violence incidents in the mornings. Although LAC1 had two domestic violence officers, both worked part-time, with one officer starting at 9.00am. The overnight data was required for the 8.30am morning meeting and so on days that that officer was working, it fell to BHU to review and report on that data, which other general duties supervisors – who would ordinarily be expected to do so – were no longer required to do.

7.125 BHU's workload was also affected by BKJ's refusal to authorise relief cover for her role when she was absent from the station for long periods. This had occurred on at least two occasions: once in 2014 when she was relieving at Blacktown for four weeks and once in 2015 when she took a month's leave. Instead, her workload was shared between BIU and BJB in addition to their own workload. This meant that, in practice, there was a significant backlog of tasks left for her on her return.

7.126 BHU gave evidence concerning two events which, historically, she had been involved in whilst at LAC1. The first was the organisation of the Secret Garden Music Festival and the second was an off-duty annual fundraiser for the Cancer Council. In respect of the Secret Garden Music Festival BHU had been responsible for coordinating the police response for a number of years. She gave evidence that BKJ said to her:

'There's a conflict of interest, they never should have done it and I'm going to make it as hard for them as I possibly can'.⁹⁶

7.127 She understood that this remark reflected his view that the Council should not have approved the Festival. Thereafter, BKJ removed BHU from any involvement in planning the police response to the concert, without discussion with her and despite her long-standing involvement and background knowledge of the event.

⁹⁶ Examination BHU at T38.

- 7.128 Similarly, BHU, with TAB20, had successfully co-ordinated police participation in the Cancer Council's Relay for Life fundraiser, raising \$50,000 over a number of years. In 2014 BKJ informed BHU that the fundraising was not permitted. When BHU disagreed, he instructed her to find the relevant provision in the endorsement policy.
- 7.129 When BHU showed him the endorsement policy, which permits participation in charitable events, he said *'Yes I know that, I was just making sure that you did'*.⁹⁷
- 7.130 BHU and TAB20 participated in the fundraiser in 2014. This involved, in addition to fundraising, attending the event off-duty, but still as a positive police presence. In 2015, when the fundraisers wrote to the Command seeking police involvement (as was customary), BKJ assigned the task to two Senior Constables and altered it to an on-duty police presence rather than a fundraising activity.
- 7.131 Also in November 2014, BHU was involved in an incident with an attempted suicide, which resulted in a heated – but in her view professional – exchange between her and an ambulance officer who did not want to involuntarily commit the person.
- 7.132 The ambulance officer complained to BKJ who raised this with BHU. When she advised him of her view that her conduct was appropriate, and that GoPro footage was available, he informed her that he had already apologised on her behalf to the ambulance officer before speaking to her. In BHU's opinion, this conduct significantly undermined her and demonstrated an unwarranted lack of trust and confidence in her as an officer.
- 7.133 BHU also described difficulties with BKJ offering her relief opportunities. This first occurred in 2014, when she was attempting to transfer into Detective work and also commence the promotion process to Inspector. BKJ informed her that he would not give her the opportunity to relieve in the role of Detective Sergeant at LAC1, although he had simultaneously provided BJC with this relief opportunity.
- 7.134 Ultimately, after approaching (on BKJ's instruction) Area Command to discuss relief opportunities, BHU was offered a four-week secondment to Bankstown, a significantly busier and higher-crime command. She had the impression that BKJ was expecting her to refuse this secondment and was deflated when she did not. BHU raised her concerns with the HR officer at Region Command, TAB11, but no action was taken.⁹⁸

⁹⁷ Examination BHU at T43.

⁹⁸ Examination BHU at T48.

7.135 Further issues with relieving opportunities arose in late 2015. BHU described an exchange with BKJ during which he informed her that he would not be providing any further opportunities for her to relieve as an inspector (in favour of other staff). He initially said this was because he intended to prioritise people through the promotions process. However, when he was advised that BHU was at that time the furthest along in that process of all the station Sergeants, he said that *'there [were] issues with [her] family situation'*.⁹⁹

7.136 On querying this advice with BKJ he advised that he was referring to her mother's recent illness, which had required BHU to take a day off (with notice) to attend her mother's surgery, and leave early on one afternoon. BHU accepted that she was provided with a further opportunity to relieve after this exchange, but only after she was invited onto the Inspector's Eligibility Program.

7.136 Although BHU did not suffer a psychological injury as a result of BKJ's conduct toward her, she reported high levels of distress and upset and his behaviour was a significant motivating factor behind her desire to leave LAC1.

(a) BIX

7.137 BIX agreed that he could tell there were issues with then-BHU and BKJ, and observed tension and conflict, but disagreed that BKJ targeted her.

(b) BJI

7.138 BJI observed BKJ *'lock[ing] horns'*¹⁰⁰ with BHU in particular and targeting her in a manner that other staff were not subjected to. He described her as *'copp[ing] a fair bit of vitriol from him'*¹⁰¹ and on occasion appearing upset after a confrontation.

(c) BKK

7.138 BKK relieved at Green Valley for a period of 18 months. While he was there, BHU, who he considered an excellent officer, transferred into the command. In this period he was required to formally counsel her on behalf of BKJ based on an incident at LAC1. On reviewing the file, he formed the view that she had been unfairly treated, as the allegation had been substantiated without any input from her.

⁹⁹ Examination BHU at T65.

¹⁰⁰ Examination at BJI T11.

¹⁰¹ Examination at BJI T15.

(d) BJD

7.139 As a member of the Senior Management Team, BJD attended the morning meetings. He gave evidence that he did not recall any particular meeting, but did remember one incident in 2014, as he described to the investigator, during which BKJ became *'loud and very vocal'* in relation to TAB19,¹⁰² a member of BHU's team, being on leave, *'asking a lot of questions, demanding a lot of answers'*.¹⁰³

(e) BKJ

7.140 BKJ stated that he would often need to directly address BHU at morning meetings. Often this arose when he would direct her to do a task and she would raise issues with the crime management team's capacity.¹⁰⁴

7.141 He accepted that he had increased the workload of both the team generally and BHU specifically. In respect of BHU, this included an increase in paperwork, supervisory tasks and the number of employees to supervise as well as delegation to attend community events. BKJ considered this to be reasonable. He formed a view that BHU resented the changes he had introduced, particularly the increased accountability. He noted that he had given her time off in relation to her mother's cancer, although he accepted that she was entitled to leave. He gave evidence of other flexibilities and professional support he had given BHU.¹⁰⁵

7.142 BKJ recalled an exchange between himself and BHU in respect of a stolen scissor lift, which had been incorrectly recorded as a stolen vehicle. He gave evidence that while it was not a particularly serious crime, the misreporting was significant to him because of its impact on crime figures.¹⁰⁶

7.143 In respect of the email chain arising from this incident¹⁰⁷ BKJ did not accept that his actions were micromanaging, or that they could have undermined BHU. He considered it normal that he had to do something himself, rather than rely on his team.¹⁰⁸

7.144 BKJ could not recall the morning meeting in January 2014 where BHU raised a team member's short notice of leave. He did not recall any incident at a morning meeting involving BHU and leave.

¹⁰² Examination BJD at T15.

¹⁰³ Ibid.

¹⁰⁴ Examination BKJ at T84-85.

¹⁰⁵ Examination BKJ at T100.

¹⁰⁶ Examination BKJ at T93.

¹⁰⁷ Ex BKJ11C.

¹⁰⁸ Examination BKJ at T94-97.

- 7.145 In respect of the Relay for Life matter, BKJ's evidence was that he refused a request from BHU for funds for prizes to run a raffle, saying that this was not permitted. He accepted that the Relay for Life was within the scope of the policy and stated that he gave BHU the policy in the initial meeting and instructed her to prepare a report. He denied responding that he did not want the activity to go ahead. He agreed that in 2015 he assigned other officers to attend the event, and could not recall whether he discussed this with BHU.
- 7.146 BKJ relied on the provision of the Bankstown relief as an example of support he had provided BHU. He accepted that she had organised the Bankstown relief and that his role was confined to agreeing to release her if she backfilled her role from Crime Management Unit.
- 7.147 He accepted that this was not actually arranging relief. He stated that it was '*just too hard*'¹⁰⁹ to arrange relief cover at the time. He agreed that this would result in BHU's workload being covered only partially, with less urgent tasks left awaiting her on her return. He agreed that this arrangement was his preference when BHU was relieving.
- 7.148 BKJ was unsure about BHU's historical involvement with the Secret Garden Festival. He agreed that from 2015, he changed the manner in which the police supported the festival, making it a '*showpiece operation for the Command*'.¹¹⁰ This involved BKK taking over the main command role. The purpose behind this was to increase the user-pay contribution from \$2000 in 2014 to \$70,000 in 2019.
- 7.149 BKJ recalled a concern about a potential conflict of interest, stating that he '*could not understand why [the local council] was green-lighting everything*' given historic non-compliance,¹¹¹ and became concerned that the Council's deputy general manager was connected to the family of the event promoter. He briefed the General Manager on the issue.

(vi) BJT

- 7.150 BJT provided examples of BKJ's behaviour at morning meetings. This included:
- a meeting in December 2015, where he was tasked with finding flexible bollards for the carpark online but he was unable to. He was told '*you're an idiot, you're incompetent*' by BKJ, when alone with him in the office;¹¹²

¹⁰⁹ Examination BKJ at T101.

¹¹⁰ Examination BKJ at T104.

¹¹¹ Examination BKJ at T107.

¹¹² Examination BJT at T8.

- at the morning meeting discussed above BKJ questioned BHU about a scissor lift report. He described the exchange as follows *'he was aggressive, loud. He definitely gave her a dressing-down and then I sort of tried to explain that that's the only way the system will do it, and I was told that my opinion wasn't wanted, sort of thing, you know "I wasn't talking to you" or whatever'*¹¹³
- BKJ being *'always short with [BIU]. You could see that he didn't really like her'*¹¹⁴ and
- an incident where BKJ gave him a *'serve'* and, after the meeting, BJB approached him to say *'he shouldn't have spoken to you like that'*.¹¹⁵

(a) BJB

7.151 BJB gave evidence concerning an incident which occurred in or around 2018 involving the command NSWPA representative BJT. In short, BKJ became aggressive and confrontational toward BJT in a morning meeting. He accused him of complaining about a staffing issue to the Association. BJB observed other officers looking taken aback, and felt the need to discuss the matter with BJT after the meeting to confirm if he was okay and if he wished to make a complaint. BJB raised the matter herself with BKJ, who ultimately apologised.¹¹⁶

(b) BKJ

7.152 BKJ recalled a *'robust discussion'* with BJT at a morning meeting which related to a breach of the First Response agreement while BJT had been away. He recalled asking BJB if he had been *'a bit harsh to Dan'*. She agreed that he had. BKJ later apologised to BJT.¹¹⁷

(c) BJC

7.153 BJC described an interaction he had had with BKJ in the muster room, shortly after the meeting in respect of the team building nights. He made eye contact with the Commander as he entered the room and said *'Morning, boss'*. BKJ made direct eye contact, turned away and left without responding. This was witnessed by a number of junior and senior staff.¹¹⁸ BKJ later apologised.

¹¹³ Examination BJT at T8.

¹¹⁴ Examination BJT at T9.

¹¹⁵ Examination BJT at T10.

¹¹⁶ Examination BJB at T12-14.

¹¹⁷ Examination BKJ at T111.

¹¹⁸ Examination BJC at T23-24.

(d) BIW

7.154 BIW confirmed BJC’s account of the occasion when BKJ had deliberately ignored him. She had witnessed this interaction.¹¹⁹

(e) BKJ

7.155 BKJ had no recollection of ignoring BJC after being greeted by him, or of apologising for this afterwards.¹²⁰

(vii) BJB

7.156 BJB gave evidence of an exchange between her and BKJ. She met with BKJ to advise that she was thinking of taking a managed time day, in accordance with her award entitlements. They had an exchange to the following effect:

‘I went into his office one time and I said, “I’m thinking of taking a managed time day later this week” and he said, “You don’ t come in here and tell me you are taking one, you come in and ask me to take one”. I said, “I came in here to have a conversation”, because that’s how it had been in all of my other commands. He said, “No, you come in and ask me if you can take one”. I said “Well, all right, can I take a managed time day later this week”. He said, “No, you are not entitled to managed time”. So we had a bit of an argument over that. He said his understanding was that managed time was for the duty officers when they had stayed later.’¹²¹

7.157 BJB left and later emailed the relevant award clause to BKJ. BKJ instructed her to return to his office. They discussed the Award, with BKJ maintaining that BJB was not entitled to managed time. After some further discussion, BJB and BKJ had an exchange to the following effect:

BJB: *‘How about you send me an email with your understanding about it, I will type in mine, I will send it to the Association and we will see who is right, we will get a ruling on it.’*

BKJ: *‘If you go to the association over it I will have lost all faith in you and we can’t work together, you will have to become a duty officer.’*

BJB: *‘You can’t change my duties without me having committed some breach. Going to the association isn’t that. If you want a fight you will get one out of me if you try and do that.’*

¹¹⁹ Examination BIW at T13.

¹²⁰ Examination BKJ at T122.

¹²¹ Examination BJB at T8.

...

BKJ: *'In that case I direct you not to work any more than your 7-hour 36 minute day for the purpose of building up managed time.'*¹²²

7.158 BJB's evidence was that the demands of the Crime Manager role make this direction practically impossible to comply with. BJB raised this conversation with TAB4, the Region Operations Manager. He later informed her that BKJ had been directed by TAB1 to apologise, withdraw the direction and permit her to start taking managed time. BKJ never apologised or withdrew the direction but he did occasionally suggest that BJB take managed time.

(a) Ms BJV

7.159 Ms BJV gave evidence regarding the managed time question. Her evidence was that the purpose of the managed time policy, negotiated in 2009, was to recognise the additional hours worked by commissioned (i.e. senior) police officers and provide a time in lieu system. She had not heard of a commissioned officer being directed to work their rostered hours only, and considered it highly unlikely that the Crime Manager would be able to consistently meet the requirements of the role with a 38-hour week.

(b) BKJ

7.160 BKJ described BJB as *'very diligent, very committed, very fair, very ethical, hardworking'*.¹²³ He considered his working relationship with BJB to be pretty good and said *'we never had cross words or arguments'*.¹²⁴

7.161 He disagreed that there was conflict between them in the initial stages of their relationship. He accepted that they would argue on occasion. He would tell her how he wanted something done, she would put forward her view, and he would have to reiterate *'no, this is how we are doing it'*.¹²⁵

7.162 He agreed that, realistically, commissioned officers in the Crime Manager role worked significant amounts of unpaid and unrecognised overtime, usually about ten hours a week. He recalled the discussion with BJB about her use of managed time and confirmed his familiarity with the policy requirements.

7.163 He agreed that BJB approached him and said she was thinking of taking some managed time, he recalled the conversation that followed:

¹²² Examination BJB at T8-9.

¹²³ Examination BKJ at T143.

¹²⁴ Ibid.

¹²⁵ Examination BKJ at T145.

*'And I would have said "Well, what managed time do you have?" And then she recounted, "Well, I do half an hour before and after my shift every day. I've got, you know, X amount of managed time hours", and I was unaware of that.'*¹²⁶

7.164 BKJ did not recall the remainder of the conversation. BJB forwarded him an email with her understanding of the managed time policy, to which he replied with his interpretation. They then met to discuss it. BKJ's recollection of this meeting was very poor. He denied saying that he would lose trust in BJB if she went to the association, or that he would make her a duty officer. He was reluctant to agree that he had directed her to work a 7.6 hour day. He accepted that he would have said that the policy required her to work a 7.6 hour day unless operationally required.

(viii) BIW

7.165 BIW gave evidence that BKJ told her that he had told another officer, who was in a relationship with another, *'don't root the staff'*.¹²⁷

7.166 BIW notes recorded an interaction with BKJ sometime in 2013:

*'...I recall [BKJ] called me into his officer (sic) and shut the door. He asked how I felt he was going as Commander. He started to state that he knew I did not want him as Commander, that I wanted [TAB21] to stay on as Commander. He stated he was aware that I was intending to go off sick with my back, stating people had told him. I defended myself as that was not right. He went on to say that I was the duty officers (sic) to break... He went on to say I was the last of the Duty Officers to come around to his way.'*¹²⁸

(a) BKK

7.167 BKK described the relationship between BIW and BKJ as initially very close, but drifting apart. He recalled BIW discussing an issue where BKJ had ordered her to attend BJD's property and seize his personal firearms as he was suffering a psychological injury. He described this as embarrassing to both of them and badly handled by BKJ.

(b) BKJ

7.168 BKJ considered BIW to be a diligent and conscientious officer and described their working relationship as *'very good'*. He did not recall a specific conversation with BIW where he sought her feedback, but agreed that this would have happened. He denied saying that he knew she did not

¹²⁶ Examination BKJ at T149.

¹²⁷ Examination BIW at T16.

¹²⁸ Ex BIW1C.

want him to be the Commander, that she was the last of the duty officers to come around to him, or that she was *'the last one [he] needed to break'*.¹²⁹

7.169 He recalled discussing TAB5 with BIW and her saying that she wanted to retain him. He disagreed with her because of poor feedback from the detective's office. He agreed that TAB5's psychological injury, for which he was on a return-to-work plan, was a contributing factor in his decision not to keep him, and agreed he may have said this to BIW.¹³⁰

7.170 He did not agree that he would have said that he did not want BIW's view if she had disagreed with him. He was critical of BIW for often seeking industrial advice without telling him first, as he thought this was second guessing him. He considered that she was *'running around and doing that behind [his] back'*.¹³¹

7.171 He agreed that he might have discussed BIU's complaint with BIW, but denied laughing about it.¹³²

7.172 He denied telling BIW that he had told BJK, in respect of his relationship with BJJ, not to *'root the staff'*, but agreed he might have said that he had told him not to *'screw the crew'*, a common phrase in the NSWPF.¹³³ He denied saying that he would not have taken in BJK if he had known about his post-traumatic stress disorder. He believed that he had known of the injury before BJK started at the command.¹³⁴

7.173 He did not recall opening the door of the female toilets to speak to BIW.¹³⁵

(ix) BJK

7.174 BJK gave evidence that, when he initially started on restricted duties and was working the front counter, BKJ would pass him on a daily basis. His evidence was:

'So he would walk down the corridor and he would stop and he would - depending on what mood he was in he would either acknowledge you or he would - depending on what mood he was in, he would either acknowledge you or he would just stop and stare at you... he wouldn't say anything. He would just look you up and down'.¹³⁶

¹²⁹ Examination BKJ at T155.

¹³⁰ Examination BKJ at T155-156.

¹³¹ Examination BKJ at T158.

¹³² Examination BKJ at T158.

¹³³ Examination BKJ at T159.

¹³⁴ Examination BKJ at T160.

¹³⁵ Examination BKJ at T159.

¹³⁶ Examination BJK at T8.

7.175 He confirmed that he had seen the interaction at which BKJ had deliberately ignored BJC.

7.176 BJK gave evidence that while he was on restricted duties BKJ said words to the effect:

*'With the way that policing is going, we need more bodies on the street and there is a push to get rid of injured staff, and if you are not back to full duties, you won't have a position here.'*¹³⁷

7.177 After BJK returned to full duties his relationship with BKJ improved. He stated that he was regularly called into the Commander's office to have an informal chat, with BKJ saying *'[BJK], come in here, come and see the Commander, have a chat.'*¹³⁸ During these discussions, BKJ would discuss other staff with him. In this context BKJ:

- informed him that TAB6 was pregnant, before this was public knowledge;
- called TAB2 a *'whinger'* and said *'she's whinging because I won't allow her to go to the SPC [to undertake a course]. She's going to be pregnant again, I'm not supporting it, she's a whinger and she's gone against me'*;¹³⁹
- told him that he would not support TAB7's request to transfer closer to home in order to manage fatigue issues, laughing and saying *'Not supporting it. He can't do this job. Why would I help him get closer to home?'*¹⁴⁰
- said, in respect of TAB8 (on a performance management plan at the time), *'Look, she's useless. We keep up the pressure, she will resign'*;¹⁴¹
- advised he would not support TAB9's request to transfer to a command closer to home, and in BJK's view adjusted her roster to increase her fatigue management issues;¹⁴²
- called BHU a *'whinger'*;¹⁴³
- described post-traumatic stress disorder as being *'all in their head'*;

¹³⁷ Examination BJK at T10.

¹³⁸ Ibid.

¹³⁹ Examination BJK at T13.

¹⁴⁰ Examination BJK at T14.

¹⁴¹ Examination BJK at T15.

¹⁴² Examination BJK at T15.

¹⁴³ Examination BJK at T16.

- described BIV as having *'passed his time, he needed to retire'*;¹⁴⁴
- questioned BJK about whether he knew anything about the meeting between female officers and Region Command (discussed below in respect of Ms BIU's evidence), saying *'they are gunning for me, oh the old commander will be right, it will be all right, it will just be water off a duck's back'*; and
- when discussing the Lake Burrinjuck training day issue (discussed below), said *'I didn't want to take the GDs away, because the girls are sluts'*.¹⁴⁵

7.178 BJK gave evidence that BKJ would repeatedly question him about whether he was on *'Team [BKJ]'*, saying (at the time he was the PACT Leader) *'If you're not on Team [BKJ], [BJK], there's always a spot back in general duties'*.¹⁴⁶

7.179 BJK became involved in a relationship with BJJ in around March 2018. He recounted a conversation with BKJ in which BKJ said words to the effect of *'She's young. I wouldn't be going there'*; called BJJ a *'tart'*; and said *'she's got a nice set of tits'*.¹⁴⁷

(a) BKJ

7.180 BKJ agreed that it was likely that he had said to BJK that if he did not return to full duties he would not have a position at LAC1. He denied saying that there was a push to get rid of injured staff, or calling him a *'liability'*.¹⁴⁸

7.181 He agreed that, by the time that BJK became PACT team leader, he would speak to him once or twice a week in his office, occasionally with the door closed. They would discuss issues with people in BJK's team. He denied:¹⁴⁹

- saying *'if you are not on Team [BKJ], there is always a spot in general duties'*,
- saying that team players were rewarded,
- discussing TAB6's pregnancy,
- discussing TAB2 at all, or describing her as a whinger,

¹⁴⁴ Examination BJK at T20.

¹⁴⁵ Examination BJK at T19.

¹⁴⁶ Examination BJK at T28.

¹⁴⁷ Examination BJK at T37 -38.

¹⁴⁸ Examination BKJ at T162.

¹⁴⁹ Examination BKJ at T163-166.

- discussing TAB7's transfer request or his reasons for not supporting it,
- describing TAB8 as 'useless',
- discussing BHU, or
- saying about BIV 'he's past his time, he needs to retire'.

7.182 He recalled discussing BJK's relationship with BJJ but he denied discouraging him from being in a relationship with her or making any comments about her body.

(x) Mr BIV

7.183 Mr BIV gave evidence of a meeting he had had with BKJ shortly after he joined the command, which was also attended by Ms BJE. He recalls BKJ saying words to the effect of:

'You're a very short man for a policeman. I like my police officers to be big strong men like myself, we can deal with problems. I can't understand how a little chap like you can deal with big Australian guys.'

'I don't understand – so how old were you when you joined the police? [Mr BIV advised him of his age] "At your size? Oh, I think there's something wrong at Goulburn"... "I don't think we should be employing people of your age like you... "But that's the system that's wrong.'

[After being advised that Mr BIV was on restricted duties due to PTSD] *'PTSD? I don't really believe in that... I was a detective, and I've seen everything, and I don't suffer PTSD.'*

*... 'What good are you to me? You're restricted.'*¹⁵⁰

7.184 Mr BIV was angered by this conversation. He gave evidence that, while he did not mind jokes about his height or age, he considered BKJ's comments to be directly putting him down in a way he had not otherwise experienced in the NSWPF.

7.185 From that point on Mr BIV and BKJ had a poor relationship. BKJ would regularly fail to acknowledge Mr BIV when walking past the exhibits room, or occasionally – if nobody else was there – repeat his comments about Mr BIV being 'no good to [him]' while restricted due to PTSD.¹⁵¹ Mr BIV admitted to attempting to provoke BKJ from time to time, including by greeting him loudly.

¹⁵⁰ Examination BIV at T11-12.

¹⁵¹ Examination BIV at T15.

7.186 Mr BIV gave evidence that in the last six months of 2015, after Mr BIV turned 64, BKJ would regularly ask him when he planned to retire, saying words to the effect of *'I don't want you here, you should really be thinking about retirement.'* In around October, BKJ began saying that if Mr BIV did not nominate a retirement date he would be moved to Parramatta (a significant distance from his home).

7.187 He described an incident when he was alone in the exhibits room and BKJ entered the room. They had a conversation to the following effect:

BKJ: *'Well, when are you going to go, because you're no good to me... 'I'm talking to you, I want - when are you going?'*¹⁵²

7.188 Mr BIV described BKJ as loud and angry. He turned around in his seat and saw him standing close by, with a red face and clenched fists. He believed that BKJ might hit him. The exchange continued:

Mr BIV: *'I can't tell you yet. I don't know about it.'*¹⁵³

7.189 BKJ then ground his teeth and *'stormed out.'*¹⁵⁴ Mr BIV reported the incident to Professional Standards Command but was discouraged from making a formal complaint by the officer he spoke to.

7.190 Mr BIV retired in January 2016. In his exit interview survey, he recorded the following response:

*'My commander has made it clear that he does not wish to have me work any longer. I am on a back to work plan and am about to be classified PRD [permanent restricted duties]. He has no work for me here.'*¹⁵⁵

7.191 Mr BIV did not recall ever being contacted by Professional Standards Command about this. He gave evidence that, if not for the pressure from BKJ, he would *'still be in exhibits now.'*¹⁵⁶

7.192 Mr BIV gave two examples in which he had, through his role in exhibits, performed police work which resulted in positive local news coverage (including saving a woman's life). He understands that, while BJB had nominated him for an award for the latter, BKJ had vetoed it.

(xi) Ms BJE

7.193 Ms BJE recalled a meeting between BKJ and Mr BIV. She agreed that BKJ said words to the effect of: *'I don't even know why they let you through the*

¹⁵² Examination BIV at T25.

¹⁵³ Ibid.

¹⁵⁴ Examination BIV at T26.

¹⁵⁵ Ex BIV2C.

¹⁵⁶ Examination BIV at T25.

Academy, you were too old to go through the Academy at that time...' She did not recall whether Mr BIV's size or his post-traumatic stress disorder had been mentioned.¹⁵⁷

(a) BKJ

7.194 BKJ denied making adverse comments to Mr BIV in regard to his age and post-traumatic stress disorder, or querying why the Academy allowed him to complete his training.¹⁵⁸

(xii) BIU

7.195 In addition to his general demeanour and conduct toward her and others BIU's main complaints about BKJ involved:

- his approach to the renegotiation of her part-time and working from home arrangements; and
- the disposal of her property from the LAC2 station after it flooded.

7.195 BIU's working arrangements included a 31-hour week part-time agreement and one day working from home agreement. These arrangements were reviewable annually but had been in place since 2003. In addition, she regularly worked from LAC2.

7.196 In around June 2016, BKJ met with BIU. He advised her that working from home and LAC2 would have to stop as he needed her in LAC3, and '*demand*' that she apply for permanent part-time.¹⁵⁹ She stated that he said he would only approve a hardware request she had made (i.e. for two monitors) if she went part-time. Ultimately her request was rejected, with the stated reason being the LAC2 station flooding.

7.197 BIU described her working from home arrangements as having nothing to do with her carer's responsibilities, but that it was '*really good to be alone and concentrate on what you were doing*'.¹⁶⁰ It permitted her to be available at short notice to perform intelligence work and let her take work home. She did not claim all her time worked.

7.198 BKJ did not explain the financial and status consequences of a permanent part-time role, namely that BIU would lose the ability to convert back to full-time. She sought advice from the NSWPA who informed her of this.

¹⁵⁷ Examination BJE at T14.

¹⁵⁸ Examination BKJ at T171.

¹⁵⁹ Examination BIU at T32.

¹⁶⁰ Examination BIU at T34.

- 7.199 Shortly after this meeting the LAC2 station flooded. BIU had a number of personal items stored in a locker, including her diaries, personal photographs, work-related items and items of clothing.
- 7.200 The week of the flood, BIU was absent on leave due to a chest infection. She contacted TAB14 about her locker, and asked him to make sure that nothing was thrown out.
- 7.201 On around 8 June 2016, BIU was contacted by the LAC2 station cleaner, who let her know that there was a plan to clean out the station the next day, and that she might want to collect her things.
- 7.202 BIU attended the LAC2 Station at around 8.30am the next morning. Her locker had already been emptied and her desk removed. She saw an unmarked red security bin. Unable to find her possessions, in her words she *'panicked'*. She contacted BJB who *'knew nothing about it'*. BIU then rang another colleague who *'made some inquiries, rang me back and said "Yeah he was down there"'*.¹⁶¹
- 7.203 BIU became very distressed. She returned to the station that afternoon with her son as she was too scared to return alone. She observed BKJ standing at the security bin which was by this point labelled *'not to be destroyed at Direction of BKJ'*. The bin was opened, and BIU was able to recover some of her property – including a wedding photo that had been on her desk, and had not been affected by the flood.¹⁶²
- 7.204 BIU described a conversation with BKJ, where he said words to the following effect:
- 'I found some of your stuff, [BIU]. It was here all along, and see, this was never going to be thrown out'... 'See, that was always going to be retrieved.'*¹⁶³
- 7.205 BKJ and BIU's son went through the skip bin and recovered a number of items, none of which were wet.
- 7.206 After this incident, there were a series of negotiations between BKJ and BIU about her part-time and work from home arrangements. BIU's husband, a Superintendent of police, became involved.
- 7.207 BIU described a meeting in September 2016, after she had refused to apply for permanent part-time. She reported *'a number of other staff that were being pressured into a similar situation'*.¹⁶⁴ At that meeting, BKJ questioned

¹⁶¹ Examination BIU at T27.

¹⁶² Examination BIU T28-T29.

¹⁶³ Examination BIU at T29.

¹⁶⁴ Examination BIU at T37.

her about the nature of her caring responsibilities in detail and suggested that her youngest son could wait for her in the library in the afternoons. BIU said *'it was horrible to have your parenting decisions questioned in front of people'*.¹⁶⁵

- 7.208 At the end of that meeting, BIU *'was given a direction...that [she] was to order a uniform immediately'*.¹⁶⁶ BIU had been plain clothes since around 2009, after she had started working in the LAC2 station, which is a covert premises. Being in plain clothes permitted BIU to leave the station to attend meetings without having to change, as she could not leave the station in uniform as she was on restricted duties and not permitted to carry a firearm.
- 7.209 Throughout this period, a number of female staff were raising similar concerns about BKJ's behaviour with BIU. BIU raised the issue with TAB11 in HR, who advised her that she was aware of the issues but could not do anything without a formal complaint.
- 7.210 BIU reached out to Women in Policing corporate sponsor, TAB10. She emailed a number of female officers at LAC1 inviting them to meet with TAB10 to have an informal chat, describing it as a *'great opportunity to discuss any issues or concerns'*.¹⁶⁷ A number of officers attended the meeting on 8 September 2016. TAB11 did not give evidence before the Commission.
- 7.211 The negotiations continued. BIU agreed to give up working from home, but was unwilling to apply for permanent part-time. Her work injury claim occurred before the issue was finally resolved.
- 7.212 Since the LAC2 flood and subsequent events, BIU began suffering increasing anxiety levels, in particular in respect of having to interact with BKJ. She remained at work for as long as she could, but as she described it:
- 'I got more and more frightened of him...I found myself over-preparing for every meeting that I went to, terrified that he'd ask me something that I didn't know the answer to. And I think that as my confidence got worse, it felt like he got bigger.'*¹⁶⁸
- 7.213 Ultimately, BIU made a hurt on duty claim. She is unlikely to return to policing, despite having intended to retire in the job.¹⁶⁹

¹⁶⁵ Ibid.

¹⁶⁶ Examination BIU at T39.

¹⁶⁷ Ex BKJ9C.

¹⁶⁸ Examination BIU at T43.

¹⁶⁹ Examination BIU at T44-45.

(a) BJI

7.214 BJI gave evidence that he had overheard BKJ making comments about Ms BIU such as *'I'm going to get her back into uniform, I don't care how much it costs'* and *'she's not doing her job properly, she's not going to work from home again, that's not how it works'*.¹⁷⁰

(b) Ms BJE

7.215 Ms BJE was involved in the clean-up of the LAC2 station after the flood in 2015 although was not there when Ms BIU's possessions were thrown out. She recalled the floodwater as being *'just below desk height'*.¹⁷¹ In her view there was no malice in BKJ's actions and she recalled that the secure documents bin was being used for items that were to be taken back to LAC3 for review.¹⁷²

(c) BKJ

7.216 BKJ stated that he would only ever ask clarifying questions of BIU at morning meetings. He gave examples which demonstrated that these would be at a high level of detail in respect of reported crimes – make and model of cars, point of entry, *'all those types of things'*. He attributed this to having *'been a detective all [his] career... [he] just probably couldn't leave the detective behind'*.¹⁷³

7.217 BKJ described BIU as a *'good, competent, experienced officer'*.¹⁷⁴ He felt that, until 2015, they had a good working relationship. He would generally interact with her if she attended the morning meeting or if he needed a specific task done.

7.218 In respect of BIU's part-time work and working from home agreement, BKJ reviewed it when he commenced in LAC1. He allowed it to continue for two years until he formed a view in 2016 that it was no longer sustainable due to the increased workload of the Command. He accepted that BIU did in fact perform work outside of her rostered hours. The age of her remaining dependent child – a 15 year old son – played a role in the development of his approach as the arrangement was outside what NSWPF policy prescribed.

7.219 BKJ described the first meeting with BIU, in or around June 2016. He agreed that he presented her with two options: either accept a permanent part-time role, or return to full-time work, and advised her that the working

¹⁷⁰ Examination BIU at T16.

¹⁷¹ Examination BJE at T17.

¹⁷² Ibid.

¹⁷³ Examination BKJ at T90.

¹⁷⁴ Examination BKJ at T180.

from home arrangement was no longer suitable. He recalled BIU raising custom and practice. He responded that this did not override policy. He accepted that he had a discretion to continue the arrangement and that he offered as a compromise an option of starting and finishing at the LAC2 station.

- 7.220 At that meeting, BKJ also raised the issue of BIU not wearing uniform and directed her to wear it.
- 7.221 Shortly after the meeting, the LAC2 station was flooded on 6 July 2016. BKJ spent the next few days in LAC2, briefing the Prime Minister and other officials, and dealing with emergency management meetings. On the Thursday he was advised by Ms BJE that the contractors were ready to commence the cleanout of the LAC2 station but that sensitive material first needed to be removed.¹⁷⁵
- 7.222 BKJ elected to supervise this himself to avoid any arguments about what had and hadn't been thrown out. With the assistance of two constables, he cleared out the lockers and desks of police material. He put the contents of Ms BIU's locker into a secure records bin, with the exception of items of clothing which were taken by car, for transport to the LAC3 police station.
- 7.223 The next day, BKJ became aware that BIU had become upset, believing that her things had been thrown out. He became nervous, because he was aware that there was a perception among staff that he was picking on BIU, and also because of the involvement of her husband (TAB15) in the dispute about her working arrangements. Ultimately he went to LAC2 to meet BIU to assure her that the items had not been thrown out. He recalled going through the skip bin with her son.
- 7.224 In the interim, BIU had made two formal requests: one for the continuation of her part-time work arrangement and one for the continuation of her working from home. BKJ refused both and the dispute continued. BIU's husband continued to be involved, which BKJ described as putting him in a difficult position. BIU appealed the decision to TAB1, who confirmed the refusal.
- 7.225 A further meeting was held with TAB11, BKJ, BIU and an NSWPA representative, to negotiate a permanent part-time arrangement. At the conclusion of the meeting BKJ directed BIU to wear police uniform. He considered this appropriate because there were independent witnesses in the room. BKJ described BIU as '*hostile*' during the meeting.¹⁷⁶

¹⁷⁵ Examination BKJ at T191-192.

¹⁷⁶ Ex BKJ9C.

7.226 BKJ became aware of an email from BIU to women in his command inviting them to a meeting with the 'Women in Policing' corporate sponsor, TAB10 in early September 2016. It was shown to him by two recipients. He raised the matter with TAB11 and TAB1's staff officer, as he thought complaints could be made against him.¹⁷⁷

7.227 On 8 September 2019, BKJ observed the meeting between TAB10, BIU and a number of other female officers. The meeting occurred in a coffee shop across the road from the station. BKJ covertly watched the door through the blinds of his office and made a note of everyone who attended. He reported the attendance list to TAB11. TAB11 did not raise any concerns about this with him.¹⁷⁸

7.228 He accepted that there was occasional reluctance in the NSWPF to make formal complaints, and that it was important to allow people to feel able to raise concerns formally or informally, but maintained that it was appropriate for him to monitor the attendance at this meeting, because of BIU's involvement.¹⁷⁹

(xiii) Mr BIY

7.229 In early July 2015, Mr BIY began dealing with recurring memories of a childhood sexual assault, and began seeing a psychiatrist and taking anti-depressants. He disclosed this to BJB during a meeting and advised her that he was planning to apply for leave to attend a residential treatment program.

7.230 Following this meeting, BJB directed Mr BIY to obtain medical evidence from his treating psychiatrist, which he did. Mr BIY made a leave application on 22 July 2015 seeking four weeks' leave.

7.231 BKJ directed Mr BIY to attend a meeting to discuss the request on 24 July 2016. BJB also attended. Mr BIY gave evidence that at that meeting BKJ asked him whether he was drinking. A conversation to the following effect then took place.

Mr BIY: *'Yeah, I drink, but never when I'm on duty or before I go on duty.'*

BKJ: *'I'm not going to get woken up in the middle of the night with you assaulting your wife from drinking too much, am I?'*

Mr BIY: *'Excuse me?'*

¹⁷⁷ Ex BKJ9C.

¹⁷⁸ Ibid.

¹⁷⁹ Examination BKJ at T219-220.

BKJ: *'Yeah, I know about your past, [Mr BIY]. I don't want to be woken up in the middle of the night.'*¹⁸⁰

7.232 Mr BIY understood this to be a reference to two complaints made by ex-partners, both of which were dismissed. The exchange continued:

BKJ: *'Are you taking any medication?'*

Mr BIY: *'Yeah, I'm on the normal medications, cholesterol and anti-depressants.'*

BKJ: *[pointing finger] 'I should take your gun off you straight away... You should tell me when your medications change.'*

Mr BIY: *'But anti-depressants help you, they help your mood they don't hinder your mood.'*

BKJ: *'It doesn't matter. You should tell me when you change medications, especially anti-depressants. I should take your gun off you.'*

Mr BIY: *'Well, you should take the gun off most people downstairs, then. You won't have a police command left.'*¹⁸¹

7.233 By this point, Mr BIY had become quite upset and emotional. The exchange continued:

BKJ: *'What proof have you got that you were sexually assaulted as a kid? What's to say you just don't want to take the family away to Noosa for a holiday?'*

Mr BIY: *'What proof has any sexual assault survivor got?'*¹⁸²

7.234 BKJ then raised a range of performance concerns, telling Mr BIY that TAB17 and BJF had called him lazy, and that BIX had complained. Mr BIY became *'pretty emotional and aggressive'* and said:

*'I can't believe this. You know, most Commanders have an open-door... I could go and speak to. You, you've got a closed door. You're untouchable.'*¹⁸³

¹⁸⁰ Examination BIY at T20.

¹⁸¹ Examination BIY at T21.

¹⁸² Ibid.

¹⁸³ Examination BIY T23.

7.235 At this point BKJ stood up, raised his voice and told him to *'get the fuck out'*. BJB intervened at this point and suggested getting evidence from Mr BIY's doctor. She and Mr BIY left the meeting.¹⁸⁴

7.236 Mr BIY contacted his psychiatrist and asked her to confirm that he was seeing her as a result of childhood sexual abuse, in order to obtain leave. He was also required to attend a police medical officer assessment on 6 August 2015, which resulted in a short email recommending that he be permitted to take leave.

7.237 Mr BIY made a workers' compensation claim in respect of a psychological injury arising from the meeting on 24 July 2015. He did not return to work. He left the NSWPF.

7.238 Mr BIY made an official complaint about BKJ in respect of the conduct described above.¹⁸⁵ It was investigated by TAB12 who, on 4 October 2015, issued a report which:

- accepted BJB's evidence that, at least, BKJ said *'I only have your word that you've been sexually assaulted – how do I know what it is not for drinking or a marriage breakdown?'*, raised performance concerns, and enquired about medications;
- found that it was *'proper and prudent'* to make these enquiries;
- concluded that Mr BIY *'already had issues when he went into the meeting and would appear to have been of the view that he could do whatever he liked in relation to the roster, taking leave and working when and how he wanted to'*; and
- dismissed the complaint.

7.239 This report was reviewed by TAB13 who described it as being *'completed to a very high standard'* with *'no opinion or supposition in the investigation report'*.

(a) BIX

7.240 BIX gave evidence that, as a general rule, periods of leave are allocated approximately a year in advance. Where an officer wishes to request additional leave, or alter the roster, they are required to submit an issues report (also known as a Godfrey report). While this requires an explanation, BIX confirmed that the Command's concern was with roster coverage, not justification. As to the reason provided by the officer, BIX said:

¹⁸⁴ Examination BIY at T23.

¹⁸⁵ Ex BIY1C.

'That's their business. It's got nothing to do – if we can support it, we support it. If we can't operationally support it, then it won't be supported'.¹⁸⁶

7.241 He agreed that it was not any of the Commander's business why a person wants to take their leave. He confirmed that there was no operational reason to refuse then-Senior Constable BIY's request for leave and, if there had been, it would have been indicated in the email chain which is Exhibit BIYC3.

(b) BJB

7.242 BJB also discussed an incident involving BKJ and then-Senior Constable BIY which is discussed in more detail below. BJB, in short, confirmed Mr BIY's version of events and provided relevant file notes and emails. In particular, she gave evidence that, in the meeting between herself, Mr BIY and BKJ. BKJ questioned Mr BIY's request for leave, saying words to the effect of:

'I will consider your leave application once I have confirmation of what you are being treated for. We've only got your word that it's in relation to being sexually assaulted. How do I know it's not about your drinking or your marriage breakdown'.¹⁸⁷

7.243 Additionally he raised new allegations of poor performance with Mr BIY. Mr BIY became upset, raising his voice and pointing, and BKJ responded in kind. She had to intervene to calm matters down.

(c) BIU

7.244 BIU gave evidence that BIY had approached her, extremely distressed, after having met with BKJ and BJB. She could see that he had been crying and asked what was wrong.

7.245 BIY told BIU that he had been a victim of childhood sexual assaults and had recently been seeking treatment. BIU recalled:

'He just detailed that the commander basically said that he didn't believe him and that he wanted medical proof of the fact that he'd been sexually assaulted and that he inferred that BIY was changing his holiday dates to go on holidays with his family.'

...

¹⁸⁶ Examination BIX at T8.

¹⁸⁷ Examination BJB at T37.

*'My heart broke for him...I couldn't fathom that someone would treat one of our own in such a way.'*¹⁸⁸

7.246 BIU, after comforting BIY, advised him to make a note about what had happened, which he did.

(d) BKJ

7.247 BKJ agreed that a reason that he did not support BIY's initial application for the PACT and IRT was because of the level of sick leave he was taking. The second application was approved as his attendance levels had improved and in 2014 BIY did six weeks in IRT and six weeks in A List. BKJ recalled some concerns raised by BJB in respect of his A List performance.

7.248 In July 2015 BKJ received a complaint from BIX stating that BIY had failed to comply with Alert 15, a new policy on single unit policing, by doing licensing checks on his own. BKJ maintained that this was a Part 8A complaint under the Police Act. The matter was dealt with by BJB.¹⁸⁹

7.249 BKJ recalled hearing rumours about BIY's personal life including allegations of domestic violence and heavy drinking, largely from TAB16 reporting things his children had heard. He denied that this was gossip, and considered it legitimate feedback. He asked BJB to meet with BIY on this basis.¹⁹⁰

7.250 BKJ recalled being advised by BJB that BIY had been seeking treatment for depression as a result of childhood sexual assault. He directed her to seek information from his treating psychiatrist to confirm his fitness and to confirm that sexual assault was the reason for treatment. He maintained that he could not take BIY's word for this. While he did not doubt that BIY was seeking treatment, he felt it necessary to confirm whether this was for childhood sexual assault or in fact related to domestic violence or marriage breakdown. He accepted that this was *'the detective in [him]'* at work.¹⁹¹

7.251 BKJ received BIY's application for leave, and directed BJB to instruct him to provide an issues report before it would be approved. He accepted that there was no operational reason to refuse the leave.

7.252 BKJ met with BIY on 23 July 2016. He accepted saying words to the effect of:

¹⁸⁸ Examination BIU at T21.

¹⁸⁹ Examination BKJ at T224-227.

¹⁹⁰ Examination BKJ at T230.

¹⁹¹ Examination BKJ at T236.

'I only have your word for why you are being treated, that it's childhood sexual assault. For all I know, it might be treatment for marriage counselling, domestic violence or alcohol issues'.¹⁹²

'All I need is for you to send an email to your psychologist saying that you give permission to her to tell us why you are being treated. I will then approve the leave. Once I receive the information from the psychologist I will then approve the leave.'¹⁹³

7.253 BKJ accepted that he would not have approved the leave without knowing why BIY was seeking treatment. He accepted that this was different to operational considerations or questions about BIY's fitness for work. He agreed that the reason he was asking for this was to investigate the allegations of domestic violence and his concern was more for BIY's wife's wellbeing rather than his.¹⁹⁴

7.254 BKJ accepted that he raised a range of other unrelated performance issues, and that in hindsight this was not the right time. He recalled BIY becoming agitated in the meeting, and gave evidence that his response was to become stern, stand up, and say *'sit down, stop swearing'... You can't carry on like that in here, if you haven't got respect for me, have respect for the office'*.¹⁹⁵

7.255 BKJ said that in hindsight he would have approved the leave. He maintained that it was appropriate and necessary to enquire into the reasons Mr BIY was seeking treatment.¹⁹⁶

(xiv) Mr BLC

7.256 Mr BLC gave evidence before the Commission on 27 September 2019. The Scope and Purpose of the examination of this witness was directed towards how the NSWPF dealt with issues of bullying and discrimination within the workplace. A summary of Mr BLC's evidence and analysis is to be the subject of a supplementary report by the Commission.

8. Policies, Procedures and Guidelines of NSWPF

8.1 An employee of the NSWPF must comply with the NSWPF *'Code of Conduct and Ethics'*.¹⁹⁷ This includes, inter alia, a requirement that the employee:

¹⁹² Examination BKJ at T241.

¹⁹³ Examination BKJ at T242.

¹⁹⁴ Examination BKJ at T245.

¹⁹⁵ Examination BKJ at T246.

¹⁹⁶ Examination BKJ at T248.

¹⁹⁷ Ex BKJ18C at Item 4.

- *‘Know and comply with all policies, procedures and guidelines that relate to their duties;*
- *Treat everyone with respect, courtesy and fairness;*
- *Comply with the law whether on or off duty.’*

Failure to comply with the Code may result in managerial disciplinary action being taken against the employee.

8.2 On 22 May 2007 the NSWPF published a policy titled *‘Harassment, Discrimination & Bullying*¹⁹⁸ (*‘Bullying Policy’*). The Policy stated that:

‘All forms of harassment, discrimination, bullying, victimisation and vilification are unacceptable behaviours that breach the NSW Police Code of Conduct and Ethics and will not be tolerated in any circumstances’.

8.3 The Bullying Policy set out, inter alia, the rights and responsibilities of Managers, namely, to provide an environment for employees to carry out their work free from discrimination, harassment, bullying, vilification and victimisation, and that in doing so, the Managers were expected to be good role models. The Bullying Policy made clear that any breach of the policy by an employee would be considered serious and may result in disciplinary action, including dismissal.

8.4 Of relevance to the complaints brought against BKJ, the Bullying Policy defined conduct that would amount to harassment, bullying and discrimination, which may be summarised as follows:

‘Harassment- Is behaviour or conduct which

- *is unwelcome, uninvited or unreciprocated;*
- *makes the recipient feel intimidated, offended, humiliated or belittled, and*
- *targets the recipient because of a discriminatory ground.*
- *The behaviour does not need to be repeated or continuous.*
- *The test is whether, having regard to all the circumstances, a reasonable person would be offended, humiliated or intimidated by the conduct.’*

8.5 Examples of conduct that would amount to harassment, included:

- *‘Persistent verbal abuse or threats; comments that put down or stereotype people generally or an individual particularly; derogatory or*

¹⁹⁸ Ex BKJ19C.

sexual comments, innuendo, insults or taunts; intrusive questions or insinuations about a person's private life.'

8.6 Under the Bullying Policy *'bullying'* was described as a *'form of harassment not expressly linked to a discriminatory ground'* and included the following conduct:

- *'Repeated conduct that intimidates, offends, degrades, insults or humiliates a person... and abuse of management and supervisory powers.'*

Examples provided of conduct where repeated, or occurring as part of a pattern of behaviour that could be considered as bullying included:

- *'Being subjected to constant ridicule or being put down in front of co-workers,*
- *Being the victim of loud and abusive , threatening or derogatory language,*
- *Excluding or isolating employees'.*

8.7 Under the Bullying Policy, *'discrimination'*- occurs *'when a person or group of people, is treated less favourably than another person or group because of a particular characteristic, including... sex or disability, or any characteristic which is a prohibited ground of discrimination under federal or state legislation.'*

8.8 On 6 December 2016, the NSWPF issued its *'Respectful Workplace Behaviours Policy Statement'*¹⁹⁹ ('Policy Statement') in conjunction with *'Respectful Workplace Behaviour Guidelines'*²⁰⁰ ('Workplace Guidelines'). The Workplace Guidelines further clarified behaviour that would be regarded by the NSWPF as harassment, bullying and discrimination.

8.9 The Policy Statement declared:

'behaviour that amounts to bullying, discrimination, harassment, vilification and victimisation will not be tolerated, will be taken seriously and may result in managerial disciplinary action.'

8.10 The Workplace Guidelines outline the commitment of the NSWPF to comply with its obligations under the *Work, Health and Safety Act 2011* (NSW), *Anti-Discrimination Act 1977* (NSW) and the *Government Sector Employment Act 2014* (NSW).

¹⁹⁹ Ex BKJ21C.

²⁰⁰ Ex BKJ20C.

8.11 Under the Workplace Guidelines, Commanders and Managers are responsible for *'leading the way'* by being good role models for respectful workplace and conduct.²⁰¹

8.12 Of relevance to the complaints brought against BKJ, the Workplace Guidelines define conduct that would and would not constitute workplace bullying, discrimination and harassment, which may be summarised as follows:

(b) Workplace Bullying

The NSWPF has adopted the Safe Work Australia definition of workplace bullying, that is:

'Workplace bullying is repeated and unreasonable behaviour directed towards a worker or a group of workers that creates a risk to health and safety.'

The Workplace Guidelines helpfully provide examples of bullying conduct which include:

- abusive, insulting or offensive language,
- aggressive and intimidating conduct,
- belittling or humiliating comments,
- unjustified criticism,
- deliberately excluding or isolating employees,
- changing work arrangements such as rosters and leave to deliberately inconvenience a particular employee or employees.

The Workplace Guidelines state that bullying behaviours are manifested verbally, physically and/or through body language.

Reasonable management action will not be considered to be bullying and given the nature of policing, the comment is made that *'robust conversations and directions may form part of general business and should not necessarily be viewed as bullying'*.

8.13 The Workplace Guidelines provide that *'harassment'* is unlawful under both State and Commonwealth legislation if:

- it is unwelcome, uninvited or unreciprocated; and

²⁰¹ Ex BKJ20C at pg 7.

- a reasonable person would anticipate that the recipient would be offended, humiliated, intimidated; and it is either sexual in nature or targets a person on a discriminatory ground.

Importantly, harassment can occur whether or not a person intended to harass another person. It does not need to be repeated or continuous, one-off incidents are capable of constituting harassment.

8.14 The Workplace Guidelines provide a definition and examples of conduct that would constitute '*discrimination*' in terms essentially the same as appear in the Policy Statement.

9. Submissions in Response

9.1 The Commission received lengthy and detailed submissions in response on behalf of BKJ, as well as a quantity of additional material in support.

9.2 It is not proposed to repeat or respond to each and every submission. Suffice it is to say that submissions have been made in respect of each category of complaint made against BKJ, those being:

- i. General Demeanour toward staff;
- ii. PACT Rosters;
- iii. Restricted Duties Officers;
- iv. Commander's Morning Briefings;
- v. Team Building Exercises;
- vi. The Union Campaign;
- vii. Complaints of Misconduct Towards Individual Officers;

9.3 In regard to each category of complaint BKJ rejected allegations of inappropriate conduct towards officers under his command and in doing so he relied principally upon statements he had previously made in relation to workplace injury claims brought by various officers and his evidence before the Commission. BKJ also relied upon the contents of records of interview which he previously gave to TAB22 and TAB23, various emails, business and operational documents of the NSWPF and his service record.

9.4 In refuting the allegations of bullying and harassment of staff members BKJ sought to characterise his management style, as put by one witness when giving evidence, as direct, firm and stern and that he did not target individual officers but had the same approach with everybody.

- 9.5 In assessing the credibility of the evidence given by officers who had made complaints about the behaviour of BKJ, it was submitted on his behalf that the Commission should take into account that they had each been adversely affected in their personal and professional lives by administrative decisions made by BKJ, that many were experiencing personal emotional and psychological issues which may have affected the reliability of their recollection of events and finally, that they each had a motive to dislike him. In this regard no submission was made as to how the Commission should assess the reliability of the evidence of BKJ, given his own psychological illness for which he has been absent from work since March 2019 and receiving medical treatment.
- 9.6 A submission was made on behalf of BKJ that when assessing the evidence provided during the examinations to the Commission, it should take into account that it was untested by cross examination. This submission appears to misunderstand the function of the Commission and the role of counsel assisting. The nature of the proceedings are not adversarial, there are no parties. There is no prosecutor. The purpose of the examinations is to assist the Commission's investigation into allegations of serious misconduct and to arrive at a finding. The role of counsel assisting is not partisan, but to present all the relevant evidence to the Commission and examine witnesses without fear or favour. Furthermore, the Commission notes that when the legal representatives were provided with a copy of its draft report, transcripts of the evidence and exhibits, and invited to make submissions in response, no application was made for any witness to be recalled for cross examination by counsel for BKJ.
- 9.7 Finally, it was submitted on behalf of BKJ, that although the draft report contained a summary of the evidence given by the witnesses, in some instances, additional extracts of their evidence should be included in order to provide a more balanced interpretation. Whilst the Commission did not agree with this submission, it amended its draft report in some instances to take this issue into account.
- 9.8 Having regard to the submissions made on behalf of BKJ, the Commission amended its finding in the draft Report in respect of Mr BIV.

10. Findings

The Commission is satisfied that BKJ engaged in serious misconduct in the following circumstances.

A. General Demeanour Towards Staff

- 10.1 BKJ's conduct towards staff was inconsistent and unpredictable. On many occasions it was overly aggressive, domineering, and likely to cause offence.

- 10.2 The Commission is satisfied that he very often behaved in an unreasonable manner, particularly for an officer of his rank, when dealing with those officers under his command.
- 10.3 The Commission accepts BJB's evidence that BKJ frequently raised his voice when speaking to staff, pointed, raised his hand in a stop gesture to interrupt staff, waved his hand dismissively at staff when they were speaking, rolled his eyes when they were speaking and was prone to losing his temper when interacting with others.
- 10.4 The Commission accepts BJB's evidence that BKJ behaved in this fashion toward BHU and BIU.
- 10.5 The Commission accepts BIW's evidence that BKJ would often speak to officers rudely, abruptly and aggressively. He would interrupt officers, raise his voice and repeatedly question them. The Commission accepts BIW's evidence that BHU was subject to this behaviour at morning meetings.
- 10.6 BIW gave evidence that BKJ was controlling. He preferred to do work himself that would otherwise have been done by junior officers in another command. Performing this work as a Commander is not serious misconduct. However, the Commission accepts BIW's evidence that these discussions were conducted in inappropriately direct and abrupt manner. This manner, in conjunction with BKJ's general demeanour towards staff, have added weight to the general perception of inappropriate conduct.
- 10.7 The Commission accepts BJI's description of BKJ's management style as *'his way or the highway'*.²⁰² The Commission accepts BJI's evidence that BKJ got "*stuck into*" staff if he was dissatisfied with their responses at the early morning meetings. The Commission accepts BJI's evidence that he interrupted staff, was rude to them and made dismissive gestures.
- 10.8 The Commission accepts BJC's evidence that BKJ referred to a "*Team [BKJ]*".²⁰³
- 10.9 The Commission accepts BJH's evidence that BKJ's demeanour was intimidatory and abrupt and that he made dismissive hand gestures towards her.
- 10.10 The Commission accepts Mr BIV's evidence that he saw and overheard BKJ speaking rudely and aggressively to female officers, in particular BHU.
- 10.11 The Commission accepts Ms BJE's evidence that BKJ's management style was intrusive, autocratic and micromanaging. She gave evidence that his management style when angry was to lean into the person he was speaking

²⁰² Examination BJI at T6.

²⁰³ Examination BJC at T18.

to, and that he would put his hand up in front of a person's face and interrupt them. She had observed BKJ interact with people this manner and this included BJB and BHU. Her evidence was that if you were an assertive female you "*copped it a bit*".²⁰⁴ The Commission accepts this evidence.

- 10.12 BKJ rejected any suggestion that his conduct in office was in any way inappropriate. His evidence was that he was a strong leader focused on performance attendance and conduct.
- 10.13 His evidence in relation to his focus on leave entitlements was troubling. He was concerned with officers manipulating their sick, carers or FACS leave entitlements. He would not support officers with high personal leave levels for relieving. He was entirely unaware that this may be an entirely inappropriate consideration where leave has been properly sought and is within entitlements.
- 10.14 BKJ denied ever speaking aggressively to staff, or raising his voice (except for one occasion with Mr BIY), or pointing at staff, although he accepted that he would hold his hand up in a stop gesture and from time to time interrupted people. He described himself as a good negotiator. He denied making any derogatory remarks about officers on restricted duties.
- 10.15 BKJ denied that he was a micromanager but accepted that he had a hands-on management style involving performance of formal counselling, approval of leave and rostering.
- 10.16 The Commission is satisfied that BKJ has no self-awareness in relation to his general demeanour towards staff. He considers that his conduct was appropriate in all the circumstances present at LAC1 when he commenced his stewardship of that role and as the role developed. He considers that he behaved righteously.
- 10.17 The Commission finds that BKJ's demeanour towards staff was very often unnecessarily aggressive, domineering, abrupt and likely to cause offence. It was intimidating. In relation to officers generally, it was bullying.
- 10.18 The Commission finds that BKJ bullied officers BJB, BIW, BIU, BJI and Mr BIV.

B. PACT Rosters

- 10.19 BJK gave evidence that there were issues with fatigue management in the PACT. BKJ supervised the roster in great detail. An example was provided. The relevant award was not complied with in that the team was regularly

²⁰⁴ Examination BJE at T9.

rostered from Wednesday to Saturday preventing application of the Award requirement for a number of full weekends off per month.

- 10.20 This breach was not raised by the Association in an industrial context. Although he raised this issue with the Association delegate, BJT, that officer, when giving evidence, did not volunteer this as a complaint that had been brought to his attention.
- 10.21 BKJ accepted that he required the PACT staff to work a Wednesday to Saturday night roster and that Award requirements for clear weekends off work were not met. It was his evidence that staff waived this entitlement by choice.
- 10.22 Under the NSWPF Code of Conduct,²⁰⁵ employees are required to comply with the law. This extends to compliance with relevant industrial awards and instruments. Drafting rosters that ensure a breach of award conditions would be serious misconduct. Award entitlements are not matters to be set aside by agreement with staff except where explicitly stated in the Award. Even in those instances where a change to or avoidance of award entitlements is possible, those arrangements must be explicitly agreed to and are almost always required to be in writing. Staff cannot be said to have agreed to this arrangement because they did not explicitly object. In the circumstances existing at LAC1:
1. It was highly unlikely that anyone would put their hand up and object. If evidence had been presented to the Commission which had revealed that the weekend rosters for the PACT officers were drafted and implemented by BKJ in contravention of the Award, together with evidence that officers' consent to work weekends had not been appropriately obtained, it would have been evidence that BKJ's actions constituted serious misconduct.
 2. It appears from the evidence of BJT that officers were prepared to complain to the Association on a broad range of matters. The weekend rostering of the PACT officers was not raised. Taking this into account with the fact that the complaint made by BJK was not corroborated, the Commission cannot be satisfied to the required standard that the Award in regard to the rostering of PACT officers on weekends was breached and if so, it was knowingly done BKJ.

C. Restricted Duties Officers – General

- 10.23 The Commission accepts BIW's evidence that BKJ referred to a particular officer's post-traumatic stress disorder as a proper reason for not retaining that officer in the command, and, had he known that the officer suffered

²⁰⁵ Ex BKJ18C at Item 4.

from post-traumatic stress he would not have permitted him to return-to-work or as accepted him as a transfer to the command.

- 10.24 BJI gave evidence that BKJ referred to injured staff as being no good and not wanted in the command. The Commission accepts BJI's evidence.
- 10.25 BKJ gave evidence that the number of restricted duty officers in LAC1 was a problem for the command. His evidence was that TAB1 had instructed him to do something about the number of permanent medically restricted officers.
- 10.26 There is no serious misconduct, or misconduct of any kind, in managing staffing numbers whilst taking into account the number of officers who are on restricted duties. It would be impossible to manage a command without knowing the number of officers able to perform full duties. The workload of any command can be identified and the Commander must ascertain what staff he or she has to perform that work. What is not appropriate is to discriminate against those persons who have been injured in the course of their duties by denying them opportunities or treating them rudely or disrespectfully in the workplace.
- 10.27 The Commission is satisfied that BKJ engaged in serious misconduct by treating those persons, disabled by injury in the course of their work, in a discriminatory and disrespectful fashion.

D. Commander's Morning Meetings

- 10.28 The Commission accepts BIX's evidence that if BKJ was dissatisfied with an answer at the morning meeting he would be very direct and stern in response. He might say '*come back to me with the answer or you're not telling the truth sort of thing*'.²⁰⁶ The Commission accepts this evidence of BIX.
- 10.29 BJC gave evidence that he observed BKJ targeting officers, particularly BHU, by speaking to them in a disrespectful manner and belittling them.
- 10.30 The Commission accepts this evidence of BJC.
- 10.31 BJA gave evidence that BKJ was short and direct at meetings. He would interrupt, gesture at people to stop talking and use a stern tone. He would repeat questions. The Commission accepts this evidence of BJA.
- 10.32 BJT gave evidence that BKJ's conduct at morning meetings was variable. Some days he was calm, but on a bad day he would give officers a serve,

²⁰⁶ Examination BIX at T27.

yell at officers and tell them they were incompetent. The Commission accepts this evidence of BJT.

- 10.33 BJK gave evidence that BKJ was extremely volatile. No one could predict his mood. BJK was nervous attending those meetings. He gave evidence that BKJ targeted people during meetings with excessive and aggressive questioning. He tried to switch off to avoid being targeted. BKJ berated people. He made derogatory comments such as '*are you stupid?*' and '*why don't you know this?*'.²⁰⁷ He recalled this happening to BHU and BJI. He observed BHU being upset after such a meeting. The Commission accepts this evidence of BJK.
- 10.34 BJK gave evidence that sick leave was discussed in the morning meeting, including the individual reasons for such leave. When questioning officers on issues he would speak in a louder speaking voice than his usual tone. He rolled his eyes, interrupted, raised his hand to stop officers talking and made dismissive gestures. He particularly conducted himself in this manner towards BHU, BJB and BJI. The Commission accepts this evidence of BJK.
- 10.35 Mr BIY gave evidence that he recalled BKJ speaking to TAB18 and BHU in a dismissive manner at the morning meetings. He repeatedly questioned them and treated them differently to others at those meetings. The Commission accepts this evidence of Mr BIY.
- 10.36 BKJ gave evidence that he asked clarifying questions to a very high level of detail. The purpose of these questions was to gather information or to educate officers as to how to report. He would repeatedly question officers if he considered that their answer was unclear or unsatisfactory. This included asking the same question repeatedly. He would ask questions about sick leave which included the reason for leave. He redirected officers if he considered that they had gone off on a tangent. He accepted that he might become frustrated and express that frustration in his body language and that he would occasionally cut people off. After BHU's complaint was upheld he changed the format of the morning meetings so that junior officers left before personal issues were discussed. He also made an effort to delegate more to his leadership team.
- 10.37 The Commission finds that BKJ regularly engaged in bullying which was serious misconduct at the early morning meetings which affected all persons in attendance but particularly BHU, BJB and BJI.

²⁰⁷ Examination BJK at T33.

E. The Team Building Exercises

10.38 BKJ's conduct in this regard was the subject of an internal investigation. The complaint was upheld. There is no need for further findings by this Commission.

F. The 2015 Union Campaign

10.39 BJT gave evidence that BKJ refused to negotiate, interrupted him in a meeting with regional commands in respect of minor matters and demanded an apology in respect of his mentioning a reported breach of the first response agreement. He also gave evidence that BKJ had observed a union meeting from the roof of the station near the air-conditioning vents.

10.40 BJK gave evidence that his relationship with BKJ deteriorated after his involvement in a NSWPA campaign. He supported BJT's evidence of a heated exchange with BKJ regarding industrial issues in dispute. He confirmed that he had witnessed BKJ standing, partially hidden, on top of the police station building observing a union meeting in the car park.

10.41 Ms BJV from the NSWPA described BKJ's observation of the union meeting from the roof of the police station as being a complete breach of confidentiality and privacy.

10.42 BKJ agreed that he had observed the union meeting from the air conditioning area on the roof of the police station. His evidence was that he did this to ensure that there was no media on the station grounds. Nevertheless he confirmed that he took a note of the number of people present at the meeting.

10.43 Robust discussions and negotiations between union representatives and management are commonplace. There can be no misconduct in reasonable robust exchanges.

10.44 However, lurking on the roof of a police station observing a union meeting is conduct unbecoming of a Superintendent of the NSWPF. It is a breach of the privacy of the union members attending the meeting. The Commission does not intend to examine the relevant industrial agreement and/or legislation, but it is more than likely a breach of the industrial arrangements between the NSWPF and the NSWPA. It is certainly contrary to the ordinary understanding of the manner in which industrial relations should be conducted. Privacy of union meetings is implicit in such understandings.

10.45 The Commission does not accept BKJ's explanation that he was ensuring that the media was excluded from the police station premises. There would be many ways in which their exclusion could be ensured without breaching the privacy of the meeting and spying on it from the rooftops. If that was

his real purpose, there would have been no need to take a note of the number of members in attendance.

10.46 The Commission is not satisfied that BKJ's conduct in spying upon the union meeting from the roof top of the police station behind the air conditioning units, meets the threshold required in order to establish a finding of serious misconduct. However, BKJ's behaviour on this occasion fell well below the standard required under the NSWPF Code of Conduct, particularly having regard to the fact that he was a senior ranked police officer.

G. Serious Misconduct Complaints by Individual Officers

(i) BJI

10.47 BKJ had noted on transfer forms submitted by BJI that he would '*benefit from a change of location*'.

10.48 The Commission accepts:

- the evidence of BJI that BKJ had remarked in a subsequent senior management meeting regarding a transfer application that that phrase meant that anyone about whom that remark was made was '*shit*'.²⁰⁸
- The evidence of BJI that BKJ denied him an opportunity to relieve without giving him the opportunity to discuss his CMS review which showed relatively poor scores.
- The evidence of BJI that BKJ discussed the renewal of his contract in front of a civilian employee.
- The evidence BJI gave regarding a conversation with BKJ concerning his return to work on a return-to-work plan after injury, during which BKJ appeared '*mildly irate*' that BJI had made '*certain comments*' about him in *[his] statement of claim*' and BKJ said '*we need to talk to see if [you] wish to continue working for him at [LAC1]*'.²⁰⁹
- BJI's evidence that he was questioned about his family responsibilities and was requested to complete a formal application for leave regarding his shoulder surgery when other officers were not required to complete such an application.

²⁰⁸ Examination BJI at T17.

²⁰⁹ Examination BJI at T30.

- BIU's evidence that she heard BKJ say to BJI *'the only thing you're capable of being in charge of is the water bottles'*.²¹⁰

10.49 The Commission finds that BKJ's general attitude towards BJI, including:

- speaking about the renewal of his contract before a civilian employee;
- discussing the remark included in his CMS review in a derogatory fashion;
- deciding on his own behalf, without any medical evidence, that BJI's condition arose from his personal circumstances rather than work-related causes;
- providing a copy to BJI's claim manager with a statement containing a significant amount of the relevant prejudicial information

amounted to *'bullying'* as defined in the NSWPF Bullying Policy²¹¹ and Workplace Guidelines²¹² and, as such was in breach of the Policy and Guidelines. By behaving in such a fashion towards BJI, the Commission finds that BKJ engaged in serious misconduct.

10.50 In his evidence BKJ agreed that he took into account, in assessing applications to relieve, BJI's complex personal circumstances and his need to take leave to accommodate his family commitments. As long as BJI's leave applications were within his entitlements, his personal circumstances were irrelevant to those applications and should have been ignored. The Commission finds that taking those matters into account to the detriment of BJI was serious misconduct by BKJ.

(ii) BJH

10.51 The Commission accepts:

- BJH's evidence that on the first occasion she met BKJ he told her that she was a liability to the command and that he did not need an excuse to be rid of her as a Probationary Constable.
- Shortly thereafter he told her *'We'll be looking at getting rid of you'*.²¹³

10.52 It was common ground between BKJ and BJH that, as a result of injuries sustained earlier in her policing career, BJH was not fully fit and was limited

²¹⁰ Examination BIU at T14.

²¹¹ Ex BKJ21C at Para 7.2.

²¹² Ex BJK19C at Para 7.6.

²¹³ Examination BJH at T8-9.

to working restricted duties. The Commission finds BKJ's remarks to BJH demonstrated a discriminatory attitude on his part towards her which constituted a significant breach of the NSWPF Bullying Policy,²¹⁴ Workplace Guidelines²¹⁵ and Code of Conduct.²¹⁶ By behaving in such a fashion towards BJH, the Commission finds that BKJ engaged in serious misconduct.

(iii) BLG

10.53 The Commission accepts BLG's evidence that BKJ repeatedly asked him whether he was in a relationship with BJH and referred to gossip on that issue.

10.54 Whilst BKJ's conversations regarding BLG's relationship with BJH might appear inappropriate, the Commission is not satisfied that BKJ engaged in serious misconduct in discussing this issue with BLG in circumstances where BJH was subject to disciplinary issues.

(iv) BJJ

10.55 Whilst BKJ's conduct in relation to BJJ's application for maternity leave was somewhat heavy-handed, the Commission is not satisfied that BKJ engaged in serious misconduct in this respect.

(v) BHU

10.56 The Commission accepts:

- BHU's evidence of BKJ's treatment of her in the course of her duties, as detailed in the analysis of her evidence, in particular at the morning meetings. This included:
 - Speaking to her rudely, sometimes aggressively;
 - Using an aggressive manner including aggressive body language such as pointing, waving his hands dismissively and rolling his eyes;
 - Belittling her and subjecting her to excessive questioning concerning her staff and their leave;
 - Assigning additional tasks without consultation and without regard to workload;

²¹⁴ Ex BKJ19C.

²¹⁵ Ex BKJ20C.

²¹⁶ Ex BKJ18C.

- Excessive monitoring of and commenting on her flexible hours of work;
- Micromanaging her work; and
- Undermining her performance of her role when dealing with an ambulance officer in a dispute concerning the voluntary committal of a mentally ill person.

10.57 The Commission accepts:

- BIX's evidence that there was tension and conflict between BHU and BKJ.

10.58 The Commission accepts:

- BJI's evidence that BKJ targeted BHU.

10.59 The Commission accepts:

- BKK's evidence that BKJ had treated BHU unfairly by determining a complaint against her without any input from her.

10.60 The Commission is satisfied that the behaviour regularly exhibited by BKJ, as outlined above, towards BHU, amounted to '*bullying*', as defined in the NSWPF Bullying Policy²¹⁷ and Workplace Guidelines²¹⁸ and, as such, he was in breach of the NSWPF Bullying Policy and Guidelines. It follows that BKJ also failed to comply with the Code of Conduct. The Commission finds that by failing to comply with these policies and guidelines of the NSWPF BKJ engaged in serious misconduct.

(vi) BJT

10.61 The Commission accepts:

- BJT's evidence that:
 - BKJ unfairly criticised him and called him an idiot and an incompetent.²¹⁹
 - When he attempted to intervene between BHU and BKJ he was shut down.²²⁰
 - BKJ spoke to him aggressively at morning meetings.

²¹⁷ Ex BKJ19C at Para 7.2.

²¹⁸ Ex BKJ20C at Para 7.6.

²¹⁹ Examination BJT at T8.

²²⁰ Examination BJT at T8.

- BJB's evidence that:
 - BKJ was aggressive and confrontational toward BJT at morning meetings. BJT was the NSWPA representative.²²¹
 - At one meeting BKJ accused him of complaining about a staff issue to the Association. She raised this issue with BKJ who ultimately apologised.²²²

10.62 BKJ was not entitled to object to the NSWPA representative reporting staffing issues to the NSWPA as this was his role. However, the Commission is not satisfied that BKJ's conduct in this regard amounted to serious misconduct.

(vii) BJC

10.63 The Commission accepts:

- BJC's evidence that BKJ ignored him when spoken to and later apologised.²²³
- BIW's evidence that BKJ behaved in this fashion towards BJC.²²⁴

10.64 The Commission is not satisfied that BKJ's behaviour in this regard amounted to serious misconduct.

(viii) BJB

10.65 The Commission accepts:

- BJB's evidence that, following a dispute regarding her entitlements, BKJ threatened her with a change of position and duties if she sought advice from the NSWPA regarding her entitlement to managed time.

10.66 The Commission finds that BKJ's conduct in threatening BJB over this issue and her access to the NSWPA amounted to '*bullying*' as defined in the NSWPF Harassment, Discrimination and Bullying Policy²²⁵ and Workplace Guidelines.²²⁶ As such, it was in breach of the Bullying Policy and Guidelines. By behaving in such a fashion towards BJB, the Commission finds BKJ engaged in serious misconduct.

²²¹ Examination BJB at T13-15.

²²² Examination BJB at T13-14.

²²³ Examination BJC at T23-24.

²²⁴ Examination BIW at T13.

²²⁵ Ex BKJ19C at para 7.2.

²²⁶ Ex BKJ20C at para 7.6.

(ix) BIW

10.67 The Commission accepts BIW's evidence that:

- BKJ informed her that he had told another officer '*not to root the staff*'.²²⁷
- BKJ told her that she was '*the last of the duty officers to come round to his way*'.²²⁸

(x) BJK

10.68 The Commission accepts:

- The evidence of BJK that:
 - depending on BKJ's apparent mood, he would stop and stare at him and look him up and down, rather than acknowledge him.
 - he had observed the interaction during which BJC was ignored by BKJ.
 - that BKJ said words to him to the following effect. '*With the way that policing is going, we need more bodies on the street and there is a push to get rid of injured staff. If you are not back to full duties, you won't have a position here*'.²²⁹
 - after his return to full duties, his relationship with BKJ improved and he discussed matters with him in meetings. The Commission accepts his evidence about those matters discussed in these meetings and set out below.
 - BKJ:
 - informed him that TAB6 was pregnant, before this was public knowledge;
 - called TAB2 a '*whinger*' and said '*she's whinging because I won't allow her to go to the SPC [to undertake a course]. She's going to be pregnant again, I'm not supporting it, she's a whinger and she's gone against me*';
 - told him that he would not support TAB7's request to transfer closer to home in order to manage fatigue issues, laughing

²²⁷ Examination BIW at T16.

²²⁸ Ex BIW1C.

²²⁹ Examination BJK at T10.

and saying *'Not supporting it. He can't do this job. Why would I help him get closer to home?'*;

- said, in respect of TAB8 (on a performance management plan at the time), *'Look, she's useless, we keep up the pressure, she will resign'*;
- advised he would not support TAB9's request to transfer to a command closer to home, and in BJK's view adjusted her roster to increase her fatigue management issues;
- called BHU a *'whinger'*;
- described post-traumatic stress disorder as being *'all in their head'*;
- described BIV as having *'passed his time, he needs to retire'*;
- questioned BJK about whether he knew anything about the meeting between female officers and Region Command (discussed below in respect of Ms BIU's evidence), saying *'they are gunning for me, oh the old commander will be right, it will be all right, it will just be water off a duck's back'*; and
- when discussing the Lake Burrinjuck training day issue (discussed below) said *'I didn't want to take the GDs away, because the girls are sluts'*.
 - BKJ would repeatedly question him about whether he was on *'Team [BKJ]'*. He would say *"If you're not on Team [BKJ], [BJK], there's always a spot back in general duties"*.
 - BKJ made inappropriate remarks about his partner BJJ. He said words to the effect of *'she is young. I wouldn't be going there'*. He called BJJ a *'tart'* and said that she had *'a nice set of tits'*.

10.69 The Commission finds that BKJ engaged in serious misconduct in this conduct towards BJK and in his conversations with him about himself, his conduct and other officers.

(xi) Mr BIV

10.70 The Commission accepts:

- The evidence of BIV that:

- BKJ criticised his admission into the NSWPF on the basis of his short stature, his age and his injury.
- following that conversation the relationship between BKJ and Mr BIV deteriorated to the point where BKJ regularly failed to acknowledge him and would repeat his opinion that Mr BIV was no good to him because he was suffering from post-traumatic stress disorder.
- in the last six months of 2015, after Mr BIV turned 64, BKJ harassed him to nominate a retirement date and threatened that he would be moved to Parramatta if he did not retire. This escalated to a confrontation during which BKJ became extremely angry and then stormed out.

10.71 The Commission accepts:

- The evidence of Ms BJE that she observed BKJ questioning why Mr BIV was allowed into the Academy because of his age.

10.72 Although the Commission accepts the evidence of Mr BIV and Ms BJE, referred to above, it is not satisfied that the behaviour of BKJ satisfies the required threshold for it to amount to serious misconduct. Nevertheless, in the Commission's view, the attitude of BKJ towards Mr BIV, reflects an outdated policing and management style on his part which would appear to be incompatible with the current NSWPF Code of Conduct and Ethics and workplace policies and guidelines.

(xii) BIU

10.73 The Commission accepts:

- BIU's evidence that:
 - BKJ placed inappropriate pressure on her to accept permanent part-time work. A change to a permanent part-time role would have meant that BIU would have lost the ability to convert back to full-time when she needed to. She sought advice from the NSWPA which confirmed this outcome.
 - BKJ discussed her parenting responsibilities in front of other staff at a meeting in September 2016.
 - arising from the manner in which BKJ dealt with BIU she suffered from anxiety if she had to talk, meet or deal with him.
- BJ's evidence was that BKJ stated that BIU was not performing her work properly and that he intended that she would not work from home or in plain clothes.

10.74 The Commission finds that BKJ's method of dealing with BIU regarding her workplace arrangements was inappropriately aggressive. Whilst BKJ was entitled to bring to an end her working from home arrangement and also the arrangement by which she worked in plainclothes, he was not entitled to pressure her to change the classification of her employment to her obvious detriment to suit operational needs. To do so was bullying and serious misconduct.

(xiii) Mr BIY

10.75 The Commission accepts:

- Mr BIY's evidence that BKJ inappropriately questioned him as to the reason that he had requested leave saying '*What proof have you got that you were sexually assaulted as a kid? What's to say you just don't want to take the family away to Noosa for a holiday?*'²³⁰
- Mr BIY's evidence that BKJ raised performance issues inappropriately.

10.76 The Commission accepts BIX's evidence regarding the usual process for leave applications.

10.77 The Commission accepts BJB's evidence in support of Mr BIY's version of events.

10.78 The Commission accepts BIU's evidence about the level of upset demonstrated by Mr BIY after his meeting with BKJ.

10.79 The Commission finds that BKJ's conduct in relation to Mr BIY's application for leave, his cross examination of Mr BIY as to the reason for his leave application and his imposition of onerous requirements for support of his history of childhood sexual assault before approval of his leave was extraordinary, offensive and bullying. It was unjustified, unreasonable and harmful. He acknowledged that there was no operational reason to refuse the leave application. BKJ described his need for this information as arising from the detective in him. The Commission rejects that explanation.

10.80 Mr BIY had been working with difficulties. Following this exchange he never worked again.

10.81 It is reasonable for a Commander to exclude dangers to a particular Officer, the public, and other members of the NSWPF who might be exposed to danger by reason of information disclosed in an application for leave. In this circumstance such justification was not apparent. BIX's evidence correctly reflected the position.

²³⁰ Examination BIY at T21.

10.82 BIX gave evidence that, as a general rule, periods of leave are allocated approximately a year in advance. Where an officer wishes to request additional leave, or alter the roster, they are required to submit an issues report (also known as a Godfrey report). While this requires an explanation for the change, BIX confirmed that a Command's concern is with roster coverage not the reason for leave. BIX said:

'That's their business. It's got nothing to do – if we can support it, we support it. If we can't operationally support it, then it won't... be supported',²³¹

and agreed that it was not any of the Commander's business why a person wants to take their leave. He confirmed that there was no operational reason to refuse then-Senior Constable BIY's request for leave, and if there had been it would have been indicated on the email chain which is Exhibit BIYC3.

10.83 BKJ did not require evidence of Mr BIY's child sexual assault difficulties because he wished to exclude any danger to the public. He could have engaged in that enquiry without mentioning the private experiences of Mr BIY. Whatever his motivation his conduct was bullying and serious misconduct.

The Commission has found a number of individual instances of serious misconduct engaged in by BKJ. The Commission finds that these individual instances of conduct, considered alone and together as a course of conduct, amounted to serious misconduct.

11. Affected Persons

11.1 The Commission is of the opinion that BKJ is an affected person within the meaning of section 133(3) of the LECC Act, being a person against whom, in the Commission's opinion, substantial allegations have been made in the course of the investigation.

12. Recommendations

12.1 The Commissioner of Police should give consideration to the taking of action as listed at section 133(2)(c) of the LECC Act, namely to do so with the view of dismissing BKJ pursuant to s 181D of the *Police Act 1990*. The taking of this action should be considered on the grounds that BKJ breached the NSWPF Guidelines and Statement in relation to Respectful Workplace Behaviour, and, additionally, that he has been found by the

²³¹ Examination BIX at T8.

Commission to have engaged in serious misconduct by behaving in a manner contrary to the NSWPF Code of Conduct and Ethics.

Operation Tabarca
Report pursuant to s 132
Law Enforcement Conduct Commission Act 2016
May 2020

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