

OPERATION TUTOKO

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

JULY 2020

Office of Commissioner for Integrity

47672/517

21 July 2020

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 Tutoko.

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

Table of Contents

1. Introduction.....	1
2. The Commission’s Statutory Functions.....	3
3. The Commission’s Investigation	8
4. Analysis of Evidence.....	19
5. Findings.....	20
6. Affected Persons.....	21
7. Recommendation	21

1. Introduction

- 1.1 On 4 April 2019, the Law Enforcement Conduct Commission ('the Commission') decided to conduct an investigation pursuant to s 44(1)(a) of the *Law Enforcement Conduct Commission Act 2016* (NSW) ('the LECC Act') into three complaints alleging serious misconduct concerning Officer TUT1.
- 1.2 During the course of the investigation, the Commission became aware that Officer TUT1 was obtaining grocery items from a Coles supermarket without charge with the assistance of his niece, Civilian TUT2, who was an employee of Coles at the relevant times.
- 1.3 The Commission obtained relevant CCTV footage from Coles and identified 14 separate occasions between 27 June 2019 and 22 October 2019 on which it believed that Officer TUT1, whilst off-duty and not in uniform, obtained free grocery items in the Coles supermarket with the assistance of Civilian TUT2.
- 1.4 On each occasion, it appeared that Officer TUT1 would approach a check-out in the supermarket with a number of items, and that Civilian TUT2 would either bypass the scanning of certain items or cancel certain items that had been scanned, and allow Officer TUT1 to leave the supermarket with these items free of charge.
- 1.5 The Commission gave consideration to the relevant provisions of the LECC Act and determined that private examinations should take place.
- 1.6 On 16 December 2019 Officer TUT1 gave evidence in a private examination before the Commission. The general scope and purpose of the examination was as follows:

To investigate whether [Officer TUT1] or any other NSW police officer or other person associated with him, is or has been involved in police misconduct or criminal activity.

- 1.7 For the reasons set out later in this Report the Commission finds that Officer TUT1 engaged in serious misconduct by obtaining grocery items free of charge with the assistance of Civilian TUT2.

- 1.8 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 Tutoko or included in this report without further order of the Commission.

2. The Commission's Statutory Functions

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

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

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

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

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

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

(2) *In this section:*

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

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

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

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

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

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

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

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

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

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

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

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

(1) *The Commission may:*

(a) *make findings, and*

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

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

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

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

(iv) *is likely to occur, and*

(c) *form opinions as to:*

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

(ii) *whether the Commissioner of Police or Crime Commissioner should or should not give consideration to the taking of other action against particular persons, and*

(d) *make recommendations as to whether consideration should or should not be given to the taking of action under Part 9 of the Police Act 1990 or under the Crime Commission Act 2012 or other disciplinary action against, particular persons, and*

(e) *make recommendations for the taking of other action that the Commission considers should be taken in relation to*

the subject-matter or opinions or the results of any such investigations.

- (2) *Subsection (1) does not permit the Commission to form an opinion, on the basis of an investigation by the Commission of agency maladministration, that conduct of a particular person is officer maladministration unless the conduct concerned is (or could be) serious maladministration.*
- (3) *The Commission cannot find that a person is guilty of or has committed, or is committing or is about to commit, a criminal offence or disciplinary infringement.*
- (4) *An opinion or finding that a person has engaged, is engaging or is about to engage in:*
- (a) officer misconduct or serious misconduct or officer maladministration or serious maladministration (whether or not specified conduct), or*
 - (b) specified conduct (being conduct that constitutes or involves or could constitute or involve officer misconduct or serious misconduct or officer maladministration or serious maladministration), and any recommendation concerning such a person is not a finding or opinion that the person is guilty of or has committed, or is committing or is about to commit, a criminal offence or disciplinary infringement.*
- (5) *Nothing in this section prevents or affects the exercise of any function by the Commission that the Commission considers appropriate for the purposes of or in the context of Division 2 of Part 9 of the Police Act 1990.*
- (6) *The Commission must not include in a report under Part 11 a finding or opinion that any conduct of a specified person is officer misconduct or officer maladministration unless the conduct is serious misconduct or serious maladministration.*

(7) The Commission is not precluded by subsection (6) from including in any such report a finding or opinion about any conduct of a specified person that may be officer misconduct or officer maladministration if the statement as to the finding or opinion does not describe the conduct as officer misconduct or officer maladministration.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2.9 In considering any factual conclusions to be reached in a report, the Commission will apply the civil standard of proof, namely whether the relevant factual matters have been proved to the reasonable satisfaction of the Commission.¹ Accordingly findings can form the basis of opinions and recommendations, even if they do not reach the standard of beyond reasonable doubt.

3. The Commission's Investigation

3.1 Information obtained by the Commission demonstrated that Officer TUT1 and Civilian TUT2 collaborated on 14 separate occasions to obtain

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

grocery items from a Coles supermarket without charge. These are detailed below.

Incident on 27 June 2019

- 3.2 CCTV footage demonstrated that at about 10:30 a.m. Officer TUT1 approached a register holding a basket full of items and in the company of a young person. Civilian TUT2 is at the register and proceeded to serve Officer TUT1.
- 3.3 Officer TUT1 hands Civilian TUT2 what appears to be a children's colouring book, which she does not scan and in turn hands it the young person. Officer TUT1 continues to hand items to Civilian TUT2, some of which are scanned by her while others are placed directly into a Coles shopping bag without being scanned.
- 3.4 The receipt for this transaction shows six items were paid for. The total cost was \$26.75. CCTV footage shows Officer TUT1 presented 11 items in total to Civilian TUT2 for processing. They were subsequently given to him and he removed them from Coles.

Incident on 4 July 2019

- 3.5 CCTV footage demonstrates that at about 9:35 a.m. Civilian TUT2 was working at a register when Officer TUT1 joined the queue and placed his items onto the conveyor belt. She commenced to scan some items while not scanning others. This included a 24 pack of Pepsi soft drink cans which Officer TUT1 had placed directly into the collection area without it being scanned.
- 3.6 The receipt for this transaction shows three items were paid for with a total cost of \$14.56. CCTV footage shows Officer TUT1 presented at least eight items to Civilian TUT2 for processing. These were subsequently given to him and he removed them from Coles.

Incident on 12 July 2019

- 3.7 CCTV footage demonstrates that at about 11:17 a.m. Civilian TUT2 was working at a register when Officer TUT1 joined the queue, in the company of a young child, and placed various items onto the conveyor belt. Civilian TUT2 commenced to scan some items but not others. One of these items appears to be a children's magazine, which Officer TUT1 initially hands to Civilian TUT2. She placed the item directly into the collection area without scanning it, and Officer TUT1 picks it up to give to the young person.
- 3.8 The receipt for this transaction shows eight items were paid for with a total cost of \$29.93. CCTV footage shows Officer TUT1 presented at least 12 items to Civilian TUT2 for processing which were subsequently given to him and he removed them from Coles.

Incident on 15 July 2019

- 3.9 CCTV footage demonstrates that at about 9:50 a.m. Civilian TUT2 was working at a register when Officer TUT1 approached the register with a young child. He placed a basket next to the counter and Civilian TUT2 proceeded to take two items out of the basket, placing them directly into a Coles shopping bag without scanning them. She then scanned at least two other items. Officer TUT1 is seen to make a payment.
- 3.10 The receipt for this transaction shows three items were paid for with a total cost of \$7.00. These items are listed as salt and vinegar (93 grams) for \$3.00, Wrigleys Peppermint (64 grams) for \$3.00 and Tic Tac peppermint (24 grams) for \$1.00. The two items Civilian TUT2 placed into the shopping bag without scanning were noticeably larger than these listed items. Officer TUT1 removed all items from Coles.

Incident on 18 July 2019

- 3.11 CCTV footage demonstrates that at about 10:36 a.m. Civilian TUT2 was working at a register when Officer TUT1 approached with a young child and placed grocery items onto the conveyor belt. Civilian TUT2 then

took a handful of items from a box located at the register and placed them directly into the Coles shopping bag without scanning them. She then takes the items from the conveyor belt and places them into the shopping bag. Some items are scanned whilst other items are not.

- 3.12 The receipt for this transaction shows seven items were paid for at a total cost of \$20.65. CCTV footage shows that at least 14 items were placed into the shopping bags by Civilian TUT2. Officer TUT1 removed all items from Coles.

Incident on 1 August 2019

- 3.13 CCTV footage demonstrates that at about 9:35 a.m. Civilian TUT2 was working at a register when Officer TUT1 approached and placed items onto the conveyor belt. Civilian TUT2 proceeded to place the items into various Coles shopping bags, scanning some and not others.

- 3.14 The receipt for this transaction shows 13 items were paid for with a total cost of \$49.69. Two additional items, described as “Atkins Advantage Sha 330GRAM”, are listed as cancelled transactions. They have a price of \$19.80 each. CCTV footage shows that at least 16 items were placed into the shopping bags by Civilian TUT2. Officer TUT1 removed all items from Coles.

Incident on 20 August 2019

- 3.15 CCTV footage demonstrates that at about 9:24 a.m. Officer TUT1 approached an unattended register holding a basket full of grocery items. Shortly thereafter, Civilian TUT2 attended the register. Officer TUT1 placed the basket on the counter and Civilian TUT2 began taking items from the basket as well as taking items handed to her by him. She then scanned some items, whilst others were placed directly by her into the Coles shopping bags without scanning.

- 3.16 The receipt for this transaction shows six items were paid for with a total cost of \$22.79. CCTV footage shows at least 11 items were placed

into the shopping bags by Civilian TUT2. Officer TUT1 removed all items from Coles.

Incident on 29 August 2019

- 3.17 CCTV footage demonstrates that at about 9:40 a.m. Civilian TUT2 was working at a register when Officer TUT1 approached her and placed his grocery items onto a conveyor belt. She proceeded to process the transaction, scanning some items while directly placing other items into the shopping bags without scanning.
- 3.18 The receipt for this transaction shows six items were paid for with a total cost of \$17.86. CCTV footage shows at least 10 items were placed into the shopping bags by Civilian TUT2. Officer TUT1 removed all items from Coles.

Incident on 12 September 2019

- 3.19 CCTV footage demonstrates that at about 9:43 a.m. Officer TUT1 entered the self-serve checkout area with a basket full of grocery items and two Coles shopping bags. He appeared to scan the first item before placing it into one of the shopping bags. The checkout light changes from green to red. Civilian TUT2 approached the checkout, pressed some buttons on the screen and the light changed back to green. She then walked away.
- 3.20 As Officer TUT1 scanned the third last item, Civilian TUT2 approached and they engaged in conversation. After all items had been placed into the shopping bags, Civilian TUT2 scanned a card and pressed some buttons on the screen before Officer TUT1 made a payment.
- 3.21 The receipt for this transaction shows nine items were paid for with a total cost of \$25.35. The receipt also shows that one item described as "Atkins Advantage Sha 310GRAM" with a price of \$16.50 was cancelled. CCTV footage shows that at least 11 items were placed into the

shopping bags by Officer TUT1. Officer TUT1 removed all items from Coles.

Incident on 24 September 2019

3.22 CCTV footage demonstrated that at about 9:52 a.m. Civilian TUT2 was working at a register when Officer TUT1 approached and placed his grocery items onto the conveyor belt. Civilian TUT2 proceeded to scan some items while not scanning others, before placing everything into a Coles shopping bag.

3.23 The receipt for this transaction shows six items were paid for with a total cost of \$19.19. CCTV footage shows that at least nine items were placed into the shopping bag by Civilian TUT2. Officer TUT1 removed all items from Coles.

Incident on 26 September 2019

3.24 CCTV footage shows that at about 9:20 a.m. Civilian TUT2 was working at a register when Officer TUT1 approached holding a basket full of grocery items. He began taking them out of the basket whilst she processed the transaction and placed the items into two Coles shopping bags. She scanned some items while not scanning others.

3.25 The receipt for this transaction shows four items were paid for with a total cost of \$17.18. CCTV footage shows that at least six items were placed into the shopping bags by Civilian TUT2. Officer TUT1 removed all items from Coles.

Incident on 10 October 2019

3.26 CCTV footage demonstrates that at about 9:32 a.m. Officer TUT1, in the company of a young person, approached an empty register holding a

basket full of grocery items. Civilian TUT2 then attended the register and engaged in a conversation with Officer TUT1.

- 3.27 Officer TUT1 took the items out of his basket and placed them on the counter. Civilian TUT2 then proceeded to scan only some of the items before placing them all into two Coles shopping bags.
- 3.28 The receipt for this transaction shows five items were paid for with a total cost of \$15.58. Additionally, the receipt shows that one item, described as “Carmans Nut Bars 160GRAM” with a price of \$6.00, was cancelled. CCTV footage shows that at least 10 items were placed into the shopping bags by Civilian TUT2. Officer TUT1 removed all items from Coles.

Incident on 21 October 2019

- 3.29 CCTV footage demonstrates that at about 9:26 a.m. Civilian TUT2 was working in the self-serve checkout area. Officer TUT1 approached one of the self-serve checkouts holding a basket of items and a Coles shopping bag. As he scanned the items, before placing them into the shopping bag, Civilian TUT2 approached his checkout several times, each time pressing buttons on the screen.
- 3.30 The receipt for this transaction shows four items were paid for with a total cost of \$13.30. The receipt also shows that one item described as “Atkins Advantage Sha 330GRAM” with a price of \$22.00 was cancelled. CCTV footage shows Officer TUT1 placed at least six items into the shopping bag before making payment. Officer TUT1 removed all items from Coles.

Incident on 22 October 2019

- 3.31 CCTV footage demonstrates that at about 9:27 a.m. Officer TUT1 approached an unattended register holding a basket of items. Civilian TUT2 attended the register shortly thereafter and proceeded to place

his items into two Coles shopping bags. She scanned some items and failed to scan others.

- 3.32 The receipt for this transaction shows 11 items were paid for with a total cost of \$39.59. CCTV footage shows Civilian TUT2 placed at least 12 items into the shopping bags. Officer TUT1 removed all items from Coles.

The Evidence of Officer TUT1

- 3.33 Officer TUT1 gave evidence on 16 December 2019 during a private examination. The following is a summary of his evidence:

- i. He joined the NSW Police Force in 2002 and is performing a role in high visibility policing. Prior to that he had been based in two other locations.²
- ii. In about 2008 he was part of a proactive crime team investigating break and enter offences.³
- iii. He is in a de-facto relationship with two children. His partner is also a police officer.⁴
- iv. He has only one bank account which is a Commonwealth Bank savings account, and his partner also has access to this account. He also has a personal loan.⁵
- v. Both he and his partner do the grocery shopping for the family.⁶
- vi. He admitted that when he goes shopping at Coles, where his niece Civilian TUT2 works, she will sometimes delete some of the items he has purchased.⁷

² Private examination of Officer TUT1 at T5-6.

³ Private examination of Officer TUT1 at T6.

⁴ Private examination of Officer TUT1 at T7.

⁵ Private examination of Officer TUT1 at T7-8.

⁶ Private examination of Officer TUT1 at T8.

⁷ Private examination of Officer TUT1 at T9.

- vii. He estimated that this has happened about 10 times.⁸
- viii. He could not recall when this first started, but it began with Civilian TUT2 giving him extra “*Coles minis, and it just, it went from there*”.⁹
- ix. Sometimes he would text her before he went shopping to see if she was working, but he would go even if she was not working.¹⁰
- x. The items that Civilian TUT2 deletes are for his own use, and include meat and protein powder.¹¹
- xi. When shown the CCTV footage for 27 June 2019, he conceded that it depicted Civilian TUT2 and him in the supermarket. Although the receipt listed only six items, there were other items that had not been scanned and were placed into the shopping bag.¹²
- xii. He conceded that there “*would have*” been other occasions like this before 27 June 2019.¹³
- xiii. When shown the CCTV footage for 4 July 2019, he conceded that it depicted Civilian TUT2 and himself in the supermarket, and that she had by-passed the scanning of a box of Pepsi and some meat packages.¹⁴
- xiv. When shown the CCTV footage for 12 July 2019, he conceded that it depicted Civilian TUT2, himself and his daughter in the supermarket. He also conceded that a magazine, a bottle of milk and two beef packages were by-passed without scanning.¹⁵

⁸ Private examination of Officer TUT1 at T10.

⁹ Private examination of Officer TUT1 at T10.

¹⁰ Private examination of Officer TUT1 at T10.

¹¹ Private examination of Officer TUT1 at T12.

¹² Private examination of Officer TUT1 at T13-14.

¹³ Private examination of Officer TUT1 at T15.

¹⁴ Private examination of Officer TUT1 at T15-16.

¹⁵ Private examination of Officer TUT1 at T16-17.

- xv. When shown the CCTV footage for 18 July 2019, he conceded that it depicted Civilian TUT2, himself and his daughter in the supermarket. He also conceded that he had received more items than what was listed on the corresponding receipt.¹⁶
- xvi. When shown the CCTV footage for 1 August 2019, he conceded that it depicted Civilian TUT2 and himself in the supermarket. He also conceded that Civilian TUT2 had cancelled the purchase of two Atkins Advantage shakes and that he knew she was doing that at the time. Additionally, he admitted that the footage showed one or two meat items being placed into his bag without being scanned.¹⁷
- xvii. When shown the CCTV footage for 20 August 2019, he conceded that it depicted Civilian TUT2 and himself in the supermarket, and that he had handed her a few items which she placed directly into his bag without scanning them.¹⁸
- xviii. When shown the CCTV footage for 29 August 2019, he conceded that it depicted Civilian TUT2 and himself in the supermarket, and that she had placed some items directly into his bag without scanning them, including meat packages and one Atkins Advantage shake.¹⁹
- xix. When shown the CCTV footage for 12 September 2019, Officer TUT1 conceded that it depicted Civilian TUT2 and himself in the self-service area of the supermarket and that he had placed a pack of meat directly into his bag without scanning. He further conceded that although he had scanned an item of protein powder Civilian TUT2 had approached his register to cancel the item.²⁰

¹⁶ Private examination of Officer TUT1 at T18-19.

¹⁷ Private examination of Officer TUT1 at T19-20.

¹⁸ Private examination of Officer TUT1 at T21-22.

¹⁹ Private examination of Officer TUT1 at T23.

²⁰ Private examination of Officer TUT1 at T24-25.

- xx. He also conceded that on this occasion, he went to the self-service area because Civilian TUT2 was working in that area that day.²¹
- xxi. When shown the CCTV footage for 24 September 2019, Officer TUT1 conceded that it depicted Civilian TUT2 and himself in the supermarket, and that she had taken multiple containers and placed them directly into his shopping bag without scanning them.²²
- xxii. When shown the CCTV footage for 26 September 2019, Officer TUT1 conceded that it depicted Civilian TUT2 and himself in the supermarket, and that she had placed two packages of meat directly into his shopping bag without scanning them.²³
- xxiii. When shown the CCTV footage for 10 October 2019, Officer TUT1 conceded that it depicted Civilian TUT2 and himself in the supermarket, and that he chose to approach the register where she was working. He also agreed that she had placed two items directly into his bag without scanning them.²⁴
- xxiv. When shown the CCTV footage for 21 October 2019, Officer TUT1 conceded that it depicted Civilian TUT2 and himself in the supermarket. Further, he agreed that it showed him placing two containers directly into his shopping bag without scanning. When the checkout registered an error, she rectified it for him.²⁵
- xxv. He conceded that a lot of the items that were by-passed scanning were protein shakes which he used to keep his weight down.²⁶

²¹ Private examination of Officer TUT1 at T26.

²² Private examination of Officer TUT1 at T28.

²³ Private examination of Officer TUT1 at T28-29.

²⁴ Private examination of Officer TUT1 at T30.

²⁵ Private examination of Officer TUT1 at T31-32.

²⁶ Private examination of Officer TUT1 at T32.

- xxvi. On most occasions he would pretend that he did not know Civilian TUT2.²⁷
- xxvii. He stated that this was “*never an agreed thing, it just kind of happened and started happening, and it just went from there*”.²⁸ He also stated that he was the sole person responsible.²⁹
- xxviii. He stated that Civilian TUT2 may have received some meat on one occasion, but on all other occasions the items were for his own use.³⁰
- xxix. He knew that whenever he shopped there, and Civilian TUT2 was working at the registers, that he would receive free products.³¹
- xxx. He knew that his conduct was a criminal offence.³²
- xxxi. Civilian TUT2 had previously told him that at her supermarket, “*it happens all the time, they all do it*”.³³
- xxxii. He did not ask Civilian TUT2 to give him items for free when it first happened.³⁴

4. Analysis of Evidence

- 4.1 It is clear from the CCTV footage on all 14 occasions that Civilian TUT2 and Officer TUT1 collaborated to obtain items from the Coles supermarket free of charge. This was conceded by Officer TUT1.
- 4.2 There was an understanding between Officer TUT1 and Civilian TUT2 that when he went to shop at the Coles supermarket, and if she was

²⁷ Private examination of Officer TUT1 at T32-33.

²⁸ Private examination of Officer TUT1 at T34.

²⁹ Private examination of Officer TUT1 at T34.

³⁰ Private examination of Officer TUT1 at T34.

³¹ Private examination of Officer TUT1 at T34-35.

³² Private examination of Officer TUT1 at T35.

³³ Private examination of Officer TUT1 at T36.

³⁴ Private examination of Officer TUT1 at T36.

working on that occasion, then he would seek her out at the checkout so that she could provide a benefit in the form of stolen products.

- 4.3 Officer TUT1 would pay for some, but not all, of the products. The Commission finds that this was done to maintain a perception of legitimacy and to avoid suspicion.
- 4.4 Officer TUT1 stated that most of the items that were obtained for free were for his own personal use. The Commission has no evidence to the contrary.
- 4.5 The amount of loss caused by the conduct of Officer TUT1 and Civilian TUT2 on these 14 occasions was not significant. The information before the Commission suggests the total loss suffered by Coles on these 14 occasions was approximately \$650.00. However Officer TUT1 was willing to engage in a course of conduct which was systematic theft from Coles.
- 4.6 Events on 5 July 2019 and 22 October 2019 were not put to Officer TUT1 in the private examination but the Commission is satisfied that the above analysis applies to those two occasions.
- 4.7 The Commission is also satisfied that this conduct extended beyond the 14 occasions set out above. Officer TUT1 said in evidence that there “*would have*” been similar occasions prior to 27 June 2019. Although the true extent of his conduct cannot be ascertained the regularity of the 14 occasions is sufficient to cause serious concern regarding the extent of the theft by Officer TUT1 and his niece Civilian TUT2.
- 4.8 The legal representative for Officer TUT1 was provided with a draft version of this report and invited to make submissions. The legal representative indicated that no submissions would be made.

5. Findings

- 5.1 The Commission finds that Officer TUT1 engaged in conduct which amounted to serious misconduct on all 14 occasions. He attended the

Coles supermarket and engaged in an established course of conduct with Civilian TUT2, and stole groceries from the Coles supermarket with her help.

6. Affected Persons

- 6.1 In Part 2 of this report the Commission set out the provisions of s 133 of the LECC Act dealing with the contents of reports to Parliament. Subsections (2), (3) and (4) relate to “*affected persons*”.
- 6.2 The Commission is of the opinion that Officer TUT1 and Civilian TUT2 are affected persons within the meaning of subsection 133(2) of the LECC Act, being persons against whom, in the Commission’s opinion, substantial allegations have been made in the course of the investigation.

7. Recommendation

- 7.1 The Commission recommends that consideration should be given to the making of an order under s 181D of the *Police Act 1990* by the NSW Police Force against Officer TUT1.
- 7.2 The Commission recommends that consideration should be given to the obtaining of advice from the Director of Public Prosecutions with respect to the prosecution of Officer TUT1 for the following offences:
- Larceny – s 117 of the *Crimes Act 1900*; and
 - Fraud – s 192E(1)(b) of the *Crimes Act 1900*.
- 7.3 The Commission recommends that consideration should be given to the obtaining of advice from the Director of Public Prosecutions with respect to the prosecution of Civilian TUT2 for the following offence:
- Fraud – s 192E(1)(b) of the *Crimes Act 1900*.

Operation Tutoko
Report to Parliament Pursuant to Section 132
Law Enforcement Conduct Commission Act 2016
July 2020

Contact information

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