

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

November 2020



Law Enforcement  
Conduct Commission

## Office of Commissioner for Integrity

50799/632

30 November 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 Coolum.

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

You will note that the Report has identified an Affected Person with the pseudonym BLQ. The Commission has been put on notice by the lawyer who acted on behalf of BLQ during private examinations held by the Commission that he intends submitting a letter to the President of the Legislative Council, the Speaker of the Legislative Assembly, the relevant Minister and the NSW Commissioner of Police, complaining that during the examination process and report preparation, his client was denied procedural fairness and that he denies the allegations made against him. The letter further complains that there is no appeal avenue which BLQ can avail himself of in order to '*clear his name*' and therefore urges that legislation be introduced to reform the legislation governing the Commission as it is '*materially unfair and it requires review*'.

The lawyers representing BLQ are entitled to voice their opinion in regard to the operation of the Commission and the investigation conducted into their client. However, the Commission considers that in so doing, it is of paramount importance that Parliament is not misled as to the manner in which the investigation was conducted, or the redress available to a party who believes he or she has been aggrieved by this process.

The proposed correspondence provided to the Commission by BLQ's lawyer asserts his client had no right of appeal, and by inference, that they did not seek a legal remedy. This is not correct. BLQ, pursued two distinct avenues of redress.

Upon being informed the Commission proposed presenting its final report to Parliament on 21 July 2020, BLQ lodged a complaint with the Inspector of the

Law Enforcement Conduct Commission, the Hon Terry Buddin SC (the Inspector). Upon being so informed, the Commission agreed to defer submitting its report to Parliament, pending the outcome of the Inspector's investigation.

In the complaint, the lawyers representing BLQ asserted that their client had been denied procedural fairness based upon twelve grounds.

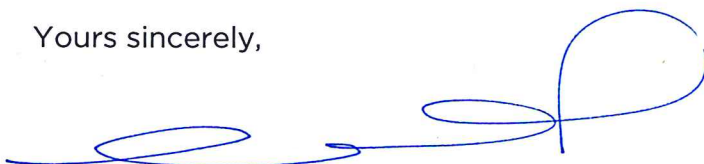
The Inspector is empowered under s 122 of the *Law Enforcement Conduct Commission Act 2016* NSW, to investigate conduct amounting to 'agency maladministration' on the part of the Commission, or 'officer misconduct' or 'officer maladministration' on the part of officers of the Commission.

On 7 October 2020 following his investigation, the Inspector released his response in which he dismissed all twelve grounds relied upon by the lawyers for BLQ in support of the complaint that BLQ had been denied procedural fairness. A copy of the Inspector's response can be obtained directly from the office of the Inspector.

With the Inspector's investigation completed, the Commission notified the lawyers for BLQ that it intended presenting its report to Parliament on 19 October 2020. In response, on 16 October 2020, BLQ's lawyers lodged in the Supreme Court of New South Wales, a summons seeking an injunction restraining the Commission from presenting its report to Parliament. In support of the summons an affidavit was filed, alleging that in the course of its investigation BLQ had been denied procedural fairness and that the Commission's report was prejudicial to him. The Commission vacated this second date before the Parliament. Five days later the summons was discontinued, with the Commission agreeing to minimal changes to its report of no substance, to further anonymize BLQ, but did not alter its findings or recommendations.

In considering correspondence from BLQ's lawyers, the Commission would like it noted as a matter of public record that BLQ exercised his legal right in two forums to seek redress for what he considered to have been a denial by the Commission to afford him procedural fairness in the course of its investigation. Once before the Inspector of the Commission which was rejected, and subsequently before the Supreme Court where he withdrew his application for relief.

Yours sincerely,



The Hon Lea Drake  
Commissioner for Integrity

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## 1. Introduction

The Law Enforcement Conduct Commission's ('the Commission'), Operation Coolum, arose from a complaint made by Officer BLN to the Professional Standards Command ('PSC') of the New South Wales Police Force ('NSWPF'), that Officer BLQ behaved in an inappropriate manner towards her, at her residence in LOC2 on 3 September 2019. On 9 September 2019, the Commission notified the PSC that pursuant to s 44(1)(a) of the *Law Enforcement Conduct Commission Act 2016* ('LECC Act'), the Commission was taking over the investigation of the complaint.

## 2. The Commission's Statutory Functions

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

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

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

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

(2) *In this section:*

*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. 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/places will be referred to by codenames in this report. There is to be no publication of the name or image of any of the codenamed persons/places in relation to the evidence given in Operation Coolum or included in this report without further order of the Commission.

### 3. Background

- 3.1 Officer BLQ joined the NSWPF in 1988. He first met Officer BLN in 2008 or 2009 when he was stationed at LAC1 as a Duty Officer. At that time Officer BLQ held the rank of Inspector.
- 3.2 Officer BLN was transferred to LAC1 in 2008, working in the Crime Management Unit as part of her 'Return to Work' program following a back injury she had suffered in the bike squad whilst attached to LAC3.
- 3.3 Officer BLQ and Officer BLN became friends at work. An internal complaint was made, alleging that Officer BLQ and Officer BLN were *'having an affair'*. An investigation was conducted in which both officers denied being in a relationship. The findings of the investigation are not known; however, according to Officer BLN, *'nothing came of the complaint'*. The Commission has been unable to locate the investigation report.
- 3.4 Thereafter, Officer BLN developed a relationship with COO1. Officer BLN gave birth to a son in 2014. Officer BLN had to cease work due to her back injury and her pregnancy.
- 3.5 Officer BLN had only sporadic contact, which was in a professional capacity, with Officer BLQ until 2016 when she took a job at COM3, working reduced hours due to ongoing back issues. At that time

Officer BLN learned that Officer BLQ was the Commander of COM1, working in the same building, and was her commanding officer.

- 3.6 In 2018, Officer BLN again ceased work due to back problems. Mr COO1 left the NSWPF, suffering from PTSD. His relationship with Officer BLN broke down and they separated. On 3 August 2019, Mr COO1 attempted suicide. Officer BLQ telephoned Officer BLN and offered assistance. There was an exchange of phone calls and text messages.
- 3.7 On 14 August 2019, Officer BLQ visited Officer BLN at her home in LOC2. The only other person at home was Officer BLN's four-year-old son. Officer BLN was still emotionally upset about the incident involving Mr COO1. Officer BLN and Officer BLQ provided the Commission with differing accounts of the nature and degree of physical contact between them which is detailed later in the Commission's report.
- 3.8 On 2 September 2019, a meeting for 3 September was arranged to take place at Officer BLN's home, with Officer BLQ and Officer BMA in attendance. Unbeknown to Officer BLN at the time, the purpose of the meeting was to inform her that the NSWPF had no positions available and that she would be transitioned towards a medical discharge.
- 3.9 Late in the afternoon on 3 September 2019, Officer BLQ, who was acting up in the position of Rank 1 at the time, sent an SMS to Officer BLN inquiring if she had time for a 'visitor'. Following a brief exchange of emails between the pair, Officer BLQ arrived at Officer BLN's residence at around 5 pm to discuss the meeting scheduled to take place the following day. The only other person in the house was Officer BLN's son.
- 3.10 On 4 September 2019, Officer BLN sent two emails to her former Injury Management Advisor, Ms BMB, in which she made a complaint of inappropriate physical contact by Officer BLQ to her when he visited her house the previous afternoon. This complaint was reported to the PSC. That afternoon, two police officers attended the residence of Officer BLN where she repeated her complaint.
- 3.11 On 5 September 2019, Officer BLN attended LAC3 and made a signed statement. That same day, Officer BLN's mother, Mrs COO2, also attended the police station and made a signed statement.

## 4. The Commission's Investigation

- 4.1 On 9 September 2019, the LECC notified the NSWPF PSC that it was taking over the investigation of the complaint made by Officer BLN. That same day, pursuant to section 44(1)(a) of the *Law Enforcement*

*Conduct Commission Act 2016*, the Commission declared a full investigation, the purpose of which was to investigate the allegation by Officer BLN of inappropriate conduct by Officer BLQ at her residence on 3 September 2019.

- 4.2 In addition to the statement made by Officer BLN, the Commission was provided with a statement made to police by Officer BLN's mother, Mrs COO2. The statement confirmed that she spoke with her daughter by telephone on 3 September 2019 at 5.43 pm and reported that Officer BLN had said '*He [Officer BLQ] gave me a hug and it didn't feel right*'.
- 4.3 The Commission investigators met with Officer BLN on 23 September 2019, when she reiterated the information in her police statement. As there were no independent witnesses to the incident, inquiries were made of residents in the area and local businesses in the hope of capturing Officer BLQ's car on CCTV. This was unsuccessful. However, an examination of a fuel receipt for the vehicle used by Officer BLQ showed that the car was refuelled at 6.14 pm at a Caltex Service Station in LOC1, 20 km south of Officer BLN's home and a journey time of 24 minutes. In his vehicle log book, Officer BLQ did not make an entry indicating that he went to Officer BLN's house. The only entry made by him shows that he travelled from his home address at 6 am to '*[LAC2/LOC1]*' and home again, arriving there at 5 pm.
- 4.4 The Commission obtained typed notes prepared by Ms BLP, Executive Officer of HR and Professional Standards, and Officer BLR, HR and Education Officer, regarding their interaction with Officer BLQ in the morning and again in the afternoon of 4 September 2019. These notes were independently prepared by Ms BLP and Officer BLR and provided to the PSC on 4 September 2019.
- 4.5 According to Ms BLP and Officer BLR, Officer BLQ informed them in the morning that the previous day he had arranged a meeting with Officer BLN at a café in LOC2, the suburb in which Officer BLN lived. He told them Officer BLN was running late for the meeting and when she eventually arrived, told Officer BLQ that she had to drop her son off at her mother's house before the meeting.
- 4.6 The information provided by Officer BLQ to Ms BLP and Officer BLR as to the location of his meeting with Officer BLN (a café), was contrary to that stated by Officer BLN in her written statement (her house).
- 4.7 The time inserted by Officer BLQ into his vehicle log book as to time of arrival at his home (5 pm) was contradicted by the time on the service station fuel docket at LOC1 (6.14 pm).

- 4.8 Ms BLP and Officer BLR, in their notes, also provided independent accounts of the flustered and almost incoherent behaviour of Officer BLQ during the afternoon of 4 September 2019.
- 4.9 The Commission conducted a search of phone and email records of Officer BLQ and Officer BLN. Officer BLQ was also required to produce his mobile phone to the Commission for analysis.

## 5. Examinations

5.1 The Chief Commissioner of the Commission, the Hon Michael Adams QC, held private examinations on 28 October, 1 November 2019, 29 and 31 January 2020.

5.2 The scope and purpose of the private examinations was:

*To investigate an allegation by [Officer BLN] of inappropriate conduct by [Officer BLQ] at her residence in [LOC 2] on 3 September 2019.*

5.3 Pursuant to section 64 of the LECC Act, Mr Robert Tumeth was appointed as Counsel Assisting the Commission in Operation Coolum.

5.4 The persons summoned to be examined were:

- Officer BLN
- Officer BLQ (twice)
- Ms BLP
- Officer BLR
- Ms BMB
- Officer BMA
- BMC

5.5 Authorisation was sought and granted by the Commission for Officer BLN, Officer BMA and Officer BLQ to be represented by Australian legal practitioners during the examinations. Ms BLP, Officer BLR, Ms BMB and Mr BMC did not seek legal representation. Below is a summary of the evidence given by each witness.

5.6 All of the witnesses requested and were granted a declaration pursuant to section 75 of the LECC Act, to the effect that all evidence adduced would be regarded as having been given under objection by the witness.

## 6. Summary of Evidence

### 6.1 Evidence of Officer BLN

Officer BLN was called to give evidence before the Commission in a private examination on 28 October 2019. In summary, her evidence was as follows:

- (1) At the commencement of the examination, Officer BLN's 10-page statement to the NSWPF dated 5 September 2019 was tendered in evidence.<sup>1</sup> Officer BLN was then questioned about its contents.
- (2) Officer BLN said that she had joined the NSWPF in 2003, and from that time until 2008, she was stationed at LAC3. During that time Officer BLN suffered a back injury which resulted in her going off work.<sup>2</sup>
- (3) As part of a return to work program, Officer BLN was transferred to LAC1, working part-time. It was whilst working there that Officer BLN met Officer BLQ who held the rank of Inspector.<sup>3</sup>
- (4) Officer BLN and Officer BLQ developed a working relationship and, with other officers, often went out for coffee. On only about two occasions did Officer BLN go out for coffee alone with Officer BLQ. Officer BLN did not socialise with Officer BLQ away from work.
- (5) During this time Officer BLN became aware of an internal complaint which alleged that she had been having an affair with Officer BLQ.
- (6) Officer BLN denied that anything had happened between her and Officer BLQ. She recalled being asked by her Crime Management Unit Sergeant to write a '*Godfrey Report*', which she did, and handed it to Officer COO21. On one occasion Officer BLN spoke to Officer BLQ about the complaint when he said '*Don't worry. Nothing happened. Nothing will come of it.*' Thereafter, Officer BLN heard nothing further in relation to the complaint.<sup>4</sup>
- (7) Subsequently, Officer BLN moved into a unit which she had purchased. Officer BLQ provided the use of a vehicle, free of charge. Officer BLN gave Officer BLQ a Bunnings gift card for \$50.00 in thanks. Officer BLN was not aware of Officer BLQ offering similar assistance to anyone else.<sup>5</sup>

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<sup>1</sup> Ex BLN1C.

<sup>2</sup> Examination BLN at T6.

<sup>3</sup> Examination BLN at T7.

<sup>4</sup> Examination BLN at T7-10.

<sup>5</sup> Examination BLN at T11-12.

- (8) In 2010 Officer BLN obtained a job as an analyst at COM1, LAC2. She subsequently suffered an aggravation to her back injury and again ceased work. Officer BLN then entered a relationship with a fellow officer, Mr COO1, and fell pregnant in 2014.
- (9) After Officer BLN gave birth to her son, COO22, she received a phone call from Officer BLQ in 2015 about a new position that had become available. He enquired when she would be returning to work and offered to come to her home to discuss this. The meeting lasted 45 minutes to an hour. Mr COO1 was also present. It was a professional visit. No job opportunities resulted from this meeting.<sup>6</sup>
- (10) In 2016, Officer BLN obtained a job working at reduced hours at COM3 at LAC2 where Officer BLQ was her Commander.
- (11) Officer BLN worked in an open-plan office with about 12 or 13 other people. Officer BLQ's office was on a different level and every few days he attended her floor for the purpose of conducting the business of the unit. Whenever Officer BLQ was on the floor and in her unit, he would come over and say hello and make polite inquiries. She could not recall him ever touching her. He never put his hand on her shoulder and she never saw him do that to other staff.<sup>7</sup>
- (12) When addressing Officer BLQ, Officer BLN said that she always called him 'Sir'. She never called him '*[first name of Officer BLQ]*' although a few people at work called him by his first name.<sup>8</sup> However, later in examination Officer BLN was shown an SMS she had sent to Officer BLQ on 14 August 2019 after he had visited her residence that day, in which she addressed him as '*[first name of Officer BLQ]*'.<sup>9</sup> Officer BLN varied her earlier evidence, saying that at work she referred to Officer BLQ as '*Sir or Mr [Officer BLQ]*' and that referring to him in her SMS by his first name was a '*one-off*'.<sup>10</sup>
- (13) On 3 August 2019, Mr COO1 attempted suicide. The following day Officer BLN received a phone call from Officer BLQ after he had found out what had happened. In her statement Officer BLN said that Officer BLQ made arrangements for her to collect Mr COO1's car keys from LAC1.
- (14) On 14 August 2019 Officer BLQ telephoned Officer BLN and asked to visit as he was working at LOC3. He arrived at between 5.35 pm and 7.30 pm. Apart from Officer BLN, the only other person present in

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<sup>6</sup> Examination BLN at T12-14

<sup>7</sup> Examination BLN at T18-19.

<sup>8</sup> Examination BLN at T19.

<sup>9</sup> Ex BLN6C.

<sup>10</sup> Examination BLN at T59-60.

the house was her son. Officer BLQ was there for about 30 to 40 minutes.<sup>11</sup>

(15) In her statement Officer BLN had said:

*'Mr [Officer BLQ] came into the kitchen area of my home and gave me a warm hug, sort of wrapped himself around me and rubbed my head with his right hand and to pull my head into his body. I felt a bit funny about this hug and pulled away from him.'*<sup>12</sup>

(16) In evidence Officer BLN said Officer BLQ had never done anything like this before. She thought he was just going to give her a friendly hug, but this lasted a bit longer and it made her feel very uncomfortable. She also felt Officer BLQ pulling her head into his body which was unusual. The actions of Officer BLQ were unexpected and Officer BLN was not ready for it. She felt that he was in a zone that she did not like.<sup>13</sup>

(17) In her statement, Officer BLN went on to say:

*'When Mr [Officer BLQ] went to leave, he hugged me again, probably a little longer than I liked.'*<sup>14</sup>

(18) Officer BLN said she had the feeling of Officer BLQ pushing her in to hold her tighter, that he had his arms around her arms in a 'bear hug'.<sup>15</sup> She said that she 'sort of froze a little bit'.<sup>16</sup> She made nothing special of it, except that it was not a pleasant experience. She agreed that if she thought about it, maybe Officer BLQ had misjudged and gone too far. At the time, however, she had enough going on with Mr COO1 and didn't want to think about Officer BLQ's actions.<sup>17</sup>

(19) Officer BLN was referred to her statement which reproduced an exchange of SMS messages between Officer BLQ and herself after Officer BLQ left her house.<sup>18</sup> Officer BLN was asked if her comments were appropriate given that Officer BLQ was her commanding officer. Officer BLN responded that her comments were probably a reaction to someone within the NSWPF being caring, and she had put Officer BLQ's SMS down to him being sympathetic and his motive being a kind one.<sup>19</sup>

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<sup>11</sup> Examination BLN at T21.

<sup>12</sup> Ex BLN1C at para.21.

<sup>13</sup> Examination BLN at T21-23.

<sup>14</sup> Ex BLN1C at para.21.

<sup>15</sup> Examination BLN at T24.

<sup>16</sup> Examination BLN at T23.

<sup>17</sup> Examination BLN at T25.

<sup>18</sup> Ex BLN1C at para.22.

<sup>19</sup> Examination BLN at T26.

- (20) Officer BLN agreed that whilst she felt the hug Officer BLQ gave her on 14 August 2019 was inappropriate and made her feel uncomfortable at the time, the SMS she sent to Officer BLQ after he left her house at 1.18 pm<sup>20</sup> looked as if she was happy with the interaction that she had with him during his visit and that Officer BLQ would probably not have picked up from this message that she objected to the way he had behaved.<sup>21</sup>
- (21) Officer BLN spoke with Ms COO9 from the NSWPF Deployment Unit and arrangements were made for a meeting to take place at her house on 4 September 2019 at 2.30 pm. She was not sure who would be in attendance but thought it would be her Injury Management Advisor, Ms BMB, and maybe Mr COO1. Officer BLN believed there were no jobs available for her in the NSWPF and that she would be moved into deployment, which Ms BMB had explained to her involved managing Officer BLN out of NSWPF and giving her job opportunities in other government organisations.<sup>22</sup> Officer BLN had a good rapport with Ms BMB.
- (22) On 3 September 2019 at 4.29 pm, Officer BLN received an SMS from Officer BLQ inquiring if she was at home and had time for a visitor.<sup>23</sup> Officer BLN assumed Officer BLQ had contacted her in regard to the meeting that was to take place the next day. Following an exchange of SMS messages, Officer BLQ arrived at her house at around 5 pm. Officer BLN was dressed in gym clothing and a jacket. Officer BLQ was dressed in a suit.
- (23) On and prior to this day, Officer BLN had never gone for a coffee with Officer BLQ in LOC2.
- (24) Officer BLN let Officer BLQ in and they both sat down at the dining room table. Officer BLN's son was in the lounge room watching television. The table was rectangular with Officer BLQ seated at one end and Officer BLN seated opposite the long side with her chair turned towards the end. They were seated within an arm's length of each other. After about 3 minutes, Officer BLQ put his hand on the outside of Officer BLN's shoulder for a few seconds and asked how she was. Officer BLN responded that she was doing OK.
- (25) Officer BLN was referred to her statement which detailed the ensuing conversation between her and Officer BLQ.<sup>24</sup> Officer BLQ said to her that the police did not have a job for her, which shocked and upset her. Officer BLQ said to her three or four times either '*I will*

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<sup>20</sup> Ex BLN6C.

<sup>21</sup> Examination BLN at T60-61.

<sup>22</sup> Examination BLN at T27.

<sup>23</sup> Ex BLN1C at para.25.

<sup>24</sup> Ibid at paras.28-30.



*look after you' or 'I will look out for you'.<sup>25</sup> Officer BLN said she could not understand why Officer BLQ was there telling her she would not have a job when there was to be a meeting (to discuss her future) the next day.*

- (26) Officer BLN said Officer BLQ's mannerisms and the fact he kept repeating that he would look after her made her feel a bit uneasy. When he was talking to her whilst they were both seated, he kept moving his body towards her, getting closer, getting too close. She did not feel right about this and moved back and sat back.<sup>26</sup> With all the things going on, such as with Mr COO1 and her job, she felt very vulnerable and was teary.
- (27) As Officer BLN thought there was nothing further to be said, she stood up. Officer BLQ stood up at the same time. He quickly took one step towards her and hugged her in a tight bear hug with both his arms around the outside of her arms so that she could not move them. He released one hand and moved it up to the back of her head, pushing it forward. At the same time, he kissed her on her forehead. Officer BLQ had never kissed her on the forehead in the past. Officer BLN stuck her *'bum'* out to avoid a full embrace. She had frozen by that time and was thinking *'what the hell's going on?'* Officer BLQ then moved his right hand down onto her left buttock and rubbed it around in circles and patted it three times. Officer BLN broke away from his grip and Officer BLQ then sat back down on the dining room chair, saying *'come here'*. Officer BLQ grabbed Officer BLN by the right forearm with his left hand and with his right hand he patted the top of his thigh, whilst saying words to the effect of *'come and sit down'* or *'come over here'*. Officer BLN was able to pull away and she walked away to the hallway where her son was, and announced *'Mr [Officer BLQ] is going now'*. Officer BLN's son led the way up the hall to the front door, followed by Officer BLN and then Officer BLQ. At the alcove next to the front door, Officer BLQ smiled at Officer BLN and said *'I will always take care of you'*, and then left.<sup>27</sup>
- (28) Officer BLN telephoned her mother Mrs COO2 at 5.43 pm and told her that Officer BLQ had just visited and she thought he was going to talk about the meeting planned for the following day. In her statement she had said:

*'I said he had hugged me and I tried to pull away and that I was a bit upset and crying.'<sup>28</sup>*

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<sup>25</sup> Examination BLN at T33-35.

<sup>26</sup> Examination BLN at T37.

<sup>27</sup> Ex BLN1C at paras.31-32 and Examination BLN at T38-44.

<sup>28</sup> Ibid at para.34.

- (29) In her evidence Officer BLN clarified this to say that she was crying whilst talking to her mother. This conversation lasted about 10 minutes.<sup>29</sup> Officer BLN did not want to tell her mother everything that had happened as her mother is very protective, so she kept the details *'very mild'*.
- (30) Officer BLN next telephoned her father, Mr COO3, and spoke for 21 minutes. She repeated what she had told her mother but provided additional details, saying:
- 'He pulled me in and he rubbed my bum and he tapped it.'*<sup>30</sup>
- (31) Whilst speaking to her father, Officer BLN received an incoming phone call from Officer BLQ. Her father told her to take the call to find out what he wanted. Officer BLN answered the call. Officer BLQ said that he had been in contact with Officer BMA and confirmed 2.30 pm for the meeting the following day. She said Officer BLQ sounded very business-like and not the same way as when he had just visited her. Officer BLN thanked him and hung up and then rang her father back.<sup>31</sup>
- (32) Officer BLN called her sister, Ms COO4, at 6.45 pm and told her what she had told her father.<sup>32</sup>
- (33) In her statement, Officer BLN had said:
- 'At 11.53 pm I sent an email to [Ms BMB] and [Ms COO10] from EML. In the email I detailed the incident with Mr [Officer BLQ] earlier that evening.'*<sup>33</sup>
- (34) Whilst giving evidence, Officer BLN was shown a copy of this email,<sup>34</sup> and agreed that it made no mention of the alleged touching of Officer BLN by Officer BLQ and that it was only concerned with the proposed meeting for the following day.<sup>35</sup> Officer BLN agreed that her statement was incorrect where she had said that she had sent an email to Ms BMB on the evening of 3 September 2019, detailing the conduct of Officer BLQ.<sup>36</sup>
- (35) Officer BLN agreed that she sent a further email to Ms BMB on 4 September 2019 at 11.53 am, detailing her complaint in regard to the behaviour of Officer BLQ.<sup>37</sup> This prompted an email in response

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<sup>29</sup> Examination BLN at T46.

<sup>30</sup> Examination BLN at T46-47.

<sup>31</sup> Examination BLN at T47-48.

<sup>32</sup> Examination BLN at T49.

<sup>33</sup> Ex BLN1C at para.39.

<sup>34</sup> Ex BLN2C.

<sup>35</sup> Examination BLN at T50-51.

<sup>36</sup> Examination BLN at T51-52.

<sup>37</sup> Ex BLN3C.

from Ms BMB which was sent to Officer BLN on 4 September 2019 at 12.15 pm in which Ms BMB asked if Officer BLN wanted the meeting with Officer BMA cancelled.<sup>38</sup> Officer BLN replied by email to Ms BMB at 12.45 pm requesting that the meeting be cancelled and giving Ms BMB permission to report her complaint about Officer BLQ to the PSC.<sup>39</sup> At 1.28 pm, Officer BLN sent a further email to Ms BMB in which she provided additional details of Officer BLQ's conduct.<sup>40</sup> Officer BLN was questioned as to why she did not provide to Ms BMB the complete details of Officer BLQ's behaviour when she first made her complaint to Ms BMB at 11.53 am on 4 September. She said that the omission was not deliberate and she was not thinking clearly initially. She agreed that when she realised the incident was going to be reported to the PSC, she looked at her earlier email and realised she had left some details out and therefore decided to send the later email adding further information.<sup>41</sup>

- (36) On 4 September 2019 at 8.50 am, Officer BLN sent an SMS to Officer BMA confirming the meeting time of 2.30 pm and asking her to tell Officer BLQ she was happy only to have Officer BMA and her mother present for support, but no one else.<sup>42</sup> At 8.57 am, Officer BLN sent an SMS to Officer BLQ advising that she would have her mother present at the meeting and there was no need for him to attend.<sup>43</sup> Officer BMA sent an SMS to Officer BLN at 9.58 am asking if it was her preference that Officer BLQ not be in attendance.<sup>44</sup> Officer BLN replied, confirming Officer BLQ was not required and that she had notified him.<sup>45</sup>
- (37) At 1.09 pm Officer BMA sent an SMS to Officer BLN advising that she had been informed that Officer BLN wished to cancel the meeting that afternoon, which Officer BLN acknowledged with a brief SMS.<sup>46</sup>
- (38) During her discussion with Officer BLQ on 3 September 2019 concerning the forthcoming meeting, Officer BLQ said that he would get together some paperwork for her, to which Officer BLN replied that she thought she already had it but asked if anything further was required. Officer BLQ said he did not know but would find out. On the morning of 4 September 2019, Officer BLN received an SMS from Officer BLQ enclosing a screenshot of her leave balances. Officer

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<sup>38</sup> Ex BLN4C.

<sup>39</sup> Ibid.

<sup>40</sup> Ex BLN5C.

<sup>41</sup> Examination BLN at T58.

<sup>42</sup> Ex BMA3C.

<sup>43</sup> Ex BLN1C at para.40.

<sup>44</sup> Ex BMA3C.

<sup>45</sup> Ibid.

<sup>46</sup> Ibid.

BLN said that she had not messaged Officer BLQ on that day asking for this information.<sup>47</sup>

## 6.2 Evidence of Ms BLP

Ms BLP was called to give evidence before the Commission in a private examination on 28 October 2019. In summary, her evidence was as follows:

- (1) She is an Executive Officer for COM2 at LAC2, working in an HR personnel and professional standards team. Her duties entail managing the liaison of injury management cases based at COM2 and complaints management. The office layout is an open-plan style. Officer BLR, who is also on her team, sits at an adjoining desk immediately to her left.<sup>48</sup>
- (2) She was aware of Officer BLN's case and said that due to her back injury many years ago, Officer BLN had been absent from work for some time and had previously been given placements involving reduced work hours as part of a return to work program. This had not been successful in getting Officer BLN back to full-time employment.
- (3) Ms BLP said that Officer BLQ was one of the commanders, whose duties included the management of managers from the various business units of COM4. She said she worked very closely with Officer BLQ on his HR and injury management cases.
- (4) In managing injured officers Ms BLP said she was familiar with '*welfare checks*'. These were checks made by a manager or commander of an injured worker. Their regularity was determined by the severity of the officer's injury and the ease with which they could be contacted. Ms BLP said it was rare for someone from her team or the welfare management team to visit an injured officer at their home. If this was necessary, however, it would be recommended that multiple people attend or the visit take place in a public space. If the injured officer was a female, her team would not recommend that a male person conduct a home welfare check alone. It was recommended that after conducting a welfare check, a welfare check form be completed and placed in the injured worker's injury management file. She was aware that this form was not always completed. A copy of the '*Welfare Checks, Tips and Hints*' form issued by the NSWPF was tendered in evidence.<sup>49</sup> Ms BLP said she had seen this form before. Ms BLP agreed that the form did not mention the desirability of more than one officer attending the

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<sup>47</sup> Examination BLN at T54.

<sup>48</sup> Examination BLP at T3-4.

<sup>49</sup> Ex BLP1C.

welfare check, their gender, or the desirability of not attending the injured officer's home, and agreed that this should be reviewed.<sup>50</sup>

- (5) If bad news was to be given to an injured officer, she would not regard it as a welfare check. If someone was significantly injured, she would ask a doctor or medical professional to be present.<sup>51</sup>
- (6) On 4 September 2019 at 4.44 pm, in response to a request earlier that day by Officer COO8 from the PSC, Ms BLP sent an email to him enclosing a four-page typed statement of events that day at work involving Officer BLQ, with 'AW' being '[Officer BLN]' and 'SO' being '[Officer BLQ]'.<sup>52</sup> Ms BLP said that she had read her statement before giving evidence and was happy with its substance and did not think there was anything further now worth mentioning.
- (7) Ms BLP was aware that Officer BLQ and Officer BMA were to meet Officer BLN to discuss her becoming part of the deployment process.
- (8) Ms BLP said that on the morning of 4 September 2019, Officer BLQ came over to where she and Officer BLR were sitting at their desks and started talking to them, and the conversation drifted to Officer BLN. In her statement Ms BLP recited Officer BLQ telling her that he had arranged a meeting the previous day with Officer BLN at a coffee shop in LOC2, as they had previously met at this café. Officer BLQ told her that Officer BLN was running late and he did not think she was coming, but when she did get there she told him she had to first drop off her son at her mother's place. In her evidence Ms BLP said that she definitely recalled Officer BLQ saying this.<sup>53</sup> Ms BLP and Officer BLR thought this was an appropriate venue. Furthermore, Officer BLN had a history of not attending arranged meetings. However, if Officer BLQ had said he had arranged a meeting at Officer BLN's house, she would have thought it was not the best idea.
- (9) Ms BLP understood that, at the meeting on 4 September, Officer BLQ had given Officer BLN some information that the following day's meeting was about deployment and that she was not going to be provided with a position or coming back to work. Ms BLP confirmed Officer BLQ reiterated that Officer BLN '*wasn't getting it*'. However, when Officer BLQ got to the end of the conversation and said '*Oh, I didn't tell her that she didn't have a position, that's the deployment unit's position*', Ms BLP thought that if he wasn't telling Officer BLN she had no position, '*what was the essence of what he*

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<sup>50</sup> Examination BLP at T9.

<sup>51</sup> Examination BLP at T8-9.

<sup>52</sup> Ex BLP2C.

<sup>53</sup> Ex BLP2C and Examination BLP at T12.

*was telling her?* Ms BLP said that this definitely stood out in her mind.<sup>54</sup>

- (10) Officer BLQ left to attend to other business, at which time Ms BLP and Officer BLR commented on how unusual it was for him to come over and give them so much of his time as he was usually distracted and too busy to speak with them in such a manner. Ms BLP described Officer BLQ's usual demeanour as being very busy and distracted, constantly answering calls and emails.<sup>55</sup>
- (11) At about 9.10 am that day, Ms BLP attended a meeting at which Officer BLQ and Officer BLR were also present. Whilst a particular complaint was being discussed, Officer BLQ interjected, enquiring what Officer BLN's leave entitlements were because Officer BLN was texting him asking for them. Officer BLQ's inquiry was not in any way connected to the subject under discussion at the time.<sup>56</sup> The meeting adjourned temporarily, and when it reconvened, Ms BLP gave Officer BLQ a print-out of Officer BLN's leave balances. Officer BLQ took a photo of this document and then proceeded to type a text message on his phone, which Ms BLP presumed was to Officer BLN.
- (12) The meeting was shortened as Officer BLQ had to leave to have a coffee downstairs with Officer BLR and BMC at around 10.30 am. Shortly prior to this, Officer BMA had joined the meeting.
- (13) At approximately 1.25 pm, Officer BLR received a phone call from Ms BMB. When it ended, Officer BLR informed Ms BLP that Ms BMB had said that she had received an email alleging sexual misconduct by Officer BLQ. At 1.29 pm, Officer BLR received an email from Ms BMB attaching an exchange of emails between herself and Officer BLN, in which Officer BLN made an allegation of sexual misconduct by Officer BLQ.<sup>57</sup> At 1.30 pm Officer BLR received another email from Officer BLN in which she provided further details of the sexual misconduct.<sup>58</sup> Ms BLP and Officer BLR had started to read these emails when Officer BLR received a phone call from Officer COO8 from the NSWPF PSC. As they were in an open-plan office, Ms BLP and Officer BLR went downstairs into a meeting room for privacy and phoned Officer COO8 back. After speaking with Officer COO8 they both returned to their desks and each started to write up their account of their interaction that morning with Officer BLQ.
- (14) At around 3 pm, Officer BLQ entered their office area and sat directly behind Ms BLP with Officer BLQ, saying *'So what's happened*

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<sup>54</sup> Examination BLP at T16-17.

<sup>55</sup> Examination BLP at T17-18.

<sup>56</sup> Examination BLP at T18-20.

<sup>57</sup> Ex BLN3C.

<sup>58</sup> Ex BLN5C.

today?’ This behaviour was completely out of character. At the time, Ms BLP was typing up her statement from handwritten notes she had earlier prepared. She immediately minimised the computer screen and tried to cover the written notes with her arm. Officer BLR was on the phone and so Officer BLQ wheeled his chair directly over beside Ms BLP. Officer BLQ tried to engage Ms BLP in conversation but appeared to be nervous, shaky and more distracted than usual. In her statement Ms BLP described his demeanour as *‘freaked out/rattled’*. Ms BLP asked Officer BLQ about the coffee he had with Mr BMC that morning. Whilst Officer BLQ was responding he said *‘[Mr BMC] just told me something and it is freaking me out’*. Ms BLP repeated this statement as a question back to Officer BLQ to which he agreed. During this time Officer BLQ continued to appear significantly uncomfortable and awkward.<sup>59</sup>

- (15) Officer BLQ went on to say *‘So I have screwed up the...’* at which time Ms BLP asked if he had met with Officer BMA. At this point Officer BLR had finished her call. Officer BLQ then said:

*‘so, I have screwed up the [Officer BLN] thing. She has cancelled all meetings’.*

Officer BLR said *‘what, what, what?’* to which Officer BLQ added:

*‘I have made things worse with [Officer BLN] apparently’.*

- (16) Officer BLQ said that whilst in a meeting with Officer BMA, she had been phoned by the head injury management person to say the meeting was off and she did not know what was happening but would call Officer BLQ later in the afternoon. He also said he had been phoned by Ms BMB who had indicated that she had received an email from Officer BLN at midnight, stating she was beside herself about being *‘punted’*.<sup>60</sup>

- (17) There was further general discussion regarding Officer BLN, but it continued to be very disjointed. Ms BLP gave examples of what it was like trying to converse with Officer BLQ. She said he kept saying:

*‘I don’t believe I would have said anything that would have upset her,’*

and stating that he had made the mistake of thinking he should be *‘up front with her’* and that it was now biting him back.<sup>61</sup>

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<sup>59</sup> Ex BLP2C and Examination BLP at T23-24.

<sup>60</sup> Ex BLP2C.

<sup>61</sup> Ex BLP2C.

- (18) The remainder of the conversation with Officer BLQ is contained in her statement.<sup>62</sup>
- (19) Ms BLP said that even with Officer BLQ's normal level of distractedness, the conversation she was having with him was like a level of stress where he couldn't form thoughts. At times when he said things like '*I don't know what's happened, it's just weird*', it was as if he was talking to himself.
- (20) In view of the unusual nature of Officer BLQ's behaviour, Ms BLP formed the opinion that Officer BLQ may have become aware of the complaint by Officer BLN or was concerned about something similar.<sup>63</sup>
- (21) During this meeting with Officer BLQ, Ms BLP was aware of the complaint made against him and, therefore, of how important it would be for her statement to be as accurate as possible and for the PSC to be informed. After the meeting, Ms BLP completed her typed statement and emailed it to Officer COO8 at 4.44 pm.<sup>64</sup>

### 6.3 Evidence of Officer BLR

Officer BLR was called to give evidence before the Commission in a private examination on 1 November 2019. In summary, her evidence was as follows:

- (1) Officer BLR had worked for COM2 for two years and at the time of the allegation was Acting Inspector, Human Sources Manager and Professional Standards Manager. She worked as part of a team with Ms BLP.
- (2) Officer BLQ was a Commander in charge and at the time of the complaint was an Acting Rank 1. Like Ms BLP, Officer BLR associated with Officer BLQ in a work context on a regular basis and got to know his demeanour and moods fairly well.<sup>65</sup> She was on first-name terms with Officer BLQ and very few people called him by his rank. Most people referred to him as '*[nickname of Officer BLQ]*'.<sup>66</sup> She described the layout of her work area in terms similar to the evidence given by Ms BLP, including the close proximity with which they were stationed to each other.<sup>67</sup>
- (3) Officer BLQ was involved in the management of injured workers and complaints, which at times would involve him having direct contact

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<sup>62</sup> Ibid.

<sup>63</sup> Ibid.

<sup>64</sup> Ex BLP2C.

<sup>65</sup> Examination BLR at T6.

<sup>66</sup> Examination BLR at T23.

<sup>67</sup> Examination BLR at T12-14.



with them. She would not have been surprised if he visited workers but she had no personal knowledge of it.

- (4) Officer BLR was familiar with welfare checks and the requirement for a welfare report to be completed following a visit. She was not aware of any guidelines as to where welfare checks should be conducted but thought a worker would only be visited at their home if there was a real need.<sup>68</sup> She was not aware of any procedures governing whether or not a person conducting a welfare check ought to be accompanied by another person. She agreed there was a potential risk if a male person visited an injured female officer at home for the purpose of a welfare check.
- (5) If a person was going to visit an injured officer for the purpose of giving them distressing news, she agreed that it would be common sense that more than one person attend.<sup>69</sup>
- (6) Officer BLR knew Officer BLN and was aware of the management of her case, as well as the unsuccessful attempts to rehabilitate her back into the workforce.
- (7) In regard to the events of 4 September 2019, and in particular her interaction with Officer BLQ, Officer BLR made handwritten notes<sup>70</sup> at the request of Officer COO8, which she used in preparing a typed statement that afternoon. She then emailed them to Officer COO8 at 4.44 pm.<sup>71</sup>
- (8) Officer BLR did not deviate from her statement. Importantly, her account corroborated that of Ms BLP in relation to a number of important aspects.
- (9) It was unusual for Officer BLR that Officer BLQ came and sat with her and Ms BLP at around 7.30 am that morning at the beginning of the working day.<sup>72</sup>
- (10) Officer BLQ gave a detailed account of his meeting with Officer BLN at a café.<sup>73</sup> He thought that she had changed her mind as it was taking a long time for her to get to the café. When she arrived, she told him that she had dropped her son off at her mother's house before meeting him.

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<sup>68</sup> Examination BLR at T8.

<sup>69</sup> Examination BLR at T12.

<sup>70</sup> Ex BLR4C.

<sup>71</sup> Ex BLR3C.

<sup>72</sup> Examination BLR at T14.

<sup>73</sup> Examination BLR at T23.

- (11) The reason for that meeting was to prepare Officer BLN for the meeting the following day. Officer BLN did not seem to be grasping the situation.
- (12) Shortly after 9 am, Officer BLR, Ms BLP, Officer BLQ and Officer COO18 commenced a meeting. Officer BLQ said he got a text from Officer BLN asking for her leave balances. At the time Officer BLQ said this, the discussion had not been about Officer BLN but a complaint.<sup>74</sup> There was a short break in the meeting during which Ms BLP obtained the leave balances, and when the meeting resumed Officer BLQ took a photo of them and sent them to Officer BLN.<sup>75</sup>
- (13) Officer BLQ and Officer BLR subsequently went to meet Mr BMC for a coffee downstairs, around 10.25-10.30 am.<sup>76</sup> She returned to work at 10.55-11.00 am, leaving Officer BLQ with Mr BMC.
- (14) At 1.25 pm Officer BLR received a phone call from Ms BMB reporting a complaint by Officer BLN of sexual misconduct by Officer BLQ and, following that, she received two emails from Ms BMB enclosing an exchange of emails between Ms BMB and Officer BLN.<sup>77</sup> Officer BLR briefed Ms BLP after which she received a call from Officer COO8. In order to be able to speak with him privately, Officer BLR and Ms BLP went to an empty office on another level of the building and phoned him back.<sup>78</sup> The two then returned to their work desks and began separately typing up their notes.
- (15) At 2.52 pm, Officer BLR took a call from Mr COO6. Whilst on the phone, Officer BLQ came over to their work area and sat behind Ms BLP, closer than usual, and talked to her. When Officer BLR finished her call, she turned her chair around towards Officer BLQ and Ms BLP and heard him say something like *'I think I made it worse'*. Officer BLR said to him *'What?'* and Officer BLQ replied that he thought he had made things worse with Officer BLN when he met her the previous day. Officer BLQ was red-faced and flustered.<sup>79</sup> When asked to clarify Officer BLQ's appearance, she described it as *'hyped up, fidgety, twitchy,'* that *'he was like hyped up... and it was like a panic'*.<sup>80</sup> This was not his usual demeanour.

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<sup>74</sup> Examination BLR at T24-25.

<sup>75</sup> Ex BLR3C.

<sup>76</sup> Examination BLR at T25-26.

<sup>77</sup> Ex BLR1C, Officer BLR2C and Examination BLR at T15-17.

<sup>78</sup> Ex BLR3C.

<sup>79</sup> Ibid.

<sup>80</sup> Examination BLR at T27.

- (16) Officer BLR said that Officer BLQ is '*extremely articulate, intelligent and an excellent speaker*'. However, on this occasion his speech was '*very abnormal*' and '*he could not structure a sentence*'.<sup>81</sup>
- (17) Officer BLR did not hear Officer BLQ say that Mr BMC had told him something that was '*freaking him out*'. She did not hear the initial conversation between Officer BLQ and Ms BLP as she was on the phone. Ms BLP told her of this comment after Officer BLQ left them.<sup>82</sup>
- (18) From what Officer BLQ said, she understood that whilst Officer BMA and Officer BLQ were in a meeting that morning, Officer BMA had to leave to take a call and upon returning informed Officer BLQ that the meeting with Officer BLN was off and that something had happened to her. Officer BLQ also said that he had spoken to Ms BMB who said that she had received an email from Officer BLN at midnight and that she was '*beside herself*'.<sup>83</sup>
- (19) As Officer BLR was aware of the complaint made against Officer BLQ, she was listening carefully to what Officer BLQ was saying, rather than trying to reconstruct it later. She thought that Officer BLQ must have become aware of the complaint of sexual harassment and so she believed it was important to concentrate. She could not think of anything else that could have provoked Officer BLQ's unusual behaviour.<sup>84</sup>
- (20) In preparing her statement, Officer BLR did not confer with Ms BLP. They were entirely independent accounts. Furthermore, Officer BLR had not read Ms BLP's statement or shown her statement to Ms BLP.<sup>85</sup>

#### 6.4 Evidence of Officer BLQ

Officer BLQ was called to give evidence before the Commission in a private examination on 1 November 2019. In summary, his evidence was as follows:

- (1) He was attached to COM2 at LAC2. He joined the NSWPF in 1988. He had held the rank of Rank 2 since 2009/10.
- (2) Between 2006 and 2010, he was stationed at LAC1 where he met and became friends with Officer BLN. He held the rank of Inspector. He was aware that she had previously suffered a back injury. During this time he became aware that someone had a concern that he was

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<sup>81</sup> Examination BLR at T29.

<sup>82</sup> Examination BLR at T28.

<sup>83</sup> Ex BLR3C.

<sup>84</sup> Examination BLR at T30.

<sup>85</sup> Examination BLR at T21.

giving Officer BLN ‘*protection*’ because they were friends. Officer BLQ raised the matter with his then-Commander, Officer COO13, who spoke with Officer BLN and that was the end of the matter as far as he was aware.<sup>86</sup> Officer BLQ characterised this as a ‘*concern*’ rather than a ‘*complaint*.’ He was never required to provide a statement and had no idea if any documentation had been created. Officer BLQ denied giving protection to Officer BLN and his relationship with her was no more than friendship.<sup>87</sup>

- (3) Around 2012-2013, Officer BLQ loaned Officer BLN a vehicle, free of charge. He did this regularly for other officers.
- (4) In 2010, Officer BLQ was aware that Officer BLN had obtained a position as an analyst at the COM5. At that time he was not working in the same building. At some point he learned that she had had further issues with her back. From 2010 to 2016, contact between them was infrequent and through Facebook, and he ran into her once or twice.<sup>88</sup>
- (5) In 2016, Officer BLQ had a conversation with Officer BLN about trying to get her back to work. He was able to get her something in COM4 on a return to work basis. Officer BLQ was effectively her boss.<sup>89</sup>
- (6) Officer BLQ often went down to the floor Officer BLN was working on and would generally go and say hello to her. He would do the same with other staff. However, he probably paid her more attention initially as he was concerned for her. Officer BLN used to address him at work as ‘*[first name of Officer BLQ]*’, ‘*[nickname of Officer BLQ]*’ or sometimes ‘*Sir*’. Other officers used the same salutations.<sup>90</sup>
- (7) Officer BLQ had responsibility for the oversight of the management of injured officers. He did not oversight complaints and although he could not remember, he could have had meetings concerning complaint management.
- (8) Officer BLQ knew Ms BLP and Officer BLR and gave a brief description of their duties which included the management of welfare checks on injured officers. He himself had engaged in welfare checks on injured staff. Between April and September 2019, he probably conducted welfare checks, whether by telephone or face-to-face, with eight or ten injured staff. However, he did not provide welfare check reports, the reason being that it was not his practice to do so, despite agreeing that welfare check reports were important. Officer

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<sup>86</sup> Examination BLQ at T6.

<sup>87</sup> Examination BLQ at T7.

<sup>88</sup> Examination BLQ at T9-10.

<sup>89</sup> Examination BLQ at T11.

<sup>90</sup> Examination BLQ at T12.

BLQ did not always tell Ms BLP or Officer BLR of his intention to conduct a welfare check or the outcome of the check.<sup>91</sup>

- (9) In the same six-month period ending September 2019, the only welfare check that involved him going to a staff member's home was Officer BLN's. In total, Officer BLQ recalled going to Officer BLN's home on four occasions. The first time he visited would have been in 2016 when he saw Officer BLN with Mr COO1 and her young child. This was to provide Officer BLN with information in an attempt to get her back to work. He also went to the house as a friend. Officer BLQ agreed his second visit was also in 2016. The third occasion was in August 2019 after Mr COO1 had attempted suicide and he wanted to see how she was coping. The final visit was in September 2019.<sup>92</sup> On none of these occasions did Officer BLQ make a formal record, but he would have spoken to someone involved in the management of the cases of Officer BLN and Mr COO1. The last two visits were initiated by Officer BLQ contacting Officer BLN.
- (10) Officer BLQ was shown a document titled '*Welfare Checks, Tips and Hints*' prepared by the NSWPF. He could not recollect seeing the document before, but potentially would have. He agreed that it stated that documentation of a welfare check needed to be written and kept on the injury management file, but that he had never done that.<sup>93</sup>
- (11) Officer BLQ agreed that if a welfare check was to be conducted at an officer's home, it may be advisable in some circumstances for the person doing the check to be accompanied. He also agreed that if bad news was to be delivered, in hindsight it would be preferable for the person visiting to be accompanied, but at the time he saw Officer BLN (in September 2019), his answer was 'No'. The reason was that he was going to have a private conversation with her that he wanted to provide only to her.<sup>94</sup> However, in general terms, unless the circumstances are exceptional and the injured officer does not want an additional officer to be present, an additional officer should be in attendance.<sup>95</sup>
- (12) Officer BLQ said he had made arrangements with Officer BMA for them to visit Officer BLN at her home on the morning of 4 September 2019. On the previous day, he had been working at LOC3 and sent Officer BLN an SMS asking if she wanted a visitor. After an exchange of messages, he agreed to be at her home in 10 minutes. When questioned about whether he had ever told anyone

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<sup>91</sup> Examination BLQ at T15-17.

<sup>92</sup> Examination BLQ at T18-21.

<sup>93</sup> Examination BLQ at T23.

<sup>94</sup> Examination BLQ at T25.

<sup>95</sup> Examination BLQ at T27.

that this meeting occurred elsewhere than Officer BLN's home, Officer BLQ said that he thought he told Ms BLP the following day. The reason for this deception was that a lot of the injury management people had a different view of Officer BLN than he had and he did not want them to think he was giving her preferential treatment. He did not want them to know the substance of his conversation with her or that he was giving Officer BLN better treatment than he gave other people. He did not think it was right but '*I didn't think it had any real consequence on them*'.<sup>96</sup>

- (13) Officer BLQ said that over the preceding 12 months he had, on a number of occasions, expressed in injury management meetings that Officer BLN was not being properly managed and that she was getting a bad deal. Officer BLQ said his view was at odds with others in the Injury Management Team ('IMT') (which included Ms BLP and Officer BLR). Officer BLQ also volunteered that in relation to a number of other injured workers claims, he was taking a '*fairly hard stance*' as he believed their circumstances were different to that of Officer BLN and he needed positions to run the command. With Officer BLN, he was trying to look after her. He therefore did not want to talk to '*them*' (Ms BLP and Officer BLR) about the content of his meeting with her on 3 September 2019.<sup>97</sup>
- (14) Officer BLQ did not tell Ms BLP and Officer BLR that they had a different perspective to him in regard to Officer BLN's case, although it probably would have been wise to do so. He rejected that it was his duty to do so. From memory, he did think that he had told Officer BMA that he was not happy with the advice Officer BLN had been given after he had spoken to her at a previous meeting.<sup>98</sup>
- (15) In answer to a question from the Chief Commissioner about whether he had told anyone that he had seen Officer BLN at her home on 3 September, Officer BLQ's answer was equivocal. He said that he believed he had. He said that he had phoned Officer BMA after he left Officer BLN's house to change the time of the meeting. However, in providing details of this conversation he did not say he had said to Officer BMA that he had been to Officer BLN's home, just that he had seen her. He went on to say that when he spoke to Officer BMA the following morning, she asked him '*Did you speak to [Officer BLN] at home?*' to which he had replied '*Yes*'.<sup>99</sup>
- (16) Officer BLQ said he treated Officer BLN differently in that he was prepared to share information with her as a friend, not just as a Commander, whereas with other people his relationship was solely as

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<sup>96</sup> Examination BLQ at T28-30.

<sup>97</sup> Examination BLQ at T31-32.

<sup>98</sup> Examination BLQ at T32-33.

<sup>99</sup> Examination BLQ at T34-35.

a commander.<sup>100</sup> This information consisted firstly, that Officer BLN should consider suing the NSWPF, advice that he would not give generally to people. The second matter which he discussed with Officer BLN that he would not discuss with another injured officer, was that he felt the people responsible for managing her claim had not been *'upfront'* with what their intentions were. Officer BLN believed she was going to be given help to find a job when that was not the intention at all.<sup>101</sup>

- (17) Officer BLQ said he did express a view in at least two injury management meetings that because of Officer BLN's domestic situation, she was entitled to be treated a little better than others. However, he did not tell them he thought that managing Officer BLN with a view to removal was inappropriate, the reason being that to do so would have been inconsistent with how he was treating others.<sup>102</sup>
- (18) Officer BLQ agreed that he misled Ms BLP and Officer BLR as to the content of his meeting with Officer BLN on 3 September but denied that lying to them amounted to serious misconduct or misconduct and sought to portray his action as *'Foolish'*.<sup>103</sup> However, upon further questioning, he conceded that in the context in which he lied, it was contrary to the ethical standards of the NSWPF.<sup>104</sup>
- (19) When asked about the detailed account given by Ms BLP and Officer BLR of the conversation they had with him concerning meeting Officer BLN at a coffee shop in LOC2 because he had done so in the past, that she was running late and explained she had to drop her son off at her mother's house, Officer BLQ repeatedly said that he could not recall what he told them other than that he met Officer BLN at a coffee shop. He also said he could not recall why he said he was meeting her at a coffee shop but the thought came to him suddenly,<sup>105</sup> rather than as part of a premeditated story.<sup>106</sup> He agreed that if Ms BLP and Officer BLR's account of the conversation about the meeting was correct, it contained a number of factual matters that Officer BLQ would have had to think up. The only other thing Officer BLQ could recall about the conversation was that he thought he had said that when he left Officer BLN, she was a little shaken and confused about the seriousness of the situation.
- (20) Officer BLQ said that his original intent was to see if Officer BLN wanted to meet him for a coffee, or if she wanted him to visit her.

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<sup>100</sup> Examination BLQ at T35.

<sup>101</sup> Examination BLQ at T36.

<sup>102</sup> Examination BLQ at T37-38.

<sup>103</sup> Examination BLQ at T42.

<sup>104</sup> Examination BLQ at T43.

<sup>105</sup> Examination BLQ at T45-49 and T55.

<sup>106</sup> Examination BLQ at T48 and T55.

However, it was put to him that this was not the case as his first SMS to Officer BLN did not refer to a coffee shop but to her home.<sup>107</sup> Officer BLQ suggested that he went to a coffee shop in LOC2 but it was closing, so he went to the toilet and then sent Officer BLN his first SMS. When it was put to Officer BLQ that in the exchange he had with Officer BLN, he texted *'10 minutes'*, and that it doesn't take that long to drive from LOC2 to her home, he agreed that the travel time was more like 5 minutes and he therefore had a doubt as to whether he was at the coffee shop when he sent that SMS.<sup>108</sup>

- (21) Officer BLQ agreed that he initiated the meeting with Officer BLN on 3 September when he sent his SMS messages to her that day.<sup>109</sup> When he arrived he was greeted by Officer BLN at the front door.<sup>110</sup> There was a short discussion with her son in the hallway before they moved to the kitchen/dining room, sat down at the table and had a number of conversations. From his recollection, Officer BLQ said the discussions covered the purpose of the meeting the next day and her work options as she would be moving towards a medical discharge. This appeared to shock and upset Officer BLN. He consoled her by giving her a hug whilst they were both seated. Throughout the discussion, at different times he said to her:

*'Look you know, we can help you, or whatever, I'll help you, whatever I can do to help, but you've got to take this seriously, you've got to do these things.'*<sup>111</sup>

- (22) There was discussion about Officer BLN's physical work restrictions and how they were limiting her job opportunities within the NSWPF and her financial position in general. Officer BLN was told that he would only be at the meeting for support and that she needed to be *'putting up a fight'*. At times, Officer BLN became distressed and Officer BLQ tried to lighten things and constantly reassured her that he would help or support her however he could.<sup>112</sup> In response to questioning about how he could help Officer BLN, Officer BLQ said he thought that if she changed her restrictions he would try and support her in getting work within or outside the NSWPF, but was unable to be more concrete about what he could offer. He initially said he could not recall if he told Officer BLN to change her restrictions, but when pressed, agreed that he did not.<sup>113</sup>

- (23) Officer BLQ was examined in detail in regard to any physical contact that he had with Officer BLN on 3 September. Along with the

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<sup>107</sup> Examination BLQ at T50.

<sup>108</sup> Examination BLQ at T53.

<sup>109</sup> Examination BLQ at T57.

<sup>110</sup> Ibid.

<sup>111</sup> Examination BLQ at T61.

<sup>112</sup> Ibid.

<sup>113</sup> Examination BLQ at T62.



summons ordering him to attend the Commission, Officer BLQ was provided with an attachment outlining the general scope and purpose of the examination which was in the following terms:

*'To investigate an allegation by [Officer BLN] of inappropriate sexual touching by [Officer BLQ] at her residence in [LOC2] on 3 September 2019.'*

Before commencing his evidence, an amended Scope and Purpose of the examination was read out. This stated that the examination related to an allegation by Officer BLN of *'inappropriate conduct'* rather than *'sexual touching'*. Officer BLQ was therefore clearly on notice that his conduct being investigated was in regard to his behaviour towards Officer BLN at her home on 3 September. However, in giving evidence, Officer BLQ initially omitted any mention of giving Officer BLN a *'hug'* or any physical contact with her whatsoever, upon first entering the house.<sup>114</sup> This account subsequently changed to one where he gave her a kiss on the cheek and most likely a hug as well.<sup>115</sup> When asked about his earlier omission of this interaction, Officer BLQ said he had no idea why he did not mention it but that he had not been trying to mislead.

- (24) Officer BLQ gave a somewhat disjointed account of his physical contact with Officer BLN that day:
- (i) First, a hug and a kiss upon entering the house;<sup>116</sup>
  - (ii) Second, a hug whilst seated at the table (when he put his arm around her);<sup>117</sup>
  - (iii) Third, a hug when they both stood up from the table at the end of the meeting;<sup>118</sup> and
  - (iv) There was potentially a further hug, but he could not recall if it was on that occasion or another time.<sup>119</sup>
- (25) Officer BLQ said that he often gave people a kiss and a hug when greeting them and that with Officer BLN, he did the same every time he recalled seeing her. He thought his conduct on 3 September was appropriate and it did not occur to him that she may have objected but found it difficult to say no to this conduct because he was a very senior officer and she a very junior officer. He believed that if Officer

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<sup>114</sup> Examination BLQ at T57.

<sup>115</sup> Examination BLQ at T65-66.

<sup>116</sup> Examination BLQ at T65.

<sup>117</sup> Examination BLQ at T64-65.

<sup>118</sup> Examination BLQ at T66.

<sup>119</sup> Ibid.

BLN objected, she would be happy to tell him so.<sup>120</sup> He disagreed that he took advantage of her fragile mental state and circumstances and was of the view that his actions provided support, comfort and help. However, although he believed that his actions were genuine and decent at the time, he agreed that looking back now, objectively they could have been capable of serious misconstruction.<sup>121</sup>

- (26) Officer BLQ denied that he lied to Ms BLP and Officer BLR about the location and content of the meeting with Officer BLN because he knew at the time his conduct was inappropriate, but once again, looking back he agreed that an objective observer might draw the conclusion that he lied because he did not want to open up what had happened at the house. However, at the time, that thought was not in his mind.<sup>122</sup>
- (27) The evidence given by Officer BLN was put to Officer BLQ. He agreed that when he visited her at home on 3 September, he did possibly say to Officer BLN on a number of occasions that the police *'don't have a job for you'* and that such words were not offering her support and comfort. He disagreed he said *'you're not going to have a job, but I will look after you'*. He could not recall if he said to her three or four times that he would look after her, or would care for her, but did not disagree with the words.<sup>123</sup>
- (28) He agreed that during the meeting he took a number of a calls and that Officer BLN possibly left the table on those occasions. It was also his recollection that Officer BLN took one call.
- (29) He denied that when they stood up from the table at the end of the meeting, that:
- (i) he quickly stepped forward and tightly encircled her body and arms in a bear hug;
  - (ii) whilst doing this placed one hand at the back of her head, pushing it forward, and then kissed her on the forehead and that during this Officer BLN was pushing her body away from him to avoid physical contact;
  - (iii) he then withdrew that hand and moved his right hand to her left buttock and patted it three times;
  - (iv) Officer BLN let out a gasp and managed to break from his embrace, at which time he sat back down in the dining chair;

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<sup>120</sup> Examination BLQ at T67.

<sup>121</sup> Examination BLQ at T68-69.

<sup>122</sup> Examination BLQ at T69.

<sup>123</sup> Examination BLQ at T70.

- (v) he then grasped her right forearm and whilst pulling her forward, patted the top of his thigh and said *'Come sit down, come over here'*;
  - (vi) Officer BLN broke away from his grasp and walked into the hall and said loudly, *'Mr [Officer BLQ] is going'*; and
  - (vii) he walked to the front door and said to Officer BLN who was standing in the foyer *'I will always take care of you'*.<sup>124</sup>
- (30) Officer BLQ agreed that an officer who acted in such a manner was guilty of gross misconduct and that a difference in the ranks of the two persons involved would contribute to a conclusion that the misconduct was serious and would constitute an abuse of power.<sup>125</sup>
- (31) Officer BLQ was shown entries in relation to his motor vehicle diary for the NSWPF car that he had the use of, for the period 2 to 6 September 2019 inclusive.<sup>126</sup> He agreed that it was a requirement for the diary to be maintained daily, however he did not input the entries. This was done by staff within his office from Officer BLQ's diary and calendar. He did not tell the staff member his start and finish times each day which had to be recorded and he agreed the times recorded were invariably not accurate. Officer BLQ agreed the information recorded in the diary was supposed to be accurate. Officer BLQ was shown a receipt issued by a Caltex service station at LOC1 on 3 September 2019 for a fuel purchase which was paid for with Officer BLQ's Starcard. The time of purchase on the receipt was recorded as *'18.14'*, which was almost 6.15 pm.<sup>127</sup> However, the motor vehicle diary recorded that Officer BLQ arrived home at *'5 pm'*. Officer BLQ agreed this log book entry was incorrect and conceded that the entries shown for the other days were also potentially incorrect.<sup>128</sup>
- (32) Officer BLQ was questioned in regard to his discussion with Ms BLP and Officer BLR at work on 4 September 2019 at around 7.30 am. He agreed that he may have said to Officer BLR that Ms BMB had given Officer BLN *'false hope'*, but believed this was said in a prior conversation. He could not recall if he had also said that he went to see Officer BLN to prepare her for her forthcoming meeting, but agreed he possibly did. He agreed he said that he was going to be attending a meeting with Officer BLN and Officer BMA but did not

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<sup>124</sup> Examination BLQ at T72-73.

<sup>125</sup> Examination BLQ at T74.

<sup>126</sup> Ex BLQ2C.

<sup>127</sup> Ex BLQ3C.

<sup>128</sup> Examination BLQ at T78.

recall saying that he was *'not going to steal [Officer BMA]'s thunder'*.<sup>129</sup>

- (33) Officer BLQ was shown an SMS sent to him by Officer BLN on 4 September 2019 at 8.58 am, informing him that she did not require Officer BLQ to attend the meeting later in the day as she would have her mother with her. He agreed that the message and subsequent messages made no request for her leave balances. Shortly afterwards he attended a meeting with Ms BLP and Officer BLR, during which there was an exchange of messages with Officer BLN. Whilst discussing a CMT complaint, Officer BLQ agreed that he asked for Officer BLN's leave balances. However, he denied also saying that *'she is texting me asking for it'*. The request for this information was made by Officer BLN at her home the previous afternoon.
- (34) Officer BLQ agreed that he left the meeting to have coffee with Mr BMC and Officer BLR. Part of that meeting was to do with Mr BMC's farewell function, which Officer BLR was in charge of arranging. Officer BLR went down to a coffee shop first and Officer BLQ joined them shortly afterwards. He *'vaguely'* recalled that Officer BLR had to return to work after about half an hour, leaving him with Mr BMC. He could not recall how long he stayed with Mr BMC, and suggested 10-15 minutes. He had no recollection of his conversation with Mr BMC during that time. He also could not recall if he spoke with Mr BMC in person or on the phone later that day. He described Mr BMC as a good friend.<sup>130</sup>
- (35) After leaving Mr BMC, Officer BLQ had a meeting with Officer BMA. During that time, she took a call; after it concluded, she said to him words to the effect that Officer BLN was trying to move or cancel the meeting, that she was *'freaked out'*, and that she had sent an email to Ms BMB saying that she wanted to stay in the NSWPF but they were trying to get her out. Officer BLQ responded that he had received an SMS from Officer BLN saying she was still happy to attend the meeting with her mother present for support.<sup>131</sup>
- (36) Officer BLQ initially said that he did not think Officer BMA told him the meeting had been cancelled until the afternoon, but subsequently said that he did not find out until that evening when Officer BMA phoned him.<sup>132</sup>

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<sup>129</sup> Examination BLQ at T80.

<sup>130</sup> Examination BLQ at T84-85.

<sup>131</sup> Examination BLQ at T87.

<sup>132</sup> Examination BLQ at T87-89.

- (37) Officer BLQ said that Officer BLN had postponed and cancelled meetings in the past and it therefore did not come as a real great surprise and he did not get emotionally upset.<sup>133</sup>
- (38) Officer BLQ said that he had no recollection of going over to where Ms BLP and Officer BLR were working and discussing Officer BLN. He did however say that he regularly went over and sat with them to discuss work.<sup>134</sup>
- (39) From the evidence given by Ms BLP and Officer BLR, it was put to Officer BLQ that when he went over and sat with them at around 3 pm, he appeared *'flustered, nervous and agitated'*, and that in his conversation his *'sentences were disjointed, they were bordering on incoherent and he was clearly upset'*.<sup>135</sup> He replied that such demeanour would have described him for a couple of weeks around that date due to the pressure of work, and it would not have been unique to that particular afternoon. He said the two officers knew that he had not been well at around that time and Officer BLR had told him on three or four occasions that he jumped from one thing to another, that he wasn't making sense and to slow down. He agreed that because of his frequent interaction with Ms BLP and Officer BLR they would have been in a position to gauge what would have been his normal demeanour and mood and his abnormal behaviour and mood.<sup>136</sup>
- (40) As Officer BLQ had no recollection of the meeting with Ms BLP and Officer BLR that afternoon, he could not recall the content of any conversations. It was specifically asked if he said to them:
- (i) *'[Mr BMC] just told me something and it's freaking me out'*. Although Officer BLQ could not recall saying this, he said he may have been referring to his new commander who had a reputation of turning over his staff.<sup>137</sup>
  - (ii) *'So I have screwed up the [Officer BLN] thing, she has cancelled all meetings.'* Officer BLQ said that he could have potentially said this.<sup>138</sup>
  - (iii) *'I don't believe I said anything that would have upset her'* (a number of times). Officer BLQ agreed that if he had said to

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<sup>133</sup> Examination BLQ at T90.

<sup>134</sup> Examination BLQ at T91.

<sup>135</sup> Examination BLQ at T92 and 102.

<sup>136</sup> Examination BLQ at T92.

<sup>137</sup> Examination BLQ at T93-94.

<sup>138</sup> Examination BLQ at T94.

Officer BLN that they didn't have a job for her, it could possibly have upset her.<sup>139</sup>

- (41) In his role, Officer BLQ agreed he was required to be familiar with NSWPF policies, procedures and guidelines. He was shown three policy/guideline documents. In relation to the first document entitled *'Respectful Workplace Behaviours'*, he was directed to the heading *'Managers responsibilities include:'*<sup>140</sup> He agreed managers were required to provide a safe work environment and agreed with the statement that managers should lead by being good role models of respectful workplace behaviour and conduct.
- (42) The second document, *'Respectful Workplace Behaviours Policy Statement'*,<sup>141</sup> provided that NSWPF would take appropriate action in relation to bullying, discrimination, harassment... as defined. Officer BLQ said he had previously seen this document. It included a passage that *'Commanders/Managers demonstrate leadership and commitment to the communication and implementation of the Statement and Guideline in their Command/business unit'* and he agreed this applied to senior officers.
- (43) Officer BLQ agreed that the last document, *'Respectful Workplace Behaviours Guideline'*,<sup>142</sup> applied to NSWPF staff including sworn/unsworn officers. He was taken to the definition of *'harassment (including sexual harassment)'* with which he agreed. He was also referred to examples of sexual harassment set out in the Guideline and agreed that conduct which involved *'sexual or physical contact, such as slapping, kissing, touching, hugging or massaging'* would constitute sexual harassment. Later in his evidence Officer BLQ qualified his understanding of the examples of the type of conduct that would constitute sexual harassment as set out in the Guideline to mean *'unwanted hugging and kissing'*.<sup>143</sup>
- (44) The final document shown to Officer BLQ was a letter dated 26 June 2004 by Officer COO19, enclosing a report prepared by Officer COO20, in relation to the investigation of a number of complaints made against Officer BLQ.<sup>144</sup> There were 8 complaints brought by female police officers, seven of which involved allegations of sexual harassment by Officer BLQ.
- (45) A very brief summary of each officer's complaint was put to Officer BLQ and he agreed that each of the complaints was sustained. He denied, however, that his response at the time was that he had no

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<sup>139</sup> Examination BLQ at T95-96.

<sup>140</sup> Ex BLQ4C.

<sup>141</sup> Ex BLQ6C.

<sup>142</sup> Ex BLQ7C.

<sup>143</sup> Examination BLQ at T117.

<sup>144</sup> Ex BLQ8C.

recollection of the events in question. Officer BLQ said there were some things that he did do and other things that he did not, and went on to say *'the matter was never able to be completely resolved as it was resolved in the Industrial Relations Commission with no concession.'*<sup>145</sup>

- (46) Officer BLQ said that that he was treated fairly poorly during the investigation, and had it been conducted properly, the outcome would have been different.<sup>146</sup>
- (47) Officer BLQ agreed it was possible that in the course of the investigation he was invited to make comments and that he acknowledged he had a tendency to have physical contact with people in various ways. He further agreed it was possible that in his defence to allegations made by three of the complainants, he claimed he was a *'friendly, touchy person, who would apologise if his actions offended anyone or they expressed disapproval.'*<sup>147</sup> Officer BLQ agreed that he had given evidence before the Commission that he had not infrequently hugged and given kisses to people, but qualified this by saying that this was to people he knew and was friendly with and that it was not an *'embrace, but more of a hello, how are you going'*.<sup>148</sup>
- (48) Officer BLQ disagreed that it was inappropriate behaviour for an officer of his rank to be giving a hug and kiss on greeting to an officer of junior rank, particularly a non-commissioned officer, even if it occurred at a social event. He said his attitude is that:

*'if I was greeting someone and it was mutual, and that's how you greet someone, that's human nature, that people greet each other with that. Some people shake hands, some people who see a friend will give them a kiss on the cheek and say hello.'*<sup>149</sup>

- (49) Officer BLQ was invited to comment upon the following statement contained in the investigation report:<sup>150</sup>

*'He [referring to Officer BLQ] puts forward the fact that officers did not let him know what he was doing offended them. Quite clearly, as I mentioned earlier, not knowing is not a defence to an allegation of sexual harassment. A conscious mind with the training he had for the position held should have told him of his responsibilities as a commissioned officer towards his staff.'*

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<sup>145</sup> Examination BLQ at T110.

<sup>146</sup> Ibid.

<sup>147</sup> Examination BLQ at T111.

<sup>148</sup> Ibid.

<sup>149</sup> Examination BLQ at T112.

<sup>150</sup> Examination BLQ at T112 and 113.

*Another consideration in this matter is the fact the behaviour complained of was by a [Rank 3].'*

- (50) Officer BLQ repeated earlier comments about the inadequacies of the investigation, which was why he appealed to the Industrial Relations Commission. He accepted part of the content of the investigation; however, there was a large part with which he disagreed and that was why he appealed to the Industrial Relations Commission.<sup>151</sup> Having said that, he said that he was not proud of his earlier behaviour and had learned a lot, a significant amount being about the way he treated and disrespected people. He took a lot on board and since then had changed his behaviour.<sup>152</sup>
- (51) In regard to his going to Officer BLN's home, Officer BLQ agreed there were attendant risks, she being much younger and mentally fragile, and he being sympathetic and giving hugs and kisses. However, he said there was a lot of evidence that had not come out and that apart from misleading the two injury management officers, he genuinely believed he was trying to do the best by Officer BLN.<sup>153</sup> When asked to expand on what had *'not come out that would or should show your position to be better than you have been able to articulate today?'*, Officer BLQ responded:

*'Well, particularly the first incident – the first time I visited her and the whole content and conversations around the first visit.'*

- (52) When asked to expand upon his answer, Officer BLQ replied that he wanted to say something but first asked for an adjournment to speak to his lawyer.<sup>154</sup> On resuming, Officer BLQ initially chose not expand on his evidence, but when pressed, said the contact with Officer BLN was essentially the same as on the second occasion, namely exchanging hugs and kisses on the cheek when coming and going.
- (53) As a consequence of the investigation which was the subject of the 2004 report, he was demoted for twelve months and prevented from taking higher duties, which he agreed was a significant penalty. He agreed that if there was any subsequent conduct which amounted to sexual harassment, it could result in extremely serious professional consequences. He said he would have taken steps to ensure that his conduct did not expose him to the risk of allegations of sexual harassment, if he believed he was doing the wrong thing. When asked:

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<sup>151</sup> Examination BLQ at T113.

<sup>152</sup> Ibid.

<sup>153</sup> Examination BLQ at T114.

<sup>154</sup> Examination BLQ at T115.



*'Do you agree that objectively, your conduct was capable of serious question?'*

He replied:

*'If someone was to make an allegation, as they have, against me, the answer to that is obviously yes.'*

He agreed such an allegation would affect not only his reputation but that of the NSWPF.<sup>155</sup>

Officer BLQ was recalled for further examination on 31 January 2020, following the evidence of Ms BMB, Officer BMA and Mr BMC. His evidence is summarised below.

- (54) Officer BLQ first became aware of the complaint made against him by Officer BLN when he received a summons to appear before the Commission.
- (55) Although Officer BLN became upset at the news he had conveyed to her on 3 September, they parted on friendly terms.
- (56) When he received the SMS from Officer BLN the following morning, to the effect that she did not need him to attend the meeting scheduled for that afternoon, he surmised that the reason for this was because Officer BLN felt more comfortable having her mother present than him.<sup>156</sup>
- (57) Officer BLQ was asked why he felt it necessary to seek a short adjournment to obtain legal advice when giving evidence on the previous occasion in connection with his visit to Officer BLN's home on 14 August 2019. Officer BLQ responded that due to his vision impairment he had not been able to go through his emails to clarify a lot of things that were going on in his mind about meetings and messaging, and he did not want to be *'caught out'* saying one thing and then not being able to produce it.<sup>157</sup> He needed time to be able to properly prepare. He wanted to talk to his solicitor about whether he should make a statement to this effect or wait until later.
- (58) Officer BLQ was next asked why, when he returned to the witness box after obtaining legal advice, he said that he did not want to *'expand'*<sup>158</sup> upon his evidence regarding his meeting with Officer BLN on 14 August and his communication with her at that time. Officer BLQ's response was that there were a number of layers of complexity to the management of Officer BLN's case. He felt responsible for the

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<sup>155</sup> Examination BLQ at T116-117.

<sup>156</sup> Examination BLQ at T122-123.

<sup>157</sup> Examination BLQ at T125.

<sup>158</sup> Examination BLQ at T116.

management of injured workers and in most instances his *'needs and wants'*<sup>159</sup> were responded to by those directly responsible for the management of the worker. However, in the case of Officer BLN, he considered the staff did not do this. In short, Officer BLQ wanted Officer BLN's case managed differently and that was known by everyone involved in the injury management of Officer BLN.

- (59) In regard to the lies he told to Ms BLP and Officer BLR on 4 September, he said this was done because he disagreed with the way Officer BLN's case was being managed and he wanted to keep them out of the conversations he had had with Officer BLN the previous day.<sup>160</sup> He felt that Ms BLP and Officer BLR had been *'probing [him] during the day on a number of occasions about things.'*<sup>161</sup>
- (60) Officer BLQ disagreed that apart from telling the two officers anything that was confidential, it was his duty to tell the truth about relevant matters. Officer BLQ was trying to downplay the level of support he was giving to Officer BLN. In hindsight he thought this was an error of judgment which he did not see at the time.
- (61) Officer BLQ was given the opportunity to read the statement of Ms BLP.<sup>162</sup> He said that he did not agree with a lot of Ms BLP's observations and commentary, but could understand her point of view. He added that he did not have sufficient recollection to say that any of it was false and he agreed with her general sentiment.<sup>163</sup>
- (62) In regard to the meeting scheduled for 4 September 2019 at Officer BLN's home, Officer BLQ initially did not entirely agree that its purpose was for Officer BMA to inform Officer BLN that she was to be transitioned out of the NSWPF. Rather, it was to discuss Officer BLN's present position, whether work was available and what her alternatives were if not.<sup>164</sup>
- (63) He said that Officer BMA had to make a decision about the availability of work for Officer BLN if she maintained her restrictions. This would be based upon information provided by Officer BLN herself as well as information from her medical specialists which had been provided to Ms BMB. However, Officer BLQ went on to say that he believed a decision had been made behind the scenes for Officer BLN not to be redeployed, but medically discharged from the NSWPF.<sup>165</sup> Therefore, Officer BLQ's intention in seeing Officer BLN

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<sup>159</sup> Examination BLQ at T127.

<sup>160</sup> Examination BLQ at T128.

<sup>161</sup> Examination BLQ at T129.

<sup>162</sup> Ex BLP2C.

<sup>163</sup> Examination BLQ at T132-133.

<sup>164</sup> Ibid.

<sup>165</sup> Examination BLQ at T134.

on 3 September was to tell her that if she lifted her restrictions then he could offer her some work in the police.

- (64) Officer BLQ agreed that he did not tell Officer BMA of the advice he had given to Officer BLN and he disagreed that he had a duty to do so. He denied hiding his conversation from Officer BMA, and said he never had the opportunity to tell her.
- (65) Officer BLQ denied that it had been his intention to take advantage of his position to make advances towards Officer BLN in her home on 3 September. He denied that, knowing she had made a complaint, he attempted to cover his conduct by lying to Ms BLP and Officer BLR and then not disclosing to Officer BMA his conversation with Officer BLN about her reducing her restrictions.<sup>166</sup>
- (66) Officer BLQ recalled receiving an email from Officer BMA to the effect that a meeting needed to be convened with Officer BLN because she did not think the NSWPF could accommodate her in redeployment and would need to progress her to medical discharge.<sup>167</sup> Officer BLQ agreed he did not tell Officer BMA before the scheduled meeting on 4 September that he thought Officer BLN had a greater work capacity. He did however say that he had said as much to people involved in the management of Officer BLN's case.<sup>168</sup>
- (67) In regard to Officer BMA's role in relation to the deployment and transition out of staff, Officer BLQ disagreed that she made recommendations which were passed up the command line and that as Commander, he had the power to veto such recommendations. His understanding was, as Commander, he would make the report, asking someone in Officer BMA's position to consider what course could be taken with an injured worker.<sup>169</sup> In Officer BLN's case, he did not make the report. He was unaware of any circumstances where he could challenge a recommendation once it had been made, but certainly would have done so if he had had the opportunity to do so and would have sought advice as to what he could do.
- (68) Officer BLQ agreed that when he left Officer BLN's home on 3 September, he spoke by phone with Officer BMA and told her the time of the meeting (the following day) would need to be changed. He could not, however, recall if he told Officer BMA in that conversation or the following morning that he had been to see

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<sup>166</sup> Examination BLQ at T140-141.

<sup>167</sup> Examination BLQ at T137 and Ex BMA1C.

<sup>168</sup> Examination BLQ at T135-137.

<sup>169</sup> Examination BLQ at T141-142.

Officer BLN.<sup>170</sup> Further, he could not recall if he had told Officer BMA that he had seen Officer BLN at her home.<sup>171</sup>

- (69) Officer BLQ was asked about the nature of his association with two work colleagues, Ms COO11 and Ms COO12, neither of whom worked for him. He described Ms COO11 as *'one of my best friends'* and Ms COO12 as *'a good friend'*.<sup>172</sup> He denied having had an intimate relationship with Ms COO11 and said his friendship with her was very strong, very personal but not sexual.
- (70) Officer BLQ was shown two entries taken from his mobile phone which appeared to be biographies of Ms COO10 and Ms COO11, and asked how he came to have them. Officer BLQ responded that during a social meeting the two ladies had enquired how much personal information could be found out about them from social media and he offered to find out, later sharing with them what he had ascertained. He could not recall whether the inquiries he carried out at the request of the two ladies arose out of one meeting with them or two. However, as the entries were added in June and August 2018, it made sense that two separate requests had been made to him.<sup>173</sup> Officer BLQ could not offer any explanation as to why the two entries had remained on his phone for such a long time.<sup>174</sup>

## 6.5 Evidence of Ms BMB

Ms BMB was called to give evidence before the Commission in a private examination on 29 January 2020. In summary, her evidence was as follows:

- (1) Ms BMB commenced as Injury Management Advisor ('IMA') with the NSWPF in 2016. Her role was to support injured officers in their recovery and facilitate their return to work or transition out of the NSWPF. This would include keeping in contact with injured officers which could be facilitated by a telephone call or face to face. In the case of a physical meeting, her preference was for the injured officer to attend her office. Generally, home visits would not be carried out; however, if there was a good reason to do so, it would be pre-arranged, and she would be accompanied by another officer.<sup>175</sup>
- (2) In her role as IMA, Ms BMB had some dealings with Ms BLP but had not met Officer BLR.

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<sup>170</sup> Examination BLQ at T144.

<sup>171</sup> Examination BLQ at T145.

<sup>172</sup> Examination BLQ at T149.

<sup>173</sup> Examination BLQ at T155.

<sup>174</sup> Examination BLQ at T154.

<sup>175</sup> Examination BMB at T8.

- (3) Ms BMB took over the carriage of Officer BLN's case in 2017, which she retained until moving to LOC4 in June 2019. Although Officer BLN's case went back to 2006, she did not regard this as being unusually protracted.
- (4) Ms BMB was aware that as Officer BLN's Commander, Officer BLQ involved himself in decisions that had to be made regarding her management. However, this was consistent with his involvement in other injured officers' cases.
- (5) In March 2019, Ms BMB was not happy with the way Officer BLN's case was being managed, which resulted in an exchange of emails between herself, Mr COO14<sup>176</sup> and her manager, Ms COO15.<sup>177</sup> Ms BMB considered that allowances were being made to Officer BLN because of what was happening in her personal life.<sup>178</sup> Ms BMB did not become aware of Officer BLQ making any further complaints in regard to the management of Officer BLN's case. Although she met Officer BLQ at a number of injury management meetings, Officer BLN's case was not discussed.
- (6) Ms BMB's interaction with Officer BMA in relation to Officer BLN's case was that because of the restrictions imposed upon her work capability, Ms BMB had been unable to facilitate a return to work and so Officer BLN was referred to Officer BMA for deployment and transition.
- (7) Ms BMB had been informed that Officer BLN's partner, Mr COO1, attempted suicide on 3 August 2019, but was not aware that Officer BLQ had visited Officer BLN at her home on 14 August 2019, as by that time her case was being managed by Ms COO16. Ms BMB therefore had no input into the meeting that was scheduled for 4 September 2019.<sup>179</sup> A handover of Officer BLN's case to Ms COO16 having been completed, Ms BMB was surprised when she received from Officer BLN an email at 11.53 pm on 3 September 2019.<sup>180</sup>
- (8) Ms BMB read Officer BLN's email when she arrived at work the following day, at around 7 or 8 am, and at 8.42 am forwarded it on to Mr COO17 who was at the time filling in for Ms COO16.<sup>181</sup> Ms BMB subsequently spoke by telephone with Mr COO17.

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<sup>176</sup> Ex BMB1C.

<sup>177</sup> Ex BMB2C.

<sup>178</sup> Examination BMB at T11.

<sup>179</sup> Examination BMB at T13.

<sup>180</sup> Ex BMB2C and Examination BMB at T14.

<sup>181</sup> Ex BMB3C.

- (9) Ms BMB missed a telephone call from Officer BLQ at 10.37 am, which she returned at 10.39 am. After the call, Ms BMB typed up notes, and also notes of subsequent conversations and emails.<sup>182</sup>
- (10) Officer BLQ told Ms BMB he had called in to see Officer BLN the previous day and discussed what was happening with her claim and that she would be moved to medical discharge. Officer BLQ also told her that Officer BLN had said she blamed Ms BMB for not having done enough to help her. This came as a shock to Ms BMB as she had previously been told by Officer BLN that she was a godsend to her family. During the call with Officer BLQ, Ms BMB said he seemed '*completely normal*'.<sup>183</sup>
- (11) Ms BMB did not think it was unusual that Officer BLQ had gone to see Officer BLN as she had known of other commanders who visit injured officers.<sup>184</sup>
- (12) She said that whilst Officer BLN did have some work capacity, there was an issue with her travel restriction. Officer BLN's case had been referred to the deployment unit, of which Officer BMA was the manager, who had triaged the referral and determined Officer BLN did not meet the criteria to find suitable work in the NSWPF. The proposed meeting was for Officer BLN to be told in person that she would be medically discharged.
- (13) Officer BMA would have formed the view that Officer BLN would be medically discharged and a recommendation to that effect would have gone to Officer BLQ. It was a formal process.<sup>185</sup>
- (14) At 11.39 am Ms BMB forwarded Officer BLN's email from the night before to Ms COO10 at EML, the insurance agent.<sup>186</sup>
- (15) At 11.53 am on 4 September, Ms BMB received a further email from Officer BLN (the complaint about Officer BLQ). She telephoned Ms COO15 to confirm the correct reporting process. She then made notes of that call. At 12.13 pm, Ms BMB emailed Officer BLN acknowledging receipt of her complaint and asking if she wanted the afternoon's meeting cancelled.<sup>187</sup> Ms BMB received a response from Officer BLN asking for the meeting to be cancelled. At 12.59 pm, Ms BMB telephoned Officer BMA to cancel the meeting. Ms BMB then had telephone conversations with Officers COO7 and COO8 and, as a result of the advice received, telephoned Officer BLR. After completing that call, Ms BMB received an email from Officer BLN at

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<sup>182</sup> Ex BMB4C.

<sup>183</sup> Examination BMB at T18.

<sup>184</sup> Examination BMB at T19.

<sup>185</sup> Examination BMB at T20.

<sup>186</sup> Ex BMB5C.

<sup>187</sup> Ex BMB6C and Examination BMB at T21-22.

1.28 pm (providing further details of her complaint). Officer BLN's emails were forwarded to Officer BLR. Again, Ms BMB typed up notes of her telephone conversations.<sup>188</sup>

- (16) When speaking to Officer BMA on the telephone Ms BMB was repeatedly asked the reason for the meeting being cancelled, to which she replied '*I can't answer...*'<sup>189</sup> Ms BMB did not gain the impression that Officer BMA was already aware of the reason for Officer BLN cancelling the meeting. She could not recall whether or not the first email Officer BLN sent to her on 3 September 2019 was discussed. Ms BMB did not have any further communication with either Officer BLN or Officer BMA.
- (17) Ms BMB said that at no stage had she told Officer BLQ or Officer BMA of the complaint made by Officer BLN.

## 6.6 Evidence of Officer BMA

Officer BMA was called to give evidence before the Commission in a private examination on 29 January 2020. In summary, her evidence was as follows:

- (1) Officer BMA was the manager of the NSWPF Deployment and Transition Unit, based in Sydney. Her job was to place injured police into alternate duties, but if that could not be done because they had reached their maximum medical capacity, she would arrange for them to be medically retired.
- (2) Her first interaction with Officer BLN's case was on 22 February 2019 when she received a deployment referral. However, for injury management reasons, the file did not progress until August 2019.<sup>190</sup> On 23 August 2019, Officer BMA sent an email<sup>191</sup> to Officer BLQ advising that given the nature of Officer BLN's physical restrictions, the time had come for her to be transitioned out of the NSWPF, and that Officer BMA was making a recommendation for a medical discharge.
- (3) Officer BMA explained that whilst she might recommend an officer for medical discharge, it was the command's decision. In the normal course she would expect her recommendation to be accepted, although there had been one case where it was not. A commander could, however, decide to retain an officer.<sup>192</sup> There was nothing unusual about Officer BLN's case except that it had been on foot for a long time.

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<sup>188</sup> Ex BMB7C and Examination BMB at T23-25.

<sup>189</sup> Examination BMB at T26.

<sup>190</sup> Examination BMA at T5.

<sup>191</sup> Ex BMA1C.

<sup>192</sup> Examination BMA at T8.

- (4) Officer BMA was satisfied with the direction taken by the IMA in relation to Officer BLN's case. She did not recall Officer BLQ expressing dissatisfaction with Ms BMB's management of Officer BLN prior to a meeting she had with him on 4 September 2019. Officer BMA thought Officer BLQ was dissatisfied with her performance in progressing Officer BLN's file.<sup>193</sup>
- (5) Since the beginning of 2019, Officer BMA found it had been difficult to arrange for Officer BLN to attend meetings. Officer BMA did not have any involvement with Officer BLQ in relation to Officer BLN's case until the end of August when she provided advice to him in her email of 23 August.
- (6) Officer BMA was not aware of Officer BLQ visiting Officer BLN at her home on 14 August 2019 following the attempted suicide by Mr COO1. However, in those circumstances, it would have been appropriate for her Commander to make a visit. A visit of this nature would be a welfare check; when they are done, a report is to be put on the injured officer's file.<sup>194</sup> She said she would have expected records of this visit to be made by Officer BLQ.
- (7) Officer BMA agreed that if, at a meeting, an injured officer was to be given bad news such as that the officer was to be removed from the NSWPF, it would be important to line up a supportive environment.
- (8) Officer BMA was shown an Extraction Report detailing 7 SMS messages between herself and Officer BLQ between 2 and 4 September 2019.<sup>195</sup> She said that plans were being put in place for her to visit Officer BLN to discuss the next steps in her career. She had spoken to Officer BLN and this generated her first SMS to Officer BLQ on 2 September. It was her intention to inform Officer BLN that she would be recommending to Officer BLQ that the transition process to medical retirement commence, and inform her as to how it would work. The meeting was to take place on the morning of 4 September. Because of the news to be conveyed to Officer BLN, Officer BMA was of the view that a support person should be present and understood that this was to be Officer BLN's mother. The first 5 messages related to arrangements to be made for travelling to Officer BLN's house for the meeting.
- (9) Officer BMA accepted that she received a call from Officer BLQ on 3 September at 6.19 pm. She became aware the time of the meeting was changed to the afternoon to suit Officer BLN's convenience. She

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<sup>193</sup> Examination BMA at T9.

<sup>194</sup> Examination BMA at T12.

<sup>195</sup> Ex BMA2C.



did not recall Officer BLQ telling her that he had been to Officer BLN's home.<sup>196</sup>

- (10) On 4 September 2019, Officer BMA attended LAC2, one reason being to attend a meeting with Officer BLQ. Initially she met with Officer BLQ, Ms BLP and Officer BLR for some minutes before the meeting broke up.
- (11) Around 9 to 9.15 am, Officer BMA had a meeting with Officer BLQ to discuss miscommunication around a deployment referral concerning another officer. Shortly prior to going into this meeting Officer BMA received an SMS from Officer BLN, saying her mother would be supporting her at their meeting and that she did not require Officer BLQ to also attend.<sup>197</sup>
- (12) During her meeting with Officer BLQ, Officer BMA received a call from Ms COO15. It quickly became clear that the subject of the call was Officer BLN and something was occurring. Officer BMA decided it would not be appropriate to continue talking in the presence of Officer BLQ and so she left the room. Officer BMA returned and told Officer BLQ she didn't know what was going on with Officer BLN, but she had been in contact, and it seemed she was not going to be comfortable with Officer BLQ also coming to the meeting that afternoon.<sup>198</sup> Officer BLQ responded that it was OK and he had also been in touch with Officer BLN.<sup>199</sup> It was at the end of their meeting that Officer BMA discovered that Officer BLQ had been to see Officer BLN the previous day.<sup>200</sup> She said she was not told the reason for the visit and did not know what he told her.
- (13) Officer BMA received an SMS at 12.52 pm from Ms COO15 cancelling the Officer BLN meeting. She subsequently exchanged SMS messages with Officer BLN about the cancelled meeting.<sup>201</sup> Officer BMA was not told why the meeting had been cancelled. She was never shown the email Officer BLN sent to Ms BMB on 3 September 2019 at 11.53 pm. She did not subsequently have any further discussions with Officer BLQ. She did not recall saying to him *'[Officer BLN]'s playing games and wants to cancel the meeting or move the meeting. She's really freaked out'*.<sup>202</sup> She also said that she would not use that language.
- (14) Officer BMA did not discuss again with Officer BLQ what was happening with Officer BLN until that evening. After communicating

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<sup>196</sup> Examination BMA at T20.

<sup>197</sup> Examination BMA at T21.

<sup>198</sup> Examination BMA at T22.

<sup>199</sup> Examination BMA at T23.

<sup>200</sup> Examination BMA at T23-23.

<sup>201</sup> Ex BMA3C and Examination BMA at T27.

<sup>202</sup> Examination BMA at T29.

by SMS, Officer BMA spoke with Officer BLQ at 21.04. Much of the call concerned another officer. After that evening she had not had any further conversations with Officer BLQ concerning Officer BLN.<sup>203</sup>

- (15) It was clear to Officer BMA on 4 September 2019 that a complaint had been made about Officer BLQ, but she did not have any other details. She knew that something had happened the day before, but did not know what. She knew that it was being handled and it was not her business to do anything further.<sup>204</sup>

## 6.7 Evidence of Mr BMC

Mr BMC was called to give evidence before the Commission in a private examination on 31 January 2020. In summary, his evidence was as follows:

- (1) Mr BMC said he retired on medical grounds from the NSWPF on 1 August 2019, at which time he held the rank of Rank 1. Mr BMC described himself as a friend of Officer BLQ. This friendship was essentially professional, although he had met with Officer BLQ about three times since he had retired to have a coffee.
- (2) On the morning of 4 September 2019, Mr BMC met with Officer BLR and Officer BLQ in a coffee shop downstairs in the LAC2 building. He could not recall if the purpose of the meeting was to discuss his proposed send-off, which Officer BLR was arranging, or just a social catch-up. He agreed that Officer BLR could have left after half an hour, leaving him with Officer BLQ, but could not recall in detail what they discussed. He believed it would have been about Officer BLQ's health and how he was coping with a change of command.
- (3) He said Officer BLQ knew the incoming Officer COO5, and he would have been aware of his reputation of replacing commanders under him. He thought Officer BLQ was concerned about how he was going to fit in. Mr BMC did not recall anything of consequence being discussed.<sup>205</sup> He did not give Officer BLQ any surprising information that he could recall.
- (4) Mr BMC recalled Officer BLQ had been working on a particular strategy and was concerned it may not be implemented. He may have been worried about it, but Mr BMC was not sure if this was discussed at this meeting or another time. Mr BMC did not have any concerns for Officer BLQ.

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<sup>203</sup> Examination BMA at T31.

<sup>204</sup> Examination BMA at T31-32.

<sup>205</sup> Examination BMC at T7.

- (5) He did not recall if he saw or spoke to Officer BLQ later in the day.<sup>206</sup> It was put to Mr BMC that at around 3 pm that day, Officer BLQ approached two work colleagues and said '*[Mr BMC]'s just told me something and its freaking me out'*, and he agreed those comments did not fit with what he recalled talking to Officer BLQ about. In regard to the incoming commander's reputation, Mr BMC agreed this was not something new and had been around for some time.
- (6) Mr BMC did not learn that day that a complaint had been made by Officer BLN about Officer BLQ. Indeed, he did not learn about it until he was served with a summons to appear before the LECC.<sup>207</sup>

## 7. Analysis of Evidence

- 7.1 In complaints which are alleged to have occurred in a complainant's home, it is almost invariably the case that there are no witnesses to the conduct which is the subject of the complaint. The complaint made by Officer BLN against Officer BLQ, of inappropriate sexual touching, is such a case. Therefore, in order to arrive at a decision, the Commission is required to look at not only the evidence of Officer BLN and Officer BLQ in regard to what they say occurred inside Officer BLN's home on 3 September 2019, but also other factors including past events, the timeliness of the complaint being reported, the surrounding conduct of Officer BLN and Officer BLQ, independent evidence which either supports or detracts from the complaint, and any other evidence which assists the Commission in determining the relative credibility of Officer BLN and Officer BLQ.
- 7.2 In their evidence, both Officer BLN and Officer BLQ denied any previous intimate relationship between them. This included a complaint made between 2010 and 2016, which Officer BLQ described as an allegation of favouritism. As an aside, the Commission finds it curious that no record of the complaint or the subsequent investigation could be found, notwithstanding that Officer BLN gave evidence she submitted a '*Godfrey Report*', which according to Officer BLQ's evidence, ought to have been placed on Officer BLN's file.
- 7.3 As a result of suffering a work injury to her back, Officer BLN had been absent from work for a number of years. Whilst there had been some periods where she had been able to work reduced hours, attempts by the NSWPF IMT had proved unsuccessful. It seems that a decision had been reached that Officer BLN would be informed at a meeting on 4 September 2019 that as there were no positions

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<sup>206</sup> Examination BMC at T10.

<sup>207</sup> Examination BMC at T12.

available because of her physical restrictions, she would be moving to medical discharge.

- 7.4 Officer BLQ's evidence was that he had known Officer BLN for a number of years. He considered that because of events involving her domestic situation with her partner, Mr COO1, she deserved better treatment from the IMT, although he did not say what that was.
- 7.5 Officer BLQ had previously visited Officer BLN at her home on 14 August 2019, following an attempted suicide by Mr COO1. The purpose was to provide emotional support to Officer BLN. In her statement to police and in giving evidence before the Commission, Officer BLN said that during this visit, Officer BLQ had hugged her on arrival and when leaving, which made her feel uncomfortable as the hugs lasted longer than she felt was appropriate. In any event, she did not raise this with Officer BLQ and after he left there was an exchange of SMS messages in which Officer BLN thanked him for his attendance and signed off with a smiley emoji. In his evidence Officer BLQ said that in addition to the hugs, they also mutually kissed each other on the cheek. The '*kissing*' was not part of Officer BLN's evidence. One is left to speculate whether this was because it did not happen, she forgot, or that in making her complaint she wanted to downplay the extent of any prior physical contact with Officer BLQ. On Officer BLQ's part, he said that as Officer BLN raised no objection on this occasion, he assumed it was OK to repeat such conduct when he visited her on 3 September, again without any complaint from Officer BLN. Whether the kissing occurred or not, it is clear that it ought not have occurred and that Officer BLQ should have appreciated that such behaviour between an officer of his rank and a much younger female of greatly subordinate rank in his line of command was inappropriate. In the circumstances no question of '*permission*' could realistically have arisen: the failure to object was certainly no basis for inferring anything more than compliance.
- 7.6 Although it had been the intention of Officer BMA for some time to meet with Officer BLN to discuss the future management of her case, this did not finally crystallise until around 2 September following a telephone discussion with Officer BLN. It was arranged for Officer BLQ to also be in attendance as Officer BLN's Commander. He was aware of the decision to move Officer BLN to medical discharge and this appears to have been the catalyst for his decision to visit her on 3 September. As there had been no objection raised by Officer BLN to his visit on 14 August, (quite the contrary in his mind), he saw no impropriety in doing so again. Following Officer BLN's unease at the time of Officer BLQ's visit on 14 August, she could have suggested an alternate venue at which to meet on 3 September. A number of factors could have led to her discounting this. First, she had said in evidence that Officer BLQ's hugs on 14 August could have been an

error of judgment on his part. She also had her four-year-old son at home and could not leave him alone if she was to meet Officer BLQ somewhere else.

- 7.7 Evidence was given about how welfare checks on injured workers should be conducted and documented. Officer BLQ conducted these from time to time. It was clear from his evidence that he did not follow the relevant guideline or protocol when it came to placing a completed welfare check report on a worker's file, notwithstanding its importance. His failure to follow this procedure was exacerbated by the fact that before conducting a welfare check he did not always tell the officer managing the worker's case that he was going to conduct a check, or report on the outcome of one. No explanation for these failures to follow correct procedure were forthcoming from Officer BLQ. In any event, the Commission is satisfied on Officer BLQ's own evidence that he was not attending Officer BLN's residence as part of a welfare check (and as such her Commander), but for personal reasons.
- 7.8 The only injured officer visited at their home by Officer BLQ in the six month period up to September 2019, to conduct a 'welfare check', was Officer BLN, those visits being on 14 August and 3 September. The visits were conducted at her home because, as a personal friend, he felt that he could offer her support and that she could talk more freely away from the workplace. It is implicit in Officer BLQ's evidence that he did not consider it professionally inappropriate to make an unaccompanied home visit to a junior female officer. Given Officer BLQ's years of experience in the NSWPF and his rank, it is unlikely that he did not foresee the risks attached to such action, particularly when it was readily apparent to Ms BLP and Officer BLR, who were substantially his junior. This must raise the question of whether or not there was an ulterior motive for Officer BLQ visiting Officer BLN at her home on 3 September.
- 7.9 Having discounted the suggestion that Officer BLQ's visit was to conduct a welfare check, two possible reasons remain for his attendance. The first, as suggested in Officer BLQ's evidence, is that he was visiting Officer BLN as a friend and not her Commander, to counsel her in regard to what legal remedies she should consider taking (suing the NSWPF), and how she should conduct herself at the forthcoming meeting with Officer BMA. In adopting such a role it is apparent that Officer BLQ had a conflict of interest as he was Officer BLN's Commanding Officer. In adopting such a course, Officer BLQ admitted in evidence that he was giving Officer BLN treatment that he would not provide to another officer. In the Commission's view, by assisting Officer BLN in a manner that he would not have extended to other officers, Officer BLQ was showing clear favouritism, which is contrary to the ethical standards of the NSWPF. Providing Officer

BLN with advice that she should sue the NSWPF was clearly contrary to his employer's interests. The second, and possibly additional reason for Officer BLQ's visit, was that he hoped to exploit Officer BLN's emotional vulnerability for his own personal advantage.

7.10 Turning to the events of the meeting between Officer BLN and Officer BLQ on 3 September, it is to be noted that the account given by Officer BLN of her conversation with Officer BLQ was clear and precise. Two features of this discussion were firstly, his commenting that the NSWPF did not have a position for her and secondly, his repeated assurances that he would '*look after* [her]'. Officer BLQ's recollection of their conversation was vague; when pressed with the specifics of the conversations alleged by Officer BLN, he could either not recall, or agreed they possibly could have occurred.

7.11 In regard to the accounts given by each witness of what transpired after Officer BLQ entered Officer BLN's house, there is some common ground:

- (i) they both sat at the dining room table and discussed the forthcoming meeting and the need for her to prepare herself;
- (ii) they discussed Officer BLN's future employment prospects and her financial position in general;
- (iii) Officer BLQ took a number of calls whilst at the dining table;
- (iv) there was physical contact between the two not long after they both sat down at the dining table, although their accounts differ significantly as to the nature of the contact;
- (v) at times during the meeting, Officer BLN was distressed and teary;
- (vi) whilst seated at the table they were only about one metre apart; and
- (vii) when the meeting concluded, they both stood up facing each other and there was further physical contact, although the nature thereof (which is the subject of the complaint) is disputed.

7.12 Officer BLN's version is essentially that:

- (i) Officer BLQ placed her in a bear hug, encircling her arms, pushed her head forwards and kissed her on the forehead whilst she attempted to move away;
- (ii) placed his hand on her buttock and patted it three times; and

- (iii) sat down on a chair and tried to pull her over to sit on his lap.
- 7.13 Officer BLQ's version is, in summary:
- (i) upon arrival they greeted each other with a hug and kiss on the cheek;
  - (ii) this was repeated once whilst sitting at the table and at the front door upon Officer BLQ leaving; and
  - (iii) that the degree of physical intimacy was a repeat of what occurred upon his arrival and departure from Officer BLN's house on 14 August 2019.
- 7.14 As referred to earlier, there were no witnesses to the events of 3 September. However, whatever happened, it was sufficiently distressing to Officer BLN for her to telephone her mother within minutes of Officer BLQ's departure and complain that Officer BLQ had *'hugged her and that she tried to pull away and that she became a bit upset and started crying.'* Officer BLN gave an explanation in her evidence as to why she did not provide her mother with further details of the incident.<sup>208</sup> Officer BLN's evidence of what she told her mother occurred with Officer BLQ is corroborated by Mrs COO2 in her statement to police dated 5 September 2019.<sup>209</sup>
- 7.15 After talking to her mother, she telephoned her father. In her statement to police, Officer BLN did not detail this conversation. However, she told the Commission she repeated what she had told her mother and added that Officer BLQ had *'pulled me in and rubbed my bum and he tapped it.'*<sup>210</sup> Subsequently, Officer BLN telephoned her sister, Ms COO4, and said Officer BLQ had given her an *'uncomfortable hug and [she] felt uneasy about it.'*<sup>211</sup>
- 7.16 Although neither Officer BLN's father nor sister provided statements or were examined, the Commission's investigators analysed Officer BLN's telephone records and confirmed that she did call her parents and sister at the times alleged in her statement and evidence.
- 7.17 Officer BLN emailed Ms BMB at 11.53 pm on 3 September 2019, but did not mention the alleged complaint; rather, she complained she was to be told at the following days meeting there was no longer a job for her and that as a result, she was *'beside herself'*. In giving evidence, Officer BLN explained the reason for her not reporting the complaint at that time was not deliberate but because she wasn't thinking clearly. *'I was in a state of do I say something, do I not say*

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<sup>208</sup> Examination BLN at T46.

<sup>209</sup> Ex BMB10C.

<sup>210</sup> Examination BLN at T47.

<sup>211</sup> Examination BLN at T49.

*something, how is this going to affect me?...*<sup>212</sup> When Officer BLN did make her complaint to Ms BMB (whom she trusted) the following day at 11.53 am, the reported conduct of Officer BLQ was that, whilst hugging her, *'the hug went for too long and his hands went lower and lower if you get my drift, down to my backside. It was really inappropriate'*.<sup>213</sup> This complaint to Ms BMB is consistent with the account Officer BLN reported to her mother to the extent that she received from Officer BLQ a *'hug'* and it made her uncomfortable.

7.18 About an hour and a half later, Officer BLN sent a further email to Ms BMB in which she provided additional details of Officer BLQ's actions.<sup>214</sup> There are a number of possible reasons as to why Officer BLN was not forthcoming with this additional information at the time of initially reporting her complaint to Ms BMB. The unfolding of complaints in these circumstances is not at all unusual. Although of course, it does not add to the credibility of the ultimate version, it may well not detract from it. It does emphasise the need for careful consideration of the reliability of the final account. As mentioned earlier, Officer BLN gave her evidence in a succinct and candid manner. The giving of additional material was not such as to have a significantly adverse effect on Officer BLN's credibility, in the Commission's view.

7.19 Another aspect of Officer BLN's evidence that underlines the need for careful assessment concerns her use of *'Sir'* or *'Mr [Officer BLQ]'*.<sup>215</sup> Though, in an SMS that she sent to Officer BLQ on 14 August 2019, she referred to him as *'[first name of Officer BLQ]'*,<sup>216</sup> Officer BLN sought to change her evidence about this in a somewhat confusing manner. First Officer BLN said that she did not know why she called Officer BLQ by his first name, then she suggested that she always called him *'Sir'* or *'Mr [Officer BLQ]'* in a work situation (by that implying that she may address him otherwise in a non-working setting), and then finally suggested that the salutation in the SMS was a *'one-off'*.<sup>217</sup> When this is viewed along with the evidence of Officer BLQ that Officer BLN called him *'[first name of Officer BLQ]'* and Officer BLR's evidence that a number of staff called him *'[first name of Officer BLQ] or [nickname of Officer BLQ]'* and the fact that they had both been friends for a number of years, the Commission doubts that Officer BLN was being frank in her evidence about this matter, perhaps in an attempt to downplay the degree of social interaction that she previously had with Officer BLQ. However, the evidence does not do more than raise this doubt and could not

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<sup>212</sup> Examination BLN at T58.

<sup>213</sup> Ex BLNC3C.

<sup>214</sup> Ex BLNC5C.

<sup>215</sup> Examination BLN at T59.

<sup>216</sup> Ex BLN6C.

<sup>217</sup> Examination BLN at T60.



justify a positive finding that she was not telling the truth about this matter.

7.20 Considering the evidence of Officer BLQ, the Commission has already commented on the manner this was delivered.<sup>218</sup> First, in regard to the conversations he had with Officer BLN on 3 September, it was vague and on occasions he claimed his recollection failed him. This was also the case in regard to the number of ‘hugs’ that he and Officer BLN engaged in. Second, Officer BLQ’s recollection of his discussions with Ms BLP and Officer BLR, at around 7.30 am and later at around 3 pm on 4 September, was vague and again he claimed his recollection failed him a number of times.

7.21 The Commission accepts without reservation the evidence of Ms BLP and Officer BLR. The statements they prepared in regard to their conversation with Officer BLQ around 7.30 am were compiled within hours of that event. As for the conversation at around 3 pm, the officers were already on notice to pay particular attention to Officer BLQ’s conversation and demeanour, and a record of that was compiled within minutes of the encounter. Furthermore, although the content of each statement was very similar, each statement was prepared independently. There was no collaboration. In giving evidence the witnesses did not deviate from their statements. The manner in which they gave their evidence was forthright. When contrasted with the evidence given by Officer BLQ, the Commission accepts:

- (i) Officer BLQ not only lied to the officers about meeting Officer BLN at a café on 3 September 2019, but the lie was an elaborate story. The Commission does not accept Officer BLQ’s evidence that, whilst readily volunteering to the Commission that he lied when telling the officers where the meeting took place, he could not recall any details of the lie. Furthermore, given the detailed nature of the lie, the Commission is of the view it is very likely that Officer BLQ had given this some prior thought to it, rather than making it up ‘*on the run*’, so to speak.
- (ii) At the meeting that took place shortly after 9 am, whilst the team members were discussing a complaint, Officer BLQ was behaving in a ‘*definitely distracted*’ manner.<sup>219</sup> At one point, Officer BLQ unexpectedly announced that he had received a text from Officer BLN seeking her leave balances, contrary to Officer BLQ’s evidence that Officer BLN had asked for them the previous day. Furthermore, analysis of Officer BLQ’s telephone records show that whilst he did receive a number of

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<sup>218</sup> Para. 7.10.

<sup>219</sup> Examination BLP at T20.

SMS messages that morning from Officer BLN, none of them requested her leave balances.

- (iii) When Officer BLQ spoke to Ms BLP and Officer BLR at around 3 pm that afternoon, his behaviour, thought pattern and speech was markedly different to his normal behaviour, which led the two officers to conclude that Officer BLQ had at some point earlier in the day, learned of Officer BLN's complaint.
- (iv) Officer BLQ's highly unusual behaviour would not have arisen from him learning that Officer BLN had cancelled that day's meeting, as by his own evidence, for Officer BLN to act in such a manner would not have caused him any real concern.<sup>220</sup>
- (v) The behaviour of Officer BLQ that particular afternoon was out of character and was not part of a general pattern over the few weeks prior due to stress from work commitments, as put forward by Officer BLQ.
- (vi) Although he claims to have no recollection, the Commission accepts he said to Ms BLP '*[Mr BMC] has said something that is freaking me out*'.<sup>221</sup> Officer BLQ could not recall the content of his conversation with Mr BMC earlier that day and has surmised that if he said this, it may have been because he had been told his incoming commander had a reputation for moving on officers. Mr BMC however, said in his evidence that if the reputation of the incoming Rank 1 had been discussed (which he could not recall), this was not a new revelation and Officer BLQ would have been aware of Officer COO5's management style for some time. Mr BMC could not recall saying anything that would have caused Officer BLQ to '*freak out*'. The Commission therefore does not accept Officer BLQ's evidence that his unusual behaviour that afternoon may have been attributable to his discussion with Mr BMC concerning the new commander.
- (vii) No other evidence has been given to explain Officer BLQ's outburst. None of the witnesses examined before the Commission were able to shed any light on whether or not Officer BLQ had been told of the complaint made against him by Officer BLN. However, in her evidence Officer BMA said that although she had not been told of the nature of Officer BLN's complaint, it was clear to her on 4 September that a complaint had been made concerning Officer BLQ. She knew

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<sup>220</sup> Examination BLQ at T90.

<sup>221</sup> Examination BLP at T24.

that something had happened the day before but did not know what.<sup>222</sup>

7.22 In regard to Officer BLQ's evidence regarding the investigation and outcome of complaints brought against him by a number of junior female officers for sexual harassment at a time he held the rank of Inspector in 2004, although he said the outcome was a matter of record (and which he acknowledged resulted in him suffering a significant penalty), he said the investigation was flawed and that had the matter been dealt with properly, there would have been a different outcome. That being his attitude, and having appealed to the Industrial Relations Commission, it has not been explained to this Commission why Officer BLQ chose not to pursue the matter to a hearing. If the complaints were '*resolved*' at that time and the allegations not tested, this would suggest to the Commission the matter was resolved by Officer BLQ and the NSWPF on a compromise basis.

7.23 Contained within the investigation report was a statement which was read out to Officer BLQ,<sup>223</sup> following which he was invited to make a comment. Officer BLQ responded in general terms to the investigation, its flaws and what he had learned. The statement contained three points which are relevant to the Commission's investigation of the present complaint:

- (i) First, Officer BLQ said the complainants did not let him know that they were offended by his behaviour. The investigation report quite rightly states that not knowing (that the behaviour is offensive), is not a defence to an allegation of sexual harassment. In this case, Officer BLQ maintains that in the context of the hugging and kissing on the cheek of Officer BLN on 14 August and 3 September 2019, Officer BLN did not raise any objection.
- (ii) Second, especially considering the training he had for his position, he must have been aware of his responsibilities as a commissioned officer toward his staff. At the time of the present complaint, Officer BLQ was an Acting Rank 1, a rank much higher than that of Rank 3 which he held in 2004. Arguably, he had an even greater degree of responsibility towards his staff.
- (iii) Thirdly, at the time of the complaints in 2004, Officer BLQ held a far more senior rank than the complainants. That is the

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<sup>222</sup> Examination BMA at T31-32.

<sup>223</sup> Ex BLQ8C and Examination BLQ at T112-113.

case here, his rank being Acting Rank 1 whilst Officer BLN was only a Senior Constable.

7.24 Finally, in the investigation report is a reference to Officer BLQ putting forward as an explanation for his conduct (in part), that he had a tendency to have physical contact with people in various ways, which Officer BLQ said in evidence was *'possibly'* the case.<sup>224</sup> In the context of his present conduct, Officer BLQ said that he would regularly greet someone with a kiss and a hug. Even in a social setting, he did not agree that such behaviour between him as Rank 2 and an officer of lower rank such as Sergeant or Senior Constable, was inappropriate. The Commission finds of concern Officer BLQ's inability to acknowledge the power imbalance created by the difference in rank and its potential risk of harm to a junior officer.

7.25 Officer BLQ was referred to a number of NSWPF guidelines and statements concerning workplace behaviour which he said he understood and agreed with.<sup>225</sup> This included the need for managers to lead the way and be a good role model. Again, Officer BLQ agreed with the stated definition of sexual harassment. Importantly, the test is an objective rather than a subjective test, namely whether, having regard to all the circumstances, a reasonable person would be offended, humiliated or intimidated.<sup>226</sup> The documentation also set out examples of conduct that may constitute sexual harassment, which included:

*'sexual or physical conduct, such as slapping, kissing, touching, hugging or massaging,'*<sup>227</sup>

with which Officer BLQ agreed, except he qualified this to be *'unwanted hugging and kissing'*.<sup>228</sup>

7.26 This caveat imposed by Officer BLQ, taken in conjunction with his failure to understand the inappropriateness of contact such as hugging and kissing, between a very senior officer (as he was at the time) and a junior officer, in a public or private setting, demonstrates to the Commission that Officer BLQ does not yet fully accept the NSWPF policies in relation to sexual harassment.

7.27 In regard to the maintenance of Officer BLQ's motor vehicle diary, the Commission was not directed to any policies or guidelines of the NSWPF. It is clear on the evidence that the entries recorded in the diary could not have been accurate as they were compiled by

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<sup>224</sup> Ex BLQ8C and Examination BLQ at T111.

<sup>225</sup> Ex BLQ4C, Officer BLQ6C and Officer BLQ7C and Examination BLQ at T103-107 and T117.

<sup>226</sup> Examination BLQ at T107.

<sup>227</sup> Examination BLQ at T107.

<sup>228</sup> Examination BLQ at T117.

administrative staff simply consulting Officer BLQ's diary. It is certainly the case they were not accurate for Officer BLQ's arrival home time on 3 September of 5 pm. The scant regard paid by Officer BLQ for the need to accurately maintain such records is hardly setting a good example for other staff.

## 8. Submissions in Response

- 8.1 The Commission received lengthy and detailed submissions on behalf of Officer BLQ.
- 8.2 Officer BLQ did not agree with the preliminary findings or the recommendation set out in the draft report, that the Commissioner of Police give consideration to dismissing Officer BLQ from the NSWPF.
- 8.3 The Commission has not responded to each submission. Submissions have been made in respect of each preliminary finding in the Commission's draft report, which are summarised as follows:

That in arriving at the first finding of serious misconduct on the part of Officer BLQ, the Commission accepted that Officer BLN was both a truthful and reliable witness, whereas Officer BLQ did not tell the Commission the truth about his physical interactions with Officer BLN at her residence on 3 September 2019. It was submitted on behalf of Officer BLQ that:

- (i) Prior to commencing her evidence before the Commission, Officer BLN was given the opportunity to refresh her recollection of events by reading the statement she gave to police on 5 September 2019 and that in giving evidence she was led through her statement.
- (ii) There was no consistent recent complaint made by Officer BLN. Having been a police officer for a number of years, she would have been acutely aware of the importance of recent complaint as a way of supporting her allegation.
- (iii) Officer BLN was not challenged as to her motivation for making a complaint against Officer BLQ.
- (iv) The account of events contained in the statement Officer BLN gave to the police, her emails, the complaint made by Officer BLN to her mother, and her evidence before the Commission, exposed a number of inconsistencies which were not tested in cross examination rigorously or at all, and that some of the explanations provided by Officer BLN for those inconsistencies were elicited through leading questions.
- (v) In regard to the allegation that Officer BLQ invited Officer BLN to sit on his left knee, at that time, Officer BLQ had a

serious injury to his left foot and placing weight on his left leg would have caused him considerable pain. The inference was therefore that Officer BLQ would not have made such an invitation and that Officer BLN's claim that he did, was a fabrication.

- 8.4 In conducting examinations, the Commission is not bound by the rules or practice of evidence and may inform itself on any matter in such a manner as it considers appropriate.<sup>229</sup> There was nothing untoward in Officer BLN being permitted to refresh her recollection from her statement to the police prior to commencing her evidence, or being taken to various parts of the document and asked to clarify or elaborate on her version of events the subject of her complaint. It is common practice for witnesses called to give evidence before the Commission, to be given access to statements they have made and for them to be tendered in evidence.
- 8.5 Despite the criticism that Officer BLN's evidence should have been more rigorously tested by the Commission, when a copy of the Commission's draft report was provided to Officer BLQ's legal representatives, they were invited on two separate occasions to make submissions which were forthcoming within allocated timeframes. However, no application was made for Officer BLN, or any other witness who gave evidence before the Commission, to be recalled for cross examination by counsel representing Officer BLQ, prior to the Commission giving notice to BLQ's legal representatives that it had finalised its report and was intending to present it to Parliament. It is acknowledged that a request was made after the Commission had finalised its report and announced its intention to present it to Parliament. This request was accordingly declined.
- 8.6 It was not submitted on behalf of Officer BLQ that there was no recent complaint by Officer BLN, but rather, that the versions given by Officer BLN were not '*consistent*'. Indeed, the first complaint was, it having been made by Officer BLN to her mother within approximately 30 minutes of the departure of Officer BLQ. Officer BLN was cross examined in relation to a number of inconsistencies in the various versions she provided and the Commission accepted her explanation. In assessing the reliability of her evidence, the Commission took into consideration Officer BLN's mental state as at 3 September 2019, which Officer BLQ acknowledged in his evidence, was that Officer BLN was '*under considerable emotional strain*'.<sup>230</sup>
- 8.7 The Commission rejects the submission that Officer BLN's version of events was not corroborated by her mother, Mrs COO2, or anyone else. It is correct that their versions were not identical. However, what

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<sup>229</sup> S 70 of the *LECC Act 2016* (NSW).

<sup>230</sup> Examination BLQ at T68.

was common ground was that Officer BLQ had given Officer BLN a hug which Officer BLN found repulsive. In her evidence, Officer BLN provided an explanation as to why she did not, at that time, provide further details to Mrs COO2. She told the police when making her statement, and when giving evidence before the Commission, that shortly after speaking with her mother, she telephoned her father, Mr COO3 and gave additional details of what had happened. It is not known why the police investigating the complaint by Officer BLN did not obtain statements from her father and sister. In any event, Officer BLN's account of what she told her father is corroborated. In Mrs COO2's statement at paragraph 16, in reference to a conversation that she had with Mr COO3 on the morning of 4 September 2019, where in response to comment made by Mrs COO2 that Officer BLQ had hugged Officer BLN, Mr COO3 said *'No, it was more than that'*.

- 8.8 The Commission disagrees with the premise on which the submission that Officer BLN's motives for making a complaint were not challenged was made. From the evidence presented to the Commission in the form of Officer BLN's emails to Ms BMB, and her testimony, as identified in the submission, it was readily apparent that Officer BLN could have been motivated to *'make up'* the allegation against Officer BLQ in order to prolong her employment in the NSWPF and secure her financial future. No further questioning of Officer BLN was necessary. When analysing all of the evidence adduced in the course of examination of the witnesses, the Commission was required to, and did, weigh up whether or not Officer BLN had a motive to make a false claim. Also whether, even if such a motive existed, it was the catalyst for the complaint being made. In order for this to be the case, it would have required Officer BLN to have the presence of mind to formulate such a plot from the time Officer BLQ left her home, to when she telephoned her mother, approximately 30 minutes later. Given the evidence concerning Officer BLN's mental condition at the time, which has already been the subject of comment, the Commission came to the conclusion that this proposition was highly unlikely.
- 8.9 In regard to the submission that because of the injury suffered by Officer BLQ to his left foot, it was highly unlikely that he would have invited Officer BLN to sit on his left knee, the Commission was aware that Officer BLQ had suffered an injury to his left foot on 27 July 2019, which required a number of sutures, and may have been painful as at 3 September 2019. However, the evidence given by Officer BLN did not support the inference that Officer BLQ motioned for Officer BLN to sit on his left knee, but rather, that she sit on his right knee. Furthermore, despite giving evidence on two occasions, Officer BLQ did not mention that he had sustained an injury to his left foot.

8.10 Following receipt of written submissions on behalf of Officer BLQ, a request was made by his legal representatives for an extension of time in order to provide to the Commission medical evidence in relation firstly, to their client's left foot injury and the improbability of Officer BLQ inviting Officer BLN to sit on his (left) knee. Secondly, to explain their client's state of mind at the time and also his demeanour as described by Ms BLP and Officer BLR in their evidence. In light of the evidence outlined in paragraph 8.10 above, the Commission did not consider that a medical report in regard to Officer BLQ's left foot would be of assistance to it in deciding whether or not Officer BLQ invited Officer BLN to sit on his right knee. In regard to Officer BLQ's state of mind and behaviour, the Commission already had the benefit of BLQ's evidence as well as other witnesses who had been in contact with Officer BLQ in early September 2019, particularly Ms BLP, Officer BLR and Mr BMC, in regard to their observations of Officer BLQ's behaviour and comments on 4 September 2019. The Commission therefore did not consider that it would be further assisted by a medical report based essentially upon the same evidence, commenting retrospectively on this issue. Accordingly, the request by Officer BLQ's legal representative for an extension of time to obtain medical evidence was declined by the Commission.

8.11 The Commission found that the lies told by Officer BLQ to Ms BLP and Officer BLR as to his meeting Officer BLN at a café on 3 September 2019, not only adversely affected his credibility to a serious degree, but also demonstrated a consciousness of guilt about what had transpired between himself and Officer BLN. It was submitted on behalf of Officer BLQ that such a conclusion should not be made, based on the evidence:

- (i) That the lies told by Officer BLQ to Officer BLP and Officer BLR were not elaborate and complex as found by the Commission, but were simplistic and consistent with not being premeditated.
- (ii) The explanation given by Officer BLQ to the Commission for telling the lies was a simple one, namely that he was giving Officer BLN favourable treatment and he did not want others involved in her injury management to become aware of this.
- (iii) The lies made by Officer BLQ were of little probative value and could not support a conclusion by the Commission that Officer BLQ told them because he was conscious of his guilt.
- (iv) Insofar as the lies damaged Officer BLQ's credit, they did so no more than Officer BLN's lack of frankness (regarding her evidence as to how she used to address Officer BLQ), and



that it would therefore be unfair to Officer BLQ if a similar finding in respect of Officer BLN's credit was not made.

- (v) Given the shortcomings in Officer BLN's cross examination and having formed the view that she had not been frank with the Commission in one aspect of her evidence, the Commission was not entitled to conclude that she was an honest and reliable witness.
- (vi) Due to an absence of cross examination in respect to the evidence of other witnesses who gave evidence, other than Officer BLQ, the Commission would have caution in relying upon their evidence.

8.12 The reasons advanced on behalf of Officer BLQ that the lies he told to Ms BLP and Officer BLR did not demonstrate a consciousness of guilt and were simplistic and *'made up on the run without much thought'*, would have carried more weight, had he been responding to an inquiry from the officers concerning Officer BLN, which required him to make something up *'on the run'*, so to speak. Although Ms BLP and Officer BLR had some administrative role in the management of Officer BLN, neither were involved in the meeting that was to take place with Officer BLN on 4 September 2019. It was therefore totally unnecessary for Officer BLQ to volunteer to Ms BLP and Officer BLR, that he had met Officer BLN the previous day, let alone invent details of that meeting. The inescapable conclusion to be drawn from this was that Officer BLQ's encounter with Officer BLN the previous afternoon was preying upon his mind and that his lies were premeditated.

8.13 The Commission totally rejects as factually incorrect the submission that, as there was an absence of cross examination of the other witnesses other than Officer BLQ, caution should be exercised in relying upon their evidence. The Commission's report contains details of the evidence given by the witnesses and its analysis. Not one example was provided in support of this sweeping submission made on behalf of Officer BLQ.

8.14 In response to the alternative basis for the Commission finding serious misconduct on the part of Officer BLQ, recited in paragraph 9.3, it was submitted:

- (i) The evidence of Officer BLQ did not support such a finding. That Officer BLQ'S hugging and kissing Officer BLN three times at her home did not suggest any sexual element and that he did not attempt any physical contact than was not appropriate in the circumstances.

- (ii) The criticism of Officer BLQ for not initially disclosing in his evidence to the Commission, that he gave Officer BLN a 'hug' or any physical contact with her, was unjustified and unfair. Officer BLQ's evidence concerning his initial interaction with Officer BLN was not meant to be a comprehensive account and it was he that subsequently volunteered to the Commission that he gave Officer BLN a hug and a kiss. Furthermore, it was submitted that the manner in which he greeted Officer BLN was consistent with the nature of their relationship as friends.
- (iii) The offers of assistance made by Officer BLQ to Officer BLN, were to provide support and advice as a friend. He was not seeking anything in return and that no inference could be drawn from his evidence that he sought to take advantage of Officer BLN by virtue of his seniority in rank.
- (iv) That Officer BLQ's evidence did not support the conclusion that he attempted to take advantage of Officer BLN's emotional state and that he was simply supporting her.

8.15 The Commission rejects the submission(s) that, based upon the evidence of Officer BLQ together with the NSWPF guideline and statement in regard to what behaviour constitutes sexual harassment, it is not open to the Commission to find the behaviour of Officer BLQ constituted sexual harassment and therefore serious misconduct.

8.16 In relation to the second finding of serious misconduct, it was submitted:

- (i) That although Officer BLQ was prepared to show favouritism to Officer BLN, this was a form of *'positive discrimination'* and that he would have shown the same form of favouritism to someone else in her circumstances.
- (ii) Officer BLQ did not have a conflict of interest in advising Officer BLN to sue the NSWPF, this did not amount to serious misconduct, but that even if he did, it would not amount to serious misconduct.
- (iii) No consideration was given by the Commission to the mental health and stress issues Officer BLQ was suffering at the time which may have affected his judgment.

8.17 The term *'positive discrimination'* has been defined as using: *'special measures to foster greater equality by supporting groups of people within society who face, or have faced entrenched discrimination, so*

*that they can have similar opportunities as others in the community.*<sup>231</sup>

The assistance that Officer BLQ was willing to give to Officer BLN, could not have been further from this definition. Rather than provide Officer BLN with the same opportunities as other officers, Officer BLQ's actions demonstrated that he had double standards, one for Officer BLN and one for other injured officers in his command, and he did not want this to become public knowledge. This can be seen from the following evidence given by Officer BLQ to the Commission:

*'I didn't want them (Ms BLP and Officer BLR) to know necessarily the substance (of the conversation with Officer BLN), but I also didn't want them to know that I was giving [Officer BLN] better treatment than I perhaps give other people.'*<sup>232</sup>

And again:

*'In that period of time, my position was that I was actually asking them (Ms BLP and Officer BLR) to do things on a number of other cases (injured officers) where I was taking a fairly hard stance, and my position was because I believed other people's circumstances were different and I have desperately needed positions to be able to do my - to run our command and our position.'*<sup>233</sup>

And again:

*'Q Did you give them (the injury management people) to understand that it was your opinion that managing her (Officer BLN) with a view to removal was inappropriate?*

*A No*

*Q Whereas that was in fact your view?*

*A Yes*

*Q Why didn't you tell them that?*

*A Because it was inconsistent with how I was treating other people.'*<sup>234</sup>

8.18 The Commission maintains its preliminary conclusion that the preferential treatment Officer BLQ showed to Officer BLN was

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<sup>231</sup> <https://humanrights.gov.au>.

<sup>232</sup> Examination BLQ at T29.

<sup>233</sup> Examination BLQ at T32.

<sup>234</sup> Examination BLQ at T37.

contrary to the ethical standards of the NSWPF and constituted serious misconduct.

- 8.19 In regard to the third finding of serious misconduct, namely that Officer BLQ deliberately lied to Ms BLP and Officer BLR, it was submitted that:
- (i) Officer BLQ lied to Ms BLP and Officer BLR to cover up that he was showing favouritism to Officer BLN.
  - (ii) Officer BLQ considered the lies inconsequential. Where he had seen Officer BLN was not important, other than it may indicate he was showing her preferential treatment.
  - (iii) Officer BLQ's mental state at the time was important. He had for some weeks been suffering from 'burnout' and that this would account for his physical presentation and demeanour at the time of his interactions with Ms BLP and Officer BLR on 4 September 2019. He gave evidence as to his state of health and that he had been diagnosed as being unwell.
- 8.20 The Commission rejects the submissions made on behalf of Officer BLQ. For the reasons previously expressed in this report, the Commission regards the lies told by Officer BLQ to Ms BLP and Officer BLR as premeditated.
- 8.21 In cross examination Officer BLQ rejected the proposition that telling lies to the two officers amounted to serious misconduct, or misconduct, preferring to categorise his actions as 'foolish'.<sup>235</sup> He did however agree that his actions were: 'contrary to the ethical standards of the NSWPF which (he) was sworn to uphold'.<sup>236</sup>
- 8.22 The Commission rejects the submission that the lies told by Officer BLQ were inconsequential. The lies were a conscious and deliberate attempt to deceive Ms BLP and Officer BLR in regard to the favoured treatment Officer BLQ was prepared to give to Officer BLN, in contrast to other injured officers. Furthermore, the Commission has concluded that deliberately telling lies was contrary to the NSW Standard of Ethics and Code of Conduct, a situation which was exacerbated by the fact that Officer BLQ was an officer with many years' experience and had achieved a very senior rank.
- 8.23 In regard to the submission that Officer BLQ's mental state was relevant to his motives and reasons for telling lies to Ms BLP and Officer BLR, the Commission accepts Officer BLQ's evidence that he had been under pressure from work demands for some weeks prior

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<sup>235</sup> Examination BLQ at T42.

<sup>236</sup> Examination BLQ at T43.

to 4 September 2019. However, the evidence given by Ms BLP and Officer BLN that through their regular work association with Officer BLQ, his demeanour and physical appearance specifically on 4 September 2019, was contrary to his usual presentation, was not seriously challenged. Of importance, the behaviour of Officer BLQ at the time of his meeting with Ms BLP and Officer BLR at around 7.45 am, when he told the lies to the officers, was to be contrasted with his behaviour when he met with them at around 3 pm. Ms BLP gave evidence concerning Officer BLQ's normal behaviour as:

*'[Officer BLQ] is always a very busy man and always very, very distracted, constantly answering phone calls and emails. So any encounter with [Officer BLQ], you come to expect a lot of interruptions of one form or another.'*<sup>237</sup>

In describing Officer BLQ's behaviour on the morning of 4 September 2019, Ms BLP said:

*'It is not common for [Officer BLQ] to come and – we felt at that time – give us so much of his time. We were quite amazed that we had actually engaged with him for such a long time, at that point feeling like it was a positive.'*<sup>238</sup>

There was nothing in the evidence given by Ms BLP to suggest that Officer BLQ was acting in an erratic or incoherent manner during the morning meeting. Quite the opposite was suggested. This is to be contrasted by Ms BLP's evidence concerning Officer BLQ's meeting at 3 pm:

*'Even with [Officer BLQ]'s normal distractedness, this was like a level of anxiousness or a level of stress where he couldn't form thoughts. I felt like he wasn't forming straight thoughts.'*<sup>239</sup>

The assessment made by Ms BLP of the behaviour of Officer BLQ at the 3 pm meeting was corroborated by the evidence of Officer BLR:

*'...he was like hyped up, like he had had too much sugar. It was an excitable, red-faced, fidgety, can't sit still type of a thing.'*

*Q He was obviously on edge?*

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<sup>237</sup> Examination BLP at T17-18.

<sup>238</sup> Examination BLP at T18.

<sup>239</sup> Examination BLP at T27.

*A Oh, he was – it was like a panic, for want of a better word.*

*Q ...Would you say this was in keeping with his demeanour generally?*

*A No.*<sup>240</sup>

And later in Officer BLR's evidence, the following exchange took place:

*'Q ...How would you describe his speech pattern at the time? Was that normal or abnormal for him?*

*A Very abnormal. He could not structure a sentence.*

*Q Normally he is articulate and fluent?*

*A He is an extremely articulate, intelligent, excellent speaker.*<sup>241</sup>

In the submissions made on behalf of Officer BLQ, the Commission was directed to a passage in the evidence given by Mr BMC, a friend and former commander of Officer BLQ, concerning his observations of Officer BLQ when they met for coffee on 4 September 2019 at around 10.30 am:

*'[Officer BLQ] did seem a little worried, but I'm not sure whether it was about his health or other things at that stage.'*<sup>242</sup>

The above extract omits the preceding exchange between the Chief Commissioner and the witness:

*'Q How did [Officer BLQ] seem, emotionally, during the time you were having this coffee with him, if you can recall?*

*A He seemed OK. I know that he – I'm not sure whether he had started – you know, he has a particular eye condition. I don't know whether that had commenced at that stage.'*

And again, later in Mr BMC's evidence, the following exchange took place:

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<sup>240</sup> Examination BLR at T27.

<sup>241</sup> Examination BLR at T29.

<sup>242</sup> Examination BMC at T8.

*'Q And as you left him, you left without any particular concerns or worries and he hadn't expressed any particular immediate concerns or worries with you, except in the general sense, he was going to maybe have adjustments -*

*A Yes*

*Q ...which might not be easy with a new commander?*

*A You know, look, perhaps there was a level of agitation but not great. I had no concerns about him. It wasn't as if I got back on the phone the next day to make sure he was all right, or anything like that.<sup>243</sup>*

From the evidence given by the above witnesses, the Commission concluded that at the time he told the lies to Ms BLP and Officer BLR on the morning of 4 September, his behaviour was essentially normal, except that he engaged in conversation with the officers for much longer than was his usual practice. There was nothing to indicate that he was suffering from a heightened level of stress or anxiety which may have clouded his judgment or contributed to his decision to lie. This was to be contrasted with his behaviour later that afternoon. The Commission therefore rejects the submission that Officer BLQ's mental state, brought about by work and his health, contributed to his decision to tell lies to Ms BLP and Officer BLQ.

8.24 It was next submitted that no finding of misconduct should be made in regard to Officer BLQ's failure to complete his motor vehicle log book since:

- (i) Officer BLQ did not complete the entries, but his co-ordinator, and that Officer BLQ did not provide the relevant information to him.
- (ii) The co-ordinator was not called to give evidence.
- (iii) It would be unfair to hold Officer BLQ responsible for the diary entries to be accurately recorded.

8.25 The Commission did not make a preliminary finding of misconduct on the part of Officer BLQ in respect of his failure to ensure that accurate information was recorded in his motor vehicle log book. The Commission did not have before it the NSWPF policies and procedures which governed the completion of log books in respect

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<sup>243</sup> Examination BMC at T10.

of vehicles owned by the NSWPF, but regarded the entry into Officer BLQ's log book information that was false, to be unacceptable conduct. The Commission has not made any recommendation in respect of the log book entries and has left the matter for the Commissioner of the NSWPF to take whatever action is deemed appropriate.

8.26 Finally, it was submitted that because of the lack of scrutiny applied to the evidence of Officer BLN, and the potential damage to Officer BLQ's reputation, it would be inappropriate and unfair to Officer BLQ for any further action or for any findings of the Commission to be tabled in Parliament.

8.27 The Commission rejects this submission. The complaint made by Officer BLN against Officer BLQ, which the Commission has found to be made out to the requisite standard under *Brigginshaw v Brigginshaw*, is very serious. The Commission considered that the publication of its report in Operation Coolum should be tabled in Parliament and made public, as it may encourage junior officers to report sexual harassment, particularly where it concerns the conduct of more senior officers, and demonstrate that such complaints will be seriously investigated and have appropriate action taken. In order to preserve the anonymity of the witnesses called to give evidence before the Commission, their names, rank and locations have been given codenames in this report.

## 9. Findings

9.1 In regard to the complaint made by Officer BLN in her statement to police dated 5 September 2019 concerning the alleged behaviour of Officer BLQ when he attended her residence on 3 September 2019, the Commission is satisfied to the requisite standard that Officer BLN's evidence is, in substance, both truthful and reliable and that Officer BLQ did not tell the truth about his physical interactions with her. This conclusion is based on the Commission's view of the manner in which each gave their evidence, the history of the complaints made by Officer BLN and the lies told by Officer BLQ about what happened, which adversely affected his credit to a significant degree, but also demonstrated a consciousness of guilt about what had transpired, which went far beyond merely meeting at Officer BLN's home and a somewhat inappropriate but explicable hug and a kiss.

9.2 By embracing or '*hugging*' Officer BLN and kissing her on multiple occasions despite her attempt to avoid contact, the Commission is satisfied that Officer BLQ, either intentionally or recklessly, acted in contravention of the policies and guidelines of the NSWPF in regard to Respectful Workplace Behaviour, specifically in relation to sexual harassment of staff. Repeatedly patting Officer BLN's buttock and



then attempting to have her sit on his lap was seriously improper. Attempting physically to overcome Officer BLN's reluctance to do so was even more reprehensible. The Commission is satisfied that such conduct constitutes serious misconduct.

9.3 Had the Commission not been satisfied that the evidence of Officer BLN was reliable, as was urged by the legal representatives of Officer BLQ, the Commission would have found the conduct of Officer BLQ, based upon his own evidence of repeatedly hugging and kissing Officer BLN at her home on 3 September 2019, constituted sexual harassment and therefore serious misconduct. As the NSWPF guidelines and statements to which the Commission has already referred in this report make clear, the test as to what behaviour constitutes sexual harassment is an objective one, and is to be viewed having regard to all of the circumstances. In this case, not only was there a power imbalance between Officer BLQ and Officer BLN because of the significant difference in their ranks, which the Commission has already commented upon, Officer BLQ repeatedly offered to provide help to Officer BLN, although precisely what form that might take was not clarified by Officer BLQ, an inference being that he was in a position of influence. The conduct of Officer BLQ is further aggravated by the fact that he was conscious of the fragile emotional state of Officer BLN during his visit to her home.

9.4 Officer BLQ attended Officer BLN's residence as a friend, rather than as her commander. He was prepared to show favouritism to Officer BLN and impart information which he may not or would not ordinarily provide to other officers. This information included advising Officer BLN to sue the NSWPF. The Commission finds that such conduct was in clear breach of the ethical standards enunciated in the NSWPF Statement of Values:

(vii) *'To place integrity above all'*

and the Code of Conduct and Ethics:

(1) *'behave honestly and in such a way that upholds the values and good reputation of the NSWPF...'*

and as such, constituted serious misconduct.

9.5 Officer BLQ engaged in serious misconduct by deliberately lying to Ms BLP and Officer BLR about the location of his meeting with Officer BLN and the conduct of their meeting. The Commission finds that such conduct was in clear breach of the ethical standards enunciated in the NSWPF Statement of Values:

(viii) *'To place integrity above all'*

and the Code of Conduct and Ethics:

- (2) *'behave honestly and in such a way that upholds the values and good reputation of the NSWPF...'*

and as such, constituted serious misconduct.

- 9.6 By failing to ensure that his motor vehicle diary was accurately maintained, Officer BLQ acted contrary to the accepted standards of the NSWPF. Although the Commission does not consider this conduct satisfies the requisite standard for it to constitute serious misconduct, it is nevertheless unacceptable behaviour.

## 10. Affected Persons

- 10.1 The Commission is of the opinion that Officer BLQ 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.

## 11. Recommendations

- 11.1 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 Officer BLQ pursuant to s 181D of the *Police Act 1990*.
- 11.2 The Commission does not recommend that a brief of evidence should be delivered to the Director of Public Prosecutions for consideration as to whether or not Officer BLQ should be prosecuted for offences under the *Crimes Act 1900* NSW of Sexual Touching (s 61K) and Assault (s 61).
- 11.3 The NSWPF has undertaken a review of its policies and guidelines in regard to the steps to be taken by staff when a welfare check is conducted upon an injured officer. Specific consideration has been given to the following:
- the location at which the welfare check is to be carried out, particularly if this is to be at an officer's residence or any other private setting;
  - the circumstances in which a staff member should be accompanied whilst the welfare check is conducted; and
  - the gender of the staff conducting the welfare check, having regard to gender of the injured officer.

**Operation Coolum**  
Report pursuant to s 132  
*Law Enforcement Conduct Commission Act 2016*  
July 2020

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