

OPERATION ERRIGAL

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

JUNE 2019

Office of Commissioner for Integrity

25 June 2019

44509/405

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 Errigal.

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

Yours sincerely



The Hon Lea Drake
Commissioner for Integrity

Encl.

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1 Introduction

- 1.1 The Commission's investigation in Operation Errigal arose from a complaint about the conduct of Superintendent Michael Rowan (**Rowan**), who was Commander of Local Area Command (LAC) X¹ from April 2008 until his suspension in September 2018. The complaint centred around Rowan's alleged personal relationships with staff from LAC X, in particular with Officer E, the Local Area Manager (LAM); Officer A who was a Senior Constable; and Officer B who was a Sergeant, and the impact those alleged relationships had on Rowan's decision-making as a Commander.
- 1.2 Complaints about Rowan's conduct had been investigated previously by the NSWPF. Those investigations and outcomes are summarised below.
 - (a) There was an investigation into an allegation that in October 2010 Officer E was given the benefit of police housing because of her personal relationship with Rowan. Rowan's response was that at the time of allocating the house to Officer E he was not in a relationship with Officer E. This complaint was not sustained.²
 - (b) There was an investigation into an allegation that Officer B was given a temporary appointment pursuant to s67 of the *Police Act 1990* prior to her promotion to the rank of Sergeant because of an alleged intimate relationship with Rowan. This complaint was not sustained.³
 - (c) There had been an investigation into an allegation that a former Inspector, Officer F, had sexually harassed Officer B. In his show cause response Officer F alleged that Rowan was in an intimate relationship with Officer E and Officer B. Officer F had been retired as medically unfit for duty.⁴ These allegations were not investigated.
- 1.3 On 21 March 2018 the NSWPF Professional Standards Command (PSC) commenced an investigation entitled Strikeforce Massingham into various complaints of misconduct concerning Rowan.⁵ PSC identified the issues set out below for investigation:
 - (a) A possible undeclared association between Rowan and Officer A.

¹ Now Police District Y. For the purposes of this report, the Commission will continue to refer to the police district as LAC X. A non-publication order has been made in relation to the location of LAC X.

² See c@ts.i P1303361, 2013.

³ See c@ts.i LMI1401182, 2014.

⁴ See c@ts.i LMI1401302, 2014.

⁵ See c@ts.i P1704188-Strikeforce Massingham.

- (b) A possible conflict of interest which caused Rowan to involve himself in the recording by Officer B of an alleged domestic violence (DV) incident involving Officer A.
 - (c) The creation of a COPS event which did not disclose all the material facts.
 - (d) A failure to follow NSWPF Domestic and Family Violence Standard Operating Procedures (SOPs).
 - (e) A failure by Rowan to declare a conflict of interest regarding his relationship with Officer E.
 - (f) A failure by Rowan to be truthful during internal investigations regarding his relationships with Officer E and Officer A.
- 1.4 On 13 September 2018, the Commission determined to take over the investigation of the outstanding complaints against Rowan. This report sets out the Commission's findings and recommendations arising from the resolution of the outstanding complaints and additional issues arising from the investigation and the conduct of the examinations in Operation Errigal.
- 1.5 The Commission determined that, whilst it was appropriate to provide a report to Parliament, having regard to the provisions of s63(5)(d) of the LECC Act, the identity of Rowan will be disclosed but otherwise the identities of the witnesses and other persons and the location of any police stations, will be suppressed. Accordingly, codenames have been issued for the purposes of this report. There is to be no publication of the actual name of any person referred to in this report except for Rowan.

2 The Commission's Report

- 2.1 This report is made pursuant to Part 11 of the *Law Enforcement Conduct Commission Act 2016* (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*".
- 2.2 Section 133 (Content of Reports to Parliament) provides that:
- (1) *The Commission is authorised to include in a report under section 132:*
 - (a) *statements as to any of the findings, opinions and recommendations of the Commission, and*
 - (b) *statements as to the Commission's reasons for any of the Commission's findings, opinions and recommendations.*
 - (2) *The report must include, in respect of each affected person, a statement as to whether or not in all the circumstances the Commission is of the opinion that consideration should be given to the following:*

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

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

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

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

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

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

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

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

2.3 Part 4 of the LECC Act sets out the functions of the Commission. Pursuant to s29 the Commission may, *inter alia*, make findings and form opinions on the basis of its investigations as to whether officer misconduct occurred and to make recommendations as to whether the advice of the Director of Public Prosecutions should be sought in relation to the commencement of proceedings against particular persons for criminal offences or whether consideration should be given to the taking of action under Part 9 of the *Police Act 1990*. However, the Commission cannot include in a report under Part 11 of the LECC Act a finding or opinion that any conduct of a specified person is officer misconduct unless the conduct is serious misconduct.

2.4 Serious misconduct is defined in s10 of the LECC Act as:

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

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

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

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

(2) In this section:

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

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

2.5 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: s61(a).

2.6 Before expressing any opinion that serious misconduct has, or may have occurred, or that in all the circumstances it is of the opinion that consideration should be given to the prosecution of any person for a specified criminal offence, the Commission should be comfortably satisfied of the relevant facts, applying the civil standard of proof in the manner suggested by Dixon J in *Briginshaw v Briginshaw*.⁶ His Honour said:⁷

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

⁶ (1938) 60 CLR 336.

⁷ Ibid p.361.

- 2.7 Section 143 (Persons to be heard) requires the Commission, before including in a report under Part 11 any comment about a person that the Commission considers adverse, so far as practicable, to inform that person of the substance of the grounds of the adverse comment and give the person an opportunity to make submissions.⁸
- 2.8 The Commission is taken to have complied with s143 if it has held an examination at which the person who is the subject of the adverse comment was informed of the substance of the grounds of the adverse comment and given an opportunity to make submissions.⁹
- 2.9 The Commission provided Rowan and Officer A, through their legal representatives, with a copy of the Commission's draft report and invited them to make submissions in response, which they both did. Reference will be made to those submissions later in the report. The Commission considers that it has complied with s143 of the LECC Act.

3 Background

- 3.1 On 27 February 2017, police officers from Police Station Z responded to a call from Civilian 1, Officer A's de facto partner, to "*come quick*". Senior Constables Officer G and Officer H attended their address, where a DV incident was alleged to have taken place between Officer A and Civilian 1. Officer I, who was a Sergeant, also attended the scene but stayed outside in his vehicle. The police officers found Civilian 1 visibly upset. During his interaction with the police officers Civilian 1 asked whether Officer A would lose her job if he reported that she had assaulted him. He also told Officer H that, on learning that he had called the police, Officer A said "*I might as well get my gun and shoot myself*". Officer H recorded this comment in her notebook.
- 3.2 Officer G and Officer H returned to Police Station Z and, in accordance with station policy, Officer G commenced placing the event on the NSWPF database known as COPS. Officer I then informed Officer G that the matter would be taken over by Officer B, who was the acting Duty Inspector. Records provided by NSWPF confirm that Officer G commenced recording the event on COPS but later deleted it.
- 3.3 Officer J, a Sergeant of Police Station Z was the day to day supervisor of Officer G and Officer H. He was on leave on the day that the DV incident took place. He returned to duty on 13 March 2017, 2 weeks after the incident. As was the usual practice, he was updated by Officer I about relevant events that had taken place during his leave, including the DV incident involving Officer A.
- 3.4 On her return Officer H informed Officer J that she did not have an event number to acquit her notebook entry in relation to the event. She expressed her concern that the matter may be "*swept under the carpet*" as Officer B was a personal friend of Officer A and Rowan. She said this

⁸ LECC Act, s143(1).

⁹ LECC Act, s143(2).

because staff in LAC X were aware of rumours circulating about a relationship between Officer A and Rowan. Officer H did not wish to look up the event on COPS. Officer J accessed the COPS event and gave the number to Officer H.

- 3.5 Officer J became concerned that the event narrative did not reflect what he had been told about the incident. In particular, there was no mention of any self-harm threat by Officer A or the possible assault of Civilian 1 by Officer A. Officer J reported his concerns to an Inspector named Officer D, who was stationed at LAC X.
- 3.6 Officer D then raised a complaint against Officer J for unlawfully accessing the COPS event. That complaint was investigated by Officer C, an Inspector who was the Crime Manager. The complaint against Officer J was sustained and Officer J was issued with a Commander's Warning Notice by Rowan.¹⁰ Officer J's concern about the inaccuracy of the COPS event was not investigated by Officer C.
- 3.7 Officer J requested a review of the investigation. The review was carried out by Officer K, an Inspector from PSC. Officer K determined that the complaint against Officer J should not have been sustained and that PSC should consider investigating the other issues raised by Officer J. Officer K's review was itself reviewed by Officer L, an Inspector from PSC, who did not agree that the sustained finding against Officer J should be overturned. However, he did agree that Officer J's report should be considered a complaint. As a consequence, on 21 March 2018, PSC commenced Strikeforce Massingham.¹¹ An Inspector, Officer M, was assigned to that investigation.
- 3.8 On 7 May 2018, Rowan was transferred to Goulburn, pending the outcome of the PSC investigation.
- 3.9 On 16 July 2018, Officer A was issued with a Commander's Direction by Superintendent Officer N, directing her not to contact or communicate in any way with Officer B or Rowan without the prior approval of the Commander, Investigations and Field Services, PSC.¹²
- 3.10 On 7 August 2018, Rowan was issued with a Commander's Direction by Officer N, directing him not to contact or communicate in any way with Officer B or Officer A without the prior approval of the Commander, Investigations and Field Services, PSC.
- 3.11 On 13 September 2018 the Commission determined to take over the investigation of the outstanding complaints against Rowan.
- 3.12 Although this had the effect, under s44(7) of the LECC Act, of requiring the NSWPF to discontinue its investigation, the Commander's Directions issued by Officer N remained in force.

¹⁰ See c@ts.i P1701242.

¹¹ See c@ts.i P1704188.

¹² Exh BIM2C.

4 The Commission Investigation

- 4.1 The Commission decided to hold examinations in Operation Errigal and, because of the nature of the allegations, and after taking into account the factors set out in s63 of the LECC Act, decided that the examinations would be held in private.
- 4.2 The following witnesses were called to give evidence in private examinations before the Commission:
- (a) Officer B,
 - (b) Officer C,
 - (c) Officer D,
 - (d) Officer A, and
 - (e) Superintendent Michael Rowan.
- 4.3 Examinations took place between 17 and 19 December 2018. After receiving additional information following the conclusion of those private examinations, the Commission recalled Rowan and Officer A for further examination on 22 January 2019.
- 4.4 The general scope and purpose of the private examinations was to determine whether:
1. *Superintendent Michael Rowan or any other NSW police officer engaged in serious misconduct arising from a domestic violence incident involving [Officer A] on 27 February 2017.*
 2. *Superintendent Michael Rowan or any other NSW police officer engaged in serious misconduct in relation to a NSW Police Force investigation, which involved [Officer J's] access to the COPS event recording the domestic violence incident on 27 February 2017.*
 3. *Superintendent Michael Rowan engaged in any other serious misconduct in relation to the discharge of his duties as a NSW police officer.*

5 Evidence and Relevant Findings

- A.1 Did Rowan have an undeclared conflict of interest in relation to Officer E when police housing was allocated Officer E in October 2010?
- 5.1 It was alleged that Officer E was granted police housing by Rowan because of his relationship with her. She occupied that house in October 2010. In 2013, Rowan was the subject of an investigation regarding the allocation of this police housing to Officer E.
- 5.2 On 16 October 2013, in response to a Directive Memorandum, Rowan informed the investigator that Officer E was the ultimate beneficiary of the

police housing because her “...*circumstances were far more compelling than [sic] those of the other two applicants*”. He also stated that “*I had and still maintain a close friendship with [Officer E].*”

- 5.3 Rowan also pointed out in his response to the Directive Memorandum that the matter had already been raised in 2011 with Officer O, an Assistant Commissioner. As a result he was informed that he was in breach of a policy, of which he was unaware, and he was informally counselled. Rowan’s decision to grant Officer E the housing was not rescinded and the matter was concluded. Rowan stated that he still stood by his decision.
- 5.4 In a record of interview on 11 October 2013 Rowan was asked whether, at the time of making the decision to allocate the house to Officer E, he was involved in a personal relationship with Officer E that extended beyond the workplace. Rowan replied that he was not.
- 5.5 Rowan’s evidence before the Commission was that his friendship with Officer E commenced “...*probably 2009, 2010 was the friendship*”. It progressed into an intimate relationship in the “*latter part of 2011*”.¹³
- 5.6 In 2012 Officer E and Rowan had commenced an intimate relationship. At the examination before the Commission Rowan was referred to the following relevant sections of the 2012 conflicts of interest policy:

*Conflicts of interest are a major risk to the NSW Police Force. You are expected to report all conflicts of interest that you cannot avoid and participate in their resolution or management. The NSW Police Force expects all employees to take personal responsibility for their actions.*¹⁴

*Where a conflict of interest arises you are required to put the public interest before your private interests, whether on or off duty.*¹⁵

High risk situations which may result in conflicts of interest-

- ***Managing staff (eg. developing a relationship with another staff member)***¹⁶
- *Investigating employees known to you (eg. investigating a friend)*¹⁷

*Managing conflicts of interest is a shared responsibility that requires the NSW Police Force and affected employees to work together to identify and implement strategies to resolve the conflict. A failure of either party to appropriately contribute to the management of a conflict of interest is a potential misconduct issue that may result in management action, including removal/dismissal from the NSW Police Force.*¹⁸

¹³ Transcript of private examination of Rowan, 19 December 2018, p. 67.

¹⁴ PSC, NSWPF- Procedures for Managing Conflicts of Interest, July 2012, p. 6.

¹⁵ Ibid p. 8.

¹⁶ The Commission’s emphasis.

¹⁷ Ibid p. 12.

¹⁸ Ibid p. 17.

- 5.7 Rowan was asked whether, given the seniority of their respective positions, he should have notified a conflict of interest in relation to Officer E. He initially said no. However, when questioned about the application of the 2012 policy, he responded as follows:¹⁹

"I think in seeing that, as I said before, my view is the reiterations of that policy and I think that in December 2017, with the last of that policy, I would have had an obligation to report. I don't believe that I had an obligation to report before then."

- 5.8 Officer D gave evidence that there was a "*strong rumour*" about Rowan's relationship with Officer E. He stated that Rowan had never informed him that he was in a relationship with Officer E but that he had concluded that he was.²⁰ He was asked:²¹

Q: *Do you believe that that's something as the local area commander he should have declared given that she was a local area manager, as a potential conflict of interest?*

A: *Yes. I'm not sure – again, you'd have to ask him, but I'm not sure whether he did or didn't.*

Q: *Do you think if he hadn't whether he should have?*

A: *It would have been prudent, I think.*

Submissions in Response A.1

- 5.9 Rowan's legal representative submitting that during the examination, Rowan was referred to the 2012 version of the Commission policy with respect to declaring conflicts of interest and not to an earlier version. The decision relevant to the allegation occurred in 2010. In those circumstances, it was submitted that a finding that Rowan should have declared a conflict of interest in 2010 is "*questionable*" and "*unable to be maintained and/or found*".

Finding Question A.1

- 5.10 Rowan's evidence before the Commission was that, following on from a close friendship which developed in 2009, Rowan and Officer E commenced an intimate relationship during the latter part of 2011. Unsurprisingly, that relationship was the subject of gossip and conjecture in the workplace. The Commission is aware that distasteful jokes regarding the relationship were commonplace.
- 5.11 An internal police investigation into Rowan's 2010 decision to allocate police housing to Officer E over other applicants was conducted in 2013. There were no sustained findings.

¹⁹ Transcript of private examination of Rowan, 19 December 2018, p. 68.

²⁰ Transcript of private examination of Officer D, 18 December 2018, p. 33.

²¹ Transcript of private examination of Officer D, 18 December 2018, p. 35.

- 5.12 The investigation referred to the NSWPF “Employee Housing Manual” which set out the corporate guidelines regarding the allocation of police residences. It stated that *“the authority for allocating residences rests with the LAC Commander”*. That document also stated that allocation would generally be on a first come first served basis but that Commanders could also consider special and extraordinary circumstances. There was no requirement to allocate houses with priority to sworn staff over unsworn staff.²²
- 5.13 The Commission finds that it was reasonably arguable that the merit of the allocation was with Officer E. It was an outcome open to Rowan in the exercise of his discretion. Whilst there may have been a breach of the applicable policy because the LAC Commander had not declared his close friendship with Officer E, there was no serious misconduct involved in that decision.
- 5.14 At the time the housing allocation was decided, it would have been preferable if Rowan had, in accordance with policy, declared his friendship with Officer E so that any decision-making by him was transparent and untainted by innuendo.
- 5.15 The Commission finds that Rowan’s failure to declare his friendship with Officer E at the time of the allocation of police housing was a management decision which exhibited poor judgement and affected the reputation of the NSWPF.
- 5.16 However, the Commission is satisfied that Rowan’s failure to declare his friendship with Officer E at that time was not serious misconduct.
- A.2 Did Rowan have an undeclared conflict of interest in relation to Officer E when their friendship developed into an intimate relationship in 2011?**
- 5.17 After his friendship with Officer E developed into an intimate relationship, even if Rowan determined that the relevant policy did not oblige him to declare the nature of his relationship with Officer E, ordinary commonsense and appropriate, sensible management of an intimate relationship between a LAC Commander and a LAM required disclosure to a more senior officer. To continue to act in any decision-making process when there is an undeclared conflict of interest involved must be unethical.
- 5.18 The existence of an intimate relationship can only be the subject of speculative gossip if it is not acknowledged. The failure to declare such a relationship will give rise to an inevitable lack of trust within a command. Officers will question the motivation of decisions made by the relevant officer because of the lack of a candid disclosure in accordance with policy.
- 5.19 For a LAC Commander the required standard of compliance with policy must be high. The policy is clear. The LAC Commander and the LAM were managing staff. Rowan was interacting with Officer E in a management role. The relationship should have been declared.

²² See c@ts.i P1303361- Investigator's Report-Evidence Based, p.3.

Submissions in Response A.2

- 5.20 Rowan's legal representative submitted that a finding of serious misconduct could not be made as it was not until December 2017 that the matter was clarified as supported by Rowan's evidence.²³ It was submitted that the change in policy in December 2017 "*clarified this aspect whereby a requirement that reporting be made concerning interpersonal relationship be noted as well as a further amendment to include relationships which had not previously been recorded.*" Further, it was submitted that by 2017 the relationship was over and that there was no "*requirement incumbent upon Rowan to make such a declaration at any material point in time where the policy so required it*". Thus there could be no finding by the Commission that Rowan's failure to declare a conflict of interest arising from his relationship with Officer E was serious misconduct as "*the relationship had ceased before it became temporally relevant to report*".

Finding Question A.2

- 5.21 The Commission finds that the failure of Rowan to comply with policy and declare a conflict of interest arising from his intimate relationship with Officer E was serious misconduct.

A.3 Did Rowan deliberately mislead the investigator in the internal police investigation of his conduct in providing housing to Officer E?

- 5.22 During the internal police investigation, Rowan stated that "*I had and still maintain a close friendship with [Officer E].*"
- 5.23 The Commission is satisfied that Rowan's response to the investigation was not candid.
- 5.24 The Commission has no basis on which to question Rowan's assertion that he was only a friend to Officer E at the time of his decision to grant the housing to her in 2010. However, he was on the cusp of a more intimate relationship with Officer E and, at the time of the investigation in 2013, he had been in an intimate relationship. He should have owned it. Their relationship had been more than the "*close friendship*" he declared during the investigation. His failure to be candid concerning this intimacy calls into question his evidence on other issues. It was unethical.

Submissions in Response A.3

- 5.25 Rowan's legal representative submitted that Rowan maintains that he answered the question as to whether he was in a relationship with Officer E in 2010 truthfully, as at that time he was not in a relationship with her. He also answered the question truthfully when questioned during the 2013 investigation as to whether he was in a relationship with Officer E in 2010. Rowan did not agree with comments made in paragraph 5.24 of the Report and submitted that "*There is no basis in law for a serious misconduct finding arising from Rowan's response in the 2013 investigation.*"

²³ See transcript of private examination of Rowan, 19 December 2018, p. 68.

Finding Question A.3

5.26 The Commission is satisfied that Rowan's failure to frankly describe his relationship with Officer E in the course of the internal police investigation was deceitful. The Commission finds that this failure amounted to serious misconduct.

B. At the time of the alleged domestic violence incident between Officer A and her partner, did Rowan have an undeclared conflict of interest in relation to Officer A?

5.27 Rowan's evidence was that he had more than 30 years' experience as a police officer. He was aware of the Code of Conduct and Ethics. He was familiar with the 2017 Conflicts of Interest Policy. He was less familiar with the previous policy dated 2012. He understood that if he were having a relationship with a police officer who was under his command, he had a duty to declare that conflict of interest.²⁴

5.28 Rowan was referred to the NSWPF Conflicts of Interest policy dated July 2012. He gave the following evidence:²⁵

Q: *From reading that, what would your understanding be if, for example, you had developed a relationship with another staff member, be it intimate or non-intimate? What is your understanding of the requirements under this policy?*

A: *Well, this one talks about if you develop a relationship with another staff member it may result in a conflict of interest, and the second aspect is investigating employees known to you, e.g. investigating a friend; so you would not investigate a friend.*

...

Q: *So if you were having a relationship with a police officer who was under your command, do you understand that you had a duty to declare that conflict of interest?*

A: *Yes, I do.*

5.29 At the examination the Commission had before it the call charge records of Rowan and Officer A for the period October 2016 to March 2017. Over that 6-month period Rowan initiated 86 communications to Officer A, most of which were texts. Over that same period, Officer A initiated 106 communications to Rowan, most of which were also texts.

5.30 Rowan was questioned about his email and phone contact with Officer A. It was suggested to Rowan that this level of contact was unusual. Given the difference in their rank and that Officer A worked in a different police station, there could be no reason for them to be discussing work-related matters.

²⁴ Transcript of private examination of Rowan, 19 December 2018, p. 14.

²⁵ Ibid p. 13-14.

- 5.31 Rowan gave evidence that he became friends with Officer A sometime in 2017. At the time of the call charge records shown to him he would not have said that they were friends.²⁶ He agreed that they did not have any operational matters in common.²⁷
- 5.32 The Commissioner asked Rowan a series of questions about the frequent texting between himself and Officer A. Rowan stated that the contact related to welfare matters and that he was “*genuinely concerned for [Officer A]*.”²⁸ Officer A’s evidence was that she had had significant professional and personal difficulties arising out of a false accusation made against her.
- 5.33 The Commissioner asked Rowan whether it would have been preferable for another Officer, such as Officer P, a female police officer senior in rank to Officer A, or Officer A’s local Sergeant, to have been tasked with managing Officer A’s welfare. He responded that he did not do that.²⁹
- 5.34 The Commissioner asked Rowan whether, as the Local Area Commander, there were substantial management risk factors in his conduct:³⁰
- A: *Painting it like that, I see where you’re coming from, but at that time I didn’t- I didn’t consider that.....I was concerned for her.*
- 5.35 Rowan’s contact with Officer A included on one occasion going alone to Officer A’s hotel room after a work function, at her invitation, to “*have a beer*”.
- 5.36 Officer A was asked a series of questions about this occasion: ³¹
- Commissioner:
- Q: *We’re asking you how you came to be at [Hotel 1] and how Mr Rowan came to meet you there. Could you explain that?*
- A: *Oh, for sure. So there were text messages exchanged, I possibly texted him and I suggested to have a beer after the function.*
- Ms Raice:
- Q: *So you were at the function together?*
- A: *He left.*
- Q: *So he has left the function?*
- A: *Yes*

²⁶ Ibid p. 25.

²⁷ Ibid.

²⁸ Ibid p. 33.

²⁹ Ibid.

³⁰ Ibid.

³¹ Transcript of private examination of Officer A, 18 December 2018, p. 28.

Q: *And then when you're leaving the function you've texted him and asked him to join you at the hotel for a beer?*

A: Yes

Q: *Was it in your hotel room?*

A: Yes.

Q: *Or in the bar. Was it just a beer that you had?*

A: Yes.

Q: *You don't see anything unusual about a commander coming to join a senior constable in a hotel room after a work function?*

A: No.

Q: *You don't see that that could give rise to speculation about the nature of your relationship?*

A: I do, yes. I do see how it is perceived, yes.

Q: *And you still say that there was nothing sexual between you and Officer Rowan?*

A: Yes.

5.37 Despite this unusual contact Rowan denied that he and Officer A were in an intimate relationship. He said that they were friends.

5.38 Rowan's evidence was that he did not declare a conflict of interest in relation to Officer A as they were not in an intimate relationship.³² He conceded that, given the rumours concerning their relationship which were circulating at the time, it was unwise of him to have gone to Officer A's room for a beer.

5.39 Rowan gave evidence that during an investigation in 2014 involving Officer B, he formally declared a conflict of interest with respect to her.³³ His explanation as to why he declared a conflict on that occasion was:³⁴

Q: *On that occasion, why did you believe that there was a possibility or a potential for conflicts of interest?*

A: *The involved officer in that inquiry had made an assertion that he believed that I was in a relationship or having some sort of relationship with [Officer B].*

³² Transcript of private examination of Rowan, 19 December 2018, pp. 36-37.

³³ See c@ts.i LMI1401302, 2014.

³⁴ Transcript of private examination of Rowan, 19 December 2018, p. 15.

Q: *Were you in a relationship with [Officer B], be it a friendship or an intimate relationship?*

A: *I definitely did not have an intimate relationship but she's an officer that I've known for many, many years and I would have classed her as a friend".*

5.40 When asked why he distinguished between Officer A and Officer B when declaring a conflict given that he was friends with both of them, Rowan responded that although he was friends with both officers he only declared his conflict with Officer B as it had been *"flagged... by the involved officer."*³⁵ He stated: *"I just don't believe that my circumstance and friendship with [Officer A] I was obliged to report."*³⁶

5.41 Rowan gave evidence that following a police function in August 2016, he was approached by Officer D and asked outright whether he was in a relationship with Officer A. He replied he was not. Following that interaction he decided to put an arrangement in place with Officer D regarding Officer A. He gave the following evidence:³⁷

A: *I said to him [Officer D], "If anything comes through for [Officer A], as opposed to me dealing with it can you deal with it?" So it would be at arm's-length from me.*

Q: *So you recognised that in August 2016 that there needed to be an arm's-length-*

A: *It seemed to me that there was a perceived conflict.*

Q: *So you recognised that in August 2016, that there was a perceived conflict?*

A: *It seemed to be that people were making these allegations about that.*

5.42 No formal arrangement was put in place with Officer D, nor was there any record created of any such arrangement.

5.43 Rowan gave evidence that he visited Officer A at her parents' home on the morning after the DV incident in order to check on her welfare. He said that they did not discuss the DV incident as he was only concerned with her welfare. He said that he undertook to organise some rotations to LAC X, which amounted to a secondment for 12 weeks, by which time the investigation of the DV incident would be hopefully completed.³⁸ Rowan was asked about this conversation with Officer A: ³⁹

³⁵ Ibid p. 38.

³⁶ Ibid p. 38.

³⁷ Ibid pp. 39-40.

³⁸ Ibid pp.46-47.

³⁹ Transcript of private examination of Rowan, 19 December 2018, pp. 47-48.

- Q. *You mentioned earlier, and we've talked about this, that you had accepted that there should be an arm's-length between yourself and [Officer A] involving any decisions concerning her?*
- A. *Yes.*
- Q. *Yet, in this conversation with her you've pretty much told her that you were going to organise something on her behalf?*
- A. *Yes.*
- Q. *Did it occur to you that given the conflict of interest, it may be better that somebody else had that conversation with her and make that kind of decision regarding her?*
- A. *I just - well, no, to answer your question, I didn't consider that. I just undertook that I would do that, to make the arrangements to have that rotation, and I came back and I spoke to [Officer C] about that decision.*
- Q. *But by that stage she was a close friend of yours?*
- A. *No, not in - not at that point.*
- Q. *In February 2017 - you have already given evidence that you would say in about January/February 2017 you were close friends. Are you now changing that evidence?*
- A. *The evidence - and if I have misled, I'm sorry - my view was that post that February 2017, throughout 2017, the friendship developed, for want of a better term. At this point, I didn't think that it was - certainly it wasn't the friendship as it developed, I suppose over the period of time.*
- Q. *And yet, in the middle of 2016 there were rumours about you and [Officer A]; correct?*
- A. *Yes.*
- Q. *Well, there must have been reasons that there were such rumours in terms of you must have been having contact with [Officer A] that was seen as something beyond a commander/senior constable relationship?*
- A. *I have nothing to offer there. I just didn't see that, to be honest.*
- Q. *You don't see anything in your conduct in 2016 that would have given rise to those rumours?*
- A. *No.*

5.44 Officer A was given the opportunity to give evidence regarding her relationship with Rowan whilst all persons were excluded from the hearing room except those officers of the Commission directly involved in the examination. She availed herself of that opportunity. She refused the use of a transcript-in-confidence.

5.45 Officer A's evidence was that she has had 13 years' experience as a police officer during which she has been stationed in the LAC X. Rowan has been her Commander for a significant part of her policing career.

5.46 She described her relationship with Rowan as follows:

*"He's my boss. In the last 3 years my life in [LAC X] has been hell. I've been subjected to numerous complaints and he [Rowan] has been my only support."*⁴⁰

5.47 Later in her evidence Officer A described Rowan as a friend. She communicated with Rowan via text messages and through *WhatsApp* but maintained that all such contact was work or welfare related. Officer A corroborated Rowan's evidence that they were not in an intimate relationship.

5.48 Officer A was asked the following:⁴¹

Q: *At the time of the domestic violence incident you would consider yourselves as having been close friends?*

A: *Yes.*

Q: *In those circumstances, do you think it was appropriate that Superintendent Rowan was overseeing the investigation of the incident rather than someone outside of the command or somebody else?*

A: *I'm not sure if he was the overseer. I'm not sure if it was looked at by other parties other than him.*

Q: *Do you think in those circumstances he should have declared a conflict of interest?*

A: *I'm not sure how - I'm not sure how the conflicts work. I'm not sure if he already has. I don't know.*

Q: *Are you saying you don't understand how the conflict of interest works?*

A: *I think conflicts work if there's some sort of relationship.*

Q: *When you say relationship, what do you mean by relationship?*

A: *I'm talking intimate relationships.*

⁴⁰ Complaint alleging Officer A involved in drug supply. Not sustained after full investigation.

⁴¹ Transcript of examination of Officer A, 18 December 2018, pp. 29-30.

Q: *So you don't think being close friends with a Commander who has a lot of not just influence but has the ability to make decisions about somebody's promotions or work placement could lead to a conflict of interest or perceived conflict of interest?*

A: *I'm not sure.*

- 5.49 After further questioning by the Commissioner, Officer A confirmed that, in her opinion, her friendship with Rowan was not one which would cause him to have a conflict of interest when dealing with her personal matters.⁴²

Submissions in Response B

- 5.50 Rowan, through his legal representative, maintained that contact with Officer A was only welfare-related. The Hotel 1 incident took place in early 2018 and not as inferred in the Report that it took place in 2016 or 2017. Rowan acknowledges that he had a friendship with Officer A and that he was *"a mentor and support person of an officer in whom he had an abiding and genuine interest concerning her and her children's welfare in what he regarded was pressing and distressing circumstances that she was being subjected to in her employment."*
- 5.51 Rowan denied any intimate relationship and any finding of serious misconduct on the basis of this denial by Rowan is not able to be drawn and/or made out on the material before the Commission.
- 5.52 It was also submitted that the Commission has ignored the evidence of Officer B⁴³ who when asked about the relationship between Rowan and Officer A stated *"...because I honestly couldn't see how they'd have time or how he could develop a relationship or an ongoing affair with [Officer A]"*.
- 5.53 Rowan maintains that any undeclared conflict of interest was non-existent and disputes any such finding, if made.

Finding Question B

- 5.54 Rowan and Officer A's evidence was that they became friends in early 2017, and that friendship, and only that friendship, continues.
- 5.55 Rowan was unable to explain the frequency of contact by telephone calls and texts between himself and Officer A in 2016. Despite the welfare support identified by Officer A as having been provided by Rowan, the level of contact between a Commander and Senior Constable for that purpose is unlikely.
- 5.56 In any event, it was not an explanation provided by Rowan for the level of contact in 2016.

⁴² Transcript of examination of Officer A, 18 December 2018, p. 30.

⁴³ Transcript of examination of Officer B, 17 December 2018, p. 29.

- 5.57 Rowan agreed that, as Superintendent, he would have had very little reason, if any, to have direct contact with Officer A with respect to work-related matters and there is, therefore, no other explanation except a personal relationship for the extent of their telephonic communications in 2016.
- 5.58 The explanation of the meeting of Rowan as Local Area Commander and Officer A as a Senior Constable in 2018 *"for a beer"* in her hotel room is not credible. According to Officer A, Rowan had already left the function but returned at her request for a beer. Even if the Commission accepted that that was a truthful account of what took place, which it does not, that behaviour could hardly have been appropriate management conduct by a Superintendent of a junior officer, taking into account the possible reputational damage to the NSWPF or the reputation and welfare of the junior officer who that Superintendent had already acknowledged had welfare issues.
- 5.59 The relationship between Rowan and Officer A was inevitably the source of speculation within the command. Speculation about this relationship in combination with speculation concerning the LAM and Rowan was an inevitable and damaging distraction for the command.
- 5.60 Officer D raised with Rowan the issue of his relationship with Officer A in 2016. No matter how inattentive to policy Rowan had been until that time, he should, as Superintendent, have been alerted to the issue. He should have then declared a conflict or distanced himself from Officer A. This was an obligation arising from his rank but he failed to do so. He should have done this to comply with policy but also, if he was indeed a friend of Officer A, to protect her, as a junior officer, from damaging gossip.
- 5.61 Rowan acknowledged that, when he became aware that there was a perception of conflict, he created an informal arrangement with Officer D to deal with matters involving Officer A. His obligation was not to make discrete informal arrangements in relation to Officer A, but to make a declaration of conflict in accordance with policy. Rowan was aware of his duty to declare a conflict of interest. He had declared a conflict with respect to Officer B. The explanation he provided for failing to do so with respect to Officer A was that he did not think the circumstances required it.
- 5.62 The Commission rejects this explanation. The Commission is satisfied and finds that Rowan did not declare a conflict in this circumstance because he actually had a conflict which would have been inconvenient and damaging to declare.
- 5.63 Rowan and Officer A shared a hotel room for a number of hours on the evening following Officer A's evidence before the Commission and before Rowan gave his evidence to the Commission. This conduct will be discussed later in the report.
- 5.64 The Commission does not accept the evidence of Rowan and Officer A that their relationship has been limited to a close friendship or that it commenced in 2017.

5.65 The Commission is satisfied that Rowan had an undeclared conflict of interest arising from his association with Officer A and that his failure to declare that association in accordance with policy was a deliberate failure. The Commission finds that this failure was serious misconduct.

C. Did Rowan improperly intervene in the alleged domestic violence incident investigation conducted by Officer B?

5.66 Officer B's evidence was that she knew Rowan prior to her transfer to LAC X. She had met him as a result of her close friendship with Officer E. She had also trained at the same gym as Rowan and had become closer to him through that contact. Her relationship with Rowan did not extend beyond friendship. It was never intimate.

5.67 At the time of the DV incident Officer B was relieving Duty Officer at the rank of Acting Inspector. She was tasked to investigate the incident. Officer B knew Rowan was "*friendly*" with Officer A but had no concerns about being able to properly investigate the incident.

5.68 Officer B was told that Officer A had made a self-harm threat. As a result she decided that Officer A's firearm should be locked up pending the outcome of the investigation. She informed Officer I that Officer A's firearm should be secured. Rowan, who was aware that the incident involved Officer A, told her to "*hold off*" until she had interviewed the parties involved and she had more information about the incident.

5.69 Officer B spoke to Officer A about the incident. She denied the self-harm threat had been made. Officer B spoke with Civilian 1. He refused to tell her anything about the incident.

5.70 Officer B had not been involved in a DV incident involving a police officer before. As her Commander, she looked to Rowan for advice and guidance. Rowan instructed Officer B to wait until the next day to create the relevant COPS event. She considered that this was unusual as it was protocol to record a DV incident by the end of the relevant shift, particularly if there were children involved. However, Rowan was adamant concerning this instruction and, as he was her Commander, she complied with his request.

5.71 The following morning, Rowan stood behind her when she was creating the event. She started to detail the self-harm threat. Rowan then questioned her about why she would mention that in the report. He told her it was not relevant and not to put it in. She complied.

5.72 Officer B's evidence was that she subsequently consulted Officer P about the details recorded in the event because she felt that the self-harm threat should have been recorded.

5.73 That Inspector agreed that it should not go in as it was "*personal*" and it was not verified because Civilian 1 had refused to make a statement to police about the DV incident.

- 5.74 Rowan's evidence was that he did not recall standing behind Officer B whilst she created the COPS event about the DV incident. He stated that he reviewed the event after it was created for the purpose of determining "*whether it was as had been outlined to me by [Officer B]*". Rowan asserted that he had no recollection of any self-harm threat and that that information was not relayed to him by Officer B.⁴⁴ He had no knowledge of the self-harm threat until he saw it mentioned in Officer C's report, which was drawn to his attention during the examination.
- 5.75 Officer A's evidence was that she did not attempt to influence Rowan with respect to the DV incident investigation nor did she have any input into what was recorded in the COPS event narrative.

Submissions in Response C

- 5.76 Rowan's legal representative submitted that Rowan's confirmed view was "*that the process of entrusting the seizure of the firearm to [Officer I] was misconceived*" and that he should not have been making that decision. It was more appropriate for an Inspector to have carriage of the matter.
- 5.77 It was submitted that Rowan does not accept a finding that he influenced the recording of the event and thus engaged in serious misconduct.

Finding Question C

- 5.78 The Commission accepts Officer B's evidence regarding the creation of the COPS event recording the DV incident and Rowan's intervention. The Commission is satisfied that Rowan influenced Officer B to make no reference to the self-harm threat by Officer A in the record of the event.
- 5.79 It is obvious that such a threat should have been recorded, whether it was an "*off the cuff*" statement or not. This event occurred at a time when Rowan was, on his own evidence, concerned for Officer A's welfare and she had ready access to a firearm.
- 5.80 In addition, Rowan should have had no involvement in the investigation given his relationship with Officer A.
- 5.81 Even if there had been no relationship, except a professional one between Rowan and Officer A, it would still have been inappropriate for him to proffer that advice to Officer B.
- 5.82 At the time of the DV incident Rowan had already recognised that he should not have anything to do with any matter involving Officer A, as evidenced by the informal arrangement he had entered into with Officer D.
- 5.83 Notwithstanding this insight Rowan interfered in the investigation by directing Officer B, a friend, not to record the self-harm threat. On balance, the most likely explanation is that Rowan did so to protect Officer A.

⁴⁴ Transcript of private examination of Rowan, 19 December 2018, pp. 61-62.

- 5.84 The Commission finds that Rowan's conduct in improperly influencing Officer B's recording of the DV event was serious misconduct.
- D.1 Did Rowan make contact or attempt to make contact with Officer B contrary to Officer N's Direction?
- D.2 Did Rowan, by his contact with Officer B, attempt to intimidate Officer B?
- 5.85 The substance of Officer N's Direction to Rowan of 7 August, 2018 is set out below:
- "...not to contact or communicate in any way with any person you believe may be a subject officer in the current Professional Standards Command investigation for which you are also a subject officer, without the prior approval of the Commander, Investigations and Field Services Professional Standards Command. Contact includes via telephone, emails, SMS, chat rooms or social network sites. These people include:*
- *[Officer B]*
 - *[Officer A]."*
- 5.86 Officer B's evidence was that, after the commencement of the PSC investigation and the Commander's Direction, Rowan continued to frequent the gym where they both trained.
- 5.87 On 20 August 2018, he sat on the bike directly in front of her, even though there were spare bikes available which were further away. She moved to another bike. She stated that Rowan had one particular bike at the gym which he preferred, and that was the bike he chose on that occasion. Notwithstanding his preference, she said that she formed the view that Rowan sat deliberately directly in front of her to send her a message that *"he's not going anywhere"*.⁴⁵
- 5.88 Officer B stated that on another occasion, a friend of hers had borrowed her car to drive to the gym. Rowan parked next to the car. Her friend noticed that Rowan was waiting next to the car when she left the gym. He left when he saw Officer B's friend. Otherwise she has had no other contact with Rowan.
- 5.89 Rowan was asked whether he had had any contact in person or otherwise with Officer B, following the issue of Officer N's direction of 7 August 2018. His evidence was that he had had no contact since being issued with that direction.⁴⁶ When asked about the bike incident Rowan denied that he intentionally sat in front of Officer B. He stated that he had no recollection that Officer B was behind him when he used the bike and he confirmed that *"I use the same bike at the gym all the time"*⁴⁷ and that the only time he would not use that particular bike would be if someone else was using it. He stated that he frequented the gym at least two or three times a week.

⁴⁵ Transcript of private examination of Officer B, 17 December 2018, p. 69.

⁴⁶ Transcript of private examination of Officer B, 17 December 2018, p. 58.

⁴⁷ Transcript of private examination of Rowan, 19 December 2018, p. 17.

5.90 The Commissioner asked Rowan the following questions:⁴⁸

Q: *How many gyms are there in [the local area]?*

A: *I suppose probably at least three or four, maybe five.*

Q: *Do you not think that given that there was a direction of the kind we've referred to, that it would be more strategically probably appropriate to use another gym so that contact would be minimized, the possibility of contact.*

A: *I hadn't thought of that, to be honest. I was attending the gym, as I said, for the RPM classes. On occasion [Officer B] was there, but on many occasions she was not there.*

Q: *I know, but what I put to you was whether it would be more appropriate, given the circumstances, to use another gym, then you wouldn't have any possibility of contact in contravention of the direction, as a practical matter?*

A: *I didn't do that.*

Q: *No, but do you think it might not have been an easy way to avoid contact about which you had had a direction?*

A: *In this circumstances now, I suppose, yes.*

Submissions in Response D.1 and D.2

5.91 Rowan, through his legal representative, submitted that Rowan has no independent recollection of the issue said to have occurred on 20 August 2018. Rowan denies any intimidation of Officer B and there was no opportunity for Officer B to be cross-examined on this issue. Officer B's "*maintenance of the threat has gone unanswered and more importantly untested in respect of any opportunity by Rowan's counsel to...cross-examine [Officer B].*" This should be taken into account if such a finding of serious misconduct were to be made.

Finding Question D.1

5.92 As soon as Rowan had been issued with Officer N's Direction he should have avoided frequenting the same gym as Officer B. He was aware that he would be likely to see Officer B there. Frequenting the same gym was, at the least, not in accordance with the spirit of the Direction.

5.93 The Commission finds that this conduct was serious misconduct.

⁴⁸ Ibid.

Finding Question D.2

- 5.94 The Commission is satisfied that Rowan's use of gym equipment in close proximity to Officer B was conduct prohibited by Officer N's direction. It was capable of being intimidating and unlikely to have been accidental. The Commission finds that this conduct was serious misconduct.
- E. **Given his perceived or actual conflict of interest in relation to Officer A, should Rowan have been involved in the investigation of Officer J?**
- 5.95 Officer J reported his concerns about the DV incident potentially being "*swept under the carpet*" to Officer D, who then reported Officer J's conduct by way of an incident report.
- 5.96 Officer D stated that as Officer B, who was in his opinion an experienced investigator, had investigated the matter, he had no concerns about the investigation not being conducted properly. He was not aware of the self-harm threat nor was there any suggestion that there had been interference in the investigation by anyone else.⁴⁹
- 5.97 Officer D was asked:
- Q: *And if there had been interference in the conduct of the completion of the report, what would your view be of that?*
- A: *That is serious misconduct and that would have been reported immediately.*
- 5.98 Officer D's evidence was that he was primarily concerned with the fact that Officer J had not only obtained the COPS event number to provide to Officer H, which was appropriate, but he had also accessed the narrative of the event in such a way as to suggest a curiosity search, which was cause for concern, and that was why he reported it.
- 5.99 The evidence-based investigation of Officer J by Officer C resulted in a sustained finding against Officer J. He was subsequently issued with a Commander's Warning by Rowan. Rowan was questioned as to whether it was appropriate that he sign off on the recommendation or indeed have any involvement in the investigation or the outcome. His response was that he had not perceived a problem in doing so as the investigation had been completed independently by Officer C and further independently reviewed by another Inspector. He could not see that he had any conflict in agreeing with the investigator's recommendation.
- 5.100 Following an opportunity to reconsider his evidence during the luncheon adjournment Rowan made the following statement:

⁴⁹ Transcript of private examination of Officer D, 18 December 2018, pp. 22-23.

*“Can I say something. I’ve reflected over that break and I have clearly got a conflict with [Officer J]. I didn’t see it....I didn’t see it, but having had it pointed out by yourself, it’s clear.”*⁵⁰

Submissions in Response E

- 5.101 Rowan submitted that Officer C had investigated the matter and it was reviewed by Officer Q. Rowan accepted that finding. Officer K disagreed with the finding but PSC did not overturn the finding. Officer C gave evidence that Rowan had never attempted to interfere or influence the outcome of the investigation. Given this, any finding by the Commission that Rowan’s conduct in this regard was serious misconduct is *“unsafe and unavailable on both the state of the evidence and, more importantly, there being no factual basis, tenuous or otherwise, for such a finding to be made.”* Officer B also denied any such influence by Rowan of her.

Finding Question E

- 5.102 Rowan should not have had any involvement in the investigation into Officer J’s conduct. Rowan had already put in place an informal arrangement with Officer D to deal with any matters involving Officer A. This was an acknowledgement of, at least, the perception of a conflict of interest, without acknowledging a direct conflict of interest. That was sufficient cause for him to remove himself from any part of the investigation process involving Officer J. He acknowledged that in his evidence.
- 5.103 Rowan was at all relevant times a Superintendent. A senior officer. The application of NSWPF policy should not have been a mystery to him.
- 5.104 Considered separately, his involvement would not amount to serious misconduct, but it was part and parcel of his failure to apply the policy of the NSWPF in this area.
- 5.105 The Commission finds that Rowan’s becoming involved in the investigation of Officer J’s conduct was serious misconduct.
- F. Did Officer C conduct an adequate investigation of all issues apparent on the face of Officer J’s complaint when investigating the complaint against Officer J?**
- 5.106 Officer C has been a police officer for over 30 years. Since June 2016 he has had the rank of Detective Inspector. He transferred to LAC X in 2016. He was referred the complaint concerning Officer J in April 2017. He could not recall whether he had ever conducted an internal investigation before, but he did not think so. He conceded that he had had limited experience in this kind of investigation.⁵¹

⁵⁰ Transcript of private examination of Rowan, 19 December 2018, p. 57.

⁵¹ Transcript of private examination of Officer C, 17 December 2018, p. 9.

5.107 Officer C was asked about the focus of his investigation. He stated that:
*"my job during this particular investigation wasn't to reinvestigate the investigation of the original domestic. My job was to investigate whether [Officer J] was duly authorised to look at that COPS event. I didn't turn my mind to reinvestigating the domestic. My focus was on does [Officer J] have the authority to look up that COPS event".*⁵²

5.108 Officer C was referred to Officer H's notebook in which she had made a record of Civilian 1's account that Officer A stated that *"I might as well get my gun and shoot myself"*. Officer C was then asked:⁵³

Q: *Reading this notebook entry were there no alarm bells for you that a statement like that hadn't transferred across to the COPS event?*

A: *Well, in hindsight, I wasn't comparing - I wasn't sitting there with the COPS event and the police notebooks and reading the notebooks and reading the COPS event and sort of going, "Well, hang on, there appears to be something that's not related in the COPS event that's in the notebook." I wasn't doing that. Again, my focus wasn't to reinvestigate it. My focus was on whether [Officer J] was authorized to look up that event in the way that I've described.*

When I've read the notebook I would have read it just to read it, but it wasn't a material factor in whether [Officer J] was authorized to look up that event, so it wasn't something that I turned my mind to. My focus was on the authorized access or not."

5.109 Officer C acknowledged that if he was an officer at the time that comment was made, he might have had a different attitude. He stated that police get called to mental health situations when someone has allegedly threatened self-harm and they tell the police that they were only joking. For that reason, the comment in the notebook did not immediately *"click"* that there was something more to it.⁵⁴

5.110 Officer C gave evidence that he had no concerns about a conflict of interest in dealing with the investigation as he had only been at LAC X for about 8 months. He said that he had no concerns that it was investigated within the command as that was the *"norm"*.⁵⁵ He was referred to that part of his investigation report in which he made the comment *"[Officer J] was too quick to access the event without giving consideration to making legitimate inquiries with [Officer B] or other members of the SMT."*⁵⁶ He stated that he came to that conclusion as *"if the requirement is to find out what the event number is, he could have easily just asked [Officer B], who would have given it to him and, as I said, he doesn't need to go into the narrative to get*

⁵² Ibid p. 11.

⁵³ Ibid p. 15.

⁵⁴ Ibid p. 17.

⁵⁵ Ibid p. 19.

⁵⁶ Exh BIK6C.

*the event number.”*⁵⁷

5.111 Officer C also expressed the opinion that if Officer J had suspicions about Officer B, *“he could have raised them with myself as the crime manager, or the commander. He didn’t need to self investigate.”*⁵⁸

5.112 The Commissioner asked Officer C the following:⁵⁹

Q: *If he had concerns about the honesty and integrity of [Officer B], was it his job to look at that or should he have not looked at it and gone to you or someone else?*

A: *Yes, I believe if he had concerns about that, what I believe he should have done is put in a report to say, “this is the information that I’ve received, I think it should be investigated.” He doesn’t need to self investigate.*

5.113 Later in the examination the Commissioner asked:

Q: *I think from what your answers have been that your view is that if he had any suspicions he should have gone to [Officer D] and then [Officer D] could have made the search, that he shouldn’t have made the search and then gone to [Officer D].*

A: *Yes, that’s what I’m saying, Commissioner.*

Q: *I am not looking to provide you with an answer, but I generally form the view from what your answers are that there was some level of presumption in what he did in doing the search and that he should not have done the investigation himself?*

A: *Correct. And the other thing is...*

Q: *I haven’t formed a view as to whether that’s right or not. I am trying to figure out what it is you think.*

A: *I understand that. [Officer B] is a long-serving member. I know that she used to be a domestic violence liaison officer, so she knows how to investigate a domestic dispute, so I had no concerns about the investigation that took place. It wasn’t something that was even on my radar. Once again, I’m focused on what [Officer J] did.”*⁶⁰

5.114 Officer C’s evidence was that Rowan had never attempted to interfere in or influence the outcome of the investigation.⁶¹

Finding Question F

5.115 The Commission is satisfied that Officer C did not deal appropriately with all issues apparent on the face of Officer J’s complaint. Although the matter referred to Officer C for investigation was limited, there was an obvious question to be answered. The fact that Officer C was focused on answering the limited question referred to him is not an answer to the absence of a

⁵⁷ Transcript of private examination of Officer C, 17 December 2018, p. 22.

⁵⁸ Ibid, p. 23.

⁵⁹ Ibid.

⁶⁰ Ibid, p. 25.

⁶¹ Ibid.

complete investigation of misconduct issues apparent on the face of the complaint.

- 5.116 However, the Commission is not satisfied that Officer C's conduct of the investigation was serious misconduct. This is a procedural and training issue for the NSWPF.

G. Was Rowan's use of the Registrar's telephone at the Goulburn Court House for an improper purpose?

- 5.117 On 17 July 2018, Rowan attended Goulburn Local Court where he requested that he be allowed to use a court telephone for a "*sensitive personal matter*". The Court Clerk allowed Rowan to use the Registrar's Office. The Registrar was not there on that day. Rowan returned approximately five times on the same day to use the telephone. On the last occasion he stated that he might be back in the morning. The following morning the Clerk informed the Registrar as to what had occurred. Rowan returned to the court the following morning to use the telephone again. The Registrar refused Rowan's request to use the telephone. She provided a statement in the PSC investigation in which she recounted the following conversation with Rowan:

Registrar: Is that right you want to use one of our phones?

Rowan: Yes

Registrar: Don't you have a work mobile that you can use?

Rowan: Yes, but I don't want to use it.

Registrar: Well if you don't want to use your work mobile that raises a red flag for me, so no you cannot use our phone. The prosecutor will be here shortly, you may like to ask her if you can use her phone.

- 5.118 Rowan did not speak with the prosecutor. Call Charge Records (CCRs) obtained by the Commission reveal that calls made by Rowan from the court house were to telephone numbers associated with Officer D.
- 5.119 During his first examination, Rowan was asked about the phone calls he made from Goulburn Court House. He stated that he recalled going to the court house to use the phone as he wanted privacy and therefore, did not want to use his mobile phone. When pressed as to why he could not use his own phone in a private place, Rowan conceded that he was aware that he was under investigation and he was concerned about his phone being monitored. Rowan stated that he could not recall why he called Officer D on that occasion nor what the substance of any resultant conversation might have been.⁶²
- 5.120 Officer D gave evidence that he had retired as a police officer at the rank of Chief Inspector. He had known Rowan for over 20 years and described the relationship at the time of his retirement as a "*professional friendship*"

⁶² Transcript of private examination of Rowan, 19 December 2018, p. 66.

which thereafter developed into a personal friendship. They were both part of a group which travelled to Cambodia in late 2018 to compete in a charity marathon and this had brought them closer.

- 5.121 Officer D was shown the CCRs. He recalled the conversation with Rowan and stated that the substance of the calls was about Rowan's welfare. Rowan was aware that he was being investigated and thought it was unfair. Officer D said "*I suppose I was in a position where I was no longer in the police force, so he was able to get stuff off his chest and, you know offload to me, I suppose*".⁶³

Submissions in Response G

- 5.122 Rowan's legal representative submitted that the Commission had found no improper purpose for the phone call between Rowan and Officer D. Any extrapolation from that as to bringing the NSW Police Force into disrepute on account of serious misconduct is "*an extravagant extrapolation of the phone call...and equally unavailable as a finding of serious misconduct*".

Finding Question G

- 5.123 The NSWPF Code of Conduct of Ethics states that an employee must behave honestly and in a way that upholds the values and good reputation of the NSWPF whether on or off duty.
- 5.124 Rowan's conduct in requesting use of the court telephone on several occasions caused the clerk, who allowed the use of the phone, to report his request to the Registrar the following morning because she found it "*did not feel right*".⁶⁴
- 5.125 Rowan's use of the Registrar's telephone at Goulburn Court House and his explanation to the Registrar on the following day suggested something nefarious to her. She was aware that Rowan was a senior officer because of his uniform. The Registrar had concerns about the conduct and accordingly refused Rowan's request.
- 5.126 There was no restriction on Rowan having contact with Officer D and, given his knowledge that he was under investigation by the PSC, it is understandable that he might seek out an experienced and now retired senior colleague for welfare assistance.
- 5.127 However, the manner in which Rowan contacted Officer D created suspicion in others and brought the NSWPF into disrepute. It was inexplicably silly conduct. If Rowan was worried about his privacy, and did not wish his personal worries to be exposed, there were a variety of perfectly sensible alternatives available to him which would not have involved reputational damage to the NSWPF with the Registrar of the Local Court.

⁶³ Transcript of private examination of Officer D, 18 December 2018, p. 32.

⁶⁴ Statement of Clerk at Goulburn Local Court dated 29 August 2018.

5.128 Given Rowan's dishonest conduct in relation to other issues a reasonable doubt might have arisen regarding the truth of his evidence concerning the purpose of his conversations with Officer D. However, Officer D corroborated Rowan's evidence regarding the substance of their conversation. The Commission has no reason to doubt the honesty of Officer D's evidence.

5.129 The Commission is not persuaded that there was any improper purpose for the conversation between Rowan and Officer D.

5.130 To the extent that Rowan's conduct brought the NSWPF into disrepute the Commission finds that his conduct was serious misconduct.

H.1 Did Officer A lie to the Commission during her evidence?

H.2 Did Officer A act contrary to the direction provided to her by Officer N?

H.3 Did Officer A breach her obligation of confidentiality regarding the examination before the Commission?

5.131 On 18 December 2018, Officer A gave evidence that she had had no contact with Rowan⁶⁵ since the issue of Officer N's Direction to her on 16 July 2018 when:⁶⁶

"They came to my house and they served me a direction to cease all communication with Detective Superintendent Michael Rowan and I was told that's how they handled conflicts."

5.132 On 22 January 2019, when Officer A was recalled to the Commission for further examination, she stated that she had booked her own accommodation in anticipation of her appearance before the Commission in December. She was not sure how it came about that Rowan was staying at the same accommodation.⁶⁷

5.133 Her evidence was that since her last examination on 18 December 2018 she had had contact with Rowan. That contact occurred on that same evening. She gave the following explanation as to how that contact occurred:⁶⁸

A: *So I went - I was in my room. I went down to the car park where my car was, or my utility was. I went down to check on it. It's a new car, and I saw a car that's similar of Mr Rowan's. Anyway, so I went back up to the room. Got off at the wrong floor. Realised I was on the wrong floor. Gone up to my room and it got the better of me and I went back down to the car park to see if it was Mr Rowan's car and that's where he was.*

.....

Q: *In the car park? Is that what you - sorry, I just didn't hear you?*

⁶⁵ Transcript of private examination of Officer A, 18 December 2018, p. 12.

⁶⁶ Ibid p. 10.

⁶⁷ Transcript of private examination of Officer A, 22 January 2019, p. 39.

⁶⁸ Ibid pp. 39-41.

A: *He was in the car park. He was at the lift when I- when the doors opened.*

Q: *And what time was that?*

A: *Oh, it would - oh, I'm not sure of the time, possibly - it could have been 7-ish, 6.30 - I'm not sure of the time*

Q: *So you see him in the lift in the car park; is that my understanding?*

A: *He wasn't in the lift, he was out - when the lift doors opened he was standing there.*

Q: *By his car?*

A: *No, just at the -*

Q: *Just at lift?*

A: *(Nods head)*

Q: *But in the car park level?*

A: *Yes.*

Q: *Then what happened?*

A: *He got into the lift. I'm going to swear here. I said, "You look fucked", and I said "Fuck this. We'll go and have a beer".*

Q: *The same kind of beer you had before?*

A: *Similar beer.*

Q: *So where did you have a beer?*

A: *In my apartment*

5.134 The Commissioner asked Officer A what she meant by "*it got the better of me*", to which she replied "*I thought it was his car but I wasn't sure.*"⁶⁹

5.135 Her evidence implied that the purpose of her returning to the hotel garage was to satisfy her curiosity as to whether Rowan was in the building.

5.136 Officer A gave evidence that after having had a couple of beers in her hotel apartment, Rowan left to buy more beer. He returned to her hotel apartment shortly after, where they spent several hours having beers, talking and watching television.

5.137 Officer A was asked whether she had discussed her evidence before the Commission with Rowan. She denied having done so.⁷⁰

⁶⁹ Ibid p. 42.

⁷⁰ Ibid p. 41.

5.138 After they met in the lift on the car park level, Officer A and Rowan both travelled in the lift to Officer A's room and their movements, thereafter, correspond with the evidence they gave on their recall before the Commission.

5.139 The following chronology outlines the movements of both Officer A and Rowan as observed by the hotel closed circuit television system.

18 December 2018

10:48 Rowan parks his car next to Officer A's car and then enters the lift.

17:17 Officer A enters the lift in the lobby area.

17:18 Officer A exits the lift on L38 and walks towards her room.

17:21 Rowan exits the lift on the car park level and walks towards his car.

17:22 Rowan walks towards his parked vehicle. Rowan appears to be carrying an iPad. Rowan appears to look at Officer A's vehicle. He stays at his vehicle for 10 seconds before returning to the lift area.

17:23 Rowan appears at the lift area. Rowan appears to be carrying an iPad and waits for 60 seconds before returning to where his vehicle is parked.

17:23 Rowan exits room on L38 and enters lift and goes down in the lift.

17:24 Rowan is seen at his car and then returns to the lift area.

17:24 Rowan enters the lift on the car park level. Rowan appears to be carrying an iPad.

17:24 Officer A exits the lifts at car park level and walks towards her vehicle. Rowan and Officer A miss each other by 15 seconds.

17:24 Officer A walks towards her vehicle where she stays for 10 seconds.

17:25 Officer A enters lifts on carpark level.

17:23 Rowan exits lift on L33 and walks towards his room. Rowan appears to be carrying an iPad. Rowan appears to enter his hotel room.

17:26 Officer A exits lift on L38 and walks towards her room.

17:29 Rowan exits his room and enters the lift on L33.

17:32 Rowan exits the lift into the Lobby area and takes a seat on a chair facing the lifts. Rowan is typing on an iPad and looking at the lifts. Rowan appears to be waiting for someone. Waits for two minutes.

17:34 Rowan enters the lift in the Lobby.

17:33 Rowan exits lift on L33 and walks towards his room. Rowan appears to be carrying an iPad. Rowan appears to enter his room.

- 17:34 Officer A exits room and enters lift on L38 and goes down in the lift to L33.
- 17:33 Officer A exits lift on L33 and walks towards Rowan's room. Officer A waits in the lift area. It is assumed that Rowan is in his room but Rowan and Officer A do not meet.
- 17:35 Officer A enters lift on L33.
- 17:36 Rowan enters lift on L33.
- 17:37 Officer A exits lift on L38 and walks towards her room.
- 17:40 Officer A exits room on L38 and enters lift and goes down in the lifts.
- 17:39 Rowan exits lifts on car park level.
- 17:39 Rowan walks around the car park lift well area where he appears to be waiting or looking for someone.
- 17:39 Rowan returns to the lift area, but does not get into open lift with other persons. Rowan appears to be waiting at the lift area for over 2 minutes.
- 17:42 Officer A exits the lift area on car park level. Rowan and Officer A greet each other with smiles and enter the lift together.
- 17:43 Rowan and Officer A exit lift on L38 and walk towards Officer A's room. Rowan can be seen holding an iPad and what is believed to be a mobile phone.

5.140 Officer A was asked by the Commissioner why she ignored the Commander's Direction. The following exchange took place:⁷¹

Q: *So your explanation is that you ignored the direction of the Police Standards Command, you ignore the reminder given by this Commission. You didn't text him, but you had him in your room for a beer – in fact, you can accept that we know that he went and got some more beers, so there was an opportunity to reconsider your conduct but, no, you continued it – and he stayed in your suite until the early hours of the morning; is that right?*

A: *That's correct.*

Q: *And it didn't once occur to you that perhaps it would be better to actually do as you were asked by your employer and follow the direction of [Officer N]?*

A: *Yes, your Honour.*

Q: *So it didn't occur to you?*

⁷¹ Ibid pp. 42-43.

A: *It did, the whole time.*

Q: *So why didn't you?*

A: *I just didn't, your Honour.*

Q: *I know you didn't. I want to know why. I asked you why you didn't. You said you didn't. Why didn't you?*

A: *Because I feel sorry for the bloke. Honestly do. And I thought maybe – he looked like crap and I thought, well, if I can support him, at least I can.*

Q: *So your supporting Mr Rowan weighed more heavily with you than doing as you were asked at the direction of the Police Commissioner?*

A: *Yes, me being concerned for him does.*

Q: *Your concern for him outweighed your obligation?*

A: *Yes.*

Submissions in Response H.1, H.2 and H.3

5.141 Officer A, through her legal representative, made Submissions in response to the proposed findings and those submissions are summarised as follows:

1. That the contact between Officer A and Rowan for the period October 2016 to March 2017 averaged 3 to 4 texts or calls per week from Rowan to Officer A and 4-5 texts or calls per week from Officer A to Rowan. This did not amount to an “unusual level of contact” or “frequent texting” (see paragraph 5.55 of this report) and that no inference adverse to Officer A should be drawn. It was significant that there was no evidence of the content of the texts or calls.
2. There is no evidence that the relationship between Officer A and Rowan was intimate and both parties denied any such intimacy. Any such finding would be conjecture.
3. Any finding that Officer A lied to the Commission about how her and Rowan ended up staying at the same accommodation is not available on the evidence. The chronology provided in support of such a finding does not “disprove [Officer A’s] evidence of her chance encounter with Rowan”.
4. There is no evidence to support a finding that Officer A breached her obligation of secrecy which she had in relation to her evidence before the Commission by informing Rowan that the Commission had taken her phone. It was submitted that Rowan was already cautious about using his work phone, given the circumstances of his use of the phone at Goulburn Court House, and this occurred well before 18 December 2018. It was also submitted that any criminal charge arising from such a

finding against Officer A would need to be proven beyond reasonable doubt.

Finding Question H.1

- 5.142 The nature of any relationship between Rowan and Officer A would not ordinarily be anyone else's business or a matter of concern to the Commission. Their relationship could only be of concern if policies concerning potential conflicts of interests were not adhered to, if either party acted inappropriately in the performance of their duties as a result of their relationship or if they were otherwise dishonest about the relationship in a manner which brought the NSWPF into disrepute.
- 5.143 Unsurprisingly there is no graphic evidence of any intimate relationship between Rowan and Officer A. Both deny any intimacy. However, the circumstantial evidence of their relationship being an intimate one, which is set out below, in paragraphs 5.144 to 5.148, is substantial.
- 5.144 The number of their mutual telephonic communications was substantial in a period when Rowan denied they were friends.
- 5.145 When he was the Commander and she was a junior officer she invited him to her hotel room "*for a beer*" after he had already left a conference. He went to her hotel room and they spent some time there.
- 5.146 Officer A and Rowan stayed in the same accommodation when in Sydney to give evidence before the Commission.
- 5.147 Officer A and Rowan greeted each other cheerfully after what does not appear to be a happenstance meeting.
- 5.148 Officer A and Rowan stayed together, in breach of Officer N's direction and contrary to a reminder from the Commission regarding her obligation to comply with that direction, in Officer A's hotel room into the early hours of the morning after Officer A had given evidence and before Rowan gave evidence at the Commission.
- 5.149 The Commission finds that Officer A breached the obligation of secrecy which she had in relation to her evidence before the Commission. The Commission required Officer A to produce her telephone and inform the Commission as to its PIN code. When Rowan attended the Commission the next day he was asked to produce his telephone. Surprisingly, he no longer had a telephone. He had misplaced it. The Commission rejects Rowan's evidence regarding the loss of his phone. The Commission is satisfied that it is more likely than not that, during the sojourn with Rowan in her room, Officer A informed Rowan that the Commission had taken her telephone and that thereafter Rowan acted on that information. Confidentiality was mandatory and Officer A set it aside. This is behaviour which strongly indicates an intimate relationship. It would be highly unusual conduct for a sworn officer to engage in such conduct, even for a very close friend.

- 5.150 The Commission finds that it was not a coincidence that Rowan and Officer A were occupying the same accommodation in Sydney for the purpose of attending the examination before the Commission. The Commission finds that Officer A lied to the Commission about that matter.
- 5.151 The Commission finds that Officer A and Rowan did not meet by accident, that Officer A was not overcome by curiosity to satisfy herself that Rowan's car was in the car park, and that Officer A and Rowan did not spend the night in Officer A's room because Officer A felt sorry for him.
- 5.152 The Commission finds that Officer A lied to the Commission about the nature of her relationship with Rowan and her contact with him. This conduct amounts to serious misconduct.

Finding Question H.2

- 5.153 Officer A placed her relationship with Rowan before her obligation to comply with Officer N's direction despite the reminder given to her by the Commission. She deliberately chose non-compliance. She demonstrated a significant lack of judgement and integrity.
- 5.154 The Commission finds that Officer A's conduct in this regard was serious misconduct.

Finding Question H.3

- 5.155 Officer A was on notice, not only that she should have no contact with Rowan, but that she should not discuss any aspect of her appearance before the Commission with any other person.
- 5.156 The Commission is satisfied that Officer A breached the obligation of secrecy in relation to her evidence before the Commission. The Commission is satisfied that Officer A disclosed material facts to Rowan regarding her examination before the Commission. Confidentiality was mandatory and she set it aside.
- 5.157 The Commission finds that this conduct was serious misconduct.

I. Did Rowan lie to the Commission during his evidence?

- 5.158 Officer A gave evidence on 18 December 2018. During his examination on 19 December 2018, Rowan was asked several times about his contact with Officer A following the Commander's Direction as set out below:

Q: In relation to that, you'd be aware that in August 2018 you were issued with a commanders' direction that you were not to have contact with [Officer B]?

A: That's correct.

Q: And [Officer A]. Are you saying that you've abided by that direction?

A: Yes.⁷²

....

Q: Did [Officer A] contact you at all last night?

A: No.⁷³

....

Q: So you stayed in your hotel room the whole time until you went for a walk at 4am; is that correct:

A: Yes⁷⁴

...

Q: Had you gone to a hotel room with her before to have a beer?

A: No.

Q: Have you done that since?

A: No.⁷⁵

...

Q:....can I just confirm that since receiving that direction on 7 August 2018 until today, you've had no contact, be it in person, by email, any sort of communication, with either [Officer B] or [Officer A]?

A: Yeah, certainly not [Officer B] and not [Officer A].⁷⁶

5.159 The Commissioner asked the following questions:

Q: Is there any doubt about [Officer A]? You said certainly not [Officer B] and not [Officer A], or is it "no" for both?

A: [Officer A] – since that 7 August I probably have, yes.

Q: What kind of contact, if you could just elaborate?

A: I saw her yesterday.

Q: Where?

A: At [Hotel 2].

Q: Was she staying there? You were staying there.

A: I was staying there.

Q: And how did that arise?

A: Just passed.

⁷² Transcript of private examination of Rowan, 19 December 2018, p.16.

⁷³ Transcript of private examination of Rowan, 19 December 2018, p. 26.

⁷⁴ Transcript of private examination of Rowan, 19 December 2018, p.29.

⁷⁵ Transcript of private examination of Rowan, 19 December 2018, p. 31.

⁷⁶ Transcript of private examination of Rowan, 19 December 2018, p. 58.

Q: You'd better elaborate. I don't want to drag the information out of you, Mr Rowan. You are a senior adult officer, you can give me the story. How did that arise?

A: We just passed in the lift.

Q: She is staying in that hotel, is she?

A: She was.

Q: Did she talk to you?

A: Just in passing.

Q: What did she say?

A: She said hello.

Q: And that's all?

A: Yes.

Q: So you met in the lift and said hello.⁷⁷

...

Q: ...prior to that, that's the only contact you've had with [Officer A] since 20 August 2018, because you did have some doubt about it earlier?

A: No.

Q: That's the only contact?

A: Yes.⁷⁸

5.160 Rowan's evidence was that he had booked his own accommodation and that it was a coincidence that Officer A and he were both staying in the same hotel.

5.161 When Rowan was recalled to the Commission for further examination on 22 January 2019 he indicated that he wished to correct his evidence in regard to the contact he had had with Officer A since the Commander's Direction.

5.162 His new evidence was that there was more to his contact with Officer A than passing in the lift and saying hello. After a comment by Officer A about how he looked, he went to Officer A's room and had a beer with her. He then left to purchase more beers from a pub close by and returned to Officer A's room for a period of time during which he consumed a number of beers and then fell asleep on the lounge. On waking up in the early hours of the morning, he left and returned to his room.⁷⁹

⁷⁷ Transcript of private examination of Rowan, 19 December 2018, p. 59.

⁷⁸ Ibid p. 60.

⁷⁹ Transcript of private examination of Rowan, 22 January 2019, pp. 72-73.

Submissions in Response I

- 5.163 It was submitted that Rowan “*maintains his denials as to lying, and relies upon the fact that he, as was his right, availed himself of the opportunity to correct his evidence, which he did, and he gave no evidence which was false in a material particular.*”

Finding Question I

- 5.164 The Commission finds that Rowan lied to the Commission concerning the nature of his relationship with Officer A.
- 5.165 The Commission finds that it was not a coincidence that Rowan and Officer A were occupying the same accommodation in Sydney for the purpose of attending the examinations before the Commission. The Commission finds that Rowan lied to the Commission about that matter.
- 5.166 The Commission finds that on 19 December 2018 Rowan lied about his contact with Officer A.
- 5.167 The Commission is also satisfied and finds that on 22 January 2019, when providing his second version of his contact with Officer A on the evening of 18 December 2018, Rowan lied again.
- 5.168 The Commission has found that Officer A breached the obligation of secrecy which she had in relation to her evidence before the Commission.
- 5.169 At the commencement of Officer A’s examination on 18 December 2018 she was asked to produce her telephone. Her telephone was handed to the Commission and subsequently examined.
- 5.170 On the evening of 18 December 2018 Officer A and Rowan spent the evening in each other’s company in breach of separate directions issued to both of them by Officer N.
- 5.171 At the commencement of his examination on 19 December 2018 Rowan was asked to produce his telephone.
- 5.172 Rowan gave evidence that he had “*misplaced*” his telephone the night before whilst walking in the city and that he could not “*find it at the moment*”. Rowan was directed to do his best to find the item and to produce it to the Commission investigator when found.⁸⁰
- 5.173 On the evening of 19 December 2018 Rowan visited his parents’ home at a suburb in Sydney.
- 5.174 Telecommunications data obtained by the Commission indicates that Rowan’s telephone was activated in that suburb on the same evening.
- 5.175 When recalled to the Commission for further examination on 22 January 2019 Rowan stated that he had not located his telephone and could not

⁸⁰ Transcript of private examination of Rowan, 19 December 2018, p. 7.

explain why the Commission would have information suggesting that this was not true.⁸¹

- 5.176 The Commission is satisfied that Rowan knew the whereabouts of his telephone at all times. He had no intention of producing his telephone to the Commission, despite being directed to do so.
- 5.177 The Commission finds that Rowan lied about his telephone being “*misplaced*” and the fact that it was never found. He was attempting to hide evidence from the Commission.
- 5.178 The Commission is satisfied that Rowan concocted a story about losing his telephone to avoid having to produce it.
- 5.179 The Commission finds that this conduct was serious misconduct, made more so because of his seniority as a Superintendent of Police.
- 5.180 The Commission finds that Rowan engaged in serious misconduct when he lied to the Commission.
- 5.181 The Commission finds that Rowan engaged in serious misconduct when he breached the direction issued by Officer N.

6 Summary

- 6.1 Individual findings of serious misconduct by Superintendent Rowan as outlined above support a recommendation that consideration should be given to the taking of action against him pursuant to s181D of the *Police Act 1990*, both individually and cumulatively.
- 6.2 Rowan’s dishonesty when giving evidence before the Commission concerning his relationship with Officer A, and his contact with her in breach of Officer N’s Direction separately and together, support a recommendation that consideration should be given to the taking of action against him pursuant to s181D of the *Police Act 1990*.
- 6.3 Rowan’s dishonesty regarding his having misplaced his phone is of a sufficient weight to justify an independent recommendation that consideration should be given to the taking of action against Rowan under s181D of the *Police Act 1990*.
- 6.4 Findings of serious misconduct against Officer A both separately and cumulatively demonstrate a lack of integrity and judgment. It would be difficult to foresee any circumstances where the NSWPF could rely upon Officer A’s honesty and integrity given her evidence before this Commission, and her deliberate decision to disobey a clear direction. The findings against Officer A support a recommendation that consideration should be given to the taking of action against her pursuant to s181D of the *Police Act 1990*.

⁸¹ Transcript of private examination of Rowan, 22 January 2019, p. 75.

7 Affected Persons

- 7.1 In Part 2 of this report the Commission set out the provisions of s133 of the LECC Act dealing with the content of reports to Parliament. Subsections (2), (3) and (4) relate to “*affected persons*”.
- 7.2 The Commission is of the opinion that Rowan is an affected person within the meaning of s133(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.
- 7.3 The Commission is of the opinion that Officer A is an affected person within the meaning of s133(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.

8 Recommendations

- 8.1 The Commission recommends that consideration be given to obtaining the advice of the Director of Public Prosecutions with respect to the prosecution of Rowan for:
- 1) without reasonable excuse, wilfully obstruct, hinder, resist or threaten the Commission in the exercise of its functions (LECC Act s148 (a)(i)); and
 - 2) knowingly give evidence that is false or misleading in a material particular (LECC Act s 151(1)).
- 8.2 The Commission recommends that consideration be given to the taking of action against Rowan under s181D of the *Police Act 1990*.
- 8.3 The Commission recommends that consideration be given to the taking of action against Officer A under s181D of the *Police Act 1990*.
- 8.4 The Commission is not of the opinion that consideration should be given to obtaining the advice of the Director of Public Prosecutions with respect to the prosecution of Officer A for an offence under s 151(1) of the LECC Act. This is because the Commission does not consider that there is sufficient admissible evidence to make out the elements of the offence.

Operation Errigal
Report pursuant to s 132
Law Enforcement Conduct Commission Act 2016
June 2019

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