

LECC

Law Enforcement
Conduct Commission

OPERATION TAMBRE

A report under section 132 of the *Law Enforcement Conduct Commission Act 2016* concerning the conduct of Constable Daniel Keneally in fabricating evidence with intent to mislead a judicial tribunal

AUGUST 2024

LECC

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ISBN 978-1-74003-067-0

The Law Enforcement Conduct Commission acknowledges and pays respect to the Traditional Owners and Custodians of the lands on which we work, and recognises their continuing connection to the lands and waters of NSW. We pay our respects to the people, the cultures, and the Elders past and present.



Office of the Chief Commissioner

2 August 2024

The Hon Ben Franklin, MLC
President
Legislative Council
Parliament House
SYDNEY NSW 2000

The Hon Greg Piper, MP
Speaker
Legislative Assembly
Parliament House
SYDNEY NSW 2000

Dear Mr President and Mr Speaker

Operation Tambre

A report under section 132 of *Law Enforcement Conduct Commission Act 2016* concerning the conduct of Constable Daniel Keneally in fabricating evidence with intent to mislead a judicial tribunal

In accordance with s 132(3) of the *Law Enforcement Conduct Commission Act 2016* (the Act), the Commission provides you with a copy of its Report:

Operation Tambre

A report under section 132 of *Law Enforcement Conduct Commission Act 2016* concerning the conduct of Constable Daniel Keneally in fabricating evidence with intent to mislead a judicial tribunal

Under s 142(2) of the Act, I recommend that this report be made public immediately.

Yours sincerely



The Hon Peter Johnson SC
Chief Commissioner

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1. Introduction

- 1.1. This Report, prepared in accordance with the provisions of section 132 of the *Law Enforcement Conduct Commission Act 2016* (LECC Act), follows on from the Commission's report under s 135, which was presented to the Minister for Police and the Commissioner of Police on 5 April 2022.
- 1.2. The contents of this Report reflect the analysis, findings and recommendations made in the s 135 Report, except where additional analysis, findings and recommendations are made, and that is noted where it occurs.
- 1.3. The Law Enforcement Conduct Commission's (the Commission) Operation Tambre arose from a complaint made by Mr Luke Moore (Moore) on 18 May 2021 that on 24 February 2021, Constable Keneally (Officer Keneally) fabricated evidence in a police investigation that led to the subsequent arrest and charging of Moore with serious offences.
- 1.4. Moore was arrested on 25 February 2021, and conveyed to Nowra police station where he participated in a record of interview, during which he admitted telephoning Newtown police station on the evening of 24 February 2021 and speaking with Officer Keneally, but denied that at any time he threatened the safety of Detective TAM1, attached to the Goulburn police station. Based on the information provided by Officer Keneally, Moore was charged with a number of serious offences under the Commonwealth Criminal Code, those being:
 - Use carriage service to menace/harass/offend (2 counts); and
 - Use carriage service to threaten to kill.

Moore was refused bail by police.

- 1.5. On the day of his arrest police executed a search warrant at Moore's residence and, amongst other items, seized his mobile phone.
- 1.6. On 25 February 2021, Moore appeared in the Local Court at Nowra where he pleaded not guilty to all charges. Police opposed bail, and this was refused by the Magistrate. Moore was remanded in custody at the Goulburn Correctional Centre until 19 March 2021, when, without opposition from police, he was granted conditional bail.

- 1.7. Experts from the NSW Police Force and Australian Federal Police (AFP) accessed Moore's mobile phone and found a recording of the conversation between Moore and Officer Keneally on the evening of 24 February 2021. The recording did not support Officer Keneally's version of the call, being that Moore made verbal threats of violence towards Detective TAM1.
- 1.8. The forensic experts from the two law enforcement agencies who examined the recording were satisfied that it was genuine and had not been tampered with.
- 1.9. When Moore again appeared in the Local Court on 7 June 2021, the Commonwealth Director of Public Prosecutions, who had the conduct of the prosecution, withdrew two of the abovementioned charges. The third charge was withdrawn on 25 June 2021. Police were ordered to pay Moore's legal costs incurred in connection with the prosecution.

2. The Commission's Statutory Functions

- 2.1. The relevant provisions of the LECC Act are set out in Appendix 1 to this Report.
- 2.2. The Commission has had regard to the statutory provisions referred to in Appendix 1 in the preparation of this Report.
- 2.3. The Commission does not sit as a criminal or civil court. It does not determine the rights of any person. However, the Commission may make findings which are adverse to persons and their reputation. The standard of proof to be applied by the Commission making findings of fact is the civil standard of proof, proof on the balance of probabilities, being qualified having regard to the gravity of the questions to be determined. The test is whether the facts have been proved to the reasonable satisfaction of the Commission.¹
- 2.4. An important function of the Commission is to determine whether any police officer has engaged in 'serious misconduct' as defined in s 10 of the LECC Act.
- 2.5. In addition, the Commission may make findings, express opinions, and make recommendations under s 133 of the LECC Act. Those provisions will be considered later in this Report.

¹ *Briginshaw v Briginshaw* (1938) 60 CLR 336 at 362; [1938] HCA 34; *Rejfeek v McElroy* (1965) 112 CLR 517 at 521; [1965] HCA 46; *Neat Holdings Pty Ltd v Karajan Holdings Pty Ltd* (1992) 67 ALJR 170 at 171-172; [1992] HCA 66.

2.6. For the reasons explained in Appendix 2, one of the police officers, referred to in this Report, will be described by pseudonym and his name will not be used.

3. A Complaint to the Commission and the Commission's Subsequent Investigation

3.1. On 18 May 2021, the Commission received a written complaint from Moore. The complaint referred to Moore's telephone call with Officer Keneally and claimed that the officer had subsequently made a statement, falsely alleging that Moore had threatened to kill Detective TAM1.

3.2. Following consideration of his complaint, the Commission wrote to Moore on 25 June 2021, advising that it did not propose to investigate the matter, but would be referring it to the police for their action, which may be overseen by the Commission. That same day, the Commission forwarded Moore's complaint to the Commissioner of Police.

3.3. The Commission's Oversight investigation unit monitors ongoing misconduct investigations by the NSW Police Force and NSW Crime Commission (NSWCC)² or reviews finalised misconduct investigations conducted by the NSW Police Force and NSWCC, to ensure that investigations were conducted reasonably, and achieved appropriate outcomes.

3.4. On 5 July 2021, the Commission received a report from the NSW Police Force advising they would be conducting an evidence-based investigation of Moore's complaint. Subsequently, the Commission notified the NSW Police Force that it agreed with their proposed course of action and directed that it be notified of the outcome of the police investigation.

3.5. On 15 October 2021, the Commission was notified of the outcome of the police investigation. The report concluded that in relation to the allegation that Officer Keneally had committed the offence of False Statement/Perjury, although the officer's statement was inconsistent with the telephone recording made by Moore of their conversation, there was no evidence the officer intentionally made a false statement, which is an element of the offence. Accordingly, the complaint of False Statement/Perjury was not sustained.

² Section 101 *Law Enforcement Conduct Commission Act 2016* (NSW) (LECC Act).

- 3.6. The investigation report also considered whether or not Officer Keneally exercised due diligence and care when making his statement. The Report concluded that he failed to do so, and had thereby breached the NSW Police Force Code of Conduct and Ethics. In all the circumstances, it was recommended that Officer Keneally receive a Non-Reviewable Commander's Warning Notice.
- 3.7. On 24 October 2021, the Commission received an email from Moore in which he advised that he was dissatisfied with the outcome of the police internal investigation, and that he wanted Officer Keneally to be prosecuted.
- 3.8. Upon review of the police investigation report, the Commission was dissatisfied with the outcome and recommendations. Consideration was given as to whether the Commission should request the Commissioner of Police to review its decision, or whether the Commission should take over the carriage of Moore's complaint for the purpose of conducting its own independent investigation.
- 3.9. On 29 November 2021, a decision was made by the Commission to place to one side the police investigation and to conduct an independent investigation under Operation Tambre, into the complaint against Officer Keneally.
- 3.10. On 14 December 2021, the Commission decided it would conduct an examination of Officer Keneally for the purpose of determining whether or not he, or any other NSW police officer, had engaged in serious misconduct.
- 3.11. Because of the nature of the allegation, and after taking into account the factors set out in s 63 of the LECC Act, the Commission decided the examination would be held in private.
- 3.12. A private examination was fixed to take place on 23 December 2021, however, this date had to be abandoned due to complications arising from the COVID-19 pandemic. The examination was rescheduled for 20 January 2022 before the former Chief Commissioner of the Commission, the Hon R O Blanch AM QC.
- 3.13. Pursuant to s 64 of the LECC Act, Mr Robert Tumeth was appointed as Counsel Assisting the Commission in Operation Tambre.
- 3.14. Officer Keneally was summoned to be examined.

- 3.15. Authorisation was sought and granted by the Chief Commissioner for Officer Keneally to be represented by an Australian legal practitioner. Below is a summary of the evidence given by the witness.
- 3.16. Officer Keneally requested and was granted a declaration pursuant to s 75 of the LECC Act, to the effect that all evidence adduced would be regarded as having been given by him under objection. As a result, his evidence attracted the protection provided by s 57 and s 74 of the LECC Act.

4. Summary of Evidence of Officer Keneally

- 4.1. Officer Keneally was called to give evidence before the Commission in a private examination on 20 January 2022. In summary, his evidence was as follows:
 1. Officer Keneally joined the NSW Police Force in 2019 as a Probationary Constable and was posted to the NSW Police Force Inner West Police Area Command.
 2. Officer Keneally recalled an incident which occurred on 24 February 2021 whilst he was stationed at Newtown police station. He had commenced his shift at 6 pm, performing reception duties with Constable Reilly. This was not a task taught at the Police Academy, but which he learned with his field training officer during his first 6 weeks as a police officer. He had performed these duties prior to 24 February 2021.
 3. It was, however, made clear to him whilst at the Academy that when interacting with members of the public in the course of his duties, where an officer did not have the time to make a contemporaneous record, such as with a body worn camera, the officer should make a note of the event in their police notebook. Reception duties entailed answering the telephone and dealing with people who came in person to the station for a variety of reasons.
 4. Officer Keneally said that he was not aware of any specific procedure to be followed when a member of the public made a threat to an officer over the telephone, but generally he would make his supervisor aware.

5. As at 24 February 2021, Officer Keneally was not aware of Newtown police station having the facility to record incoming telephone calls, but agreed that this would be of assistance to police.
6. Officer Keneally described his shift on 24 February 2021 as being busy, but added that they usually were.
7. At about 8.30 pm Officer Keneally answered a call from a man who identified himself as 'Luke Moore', who was the founder and CEO of the website 'Isuepolice'. The call lasted approximately 12 to 13 minutes. Following the call, at some point, Officer Keneally telephoned Goulburn police station to inform them of Mr Moore's website and comments that he had made during the telephone call concerning Detective TAM1 who was stationed there. Officer Keneally could not recall the identity of the officer at Goulburn police station to whom he spoke. He was not given any advice as to what he should say in any narrative that he would have to create in relation to his call with Moore.
8. Following his call to Goulburn police station, Officer Keneally recalled speaking with his shift supervisor, Sergeant Taleski, probably more than once, informing him of the content of his call with Moore. He received advice to telephone the Real – Time Intelligence Centre (RTIC). He could not recall whether the sergeant or the RTIC advised him to create an Information Report.³ In creating the narrative in the Information Report, Officer Keneally said that the only advice he received from the sergeant was to record the conversation with Moore to the best of his ability. He agreed the report stated his call with Moore lasted from 8:30 pm to 8:45 pm, and that this would have been the approximate duration of the call.
9. Officer Keneally was shown an extract from a record of interview with Sergeant Madden in which he participated on 22 September 2021. The record was made in the course of an internal police investigation into events relating to the telephone call between Officer Keneally and Moore.⁴ Officer Keneally agreed that, in the course of questioning, it was put to him that he created the Information Report on 24 February 2021 at 9:22 pm. He agreed

³ Exhibit VXF2C.

⁴ Exhibit VXF3C.

that he did not have any reason to doubt the time stated for the creation of the report, and he assumed that there was a system within the COPS database that recorded when the report was created.⁵

10. In creating the narrative in the Information Report, Officer Keneally said that he relied upon his memory of the conversation with Moore and Moore's website, Isuepolice, and he agreed that was what he told Sergeant Madden in the course of the record of interview. Officer Keneally said that no one else assisted him in creating the narrative, and that he did not receive any information that influenced what he recorded in the narrative.⁶
11. After completing the Information Report, Officer Keneally created a COPS Event⁷ which was recorded in the NSW Police Force database at 11:25 pm.⁸ He agreed the COPS Event contained a narrative of his interaction on the telephone with Moore, which he copied across from the narrative in the Information Report.⁹ Again, Officer Keneally said that he had no assistance in creating the narrative in this document. In the course of his police work Officer Keneally said that he had created COPS Event Narratives many times¹⁰, and he agreed it was important that information contained in Event Narratives be relevant, accurate, and capable of external scrutiny.¹¹
12. After speaking with Sergeant Taleski, Officer Keneally received a telephone call from the Duty Officer at Goulburn police station, whose name he could not recall. Officer Keneally was told to prepare a police statement. Officer Keneally said that he could not recall if he received any advice from the Duty Officer concerning Moore.¹²
13. Officer Keneally proceeded to make a typed statement¹³ approximately 3 hours after the phone call with Moore, and signed it at 11:35 pm.¹⁴ Officer Keneally said that he had previously made typed statements and was aware

⁵ Examination VXF at T18.

⁶ Examination VXF at T19.

⁷ Exhibit VXF4C.

⁸ Examination VXF at T20.

⁹ Examination VXF at T21-22.

¹⁰ Examination VXF at T22.

¹¹ Examination VXF at T9.

¹² Examination VXF at T23.

¹³ Exhibit VXF5C.

¹⁴ Examination VXF at T52.

that they were commonly used to assist police in their investigations and prosecutions, and it was therefore important that the content of any statement be accurate.¹⁵ Officer Keneally said that he did not receive any assistance in preparing his statement. For the purpose of creating the statement he had access to his Information Report, Moore's website, and his memory of the call.

14. Officer Keneally was taken to his statement and the extracts from Moore's website, which he had quoted. He agreed that it would be potentially important when quoting in his statement extracts from Moore's website, to also record any other comments made by Moore that gave context to the particular quotations he had recited.¹⁶ Officer Keneally agreed that in paragraph 5 of his statement he had recited two extracts from Moore's website, which he had earlier recorded in his Information Report, being¹⁷:

If anyone sees Detective [TAM1] from the Goulburn Police, tell him 'I'm coming for him. Luke Moore said to tell you he is coming for you'.

and further down in his statement:

My aim is to have you (Detective [TAM1]) gone by April 1 2021.

15. Officer Keneally was then shown a copy of Moore's website as it appeared on 24 February 2021.¹⁸ He agreed that it was a very long website which, in part, focussed on the lawfulness of strip searches performed by police, and also made unflattering remarks about the then Commissioner of the NSW Police Force, Commissioner Michael Fuller. A number of passages from the website were read out to Officer Keneally. He agreed with the following propositions¹⁹:

- a. The website appeared to contain a reference to Moore having previously brought civil litigation involving Detective TAM1.

¹⁵ Examination VXF at T24.

¹⁶ Examination VXF at T26.

¹⁷ Examination VXF at T27.

¹⁸ Exhibit VXF6C.

¹⁹ Examination VXF at T29.

- b. In one passage on the website, Moore was inviting members of the public to contact him to report strip searches and that he would stop police from touching children.
 - c. Moore was saying to parents that he could deliver a personal message to any officer who had been touching their children and say, 'I am founder and CEO of Isuepolice and I am coming for you', but in saying this, he did not refer to any specific police officer.
 - d. Moore was inviting people to email to him their story of strip searches, and claimed that he would present a petition and force Commissioner Fuller to resign from office. It was agreed that Moore was not threatening the Commissioner with physical violence.
16. Officer Keneally agreed that in his statement he had said that, because of the two extracts from Moore's website he had quoted in his statement, he was concerned that they may have constituted a threat to Detective TAM1. The officer was asked if by 'threat', he meant 'physical violence' towards Detective TAM1. Initially, Officer Keneally said in evidence that this was open to interpretation but that he believed at the time there was potential for the statements on the website to convey violence against the officer.
17. Officer Keneally was referred to his record of interview with Sergeant Madden in September 2021, and agreed that his response to a question from the sergeant conveyed the impression that when he used the word 'threat' in his statement, he meant 'physical violence'.²⁰ Officer Keneally's attention was again drawn to Moore's website. It was put to him that in the paragraph immediately preceding the first extract that he quoted in his statement, the following words appeared:

PS... the police have started a war on us. But it is a war we'll win with words, not weapons. I would never advocate for violence against police unless it was reasonable in the circumstances.²¹

²⁰ Examination VXF at T36.

²¹ Examination VXF at T33.

Officer Keneally agreed that because of the positioning of this passage on the website he probably did read it at the time, but he could not now recall why he had not included it in his statement.

18. Officer Keneally further agreed that this passage could provide a reader of the website some context as to what type of action Moore was talking about taking against police, but that it was open to interpretation as to what (violence) 'was reasonable in the circumstances.' Nevertheless, Officer Keneally agreed that an available interpretation of the comments on the website was that Moore was not advocating physical violence, but for the community to come together to assist in getting police such as the Commissioner of Police and Detective TAM1, removed from office.²²

19. Officer Keneally was next questioned in regard to the second extract he had taken from Moore's website and incorporated in his statement, that being:

My aim is to have you gone by April 1 2021.²³

20. Officer Keneally said that he had at the time interpreted this phrase as a threat to the safety to Detective TAM1. However, Officer Keneally was directed to the website and the sentence that immediately preceded the extract which he had quoted in his statement, which read:

We need 20 people to come forward with their stories about you (meaning Detective TAM1) and you will be removed from your job.

Officer Keneally agreed that when the above sentence was read in its entirety, followed by the extract quoted in his statement:

My aim is to have you gone by April 1 2021.

it could be interpreted that Moore was not talking about having Detective TAM1 'gone' in the sense of physical violence, but that he would have Detective TAM1 removed from his job.²⁴

²² Examination VXF at T34.

²³ Examination VXF at T35.

²⁴ Examination VXF at T37.

21. Officer Keneally was unable to provide an explanation as to why, in his Information Report and statement, he omitted the sentence that preceded the extract that he quoted, apart from it being his recollection of the phone call. It was put to him that this failure was a serious error, to which he responded that it was a 'massive oversight'.²⁵
22. Officer Keneally agreed that by inserting into his statement selected extracts from the website, he created the impression that Moore wanted Detective TAM1 gone by violent means. That was what he understood at the time.²⁶ However, he agreed that when the passages from the website that had been read out to him were taken as a whole, one could reach the conclusion that Moore was not advocating physical violence towards Detective TAM1.
23. Officer Keneally acknowledged that by selecting the two extracts from the website, and omitting other sentences, it could be seen that he had distorted the quotations that he used and misrepresented Moore's intention as to the type of action that he proposed taking against Detective TAM1. However, Officer Keneally said that this was not done intentionally.²⁷ He acknowledged that it was an error, and said that in hindsight he should have copied and pasted the whole extract from the website where it referred to Detective TAM1. He agreed that he probably did read all of the sentences at the time, but he was skim reading the website whilst talking to Moore on the telephone.²⁸ Officer Keneally agreed that in creating his statement he had left out remarks contained on the website that provided an 'innocent' interpretation of Moore's comments in regard to Detective TAM1, and that this was a serious oversight. However, it was not his intention to distort the truth.²⁹
24. Before giving evidence, Officer Keneally listened to a recording of his telephone conversation with Moore³⁰ (which had been recorded by Moore unbeknown to Officer Keneally at the time) and read a transcript created

²⁵ Examination VXF at T37-38.

²⁶ Examination VXF at T38.

²⁷ Examination VXF at T39.

²⁸ Examination VXF at T39.

²⁹ Examination VXF at T40.

³⁰ Exhibit VXF7C.

from the call³¹. Officer Keneally agreed that he had previously listened to the recording and read the transcript. He had been told by police that the recording had been examined and it was found to be genuine. Officer Keneally identified the two voices heard in the recording as those of Moore and himself.

25. Officer Keneally was referred to the statement he created late in the evening on 24 February 2021,³² where he had recited in the first person, his conversation with Moore.
26. Officer Keneally agreed that in his statement he asserted that Moore said to him³³:
- a. I want him (Detective TAM1) gone.
 - b. I want him off this planet.
 - c. I'm coming for him when he least expects it. I know where he works and I can follow him home.
 - d. In response to Officer Keneally asking Moore to clarify what he meant by saying he wanted Detective TAM1 'off the planet', Moore replied 'Good as gone, Dead'.
27. However, Officer Keneally agreed in giving evidence that none of the above comments he had attributed to Moore in his statement were heard on the audio recording of their conversation, and further, that during their conversation, no mention is made of Detective TAM1 whatsoever.³⁴
28. Officer Keneally was taken to the record of interview in which he participated with Sergeant Madden as part of the NSW Police Force internal investigation on 22 September 2021. In the course of the interview Officer Keneally was asked for his explanation for the discrepancy between what he had recorded in his Information Report as being his conversation with Moore on the one hand, and the audio recording of the conversation on the

³¹ Exhibit VXF 8C.

³² Exhibit VXF5C.

³³ Examination VXF at T45-46.

³⁴ Examination VXF at T46-48.

other. Officer Keneally agreed that he provided two reasons as to how this occurred. The first was that when he prepared the documents, he was relying upon his recollection of the conversation. Secondly, he was trying to do two things at once, read the website and have a conversation on the telephone with Moore, and he may have become confused.³⁵

29. When asked about how the same discrepancies occurred between his formal statement and the audio recording, the officer responded that his statement was not made until about 3 hours after the call, and without the aid of any contemporaneous notes, by which time his memory was starting to deteriorate.³⁶ In addition, Officer Keneally said that in the process of simultaneously speaking on the telephone with Moore and reading the website, he has inserted phrases from the website into his statement.³⁷
30. Officer Keneally agreed that when an officer makes a formal statement, it usually forms part of an investigation. However, in this case he could not recall the Duty Officer at the Goulburn police station informing him that his statement was going to form the basis of an investigation. He agreed that one of the purposes of creating a formal statement is that police can rely upon it as evidence in relation to a prosecution, and the court is entitled to assume that its contents are true and correct.³⁸
31. In regard to the second explanation offered by Officer Keneally for the discrepancy between his statement and the audio recording, namely, that he took some of the words and phrases from Moore's website and inserted them into his statement in the context of what Moore said to him, the officer was taken to 3 passages in his statement where it was alleged Moore said the following in relation to Detective TAM1:
- a. Moore: I want him off this planet.
 - b. Moore: ...I'm coming for him when he least expects it. I know where he works, and I can follow him home.

³⁵ Examination VXF at T51.

³⁶ Examination VXF at T52-53.

³⁷ Examination VXF at T54.

³⁸ Examination VXF at T58.

c. Keneally: What do you mean by 'off this planet?'

Moore: Good as gone. Dead.

32. Whilst Officer Keneally said the word 'planet', and the phrase 'want him gone' (in reference to Detective TAM1), appeared on Moore's website, he agreed the remaining passages (quoted in Paragraph 31) did not.³⁹ Officer Keneally said that the words in his statement were on the website and that he got them:

from my recollection, and that was due to experiencing it through a phone call, reading a website simultaneously, and perhaps like I've indicated, being tainted by the rest of the details on the website.⁴⁰

33. Officer Keneally said that when preparing the Information Report and statement he was not as focussed as he should have been. He was working station duties and was required to deal with other tasks throughout the incident.⁴¹

34. Officer Keneally denied that he 'invented' the phrase in his statement '...when he least expects it. I know where he works and I can follow him home'. He agreed that it was an error and reiterated that he had been talking to Moore whilst reading the website, and that he relied too heavily upon his recollection of the call and the website, when preparing the documents.

35. Officer Keneally rejected that in his statement he falsified the record of the conversation he had with Moore in order to assist police in having him charged with a criminal offence, although he was aware that as a result of his statement, Moore was arrested and charged with a number of offences. He was further aware that Moore was held in custody for 3 weeks until the Commonwealth Director of Public Prosecutions learned of the discrepancies between his statement and the audio recording and withdrew a number of the charges, one of which was specifically based upon Officer Keneally's statement.⁴²

³⁹ Examination VXF at T60-63.

⁴⁰ Examination VXF at T62.

⁴¹ Examination VXF at T62.

⁴² Examination VXF at T65.

5. Analysis of Evidence

- 5.1. What follows in this part of the Report constitutes analysis and findings made by then Chief Commissioner Blanch AM QC, who had the advantage of seeing Officer Keneally give evidence. The present Chief Commissioner has had regard to the record of the investigation, including the transcript of evidence of Officer Keneally, and agrees entirely with the analysis and findings of the then Chief Commissioner.
- 5.2. There is no serious dispute regarding the events which took place giving rise to the Commission's investigation. It is clear from the evidence that following his telephone call with Moore on the evening of 24 February 2021, Officer Keneally created an Information Report and subsequently, a formal statement, both of which contained a narrative of what was alleged to have been said by Moore, and what the officer read from Moore's website.
- 5.3. Officer Keneally acknowledged the narrative in both documents was incorrect insofar as it recited his conversation with Moore in regard to Detective TAM1. He could hardly do otherwise, as the Commission was in possession of an audio recording of the conversation made by Moore and a transcript of the call, which clearly shows a number of discrepancies between the narratives and the audio recording.
- 5.4. The Commission was also in possession of a copy of Moore's website as it appeared on 24 February 2021. When the contents of this document were compared with Officer Keneally's narrative in his Information Report and statement, it was apparent that in the two instances where he purported to quote extracts from the website, surrounding sentences and phrases which would have provided context for Moore's comments had been excluded.
- 5.5. The issues for consideration by the Commission were how Officer Keneally came to create the inaccuracies in the narrative contained in his Information Report and statement and whether this was a deliberate act on his part.
- 5.6. Whilst participating in a record of interview with Sergeant Madden as part of an internal NSW Police Force investigation, Officer Keneally provided a number of reasons for how he came to create the errors in the two documents that he

prepared. He was also examined at length before the Commission in regard to his explanations for these irregularities.

- 5.7. The first explanation offered by Officer Keneally was that he was basing the narrative in the Information Report on his recollection of the telephone call, and that he may have become confused. At the time of the telephone call, he was trying to have a conversation with Moore whilst also reading the website.⁴³ When creating his statement almost 3 hours after the phone call, Officer Keneally did not have any contemporaneous notes to refer to, by which time his memory of the telephone conversation was starting to deteriorate.⁴⁴
- 5.8. The second explanation provided by Officer Keneally for the discrepancies was that whilst in the process of speaking with Moore and simultaneously reading the website, he inserted phrases from the website into his statement, believing those phrases to be what Moore actually said to him, and given the length of the call and the time which had elapsed between the call and creating his statement, he was mistaken about what was said.⁴⁵
- 5.9. At the time Officer Keneally prepared the narrative in the Information Report, he was reliant upon his memory of the telephone conversation and Moore's website.⁴⁶ Whilst Officer Keneally agreed that records showed this document was created less than 40 minutes after his phone call with Moore, he said that he may not have completed the narrative until potentially 20 to 30 minutes later, but was unable to say whether or not this was in fact the case.⁴⁷ Although Officer Keneally would not agree that his memory of the conversation would have been more accurate at the time of completing the Information Report than at the time of creating his formal statement,⁴⁸ he did agree that due to the effluxion of time between the telephone call and his committing the conversation to writing, his memory of what was precisely said was starting to deteriorate.⁴⁹
- 5.10. Given Officer Keneally said that he was trying to talk with Moore whilst reading through Moore's website, and with the passing of almost 3 hours between that

⁴³ Examination VXF at T51.

⁴⁴ Examination VXF at T53.

⁴⁵ Examination VXF at T54.

⁴⁶ Examination VXF at T18.

⁴⁷ Examination VXF at T55.

⁴⁸ Examination VXF at T56.

⁴⁹ Examination VXF at T53.

event and the creation of his formal statement, one might expect there to have been some reticence on the part of Officer Keneally as to how he recounted his conversation with Moore. That, however, was not the case. The conversation Officer Keneally recited was specific and in the first person, leaving the reader in no doubt about what was said, and by whom.⁵⁰

- 5.11. Given the explanations offered by Officer Keneally for the discrepancies between his statement and the audio recording, one might expect there to be some differences between his account of his conversation with Moore and the audio recording. However, Officer Keneally's version of what Moore said to him in regard to Detective TAM1 is completely false. During the audio recording of the call, no reference is made to Detective TAM1 whatsoever.
- 5.12. The next issue of concern to the Commission is Officer Keneally's quoting in his statement of extracts from Moore's website. Officer Keneally accurately quoted the following two extracts:
- a. If anyone sees Detective [TAM1] from the Goulburn Police, tell him I'm coming for him. Tell him, 'Luke Moore is coming for him.'
 - b. My aim is to have you (Detective TAM1) gone by April 1 2021.⁵¹

Read in isolation, a reader might conclude these comments constituted a threat to the physical safety of Detective TAM1. Indeed, that was the impression Officer Keneally formed.⁵²

- 5.13. Officer Keneally acknowledged that it would have been potentially important to record in his statement any other comments made by Moore that give context to the two extracts that he quoted, and yet he did not do so.
- 5.14. Officer Keneally was directed to a number of passages in Moore's website.⁵³ Officer Keneally acknowledged that in the statements made by Moore, he was advocating that members of the public report to him instances of police conducting strip searches. Officer Keneally agreed that, in all but one passage,

⁵⁰ Examination VXF at T46.

⁵¹ Exhibit VXF5C.

⁵² Examination VXF at T35-37.

⁵³ Examination VXF at T28-35 and 37.

the course of conduct proposed by Moore was non-violent community action. There was however one passage where he thought it was ‘up for interpretation.’⁵⁴

- 5.15. In regard to the second quotation recited by the officer in his statement ‘my aim is to have you [Detective TAM1] gone by April 1 2021’, the officer’s attention was directed to the website and the sentence which immediately preceded that quotation: ‘we need 20 people to come forward with their stories about you and you will be removed from your job.’ Officer Keneally could not say why he had omitted to include this passage in his statement and said that it was a ‘massive oversight.’⁵⁵ The significance of this omission cannot be overemphasised. Its effect was to completely misrepresent Moore’s intention of the type of action he intended taking against Detective TAM1 (which clearly was to have him removed from the NSW Police Force by people coming forward with their complaints). He had to have read this sentence in order to arrive at the following sentence which he quoted.
- 5.16. To make matters worse, Officer Keneally said in his statement that he relied upon the truncated quotation as one of the bases for engaging Moore in conversation regarding Detective TAM1, which, having regard to the contents of the audio recording, the Commission notes, was fictional. Whilst Officer Keneally offered as an explanation for omitting to quote the whole passage in his statement, that he was relying upon his recollection from the telephone call,⁵⁶ this seems disingenuous. Officer Keneally had Moore’s website open to read at the time of making his statement. No ‘recollection’ of the telephone call was required. Furthermore, whilst he undoubtedly had other duties to perform on the evening in question, it was not suggested by Officer Keneally that he did not have time to read Moore’s website more closely when compiling his statement.
- 5.17. Officer Keneally was examined in detail about the second explanation he provided for the discrepancies between his statement and the audio recording of his conversation with Moore, first, during his record of interview with Sergeant Madden, and subsequently, when giving evidence before the Commission. He said that ‘in error’ he ‘inserted’ phrases from Moore’s website into his statement

⁵⁴ Examination VXF at T33.

⁵⁵ Examination VXF at T38.

⁵⁶ Examination VXF at T38.

as words actually said by Moore during the telephone call.⁵⁷ This explanation does not appear to have been explored by Sergeant Madden in his interview with Officer Keneally. Examination of Officer Keneally's statement revealed 3 instances where it was alleged by the officer that Moore said something to him, but neither appeared in the audio recording nor the website. The first is where Moore is alleged to have said 'I want him off this planet'. During his examination Officer Keneally correctly asserted the word 'planet' did appear on the website, but acknowledged the remainder of the phrase did not. Indeed, when one reads the phrase which did appear on the website it is obvious that it is used in an entirely different context to that portrayed in Officer Keneally's statement:

My aim is to have you gone by April 1 2021. Ironic because that's April fool's day and you are the biggest fool on the planet you corrupt pedo dog.

- 5.18. The second comment Officer Keneally attributed to Moore in his statement in reference to Detective TAM1 is:

I'm coming for him when he least expects it. I know where he works, and I can follow him home.

Officer Keneally agreed during his examination this phrase is not heard on the audio recording and does not appear on Moore's website.

- 5.19. The third comment attributed to Moore by the Officer Keneally in his statement appears after the officer is alleged to have said to Moore '...what do you mean by "off the planet?"' Moore is then alleged to have said in response, 'Good as gone. Dead.' Officer Keneally agreed this phrase is not heard on the audio recording and is not on the website. He rejected that the 3 phrases referred to above, were an 'invention' by him.⁵⁸ When asked where he got the phrases from, the officer replied:

Like I've explained, it was an error. It was a lack of care and diligence while preparing the information report. I didn't invent it. It was my genuine belief when I prepared the information report, when I prepared the event, when I prepared the statement. It's a culmination of what we have talked

⁵⁷ Examination VXF at T59.

⁵⁸ Examination VXF at T63.

about today. You know, there are those words on the website and unfortunately I'm reading the website while I'm speaking to Mr Moore on the phone. When I have later prepared the Information Report I'm relying heavily on my recollection, which was an error. I'm getting interrupted by station duties and I think when I've gone back to prepare this Information Report, like I've indicated, I relied too heavily on my recollection and the website, in error.

- 5.20. The Commission has difficulty accepting Officer Keneally's explanation as to how the 3 phrases came to be in his Information Report and statement. First, whilst the officer says 'there are those words on the website', the phrases do not appear on the website. At no time does Moore talk about following Detective TAM1 home. At no time does Moore use the word 'dead' as in wanting Detective TAM1 'good as gone, dead.'
- 5.21. Second, when compiling his statement, Officer Keneally did not have to rely upon his recollection of what was on Moore's website. He had it in front of him. Furthermore, by that stage he was not talking to Moore on the telephone. The assertion made by the officer that he took phrases from Moore's website and inserted them in his statement as words actually said by Moore is not credible.
- 5.22. Throughout his evidence Officer Keneally asserted that the errors in his Information Report and statement arose due to a lack of diligence on his part and were not intentional.⁵⁹ When these errors are examined individually, that is a conclusion that can be arrived at. However, when they are viewed collectively, the Commission cannot accept this explanation. Looking at a number of passages in Moore's website to which the officer was taken in his examination, it is apparent that he has left out any that provide an innocent interpretation of Moore's intentions in regard to Detective TAM1, and by so doing, created a narrative which casts Moore in an unfavourable light.
- 5.23. Furthermore, Officer Keneally has combined the 'cherry-picking' of a particular statement that appears on Moore's website, with comments attributed to Moore that simply do not exist, the outcome being to provide a foundation for one of the criminal charges brought by police against Moore (Use carriage service to threaten to kill). By way of illustration, the sentence from Moore's website, 'We

⁵⁹ Examination VXF at T65.

need 20 people to come forward with their stories about you and you will be removed from your job', was omitted by the officer in his statement. However, he did include in his statement the sentence from Moore's website which followed immediately thereafter: 'My aim is to have you gone by April 1, 2021.'

5.24. The officer has then added in his statement that Moore said:

I'm coming for him when he least expects it. I know where he works and I can follow him home. (comment never made by Moore).

And below that further added in his statement:

Good as gone. Dead. (comment never made by Moore).

6. Call for Submissions and Provision of s 135 Report in 2022

6.1. Officer Keneally was provided in March 2022, on a confidential basis, the draft s 135 Report of the Commission to enable submissions to be made with respect to its contents.

6.2. The Commission received no submissions on behalf of Officer Keneally in respect of its s 135 Report.

6.3. It had initially been the intention of the Commission to table its 2022 final report in the NSW Parliament pursuant to s 132 of the LECC Act, with a recommendation that the report be made public. However, the Commission became concerned that in the event of the Director of Public Prosecutions (DPP) providing advice that there was sufficient admissible evidence to prosecute Officer Keneally, and a prosecution ensued, any reporting in the media of the Commission's report, even with pseudonyms substituting persons' names, might jeopardise Officer Keneally's right to a fair hearing. It was therefore decided not to present its report to Parliament, but instead, to re-classify it as a private report pursuant to s 135 of the LECC Act.

6.4. On 5 April 2022, the Commission's final report under s 135 was provided to the Minister for Police and the Commissioner of Police. That report contained the following recommendations:

- Consideration should be given (by the Commissioner of Police) to the making of an order under section 181D of the *Police Act 1990* by the NSW Police Force against Officer Keneally.
- Consideration should be given to the obtaining of advice from the DPP with respect to the prosecution of Officer Keneally for the following offences:
 1. Making a false accusation – s 314 of the *Crimes Act 1900*; and
 2. General offence of Attempting to pervert the course of justice – s 319 of the *Crimes Act 1900*.

6.5. Later developments are considered under ‘Events After Delivery of Section 135 Report’ at Part 9 of this Report.

7. Findings

- 7.1. As noted at paragraph 5.1 above, what follows constitutes findings made in the s 135 report by then Chief Commissioner Blanch AM QC who had the advantage of seeing Officer Keneally give evidence at the private examination on 20 January 2022. The present Chief Commissioner has had regard to the record of the investigation, including the transcript of evidence of Officer Keneally, and agrees entirely with the findings made by the then Chief Commissioner.
- 7.2. In regard to the complaint made by Moore that, on 24 February 2021, Officer Keneally fabricated evidence in a police investigation that led to the subsequent arrest and charging of Moore with serious charges, the Commission does not accept the explanations advanced by Officer Keneally for omitting phrases that appeared on Moore’s website, from his Information Report and formal statement. Given the position of the phrases on the website in relation to two quotations that were used by the officer, they had to have been read by him. Similarly, the Commission is not satisfied with the explanations offered by Officer Keneally for the creation in his Information Report and statement of what in effect, turned out to be a non-existent telephone conversation between the officer and Moore in regard to Detective TAM1. The exclusion of the phrases, namely ‘We need 20 people to come forward with their stories about you and you will be removed from your job,’ and inclusion of manufactured comments alleged to have been

made by Moore in regard to Detective TAM1, had the clear effect of misrepresenting the intentions of Moore in relation to Detective TAM1.

- 7.3. Given the nature and extent of the inaccuracies contained in Officer Keneally's Information Report and statement, the Commission is satisfied to the requisite standard that the creation of those inaccuracies was intentional, and amounts to a false accusation, which could result in the prosecution of the officer for a serious criminal offence. Accordingly, the Commission is satisfied the conduct of Officer Keneally amounts to serious misconduct.
- 7.4. If the Commission had not been satisfied to the requisite standard that the finding in paragraph 7.3 should be made (which is not the case), it would find, at the least, that Officer Keneally did not exercise due care and diligence in creating his Information Report and statement, and as such has breached the NSW Police Force Code of Conduct and Ethics. Such conduct, in the Commission's view, amounts to serious misconduct.

8. Affected Persons

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

9. Events After Delivery of the Section 135 Report

- 9.1. On 22 June 2022, the Commission forwarded an Advisory Brief to the DPP. On 27 September 2022, the Commission received advice from the DPP to the effect that there was sufficient admissible evidence to prosecute Officer Keneally for an offence under s 317(b) of the *Crimes Act 1900* (NSW), fabricate false evidence with intent to mislead a judicial tribunal.
- 9.2. On 30 September 2022, a criminal prosecution for that offence was commenced by way of Court Attendance Notice against Officer Keneally. The DPP had the carriage of the prosecution. Officer Keneally entered a plea of Not Guilty to the charge and the matter proceeded to hearing in the Local Court at the Downing Centre before Magistrate Brender on 20 October 2023. Officer Keneally gave evidence in the defence case and was cross examined by the Crown Prosecutor.

- 9.3. On 21 November 2023, a decision was handed down, with Magistrate Brender finding the offence against Officer Keneally proved. After analysis of the evidence, Magistrate Brender concluded in his judgment (pages 9-10 transcript, 21 November 2023):

An intelligent police man on a matter of this importance could not make this wrong statement inadvertently when the material he wrote had no other possible source. It was relevantly a fabrication. It was deliberate in that he must have known he could not recall it having been said, and hence it was false to say he did recall it. The conversation as recounted just did not happen. The accused knew it because it had just happened. He was not distracted by other events and he was not fatigued.

He said he knew he could not distinguish 100% between the website and the conversation, yet he wrote the statement including the parts of which he could have no recollection. He must have checked the website because he quoted from it in the statement. There is no basis to suggest any other person suggested the content or affected his memory by pressuring him or giving him information to the effect of what he came to say in the statement had been said.

I reject the defence suggestion of honest and mistaken belief. There can be no real doubt that he knew it could well result in an arrest, detention and its use in court in a prosecution. As he candidly conceded the jurat said almost as much and he knew it was a real possibility. Evidence of the clear oral threat to kill a policeman would he knew inevitably be very likely to lead to charges and court processes. He intended the obvious, namely that a formal police statement that he made, signed, and had witnessed in the usual way would be used in any court proceedings commenced by people responsible for making those decisions. It would mislead the relevant tribunal because it was false.

- 9.4. The matter was adjourned to 21 December 2023 for submissions on sentence. On this date submissions were made on behalf of the DPP and Officer Keneally's legal representative, following which the Magistrate reserved his decision.
- 9.5. On 1 February 2024, Magistrate Brender handed down his decision on sentence. The Magistrate recorded a conviction against Officer Keneally and imposed a

sentence of imprisonment for 15 months to be served by way of an Intensive Correction Order. In addition, Officer Keneally was ordered to perform 200 hours community service, and to pay a fine of \$2,000.00.

- 9.6. Officer Keneally lodged an appeal to the NSW District Court against the Magistrate's finding that he was guilty of the offence with which he was charged.
- 9.7. This appeal was heard before His Honour Judge Pickering SC in the District Court at the Downing Centre, Sydney on 20 and 21 June 2024, when the appeal was dismissed, and all orders of the Local Court Magistrate confirmed, with Officer Keneally's sentence to commence from 21 June 2024. At the time of publishing the Commission's report, the reasons for His Honour's decision were not available.
- 9.8. Following the dismissal of his appeal, Officer Keneally tendered his resignation as a police officer to the Commissioner of Police, and the resignation was accepted on 26 June 2024.
- 9.9. Officer Keneally was provided in July 2024, on a confidential basis, the draft s 132 Report to enable submissions to be made with respect to its contents.
- 9.10. The Commission was informed that Officer Keneally did not wish to make any submissions in reply to the s 132 Report.

10. Recommendations

- 10.1. In its 2022 s 135 Report, the Commission made a recommendation under s 133(2)(c) of the LECC Act that consideration should be given to the making of an order under section 181D of the *Police Act 1990* dismissing Officer Keneally from the NSW Police Force. This recommendation was fortified by the fact that Officer Keneally had been found guilty in November 2023 by the Local Court of a serious public justice offence, and his appeal to the District Court had been dismissed in June 2024.
- 10.2. As Officer Keneally has now resigned from the NSW Police Force, the recommendation in paragraph 10.1 above is no longer necessary.
- 10.3. In the s 135 Report, as noted at paragraph 6.4, a recommendation was made that consideration be given to the prosecution of Officer Keneally and a referral was made to the DPP for that purpose. As that recommendation has been acted upon

and the prosecution is concluded, it is not necessary to make any further recommendation in this report under s 133(2)(a) of the LECC Act.

- 10.4. Having regard to the events considered in this Report, the Commission recommends that the NSW Police Force introduce into telephone systems in police stations a capacity to record conversations with members of the public.

11. Conclusion

- 11.1. A finding of serious misconduct was made in the 2022 s 135 Report and is confirmed in this Report. That finding is fortified by the verdicts of guilty in the criminal proceedings.
- 11.2. This s 132 Report serves the purpose of reciting the findings and recommendations made by the Commission in the 2022 s 135 Report and the verdicts returned in the subsequent criminal proceedings in the Local Court and then the District Court.
- 11.3. This Report illustrates the effective operation of the LECC Act in several important respects. A complaint was made to the Commission of serious misconduct on the part of a police officer. Having considered the complaint, and recognising the primary responsibility of the NSW Police Force to investigate officer misconduct⁶⁰, the Commission referred the matter to the NSW Police Force for investigation. The Commission was dissatisfied with the police investigation. The Commission took the matter over and conducted its own independent investigation. A private examination was conducted followed by a s 135 Report which recommended prosecution and consideration of removal action under s 181D of the *Police Act 1990*. A criminal prosecution was commenced, and Officer Keneally was found guilty of the serious offence under s 317(b) of the *Crimes Act 1900* and sentenced for that offence. His appeal to the District Court was dismissed. Officer Keneally has resigned from the NSW Police Force.

⁶⁰ Section 3(f) LECC Act.

Appendix 1 - The Commission's Statutory Functions

1. The *Law Enforcement Conduct Commission Act 2016* (the LECC Act) lists among the Commission's principal functions the detection and investigation of serious misconduct and serious maladministration: s 26.
2. Section 9 of the LECC Act defines “*police misconduct*”, “*administrative employee misconduct*” and “*Crime Commission Officer misconduct*”:

9 Police misconduct, administrative employee misconduct and Crime Commission officer misconduct

(1) **Definition — police misconduct** For the purposes of this Act, **police misconduct** means any misconduct (by way of action or inaction) of a police officer —

- (a) whether or not it also involves participants who are not police officers, and
- (b) whether or not it occurs while the police officer is officially on duty, and
- (c) whether or not it occurred before the commencement of this subsection, and
- (d) whether or not it occurred outside the State or outside Australia.

(2) **Definition — administrative employee misconduct** For the purposes of this Act, **administrative employee misconduct** means any misconduct (by way of action or inaction) of an administrative employee —

- (a) whether or not it also involves participants who are not administrative employees, and
- (b) whether or not it occurs while the administrative employee is officially on duty, and
- (c) whether or not it occurred before the commencement of this subsection, and
- (d) whether or not it occurred outside the State or outside Australia.

(3) **Definition — Crime Commission officer misconduct** For the purposes of this Act, **Crime Commission officer misconduct** means any misconduct (by way of action or inaction) of a Crime Commission officer —

- (a) whether or not it also involves participants who are not Crime Commission officers, and
- (b) whether or not it occurs while the Crime Commission officer is officially on duty, and
- (c) whether or not it occurred before the commencement of this subsection, and
- (d) whether or not it occurred outside the State or outside Australia.

(4) **Examples** Police misconduct, administrative employee misconduct or Crime Commission officer misconduct can involve (but is not limited to) any of the following conduct by a police officer, administrative employee or Crime Commission officer respectively —

- (a) conduct of the officer or employee that constitutes a criminal offence,
- (b) conduct of the officer or employee that constitutes corrupt conduct,
- (c) conduct of the officer or employee that constitutes unlawful conduct (not being a criminal offence or corrupt conduct),
- (d) conduct of the officer or employee that constitutes a disciplinary infringement.

(5) **Former police officers, administrative employees and Crime Commission officers** Conduct may be dealt with, or continue to be dealt with, under this Act even though any police officer, administrative employee or Crime Commission officer involved is no longer a police officer, administrative employee or Crime Commission officer (but only in relation to conduct occurring while he or she was a police officer, administrative employee or Crime Commission officer). Accordingly, references in this Act to a police officer, administrative employee or Crime Commission officer extend, where appropriate, to include a former police officer, administrative employee and Crime Commission officer, respectively.

3. Section 10 of the LECC Act defines “*serious misconduct*”:

- (1) For the purposes of this Act, **serious misconduct** means any one of the following:
 - (a) conduct of a police officer, administrative employee or Crime Commission officer that could result in prosecution of the officer or employee for a serious offence or serious

disciplinary action against the officer or employee for a disciplinary infringement,

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

(2) In this section:

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

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

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

- (2) **Officer maladministration** means any conduct (by way of action or inaction) of a police officer, administrative employee or Crime Commission officer that, although it is not unlawful (that is, does not constitute an offence or corrupt conduct):
 - (a) is unreasonable, unjust, oppressive or improperly discriminatory in its effect, or
 - (b) arises, wholly or in part, from improper motives, or
 - (c) arises, wholly or in part, from a decision that has taken irrelevant matters into consideration, or
 - (d) arises, wholly or in part, from a mistake of law or fact, or

- (e) is conduct of a kind for which reasons should have (but have not) been given.
- 5. The conduct of an officer or agency is defined as “*serious maladministration*” if the conduct, though not unlawful, is conduct of a serious nature which is unreasonable, unjust, oppressive or improperly discriminatory in its effect or arises wholly or in part from improper motives: LECC Act, s 11(3).
- 6. The Commission may hold an examination for the purpose of an investigation into conduct that it has decided is (or could be) serious misconduct or serious maladministration: s 61 (a).
- 7. Section 29 provides the authority for the Commission to make findings and express opinions:
 - (1) The Commission may:
 - (a) make findings, and
 - (b) form opinions, on the basis of investigations by the Commission, police investigations or Crime Commission investigations, as to whether officer misconduct or officer maladministration or agency maladministration:
 - (i) has or may have occurred, or
 - (ii) is or may be occurring, or
 - (iii) is or may be about to occur, or
 - (iv) is likely to occur, and
 - (c) form opinions as to:
 - (i) whether the advice of the Director of Public Prosecutions should be sought in relation to the commencement of proceedings against particular persons for criminal offences against laws of the State, or
 - (ii) whether the Commissioner of Police or Crime Commissioner should or should not give consideration to the taking of other action against particular persons, and
 - (d) make recommendations as to whether consideration should or should not be given to the taking of action under Part 9 of the *Police Act 1990* or under the *Crime Commission Act 2012* or other disciplinary action against, particular persons, and

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

- (7) The Commission is not precluded by subsection (6) from including in any such report a finding or opinion about any conduct of a specified person that may be officer misconduct or officer maladministration if the statement as to the finding or opinion does not describe the conduct as officer misconduct or officer maladministration.
8. This report is made pursuant to Part 11 of the **LECC Act**. Section 132(1) provides that the Commission may prepare reports “*in relation to any matter that has been or is the subject of investigation under Part 6*”.
9. Section 133 (Content of reports to Parliament) provides that:
 - (2) 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.
 - (3) 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.

- (4) 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.
- (5) 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.

10. Section 146 provides:

146 Notification of proposed action on reports

- (1) As soon as practicable after the Commissioner of Police or Crime Commissioner receives a report under section 27, 32, 132, 134, 135 or 136 or a copy of the report is laid before a House of Parliament, the Commissioner of Police or Crime Commissioner, respectively, must notify the Commission of the nature of the action taken, or to be taken, as a result of the report.
- (2) If the Commission has provided a copy of the report to the Commissioner of Police or Crime Commissioner and the Commission is of the opinion —
 - (a) that the Commissioner of Police or Crime Commissioner has unreasonably delayed notifying the Commission of the nature of the action taken, or to be taken, as a result of the report, or
 - (b) that the nature of the action taken, or to be taken, as a result of the report is, in the circumstances of the case, unreasonable or inadequate, or
 - (c) that the Commissioner of Police or Crime Commissioner has unreasonably delayed taking action as a result of the report,

the Commission is to advise the Commissioner of Police or Crime Commissioner accordingly by notice in writing served on that Commissioner.

- (3) If the Commission and the Commissioner of Police do not, within 28 days, resolve any issue the subject of a notice under subsection (2), either or both of them may notify the Minister administering the *Police Act 1990* that the issue is unresolved.
- (4) If the Commission and the Crime Commissioner do not, within 28 days, resolve any issue the subject of a notice under subsection (2), either or both of them may notify the Minister administering the *Crime Commission Act 2012* that the issue is unresolved.
- (5) The issue may be the subject of a Commission's special report under section 138.

Appendix 2 – Use of Names of Witnesses or Pseudonyms in this Report

1. Officer Keneally, who gave evidence in Operation Tambre, did so in a private examination held on 20 January 2022. Having considered matters relevant to the choice between a private and public examination under s 63 LECC Act, the Commission had determined that the examination should take place in private.⁶¹
2. There is a legal restriction in s 177 of the LECC Act concerning the disclosure and use of evidence given at a private examination.
3. As Operation Tambre was the subject of examination under Part 6 of the LECC Act, the Commission must prepare a report either under s 132 or s 135 in relation to the investigation.⁶² As Operation Tambre did not involve a public hearing, the Commission is not obliged to prepare a report concerning that investigation.⁶³
4. However, the Commission has determined that it is appropriate to prepare a report concerning Operation Tambre.
5. The Commission may prepare a public report⁶⁴ or an effectively private report to the Minister for Police and Counter-terrorism and the Commissioner of Police.⁶⁵
6. Having regard to the issues raised in the investigation and the Report, the Commission has determined that a public report is now appropriate in this case.
7. The question arises as to whether persons (including witnesses) should be named in the Report.
8. It should be kept in mind that the Commission is not a court hearing adversarial civil or criminal proceedings. The Commission is empowered to hold public or

⁶¹ Factors relevant to the choice of private and public examinations under s 63 LECC Act were later considered in the *Public Decision Concerning Public and Private Examinations in Aid of an Investigation in Operation Mantus* (3 March 2023) (“Operation Mantus Public Examination Decision”).

⁶² Section 132(1), 135 LECC Act.

⁶³ Section 132(2) LECC Act.

⁶⁴ Sections 132(3), 133 LECC Act.

⁶⁵ Section 135 LECC Act.

private examinations in aid of its investigatory functions under the LECC Act. The principle of open justice, which applies to court proceedings, has no application to Commission examinations.⁶⁶

9. The starting point is that Officer Keneally gave evidence in a private examination and there is, subject to further order of the Commission, a statutory restriction upon revelation of that evidence including disclosure of the identity of the witness.
10. Where persons have given evidence about events which occurred when they were young persons under 18 years old, the Commission should adopt the same approach, by analogy, as that taken in courts where there are statutory restrictions upon identification of young persons.⁶⁷
11. With respect to possible naming of police officers in public reports of the Commission, guidelines have been developed by the Commission for general use, and can be found on the Commission's website.⁶⁸
12. Several factors referred to in the Operation Mantus Public Examination Decision are relevant to the question of naming persons and the use of pseudonyms in a public report under s 132 of the LECC Act.⁶⁹
13. Adverse findings are made in this Report against Officer Keneally. Until resigning with effect on 26 June 2024, he was a serving member of the NSW Police Force. As recognised in the submissions made to the Commission on the question of identification of police officers in reports, there can be detrimental consequences flowing to an officer and the officer's family through identification in a public report of the Commission. There is also an argument that transparency points to identification of an officer against whom adverse findings have been made.

⁶⁶ Paragraph 10, Operation Mantus Public Examination Decision.

⁶⁷ See, for example, s 15A *Children (Criminal Proceedings Act) 1987*.

⁶⁸ [LECC Guidelines on the use of pseudonyms and non-publication orders in Commission reports](#).

⁶⁹ Paragraphs 38-66 Operation Mantus Public Examination Decision. See also paragraphs 4-5, 9 *Confidential Decision Concerning Public and Private Examinations in Aid of an Investigation in Operation Mantus*.

14. For the purposes of this Report, the Commission has determined that Officer Keneally should be identified. In arriving at this decision, the Commission has taken into account a number of factors including:
- a. The nature and seriousness of the conduct in question.
 - b. The low level of seniority of the police officer at the time.
 - c. The police officer was the subject of criminal proceedings as a result of his conduct which culminated in his conviction in the Local Court for a serious offence under s 317(b) of the *Crimes Act 1900* and an unsuccessful appeal against conviction to the District Court.
 - d. The criminal proceedings brought by the DPP against Officer Keneally, proceeded in public with no suppression orders being made in respect of his name.
 - e. Constable Keneally gave evidence in open court in respect of his conduct which was the subject of the Commission's investigation. The hearing was open to members of the public to attend.
 - f. The significant amount of media coverage the conduct of the police officer received during the hearing of the criminal proceedings, and which remains available on the internet.
15. For the purposes of this report the Commission has determined that Officer Taleski and Officer Reilly should be identified. In coming to this decision, the Commission has taken into account a number of factors including:
- a. They were not the subject of the Commission's investigation and no adverse findings have been made in respect of their conduct.
 - b. Whether there is evidence that makes it likely that disclosing the name of the police officers will result in a real risk of disproportionate distress or harm either to the person or their family.
 - c. The hearing of the prosecution of Officer Keneally proceeded in open court to which members of the public were permitted entry, and no non-publication orders were made in respect of witnesses or persons identified in the course of evidence.
 - d. That in the course of extensive media reporting on the hearing of the prosecution of Officer Keneally, both officers have been publicly identified, and that this material remains available on the internet.

16. It is appropriate for the Commission to use a pseudonym in the Report in respect of Detective TAM1. This approach does not inhibit a clear understanding of the roles of different persons referred to in the Report.

17. Although the LECC Act does not provide expressly for the making of pseudonym orders, this step is incidental to the power to conduct private examinations, to make orders under ss 176 and 177 and to issue a public report under s 132 of the LECC Act. The use of pseudonyms is simply a mechanism to identify different persons in the Report without using names. This is a necessary step to facilitate a meaningful and informative report without detracting from analysis of the important issues arising in the context of the investigation. In arriving at its decision to anonymise the name of this officer, the Commission has taken a number of factors into consideration including:
 - a. No adverse findings have been made with respect to Detective TAM1.
 - b. It is not necessary to identify the officer to understand that person's role in the events under investigation.
 - c. Although there has been extensive coverage in the media of the prosecution of Officer Keneally, Detective TAM1's name has not been identified.
 - d. If Detective TAM1 is identified there is a very real risk that this will result in disproportionate distress or harm to him and his family.

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