

LECC

Law Enforcement
Conduct Commission

OPERATION MONZA

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

MARCH 2021

LECC

Law Enforcement
Conduct Commission

Office of Commissioner for Integrity

26 March 2021

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

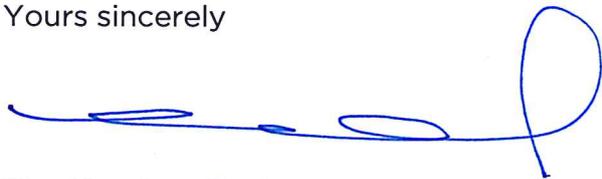
The Hon Jonathan O'Dea MP
Speaker
Legislative Assembly
Parliament House
SYDNEY NSW 2000

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 Monza.

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

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1. Introduction

- 1.1 On 13 June 2019, the Law Enforcement Conduct Commission ('the Commission') decided to conduct an investigation pursuant to s 44(1)(a) of the *Law Enforcement Conduct Commission Act 2016* (NSW) ('the LECC Act'). The general scope and purpose of the investigation was as follows:

To investigate whether on 28 and 29 May 2019, Officer MON3 and Officer MON4 of Strike Force Raptor and other unidentified NSW Police Force officers harassed and intimidated Civilian MON1.

- 1.2 On 4 June 2019 the Commission had received a complaint from a solicitor instructed by Civilian MON1 (who himself was also a solicitor) detailing serious allegations of police harassment of Civilian MON1 and his friend Civilian MON2 on 28 and 29 May 2019.
- 1.3 Officer MON3, a Constable, and Officer MON4, a Senior Constable, had travelled to a regional town in Northern NSW (Town1) on 28 May 2019 with other officers from Strike Force Raptor for work related purposes. One of these purposes was for some of the other officers in Strike Force Raptor to attend a hearing at the Local Court on 28 May 2019 at which Civilian MON1 was representing a client, Civilian MON9.
- 1.4 Officer MON3 resigned from the NSW Police Force on 15 June 2020. However, for convenience, he will still be referred to as an officer in this Report.
- 1.5 The Commission obtained relevant footage from the body worn camera of Officer MON3 in the course of its investigation.
- 1.6 The Commission gave consideration to the relevant provisions of the LECC Act and determined that private examinations should take place.
- 1.7 On 12 February 2020 Civilian MON1 and Civilian MON2 gave evidence in separate private examinations before the Commission.

1.8 Officer MON3 and Officer MON4 gave evidence in private examinations at the Commission on 25 and 26 June 2020 respectively.

1.9 Other officers found to be involved in the matter also attended subsequent private examinations at the Commission, including Officer MON5 on 23 July 2020, Officer MON7 on 10 September 2020, and Officer MON8 on 2 November 2020. The general scope and purpose of the examinations was as follows:

To investigate whether Officer MON3 or Officer MON4, or any other NSW Police officer or other person associated with them is, or has been, involved in misconduct or criminal activity.

1.10 Officer MON6, Commander of the Criminal Groups Squad also attended a private examination on 23 November 2020. He gave evidence, set out below at paragraph 3.7, in respect of his review into the operation of Strike Force Raptor and the changes he had implemented since commencing in the role of Commander.

1.11 For the reasons set out later in this Report, the Commission has found that Officer MON3 engaged in serious misconduct when he intimidated and harassed Civilian MON1 on 28 and 29 May 2019.

1.12 For the reasons set out later in this Report, the Commission has found that Officer MON4 engaged in serious misconduct when he intimidated and harassed Civilian MON1 on 28 and 29 May 2019.

1.13 For the reasons set out later in this Report, the Commission has found that Officer MON5 engaged in serious misconduct when he issued instructions to Officer MON3 and Officer MON4 to target Civilian MON1 on 28 May 2019.

- 1.14 The Commission has determined to protect the identities of all persons involved in these events. Accordingly, all persons will be referred to by codenames in any published report. There is to be no publication of the name or image of any of the codenamed persons in relation to the evidence given in Operation Monza or included in this Report without further order of the Commission.

2. The Commission's Statutory Functions

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

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

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

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

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

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

(2) *In this section:*

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

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

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

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

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

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

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

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

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

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

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

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

(1) The Commission may:

(a) make findings, and

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

(i) has or may have occurred, or

(ii) is or may be occurring, or

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

(iv) is likely to occur, and

(c) form opinions as to:

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

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

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

(e) make recommendations for the taking of other action that the Commission considers should be taken in relation to the subject-matter or opinions or the results of any such investigations.

(2) Subsection (1) does not permit the Commission to form an opinion, on the basis of an investigation by the Commission of agency maladministration, that conduct of a particular person is officer maladministration unless the conduct concerned is (or could be) serious maladministration.

(3) The Commission cannot find that a person is guilty of or has committed, or is committing or is about to commit, a criminal offence or disciplinary infringement.

(4) An opinion or finding that a person has engaged, is engaging or is about to engage in:

(a) officer misconduct or serious misconduct or officer maladministration or serious maladministration (whether or not specified conduct), or

(b) specified conduct (being conduct that constitutes or involves or could constitute or involve officer misconduct or serious misconduct or officer maladministration or serious maladministration), and any recommendation concerning such a person is not a finding or opinion that the person is guilty of or has committed, or is committing or is about to commit, a criminal offence or disciplinary infringement.

(5) Nothing in this section prevents or affects the exercise of any function by the Commission that the Commission considers appropriate for the purposes of or in the context of Division 2 of Part 9 of the Police Act 1990.

(6) The Commission must not include in a report under Part 11 a finding or opinion that any conduct of a specified person is officer misconduct or officer maladministration unless the conduct is serious misconduct or serious maladministration.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3. Commission Private Examinations

3.1 During the investigation the Commission summonsed witnesses to give evidence in private examinations at the Commission. Set out below are summaries of some of the evidence of those witnesses.

Evidence of Civilian MON1

3.2 Civilian MON1 gave evidence on 12 February 2020 in a private examination at the Commission. He chose to appear without legal representation. The following is a summary of his evidence:

- i. He is the principal lawyer of his own firm practising mainly in criminal law. He was admitted to practice as a solicitor in 2008. His firm is based in Town1. He employs four people.²
- ii. He owns three cars, including a Dodge Journey and a Harley Davidson motorcycle.³

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

² Private examination BMD at T6-7.

³ Private examination BMD at T6.

- iii. He has an “*extremely good*” relationship with the local police and was previously part of the police motorcycle club.⁴
- iv. He was engaged to represent Civilian MON9 in the Local Court on 28 May 2019. Civilian MON9 had been charged by police from Strike Force Raptor with five animal cruelty charges.⁵
- v. The police had asked if the relevant officers could appear via audio-visual link. He refused. He required the officers to appear in person because the case involved evidence regarding directions and measurements.⁶
- vi. At approximately 6:30 a.m. on 28 May 2019, he noticed a police car drive past his house. This surprised him. He waved because he knew almost every local police officer in the area but there was no wave back.⁷
- vii. He saw there were two male police officers in the car who he did not recognise. He also stated that it was a different looking police vehicle.⁸
- viii. He stated that there was no reason to be on his street unless a person was walking their dog, playing on the street or actually lived there.⁹
- ix. At about 7:00 a.m. his friend Civilian MON2 arrived and asked him to travel to Beaurepaires with her, as she needed tyres for her car, and he could then drive her to work from there.¹⁰
- x. Civilian MON1 decided that they would leave for Beaurepaires immediately. Civilian MON2 got into her car and he got into his Dodge. They both reversed out of the driveway onto the road in

⁴ Private examination BMD at T7.

⁵ Private examination BMD at T8.

⁶ Private examination BMD at T32.

⁷ Private examination BMD at T9-10.

⁸ Private examination BMD at T10.

⁹ Private examination BMD at T23.

¹⁰ Private examination BMD at T10-11.

their respective vehicles.¹¹ There was no traffic on the road at the time.¹²

- xi. He noticed the police vehicle was following him.¹³
- xii. Beaurepaire is about seven or eight blocks away from his residence and the journey there only took “*single minutes*”.¹⁴
- xiii. Upon arrival at Beaurepaire the police vehicle pulled up behind him. Officer MON3 approached him and asked to see his driver’s licence because he had not indicated when he reversed from the driveway. He did not have his licence on him as he had left home in a hurry.¹⁵
- xiv. After Officer MON3 had identified himself as being from Strike Force Raptor, he said to Officer MON3 “*oh, I’m against you guys today*”. Officer MON3 said he did not know that.¹⁶
- xv. He decided to go home straight away to get his driver’s licence because he “*smelled a rat*”, given that neither of the officers involved were required to attend Court that day for cross-examination.¹⁷
- xvi. On his way home from Beaurepaire, he was stopped again by the police officers. They told him that they had forgotten to conduct a roadworthiness check on his vehicle.¹⁸
- xvii. Both he and Civilian MON2 were directed to get out of the vehicle and he watched as Officer MON3 inspected the vehicle and pulled the driver’s seat belt “*out way past where it’s ever*

¹¹ Private examination BMD at T11.

¹² Private examination BMD at T20.

¹³ Private examination BMD at T11.

¹⁴ Private examination BMD at T12.

¹⁵ Private examination BMD at T13.

¹⁶ Private examination BMD at T13.

¹⁷ Private examination BMD at T19.

¹⁸ Private examination BMD at T24.

been before". Officer MON3 told him that the seat belt was not retracting although he maintained that it was.¹⁹

- xviii. The police officers opened the bonnet of his vehicle and told him that they could see an oil leak.²⁰ He could not see an oil leak but he did not look underneath the vehicle.²¹ He asked to be shown the oil leak and one of the officers said to him "*oh, you wouldn't be able to see it*".²²
- xix. The officers issued a vehicle defect notice for faults relating to oil leaks, seat belt defects and window tinting.²³
- xx. He has had many years of experience with motor vehicles. He was previously the proprietor of a service station and a speedway driver.²⁴ His evidence was that if there was an oil leak he would have been able to recognise it.²⁵
- xxi. After his vehicle was defected he walked home with Civilian MON2. He felt embarrassed as he was wearing socks and thongs. They had to walk about three blocks to reach home. Upon reaching his home he decided not to take any more risks and took a taxi to work with Civilian MON2.²⁶
- xxii. On that journey he noticed that the same police vehicle was now following his taxi. When the taxi reached his office both he and Civilian MON2 exited the taxi. He observed the police vehicle lights turn on. He asked the police officers if they needed him and they said no. He then saw the officers conduct a check on the taxi.²⁷

¹⁹ Private examination BMD at T24 and T26-27.

²⁰ Private examination BMD at T25.

²¹ Private examination BMD at T25.

²² Private examination BMD at T28.

²³ Private examination BMD at T25.

²⁴ Private examination BMD at T28.

²⁵ Private examination BMD at T28.

²⁶ Private examination BMD at T28.

²⁷ Private examination BMD at T29-30.

- xxiii. Civilian MON2 went to her work and he went into his office. His client Civilian MON9 arrived at his office at about 8:30 a.m. and advised him that there was a police vehicle “*doing laps*” outside.²⁸
- xxiv. When he stepped outside the office he saw the same police vehicle parked in the parking area in the middle of the street. The two officers were leaning on the bonnet appearing to look at his office. When he made eye contact one of the officers nodded at him.²⁹
- xxv. He used an alternate exit at the back of his office without being seen by the two officers as he “*had no idea what they would do*”. He went to the office of his friend, who was also a solicitor, to relay what had happened that morning. His friend contacted the local police and was told there was nothing they could do.³⁰
- xxvi. When he appeared before the Local Court in Civilian MON9’s matter he informed the magistrate what had happened to him that morning and sought an adjournment. This was granted by the Magistrate as “*she could see that I was shaken up*”. The hearing was accordingly vacated.³¹
- xxvii. When he left the courtroom he saw between five to ten Strike Force Raptor officers. He felt so intimidated that he asked the Magistrate if he could use her exit, which she allowed.³² He did not see Officer MON3 or Officer MON4 inside the court complex. They were not involved in the prosecution of Civilian MON9.³³

²⁸ Private examination BMD at T30.

²⁹ Private examination BMD at T31.

³⁰ Private examination BMD at T32.

³¹ Private examination BMD at T33.

³² Private examination BMD at T34.

³³ Private examination BMD at T36.

- xxviii. He told his client Civilian MON9 that he should not act for him anymore. Civilian MON9 subsequently instructed another lawyer to act for him.³⁴
- xxix. He understands Civilian MON9 was searched outside Court that day.³⁵
- xxx. The next morning at approximately 8:00 a.m. he rode his Harley-Davidson motorcycle to work because his car was still defected from the day before. The Harley-Davidson is stock-standard and had not been modified since he purchased it brand new.³⁶
- xxxi. A few hours later he saw Officer MON3 and Officer MON4 next to his motorcycle in the private car park behind his office building. He called his solicitor friend and asked to meet him outside. They confronted the officers together and asked what they were doing. It was then that he noticed a Department of Environment and Climate Change (DECC) notice had been left on his motorcycle.³⁷
- xxxii. He paid the penalty for not carrying a driver's licence. The infringement notice for not indicating while reversing out of his driveway was withdrawn by the police prosecutor at the hearing before the Local Court.³⁸
- xxxiii. At the time of the hearing he had not received an apology from anyone in Strike Force Raptor. Local police officers in Town1 were very apologetic.³⁹

³⁴ Private examination BMD at T34.

³⁵ Private examination BMD at T36.

³⁶ Private examination BMD at T38.

³⁷ Private examination BMD at T39.

³⁸ Private examination BMD at T14-18.

³⁹ Private examination BMD at T41.

Evidence of Civilian MON2

3.3 Civilian MON2 gave evidence on 12 February 2020 in a private examination at the Commission and she was legally represented. Her evidence was as follows:

- i. Civilian MON1 was her partner in May 2019.⁴⁰
- ii. She owns one car and works in Town1.⁴¹
- iii. On 28 May 2019 she needed to have her tyres replaced at Beaurepaires. She drove to Civilian MON1's residence at approximately 7:15 a.m. to see if he could take her to work after attending on Beaurepaires.⁴²
- iv. When she reversed her vehicle from Civilian MON1's driveway she noticed a police vehicle parked "*three doors up*". After Civilian MON1 reversed his vehicle out, the police vehicle followed him.⁴³
- v. At Beaurepaires the police vehicle had the lights turned on. The officers started speaking to Civilian MON1. She went into Beaurepaires to drop her keys off. When she returned to Civilian MON1's vehicle the police were at their car checking his registration.⁴⁴
- vi. Civilian MON1 said to her "*...these are the people I'm up against in court today*".⁴⁵
- vii. Civilian MON1 asked the officers why his car was stopped. They responded that it was because he had not indicated for five

⁴⁰ Private examination BMF at T6.

⁴¹ Private examination BMF at T5.

⁴² Private examination BMF at T6.

⁴³ Private examination BMF at T6.

⁴⁴ Private examination BMF at T6.

⁴⁵ Private examination BMF at T7.

seconds while reversing onto the road.⁴⁶ She recalled that she had also not indicated as she reversed out from his driveway.⁴⁷

- viii. Civilian MON1 asked the officers if they were in court that day. They responded “*no, what is it for?*” When Civilian MON1 said it was for animal cruelty charges they said no again and told him that he would receive an infringement notice for failure to indicate and not having his driver’s licence with him.⁴⁸
- ix. She suggested to Civilian MON1 that he drive home before taking her to work because “*it was just a little unusual, the way they were talking*”. She noticed the police were following them after leaving Beaurepaires. When they were about three blocks from Civilian MON1’s residence, the police activated their lights and pulled them over.⁴⁹
- x. The police officers said they had forgotten to check Civilian MON1’s vehicle for defects. She and Civilian MON1 got out of the vehicle and the officers opened all the doors as well as the bonnet and boot for inspection.⁵⁰
- xi. The officers said there was an oil leak, although she could not see it at all. The officers then said “*...that’s cruelty to animals and bad for the environment*”.⁵¹
- xii. She knew there was no oil leak because Civilian MON1 had new cement poured on his driveway about four months prior and there was no oil on the driveway.⁵²
- xiii. The officers also said that the seat belts did not retract fast enough and the tint on the windows was not correct. For these

⁴⁶ Private examination BMF at T7.

⁴⁷ Private examination BMF at T12-13.

⁴⁸ Private examination BMF at T7.

⁴⁹ Private examination BMF at T7.

⁵⁰ Private examination BMF at T7.

⁵¹ Private examination BMF at T7.

⁵² Private examination BMF at T9.

reasons the officers defected Civilian MON1's vehicle and she and Civilian MON1 had to walk home.⁵³

- xiv. When they arrived home she suggested to Civilian MON1 that they should not drive again. They therefore called a taxi which came to collect them.
- xv. While exiting the taxi at the office she noticed that the police vehicle had followed them all the way.⁵⁴ The police vehicle lights were then activated and the officers told the taxi driver that he had not indicated whilst exiting a roundabout. She and Civilian MON1 left to go to their respective offices once they confirmed that they were not needed.⁵⁵
- xvi. She could not focus on work because she was "*a bit shaken*". She went for a walk and saw the two police officers sitting outside the front of Civilian MON1's office on the bonnet of their car with their arms folded, watching his office.⁵⁶ She could also see this from her own office window as she works "*...directly across*" from Civilian MON1's office.⁵⁷
- xvii. When she went out for lunch, one of the officers who had stopped them earlier pointed at her.⁵⁸
- xviii. She felt "*rattled*" and "*intimidated*" from this experience.⁵⁹
- xix. Civilian MON1 has had his vehicle inspected by an authorised person and none of the defects had to be fixed.⁶⁰
- xx. Civilian MON1 appeared "*frightened*" and "*composed but...rattled*" by the experience.⁶¹

⁵³ Private examination BMF at T7-8.

⁵⁴ Private examination BMF at T8.

⁵⁵ Private examination BMF at T8.

⁵⁶ Private examination BMF at T8.

⁵⁷ Private examination BMF at T8 and T10.

⁵⁸ Private examination BMF at T12.

⁵⁹ Private examination BMF at T8-9.

⁶⁰ Private examination BMF at T9.

⁶¹ Private examination BMF at T9.

- xxi. She has had no contact with any officers from Strike Force Raptor since the incident.⁶²
- xxii. She provided an email about the incident to Civilian MON1 because “*it was just so wrong that it needed to be documented*”.⁶³

Evidence of Officer MON3

3.4 Officer MON3 gave evidence on 25 June 2020 in a private examination at the Commission. He was legally represented. His evidence was as follows:

- i. He joined the NSW Police Force in May 2014. He served as a Probationary Constable in 2015 and 2016. In April 2016 he was given the rank of Constable.⁶⁴
- ii. He resigned from the NSW Police Force in June 2020.⁶⁵
- iii. He worked in General Duties and the High Visibility Policing Unit before joining Strike Force Raptor in 2018.⁶⁶
- iv. He considered it to be an honour to be working in Strike Force Raptor.⁶⁷
- v. On 27 May 2019 he and other officers in Strike Force Raptor drove from Sydney to a nearby regional town in Northern NSW (Town2), where they stayed one night in a motel before arriving in Town1 the next day.⁶⁸
- vi. In the afternoon of 27 May 2019 there was a briefing in the motel. They discussed the reason for their going to Town1, which was a court matter to be heard there. However, he and

⁶² Private examination BMF at T9-10.

⁶³ Private examination BMF at T12.

⁶⁴ Private examination BMJ at T5-6.

⁶⁵ Private examination BMJ at T5.

⁶⁶ Private examination BMJ at T6.

⁶⁷ Private examination BMJ at T7.

⁶⁸ Private examination BMJ at T8.

Officer MON4 had been taken there to target Civilian MON1 as directed by Officer MON5. It was explained to him by Officer MON5 that Civilian MON1 was “a solicitor who was in with the bikies”.⁶⁹

- vii. By “*target*” he understood that he was to observe Civilian MON1 driving and to stop and issue him with tickets if he committed any offences. This included inspecting a vehicle for defects. This is one of the tactics used in targeting a person and he was good at that.⁷⁰
- viii. He understood that Civilian MON1 was acting for Civilian MON9 the following day in Court to defend animal cruelty charges and that Civilian MON1 was not cooperating because he had refused to allow the officers to give evidence via the audio-visual link.⁷¹
- ix. He did not know where Officer MON5 got the information that Civilian MON1 was “*in with the bikies*”.⁷²
- x. He recalled that on 27 May 2019, he looked up Civilian MON1 on the police system to find out his address and the vehicles he owned. He also would have looked up Civilian MON1’s traffic history.⁷³
- xi. When he looked up Civilian MON1 on the police system, there was no information which suggested that he was associated with “*bikies*”.⁷⁴
- xii. He did not know Civilian MON1 had a good relationship with the local police or that he had been part of the police motorcycle club.⁷⁵

⁶⁹ Private examination BMJ at T9-10.

⁷⁰ Private examination BMJ at T10.

⁷¹ Private examination BMJ at T11-12.

⁷² Private examination BMJ at T13.

⁷³ Private examination BMJ at T14-15.

⁷⁴ Private examination BMJ at T15.

⁷⁵ Private examination BMJ at T16.

- xiii. He and Officer MON4 arrived at Civilian MON1's residence on 28 May 2019 at about 6 a.m.⁷⁶
- xiv. He saw Civilian MON1's vehicle reverse onto the roadway without indicating for five seconds.⁷⁷
- xv. He followed Civilian MON1 for a couple of minutes to see if he would commit any other offences, before he stopped Civilian MON1 for testing. It was at this stage that he discovered Civilian MON1 also was not carrying his driver's licence.⁷⁸
- xvi. He told Civilian MON1 that he would issue two tickets for the infringements. He feigned surprise when Civilian MON1 told him who he was representing at Court that day, as he knew all along who Civilian MON1 was.⁷⁹
- xvii. He and Officer MON4 followed Civilian MON1 again to see if he would commit any further traffic offences.⁸⁰
- xviii. They stopped Civilian MON1 on a suburban street to inspect his vehicle for its road worthiness, although he could not recall whether there were any visible signs of a defect. He gave evidence that he did this in accordance with his powers pursuant to s 76 of the *Road Transport Act 2013*.⁸¹
- xix. During the inspection, he pulled on the seat belts to make sure that the locking mechanism would work and that the person would be safe if they crashed.⁸²
- xx. The front passenger seat belt would retract but had a delayed period during which the mechanism did not work as well.⁸³ He pulled on the seat belts repeatedly to check and make sure he

⁷⁶ Private examination BMJ at T16.

⁷⁷ Private examination BMJ at T19-20.

⁷⁸ Private examination BMJ at T23.

⁷⁹ Private examination BMJ at T25.

⁸⁰ Private examination BMJ at T25-27.

⁸¹ Private examination BMJ at T27-28.

⁸² Private examination BMJ at T29.

⁸³ Private examination BMJ at T30.

was satisfied that if he let the person go and if they crashed then he would not be sued for not having checked it properly.⁸⁴

- xxi. Officer MON4 pointed out an oil leak to him and when he went to have a look he could see “*a little bit of oil*” near the engine block.⁸⁵ He would not describe it as a substantial oil leak “*in comparison to, like, bad ones*”.⁸⁶
- xxii. He created an entry in the police system on the same day regarding his interactions with Civilian MON1. In this entry he described the oil leak as “*substantial*”, but conceded that it was in actual fact not substantial.⁸⁷
- xxiii. It was his decision to issue Civilian MON1’s vehicle with a red defect notice. Officer MON5 had said during the briefing on the previous day that “*if there was a defect, issue it*”.⁸⁸
- xxiv. He understood that a major defect notice was to be issued when there was “*anything to do with safety*”.⁸⁹ He was told that if there were problems with certain things, such as oil leaking or seat belts, it was serious. Accordingly, any leak would justify a grounding of a vehicle.⁹⁰
- xxv. He considered that the oil leak caused a safety risk “*because of the impact it has on the environment*”. He also thought that the seat belts posed a safety risk.⁹¹
- xxvi. He knew he could have issued Civilian MON1’s vehicle with a minor defect notice but he chose not to. Instead, he issued a major defect notice based on the seat belts, oil leak and window

⁸⁴ Private examination BMJ at T30.

⁸⁵ Private examination BMJ at T31.

⁸⁶ Private examination BMJ at T33 and T44.

⁸⁷ Private examination BMJ at T34-37.

⁸⁸ Private examination BMJ at T39.

⁸⁹ Private examination BMJ at T40.

⁹⁰ Private examination BMJ at T43.

⁹¹ Private examination BMJ at T44.

tinting.⁹² He did not think it was unreasonable to defect Civilian MON1's vehicle based on those reasons.⁹³

- xxvii. He conceded that his conduct could have rattled Civilian MON1.⁹⁴
- xxviii. He knew Civilian MON1 had to appear in Court that day and that defecting the vehicle could have made Civilian MON1 late for work.⁹⁵
- xxix. He agreed that he could have allowed Civilian MON1 to drive home first before conducting the inspection on the vehicle and subsequently defecting it.⁹⁶
- xxx. He denied that he had intimidated Civilian MON1.⁹⁷
- xxxi. After the vehicle was defected, he returned to Civilian MON1's residential area and continued to target him.⁹⁸
- xxxii. His task on that day, in addition to targeting Civilian MON1, was to speak to Civilian MON9 to tell him to stop misbehaving and, if he observed Civilian MON9 driving, to engage in "*the same sort of scenario*". This was part of his instructions from Officer MON5.⁹⁹
- xxxiii. He did not see this as an attempt to intimidate Civilian MON9 despite Civilian MON9 being scheduled to appear for his hearing that day.¹⁰⁰
- xxxiv. He saw Civilian MON1 get into a taxi and he followed the taxi because it was "*just all part of the targeting*". He and Officer MON4 stopped the taxi because it failed to indicate out of a

⁹² Private examination BMJ at T45.

⁹³ Private examination BMJ at T46.

⁹⁴ Private examination BMJ at T45.

⁹⁵ Private examination BMJ at T46.

⁹⁶ Private examination BMJ at T47-48.

⁹⁷ Private examination BMJ at T49.

⁹⁸ Private examination BMJ at T51.

⁹⁹ Private examination BMJ at T51-52.

¹⁰⁰ Private examination BMJ at T52.

roundabout but the taxi driver was not issued with a ticket because “*he wasn’t really - it wasn’t one of the people that had been told to be the target, it was the cabby*”.¹⁰¹

- xxxv. He and Officer MON4 waited outside Civilian MON1’s office to speak with Civilian MON9. They were sitting on the bonnet of their police vehicle and facing Civilian MON1’s office.¹⁰²
- xxxvi. He could not see why someone in Civilian MON1’s position would hold concerns for their own welfare at this stage after everything that had transpired, but conceded that Civilian MON1 was probably concerned about any further interaction with the police.¹⁰³
- xxxvii. He also intended to target Civilian MON9 after court using a similar strategy.¹⁰⁴
- xxxviii. He told Officer MON5 what had happened and Officer MON5 said words to the effect of “*good job*”.¹⁰⁵
- xxxix. On the same day, he also pulled another person over, being an outlaw motorcycle gang member, for having a helmet that did not meet the standards.¹⁰⁶
- xl. On 29 May 2019 he and Officer MON4 were driving around looking for outlaw motorcycle gang members when he saw Civilian MON1’s motorcycle at the back of his office. He conducted an inspection of it, including measuring the handle bars.¹⁰⁷
- xli. He had received training in relation to Harley Davidson motorcycles and how they may or may not comply with motorcycle standards. He also learnt that some stock

¹⁰¹ Private examination BMJ at T53.

¹⁰² Private examination BMJ at T55-56.

¹⁰³ Private examination BMJ at T57-59.

¹⁰⁴ Private examination BMJ at T61.

¹⁰⁵ Private examination BMJ at T62 and T78.

¹⁰⁶ Private examination BMJ at T54.

¹⁰⁷ Private examination BMJ at T62.

motorcycles sold out of Harley Davidson are not compliant with standards.¹⁰⁸

- xlii. He had never seen or heard Civilian MON1's motorcycle being ridden, but he thought there was an issue with the pipes.¹⁰⁹
- xliii. He thought his conduct in refusing to speak to Civilian MON1's solicitor friend was reasonable because the DECC referral that he issued to Civilian MON1 was not a criminal matter.¹¹⁰
- xliv. The issuing of a DECC referral to Civilian MON1 was part of the targeting of him.¹¹¹
- xlv. He denied that he had made a false statement in the DECC referral because he was not aware that the motorcycle had to be stopped and heard. He thought he could form an opinion about the noise by observing the pipe.¹¹²
- xlvi. He was told that Civilian MON9's court case had been adjourned because Civilian MON1 did not feel comfortable or confident to conduct it.¹¹³
- xlvii. He viewed the targeting of Civilian MON1 as just another task he was given by those who issue instructions.¹¹⁴
- xlviii. He agreed that it was not permissible to target a solicitor who was representing an outlaw motorcycle gang member.¹¹⁵

¹⁰⁸ Private examination BMJ at T64-66.

¹⁰⁹ Private examination BMJ at T65.

¹¹⁰ Private examination BMJ at T67.

¹¹¹ Private examination BMJ at T68.

¹¹² Private examination BMJ at T70.

¹¹³ Private examination BMJ at T76-77.

¹¹⁴ Private examination BMJ at T79.

¹¹⁵ Private examination BMJ at T80.

Evidence of Officer MON4

3.5 Officer MON4 gave evidence on 26 June 2020 in a private examination at the Commission. He was legally represented. His evidence was as follows:

- i. He joined the NSW Police Force in 2013 and was a Probationary Constable for one year. From 2014 to 2018 he held the rank of Constable. Thereafter he was appointed as a Senior Constable.¹¹⁶
- ii. He served two years in General Duties and three years in the proactive crime team unit before moving into Strike Force Raptor where he is currently based.¹¹⁷
- iii. In May 2019 he travelled to Town1 with Officer MON5, who was his supervisor. The purpose of the trip was to conduct an operation targeting outlaw motorcycle gang members that had established themselves in that area.¹¹⁸
- iv. He stayed in a hotel in Town2 with other officers before arriving in Town1. Some officers were preparing for Court the next day, in addition to preparing for other operations on the day after.¹¹⁹
- v. At the hotel he had a conversation with Officer MON5 about what Officer MON5 wanted he and Officer MON3 to do the next day. Officer MON5 told them that there was a solicitor who was “*on side with the bikies*” and he wanted them to “*interact*” with the solicitor on the way to court. His understanding was that if someone was on side with the bikies, then it was a “*tick of approval to, you know, stop and engage with them*”. Officer MON5 also said “*he doesn't make it to court*”.¹²⁰

¹¹⁶ Private examination BMK at T5-6.

¹¹⁷ Private examination BMK at T5.

¹¹⁸ Private examination BMK at T6.

¹¹⁹ Private examination BMK at T7-8.

¹²⁰ Private examination BMK at T8.

- vi. He did not remember the word “*target*” being used in this conversation, but Officer MON5 said they were to “*interact*” with this solicitor. He understood this to mean that this solicitor needed “...*to be stopped, breath tested, vehicle looked over, any traffic infringements to be dealt with*”.¹²¹
- vii. He did not think Officer MON5 was happy about having to travel to Town1 for court instead of being able to give evidence via audio-visual links.¹²²
- viii. He did not know anything about the solicitor Civilian MON1. He was relying on information being passed on by Officer MON5.¹²³
- ix. On the morning of 28 May 2019, he and Officer MON3 drove from Town2 to Town1. He was in the passenger seat and Officer MON3 was driving. They arrived in Civilian MON1’s street where they parked and watched the street.¹²⁴ He estimates that they sat there for about one hour.¹²⁵
- x. He remembers seeing Civilian MON1 pull out of his driveway and follow a female to a mechanic.¹²⁶
- xi. They followed Civilian MON1 to observe his driving and see if he committed any traffic offences.¹²⁷ His evidence was that nothing on the police system indicated that Civilian MON1 had a criminal background, but that was not conclusive, as not everything gets put onto the system for whatever reason.¹²⁸
- xii. He has never issued a ticket for failing to indicate when reversing out of a driveway, but this was one of the “*disruption method(s)*” used to target outlaw motorcycle gang members.¹²⁹

¹²¹ Private examination BMK at T10-11.

¹²² Private examination BMK at T10.

¹²³ Private examination BMK at T11.

¹²⁴ Private examination BMK at T12-13.

¹²⁵ Private examination BMK at T14.

¹²⁶ Private examination BMK at T17.

¹²⁷ Private examination BMK at T18.

¹²⁸ Private examination BMK at T20.

¹²⁹ Private examination BMK at T22.

- xiii. He did not think that this form of targeting would intimidate Civilian MON1 but he could see how it might be possible.¹³⁰ He did not understand his instructions to interact with Civilian MON1 to include intimidating him.¹³¹
- xiv. The purpose was “*more of an annoyance sort of thing*”, but he could see how this might be intimidating to some.¹³²
- xv. After the stop at Beaurepaires both officers continued to follow Civilian MON1 as they “*...were still just focused on*” him. They stopped Civilian MON1 shortly thereafter to conduct an inspection of his vehicle.¹³³
- xvi. Prior to this second stop he had not noticed anything irregular about the vehicle or any oil leaks.¹³⁴
- xvii. He described the force used by Officer MON3 to pull on the seat belts as “*necessary*” to “*...make sure they’re working properly*”. He was of the opinion that the driver’s seat belt did not retract.¹³⁵
- xviii. He would issue a red label for a faulty seat belt because “*it’s a serious safety issue*”.¹³⁶
- xix. He understood that to test a seat belt it needed to be pulled out and, if it does not retract, then there is a safety issue.¹³⁷
- xx. He took it upon himself to check the engine and saw an oil leak. When asked how much oil he saw, he responded with “*...it wasn’t a great deal*” and “*it wasn’t huge, it wasn’t dripping in front of me*”.¹³⁸

¹³⁰ Private examination BMK at T22-23.

¹³¹ Private examination BMK at T24.

¹³² Private examination BMK at T24.

¹³³ Private examination BMK at T26-28.

¹³⁴ Private examination BMK at T28.

¹³⁵ Private examination BMK at T29.

¹³⁶ Private examination BMK at T29.

¹³⁷ Private examination BMK at T30 and T38.

¹³⁸ Private examination BMK at T30 and T33-34.

- xxi. He agreed that grounding the vehicle would be an inconvenience and that it would have made it harder for Civilian MON1 to get to court that day.¹³⁹
- xxii. In his opinion the oil leak by itself would not have justified a red label defect notice.¹⁴⁰
- xxiii. He did not think it was appropriate to issue a minor defect notice because if a seat belt is not working then it is a serious safety risk. In this case, because the seat belts were not retracting, then they were not working properly and therefore were a serious safety risk.¹⁴¹
- xxiv. When it was put to him he agreed that he had no real thought that the vehicle was unsafe. This was just part and parcel of the task that had been assigned by Officer MON5.¹⁴²
- xxv. He did not agree with Officer MON3's assessment that the seat belts were "*marginal*", because "*the seat belt's just on the seat, it's not even coming up*".¹⁴³
- xxvi. After this interaction they returned to Civilian MON1's street where they parked. He disagreed that this was to continue targeting Civilian MON1. Rather, it was an opportunity for him and Officer MON3 to assess what had happened and decide what to do next.¹⁴⁴ He later conceded that it was "*likely*" that this was done to continue targeting Civilian MON1.¹⁴⁵
- xxvii. He recalled seeing Civilian MON1 get into a taxi from his home and they then followed the taxi. When the taxi arrived outside

¹³⁹ Private examination BMK at T31-32.

¹⁴⁰ Private examination BMK at T34.

¹⁴¹ Private examination BMK at T34-35.

¹⁴² Private examination BMK at T36.

¹⁴³ Private examination BMK at T37.

¹⁴⁴ Private examination BMK at T38-39.

¹⁴⁵ Private examination BMK at T39.

Civilian MON1's office, they spoke to the driver of the taxi but did not issue any tickets.¹⁴⁶

- xxviii. After speaking to the taxi driver they went to the police station where he was shown a photo of Civilian MON9. Thereafter they went driving around the main street in Town1. He spotted Civilian MON9 walking on the street. When he pointed Civilian MON9 out to Officer MON3, Civilian MON9 began "*power-walking away from us*" and went into Civilian MON1's office.¹⁴⁷
- xxix. They then parked outside Civilian MON1's office to wait for Civilian MON9 to come out. He wanted to interact with Civilian MON9 because Civilian MON9 had "*just ran from us essentially, raised our suspicion, as to why he would do that*".¹⁴⁸
- xxx. This was the first time he had seen Civilian MON9 in person and he had not been tasked to target him.¹⁴⁹ Both officers sat on the bonnet of their vehicle looking at Civilian MON1's office to wait for Civilian MON9 to come out, but they never saw him come out.¹⁵⁰
- xxxi. He could see why Civilian MON1 would feel harassed at that stage but by that time they weren't there for Civilian MON1. They were there to talk to Civilian MON9.¹⁵¹
- xxxii. At the time he did not consider that their actions could have been perceived as an attempt to interfere with the court process or to pervert the course of justice.¹⁵²

¹⁴⁶ Private examination BMK at T39-40.

¹⁴⁷ Private examination BMK at T43.

¹⁴⁸ Private examination BMK at T44.

¹⁴⁹ Private examination BMK at T44.

¹⁵⁰ Private examination BMK at T45.

¹⁵¹ Private examination BMK at T46 and T48-49.

¹⁵² Private examination BMK at T47.

- xxxiii. They conducted a search of Civilian MON9 that day under the *Firearms Act 1996* because a firearms prohibition order had been served on Civilian MON9.¹⁵³
- xxxiv. He did not recall seeing Civilian MON2 while he and other officers were at the coffee shop, nor did he recall seeing any officer point at her.¹⁵⁴
- xxxv. The next day he and Officer MON3 were driving around when they spotted a motorcycle at the back of Civilian MON1's office.¹⁵⁵
- xxxvi. He had previously received training in relation to defects on motorcycles and specifically in relation to Harley Davidson motorcycles because "*that's what most of the bikies are riding*".¹⁵⁶
- xxxvii. His understanding was that no exhaust on Harley Davidson motorcycles comply with Australian emission standards, yet they are allowed to be sold like that. This was taught to him on training days.¹⁵⁷
- xxxviii. They issued a DECC referral on Civilian MON1's Harley Davidson motorcycle to get its exhaust tested. He wrote the referral himself.¹⁵⁸
- xxxix. He had not heard the motorcycle or seen Civilian MON1 riding it.¹⁵⁹
- xl. He agreed his conduct towards Civilian MON1 and his solicitor friend on that occasion was "*pretty smart*".¹⁶⁰

¹⁵³ Private examination BMK at T49.

¹⁵⁴ Private examination BMK at T50.

¹⁵⁵ Private examination BMK at T52.

¹⁵⁶ Private examination BMK at T52.

¹⁵⁷ Private examination BMK at T52-53.

¹⁵⁸ Private examination BMK at T53.

¹⁵⁹ Private examination BMK at T54.

¹⁶⁰ Private examination BMK at T54.

- xli. He disagreed that it was inappropriate to issue the DECC referral, because he had been taught that *“most Harleys don’t comply with the emission standards”*.¹⁶¹ However, he conceded that he would not sign off on that again because the notice required that he find it to be excessively noisy and in this instance he had not heard it before issuing the notice.¹⁶²
- xlii. He rejected the proposition that he had not acted honestly when he refused to show Civilian MON1 the oil leak, but he accepted that *“I could have done better, yes”* and that Civilian MON1 could have perceived him as not behaving honestly.¹⁶³
- xliii. He understood that Officer MON5 reported to Officer MON7.¹⁶⁴
- xliv. He did not consider speaking to an Inspector about what Officer MON5 had asked them to do because *“...generally you don’t go above the Sergeant”*.¹⁶⁵

Evidence of Officer MON5

3.6 Officer MON5 gave evidence on 23 July 2020 in a private examination at the Commission. He was legally represented. His evidence was as follows:

- i. He joined the NSW Police Force in 2003. He held the rank of a Probationary Constable in 2004. He served as a Constable between 2004 and 2008. In August 2008 he became a Senior Constable. In 2014 he was promoted to the rank of Sergeant. He is currently acting as an Inspector.¹⁶⁶
- ii. In 2014 he was a full-time weapons instructor at the NSWPF Academy for three years, before he returned to Strike Force Raptor in April 2017 for a second time as a tactical team

¹⁶¹ Private examination BMK at T58.

¹⁶² Private examination BMK at T59.

¹⁶³ Private examination BMK at T61.

¹⁶⁴ Private examination BMK at T64.

¹⁶⁵ Private examination BMK at T65.

¹⁶⁶ Private examination BML at T5-6.

leader.¹⁶⁷

- iii. He saw the purpose of Strike Force Raptor as targeting outlaw motorcycle gangs.¹⁶⁸ This was done in any way which would have the effect of dismantling the gang, whether it be by issuing fines and traffic infringements, conducting firearms prohibition order searches, or search warrants.¹⁶⁹
- iv. In May 2019 he drove to Town1 with Officer MON4 and another officer, who was on restricted duties at the time due to a back injury.¹⁷⁰
- v. The officer on restricted duties and two officers from Raptor North had to attend court to give evidence at Civilian MON9's hearing. Instead of sending only three officers to Town1, it was decided that a firearms prohibition order operation would be conducted as well on all outlaw motorcycle gang members in that region.¹⁷¹
- vi. The officer on restricted duties had asked to give evidence via an audio-visual link as he could not travel in a vehicle for long periods of time due to his back injury. This request was denied by Civilian MON1.¹⁷² He heard from the officer in charge of the case that Civilian MON1 had said "*I want all of Raptor up there*".¹⁷³
- vii. On the night of 27 May 2019, there was a briefing about the operation in the Town2 hotel conducted by himself and another officer, though he was in charge of the whole operation as he was the most senior officer there.¹⁷⁴

¹⁶⁷ Private examination BML at T6-7.

¹⁶⁸ Private examination BML at T6-7.

¹⁶⁹ Private examination BML at T7-8.

¹⁷⁰ Private examination BML at T8-9.

¹⁷¹ Private examination BML at T9.

¹⁷² Private examination BML at T12.

¹⁷³ Private examination BML at T13.

¹⁷⁴ Private examination BML at T10-11.

- viii. During this briefing, he said words to the effect of *“let him [Civilian MON1] know that the whole of Raptor’s up here. He wanted Raptor. The whole of Raptor’s up here”*.¹⁷⁵
- ix. He agreed that this meant he wanted Civilian MON1 to be targeted.¹⁷⁶
- x. He gave instructions to Officer MON3 to *“sit off him, and if he commits a traffic offence, give him a ticket”*. He stated that Officer MON3 was *“very adept at the traffic side of law”*.¹⁷⁷
- xi. Officer MON3 then asked for Officer MON4 to assist him.¹⁷⁸ He thought Officer MON4 was *“probably the best fit for that”* because *“he’s also very good at the traffic law side of it”*.¹⁷⁹
- xii. He thought it was arrogant of Civilian MON1 to deny the request to give evidence via an audio-visual link as Civilian MON1 knew the officer on restricted duties had a back injury.¹⁸⁰
- xiii. While he was at the police station on the morning of 28 May 2019, one of the detectives there mentioned to him that Civilian MON1 *“was not a bad bloke”* and that he did social rides with the police motorcycle club. This detective also mentioned that Civilian MON1 had previously done a social ride with the outlaw motorcycle gang. However, he could not recall the name or appearance of this detective.¹⁸¹ Based on this information, he formed the view that Civilian MON1 associated with the outlaw motorcycle gang.¹⁸²
- xiv. He agreed that he did not really have any reliable information that Civilian MON1 was an associate of the outlaw motorcycle

¹⁷⁵ Private examination BML at T13.

¹⁷⁶ Private examination BML at T17.

¹⁷⁷ Private examination BML at T17.

¹⁷⁸ Private examination BML at T13-14.

¹⁷⁹ Private examination BML at T17.

¹⁸⁰ Private examination BML at T15.

¹⁸¹ Private examination BML at T18-20.

¹⁸² Private examination BML at T21 and T24.

gang.¹⁸³ He later gave evidence that he had received information from another member of Strike Force Raptor that Civilian MON1 had represented outlaw motorcycle gang members in the past. He had been aware of that prior to going to Town1.¹⁸⁴

- xv. The purpose of targeting Civilian MON1, and the overall plan, was to inconvenience him.¹⁸⁵
- xvi. He agreed that it was possible that he had said to Officer MON3 or Officer MON4 “*he [Civilian MON1] doesn’t make it to court*”.¹⁸⁶ One way of achieving this would be to ground Civilian MON1’s vehicle.¹⁸⁷ He later described this as “*just a throwaway line*” and although it would be an inconvenience, it would not actually stop someone from getting to Court.¹⁸⁸
- xvii. He also instructed Officer MON3 and Officer MON4 to conduct a search of Civilian MON9 prior to the court hearing pursuant to a firearms prohibition order. They were to wait outside Civilian MON1’s office because Civilian MON9 would have to go there before court.¹⁸⁹
- xviii. It was not his intention that Civilian MON1 continue to be targeted once he arrived at his office. However, he failed to communicate this to Officer MON3 and Officer MON4, describing it as “*an error on my judgment*”.¹⁹⁰
- xix. He could not remember saying to Officer MON3 and Officer MON4 on 27 May 2019 that Civilian MON1 was “*in with the bikies*”.¹⁹¹

¹⁸³ Private examination BML at T27.

¹⁸⁴ Private examination BML at T46.

¹⁸⁵ Private examination BML at T21-23.

¹⁸⁶ Private examination BML at T24 and T48.

¹⁸⁷ Private examination BML at T24.

¹⁸⁸ Private examination BML at T48.

¹⁸⁹ Private examination BML at T25.

¹⁹⁰ Private examination BML at T25-26.

¹⁹¹ Private examination BML at T28.

- xx. He conceded that the conduct of Officer MON3 and Officer MON4 had the potential to intimidate Civilian MON1. He stated that *“they probably went a little bit over the top”*.¹⁹²
- xxi. He intended to affect Civilian MON1’s ability to arrive at Court, but not to affect his ability to appear at Court for Civilian MON9. He accepted that Civilian MON1 could have been *“rattled”* due to the conduct of the two officers.¹⁹³ He later said he did not intend to prevent Civilian MON1 from going to Court.¹⁹⁴
- xxii. Officer MON3 and Officer MON4 reported to him how they had dealt with Civilian MON1. He understood that Civilian MON1’s vehicle was grounded due to the seat belt causing a safety issue.¹⁹⁵
- xxiii. He did not think it was appropriate to issue a DECC referral without first hearing the vehicle.¹⁹⁶
- xxiv. He did not recall any police officer pointing at a woman walking towards a coffee shop that day, nor did he know who Civilian MON1’s partner was at the time.¹⁹⁷
- xxv. He had a subsequent telephone conversation with his supervisor, Officer MON7, and was told that *“it wasn’t a real good targeting strategy”* and that *“there’s an unwritten rule that we follow of not targeting legal representation”*. He was surprised about that.¹⁹⁸
- xxvi. He was aware that Strike Force Raptor had targeted legal representatives on two prior occasions in unrelated matters although he had no involvement in either of them.¹⁹⁹

¹⁹² Private examination BML at T32-33.

¹⁹³ Private examination BML at T33.

¹⁹⁴ Private examination BML at T49.

¹⁹⁵ Private examination BML at T35.

¹⁹⁶ Private examination BML at T38.

¹⁹⁷ Private examination BML at T39.

¹⁹⁸ Private examination BML at T40.

¹⁹⁹ Private examination BML at T40.

- xxvii. He did not expect Officer MON3 or Officer MON4 to issue an infringement notice if no offence had occurred. He also did not expect them to arbitrarily pull Civilian MON1 over for no lawful reason.²⁰⁰
- xxviii. As a result of this incident, he was removed from the tactical team for three months and sent to work as a supervisor in General Duties to work on his decision making and judgment.²⁰¹

Evidence of Officer MON6

3.7 Officer MON6 gave evidence on 23 July 2020 in a private examination at the Commission and he was legally represented. He also provided the Commission with a statement which was tendered as an exhibit. The following is a summary of his evidence:

- i. He has been a police officer since 1990 and currently holds the rank of Detective Superintendent. He is the Commander of Criminal Groups Squad, which contains various squads and teams, including Strike Force Raptor. He commenced this role in December 2019.²⁰²
- ii. The leadership group has been the driving force in Strike Force Raptor due to their longevity and continuity in the group.²⁰³
- iii. He acknowledged that the results achieved by the team were *“noteworthy and had a significant impact in achieving a key government priority of making the community safer”*.²⁰⁴
- iv. Officer MON6 gave detailed evidence about operational matters concerned with dealing with issues identified in this Report. The Commission does not consider it appropriate to detail that evidence in this Report.

²⁰⁰ Private examination BML at T47.

²⁰¹ Private examination BML at T48.

²⁰² Private examination BMM at T3.

²⁰³ Private examination BMM at T6.

²⁰⁴ Private examination BMM at T6,

- v. Overall, he thought that *“it was clear that the structure, purpose and reputation of Strike Force Raptor was effective and worthy of retention”*.²⁰⁵

Evidence of Officer MON7

3.8 Officer MON7 gave evidence on 10 September 2020 in a private examination at the Commission. He was legally represented. His evidence was as follows:

- i. He has been an officer of NSWPF for more than 30 years. He currently holds the rank of Detective Chief Inspector based in Bankstown.²⁰⁶
- ii. He was asked to join Strike Force Raptor in 2011 and spent nine years there before leaving about five or six months ago.²⁰⁷
- iii. He met Officer MON5 *“fairly early in the piece”* when Officer MON5 joined Strike Force Raptor as a Senior Constable.²⁰⁸ He was Officer MON5’s supervisor at that stage.²⁰⁹
- iv. Officer MON5 was in Strike Force Raptor for two or three years as a Senior Constable before he was appointed as a Sergeant in the Weapons Training Unit. Officer MON5 subsequently applied to return to Strike Force Raptor as a Sergeant and he agreed to that.²¹⁰
- v. In May 2019, Strike Force Raptor consisted of many officers who were quite junior, with the average length of service being around the five year mark.²¹¹
- vi. He denied there was an elitist culture in Strike Force Raptor, but said that *“there was certainly pride amongst the Raptor people”*

²⁰⁵ Private examination BMM at T12.

²⁰⁶ Private examination BMR at T5.

²⁰⁷ Private examination BMR at T6-7.

²⁰⁸ Private examination BMR at T7.

²⁰⁹ Private examination BMR at T8.

²¹⁰ Private examination BMR at T8-9.

²¹¹ Private examination BMR at T10.

and agreed that those officers considered themselves distinct from general duties police officers.²¹²

- vii. He stated that he promoted that pride in Strike Force Raptor by emphasising the importance of their work, and that they were *“preventing murders and preventing people from going to jail, and preventing victims and creating a better society”*.²¹³
- viii. He tried to conduct daily team meetings, and if that was not possible, then he would hold meetings at least once a week.²¹⁴
- ix. During these meetings various issues would be discussed, including anything that had gone wrong. When asked to provide examples, he stated *“I was very big on being polite, the way they spoke to people and spoke to other police, especially because they were going around to different police stations”*.²¹⁵
- x. His policing approach was psychological in nature as he wanted to prevent crime by doing everything other than arresting people. He wanted to prevent gangs from forming in the first place.²¹⁶
- xi. He agreed that part of Strike Force Raptor’s approach was to disrupt gang members from doing whatever they were doing. This could involve interacting with the gang members and to some extent their friends and family. However, in general, this did not include their solicitors.²¹⁷
- xii. Police officers would not normally interact with solicitors to disrupt them. He could only recall one occasion where that had happened, but he could not remember the specific details.²¹⁸ He

²¹² Private examination BMR at T11.

²¹³ Private examination BMR at T12.

²¹⁴ Private examination BMR at T12.

²¹⁵ Private examination BMR at T13.

²¹⁶ Private examination BMR at T14.

²¹⁷ Private examination BMR at T15-16.

²¹⁸ Private examination BMR at T16-17.

spoke to that officer and said *“that’s not to happen that’s not what we do”*.²¹⁹

- xiii. There was never a rule that solicitors were not to be interacted with, but after this incident involving Civilian MON1 he *“made it really clear with the guys that there’s, our whole system is based on the separation of powers between the legislator, the judiciary and the enforcement arm and one doesn’t attack the other because you are upset with them”*.²²⁰
- xiv. He was not particularly familiar with Civilian MON9, but he knew that there had been a request from local police to go to Town1 to conduct some firearm prohibition order searches.²²¹
- xv. He did not travel to Town1 with the other officers in May 2019.²²²
- xvi. It was his understanding that Strike Force Raptor officers would consult with local police before operations in regional areas. This was done as courtesy but also because often it was necessary to operate with the local police.²²³
- xvii. He did not know the specifics of Civilian MON9’s court matter but understood that since police officers would be travelling to Town1 for a court appearance, they were going to make use of public resources and do some work while they were there.²²⁴
- xviii. He could not recall whether Officer MON5 expressed any dissatisfaction about having to send officers to Town1.²²⁵

²¹⁹ Private examination BMR at T17-18.

²²⁰ Private examination BMR at T17.

²²¹ Private examination BMR at T22.

²²² Private examination BMR at T23.

²²³ Private examination BMR at T23.

²²⁴ Private examination BMR at T24.

²²⁵ Private examination BMR at T24-25.

- xix. He was not aware of any decision to target Civilian MON1.²²⁶ He first heard about it when a police officer in Town1 called him to ask him about it.²²⁷
- xx. He called Officer MON5 to ask about it, and the response was effectively “*if he’s going to get us all up there, then he can get targeted with the bikies*”. He understood this to refer to Civilian MON1’s request for police to attend court in person to give evidence.²²⁸
- xxi. Officer MON5 did not suggest to him that Civilian MON1 was in with the bikies.²²⁹
- xxii. Officer MON5 did not suggest to him that Officer MON3 and Officer MON4 had been instructed to prevent Civilian MON1 from getting to court or to inconvenience him.²³⁰
- xxiii. He thought that the effect of their actions was more psychological in nature, namely to harass Civilian MON1. He agreed it was reasonably likely to have intimidated Civilian MON1.²³¹
- xxiv. His understanding was that Officer MON5 had instructed Officers MON3 and MON4 to interact with Civilian MON1, and that they had issued Civilian MON1 with relatively trivial traffic offences. This concerned him because in his view Civilian MON1 should not have been targeted.²³²
- xxv. When Officer MON5 returned from Town1, he said to him “*what, are you going to attack a Magistrate next because you lose a*

²²⁶ Private examination BMR at T26.

²²⁷ Private examination BMR at T 26.

²²⁸ Private examination BMR at T27.

²²⁹ Private examination BMR at T28.

²³⁰ Private examination BMR at T28.

²³¹ Private examination BMR at T28-29.

²³² Private examination BMR at T29-30.

*court matter?” and “a solicitor acting for someone is essentially a part of the judicial system, so we don’t do it”.*²³³

- xxvi. He thought that Officer MON5 did not understand the point for a while so he had to “*keep pushing the point until I got it through*’.²³⁴
- xxvii. He did not recall specifically saying to Officer MON5 that there was an unwritten rule to not target lawyers, but agreed that this was the effect of the message he was trying to convey.²³⁵
- xxviii. Officer MON5 expressed surprise when his method of dealing with Civilian MON1 was rejected.²³⁶
- xxix. As soon as he heard about the incident, he spoke to his Superintendent. He told the Superintendent that he wanted to apologise to Civilian MON1 in person. The Superintendent expressed disappointment about what had occurred. She told him to clear it with the Office of General Counsel (OGC) first.²³⁷
- xxx. He spoke to a solicitor from the OGC who advised him that the conduct was a declarable matter which had to be submitted to the Commission. He was told by the OGC to wait, and because subsequent arrangements with Civilian MON1’s office were not fruitful, the apology never occurred.²³⁸
- xxxi. After this incident, he wanted Officer MON5 out of Strike Force Raptor, so putting him on an interim risk management plan was a way for that to happen and for him to get some general policing experience which would be good for developing his decision making skills.²³⁹
- xxxii. He felt that Officer MON5 was “*a good, brave and efficient*

²³³ Private examination BMR at T30-31.

²³⁴ Private examination BMR at T31.

²³⁵ Private examination BMR at T31.

²³⁶ Private examination BMR at T31.

²³⁷ Private examination BMR at T31-33.

²³⁸ Private examination BMR at T34.

²³⁹ Private examination BMR at T33-34.

police officer, but he did not understand the concept that you have to operate within the expectations of the public". He added that Strike Force Raptor was at the forefront of strategies in dealing with crime and gangs and he felt that he could not trust Officer MON5 with that responsibility.²⁴⁰

- xxxiii. Soon after this incident, he gathered Strike Force Raptor officers together for a meeting, including Officer MON5, to explain why solicitors are not to be targeted.²⁴¹

Evidence of Officer MON8

3.9 Officer MON8 gave evidence on 2 November 2020 in a private examination at the Commission. He was legally represented. His evidence was as follows:

- i. He joined the NSWPF in 1988 and holds the rank of Inspector. He has been based in the Education and Training Command in the Command Development Unit since February 2020.²⁴²
- ii. He was previously the Professional Standards Manager for Corporate Services within the Education and Training Command. He had been there for just under three years.²⁴³
- iii. As the Professional Standards Manager for Corporate Services, he managed all facets of allegations of police misconduct and administered the probationary constable review panel.²⁴⁴
- iv. Complaints and allegations of misconduct come from either community sources or within the police force.²⁴⁵
- v. If information is received and the subject officer is not attached to Corporate Services, he would send the information to the

²⁴⁰ Private examination BMR at T34-35.

²⁴¹ Private examination BMR at T35-36.

²⁴² Private examination BMS at T5.

²⁴³ Private examination BMS at T5.

²⁴⁴ Private examination BMS at T5-6.

²⁴⁵ Private examination BMS at T6.

Professional Standards Manager for the appropriate region to which the subject officer is attached.²⁴⁶

- vi. On 7 June 2019 the Acting Staff Officer at the OGC forwarded him an email regarding a Sydney Morning Herald article about an incident in Town1 involving two police officers and a local solicitor. The email was sent to him because he was the Professional Standards Manager for the OGC at the time.²⁴⁷
- vii. This was the only information he received regarding the matter. He did not know how the Acting Staff Officer came to receive this information.²⁴⁸
- viii. When he read the article he formed the view that it contained an allegation of misconduct, so he forwarded the email to a Chief Inspector at the State Crime Command, which is responsible for Strike Force Raptor, for it to be assessed under Part 8A of the *Police Act 1990*.
- ix. He had no further involvement in the matter after forwarding the email to the Chief Inspector.²⁴⁹
- x. He did not know what the Chief Inspector did with the referral.²⁵⁰
- xi. He was not aware if the information was ever referred to the Commission.²⁵¹
- xii. He agreed that if the conduct contained in the article was misconduct then an officer aware of that conduct would have to report it.²⁵²

²⁴⁶ Private examination BMS at T6.

²⁴⁷ Private examination BMS at T7-8.

²⁴⁸ Private examination BMS at T8.

²⁴⁹ Private examination BMS at T9-10.

²⁵⁰ Private examination BMS at T10.

²⁵¹ Private examination BMS at T10.

²⁵² Private examination BMS at T11.

- xiii. He agreed that this matter should have been recorded on the police complaints system.²⁵³
- xiv. The person responsible for recording complaints onto the system is the Executive Officer attached to the Professional Standards Unit for the region concerned.²⁵⁴
- xv. The Executive Officer should receive that information from the Professional Standards Manager unless they were already aware of the conduct.²⁵⁵
- xvi. His view was that the information contained in the article was sufficient for it to be referred to the Professional Standards Manager in a command.²⁵⁶

4. Factual Findings

- 4.1 The Commission is satisfied that the narrative set out in the following paragraphs accurately sets out the circumstances surrounding Strike Force Raptor's interaction with Civilian MON1 on 28 and 29 May 2019 and thereafter.
- 4.2 Civilian MON1 was the legal representative of Civilian MON9 who had various charges listed for hearing at the Local Court on 28 May 2019.
- 4.3 The charges had been laid by officers from Strike Force Raptor who had been directed to attend court on that day to give evidence as witnesses at the request of Civilian MON1.
- 4.4 As was his right in defending Civilian MON9, Civilian MON1 had rejected a request that the officers give evidence by video link.
- 4.5 Civilian MON1's client was known to the police as a member of an outlaw motorcycle gang.

²⁵³ Private examination BMS at T11.

²⁵⁴ Private examination BMS at T12.

²⁵⁵ Private examination BMS at T12.

²⁵⁶ Private examination BMS at T13.

- 4.6 Officers from Strike Force Raptor, including Officer MON3 and Officer MON4, left Sydney on 27 May 2019 to travel to Town2 where they stayed for one night before arriving in Town1 the next day.
- 4.7 Officer MON3 and Officer MON4 were instructed by Officer MON5 to target, interact and harass Civilian MON1. Officer MON5 instructed Officer MON4 to see that Civilian MON1 did not make it to court.
- 4.8 From about 6:30 a.m. on 28 May 2019 Officer MON3 and Officer MON4 waited outside Civilian MON1's residence in a quiet suburban street in Town1. There was no operational requirement for their attendance in that street.
- 4.9 At about 7 a.m. Civilian MON1 noticed a marked police vehicle parked near his home.
- 4.10 Civilian MON2 travelled to Civilian MON1's home and asked that they both drive to Beaurepaire together, in their separate vehicles, so that Civilian MON1 could drive her to work after she had left her vehicle at Beaurepaire.
- 4.11 A short time later, Civilian MON1 and Civilian MON2 reversed out of the driveway in their respective vehicles and drove towards Beaurepaire. They did not indicate when reversing out of the driveway.
- 4.12 They were followed by Officer MON3 and Officer MON4 in a marked police vehicle. Upon arrival at the tyre repair shop the officers exited their vehicle and approached Civilian MON1 at approximately 7:15 a.m.
- 4.13 Officer MON3 initiated a conversation with Civilian MON1 who remained seated in his vehicle. Officer MON3 advised Civilian MON1 that his reason for stopping him was that he had failed to indicate for five seconds when reversing earlier from his driveway onto the road. During this conversation Civilian MON1 informed Officer MON3 that he did not have his drivers licence with him as he had left it in his work pants.
- 4.14 In this conversation Officer MON3 pretended that he did not know about the hearing at which Civilian MON1 was representing Civilian

MON9. After further conversation, the following exchange then took place between Civilian MON1 and Officer MON3:²⁵⁷

Civilian MON1: *Alright, what's your name?*
Officer MON3: *Constable [MON3] from Strike Force Raptor.*
Civilian MON1: *Are you in court today?*
Officer MON3: *No. Why?*
Civilian MON1: *No I was just wondering, I've got a case with Raptor today, I'm a solicitor.*
Officer MON3: *Oh ok.*
Civilian MON1: *I've got a case with Raptor...(inaudible)*
Officer MON3: *Are you, who are you, what are you defending, bikies?*
Civilian MON1: *Yeah.*
Officer MON3: *What's the matter, which one?*
Civilian MON1: *Cruelty to animals.*
Officer MON3: *Cruelty to animals? Oh ok. Alright, no worries.*

- 4.15 Officer MON3 then told Civilian MON1 that he would be issued with two infringement notices, the first for not carrying a drivers licence whilst driving, and the second for not giving a sufficient change of direction signal before driving onto a roadway. Civilian MON1 questioned which direction he was supposed to indicate given he had reversed out of the driveway and Officer MON3 replied "*whichever way you turn*".²⁵⁸
- 4.16 After this interaction, Civilian MON1 drove off with Civilian MON2 in the front passenger seat. They were followed by Officer MON3 and Officer MON4 in the marked police vehicle.
- 4.17 At approximately 7:27 a.m. Civilian MON1 was again stopped by both officers. He was told that the officers' reason for stopping him was to conduct an inspection of his vehicle. Video footage from Officer MON3's body worn camera shows him inspecting the seat belts in Civilian

²⁵⁷ Exhibit BMJ3C.

²⁵⁸ Exhibit BMJ3C.

MON1's vehicle, in particular pulling on the two front seat belts repeatedly with some force.

4.18 Officer MON4 can be seen inspecting the engine of the vehicle. Officer MON3 also inspected the engine, and then looked underneath the vehicle, claiming that there was an oil leak.

4.19 Officer MON3 issued a red defect notice for Civilian MON1's vehicle due to the alleged oil leaks and alleged failure of the seat belts to retract. The video footage from Officer MON3's body worn camera shows him explaining the situation to Civilian MON1 as follows:²⁵⁹

"Alright [Civilian MON1], so we've inspected your vehicle for defects and we've found several defects with it. My partner's found some oil leaks, where were yours? Near the, he's got something there, near the dif. Also under the vehicle where the sump is as well there's some oil leaks, which makes it defective. Your seat belt, your seat belts' borderline, but because it's such a safety thing it's definitely gone and contributed to it, in a way that, you see how these retract, sort of stops. If you look the back ones are really good. The back ones are brand new. They fly up, that's awesome. Passenger side's very similar."

4.20 Civilian MON1 was then told by Officer MON3 that the vehicle could not be driven and that it would need to be towed for a full authorised vehicle inspection.

4.21 Civilian MON1 and Civilian MON2 were then obliged to walk home as the vehicle could no longer be driven.

4.22 At about 8:00 a.m. Civilian MON1 and Civilian MON2 took a taxi from home to work. During this trip they noticed that the same marked police vehicle was following them. After arriving at Civilian MON1's office, the taxi was pulled over by Officer MON3 and Officer MON4 and issued with a traffic infringement notice for failing to indicate when exiting a

²⁵⁹ Exhibit BMJ11C.

roundabout. Both officers also inspected the taxi for defects, with nil defects found.

- 4.23 Shortly after 8:30 a.m. Civilian MON1's client arrived at the office and informed him that there was a police vehicle driving up and down the road outside his office. Civilian MON1 noticed that it was the same marked police vehicle previously driven by Officer MON3 and Officer MON4.
- 4.24 At approximately 9:00 a.m. Civilian MON1 and his client looked out the office window and saw that the police vehicle was parked across the road with both officers leaning on the bonnet of the vehicle and looking towards the office.
- 4.25 Civilian MON1 feared that he would have another encounter with Officer MON3 and Officer MON4. He therefore went to his friend's office and informed him what had happened. This friend is also a practising solicitor in Town1. Civilian MON1's solicitor friend then made a complaint to the local Police Area Command.
- 4.26 Civilian MON1 later attended court for Civilian MON9's hearing. He made an application for an adjournment on the basis of his being upset at what had transpired earlier that morning with the police officers. The Magistrate granted his application and the hearing was adjourned to another date.
- 4.27 At about 12:00 p.m. on the same date, Civilian MON2 left her place of work to attend a café. As she approached, she saw a large number of police officers sitting in the café. One of them pointed towards her. She felt intimidated. She turned around and walked away.
- 4.28 The next day, on 29 May 2019, at about 12:10 p.m. Officer MON3 and Officer MON4 were discovered at the rear of Civilian MON1's office in his parking area inspecting his motorcycle. It had been parked there since 8:30 a.m. The officers had left a DECC notice on the motorcycle which stated the following:

“The above listed vehicle has been stopped and inspected by an officer authorised for the purposes of Section 208 of the Protection of the Environment Operations Act 1997 and has been found to be excessively noisy. As the driver/person in charge of the vehicle you are notified that the vehicle will be reported to the DECC.”

4.29 Civilian MON1 and his solicitor friend approached both officers about this notice. The solicitor friend stated that he represented Civilian MON1. The officers refused to speak to Civilian MON1's solicitor friend, claiming that they were too busy. They refused to identify themselves when asked. They responded that Civilian MON1 and his solicitor friend could examine the documents or call their Superintendent in charge of Strike Force Raptor at the time.

5. Submissions

5.1 The legal representatives for all NSWPF officers were provided with a draft version of this Report and invited to make submissions. Only the legal representative for Officer MON6 provided submissions which were accepted by the Commission and incorporated into this Report.

6. Findings

6.1 Driving a motor vehicle without carrying a licence is an offence against Regulation 300-5 of the *Road Rules 2014* and carries a maximum penalty of 20 penalty units. Civilian MON1 paid the penalty amount of \$112.00 relating to this offence. Setting aside the serious misconduct in the targeting of Civilian MON1, the Commission is satisfied that there can be no misconduct in having issued a penalty notice to Civilian MON1 for failing to carry his drivers licence.

6.2 Failing to give sufficient right change of direction signal is an offence against Regulation 48 of the *Road Rules 2014* and carries a maximum penalty of 20 penalty units. Civilian MON1 elected for this charge to be dealt with by the court on which occasion it was withdrawn on 14 October 2019 at the Local Court.

- 6.3 The Commission notes that Civilian MON1 lived in a *cul-de-sac* and that it was approximately 7:00 a.m. when he reversed out of his driveway without signalling. Civilian MON1's evidence was that there was no traffic on the road at the time.²⁶⁰ This was not disputed by either Officer MON3 or Officer MON4. Civilian MON1's failure to indicate did not pose any danger or hazard to any persons or vehicles. There was no traffic in the vicinity to observe his signal apart from Officers MON3 and MON4 who were there to target him. In these circumstances, failure to signal a right change of direction could only be seen as a trivial and technical breach of Regulation 48 if it was any breach at all.
- 6.4 On questioning by the Commission neither officer could provide any useful information as to how a person reversing out of their driveway in these particular circumstances could appropriately signal anything. Any signal would be misleading and potentially dangerous. In addition to the serious misconduct involved in the targeting of Civilian MON1, the Commission is satisfied that it was serious misconduct to issue a penalty notice to Civilian MON1 for failing to indicate when reversing from his driveway in all the surrounding circumstances. Issuing the infringement notice for this offence was a deliberate, deceitful and malicious harassment of Civilian MON1.
- 6.5 The next encounter occurred at approximately 7:27 a.m. when Officers MON3 and MON4 pulled Civilian MON1 over for a vehicle inspection. Civilian MON2 was also in the vehicle. The vehicle inspection was conducted under section 76 of the *Road Transport Act 2013*.²⁶¹ That provision provides as follows:

(1) A police officer, or the Authority, may inspect a registrable vehicle (whether or not on a road) for the purpose of deciding its identity, condition or the status (whether in this jurisdiction or another jurisdiction) of any registration or permit relating to the vehicle.

²⁶⁰ Private examination BMD at T20.

²⁶¹ Private examination BMJ at T28.

- 6.6 Body worn camera footage shows Officers MON3 and MON4 inspecting Civilian MON1's vehicle. Officer MON3 is seen pulling the driver's seat belt with two hands at least five times and watching it retract. He then moves to the right rear passenger side and pulls on that seat belt once. He moves onto the front left passenger seat and pulls on that seat belt with some force at least four times. Finally, he moves to the left rear passenger side and pulls on that seat belt once.
- 6.7 Officer MON4 is seen inspecting the engine bay of the vehicle and Officer MON3 joins him. Officer MON3 makes a reference to a leak and later looks under the vehicle and claims there is an oil leak.
- 6.8 At the conclusion of the inspection Officer MON3 issues Civilian MON1 with a major defect notice for defects in oil leaks, seat belts failing to retract, and window tinting not complying with standards. Officer MON3 stated *"your seat belts are borderline but because it's such a safety thing it's definitely contributed to it"* and *"yeah so the car has been red labelled defect due to the safety concerns for you and also for the safety concerns for the environment and the animals with the oil leaks as well"*.
- 6.9 Regulation 80 of the *Road Transport (Vehicle Registration) Regulation 2017* governs the issuing of defect notices and provides two types of notices as follows:
- (1) *A vehicle defect notice issued under the Act may be stated to be*
-
- (a) *a "major defect notice" if, in the reasonable opinion of the person issuing the notice, the further use of the registrable vehicle in road transport after the time specified in the notice would constitute an imminent and serious safety risk, or*
- (b) *a "minor defect notice" if, in the reasonable opinion of the person issuing the notice, deficiencies in the*

registrable vehicle, if allowed to continue after the time specified in the notice, may -

- (i) constitute a safety risk, or*
- (ii) hinder the ability of a person to identify the vehicle by reference to its number plates.*

“Safety risk” is defined in the Dictionary to mean danger to a person, to property or to the environment.

- 6.10 Officer MON3 could not recall whether there was anything visibly irregular about the vehicle which indicated that there may have been a defect with it.²⁶² The Commission is satisfied that there was no observable physical defect in Civilian MON1’s vehicle which could have caused him to consider inspecting the vehicle. This conclusion is supported by the outcome of the inspection which followed the defect notice. The inspection was an invention to intimidate, target and inconvenience Civilian MON1 who was going about his ordinary lawful business.
- 6.11 When asked whether he was hoping to pull Civilian MON1 over again, Officer MON3 said in evidence *“oh, if he did something else we would pull him over, yes”*.²⁶³
- 6.12 Given that there was nothing visibly irregular about Civilian MON1’s vehicle, the only reasonable inference available is that Officers MON3 and MON4 conducted the vehicle inspection as a continuation of the targeting campaign against Civilian MON1.
- 6.13 In his evidence, Officer MON3 said to the Commission that *“down with the engine block you could see that there was, like, you could see that there was a little bit of oil”*.²⁶⁴ The Commission is satisfied that Officer MON3 did not hold a genuine belief that the further use of the vehicle constituted an imminent and serious safety risk. He stated to Civilian MON1 that it was for *“safety concerns for the environment and the*

²⁶² Private examination BMJ at T28.

²⁶³ Private examination BMJ at T26.

²⁶⁴ Private examination BMJ at T31.

animals". The Commission is satisfied that this was a sarcastic remark by Officer MON3 arising from the fact that Civilian MON1's client was facing criminal charges of animal cruelty.

- 6.14 The mechanic designated to inspect Civilian MON1's vehicle found no defects and stated that the condition of the vehicle complied with existing standards.
- 6.15 The Commission is satisfied that there were no proper grounds for the issue of a major defect notice. There was no defect in the windows, the seat belts or the engine of Civilian MON1's vehicle. The Commission is satisfied that all of those defects were inventions developed to inconvenience Civilian MON1.
- 6.16 In addition to the serious misconduct involved in the targeting of Civilian MON1, the Commission is satisfied that it was serious misconduct to issue a defect notice to Civilian MON1 in relation to his vehicle seatbelts, oil leakage and window tinting. Issuing a defect notice for these alleged defects was deliberate, deceitful and malicious harassment of Civilian MON1.
- 6.17 On 29 May 2019, Officers MON3 and MON4 continued to target Civilian MON1. Both officers attended the private parking area at the rear of Civilian MON1's office. They issued a Notice of Referral of Vehicle to the Department of Environment and Climate Change under the *Protection of the Environment Operations Act 1997*. That notice stated the following:

"The above listed vehicle has been stopped and inspected by an officer authorised for the purposes of section 208 of the Protection of the Environment Operations Act 1997 and has been found to be excessively noisy. As the driver/person in charge of the vehicle you are notified that the vehicle will be reported to the DECC."

- 6.18 Both Officers MON3 and MON4 conceded that they had not heard Civilian MON1's motorcycle prior to the issuing of this notice.²⁶⁵ Officer

²⁶⁵ Private examination BMJ at T65 and private examination BMK at T54.

MON3 provided the incredible explanation that he issued this notice as he thought that the exhaust pipes used on the motorcycle meant that it would be excessively noisy.²⁶⁶ He conceded that he now knew it was incorrect to have issued that notice.²⁶⁷

- 6.19 Given that Civilian MON1's motorcycle could not have been found to be excessively noisy, the Commission finds Officer MON3 and Officer MON4 invented a reason to issue a notice against Civilian MON1.
- 6.20 In addition to the serious misconduct involved in the targeting of Civilian MON1, the Commission is satisfied that it was serious misconduct to issue the DECC notice to Civilian MON1 in relation to his motorcycle. Issuing a notice for this alleged defect was a deliberate, deceitful and malicious harassment of Civilian MON1.
- 6.21 This investigation had as its background targeting as a general policing strategy, particularly where the subjects to be targeted are outlaw motorcycle gang members, or alleged outlaw motorcycle gang members. Targeting involves the enforcement of the law against targeted individuals. An individual, or a group of individuals, is identified and observed closely for any breaches of the law. It is an effective disruption strategy, if somewhat provocative. It is a legitimate policing tool in appropriate circumstances and the Commission makes no comment about its use in those circumstances. These are issues for the Commissioner of Police and his Deputies.
- 6.22 The essential ingredient for the proper application of the policy, one that escaped the attention of the officers involved in this disgraceful conduct towards Civilian MON1, was for it to involve the actual enforcement of the law, not the invention of breaches to achieve targeting.

²⁶⁶ Private examination BMJ at T70.

²⁶⁷ Private examination BMJ at T70.

- 6.23 When misused, targeting can create a hostile relationship between the police and citizens who would otherwise have no animosity towards the police.
- 6.24 The Commission is concerned about the sense of entitlement that can develop in an elite strike force and was demonstrated by this conduct. Such limited strategies can become unrestrained and unlawful. If you are an elite, are you bound by the rule of law and the policies of the NSWPF or are you bigger, better, harder and more entitled?
- 6.25 The task of these officers is to enforce the law. If the unlawful conduct engaged in by these officers is allowed to continue and be condoned because of some imagined higher purpose, there can be no good to come from it for the people of New South Wales.
- 6.26 The harassment of Civilian MON1 and his friend Civilian MON2, and the impertinent lack of respect shown to Civilian MON1's solicitor friend in his interaction with Officer MON3 and Officer MON4, was a natural consequence of that sense of entitlement within Strike Force Raptor resulting in the direction by Officer MON5 who was in charge of this operation. It also demonstrated complete failure to manage the application of this targeting policy by the Commander then in command of the Strike Force.
- 6.27 This sense of entitlement, the misdirection by senior management and the condonation of unlawful conduct has led directly to the conduct of the officers outlined in this investigation. Strike Force Raptor has been very successful in disrupting criminal activity and its function must continue. However, unlawful conduct must not be condoned or covered up.
- 6.28 As a result of a conference with Officer MON6 and his detailed evidence, the Commission is satisfied that he is aware of the difficulties in this command and is addressing those issues whilst still applying the policies of the NSWPF to those citizens for whom targeting of their breaches of the law is an appropriate policy.

- 6.29 The circumstances surrounding the targeting of Civilian MON1 were never appropriate circumstances for the application of targeting.
- 6.30 Civilian MON1 was targeted on his way to Court on 28 May 2019 and on the following day. The Commission accepts for the purposes of this Report that Civilian MON1's client was known to police as a member of an outlaw motorcycle gang.
- 6.31 Officer MON3 stated in his evidence that he had been tasked by Officer MON5 to target Civilian MON1.²⁶⁸ Officer MON4's evidence was that they were tasked to "*interact*" with Civilian MON1, and that Officer MON5 had said, regarding Civilian MON1, "*he doesn't make it to court*".²⁶⁹ Officer MON5 accepted that he gave instructions for Civilian MON1 to be targeted.²⁷⁰
- 6.32 The Commission finds that Officer MON3 and Officer MON4 were instructed to target Civilian MON1 and that Officer MON5 said the words "*he doesn't make it to court*" to Officer MON4.
- 6.33 Officer MON3's evidence was it had been explained to him by Officer MON5 that Civilian MON1 "*was in with the bikies*".²⁷¹ It was also his understanding that Civilian MON1 was not cooperating by refusing the police request to give evidence via audio-visual link.²⁷² Officer MON4's evidence was that Officer MON5 had said Civilian MON1 was "*on side with the bikies*", and he also thought Officer MON5 was not happy about the officers having to travel to Town1.²⁷³
- 6.34 Officer MON5's evidence was that he could not remember saying to Officers MON3 and MON4 that Civilian MON1 was "*in with the bikies*".²⁷⁴ However, he stated that on the morning of 28 May 2019, one of the detectives at the local police station had told him that Civilian MON1 had previously done social rides with the police motorcycle club and with

²⁶⁸ Private examination BMJ at T9-10.

²⁶⁹ Private examination BMK at T8.

²⁷⁰ Private examination BML at T17.

²⁷¹ Private examination BMJ at T9-10.

²⁷² Private examination BMJ at T11-12.

²⁷³ Private examination BMK at T8 and T10.

²⁷⁴ Private examination BML at T28.

the outlaw motorcycle gang. It was this information which formed the basis for his thinking that Civilian MON1 was associated with an outlaw motorcycle gang.²⁷⁵ Additionally, he also said that, prior to going to Town1, another member from Strike Force Raptor had told him that Civilian MON1 had represented outlaw motorcycle gang members in the past.²⁷⁶

- 6.35 As noted above, Officer MON4's evidence was that Officer MON5's instructions included making sure that "*he [Civilian MON1] doesn't make it to court*".²⁷⁷ Officer MON5 accepted that it was possible he gave these instructions²⁷⁸ and he conceded that the aim was to inconvenience Civilian MON1.²⁷⁹
- 6.36 Whether Officer MON5's purpose was to ensure Officer MON1 did not make it to court, or to inconvenience him, the practical effect was the same. They harassed and intimidated Civilian MON1 to such an extent that he could not represent Civilian MON9 to the best of his abilities.
- 6.37 The Commission finds that Civilian MON1 was targeted, either because he was thought to be associated with an outlaw motorcycle gang, or because he had requested for all police officers involved in Civilian MON9's case to attend court in person. There is insufficient evidence to establish that Civilian MON1 was associated in any way with motorcycle gangs. The second possible reason for Civilian MON1 being targeted would clearly mean the conduct was for the purpose of perverting the course of justice.
- 6.38 There has never been alleged any personal conduct of Civilian MON1 which could be identified as criminal conduct. He is a pillar of the community. He was doing his job. Whatever the police may have thought of his client, Civilian MON1 was performing his role as a solicitor.

²⁷⁵ Private examination BML at T18-24.

²⁷⁶ Private examination BML at T46.

²⁷⁷ Private examination BMK at T8.

²⁷⁸ Private examination BML at T24 and T48.

²⁷⁹ Private examination BML at T21-23.

- 6.39 The police officers' objections to Civilian MON1's client were entirely irrelevant. He was representing a client. He is an officer of the Supreme Court of New South Wales acting for a client appearing in the New South Wales justice system. The performance of his role must not be interfered with if the system of justice in New South Wales is to operate as intended.
- 6.40 Officers of the NSWPF are not entitled to interfere with the representation of a client by a solicitor or counsel because they do not approve of the client. Every person subject to a charge in New South Wales is entitled to legal representation without interference.
- 6.41 Civilian MON9 was entitled to proper legal representation and to have his case conducted professionally and skilfully. However, having two police officers wait outside Civilian MON1's home in the early hours of the morning, following him and Civilian MON2 to Beaurepaires, issuing him with a ticket for failing to indicate, stopping his vehicle and defecting it, then waiting outside his office afterwards, all contributed to ensuring that Civilian MON1 was upset and that Civilian MON9 therefore did not receive the legal representation he was entitled to.
- 6.42 Harassing Civilian MON9, who was intending to appear on charges before the Local Court on that day, was also conduct of doubtful propriety and its continued practice should be considered by the OGC.
- 6.43 Civilian MON2 was collateral damage in this activity. The Commission accepts her evidence that police officers from Strike Force Raptor pointed at her on the street. She was already traumatised by the events previously described and the whole experience has been a negative one for her. It is not likely that her opinion of the NSWPF has been improved by these events.
- 6.44 Furthermore, the Local Court Magistrate was inconvenienced and public resources were wasted by this conduct which caused the hearing to be adjourned.

- 6.45 The Commission finds that the targeting of Civilian MON1 was not done for a legitimate policing purpose. The instructions from Officer MON5 and the subsequent conduct of Officer MON3 and Officer MON4 were dishonest and intimidatory. The Commission is satisfied that, in issuing instructions to Officer MON3 and Officer MON4 to target Civilian MON1, Officer MON5 engaged in serious misconduct.
- 6.46 The Commission is satisfied that engaging in this targeting on the instructions of Officer MON5 that Officer MON3 and Officer MON4 engaged in serious misconduct.
- 6.47 The system of notifying police misconduct on the relevant police systems failed entirely in these circumstances. The events would not have come to the attention of anyone, let alone the Commission, if not for the correspondence from Civilian MON1's solicitor.
- 6.48 Officer MON7 reported the matter to the OGC. That office notified Officer MON8 who reported the matter to the relevant local officer. That officer is now retired but the Commission cannot find that he did anything to record the misconduct. At the very least the Commander at the time should have recorded the misconduct and dealt with it. The Commander did not record the misconduct and neither did anyone else. The Commission did not call the Commander, who has since retired, and the only evidence the Commission has regarding the Commander's involvement is set out below:

Counsel: *What did they [Officers MON3 and MON4] say to you about this conversation with [the Superintendent]?*

Officer MON5: *That [the Superintendent] had called them and asked them whether they issued tickets to [Civilian MON1], and they obviously told her that they did. She sort of left it short. I'm just going to paraphrase what [the Superintendent] said. She*

said, "Okay darl", and that was the end of it, for [Officer MON3] and [Officer MON4]."²⁸⁰

6.49 If that is the only interaction that occurred between the Commander and these two junior officers, it is an inexplicable failure.

6.50 I expect that this system failure will be addressed by any present or future commander of Raptor.

7. Affected Persons

7.1 In Part 2 of this Report the Commission set out the provisions of s 133 of the LECC Act dealing with the contents of reports to Parliament. Subsections (2), (3) and (4) relate to "affected persons".

7.2 The Commission is of the opinion that Officers MON3, MON4 and MON5 are affected persons within the meaning of subsection 133(2) of the LECC Act, being persons against whom, in the Commission's opinion, substantial allegations have been made in the course of the investigation.

8. Recommendation

8.1 Because of the seriousness of a New South Wales police officer interfering with a solicitor appearing in criminal proceedings before a New South Wales court the Commission considered making a recommendation in relation to s 181D of the *Police Act 1990* in relation to Officer MON3, Officer MON4 and Officer MON5.

8.2 However, the Commission has considered the operation of Strike Force Raptor and the failure to manage the expectations and conduct of officers in that command which led to the condonation of the egregious misconduct of the officers the subject of this Report. The Commission therefore recommends that the Commissioner of Police should give consideration to the taking of reviewable action pursuant to s 173 of the *Police Act 1990*.

²⁸⁰ Private examination of BML at T41.

- 8.3 In respect of the continued operation of the work of this command the Commission is satisfied that the steps undertaken by Officer MON6 are likely to put an end to further unlawful conduct arising out of the atmosphere of entitlement which previously existed.
- 8.4 The Commission intends to review the continued operation of this work in cooperation with the NSWPF.
- 8.5 Subsequent to the hearings before the Commission, Officer MON6 contacted Civilian MON1's legal representative in an attempt to apologise for the conduct the subject of this Report. No response was received, however there is nothing preventing the relevant Commander from contacting Civilian MON1 directly to provide an apology and the Commission recommends this take place as soon as possible.
- 8.6 A reorganisation of Strike Force Raptor has very recently been announced. The Commission is confident that the issues identified in this report will be considered by the new Commander.

Operation Monza
Report to Parliament Pursuant to Section 132
Law Enforcement Conduct Commission Act 2016
March 2021

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