

# LECC

Law Enforcement  
Conduct Commission

## OPERATION KAINITE

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

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March 2022

# LECC

## Law Enforcement Conduct Commission

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



## Office of the Chief Commissioner

15 March 2022

The Hon Matthew Ryan Mason-Cox 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 Kainite.

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

Yours sincerely,



The Hon R O Blanch AM QC  
Chief Commissioner



The Hon Lea Drake  
Commissioner

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# 1. Introduction

- 1.1. The Law Enforcement Conduct Commission's (the Commission) Operation Kainite arose from media reports relating to the Assistant Commissioner of the NSW Police Force, Leanne McCusker.

# 2. The Commission's Statutory Functions

- 2.1. The *Law Enforcement Conduct Commission Act 2016* (the LECC Act) lists among the Commission's principal functions the detection and investigation of serious misconduct and serious maladministration: s 26.

- 2.2. 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: LECC Act, 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.<sup>1</sup> Accordingly findings can form the basis of opinions and recommendations, even if they do not reach the standard of beyond reasonable doubt.
- 2.10. The Commission has made a determination to protect the identities of some persons. Accordingly, these persons will be referred to by codenames in this report. There is to be no publication of the name or image of any of the codenamed persons in relation to the evidence given in Operation Kainite or included in this report without further order of the Commission.

### 3. Allegations Investigated

- 3.1. A private examination by the Commission has been held to investigate whether or not NSW Police Force officers have been involved in serious misconduct in regard to the procurement of catering contracts, in particular the catering contract awarded to Ozmart Catering Group Pty Ltd (Ozmart) in 2012 and again in 2017. The focus of the enquiry was whether or not Assistant Commissioner McCusker had any involvement in the awarding of the catering contract. The reason for the enquiry was a media report stating that a “food business has for many years employed a former policeman and friend of Mr Fuller, John McCusker, as a manager. Mr McCusker’s wife, Assistant Commissioner Leanne McCusker, was seen as a front runner in the race to be promoted to Deputy Commissioner before this week.”

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

## 4. Analysis of Evidence

- 4.1. It appears from the material produced to the Commission that there were two separate occasions when contracts for catering were entered into by the NSW Police Force. The first occasion was in 2012. This contract was for the provision of catering services from Ozmart to the NSW Police Force for a period of three years. The contract was extended for one further year and then again for one year. The panel that evaluated the 2012 contract consisted of the Manager of Major Events and Incidents, a Detective Inspector, a Sergeant from the State Planning Group, a representative of Fire and Rescue NSW Supply Services Unit, an Inspector from Operational Logistics in Fire and Rescue, a Health and Safety Representative from Fire and Rescue and a public servant from the Strategic Procurement Sector of New South Wales Police Force, who was the Tender Evaluation Coordinator.
- 4.2. In 2017, there was a new process to determine who should be given the catering contract for the next period. From the documentation obtained by the Commission, the Tender Evaluation Committee consisted of a Detective Chief Inspector who was the Logistics Manager for major events, a Sergeant who was the Logistics Coordinator for major events, a civilian who was the Business Manager, a Lead Organiser from the NSW Police Association, and the Regional Business Manager from the Central Metropolitan Region. In addition, there was a Detective Superintendent who was the Tender Evaluation Advisor and a public servant who was the Procurement Manager.
- 4.3. The Tender Evaluation Committee considered four companies that had submitted bids for the catering contract. The conclusion was that Ozmart was the only proposal to pass the mandatory criteria and achieve the minimum technical cut off score of 60%. The recommendation was ultimately approved by an Acting Assistant Commissioner of Police and an Acting General Manager of Strategic

Procurement and Fleet Services, who was a public servant. The documentation does not indicate that any other person was involved in the making of the decision to award the catering contract.

- 4.4. In order to determine whether or not Assistant Commissioner McCusker was in any way involved in the awarding of these catering contracts to Ozmart, the Commission has obtained the documents held by the NSW Police Force in relation to these matters. There is nothing in this documentation to indicate that she was in any way involved in the awarding of either of these contracts. Of course, it can always be speculated that behind-the-scenes she was able to have some influence. In order to address that issue, the Commission has conducted a coercive examination of Assistant Commissioner McCusker.

## **5. LECC Examination**

- 5.1. The evidence from this examination disclosed that Assistant Commissioner McCusker's husband, Mr John Thomas McCusker, retired from the NSW Police Force with the rank of Senior Constable in 2002. On his retirement, he began to work as the Manager of the Plumer Road Chicken Shop (the Chicken Shop) in Rose Bay, NSW. The Chicken Shop was effectively owned by KAI1, who is the principal behind Ozmart. It transpired that Mr McCusker only worked full time for approximately six months at the Chicken Shop and thereafter, he has only worked three days a week. The evidence was that KAI1 sometimes worked at the Chicken Shop when Mr McCusker first worked there, and accordingly, they knew each other but were not friends. The ownership of the lease of the Chicken Shop business has since been taken over by another person, according to the evidence of Assistant Commissioner McCusker. This change of ownership happened ten years ago. John McCusker has never worked at any NSW Police Force function catered for by Ozmart.

- 5.2. Assistant Commissioner McCusker gave evidence that she had met KAI1 as a result of her husband commencing working in the Chicken Shop, but at that stage, it was on rare occasions. Subsequently, she met KAI1 on other occasions when he was providing catering services for NSW Police Force functions. As indicated, the first catering contract was awarded to Ozmart in 2012. At that time, Assistant Commissioner McCusker was a Detective Inspector at Redfern Police Command and her duties did not involve anything to do with catering contracts for the NSW Police Force. The evidence was that she was not even aware of the catering contract negotiations in 2012 and she did not become aware of Ozmart as an entity until 2022 as a result of media reports.
- 5.3. When the 2017 catering contract was being considered, Assistant Commissioner McCusker was a Superintendent. She was promoted to that rank in 2016. She was stationed as the Local Area Commander at Botany Bay and then transferred as the Commander of Kings Cross Police Command. Assistant Commissioner McCusker's evidence was that she had no knowledge at all of the contract negotiations for catering services. At that stage, her husband was still working part-time at the Chicken Shop, but from about 2012, the Chicken Shop was being managed by a new entity and not Ozmart. By that time, Mr McCusker was not beholden to KAI1 for his employment and the evidence the Commission has received is that there was no special friendship between KAI1 and the McCuskers. Any ongoing relationship Assistant Commissioner McCusker had with KAI1 simply resulted from chance meetings at occasional NSW Police Force functions catered for by Ozmart.

## 6. Findings

- 6.1. The 2012 catering contract was effectively determined by a joint panel from the NSW Police Force and NSW Fire and Rescue Services. There

is no indication that Assistant Commissioner McCusker was in any way involved. Her position at that time, as a Detective Inspector, would not in the normal course of events have given her any say in awarding such a contract and she was not a member of the panel making the decision. Her acquaintance with KAI1 was a casual one at that stage. Her sworn evidence that she knew nothing about the awarding of that contract should be accepted.

- 6.2. The 2017 catering contract was again considered by an independent panel but this time comprised only of members of New South Wales Police Force. By that stage, Assistant Commissioner McCusker had met KAI1 because he had been catering for NSW Police Force functions for five years. The documentation relating to that catering contract makes no mention of her being involved in the process. At that stage, she was a Superintendent, a position that in the ordinary course of events would have no influence on the awarding of such contracts. Her sworn evidence that she knew nothing about the awarding of the contract should be accepted.
- 6.3. The evidence does not support a finding of serious misconduct or any other misconduct against Assistant Commissioner McCusker and the Commission is satisfied she played no part, at all, in the awarding of either of these contracts.
- 6.4. There is, in short, no reason at all to doubt Assistant Commissioner McCusker's ability or her integrity.

## **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) and (3) relate to 'affected persons'.
- 7.2. The Commission is of the opinion that Leanne Michelle McCusker is an affected person within the meaning of subsection 133(2) of the LECC

Act, being a person against whom, in the Commission's opinion, substantial allegations have been made in the course of the investigation.



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