

LECC

Law Enforcement
Conduct Commission

OPERATION TORRENS

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

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 Commissioner

24 March 2022

The Hon Matthew Ryan Mason-Cox MLC
President
Legislative Council
Parliament House
SYDNEY NSW 2000

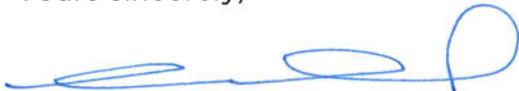
The Hon Jonathan O'Dea MP
Speaker
Legislative Assembly
Parliament House
SYDNEY NSW 2000

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 Torrens.

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

Yours sincerely,



The Hon Lea Drake
Commissioner

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1. Introduction

- 1.1 The Commission's investigation in Operation Torrens arose from a complaint submitted to the Commission which alleged that Officer TOR1 of the NSW Police Force ('NSWPF') was seen using prohibited drugs at a Christmas function. The complaint specifically alleged that Officer TOR1 had been seen inside the bathroom using cocaine with friends.
- 1.2 On 18 January 2021, pursuant to s 44(1)(a) of the *Law Enforcement Conduct Commission Act 2016* ('the LECC Act'), the Commission decided to commence an investigation into allegations that Officer TOR1 was using prohibited drugs, namely cocaine, and that he associated with others involved in the supply of prohibited drugs.

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: 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.¹ Accordingly findings can form the basis of opinions and recommendations, even if they do not reach the standard of beyond reasonable doubt.

- 2.10 The Commission has made a determination to protect the identities of all persons involved. Accordingly, all persons and places will be referred to by codenames in this report. There is to be no publication of the name or image of any of the codenamed persons or places in relation to the evidence given in Operation Torrens or included in this report without further order of the Commission.

3. The Commission's Investigation

- 3.1 Officer TOR1 is based at a suburban police station and works as a personal trainer at a gym with secondary employment approval from the NSWPF.

- 3.2 The Commission's investigation established that Officer TOR1 had associations with people with whom he would discuss the use of prohibited drugs.

- 3.3 On 26 April 2021 Officer TOR1 was subjected to a targeted drug test during which both urine and hair samples were taken. Both returned a negative result.

- 3.4 On 28 October 2021 the Commission decided that it would hold an examination of Officer TOR1. Due to the nature of the allegations, and after taking into account the factors set out in s 63 of the LECC Act, the examination was held in private.

- 3.5 The scope and purpose of the private examination was:

To investigate allegations [Officer TOR1], or any other member of the NSW Police Force, has engaged in serious misconduct or illegal activity.

- 3.6 The examination was held on 1 December 2021.

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

THE EVIDENCE

Officer TOR1

3.7 Officer TOR1 stated the following during his private examination:

- (a) He joined the NSWPF in 2019, and holds the rank of Constable.²
- (b) He has secondary employment as a personal trainer.³
- (c) In 2020 he attended two Christmas functions. One was for the NSWPF and one for the gym where he works as a personal trainer.⁴
- (d) At the gym Christmas function, he estimated that there were between 60 to 100 people present. He did not know all of them. He denied using drugs at the function, and he did not see anyone else using drugs there.⁵
- (e) He was driven to the function by Officer TOR2, who he had met through police football about two years ago.⁶
- (f) He could not recall joking with Officer TOR2 about using drugs, but when played a recording of a telephone call between them on 25 April 2021, he conceded that they had made an assumption about someone using cocaine at a function.⁷
- (g) He currently lives with Officer TOR3 who he also met through police football about two years ago. He conceded that they had previously joked about the use of drugs.⁸
- (h) When played a recording of a telephone conversation between Officer TOR3 and himself on 26 April 2021, he stated that they were talking about him having been target tested for drugs by the NSWPF and “*staying off the phone*”.⁹
- (i) Officer TOR4 is his cousin. Outside of work he sees her at family gatherings. He is not aware if she has ever used any prohibited

² Private examination TAQ at T5.

³ Private examination TAQ at T6.

⁴ Private examination TAQ at T6.

⁵ Private examination TAQ at T7-8.

⁶ Private examination TAQ at T8-9.

⁷ Private examination TAQ at T9-12.

⁸ Private examination TAQ at T13-14.

⁹ Private examination TAQ at T14-15.

drugs but he knows she has been previously tested for drugs by the NSWPF.¹⁰

- (j) When played a recording of a telephone conversation between Officer TOR4 and himself on 26 April 2021, he stated that Civilian TOR5 (a former NSWPF officer) had told him that he was tested for steroids all the time. When asked why he thought Civilian TOR5 would get tested all the time, he stated “*he’s extremely good at bodybuilding*”.¹¹
- (k) He had met Civilian TOR5 in high school. He is aware that Civilian TOR5 uses steroids for bodybuilding. He was not surprised when Civilian TOR5 confirmed that, as he had “*already assumed*” that because of Civilian TOR5’s physique.¹² He stated that Civilian TOR5 works at Gym A.¹³ He had not declared his association with Civilian TOR5 to the NSWPF.¹⁴
- (l) In February 2021 he went on a four to five day trip to Byron Bay with Officer TOR2, Officer TOR3 and Civilian TOR6. He did not use any drugs or see anyone using drugs on this trip.¹⁵
- (m) He met Officer TOR7 in the police academy and has caught up with him about three times since graduating. He does not believe Officer TOR7 uses drugs but confirmed that they have joked about it.¹⁶
- (n) When played a recording of a telephone call between himself and Officer TOR7 on 19 April 2021, he confirmed that they were joking about using cocaine.¹⁷ Additionally, he stated that Officer TOR7 knew he had previously used cocaine.¹⁸
- (o) He had used cocaine in his early 20’s before he joined the NSWPF. It was “*something very rare*”. He received it from his friends. He recalled one of them was Civilian TOR8.¹⁹

¹⁰ Private examination TAQ at T16.

¹¹ Private examination TAQ at T18.

¹² Private examination TAQ at T19-21.

¹³ Private examination TAQ at T44.

¹⁴ Private examination TAQ at T21.

¹⁵ Private examination TAQ at T17.

¹⁶ Private examination TAQ at T23.

¹⁷ Private examination TAQ at T23-24.

¹⁸ Private examination TAQ at T25.

¹⁹ Private examination TAQ at T24-25.

- (p) He met Civilian TOR6 in high school and socialises with him regularly. He understands Civilian TOR6 has used cocaine and he has never declared this association to the NSWPF.²⁰
- (q) When played a recording of the telephone call between himself and Civilian TOR6 on 2 April 2021, he stated that he did not really know who the person referred to during the call was. He guessed that this person was in trouble with the police due to drugs.²¹ He stated that this person is friends with Civilian TOR9, and Civilian TOR9 is friends with Civilian TOR5. He thought that the person referred to might own Gym B.²²
- (r) In relation to the same call, he identified Civilian TOR9, with whom he went to school. He stated that he did not “*know if they are a gang or what*” but he suspected that Civilian TOR9 was a user of drugs.²³ When asked about this call, he speculated that it was possible someone had gone missing due to a drug debt and that it was possible Civilian TOR9 was chasing the debt.²⁴
- (s) He was shown a photo of four males. He identified them as Civilian TOR6, Civilian TOR10, Civilian TOR11 and Civilian TOR12. He had stopped socialising with Civilian TOR12 after Civilian TOR12 went to jail in early 2020 for manufacturing drugs. He understands that Civilian TOR6 still socialises with the others in the photo.²⁵
- (t) He was shown a photo of eight males. He identified them as Civilian TOR5, Civilian TOR6, Civilian TOR12, himself and others. He stated that this photo was taken on Civilian TOR5’s birthday.²⁶
- (u) When played a recording of a telephone conversation of 24 April 2021 between himself and Civilian TOR6 he stated that Civilian TOR13 used to live next door to him when they were in primary school and high school. He stated that Civilian TOR13 “*likes to party*” and Civilian TOR6 “*not as much*”. He conceded that Civilian TOR6 used cocaine. He did not ask where he got it from. He did not want to look into it because he is a police officer.²⁷

²⁰ Private examination TAQ at T26-27.

²¹ Private examination TAQ at T27-28.

²² Private examination TAQ at T44.

²³ Private examination TAQ at T28-29.

²⁴ Private examination TAQ at T47-48.

²⁵ Private examination TAQ at T31-32.

²⁶ Private examination TAQ at T33-34.

²⁷ Private examination TAQ at T34-35.

- (v) He agreed that it was not appropriate for a police officer to joke about or encourage the use of drugs.²⁸
- (w) When he was played a recording of a telephone conversation of 25 April 2021 between himself and Civilian TOR6 he stated that they were talking about being at an event the previous night. He denied that either of them used ecstasy or cocaine.²⁹ There were people he didn't know who were using cocaine in the tent. He said to them "*oh, I would hate for a police officer to be around*" as a way of telling them not to do it.³⁰ He knew prior to attending the event that Civilian TOR13 was a user of cocaine and he expected that Civilian TOR13 would use it at this event.³¹
- (x) He denied driving home intoxicated from the event and stated that he was lying to Civilian TOR6 about it in the call.³²
- (y) He confirmed that he had seen Civilian TOR6 affected by cocaine in 2018.³³
- (z) Civilian TOR14 is a friend from high school whom he socialises with "*a couple of times a year*". He is aware that Civilian TOR14 has used cocaine in the past. When played a recording of a telephone conversation between himself and Civilian TOR14 on 19 April 2021, he stated that he knew Civilian TOR8 from high school and he also knew that Civilian TOR8 was a user of cocaine.³⁴
- (aa) He has been to Gym A approximately 10 to 15 times. The last time was at the start of 2021 when he went to buy supplements. He saw Civilian TOR5 there and had a conversation with him but could not recall what they talked about.³⁵
- (bb) He understands that Civilian TOR15 is a part owner of Gyms A and B. Civilian TOR15 has previously been "*locked up*" but he does not know what for.³⁶

²⁸ Private examination TAQ at T36.

²⁹ Private examination TAQ at T37-38.

³⁰ Private examination TAQ at T39.

³¹ Private examination TAQ at T39-40.

³² Private examination TAQ at T49-52.

³³ Private examination TAQ at T39.

³⁴ Private examination TAQ at T41-42.

³⁵ Private examination TAQ at T45.

³⁶ Private examination TAQ at T46-47.

- (cc) Civilian TOR16 is a part-time personal trainer who used to be a police officer. About a month ago he learnt that Civilian TOR16 was asked to leave the NSWPF for using cocaine.³⁷
- (dd) He has not used any prohibited drugs since he became a police officer.³⁸
- (ee) Most of the associates that he was questioned about reside in one region of Sydney. He currently lives in another region of Sydney and has not lived in his associates' region for approximately three years. He sees those associates less than five times a year. He does not catch up with them as much as he used to because of Covid and because many of them have children.³⁹

4. Analysis of Evidence

- 4.1 The Commission is satisfied that Officer TOR1 has associated with people who he knew were users of prohibited drugs. He has not declared these associations. This is supported by the evidence of the telephone calls previously referred to. This conduct is incompatible with the NSWPF Code of Conduct and Ethics Rule 7, which states that police officers must “...take reasonable steps to avoid conflicts of interest, report those that cannot be avoided, and co-operate in their management”.
- 4.2 The Commission is satisfied that there is no evidence that Officer TOR1 has used prohibited drugs whilst employed by the NSWPF.

5. Submissions

- 5.1 The legal representative for Officer TOR1 was provided with a draft version of this Report and invited to make submissions. The submissions sought to clarify a small portion of the evidence given by Officer TOR1, and the Report was amended accordingly.

6. Affected Persons

- 6.1 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*”.
- 6.2 The Commission is of the opinion that Officer TOR1 is an affected person within the meaning of subsection 133(2) of the LECC Act,

³⁷ Private examination TAQ at T48-49.

³⁸ Private examination TAQ at T56.

³⁹ Private examination TAQ at T56.

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

7. Findings

- 7.1 The Commission is satisfied that, by associating with Civilian TOR5, Civilian TOR6, Civilian TOR8 and Civilian TOR13 without declaring the association, and whilst knowing those persons were likely to be users of prohibited drugs, Officer TOR1 has acted contrary to Rule 7 of the NSWPF Code of Conduct and Ethics.

8. Recommendations

- 8.1 The Commission recommends that the Commissioner of Police should give consideration to the taking of non-reviewable action pursuant to section 173 of the *Police Act 1990*.
- 8.2 Whilst the form non-reviewable action may take is a matter in the absolute discretion of the Commissioner of Police, in this matter the Commission recommends counselling and assistance for Officer TOR1 in relation to his obligations arising from Rule 7 of the NSWPF Code of Conduct and Ethics.
- 8.3 Training in the operation of the obligations arising from Rule 7 of the NSWPF Code of Conduct and Ethics may need a review in light of this issue arising in two recent matters before the Commission.

Operation Torrens

Report pursuant to s 132

Law Enforcement Conduct Commission Act 2016

March 2022

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