

REPORT TO PARLIAMENT

OPERATION ALGIERS

June 2000

REPORT TO PARLIAMENT OPERATION ALGIERS
JUNE 2000

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The Hon Meredith Burgmann MLC
President
Legislative Council
Parliament House
SYDNEY NSW 2000

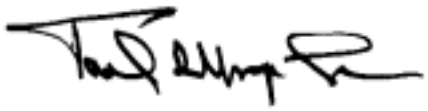
The Hon John Murray MP
Speaker
Legislative Assembly
Parliament House
SYDNEY NSW 2000

Dear Madam President and Mr Speaker

In accordance with section 96(2) of the *Police Integrity Commission Act 1996*, the Commission hereby furnishes to you a report regarding Operation Algiers, being a report in relation to a matter as to which the Commission has conducted a public hearing.

I draw your attention to section 103(2) of the Act, pursuant to which I recommend that this report be made public forthwith.

Yours faithfully



Judge P D Urquhart QC
Commissioner

June 2000

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EXECUTIVE SUMMARY

This executive summary outlines:

- the background to the Operation Algiers investigation;
- the evidence heard by the Commission during the course of its public hearings;
- the criminal and disciplinary charges the Commission is recommending for consideration; and
- the implications and corollaries from Operation Algiers for the Police Service and its members.

BACKGROUND

David Hillman Care is a Superintendent of the NSW Police Service. He joined the Police Service in 1965 and was appointed to the rank of Superintendent in 1990. He was, for a period, Chief Superintendent and Commander of the Illawarra District having spent 18 years in licensing.

In December 1997, the Police Integrity Commission received information that Superintendent Care was a silent partner in a hotel in Cabramatta. It was then established that Clare Haig was, at the time, the sole director and shareholder of a private company operating the Stardust Hotel in Cabramatta, and that she was married to a member of the NSW Police Service, Superintendent David Hillman Care.

On 9 January 1998, the Commission commenced an investigation code-named Operation Algiers. Information and evidence concerning the structure of the financial investment held by Superintendent Care's wife in the Stardust Hotel was collected.

In January 1998, the Internal Affairs Command of the NSW Police Service received a similar complaint. That complaint included an allegation that Superintendent Care had an interest in, or a close personal association with, persons with an interest in a hotel in Cabramatta. The Police Service arranged for the investigation of the complaint to be carried out by the Licensing Enforcement Agency. In August 1998, a report concluded that there was no evidence of improper or unlawful involvement by Superintendent Care in the hotel and the recommendation was for no further action.

On 14 September 1998, the Commission notified the NSW Police Service that it was taking over the investigation of the complaint that had been investigated by the Police Service.

Evidence was obtained concerning proceedings in the Equity Division of the Supreme Court of NSW between Superintendent Care and the prawn farm, Ausfarm Aquaculture Pty Limited. The investigation also obtained information in relation to a number of computer inquiries made by Superintendent Care of the Police Service computer.

These issues were examined in private hearings conducted by the Commission. The evidence and exhibits relating to those matters were taken in private because of their confidential and commercial nature. Where appropriate, that evidence was also presented in public hearings between 30 March 1999 and 20 August 1999. These hearings investigated the involvement of Superintendent Care in the licensed premise known as the Stardust Hotel. They also examined whether Superintendent Care and/or his associates had engaged in unlawful or improper conduct concerning business or financial interests involving Superintendent Care and/or members of his family. In addition, the hearings explored whether Superintendent Care had unlawfully accessed police computer information.

EVIDENCE CONCERNING A FINANCIAL INTEREST IN THE STARDUST HOTEL

In relation to Superintendent Care's financial involvement in the Stardust Hotel the Commission heard evidence that:

- Superintendent Care was aware that he was required to disclose his wife's financial interest in the Stardust Hotel to the Commissioner of Police. He claimed in a response made to a directive memorandum from the Police Service that following discussions with Deputy Commissioner Lawson concerning the matter he had given a report of financial disclosure to her. Deputy Commissioner Lawson died in January 1998, therefore the Commission was unable to verify this evidence. Superintendent Care claimed in Commission hearings that he had sent this disclosure to the Commissioner of Police. There was no record located concerning the receipt of this disclosure at the Commissioner's Office.

- Superintendent Care's evidence was that discussions with Deputy Commissioner Lawson concerning Clare Haig's investment in the hotel occurred during October and November 1997. Attached to his response to a directive memorandum from the Police Service was a copy of a report of financial disclosure dated 1 September 1997. Superintendent Care's explanation to the Commission for this was that Deputy Commissioner Lawson had instructed him to backdate his financial disclosure.

- The $500,000, which Superintendent Care's wife invested in the Stardust Hotel, was sourced from assets owned by Superintendent Care. He and his wife maintained that this money was an undocumented gift to his wife. Other documents presented to the Commission either portrayed the money as an asset belonging to Superintendent Care or a loan made by him to his wife.

Superintendent Care explained that, at that time, his wife had given the money back to him. Agreements between Clare Haig and Superintendent Care evidenced that Superintendent Care made loans to Clare Haig who then channelled the funds into the hotel to ensure its continued operation. Clare Haig could not explain why Superintendent Care did not lend this money directly to the hotel.

- Clare Haig was the owner as to 49 per cent of the hotel business and Superintendent Care was involved in setting up, and operating, the Stardust Hotel. Superintendent Care had an active role in establishing the hotel while his wife had only a limited role. Superintendent Care attended meetings with owners of the freehold and conducted negotiations in relation to finance. Superintendent Care and his wife claimed that the structure of the investment was one which was designed to reduce taxation. The evidence of Ross Visalli who became the licensee of the Stardust Hotel, and held a 51 per cent shareholding in the business, was that Clare Haig held the investment because Superintendent Care, as a police officer, could not. Further, instead of holding her share in The Monopoly Company Pty Limited, the company holding the hotel lease, Clare Haig used another structure, Clare Bear Pty Limited to hold her shares.

In relation to these matters, the Commission considers that:

- There was no evidence presented which established that Superintendent Care declared his wife's investment in the Stardust Hotel, apart from Superintendent Care's backdated memorandum attached to his response to the Police Service's directive memorandum. There was no record that this document was received at the Police Commissioner's Office. The evidence however could not sustain a finding beyond reasonable doubt that Superintendent Care did not make the required disclosure.

- Superintendent Care was the source of funds amounting to $500,000, which his wife invested in the Stardust Hotel. Superintendent Care's claims that this money was a gift were inconsistent with loan applications in which he and others described this sum as an asset of Superintendent Care's, or a loan to his wife. Superintendent Care's loans to his wife, which were then directed into the Stardust Hotel, provide evidence that Superintendent Care had a pecuniary interest in the business. This interest was also evident when Clare Haig told the Commission that loan agreements were made between herself and Superintendent Care in order to assist him to recover some of the money should the business fail.

- Superintendent Care's evidence, that he undertook a role in establishing the business in order to protect his wife's interest, should be rejected on the basis of the evidence that he had an equitable interest in the funds. Although it was claimed that Clare Haig was interested in the hotel business, she did not attend meetings held regarding the negotiation of the lease. Evidence was presented

that Superintendent Care took an active role in negotiating the lease and had harboured a long-term interest in owning a hotel.

EVIDENCE CONCERNING A RELATIONSHIP WITH THE LICENSEE OF THE STARDUST HOTEL AND SECONDARY EMPLOYMENT

In relation to a relationship with the licensee of the hotel and secondary employment of Superintendent Care, the Commission heard evidence that:

- Superintendent Care was aware that he was required under the *Commissioner's Instructions* to obtain approval to pursue secondary employment. While direct secondary employment in relation to licensed premises was forbidden, written approval for secondary employment in relation to licensed premises could be sought from the Assistant Commissioner, Professional Responsibility.

- Superintendent Care was involved in discussing matters such as the lease of the premises, he conducted inquiries in relation to financing the hotel and had frequent telephone contact with Ross Visalli, who became a licensee and had a 51 per cent shareholding in the business.

In relation to a relationship with the licensee of the hotel and secondary employment of Superintendent Care, the Commission considers that:

- Superintendent Care engaged in unauthorised secondary employment when participating in negotiations which resulted in establishing the licensed premises known as the Stardust Hotel. Superintendent Care's explanation that his wife did not hold a legal interest at the time, and that his activities were undertaken to safeguard her interest, are not accepted. The *Commissioner's Instructions* were designed to limit the involvement of police in licensed premises except where explicit approval was given. Members of the Police Service and even more so those with managerial responsibilities are required to maintain a sound knowledge of their obligations with respect to the secondary employment provisions. These provisions are now contained in the *Police Service Handbook*.

- Superintendent Care's conduct in making a gift or a loan of the sum of $500,000 and loans of $18,000, and $20,000 to Clare Haig evidences a financial association in breach of the *Liquor Act 1982*. Superintendent Care was a former key official and he knowingly had a business or financial association with Clare Haig, a person known by Superintendent Care to be a close associate of the licensee, initially Gordon Campbell and then Ross Visalli.

EVIDENCE CONCERNING SUPERINTENDENT CARE AND CLARE HAIG'S OTHER FINANCIAL TRANSACTIONS

In relation to evidence concerning Superintendent Care and Clare Haig's other financial transactions, the Commission heard evidence that:

- On 27 October 1995, Superintendent Care had a Creditor's Statutory Demand and Affidavit served on Ausfarm Aquaculture Pty Limited, a prawn farm, for the return of a sum of $83,399.45. Ausfarm then commenced proceedings to have the Statutory Demand set aside, on the basis that there was a 'genuine dispute' as to whom Ausfarm owed the money. This dispute related to the identity of the true creditor with the matter being heard on 20 and 21 May 1996 in the Equity Division of the Supreme Court of NSW. The funds at issue had been transacted in two separate cheques with one made out to the name of Peter Sim and one made out to Barbara Sim.

- Superintendent Care and Clare Haig initially intended to invest $20,000 in a photographic laboratory, referred to in this Report as Business X, and loan $60,000 to the same business but were persuaded by Peter Sim to redirect those funds into Ausfarm Aquaculture Pty Limited. Barbara Sim was a director and shareholder of Business X and Peter Sim, at one stage, operated Business X.

- The loan application for $60,000 in the name of Clare Haig stated that the purpose of the loan was to 'Purchase a share in a photo shop, [Business X location] for $80,000'. Of the first eight months of interest paid on the loan, payments were transacted in cheques drawn on an account of Business X, an account of Peter and Barbara Sim, and an account of Everything Travel Pty Limited. No interest payments were directly received from Ausfarm Aquaculture Pty Limited. The interest payments equated to monthly interest payments of 12 per cent on an amount of $60,000 rather than $80,000. Further, Clare Haig signed share documents relating to Business X and she was appointed a director of Business X. Superintendent Care and Clare Haig claimed to the Commission that the arrangement to invest in Business X changed, and they invested $80,000 in the prawn farm with an option to take a further 30 per cent in Business X.

- Superintendent Care sought to recover the money from Ausfarm prior to the service of the Creditors Statutory Demand. In a letter dated 2 May 1995, he advised the Managing Director of Ausfarm that there was no documentation to substantiate the loan. On 23 September 1995, Superintendent Care then claimed to the Annual General Meeting of Ausfarm that he had evidence of the loan. His evidence to the Commission concerning the receipt was that he located it at his Solicitor's office.

- Superintendent Care swore an affidavit in the Equity Division of the Supreme Court in proceedings to recover $80,000 from Ausfarm. The affidavit stated

that Peter Sim and Superintendent Care executed the receipt on 20 September 1994, however, Superintendent Care and his wife had informed the Commission that Peter Sim was not available on that date. Superintendent Care also gave evidence that he had instructed his Solicitor to prepare the receipt on a date after 20 September 1994.

- Counsel for Superintendent Care and Clare Haig submitted that the incorrect date was a mistake, and that there was no motive for Superintendent Care to make a false claim. Superintendent Care asserted in hearings that the incorrect date was an oversight. He also admitted that he knew when swearing his affidavit in the Supreme Court that the receipt was not signed on 20 September 1994, and admitted he was aware of the importance of that document.

- Superintendent Care submitted a confidential memorandum to the NSW Police Board dated 17 October 1994 which purported to advise the Board of changes in his financial status. This memorandum stated in part that a 10 per cent interest in Business X had been purchased and a further $60,000 lent to Barbara Sim with a convertible option. In evidence to the Commission and in sworn documents filed in the Supreme Court, Superintendent Care and Clare Haig maintained that $80,000 was lent to Ausfarm. Clare Haig's application for an advance of $60,000 indicated that the purpose of the loan was, however, for Business X. The funds were ultimately passed to Ausfarm. Although Clare Haig was appointed a director of Business X and received shares in that business, there was no written agreement documenting a convertible option or other documentation pertaining to an arrangement with Business X.

The Commission considers that:

- The evidence is consistent with an understanding on behalf of Superintendent Care and Clare Haig that they obtained money to invest in Business X, but agreed to divert funds in the short term to assist Ausfarm with a guarantee that the funds would obtain shares in Business X. The allocation of shares may have given impetus to their decision to agree to the diversion of further funds, in exchange for a guarantee of further shares in Business X.

- Superintendent Care's claim that he did not mention the receipt in his letter of 2 May 1995 to the Managing Director of Ausfarm because he did not have it in his custody at the time ought to be rejected on the basis that the receipt was so material to his claim that it is implausible he would not have referred to it in his letter. It is also unlikely that he would not have mentioned it on the grounds that it did not amount to 'formal loan documentation'.

- It is likely that the receipt dated 20 September 1994 which purported to acknowledge an $80,000 loan to the then Managing Director of Ausfarm from Superintendent Care was prepared in order to satisfy Ausfarm's requirements for evidence that Superintendent Care had provided a loan to Ausfarm. There

is no evidence of the existence of the receipt until 29 September 1995, which is six days after the Annual General Meeting of Ausfarm.

- The affidavit sworn by Superintendent Care in the Equity Division of the Supreme Court was misleading in a material particular being the date the receipt was signed. The evidence that the receipt was signed on that date must be rejected. The evidence of Superintendent Care and Mrs Haig was that Peter Sim was not available to collect the cheque. He would therefore not have been available to execute the receipt. The Commission is of the opinion that the recovery of the $80,000 presented a motive for Superintendent Care to make a false claim in his affidavit. The same incorrect assertion also appeared in the affidavit sworn by Peter Sim, which was drafted by Superintendent Care with the intention that it be sworn in terms corroborative of his own.

- The claim that $80,000 was intended for Ausfarm is inconsistent with the cheque being payable to Barbara Sim. This is particularly the case given that Peter Sim was available to drive Barbara Sim to the bank and presumably was also available to take delivery of a cheque payable to Ausfarm or, alternatively, payable to Peter Sim personally.

- The agreement was made between Superintendent Care and Peter Sim to the effect that Superintendent Care and Clare Haig invested $20,000 and lent $60,000 to Peter Sim personally in exchange for a personal guarantee. Peter Sim then lent the funds to Ausfarm. This inference is supported by payments due on the loan and in evidence given by Barbara Sim that Peter Sim obtained funds for Ausfarm from Business X. It is also supported by the amount of the repayments which at 12 per cent interest were made on an amount of $60,000 rather than $80,000.

- Superintendent Care's claim that the memorandum to the Police Board was a statement of future intention or misdated is not borne out given that other events in the same document did occur. The Commission was also not able to locate a rebuttal letter Superintendent Care asserted he had sent. This letter had not been mentioned in an interview Superintendent Care had with Mr MacKay, the then Chairman of the NSW Police Board, although Superintendent Care did mention that the arrangement with Business X had terminated.

- It is highly likely that the memorandum from Superintendent Care to the Police Board is correctly dated and that the assertions made in documents prepared by Superintendent Care for presentation to the Supreme Court were, in part, false.

EVIDENCE CONCERNING SUPERINTENDENT CARE'S COMPUTER INQUIRIES

In relation to evidence concerning Superintendent Care's computer inquiries, the Commission heard evidence that:

- During 1994 Superintendent Care used his access to the NSW Police computer system to make inquiries in relation to his friends, Sam Souksamrane and Ross Visalli and his then future wife, Clare Haig.

- Superintendent Care could not recall the reason for each of these inquiries. He suggested to the Commission that the inquiries in relation to his friends, Sam Souksamrane and Ross Visalli were prompted by requests from these friends. The inquiry in relation to his wife, he suggested, may have been prompted by boredom or curiosity. Clare Haig's evidence was that the inquiry concerning her may have been made in order to assist the transfer of her motor vehicle licence following her relocation to NSW from another state.

In relation to evidence concerning Superintendent Care's computer inquiries, the Commission considers that:

- The accessing of police computer held records relating to the friends or relatives of an officer constitutes a conflict of interests. A police officer should not undertake such inquiries. If circumstances arise in which an officer is required to access records concerning a friend or relative, the inquiry should be passed to another officer. An officer should not be in the position of forming a judgment, after having accessed sensitive material, as to whether that information should be passed to a relative or friend. The potential for this conflict of interest ought to have been apparent to an officer of Superintendent Care's seniority.

RECOMMENDATIONS FOR CONSIDERATION REGARDING CRIMINAL AND DISCIPLINARY CHARGES

The Commission expresses its recommendations in this Report that consideration be given to the prosecution of Superintendent Care upon four criminal charges. The Commission so recommends having found that there is available admissible evidence, not excluded from consideration by s. 40(3) of the *Police Integrity Commission Act 1996*, that is capable of satisfying a tribunal of fact beyond reasonable doubt as to each element of particular offences. Whether such prosecution is undertaken is a matter for the relevant prosecuting authority.

The criminal offences concerned in these recommendations are:

- In relation to Superintendent Care's dealings with Ausfarm Aquaculture Pty Limited:

  – false swearing as to the date of the making of a receipt concerning alleged loan(s) to Ausfarm Aquaculture Pty Limited;

  – aiding and abetting the false swearing by Peter Ling Choon Sim as to the date of the making of a receipt concerning alleged loans(s) to Ausfarm Aquaculture Pty Limited; and,

  – giving false evidence to the Police Integrity Commission in relation to the making of a receipt concerning alleged loan(s) to Ausfarm Aquaculture Pty Limited.

- In addition, in relation to Peter Sim's dealings regarding Ausfarm Aquaculture Pty Limited:

  – the Commission makes a recommendation that consideration be given to the prosecution of Peter Ling Choon Sim upon one criminal charge. That criminal charge is an allegation of false swearing as to the date of the making of a receipt concerning alleged loan(s) to Ausfarm Aquaculture Pty Limited.

- In relation to Superintendent Care's involvement in the Stardust Hotel:

  – as a former key official, knowingly having a financial association with a person known by him to be a close associate of the licensee of licensed premises.

The Commission also makes a recommendation that consideration be given to the taking of reviewable disciplinary action against Superintendent Care. The Commission does so having concluded that there is material available to the Commissioner of Police capable of satisfying him that Superintendent Care undertook secondary employment without first obtaining authorisation.

The Commission further recommends that consideration be given to the removal of Superintendent Care from the Police Service pursuant to s. 181D of the *Police Service Act 1990*. The Commission does so having concluded that there is material available capable of establishing to the satisfaction of the Commissioner of Police that he can no longer have confidence in Superintendent Care's suitability to continue as a police officer, having regard to Superintendent Care's competence, integrity, performance or conduct.

The questions whether reviewable disciplinary action is taken, or whether dismissal is ordered, are matters for the Commissioner of Police.

IMPLICATIONS AND COROLLARIES

In addition to making assessments and recommendations concerning 'affected persons' the Commission seeks to identify broader issues arising out of its investigations for the Police Service and its members. In this regard, the Commission notes, with some concern, that secondary employment issues featured prominently in the evidence heard by it in relation to Superintendent Care. Moreover, a number of adverse assessments made by the Commission in this Report in relation to Superintendent Care's conduct and activities concern secondary employment matters.

In the Commission's opinion, Operation Algiers reinforces:

- the responsibility of individual police officers to ensure that appropriate notification is provided to the Police Service concerning secondary employment activities;

- the forensic value of 'financial statements' obtained from individual police officers, pursuant to s. 97 of the *Police Service Act 1990*, as a means of corroborating allegations of serious police misconduct or supporting the denial of those allegations by the affected officers; and

- the shortcomings associated with the Police Service relying primarily on directive memoranda as a means of conducting effective internal investigations. This point was highlighted in Project Dresden and was subject to a recommendation on page 24 of that report.

Regarding the role of the 'financial statement', it is noted that the Police Service was unable to locate any declaration of financial interests and assets for Superintendent Care.

The Commission regards secondary employment as a matter of ongoing interest. To date, however, insufficient information has been collected from Operation Algiers or in other investigations for the Commission to make an assessment or offer any views that add to, or alter, the recommendations made in this regard by the Royal Commission into the NSW Police Service. The Royal Commission into the NSW Police Service recommended in the Final Report that:[1]

> Secondary employment be prohibited in those areas in which police have a regulatory role such as commercial and private inquiry agents, transport, liquor, security, and gaming and racing (para. 3.288).

[1] Royal Commission into the NSW Police Service, Final Report Volume II: Reform May 1997 p 312.

1. INTRODUCTION

BACKGROUND

1.1 In December 1997, the Commission received information that, amongst other things, Superintendent David Care was a silent partner in a hotel in Cabramatta and that all documentation was in his wife's name.

1.2 Preliminary enquiries established that Clare Haig was the sole director and shareholder of a private company which had a 49 per cent shareholding in a second private company operating a hotel known as the Stardust Hotel and the Tivoli Nightclub. These premises, formerly named the Heartbreak Hotel, are located in Cabramatta.

1.3 It was subsequently established that Clare Haig was married to a member of the NSW Police Service, Superintendent David Hillman Care. In 1994, Superintendent Care was appointed to the rank of Chief Superintendent and Commander of the Illawarra District, returning to the rank of Superintendent on 4 July 1997.[2] Earlier in his career, Superintendent Care had been a licensing sergeant working in the Fairfield district in the early 1980s.

1.4 In January 1998, an internal police complaint was received by the Internal Affairs Command of the NSW Police Service, which alleged that Superintendent Care had an interest in, or a close personal association with, persons with interests in a hotel located in Cabramatta.[3] This complaint originated when a police officer in the course of duty was informed that a person associated with running the hotel had connections with a high-ranking police officer. Due to the nature of the complaint, arrangements were made through the Commander Crime Agencies, to have the matter dealt with by the Licensing Enforcement Agency.

1.5 A preliminary investigation was then conducted and in August 1998, the investigating officer reported to the Commander of Crime Agencies that no evidence had been gleaned in relation to the unlawful or improper involvement of Superintendent Care in what was then the Heartbreak Hotel. The recommendation made to the Commander of Crime Agencies at that time was that no further action was required.[4]

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2 PIC Transcript DH Care 30 March 1999 p 6.

3 Exhibit 84B.

4 Exhibit 84B.

1.6 On 14 September 1998, the Commission notified the NSW Police Service that, pursuant to section 70(3) of the *Police Integrity Commission Act 1996* (the Act), it was taking over the investigation of the complaint.

OPERATION ALGIERS

1.7 On 9 January 1998, as a result of Commission enquiries and unaware of the internal police complaint and subsequent internal investigation, the Commission commenced a full investigation code-named Operation Algiers.

1.8 Between January and November 1998, the Commission collected information and evidence concerning possible police misconduct involving Superintendent David Care. In particular, it collected background information pertaining to the structure of the financial investment held by Superintendent Care's wife in the Stardust Hotel. This revealed evidence that Superintendent Care's wife indirectly owned 49 per cent of the company involved in the hotel and that Superintendent Care had involvement in setting up the Stardust Hotel and had some interest in its operation.

1.9 During the course of its investigation into the conduct of Superintendent Care, the Commission also collected evidence in relation to proceedings before the Equity Division of the Supreme Court of NSW between Superintendent Care and a prawn farm, Ausfarm Aquaculture Pty Limited.

1.10 The investigation gathered further information in relation to inquiries made on the police computer system by Superintendent Care regarding his wife, Clare Haig and his friend Sam Souksamrane.

PRIVATE HEARINGS

1.11 Between 4 November 1998 and 31 March 1999, the Commission conducted a series of private hearings in relation to Operation Algiers. The focus of the private hearings being:

- secondary employment issues involving Superintendent Care;
- financial transactions and business interests of Superintendent Care and his family;
- possible false statements of evidence made by Superintendent Care or other persons involved in financial transactions with Superintendent Care; and
- possible unlawful computer access by Superintendent Care.

PUBLIC HEARINGS

1.12 Public hearings were held between 30 March 1999 and 20 August 1999, the general scope and purpose of which was to ascertain:

- whether Superintendent David Hillman Care, a serving member of the New South Wales Police Service, had engaged in unauthorised secondary employment;

- whether Superintendent David Hillman Care owned, was a partner in, owned a large shareholding in or was a director of an enterprise or company operating premises licensed under the *Liquor Act 1982*;

- whether Superintendent David Hillman Care had any pecuniary, family, de facto, close personal or business relationship with the director, owner, partner, large shareholder or director of a company operating premises licensed under the *Liquor Act 1982* and, if so, whether he declared such interest to the Police Service as was required by the *Commissioner's Instructions* or is now required by the *Police Service Handbook*;

- whether Superintendent David Hillman Care or any other person had ever made false statements or given false evidence in relation to the business and/or financial interests of Superintendent David Hillman Care or any members of his family;

- whether there had been misconduct by any officer of police or former officer of police in relation to the said matters;

- whether there had been unlawful conduct by any officer of police, former officer of police or any other person in relation to the said matters; and

- whether there had been, and/or whether there is, any potential for police misconduct arising from the practices, methods and procedures that were used and/or followed in the said matters.

THIS REPORT

1.13 This Report, prepared and furnished pursuant to section 96(2) of the Act:

- summarises the public evidence heard by the Commission relating to the associations, business investments and financial transactions of Superintendent David Care and others in relation to the Stardust Hotel and makes assessments and forms opinions in relation to these;

- summarises and discusses public evidence relating to financial transactions and investments by Superintendent Care and his associates, in addition to evidence presented to the Supreme Court on behalf of Superintendent Care and others pertaining to the prawn farm, Ausfarm Aquaculture Pty Limited, and the photographic laboratory, Business X,[5] and makes assessments and forms opinions in relation to these; and

- summarises and discusses public evidence relating to Superintendent Care's computer inquiries and makes assessments and forms opinions in relation to these.

[5] A non-publication order was made in relation to the name and location of this business pursuant to section 52 of the Act. The business is therefore referred to throughout the Report as 'Business X'.

2. THE COMMISSION'S APPROACH

ROLE AND FUNCTIONS OF THE COMMISSION

2.1 The Commission was established under the *Police Integrity Commission Act 1996* (the Act) on the recommendation of the Royal Commission into the NSW Police Service. The principal functions of the Commission, set out in section 13 of the Act, are:

> (a) to prevent serious police misconduct and other police misconduct,
>
> (b) to detect or investigate, or manage other agencies in the detection or investigation of, serious police misconduct,
>
> (c) to detect or investigate, or oversee other agencies in the detection or investigation of, other police misconduct, as it thinks fit,
>
> (d) to receive and assess all matters not completed by the Police Royal Commission, to treat any investigations or assessments of the Police Royal Commission as its own, to initiate or continue the investigation of any such matters where appropriate, and otherwise to deal with those matters under this Act, and to deal with records of the Police Royal Commission as provided by this Act.

2.2 As far as practicable, the Commission is required to turn its attention principally to serious police misconduct (sub-section 13(2)).

2.3 Other functions of the Commission are set out in sections 14, 14A and 15 of the Act. Section 14 sets out the Commission's functions in regard to police activities and education programs including, *inter alia*:

> (a) to undertake inquiries into or audits of any aspect of police activities for the purpose of ascertaining whether there is police misconduct or any circumstances that may be conducive to police misconduct,
>
> (b) in particular, to monitor the quality of the management of investigations conducted within the Police Service and to undertake audits of those investigations,
>
> (c) to make recommendations concerning police corruption education programs, police corruption prevention programs, and similar programs, conducted within the Police Service or by the Ombudsman or the Independent Commission Against Corruption for the Police Service,
>
> (d) to advise police and other authorities on ways in which police misconduct may be eliminated.

2.4 Section 14A sets out the Commission's functions with regard to the special audit reform process.

2.5 Section 15 sets out the Commission's functions in regard to the collection of information and evidence.

POLICE MISCONDUCT

2.6 'Police misconduct' is not specifically defined by the Act but includes the following (see sub-section 5(2)):

> (a) police corruption,
>
> (b) the commission of a criminal offence by a police officer,
>
> (b1) misconduct in respect of which the Commissioner of Police may take action under Part 9 of the *Police Service Act 1990*,
>
> (c) corrupt conduct within the meaning of the *Independent Commission Against Corruption Act 1988* involving a police officer,
>
> (d) any other matters about which a complaint can be made under the *Police Service Act 1990.*

2.7 There is no limitation upon the types of misconduct in respect of which disciplinary action may be taken by the Commissioner of Police under Part 9 of the *Police Service Act 1990.* See paragraph 2.18 for a description of the types of disciplinary action available under Part 9.

2.8 'Corrupt conduct' within the meaning of the *Independent Commission Against Corruption Act 1988* means, in the case of a police officer, conduct that constitutes or involves a criminal offence or misconduct in respect of which the Commissioner of Police may take action under Part 9 of the *Police Service Act 1990*, which conduct falls into one or more of the following categories:

(i) conduct that adversely affects, or that could adversely affect, either directly or indirectly, the honest or impartial exercise of official functions by any public official, any group or body of public official or any public authority; or

(ii) conduct that constitutes or involves the dishonest or partial exercise of any of his or her official functions; or

(iii) conduct that constitutes or involves a breach of public trust; or

(iv) conduct that involves the misuse of information or material that he or she has acquired in the course of his or her official functions, whether or not for his or her benefit or for the benefit of any other person;

(v) conduct that adversely affects, or could adversely affect, either directly or indirectly, the exercise of official functions by any public official, any group or body of public officials or any public authority and which could involve any of the following matters:

(a) official misconduct (including breach of trust, fraud in office, nonfeasance, misfeasance, malfeasance, oppression, extortion or imposition);

(b) bribery;

(c) blackmail;

(d) obtaining or offering secret commissions;

(e) fraud;

(f) theft;

(g) perverting the course of justice;

(h) embezzlement;

(i) election bribery;

(j) election funding offences;

(k) election fraud;

(l) treating;

(m) tax evasion;

(n) revenue evasion;

(o) currency violations;

(p) illegal drug dealings;

(q) illegal gambling;

(r) obtaining financial benefit by vice engaged in by others;

(s) bankruptcy and currency violations;

(t) harbouring criminals;

(u) forgery;

(v) treason or other offences against the sovereign;

(w) homicide or violence;

(x) matters of the same or similar nature to any listed above; or

(y) any conspiracy or attempt in relation to any of the above.

2.9 As a means of providing more detailed guidance to the NSW Ombudsman and the Police Service as to the type of complaints regarding police about which the Commission is likely to have an interest, the Commission and the Ombudsman entered into an agreement pursuant to section 67 of the Act to specify the class or kind of complaints that are to be considered as Category 1 complaints. The Act requires that the Commission be notified of all Category 1 complaints. An initial agreement was entered into on 20 December 1996. On 15 January 1998, this agreement was amended to take effect from 1 February 1998. Since that date, Category 1 complaints now consist of the following:[6]

a) A complaint that a police officer has or may have sought or may seek to pervert the course of justice by giving false evidence, by destroying or interfering with evidence, by withholding or refraining from giving evidence, by fabricating evidence or by influencing another so to act.

b) A complaint that a police officer has or may have committed or may commit:

(i) an assault which has caused or may cause a serious injury and which could lead to a charge of maliciously wounding or inflicting grievous bodily harm upon a person pursuant to section 35 of the *Crimes Act 1900*; or

(ii) an offence (including larceny) relating to property where the value exceeds $5000; or

(iii) any offence (other than assault occasioning actual bodily harm) punishable on conviction on indictment by a maximum sentence of imprisonment or penal servitude for five years or more.

c) A complaint that a police officer has or may have solicited or accepted, or may solicit or accept, a benefit for himself/herself or for another in return for failing to carry out his/her duties.

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6 PIC Annual Report 1998-1999 p. 86.

d) A complaint that a police officer has or may have sought or may seek to interfere improperly in the investigation by another police officer of an alleged offence.

e) A complaint that a police officer investigating an offence alleged to have been committed by another police officer has or may have improperly failed to carry out, or may improperly fail to carry out, his/her duties in the course of that investigation.

f) A complaint that a police officer has or may have manufactured, or may manufacture, a prohibited drug, cultivated or may cultivate a prohibited plant, or supplied or may supply a prohibited drug or a prohibited plant unless the amount or number of such drug or plant is less than the indictable quantity therefore as specified in the *Drug Misuse and Trafficking Act 1985*.

2.10 In practice, most Category 1 complaints are referred to the Police Service to be dealt with under Part 8A of the *Police Service Act 1990*. The Commission may elect, however, to take over the investigation of a Category 1 or any other complaint (sub-section 23(1) and 70(3)(a)). It may also conduct an investigation on its own initiative (sub-section 23(1)).

INVESTIGATIONS

2.11 In matters where the Commission does decide to conduct an investigation (whether or not in the nature of a preliminary investigation), it has a wide range of powers at its disposal in order to compel the production of information. For example, the Commission may:

- require public officials and public authorities to produce statements of information (section 25);
- require any person (whether or not a public official or public authority) to produce documents or other things (section 26);
- enter public premises (section 29);
- obtain search warrants (section 45);
- obtain warrants under the *Telecommunications (Interception) Act 1979*;
- obtain warrants under the *Listening Devices Act 1984* (section 50 of the Act); and
- require persons to attend and give evidence, either in public or in private (section 38).

REPORTS TO PARLIAMENT

2.12 The Commission may prepare reports in relation to any matter that has been, or is, the subject of an investigation (section 96(1)). In the event that the Commission holds public hearings as part of an investigation, the Commission must prepare a report in relation to the matter (section 96(2)). The report must be furnished to the Presiding Officer of each House of Parliament as soon as possible after the Commission has concluded its involvement in the matter, unless it is considered desirable, in the public interest, for the making of the report to be deferred.

2.13 Reports to Parliament in relation to investigations will generally contain a number of components, namely:

- a summary of the relevant evidence;
- assessments, opinions and findings of fact regarding the matters under investigation, including findings and opinions as to whether police misconduct or other misconduct has or may have occurred, is or may be occurring, is or may be about to occur, or is likely to occur;
- statements and recommendations as to whether consideration should or should not be given to the prosecution of persons for criminal or disciplinary offences;
- statements and recommendations that consideration be given to the taking of disciplinary action against police officers or other persons; and
- recommendations for other action, for example, changes to systems, procedures or policies.

2.14 Assessments, opinions or findings of fact about what did or did not occur in relation to a matter under investigation inform the making of recommendations regarding prosecutions and other action. These findings are made on the balance of probabilities, having regard where relevant to the principles in *Briginshaw v Briginshaw* (1938) 60 CLR 336, that is, the more serious the matters under consideration, the more stringent will be the requisite degree of satisfaction.

2.15 Bearing in mind that the Commission is an investigative agency and not a court or tribunal in the sense that it may adjudicate upon the legal rights of persons, the Commission may not make a finding or form an opinion that a specified person is guilty of or has committed, is committing or is about to commit a criminal or disciplinary offence (sub-section 16(2)(a)). An opinion that a person has engaged, is engaging or about to engage in police misconduct or other specified conduct (being conduct that

constitutes or involves or could constitute or involve police misconduct) 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 (sub-section 16(3)).

2.16 A statement as to whether consideration should be given to the prosecution of a person for a specified criminal or disciplinary offence must be included in each report to Parliament if the person is an 'affected person', that is, the person was the subject of substantial allegations made in the course of or in connection with the investigation (section 97).

2.17 The Commission will recommend or state that consideration should be given to the prosecution of a person for a specified criminal or disciplinary offence if the facts as found by the Commission are sufficient to establish a prima facie case against the person in relation to the offence, that is, available admissible evidence, when taken at its highest, is capable of establishing each ingredient of the offence. The Commission cannot make a recommendation that a person should in fact be prosecuted for a criminal or disciplinary offence. This is the domain of the relevant prosecutorial authority (e.g. the NSW Director of Public Prosecutions). The Commission will not have regard to discretionary considerations, such as whether there is a reasonable prospect of conviction, when deciding whether to make such a recommendation. This and other discretionary considerations are appropriately matters for the relevant prosecutorial authority. That said, the Commission may make findings of fact or express opinions as to the veracity of evidence received from individual witnesses.

2.18 It is noted that, since 8 March 1999, when the power of the Commissioner of Police to prefer a departmental charge against a police officer for hearing by the Police Tribunal was repealed,[7] the powers and obligations of the Commission to recommend or state whether consideration should be given to the prosecution of a person for a specified '*disciplinary offence*' (sections 16(1)(b), 97(2)(b)) has no effective application to police officers. This is so even for police misconduct that occurred before this date.[8] Instead, the Commission may make recommendations that consideration be given to the taking of disciplinary action under Part 9 of the *Police Service Act 1990*. Disciplinary action may include the following:

- non-reviewable action, that is:
  - coaching;
  - mentoring;

[7] *Police Service Act 1990*, section 173 (repealed).

[8] *Police Service Act 1990*, Schedule 4, Part 13, clause 49.

  - training and development;
  - increased professional, administrative or educational supervision;
  - counselling;
  - reprimand;
  - warning;
  - retraining;
  - personal development;
  - performance enhancement agreements;
  - non-disciplinary transfer ;
  - change of shift (but only if the change results in no financial loss and is imposed for a limited period and is subject to review);
  - restricted duties; and
  - recording of adverse findings;

- reviewable action, that is:
  - a reduction in a police officer's rank or grade;
  - a reduction in the police officer's seniority;
  - a deferral of the police officer's salary increment; and
  - any other action (other than dismissal or the imposition of a fine) that the Commissioner of Police considers appropriate; and

- removal from the Police Service on the basis that the Commissioner no longer has confidence in the police officer's suitability to continue as a police officer, having regard to the police officer's competence, integrity, performance or conduct.

3. EVIDENCE CONCERNING A FINANCIAL INTEREST AND SECONDARY EMPLOYMENT IN THE STARDUST HOTEL

3.1 This chapter examines the evidence presented to the Commission concerning the financial investment by Superintendent Care's wife in what became known as the Stardust Hotel. It considers whether Superintendent Care declared this financial investment in the hotel as required by the NSW Police Service *Commissioner's Instructions*. It then has regard to whether Superintendent Care was required to declare his activities, with regard to establishing the hotel business under the secondary employment policy detailed in the *Commissioner's Instructions* and the *Police Service Act 1990*. Finally, the chapter considers possible breaches of the *Liquor Act 1982* by Superintendent Care involving Clare Elizabeth Mary Haig and Ross Julian Visalli.

STRUCTURE OF FINANCIAL INTEREST IN THE STARDUST HOTEL

3.2 The Stardust Hotel is a licensed premise in Cabramatta, the freehold of which during the relevant period was owned by Milperra Hotel Pty Limited.[9] On 5 August 1997, Milperra Hotel Pty Limited granted a lease to The Monopoly Company Pty Limited in respect of the premise, which was then known as the Heartbreak Hotel and the Tivoli Nightclub.[10]

3.3 Initially, Clare Haig was the sole director of The Monopoly Company Pty Limited. She later resigned her directorship and Ross Visalli became the sole director of The Monopoly Company Pty Limited.[11] The shareholders in that company were Ms Elvira Visalli, the mother of Ross Visalli, with a 51 per cent interest comprising 204,000 $1.00 shares and Clare Bear Company Pty Limited which owned the balance of the shareholding comprising 196,000 $1.00 shares.[12] The Commission heard evidence that Elvira Visalli held the Monopoly Company shares on behalf of her son, Ross Visalli.[13]

3.4 At all relevant times, the sole director and shareholder of Clare Bear Company Pty Limited was Clare Haig, the wife of Superintendent David Care. The guarantors of the lease in respect of the Stardust Hotel were Clare Haig and Ross Visalli.[14]

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9 PIC Transcript DH Care 30 March 1999 p 59.

10 Exhibit 86 & PIC Transcript D H Care 30 March 1999 p 59.

11 PIC Transcript RJ Visalli 1 April 1999 pp 240-242.

12 PIC Transcript RJ Visalli 1 April 1999 pp 240-242.

13 PIC Transcript CEM Haig 13 April 1999 p 269.

14 Exhibit 86.

DISCLOSURE OF FINANCIAL INTEREST IN THE STARDUST HOTEL

3.5 At the time that Clare Haig obtained a financial interest in the Stardust Hotel, the NSW Police Service *Commissioner's Instructions* set out to regulate the involvement of police officers with respect to involvement in licensed premises. These Instructions contained, under the subheading 'Interests requiring secondary employment approval', the following paragraph, 13.03, which related to the declaration of a financial, personal or business relationship: [15]

> You are required to declare any pecuniary, family, de-facto, close personal or business relationship with the direct owner, partner, large shareholder or director of a transport company, security company or a company operating premises licensed under the Liquor Act.

3.6 In Commission hearings, Superintendent Care indicated that he was aware of the *Commissioner's Instructions* and the obligations on police officers to disclose to the Commissioner of the NSW Police Service certain family interests: [16]

> Q. In relation to the obligation of disclosure relating to relatives of police officers – that is, disclosure by police officers of their relatives' interests in certain areas – was that disclosure required in relation to those same three areas?
> A. Yes.
>
> Q. That is, the security industry, the heavy transport industry and the liquor industry?
> A. Yes, until the code of conduct came in, yes – written, yes.
>
> Q. What was required was that written notice was confidentially given to the Commissioner disclosing those family interests and did you understand that that was required to be done to protect the police officer and the Police Service from allegations, if you like, of impropriety in the sense that it might interfere with the officer's duties?
> A. Yes, in relation to any, I suppose, conflict of interest, similar to – well, I suppose the Police Board, we used to notify the Police Board of any confidential conflicts that you might have.

[15] Exhibit 2.

[16] PIC Transcript DH Care 30 March 1999 p 9.

3.7 Superintendent Care gave evidence that he had had discussions with Deputy Commissioner Lawson regarding the investment by his wife in what became known as the Stardust Hotel. He maintained he had initially discussed his wife taking an interest in the hotel, with the Deputy Commissioner around about February 1997.[17] As mentioned earlier, The Monopoly Company Pty Limited was granted a lease for the premises known as the Stardust Hotel on 5 August 1997.[18]

3.8 When questioned further, he explained that it was not until he was working out of Deputy Commissioner Lawson's office in October or November 1997 that he became aware that he was required to make a declaration to the Commissioner: [19]

> Q. Sir, thank you for that, but can you tell me whether or not you put in your confidential response that Deputy Commissioner Lawson told you that you would be required to submit a report to the Commissioner under confidential minutes setting out the details of your wife's business interests?
> A. Yes, in about late October, November.
>
> Q. Late October, November when?
> A. 19 - that would have been 1997. 1997.
>
> Q. 1997?
> A. Yes, when I was working down at her office.

3.9 Superintendent Care's evidence was then that the conversation with Deputy Commissioner Lawson occurred after he and his wife had been discussing the proposition with Ross Visalli in late 1996 or early 1997: [20]

> Q. Well, leaving that aside, sir, when did your wife make the decision to go into business involving a hotel?
> A. Not until I suppose - and you'd have to ask her that question, you know, but I suppose it would be - I'd be only guessing - when all the leasing and everything in the agreement was done.
>
> Q. Well, some sort of decision had been made by your wife do you say in February 1997 when you spoke to Lawson?
> A. No decision to go into the business, but what would be the - you know, I was testing the waters to see what we would have to do, what would be the effect if she did go into business.
>
> Q. I see. And you made that inquiry in February 1997?
> A. That's correct.

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17 PIC Transcript DH Care 30 March 1999 p 14.

18 Exhibit 86.

19 PIC Transcript DH Care 30 March 1999 p 14.

20 PIC Transcript DH Care 30 March 1999 pp 15-17.

3.10 Superintendent Care explained that Deputy Commissioner Lawson and he were initially uncertain about what his obligations were:[21]

> Q. Do you say that somewhere between January 1997 and September 1997 you became aware that you ought to comply with the Commissioner's instructions regarding secondary employment; that is, disclosure of your wife's interest?
> A. Between what dates again, I'm sorry?
>
> Q. Between January and September 1997?
> A. Well, actually, I spoke to Miss Lawson in October - late October or November, that would have been. So I was of the opinion after speaking to her in February - well, she wasn't quite sure herself. She went away to make some inquiries herself. Then she told me in May that there was no - that all I had to do was make sure I had no conflict of interest in what I was doing in relation to the hotel and to be very careful about that point and that was what happened.
>
> Q. I see. She was uncertain about it. This is the picture I have. She was uncertain about it, you were uncertain about it?
> A. In February, yes.

DATE OF FINANCIAL DISCLOSURE

3.11 On 10 August 1998, following the internal police complaint regarding Superintendent Care's alleged involvement with the hotel, Detective Chief Superintendent Lynch served Superintendent Care with a directive memorandum. The memorandum required that Superintendent Care respond in writing to specific questions. Superintendent Care's response dated 10 August 1998 stated, in part, the following:[22]

> When my wife decided to become involved in the business, I spoke about it with then Deputy Commissioner Lawson at her home at Corrimal, I had earlier consulted the reform Code of Conduct. At that time I was also residing on the South Coast. She confirmed my view that provided I was not employed, had no financial or business interest, and did nothing that would conflict with my office as a Police Officer, I was required to do nothing. During August, 1997, I was working out of her office, rolling out the amendments to the "Crimes (Detention after Arrest) Act," and I again discussed the matter with her. She made some more inquiries and then informed me that as the Code of Conduct had not officially replaced the Commissioners Instructions, I would be required to submit a report to the Commissioner under confidential minute setting out the details of my wife's business interest. I showed her the report (a copy of which I have attached.) She stated that it was satisfactory and would forward it to the Commissioner under confidential cover.

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21 PIC Transcript DH Care 30 March 1999 p 29.

22 Exhibit 1B.

3.12 The document, referred to above as a 'report' was attached to Superintendent Care's response to the directive memorandum. It consists of a single page which, in part, states:[23]

> My wife has recently purchased a shareholding in a company Clare Bear Co. Pty Ltd. This company in turn holds a minority shareholding in the Monopoly Company Pty Ltd, which owns a lease of the Hoteliers License at Broomfield Street, Cabramatta. Her other partner is Alvira [sic] Visalli. …

3.13 That document, dated 1 September 1997, predated the discussion which Superintendent Care stated to the Commission took place in October/ November with Deputy Commissioner Lawson.[24]

3.14 Superintendent Care also responded to a notice served pursuant to section 25 of the Act. At paragraph numbered 31 in his response to this notice, Superintendent Care maintained that Deputy Commissioner Lawson had instructed him to date the above document retrospectively:[25]

> 31. The next conversation I had with Deputy Commissioner Lawson about the hotel was in her officer [sic] in the Avery building, I think about late October or November, 1997. I had earlier been discussing changes to the Commissioner's Instructions relating to my project management position with Acting Inspector Chalmers of the Programs Branch. During this discussion it was brought to my attention that even though new policies and procedures such as the "Code of Conduct" etc had been commenced, we were still controlled by the Commissioners Instructions. I then discovered in Commissioners Instruction 13.03 that even though it was not included in the "Code Of Conduct," I was required to notify the Commissioner of my wife's purchase of the shares. This is when I discussed the matter with M/s Lawson. She directed that I should put a report in immediately to the Commissioner. She told me to date the report from the time of my commencement at her office. I did the report and gave it to her.

3.15 Superintendent Care said that he did not know why Deputy Commissioner Lawson instructed him to backdate this document:[26]

> Q. Sir, in relation to the document that you attached to your response to the Lynch memorandum, that is the confidential minute, you said you spoke to Lawson about that in about October or November 1997?
> A. Yes.

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23 Exhibit 1B.

24 Exhibit 1B & PIC Transcript DH Care 30 March 1999 p 14.

25 Exhibit 62B.

26 PIC Transcript DH Care 30 March 1999 p 31.

> Q. The document's dated, as you're aware, 1 September 1997?
> A. That's correct.
>
> Q. What's your explanation for the date on the document?
> A. Well, Miss Lawson said, "Put it down", "Put the date down from when you came down under my office, under my direction".
>
> Q. What was the purpose as [sic] of that as you understood it?
> A. I've got no idea.
>
> Q. Well, it wasn't the date that you created it; is that right?
> A. That's correct.

3.16 Counsel for Superintendent Care speculated in his submission to the Commission that Deputy Commissioner Lawson may have advised that the document be dated this way in order to properly represent the timing of Superintendent Care's discussions with her and the fact that it was Deputy Commissioner Lawson's uncertainty over the matter that had caused the delay.[27] The Commission expresses a view on this matter in the assessment section which follows in this chapter of the Report.

SUPERINTENDENT CARE'S FINANCIAL DISCLOSURE

3.17 Superintendent Care's response to the directive memorandum of Detective Chief Superintendent Lynch, at paragraph number 9, stated that Superintendent Care had furnished Deputy Commissioner Lawson with the financial disclosure required under the *Commissioner's Instructions*: [28]

> ... She [Deputy Commissioner Lawson] made some more inquiries and then informed me that as the Code of Conduct had not officially replaced the Commissioners Instructions, I would be required to submit a report to the Commissioner under confidential minute setting out the details of my wife's business interest. I showed her the report (a copy of which I have attached.) She stated that it was satisfactory and would forward it to the Commissioner under confidential cover.

3.18 Superintendent Care's written response to the Commission's section 25 notice, served under the Act, was consistent with this account, also stating that he gave the document to Deputy Commissioner Lawson.[29]

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27 Exhibit 82.

28 Exhibit 1B.

29 Exhibit 62B.

3.19 The Commissioner of Police gave evidence in writing to the Commission that there was no record of this document being received at the Commissioner's Office:[30]

> There is no record of receipt within my Office of Superintendent Care's memorandum of 1st September, 1997. Whilst it is not a matter about which I am able to be emphatic, to the best of my recollection I did not receive notification of the contents of the memorandum from the late Deputy Commissioner Lawson, Superintendent Care, or any other person.

3.20 The submission to the Commission by Counsel for Superintendent Care pointed out that the Commissioner of Police cannot be emphatic that he did not receive this financial declaration.[31] That submission also raises questions regarding the effectiveness of recording procedures then in place at the Commissioner's Office.

3.21 When examined by Counsel Assisting the Commission on 30 March 1999, about his response to Detective Chief Superintendent Lynch's directive memorandum, Superintendent Care replied that he wished to correct his response. At this time, Superintendent Care stated that he was unsure as to which of a number of documents he may have given to Deputy Commissioner Lawson, and whether he also sent one directly to the Commissioner:[32]

> Q. Is that the first page of your response to Superintendent Lynch's memorandum?
> A. That's correct, yes.
>
> Q. The second page, if I can take you to the next page, is that the final part of your response?
> A. That's correct, yes.
>
> Q. You say that the parts that you sought to correct is that sentence at the end of the first page of your response, if we could turn back, please, where you said, "I showed her the report, a copy of which I have attached"?
> A. That's correct.
>
> Q. And the next sentence, did it include - that is on the next page, if the next page could be shown - the next sentence where you reported, "She stated that it was satisfactory and would forward it to the Commissioner under confidential cover"?
> A. That's correct.

30 Exhibit 64B.

31 Exhibit 82.

32 PIC Transcript DH Care 30 March 1999 p 12.

Q. What is it you say about those two sentences?
A. Well, when I got the – I thought that I had given the document to Deputy Commissioner Lawson. However, when I produced – I got the document to produce the second lot of information for the Commission, I then got my application for leave without pay, which, you know, I submitted about the same time and I'm not sure whether that was the document I was thinking about when I gave it to her, or the other one, or whether I in fact just sent the other one directly to the Commissioner.

3.22 A short time later that day in Commission hearings, Superintendent Care gave evidence that he probably did not show the document to Deputy Commissioner Lawson:[33]

Q. In your response to Mr Lynch's memorandum you said this in reference to Lawson:
She stated that it was satisfactory and would forward it to the Commissioner under confidential cover.
A. That's correct.

Q. And you were referring to the memorandum that you'd attached. Do you say now that you're not sure if that is simply a mistake and that you never gave it to Lawson?
A. That's correct.

Q. You may not have given it to Deputy Commissioner Lawson at all?
A. No, I might have posted it directly myself.

Q. Could it be understood from that response that you just made you didn't show it to her?
A. I'd say not, no, probably not.

Q. And that she didn't tell you that you would be required to submit a report under confidential minute setting out the details of your wife's business interest?
A. No, no, she told me that.

Q I see. But everything after that in that paragraph probably didn't take place, you sent it to the Commissioner himself?
A. I think so. The other papers in relation to my secondary employment, I think that's what happened.

3.23 Superintendent Care was then examined in relation to his leave without pay application, and secondary employment application with respect to the endorsements, signatures and dates on these documents.[34]

[33] PIC Transcript DH Care 30 March 1999 pp 26-27.
[34] Exhibit 59 and Exhibit 60.

3.24 Superintendent Care said that the endorsements, initials and dates on the leave without pay application suggested that this application was forwarded to the Human Resource Manager, City East and then the Commander, City East Region, Mr Ken Moroney.[35] Superintendent Care agreed that Mr Moroney had recorded his endorsement on this document along with his signature and the date and then directed it on to Deputy Commissioner Lawson. He also agreed that Deputy Commissioner Lawson had then initialled the application and inserted the date, 1 December 1997.[36]

3.25 Superintendent Care's evidence to the Commission regarding his secondary employment application was similar to evidence he gave regarding his leave without pay application. He stated that Mr Moroney had also signed his secondary employment application on 26 November 1997.[37] Superintendent Care agreed that it was probable that his secondary employment application would have been made together with his application for leave without pay, as each document depended on the other.[38]

3.26 When examined further regarding the disclosure of his wife's financial interest in the hotel, Superintendent Care denied that he had created the financial disclosure document in response to Detective Chief Superintendent Lynch's directive memorandum:[39]

> Q. And you maintain, do you, that the confidential minute that you produced to Mr Lynch when he was investigating that complaint was something that had been sent to the Commissioner —
> A. Yes.
>
> Q. — by you?
> A. Yes.
>
> Q. Notwithstanding that when you responded to Mr Lynch's directive memorandum, you told him that you had given the confidential minute to Deputy Commissioner Lawson?
> A. That's correct.
>
> Q. That's what you also told this Commission in your response to the notice, wasn't it?
> A. Yes, but I explained that I had the other, and I wasn't sure whether it was that or it was the secondary employment files that I'd given to her.

35 PIC Transcript DH Care 14 April 1999 p 377.
36 PIC Transcript DH Care 14 April 1999 pp 376-377.
37 PIC Transcript DH Care 14 April 1999 p 378.
38 PIC Transcript DH Care 14 April 1999 pp 378-379.
39 PIC Transcript DH Care 31 March 1999 pp 119-120.

Q. Could it be, sir, that you have created that confidential minute after you were told by Mr Lynch of the complaint?
A. No.

ASSESSMENT

3.27 Superintendent Care was aware that under paragraph 13.03 of the NSW Police Service *Commissioner's Instructions* he was required to disclose his wife, Clare Haig's, financial interest in the Stardust Hotel to the Commissioner of Police. There was no record of a disclosure of Superintendent Care's wife's involvement in the Stardust Hotel being received at the Commissioner's Office.

3.28 Superintendent Care claimed in his response to the Police Service's directive memorandum that he had given this report to Deputy Commissioner Lawson following discussions with her. He then later claimed to the Commission that he thought he had sent the document to the Commissioner of Police. Both claims remain uncorroborated.

3.29 Deputy Commissioner Lawson died in January 1998. The Commission is mindful that it cannot test the veracity of Superintendent Care's evidence concerning discussions with Deputy Commissioner Lawson about his wife's investment in the Stardust Hotel. There were no other witnesses capable of verifying Superintendent Care's evidence in relation to these discussions.

3.30 Superintendent Care claimed he had backdated the disclosure on the instruction of Deputy Commissioner Lawson. The Commission is also unable to determine whether Superintendent Care consulted her about the document, and then backdated this document on Deputy Commissioner Lawson's instruction. Superintendent Care's evidence that he may have given a copy of the disclosure to Deputy Commissioner Lawson for forwarding to the Commissioner with other documents is not consistent with the signatures and dates on those documents.

3.31 The first document tendered in Commission hearings, which evidenced a disclosure of Superintendent Care's wife's financial interest in the hotel, was the backdated report submitted by Superintendent Care in response to Detective Chief Superintendent Lynch's directive memorandum. Superintendent Care's evidence was that he did not create that document in response to the directive memorandum.

3.32 There has been no evidence presented that establishes whether Superintendent Care declared his wife's investment in the hotel, apart from Superintendent Care's response to Detective Chief Superintendent Lynch's directive memorandum on 10 August 1998. Superintendent Care attached this backdated memorandum to his response to the directive memorandum. It is the Commission's opinion, that the evidence could not sustain a finding beyond reasonable doubt that Superintendent Care did not make the required disclosure.

THE NATURE OF THE INVESTMENT IN THE STARDUST HOTEL

3.33 Evidence was presented to the Commission by Superintendent Care, Clare Haig and Ross Visalli concerning the nature of the investment by Clare Haig in the Stardust Hotel. While Clare Haig owned the shares in the hotel, evidence was heard on the question of whether Superintendent Care had an interest in the hotel investment.

ORIGIN OF FUNDS FOR THE HOTEL INVESTMENT

3.34 Superintendent Care's wife, Clare Haig was the sole director and shareholder of the Clare Bear Company Pty Limited which retained a 49 per cent shareholding in the Monopoly Company Pty Limited.[40] The Monopoly Company Pty Limited held the lease for the Stardust Hotel.[41]

3.35 Superintendent Care was questioned regarding the origins of the $500,000 which his wife invested in the hotel. Superintendent Care initially said that a proportion of the funds invested in the hotel came from the sale of a property that he owned jointly with his wife, although he then expressed some uncertainty about the joint ownership of the property.[42] The transfer showed, and Superintendent Care accepted, that he had been the sole proprietor.

3.36 Superintendent Care said that, of the $500,000 his wife invested in the hotel, $160,000 had its origins in the sale of his property and was invested in the Macquarie Bank in her name, while the remainder came from his superannuation fund payout.[43] He also asserted that the money came to be invested by his wife because he gave it to her.[44] He gave further

[40] PIC Transcript CEM Haig 13 April 1999 p 262.
[41] PIC Transcript CEM Haig 13 April 1999 p 262.
[42] PIC Transcript DH Care 30 March 1999 p 39.
[43] PIC Transcript DH Care 30 March 1999 pp 42-43.
[44] PIC Transcript DH Care 30 March 1999 p 43.

evidence that there was no documentation made concerning these monetary gifts:[45]

> Q. Sir, these gifts of money that you made to your wife at the time the money was drawn from your account or your joint account with your wife for the purpose of the hotel, were they documented as gifts in any way or were they simply done on the basis of trust?
> A. Just on the basis of trust. They were paid into my wife's account.
>
> Q. There was nothing that recorded them being a gift to your wife?
> A. Not that I - I don't think so, no.
>
> Q. No deed or anything of that nature?
> A. No.

3.37 Clare Haig's evidence concerning the origins of the $500,000 she invested in the hotel was consistent with that given by Superintendent Care. Clare Haig maintained that part of the money came from the sale of her husband's house in Wollongong, and part came from his superannuation. She also gave evidence that the funds arising from the sale of his property in Wollongong were deposited in the Macquarie Bank in her name. Clare Haig's evidence was that this was done for tax purposes.[46]

THE PURPOSE OF THE GIFT

3.38 Superintendent Care gave evidence that the gift to his wife of $500,000 was given to her to do whatever she wanted with but was also made with a view to undertaking an investment in the hotel:[47]

> Q. Did you intend by giving her the money that she had it to do whatever she wanted with?
> A. Yes.
>
> Q. And what was it that you understood she wanted to do with the money that you gave her?
> A. Well, she was going to buy shares in the hotel.
>
> Q. I see?
> A. Or buy shares in her company, which then held shares in the hotel.
>
> Q. What would have been your response if she'd said, "I want to go on a world trip"?
> A. Well, you know, for half a million dollars, I'd say, "No way". If she wanted to go for $20,000, I'd probably say yes.

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45 PIC Transcript DH Care 30 March 1999 p 83.

46 PIC Transcript CEM Haig 13 April 1999 p 263.

47 PIC Transcript DH Care 30 March 1999 pp 43-44.

Q. Well, sir, were these gifts that you say were made to your wife made with a view to the investment being made by your wife in the hotel?
A. Yes.

Q. Were they given by you to her for the purpose of them being – the money becoming her money and not your money to enable investment in the hotel to take place?
A. That's correct.

3.39 Superintendent Care's evidence that the gift was for a specific purpose was consistent with the following evidence given by Clare Haig:[48]

Q. Was the money given to you unconditionally or was it the subject of some condition?
A. Well it was given to me unconditionally with the huge hope the business would grow and we would – the money would come back. One doesn't go into business expecting to fail and hoping that one loses all the money one invests.

Q. What I'm interested in is the relationship between the gift of the money and your investment in the hotel. Was the money given to you for that specific purpose?
A. Yes, sir.

3.40 When Counsel Assisting the Commission suggested to Superintendent Care that it might be a loan to his wife, he denied this:[49]

Q. Sir, those gifts that you made were not conditional; you told us that before, I think?
A. Yes, I said to my wife, you know - I knew what she was going to do with the money. There were no conditions on the money, no.

Q. And the money was hers to keep and if she wanted to do what she wanted, that was up to her, it was a gift with no strings attached?
A. That's correct.

Q. It didn't result in holding the money on trust for you?
A. No.

Q. It wasn't a loan by you to her?
A. No.

Q. And would never be expressed as such a thing, is that right, it was simply a gift?
A. Not that I'm aware, yes, a gift.

[48] PIC Transcript CEM Haig 13 April 1999 pp 271-272.
[49] PIC Transcript DH Care 30 March 1999 p 83.

REPRESENTATIONS AS TO THE FUNDS

3.41 The Commission heard evidence that the funds given to Clare Haig and used for Clare Haig's financial investment in the Stardust Hotel were not consistently referred to as being by way of a gift. Once given to her, various application forms completed by and on behalf of Superintendent Care referred to these funds as a loan to his wife or an asset belonging to Superintendent Care.

3.42 Superintendent Care endorsed an application for a loan with the Police Credit Union on 18 July 1997. This application detailed under Superintendent Care's assets an amount of 'Savings/term deposit $250,000'.[50] Superintendent Care explained that at that time, his wife had given the money back to him:[51]

> Q. Was it given by your wife back to you at that stage?
> A. Possibly. I haven't got the books here, yes. I assume that it was in my sort of savings with the credit union at that stage, because otherwise they wouldn't have given me the loan. They check up on these things.
>
> Q. Sir, could it be that at the time of this application it was convenient to say it was an asset of yours, but at the time of the money going out to the hotel, it was convenient to say it had been made as a gift to your wife?
> A. No, the money to my understanding – part of that money in the bank was paid to Macquarie Bank, from memory, part of it was paid for the 10 per cent deposit on the house and the remainder of it then came back into either my account or my wife and my joint accounts from the Macquarie Bank and then the money went to – this all happened within a matter of days or weeks, or a week, I should say, when this was all happening. It was only three or four weeks. And without showing me the bank statements and where it is, I – you know, I can't tell you. Obviously the people wouldn't have given me the loan unless that was correct.
>
> Q. That's entirely right, sir, they wouldn't have given you the loan perhaps if you had not had an asset of $250,000?
> A. And provided the security – well, no, the security – the major thing in this is the security of the property you're going to borrow and how much you want to borrow. Excuse me, sir, could I be excused for a couple of minutes?

3.43 Superintendent Care gave evidence that $250,000 documented in a loan application as an asset belonging to him was in fact the money he had

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50 Exhibit 14B.

51 PIC Transcript DH Care 30 March 1999 pp 85-86.

previously given to his wife, and which had subsequently been deposited in the Macquarie Bank in his wife's name.[52] He maintained that his wife was going to return the money to him at that stage and that he may have informed the loans officer as to the situation:[53]

> Q. So at the time you made that application, you listed the money in the Macquarie Bank in your wife's name as being an asset of yours?
> A. Yes, I may well have told them in a couple of days time or three days later it was going to come back into my possession. I may have told the bank loan officer what was happening. Obviously the bank wouldn't - or, sorry, the credit union wouldn't have issued me with a loan if it hadn't have been true.
>
> MS STENMARK: What's the date of that application?
> MR BARRETT: The document itself is undated. The document that I'm showing the witness is undated.
> THE WITNESS: Sir, the money, this quarter of a million dollars, or whatever it was, however much, would have come back to me within a matter of one or two days after filling this form out. That may be what I've told the loans clerk at the time. I mean, the credit union aren't going to give me a $400,000 loan without checking all these things and verifying it to their satisfaction.
>
> MR BARRETT: Q. Sir, the application for the loan - is this your recollection? - was 12 June 1997 and you signed a declaration that I referred you to earlier as to the truth of the contents of it on 18 July 1997?
> A. Subject to what I probably told the loans officer was happening.
>
> Q. The money in the Macquarie Bank, you already told this Commission, was given to your wife when it was deposited in the Macquarie Bank?
> A. Certainly.
>
> Q. Well, that gift changed its quality some time later?
> A. Yes, because my wife was going to return the money to me.

3.44 In 1998, Superintendent Care endorsed a further loan application. In this application, the money Superintendent Care had previously told the Commission he had given to his wife was described as a 'loan' rather than a 'gift'. This AMP Priority One loan application to refinance the purchase of property listed an amount of $400,000 under the heading 'what you own today'. The amount was followed by the words 'loan to wife from super'.[54] This application was completed at a date following that which Superintendent Care claims he had given the money to his wife and

[52] PIC Transcript DH Care 30 March 1999 pp 86-87.
[53] PIC Transcript DH Care 30 March 1999 p 87.
[54] Exhibit 15B.

following the investment of the money in the hotel. Superintendent Care gave evidence that he did not personally complete the application:[55]

> Q. The amount of $400,000 in there is described as a loan to your wife. Is that money that you'd given to your wife for her to purchase the hotel?
> A. That's correct.
>
> Q. Why did you describe it as a loan to your wife?
> A. I didn't fill this form out.

3.45 Superintendent Care then explained that although he had signed the declaration stating that the financial information was correct, he had failed to read the application properly prior to signing it:[56]

> Q. And the second paragraph of that, if it could just be expanded where it says "declaration" - perhaps it could be blown up again, if it's possible. Are you able to read that, sir?
> A. No, I can't.
>
> Q. Well, I might get it blown up again. It reads as follows. The first sentence reads:
> I/We apply for a Priority 1 home loan or an increase in the loan amount of our existing Priority 1 home loan. I/We understand that a Priority 1 home loan will be available only on Priority 1's approval of this application. I/We understand that this application includes any split loan application. I/We confirm that the information contained in this application and the financial information supporting this application is true and correct.
> Do you see that?
> A. Yes, I do.
>
> Q. Do you see below there your signature?
> A. I do.
>
> Q. Dated 27 January 1998?
> A. Yes.
>
> Q. That's clearly after the hotel had started and the money had been provided to your wife and she'd put it into Clare Bear Company and provided it to The Monopoly Company?
> A. Correct.
>
> Q. And you described it in your application that you declared was correct?
> A. Yes.

[55] PIC Transcript DH Care 30 March 1999 p 93.

[56] PIC Transcript DH Care 30 March 1999 pp 94-95.

Q. And the financial information supporting the application is true and correct. You described the $400,000 as a loan to your wife?
A. That was what was put down by the person filling the form out. I can only say that when I've signed the thing I haven't read it properly.

3.46 Superintendent Care's account concerning this application was that he had provided the information to the loans officer, who had completed the form when he visited Superintendent Care at Superintendent Care's home:[57]

Q. They are his words, but that's what you've told him; is it a fair representation of your position, you say, at that time that you applied for the loan?
A. Yes.

Q. Is that right?
A. Well, yes.

Q. And he could only have got that information from you; that would be fair to say, wouldn't it?
A. Well, my wife was there at the same time, I think, yes, but off me, yes.

3.47 The loans officer who spoke with Superintendent Care also completed a 'client sheet' concerning Superintendent Care's loan application.[58] Superintendent Care was questioned regarding the information in this sheet which records his superannuation not as a gift to his wife but as a loan to her:[59]

Q. The part I just read to you is under "Serviceability". If we go down to where it says "general remarks":
Client has recently resigned from the police force and will be commencing new employment as an executive director. Client is not on a probation period but is a full-time employee. Client took most of his superannuation when he left the police force and lent it to his wife to invest in a hotel. Superannuation was $400,000.
A. Well, that's his words, "lent".

Q. :
Client intends to sell home within 15 years and pay remaining debt out —
A. Yes.

[57] PIC Transcript DH Care 30 March 1999 p 95.
[58] Exhibit 18.
[59] PIC Transcript DH Care 30 March 1999 p 96.

Q. "And purchase a smaller home" is on the next page. The words "purchase a smaller home" were on the back of that page?
A. Yes.

Q. That information came from you?
A. That's a person's interpretation of what I've said. I've never seen that before and I certainly didn't fill it out, so —

Q. Sir, that information came from you?
A. The information came from me. What's written down there is that person's interpretation of what I told him.

Q. Well, sir, we have in the document recorded that $400,000 was lent to your wife?
A. Yes.

3.48 When questioned regarding his representation of information to the loans officer, Superintendent Care maintained that it was up to the loans officer to decide how he was going to complete the form:[60]

Q. But he's included it as an asset of yours, not a gift to your wife, and you've signed the application saying that it's an asset of yours?
A. Well, again, I'm guilty of signing it – not reading the form properly and signing the form.

Q. Well —
A. I think I wouldn't be the first person that signed these sorts of forms without reading all the fine print and going through it.

Q. Perhaps we don't know, but we do know that in relation to yourself this is another document that would appear to have information on it that's incorrect?
A. That one, yes.

3.49 Superintendent Care gave evidence regarding a third loan application. This application was for a $15,000 line of credit from the Police Credit Union. The application was dated and signed 3 September 1998 and described under the heading 'Current Assets' a '$500,000 loan to his wife Clare Haig'.[61] Superintendent Care was shown a copy of the application which he agreed contained his handwriting.[62] He was taken through the form and conceded that some of this information was not correct:[63]

Q. This is an application after the Priority 1 refinancing has gone through?
A. Yes.

60 PIC Transcript DH Care 30 March 1999 pp 97-98.
61 Exhibit 19B.
62 PIC Transcript DH Care 30 March 1999 p 100.
63 PIC Transcript DH Care 30 March 1999 pp 100-102.

Q. Application for line of credit for 15,000 from the Police Credit Union?
A. Yes.

Q. Whose writing is that?
A. That's mine, yes.

…

Q. And then "other", "specify" - do you see that, 500,000 loan to wife Clare Haig and then 500,000 written in your hand?
A. That's correct.

Q. That's not correct, is it, on what you tell us today?
A. No, the money was given to my wife.

Q. All right. The money was given to your wife?
A. Yes.

Q. It was never the subject of any trust or loan?
A. No.

Q. It was never the subject of any transfer of shares signed by your wife and it has at all times been a gift to your wife to enable her to buy an interest in a hotel?
A. That's correct.

Q. And amounted to, as we understand from your evidence earlier, $500,000?
A. That's correct.

Q. On this document you record that amount of money —
A. Yes.

Q. — that gift or gifts to your wife, totalling that amount of money as a loan to your wife?
A. Yes, that's true.

Q. Well, which is it, sir? Is it a loan or is it a gift or is it what is convenient at the time?
A. No, it's a gift.

Q. Why did you record it as an asset in an application for credit which you declared to be correct when you made an application for a line of credit?
A. Well, I suppose I thought at some time my wife would give it back to me.

Q. Sir, you didn't record it as "$500,000 that my wife might at some stage give back to me should I need it"?
A. No, that's true.

Q. You recorded it as a loan?
A. That's correct.

Q. Is that what it is, or is it your money in your wife's name?
A. No, it's a gift to my wife.

Q. A gift to your wife, not a loan?
A. No.

Q. And it's not your money in your wife's name?
A. No.

Q. It's not your money in your wife's name, and yet you choose to refer to it in loan applications as one of your assets?
A. In this loan application, yes.

Q. And other loan applications, if we accept that they were made on your instructions?
A. Well, I am not - I can't say what the people wrote down when I spoke to them.

Q. Sir, how do you account for having told the Police Credit Union finance provider that you had made a loan to your wife of $500,000 when you've told this Commission that you gave it to your wife?
A. Well, I just put - I wrote that down.

Q. Which one is the lie, sir?
A. The loan; the loan is not correct.

EVIDENCE CONCERNING LOANS MADE BY SUPERINTENDENT CARE TO THE STARDUST HOTEL

3.50 In addition to providing the initial funds to invest in the hotel, Superintendent Care funded a series of loans to ensure the hotel continued to operate. The Commission heard evidence of two occasions on which Superintendent Care supplied the hotel business with funds.

3.51 On 21 October 1997, cheques were drawn by Superintendent Care and Clare Haig for amounts of $25,000 and $20,000 respectively. These cheques were deposited into the account of The Monopoly Company Pty Limited. Superintendent Care maintained in his response to the Commission's section 25 Notice that $5,000 of the $25,000 drawn from his account was a gift to his wife with the balance of $20,000 being a loan to her.[64]

[64] Exhibit 62B.

3.52 A handwritten Memorandum of Loan, dated 20 January 1998, was drawn up between Clare Haig and The Monopoly Company Pty Limited relating to an amount of $18,000.[65] This memorandum bore the same date as that on which Superintendent Care drew a cheque on his Police Credit Union account for $18,000 payable to Clare Haig. Clare Haig endorsed this cheque 'Please pay The Monopoly Company Pty Limited'.[66] The cheque was then deposited into an account of The Monopoly Company Pty Limited.

3.53 A further document, a typewritten loan agreement dated 21 January 1998, named Superintendent Care as lender and Clare Haig as borrower in respect of a $20,000 loan.[67]

3.54 Clare Haig gave evidence that although she recalled that her husband supplied the business with funds in the form of loans she could not recall which loans were documented and when these loans were transacted:[68]

> Q. In the chronology of events, it was about 3 or 5 August that the lease of the hotel was taken by The Monopoly Company, that's when business started?
> A. That sounds about right, yes.
>
> Q. In December 1997, do you recall that there was a loan of $20,000?
> A. There were loans to the hotel. Without documentation I couldn't tell you whether that exactly was it, but if you say that that was - because, as we mentioned before, there were a number of small loans given.
>
> MR BARRETT: Commissioner, it is tab 185. Could this be shown on the screens of the witness and at the Bar table - it is document number 5387309.
> Q. Do you recognise that document as the first page of a loan agreement made on 21 January 1998. Is that correct?
> A. Yes, sir.
>
> Q. I'll take you to the next page, 5387310. Do you recognise that?
> A. Yes, sir.
>
> Q. That document was executed, was it, to acknowledge the existence of a loan of $20,000 from your husband to you?
> A. Is that a question or a statement?
>
> Q. Is that what you understood it to be?
> A. Yes, sir.

65 Exhibit 34B.

66 Exhibit 35.

67 Exhibit 33B.

68 PIC Transcript CEM Haig 13 April 1999 pp 272-273.

Q. Was that done after the money had been provided by your husband to you?
A. Before, after or during, I don't know – around the time of.

Q. I take you back to the first page. Do you see above the item 1, the words "now it is agreed as follows". Do you see the paragraph directly above that where it says:
Whereas, the borrower acknowledges that an advance was made to her by the lender of the sum of $20,000.
A. Yes, I see that, okay.

Q. Would you accept that —
A. I accept that the money —

Q. — had been lent.
A. — had been lent, yes.

Q. The money that was the subject of that deed was money lent to you, was it, by your husband?
A. Yes.

Q. And provided to The Monopoly Company, is that right?
A. That's right.

Q. To keep the hotel running?
A. Yes.

Q. Was that money provided in December 1997? This deed was executed in January 1998. Was the money provided in December 1997, that's the question?
A. I can't remember.

Q. The money that was the subject of that agreement, that is, the advance that had been made before this agreement document came into existence, was that an amount of $20,000 in cash?
A. I can't - I wouldn't be able to say, I'm sorry, whether it was cash or a cheque. I don't know.

Q. Do you recall there being an advance of about that amount of money in cash?
A. No, I don't recall.

3.55 Clare Haig maintained that loan agreements were made in respect of the money Superintendent Care lent her which she then lent to the business. The loan agreements were made in order to ensure that some money could be recovered by him in the event that the business did not succeed:[69]

Q. Do you recall that there was another loan agreement in respect of a sum of $18,000 that was an interest-free loan?
A. That sounds right.

[69] PIC Transcript CEM Haig 13 April 1999 pp 275-276.

Q. That was a loan from you to The Monopoly Company, do you recall, that was an interest-free loan repayable by instalments of a thousand dollars per week?
A. Yes.

Q. And was that done in order to ensure that some moneys came back?
A. That was also done to ensure that some moneys came back.

3.56 Clare Haig was not able to give a reason why Superintendent Care did not directly lend the funds to The Monopoly Company Pty Limited:[70]

MR BARRETT: Q. Is this the situation, that your husband lent you money which you then on-lent to The Monopoly Company?
A. In this case, yes.

Q. Why did your husband not directly lend money to The Monopoly Company?
A. I don't know how to answer that question. I was part owner of the company. He lent the money to me; I paid it into The Monopoly Company.

THE ROLES OF SUPERINTENDENT CARE, ROSS VISALLI AND CLARE HAIG IN THE HOTEL INVESTMENT

3.57 The Commission heard evidence concerning Superintendent Care's interest in owning a hotel and his involvement in establishing the business of the Stardust Hotel with Ross Visalli. Further evidence was also presented regarding Clare Haig's role in the business.

3.58 Superintendent Care gave evidence that his interest in owning a hotel dated back to his days as a licensing sergeant in the Fairfield area 10 or 15 years ago. At that time he had inspected a hotel at Merrylands with a view to purchasing the business.[71]

3.59 In a letter written by Clare Haig and her husband, dated 4 August 1998 to Detective Chief Superintendent Lynch of Internal Affairs, Clare Haig described the company structure, ownership and operation of the hoteliers licence at what was then known as the Heartbreak Hotel at Cabramatta.[72] This letter stated that:[73]

Superintendent David Care has no financial interest in either the Clare Bear Company Pty Ltd or the Monopoly Company Pty Ltd. He has never been employed by either company.

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70 PIC Transcript CEM Haig 13 April 1999 p 277.
71 PIC Transcript DH Care 30 March 1999 p 45.
72 Exhibit 36 & PIC Transcript CEM Haig 13 April 1999 p 279.
73 Exhibit 36.

3.60 Clare Haig, when examined by Counsel Assisting the Commission regarding her role in establishing the business, responded that during this period she was not involved in negotiations. Her evidence was that her husband and Ross Visalli were involved in the negotiations and transactions in relation to establishing the business:[74]

> Q. It would be fair to say, wouldn't it, that you were kept informed of what was taking place?
> A. On a daily basis.
>
> Q. But you were not directly involved in the negotiations with the other parties to the hotel transaction?
> A. Yes.
>
> Q. And you were not involved in any of the negotiations with the proprietors or directors of the companies that operated the hotel or, sorry, owned the hotel —
> A. That's correct.
>
> Q. — nor in negotiations with prospective employees?
> A. No.
>
> Q. Or the prospective licensee?
> A. No.
>
> Q. Or any other of the transactions necessary to commence the operation of the hotel by The Monopoly Company?
> A. That's correct.
>
> Q. A considerable part of that was done by Mr Visalli?
> A. Yes.
>
> Q. And it would be fair to say that your husband was also involved in those negotiations, to your knowledge?
> A. My husband was involved in the very early negotiations with the owners of the freehold.

3.61 Superintendent Care's evidence concurred with that given by his wife, in that he had a role in negotiating the lease, arranging the finance and attending meetings in relation to the hotel. He stated that he told the owner of the freehold, Mr Medich, at the time these meetings were conducted that he attended on behalf of his wife to protect his wife's interest.[75] Superintendent Care maintained that he attended three of these

[74] PIC Transcript CEM Haig 13 April 1999 pp 267-268.

[75] PIC Transcript DH Care 30 March 1999 p 63.

meetings. He stressed, however, that these were only preliminary meetings as his wife had not purchased the business at that stage:[76]

> Q. What part did you play in the meetings?
> A. Well, I played a watching brief and I asked some questions.
>
> Q. When did this take place?
> A. Gee, I - sometime before they bought the hotel.
>
> Q. When was that that they bought the hotel, as you understand it?
> A. I think it was some time in August '97.
>
> Q. I see. Well, some time is a variable feast, as you'd appreciate, what do you mean by "some time before"?
> A. I can't tell you the exact date.
>
> Q. What part did you play, sir, in the setting up of the hotel?
> A. Well, I went to meetings with Visalli and the owners to make sure that my wife knew what she was getting into.
>
> Q. Did your wife go to those meetings?
> A. No.
>
> Q. How did your wife know what she was getting into by you going to the meetings?
> A. Because I came back and told her. At that stage that wasn't - at that stage it was only preliminary meetings as to whether she'd take a part in the thing. She hadn't purchased the thing at that stage.

3.62 Superintendent Care was examined in hearings regarding the extent of his involvement in the negotiations which took place during these meetings. He could not recall expressing concern regarding prices of items such the hotel's fixtures and fittings.[77] Notes made by Mr Medich, however, confirm that Superintendent Care took an active role. Mr Medich's notes, in part, state that:[78]

> Dave Care was concerned that they would have to pay $374,000 for the fixtures and fittings.
>
> They would prefer to sit down with Milperra Hotel P/L and agree with what is a fixture + what is a fitting and what they have to pay for.

[76] PIC Transcript DH Care 30 March 1999 pp 37-38.
[77] PIC Transcript C H Care 30 March 1999 p 60.
[78] Exhibit 5.

3.63 Superintendent Care then gave evidence that his wife, Clare Haig, had no experience in running a hotel or small business and nor had she undertaken any training or any courses in running a small business such as a hotel.[79] He gave the following evidence in relation to his wife's role in the business:[80]

> Q. Well, what part did she take in the setting up of the hotel and its purchase?
> A. Well, once it was decided that she was going to take part - she was going to actually take it and do it, she did everything.
>
> Q. What do you mean she did everything?
> A. Well, she went to the lawyers, she spoke to the lawyers - I assume that they required her to explain everything to them - and went to the accountants.
>
> Q. I see. So she went to lawyers and went to accountants, you say?
> A. Yes.
>
> Q. That was the extent of her involvement in the setting up of the hotel?
> A. Well, that's - that's her involvement in the thing, yes; she went to lawyers, she was advised by lawyers, advised by accountants. I mean, I was there to see whether the - initially to see whether the business, you know, would be any good or not and give her some advice in that regard.

3.64 When examined by Counsel Assisting the Commission about her husband's role in establishing the hotel business, Clare Haig explained that Superintendent Care assumed a more active role at relevant meetings and negotiations due to his understanding of these things.[81] When examined by Counsel Assisting the Police Service about what work she had carried out as company director Clare Haig replied 'I kept myself apprised as to what was going on in the hotel.'[82] Clare Haig also gave evidence that she did not do any clerical work and added that 'Ross Visalli didn't want me there. [in the hotel].'[83] Clare Haig could identify no other steps undertaken by her in the establishment or management of the hotel.

3.65 Superintendent Care was questioned concerning a document addressed to the Stardust Hotel from AHA Financial Services which bore the facsimile number of the District Commander's office at Wollongong.[84]

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79 PIC Transcript DH Care 14 April 1999 p 401.
80 PIC Transcript DH Care 30 March 1999 p 38.
81 PIC Transcript CEM Haig 13 April 1999 pp 268-269.
82 PIC Transcript CEM Haig 13 April 1999 p 324.
83 PIC Transcript CEM Haig 13 April 1999 pp 324-325.
84 PIC Transcript DH Care 30 March 1999 p 69.

Superintendent Care's evidence in relation to that document was that, while the hotel business was being established, he pursued inquiries about obtaining further finance for the business.[85] He discussed the matter with a representative of AHA Financial Services and the information resulting from his inquiry was then sent by facsimile to his place of work.[86]

3.66 Superintendent Care also attended a meeting about finance for the hotel together with Mr Ivkovic, the Chairman of Australia Private Capital Group Limited. This meeting took place at the Westpac Bank. Superintendent Care's account of the circumstances of this meeting was that Mr Ivkovic accompanied him in order to provide his, Mr Ivkovic's, financial expertise.[87] Superintendent Care's wife did not attend the meeting.[88]

3.67 Superintendent Care's evidence was also that whilst on extended sick leave from the Police Service he had regular telephone contact with Ross Visalli.[89] When questioned about his business interests with Ross Visalli, Superintendent Care acknowledged that the only business interest he or his wife had with Ross Visalli at that time was the prospective hotel business.[90] He gave the following account concerning the frequency of telephone contact with Ross Visalli: [91]

> Q. How often is regularly talking to Ross Visalli on the phone?
> A. I can't recall.
>
> Q. Can you give us an estimate of how often you spoke to him on the telephone during the time that you were off sick about the hotel venture?
> A. Two, three times a week.

3.68 The Commission analysed telephone call records for the month of March 1997 relating to the telephones operated by Superintendent Care and Ross Visalli during the time the business was being established. The results of this analysis differed from the evidence given by Superintendent Care in that it suggested that telephone contact between these parties occurred much more regularly than 'two, three times a week' and in fact averaged

85 PIC Transcript DH Care 30 March 1999 pp 69-71.
86 PIC Transcript DH Care 30 March 1999 pp 69-71.
87 PIC Transcript DH Care 30 March 1999 p 72.
88 PIC Transcript DH Care 30 March 1999 p 73.
89 PIC Transcript DH Care 30 March 1999 p 52.
90 PIC Transcript DH Care 30 March 1999 p 52.
91 PIC Transcript DH Care 30 March 1999 p 52.

just over four telephone calls per day.[92] Superintendent Care gave further evidence regarding the frequency of these telephone calls: [93]

> Q. All that's listed there, sir, for that 14-day period is the calls between your mobile phone, Mr Visalli's home and your home, in whichever of the three directions, you appreciate; it doesn't include any other calls to any other persons or places?
> A. No – yes.
>
> Q. I'd like to take you now to the next page. Do you see that's a continuation of 14 March?
> A. Yes.
>
> …
>
> Q. Again, calls between those three telephones?
> A. Yes.
>
> Q. You will see at the bottom there, total calls 128?
> A. Yep.
>
> Q. That's calls between those three telephones in that month, March 1997, between the telephone of yourself, your home and your mobile telephone?
> A. Yes.
>
> Q. As you can read on the document, an average of 4.12 telephone calls per day?
> A. Sure.
>
> Q. And a total talk time recorded in respect of those calls of 12.35 - 12 hours, 35 minutes and 4 seconds?
> A. Yes.

3.69 Counsel for Superintendent Care, submitted that there was no evidence that these telephone conversations related to setting up the hotel business.[94]

3.70 The licensee of the Stardust Hotel, Ross Visalli, gave evidence regarding Superintendent Care's role in the negotiations which took place during meetings with the owners of the freehold of the hotel. Ross Visalli's evidence accorded with that given by Superintendent Care that he (Superintendent Care) attended meetings on his wife's behalf.[95] Ross Visalli stated, however, that he understood Superintendent Care could

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92 Exhibit 4B.

93 PIC Transcript DH Care 30 March 1999 pp 57-58.

94 Exhibit 82.

95 PIC Transcript RJ Visalli 1 April 1999 p 233.

not be involved personally in investing or owning a licensed hotel due to the fact that he was a police officer. He explained that it was decided between Ross Visalli, Superintendent Care and his wife that Clare Haig would take an interest in the hotel. Ross Visalli was further questioned regarding the circumstances surrounding these meetings: [96]

Q. Were there times when he [Superintendent Care] attended in 1996 and in 1997?
A. Yes.

Q. You have said before that he attended on his wife's behalf?
A. Yes.

Q. Was this the situation, that because of his position as a policeman, he couldn't be personally involved as an investor or owner or operator of the hotel?
A. That's correct.

Q. And was it decided between you and he and his wife that his wife would, or could, take an interest in it?
A. Yes.

Q. And was it decided that his wife would take an interest in it if you were able to go ahead?
A. Yes.

Q. Because of that, he attended those meetings and had discussions with you and with the Medichs and others on her behalf?
A. Yes.

Q. As if he were acting for her; is that the situation?
A. Yes, there were only two or three or four meetings, though. I met and spoke with John [Medich] continually almost every day.

3.71 Ross Visalli also gave evidence about his own role in establishing the hotel, stating that he spoke frequently with Superintendent Care on the telephone during the course of negotiations in 1997: [97]

Q. Sir, those negotiations became more detailed as time went on, and presumably at the time of that meeting in March, they were quite extensive?
A. Between David and I?

Q. Between yourself and Mr Medich.
A. Yes.

[96] PIC Transcript RJ Visalli 1 April 1999 pp 233-234.
[97] PIC Transcript RJ Visalli 1 April 1999 pp 243-244.

Q. And your communications with David Care were frequent; is that right?
A. That's correct.

Q. It would be correct to say, wouldn't it, that you spoke frequently with him on the telephone —
A. That's correct.

Q. — during 1997, when the negotiations phase was going on?
A. Yes.

Q. And you discussed with him what was happening?
A. I was keeping David abreast of my meetings with John Medich.

Q. And I take it discussing with him which way you should go and which way you felt that it should go and whether to resist views of Mr Medich, or go along with him, and the like?
A. That's correct, yes.

Q. And you spoke regularly and frequently on the phone about it?
A. I would keep David abreast, even Clare abreast, of what was happening.

Q. It would be fair to say, would it, that you spoke far more with David Care than you ever did with Clare Haig?
A. I did, yes, because of our friendship, yes.

Q. And because he knew something about it?
A. Yes.

Q. She didn't know anything about it to your knowledge, did she?
A. No.

THE STRUCTURE OF THE HOTEL BUSINESS

3.72 The Commission also heard evidence that Superintendent Care advised Clare Haig on how to establish and arrange the companies which administered the hotel investment:[98]

Q. You remember you have been asked questions about that company structure?
A. Yes.

Q. That company structure was set up on the advice of your husband?
A. Yes.

[98] PIC Transcript CEM Haig 13 April 1999 p 321.

3.73 During the course of hearings, Ms Stenmark, Counsel for the Police Service, examined Clare Haig about the structure employed for operating the business of the Stardust Hotel. Ms Stenmark suggested to Clare Haig that structuring the business through the two companies, Clare Bear Pty Limited and The Monopoly Company Pty Limited, provided a structure designed to distance Superintendent Care from the Stardust Hotel.[99] This suggestion was refuted by Clare Haig.

3.74 When questioned further by Ms Stenmark regarding whether she knew whether her husband, as a police officer, could invest in the hotel, Clare Haig replied that she was aware he could not. Clare Haig's evidence was, however, that the business was structured as it was for taxation purposes. She claimed that the hotel was her investment:[100]

> MS STENMARK: Q. Leaving aside for one moment, Miss Haig, the advice that that's the way things were done, can you think of any other reason why your holding was through a private company?
> A. Well, for taxation purposes.
>
> Q. What taxation purposes?
> A. Well, if the hotel ever made a profit and moneys - if dividends were paid, then the dividends could be paid into my private company and so forth.
>
> Q. But there is another reason, isn't there, so that by virtue of the shareholding and the structure and the way the whole thing was set up, it was done deliberately to distance your husband from the hotel?
> A. No, I don't - I don't see it that way at all.
>
> Q. Well, you knew that he could not invest money in the hotel because he was a police officer?
> A. Yes.
>
> Q. You knew that.
> A. Yes.
>
> Q. And he was very interested in owning a hotel or having something to do with a hotel, wasn't he?
> A. I was very interested.
>
> Q. So was he, wasn't he?
> A. He was interested because of my interest.

[99] PIC Transcript CEM Haig 13 April 1999 p 322.

[100] PIC Transcript CEM Haig 13 April 1999 pp 321-322.

Q. And, of course, by you having money and moneys invested in the Macquarie Bank in your name, that distances him one step, doesn't it, from the money?
A. It could be seen that way.

Q. And then, by the money going into another shelf company, or into a shelf company Clare Bear Company, it distances his initial investment further, doesn't it?
A. It was not my husband's investment.

Q. Madam, it was his money, his house, and his superannuation?
A. That he gave to me.

Q. That he gave to you, right. But by investing it through Macquarie Bank, it distances him one step, correct?
A. Well, you could say that.

Q. And by then investing it in shares in the Clare Bear Company it further distances him; correct?
A. You could say that also.

Q. And then, by putting it into another company, he is further distanced from the initial investment.
A. The hotel is mine.

3.75 Ross Visalli, the licensee of the hotel, gave evidence that he had approached Superintendent Care in 1996 about investing in the Stardust Hotel:[101]

Q. In 1996, in the latter half of 1996, did you, on learning of the possible availability of the Stardust Hotel, approach Mr Care to see whether he was interested in investing in it?
A. Yes.

Q. All right. Did he express some interest?
A. Yes.

Q. Were you told subsequently during discussions with him that he could not personally take an interest in the hotel?
A. That's correct.

Q. Was that, as you understood it, because he was a serving police officer?
A. Yes. But that his wife could.

Q. But that his wife could?
A. Yes.

Q. Did you and he and his wife then continue discussions with a view to their investment in the hotel?
A. Yes.

[101] PIC Transcript RJ Visalli 1 April 1999 p 232.

3.76 Ross Visalli then gave evidence concerning his understanding of Superintendent Care's position with regard to holding a financial interest in the hotel. He said he believed that Superintendent Care was required to maintain a distance between himself and the Stardust Hotel and it was his impression that Superintendent Care used the company, Clare Bear, to this purpose: [102]

> Q. Sir, you told us the shareholders in The Monopoly Company were Clare Bear Company Pty Limited and your mother?
> A. Yes.
>
> Q. What was the reason for there being a company Clare Bear Pty Limited as the shareholder instead of Clare Haig?
> A. I don't know that.
>
> Q. You don't?
> A. That wasn't my affairs [sic].
>
> Q. Was that ever discussed with you?
> A. I don't exactly recall. It may have been because David was in the police force and he had to, you know - he had to keep abreast from, you know - arms length away from the hotel, and that – he also said that he had to report the matter to his superiors.
>
> Q. All right. So, as you understood it, he had to not appear to be connected in any way with the hotel?
> A. In a financial way, yes.
>
> Q. He couldn't have a financial interest in the hotel, as you understood it?
> A. That's correct.
>
> Q. Because he was a police officer?
> A. That's correct, yes.
>
> Q. And couldn't appear to be connected with the hotel?
> A. Financially, yes.
>
> Q. So that's why they used the company?
> A. I think so, yes.

3.77 Counsel for Superintendent Care and Clare Haig, in submissions to the Commission, maintained that the corporate structure adopted for the investment in the Stardust Hotel is that which is normally used in order to minimise taxation and limit personal liability.[103]

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[102] PIC Transcript RJ Visalli 1 April 1999 pp 250-251.

[103] Exhibit 82 & Exhibit 83.

ASSESSMENT

3.78 The evidence presented to the Commission was that the funds Superintendent Care's wife invested in the hotel were sourced from assets owned by Superintendent Care.

3.79 Superintendent Care and Clare Haig stated that Superintendent Care gave $500,000 to his wife to invest in the hotel and that this was an undocumented gift.

3.80 It is the Commission's view that documents in support of loan applications made by, or on behalf of Superintendent Care, contradict the assertions made by Superintendent Care that the money invested in the hotel was a gift to his wife. Superintendent Care's evidence that he had failed to read an application properly or that an application was completed by the loans officer, do not adequately explain the portrayal of the money in these documents as an asset of his or a loan to his wife. A further application for a line of credit was completed by Superintendent Care and also clearly represented, as a loan, the money he said he gave to his wife.

3.81 Superintendent Care's evidence that the money was given back to him by his wife is also not consistent with documents presented to the Commission in hearings. Superintendent Care's evidence that he may have told the Police Credit Union loans officer that he had given the money to his wife, who was going to return it is also inconsistent with the loan documents presented to the Commission. The Commission is of the view that the portrayal of the money in these applications as a loan to his wife, rather than a gift, is more likely to be the truth.

3.82 Agreements made between Clare Haig and Superintendent Care disclose evidence of loans made by Superintendent Care to Clare Haig to ensure the hotel continued operating. These funds were channelled by Clare Haig into the hotel business. The Commission notes that Superintendent Care did not lend directly to the business but provided finance through his wife, Clare Haig. Clare Haig could not explain why he did this. The Commission is of the view that this is a further indication of Superintendent Care's pecuniary interest in the Stardust Hotel. Superintendent Care's interest in the business is supported by Clare Haig's evidence that loan agreements were made in order to assist Superintendent Care recover some of the money invested if the business failed.

3.83 The evidence relating to the establishment of the hotel suggested that Superintendent Care took an active role, and Clare Haig almost no role at all. Counsel for Superintendent Care and Clare Haig submitted that Superintendent Care had no legal or equitable interest in the business of the hotel. Superintendent Care had formerly been a licensing sergeant and harboured a long term interest in owning a hotel. His involvement in

establishing the hotel extended to attending meetings with owners of the freehold. Once he had returned to work after taking leave, Superintendent Care was involved in negotiating finance for the hotel.

3.84 Counsel for Superintendent Care and Clare Haig in submissions to the Commission drew attention to the marital context of the situation, and rejected the idea that Superintendent Care held an equitable interest in the hotel shares.[104] Superintendent Care's evidence was that his role in establishing the business was undertaken to protect his wife's interest. There is, however, much evidence to the contrary, not the least being that Superintendent Care was interested in owning a hotel and had lent the establishment funds. The Commission heard that Ross Visalli understood that the situation was one in which Superintendent Care attended meetings and negotiations on his wife's behalf because he could not personally be involved in the business due to his role as a police officer.

3.85 The Commission accepts that companies are often structured in order to reduce taxation and personal liability. The structure of Clare Bear Pty Limited and The Monopoly Company Pty Limited might have achieved these ends. The Commission is mindful, however, of Superintendent Care's interest in the funds invested in the hotel and the restrictions on police officers investing in the liquor industry. The evidence of Ross Visalli was that an agreement had been made that while Superintendent Care could not invest in the hotel, Clare Haig could. Although the company structure may have reduced taxation, it is clear that it also distanced Superintendent Care from the ownership of the Stardust Hotel. This distance was further achieved by directing Superintendent Care's financial contributions to the hotel through his wife, Clare Haig.

SECONDARY EMPLOYMENT OF SUPERINTENDENT CARE

3.86 Superintendent Care gave evidence that during 1996 and 1997, the *Commissioner's Instructions* required police officers to obtain approval to undertake work outside of the NSW Police Service.[105] He gave evidence that a higher level of approval was required for duties in relation to the liquor, security and heavy transport industries.[106] Superintendent Care denied that he had ever worked, been employed or carried out secondary employment in relation to the Stardust Hotel:[107]

> Q. You told us before that that work or employment or secondary employment in the liquor industry was something that would not be the subject of approval?
> A. That's correct.

[104] Exhibit 82 & Exhibit 83.
[105] PIC Transcript DH Care 30 March 1999 pp 7-8.
[106] PIC Transcript DH Care 30 March 1999 pp 8-9.
[107] PIC Transcript DH Care 30 March 1999 p 23.

Q. Have you ever worked or been employed or carried out secondary employment of any type in relation to the Stardust Hotel?
A. Personally?

Q. Yes.
A. No.

Q. Have you ever worked or carried out secondary employment in relation to The Monopoly Company?
A. No.

Q. Have you ever worked or carried out secondary employment in relation to the Clare Bear Company Pty Ltd?
A. No.

Q. Have you ever carried out secondary employment or worked in relation to your wife's interest in the Stardust Hotel?
A. No.

3.87 Section 59, Part 5 Division 7 of the *Police Service Act 1990* clearly states that an executive police officer is required to seek approval prior to engaging in secondary employment:

> An executive officer must not engage in any paid employment outside the duties of the executive position without the consent of the Commissioner.

3.88 The *Commissioner's Instructions*, valid as at 1 October 1996, stated under the heading 'Secondary employment':[108]

> Except with approval in writing of your District or Branch Commander, or in the case of employment in the security, liquor, and heavy transport industries the Assistant Commissioner, Professional Responsibility, you cannot accept any paid employment, (Section 88 of the Police Service Act.)

3.89 'Paid employment' was subsequently defined in these Instructions as:[109]

- employment where the officer directly receives a financial benefit, or
- employment which has the purpose or effect of generating profit, gain or a benefit of any kind in favour of the officer or any other person or company (excluding registered charities).

[108] Exhibit 2.
[109] Exhibit 2.

3.90 Superintendent Care was questioned concerning his knowledge of the relevant *Commissioner's Instructions*. His evidence was that he had not previously seen that definition of paid employment:[110]

> Q. Sir, do you see there part of the Commissioner's instructions as they were in October 1996 as they relate to secondary employment?
> A. Yes.
>
> Q. I'll take you to the next page, the continuation of those instructions. I don't ask that you actually absorb all of the material contained in it.
> A. Can I say these are not the instructions, these are not the Commissioner's instructions of 1996. These have been changed.
>
> Q. Do you see at the foot of the document, sir, "Valid as at 1 October 1996"?
> A. Well, I certainly - I've certainly – the Commissioner's instructions that I had certainly didn't have all that in there in that - I think it only had about three paragraphs in relation to secondary employment.

3.91 Superintendent Care added that it was his belief that a literal interpretation of this definition would mean that anyone would be guilty of secondary employment and that that was probably part of the reason why the *Commissioner's Instructions* were, at a later date, changed.[111]

3.92 Superintendent Care was also questioned concerning the procedures adopted for notifying changes made to *Commissioner's Instructions* in 1996 when he was Chief Superintendent and Commander of the Illawarra district.[112] He confirmed that changes were reported through updates to pages of the *Commissioner's Instructions* manual, and also brought to the attention of officers through the *Police Service Weekly*.[113] When questioned regarding the updating and administering of the *Commissioner's Instructions*, Superintendent Care explained that his personal assistant was responsible for updating the Instructions.[114] He also stated that it was the personnel officer who was responsible for bringing matters to do with secondary employment to his notice.[115] Superintendent Care said

[110] PIC Transcript DH Care 30 March 1999 pp 23-24.
[111] PIC Transcript DH Care 30 March 1999 pp 67-68.
[112] PIC Transcript DH Care 30 March 1999 pp 25-26.
[113] PIC Transcript DH Care 30 March 1999 pp 24-26.
[114] PIC Transcript DH Care 30 March 1999 pp 24-25.
[115] PIC Transcript DH Care 30 March 1999 p 26.

that it was he who was responsible and accountable for administering secondary employment in the Illawarra district:[116]

Q. The changes that were made to any of the Commissioner's instructions were required to be updated, as you understood it, and were sent out in the form of the pages to be fitted into the instructions?
A. That's correct.

Q. They were also published fully, weren't they, in the Police Service Weekly that's sent to all stations in the State?
A. That's correct.

Q. So there'd be two sources of information about amendments to the Commissioner's instructions at the time back in '96 —
A. Yes.

Q. — that is, the actual amendments that were sent to the stations to be placed in the Commissioner's instruction sets and the Police Service Weekly?
A. That's correct.

Q. Presumably which you'd receive a copy of as commander of Illawarra?
A. That's correct.

Q. You say you never read —
A. No.

Q. — thus previously?
A. No.

Q. I see. Did you read the Police Service Weekly when it came out?
A. Yes, not all the time though. I might add, I also had, you know, functional officers to take care of this; in other words, the personnel officer was in charge of the secondary employment and, you know, if there was something that was required to be brought to my notice, he would bring it to my notice.

Q. But you had overall a responsibility in relation to approval of secondary employment?
A. Yes, I had accountability for that.

Q. And therefore had to see what secondary employment was being approved, didn't you?
A. Yes, that's true. I would make the final decision if there was something controversial brought up. However, I depended upon - I'm not trying to avoid my accountability for this, but when running a district the size of the Illawarra district with some 600 police,

[116] PIC Transcript DH Care 30 March 1999 pp 25-26.

> 200 public servants, your own boat fleet, mine was an administrative position and I would expect if there was any controversial aspects requiring a decision by me, it would be brought to me by my relevant officer. However, you know, I expected also that those officers had to take accountability of themselves and make decisions unless they were required to bring it to me.

3.93 During Commission hearings, Superintendent Care did not accept that he was required to seek approval for secondary employment when attending meetings, conducting negotiations and liaising with Ross Visalli regarding establishing the business of the Stardust Hotel. He gave the following evidence:[117]

> Q. The fact is that you know very well from your experience, from your previous applications and from your history in the Police Service, that you should have put in an application for secondary employment?
> A. No. I think - doesn't it say that you've got to notify the Commissioner that your wife has a pecuniary interest - wife or close personal person —
>
> Q. I'm talking about for you?
> A. For me?
>
> Q. Yes.
> A. Secondary employment for what?
>
> Q. For being involved in the hotel and coming within the definitions of employment?
> A. What, for going to two or three meetings before there was even a lease available?
>
> Q. That's what you say now is the extent of it, is it, two or three meetings before the lease is available?
> A. That's correct. In terms - but I've spoken to Mr Visalli about it on the phone on and off.
>
> Q. On and off?
> A. Of course, yes, he's a friend of mine as well.

3.94 During the Commission hearings on 30 March 1999, Superintendent Care perused the *Commissioner's Instructions* in relation to secondary employment and stated that he was aware that the Instructions imposed restrictions on employment in the liquor industry.[118] Superintendent Care claimed that he did not engage in secondary employment in relation to the Stardust Hotel. He gave evidence that at the time the negotiations occurred, his wife had no legal interest in the hotel business and the

[117] PIC Transcript DH Care 14 April 1999 pp 402-403.
[118] PIC Transcript DH Care 30 March 1999 p 68.

discussions were taking place over things that were proposed for some time in the future:[119]

Q. Well, sir, leaving aside the reason why it was changed, the document you're looking at was valid as at 1 December 1995. You said you hadn't seen the 1996 model that was shown earlier?
A. Yes.

Q. Had you seen this model?
A. Yes, I had.

Q. You were aware, aren't you, of the restriction and the requirement in relation to certain industries, including the liquor industry?
A. Yes.

Q. Licensed premises?
A. Yes.

Q. And you knew that there was an embargo in respect of - or that secondary employment would not be approved in those particular industries?
A. Yes.

Q. And that had been in existence for a considerable period of time before 1995?
A. Certainly.

Q. But if you did work in relation to the benefit of a company that ran licensed premises, it would be work connected with the licensed premises?
A. Yes, but there was no - my wife had no interest in the premises when these discussions and negotiations took place.

Q. Well, she had no legal interest but she had an interest in it being set up and you set it up for her?
A. I assisted her.

Q. And Mr Visalli, in setting it up?
A. Certainly.

Q. And you say that you cannot see that that might infringe the rules in relation to secondary employment, or the obligation of disclosure?
A. You know, these were - these were discussions that were taking place that you may or may not arrive at somewhere in the future.

Q. Right.
A. I mean, you would have to put an embargo on any police officer from ever discussing any option of his life, ever. My wife was very

[119] PIC Transcript DH Care 30 March 1999 pp 68-69.

> excited about this, and this was a chance to get her out of the blooming situation that she was in as well. She was depressed. She was, you know - and this was a way for her to build a business for herself. I don't know about you, but I trust my wife and I love her.

ASSESSMENT

3.95 Superintendent Care was aware that the *Commissioner's Instructions* required police officers to obtain approval to pursue secondary employment. He was also aware that there was an embargo on direct secondary employment in respect of licensed premises. In order to undertake secondary employment in relation to licensed premises an officer was required to seek written approval from the (then) Assistant Commissioner, Professional Responsibility.

3.96 It is the Commission's view that Superintendent Care engaged in unauthorised secondary employment. Whilst on sick leave from the NSW Police Service, Superintendent Care actively participated in negotiations which resulted in establishing licensed premises known as the Stardust Hotel. The Monopoly Company Pty Limited, a company in which his wife had a 49 per cent shareholding via her personal company operated the hotel. Superintendent Care was involved in discussing matters such as the hotel lease, attending meetings, inquiring about financing the hotel and had frequent telephone contact with Ross Visalli who was the beneficial 51 per cent shareholder.

3.97 Superintendent Care claimed that, at the time he engaged in these activities, his wife did not hold a legal interest in the hotel. He then said that, his activities were undertaken in order to safeguard his wife's investment and also asserted that he had not been aware of the definition of 'paid employment' in the *Commissioner's Instructions*.

3.98 In the Commission's view, Superintendent Care, who was then a District Commander with responsibilities for assessing secondary employment applications must be taken to have been aware of the relevant Instructions. The very activities in which he was engaged, especially with respect to an undertaking in the liquor industry, would put a competent, diligent officer upon inquiry as to the limits of permissible involvement. The claim that he was safeguarding his wife's interest is not an acceptable explanation. The Instructions were designed to limit the involvement of police officers in licensed premises except where explicit approval had been given following full disclosure. It was not intended that an officer could on their own volition, exempt themselves from the proscription for the purpose of protecting a family member's interests.

3.99 Superintendent Care's explanation is also inconsistent with the facts. Superintendent Care asserted that his wife was interested in the hotel business, but there is no evidence that her interest extended beyond investing the money that Superintendent Care made available to her, (by way of gift or loan), for that purpose. If Clare Haig was interested in the hotel business, it is likely that she would have attended meetings and involved herself in discussions, or at least listened and learned rather than relying on Superintendent Care to relay events and decisions.

3.100 The Commission is of the view, that the public interest required members of the Police Service to maintain a sound knowledge of their obligations with respect to secondary employment which are now contained in the *Police Service Handbook*. The importance of strict adherence is increased in the case of officers with managerial responsibilities.

3.101 The Commission notes that in January 1993, following recommendations concerning secondary employment in particular industries made by the NSW Ombudsman and the ICAC, the Police Service implemented changes to the secondary employment policy. The approval of the Assistant Commissioner, Professional Responsibility was required with respect to applications in the security, liquor and heavy transport industries.[120]

3.102 That policy prohibited approval for secondary employment in partnerships, large shareholdings, or directorships of businesses involved in the security, private investigation, or liquor industries.[121] Secondary employment was also not to be approved for direct employment in the security, liquor or transport industries for police having specific duties in those areas.

3.103 The Commission notes that the Royal Commission into the NSW Police Service recommended in the Final Report that:[122]

> Secondary employment be prohibited in those areas in which police have a regulatory role such as commercial and private inquiry agents, transport, liquor, security, and gaming and racing (para. 3.288).

3.104 Notwithstanding this, the Commission is concerned that the current *Police Service Handbook* does not proscribe secondary employment in the liquor industry.

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[120] Royal Commission into the NSW Police Service, Final Report Volume II: Reform May 1997 pp 309, 310.

[121] Royal Commission into the NSW Police Service, Final Report Volume II: Reform May 1997 p 310.

[122] Royal Commission into the NSW Police Service, Final Report Volume II: Reform May 1997 p 312.

REQUIREMENTS OF THE *LIQUOR ACT 1982*

3.105 The *Liquor Act 1982* imposes restrictions on 'former key officials' which under section 105B(5) included those who had been key officials at any time during the previous three years.

3.106 Section 105B(5) defines 'former key official' to include members of the Police Service Senior Executive Service. Superintendent Care ceased to be a member of the Police Service Senior Executive Service in July 1997. Superintendent Care gave evidence to the Commission that he was aware of restrictions imposed on him as a former key official under the *Liquor Act 1982*.[123]

3.107 Offences under the *Liquor Act 1982* in relation to 'former key officials' include under section 105B(1)(d):

> A former key official must not:
>
> …
>
> d) knowingly have, directly or indirectly, any business or financial association with or any business or financial interest in any matter in conjunction with, a licensee or a person known by the former key official to be a close associate of the licensee.

3.108 A 'close associate' is defined in section 4A of the *Liquor Act 1982* as follows:

> (1) For the purposes of sections 68, 105A and 105B, a person is a "close associate" of an applicant for a licence or a licensee if the person:
>
> a) holds or will hold any relevant financial interest, or is or will be entitled to exercise any relevant power (whether in his or her own right or on behalf of any other person), in the business of the applicant or licensee that is or will be carried on under the authority of the licence, and by virtue of that interest or power is or will be able (in the opinion of the court or the Director) to exercise a significant influence over or with respect to the management or operation of that business, or
>
> b) holds or will hold any relevant position, whether in his or her own right or on behalf of any other person, in the business of the applicant or licensee that is or will be carried on under the authority of the licence.

[123] PIC Transcript DH Care 30 March 1999 pp 35-36.

(2) In this section:

"relevant financial interest", in relation to a business, means:

a) any share in the capital of the business, or

b) any entitlement to receive any income derived from the business, or to receive any other financial benefit or financial advantage from the carrying on of the business, whether the entitlement arises at law or in equity or otherwise, or

c) any entitlement to receive any rent, profit or other income in connection with the use or occupation of premises on which the business is or is to be carried on (such as, for example, an entitlement of the owner of licensed premises to receive rent as lessor of the premises).

"relevant position" means:

a) the position of director, manager or secretary, or

b) any other position, however designated, if it is an executive position.

"relevant power" means any power, whether exercisable by voting or otherwise and whether exercisable alone or in association with others:

a) to participate in any directorial, managerial or executive decision, or

b) to elect or appoint any person to any relevant position.

3.109 Superintendent Care was questioned in the Commission concerning the structure of the investment in the Stardust Hotel and his compliance or otherwise with relevant provisions of the *Liquor Act 1982.*

3.110 The Monopoly Company Pty Limited held the lease of the Stardust Hotel premises.[124] Upon incorporation, the sole director was Clare Haig. The shareholders of The Monopoly Company were Mrs Elvira Visalli (Ross Visalli's mother) as to 51 per cent, and Clare Bear Pty Limited, as to 49 per cent. Clare Bear Pty Limited was wholly owned by Clare Haig.

[124] Exhibit 85B.

Superintendent Care's evidence was that the company structure was selected for taxation benefits:[125]

Q. Is it [your wife's interest in The Monopoly Company] anything to do with the requirements under the Liquor Act?
A. No, I think there's taxation benefits if you get paid - if you receive money into a company, you only pay 30 per cent, or 30 whatever it is, you haven't got to pay normal personal income tax.

Q. Are you aware of a requirement of the Liquor Act in relation to or a prohibition in relation to the Liquor Act in respect of key officials, or former key officials?
A. Yes, I am.

Q. They are defined under that Act?
A. They are.

Q. Do they include persons who hold certain positions in either the Police Service or the body that administers the Liquor Act?
A. Yes.

Q. The Liquor Licensing Board. Is there a restriction, to your knowledge, prohibiting the holding of a licence or holding of shares in an organisation or having a large shareholding in an organisation that holds a licence upon those certain people?
A. Yes.

Q. Do those restrictions that apply to certain people in the Police Service include people who were or are Police Senior Executive Service officers?
A. Yes, that's correct.

Q. Would the restrictions, to your knowledge, apply to you during the time you were a member of the Police Senior Executive Service?
A. Yes.

Q. Would they apply also to your wife during the time that you were a member of the Senior Executive Service?
A. No, they wouldn't apply to my wife.

Q. Do you understand that the restrictions applying to yourself continue for three years after you cease to be a member of the Senior Executive Service?
A. To me, yes.

Q. So you're prevented from —
A. Yes, I can't hold any interest in a hotel licensed premises unless I apply to the Commissioner of Police. The Commissioner of Police can give approval to do that.

[125] PIC Transcript DH Care 30 March 1999 pp 35-36.

Q. Was the company Clare Bear Pty Ltd obtained for the purpose of your wife obtaining an interest in the hotel?
A. Yes, I assume so, yes.

3.111 When questioned before the Commission concerning the requirements of the *Liquor Act 1982*, Ross Visalli gave evidence that he was not aware of the restrictions on Superintendent Care as a former key official.[126] Clare Haig also could not recollect having heard of these restrictions and gave the following evidence:[127]

Q. Why was a company structure used by you for your shareholding?
A. Why? Because I believed that that was the best way to do it.

Q. Who led you to believe that?
A. Well, both Mr Visalli and my husband, we discussed it, I think.

Q. Did it have anything to do with the provisions of the Liquor Act, as you understood it?
A. I'm sorry, I wouldn't be able to say one way – I have just no recollection of that.

Q. When you were entering into this transaction for the purchase of the hotel and when it was initially discussed between you and it was decided to go ahead with it, you were made aware, weren't you, that your husband could not be an owner or shareholder or leaseholder, or operator of the hotel?
A. Well, yes, I would have been aware of it, but he didn't want to be. This was an initiative that I wanted for myself.

Q. Are you saying by that answer that your husband didn't want you to be involved in a hotel?
A. No, sir, no. That's not what I'm saying. What I'm saying is the decision to enter into business in a hotel was something that I wanted.

3.112 The mode of investment in the hotel business, according to Superintendent Care's evidence, was that he gave Clare Haig $500,000. That money was invested by Clare Haig in The Monopoly Company which held the lease of the Stardust Hotel premises. In addition to that sum, Superintendent Care lent two further sums of $18,000 and $20,000 to The Monopoly Company intending that the money be used as working capital in the Stardust Hotel business. Those loans were channelled through Clare Haig, who told the Commission that Superintendent Care had loaned the money to her because she was 'part owner of the company'.[128] She then paid the money into the account of The Monopoly Company Pty Limited.

[126] PIC Transcript RJ Visalli 1 April 1999 p 251.
[127] PIC Transcript CEM Haig 13 April 1999 p 270.
[128] PIC Transcript CEM Haig 13 April 1999 p 277.

ASSESSMENT

3.113 Superintendent Care's conduct in making a gift or a loan of the sum of $500,000 and loans of $18,000, and $20,000 to Clare Haig could, if placed before a tribunal of fact, be considered to constitute breaches of section 105B of the *Liquor Act 1982* in that:

- Superintendent Care was a former key official;
- Superintendent Care knowingly;
- had a business or financial association;
- with Clare Haig, a person known by Superintendent Care to be a close associate of the licensee, (Gordon Campbell and then Ross Visalli).

3.114 Superintendent Care was a 'former key official' because at the relevant times he had been a member of the Police Service Senior Executive Service within three years; section 105B(5) *Liquor Act 1982*.

3.115 Superintendent Care knew of the business or financial association between himself and Clare Haig. It is immaterial whether he knew of the application of the *Liquor Act 1982* to the association. The relevant association between Superintendent Care and Clare Haig was a 'business or financial association' within the meaning of the section. Whether or not the sum of $500,000 was by way of gift or loan, it was expressly for the purpose of enabling Clare Haig to obtain a financial interest in the Stardust Hotel. The smaller sums were expressly loaned to Clare Haig in order to provide working capital to the hotel.

3.116 Whether by way of loan or gift, the payments were made for the purpose of enabling Clare Haig to invest in a business with the undoubted aim of generating profit. That profit would undeniably form part of Clare Haig's assets. Superintendent Care's account regarding the money which '[he] thought at some time my wife would give it back to me'[129], provides some evidence that profits generated would be treated as assets of the marriage. The alternative, and less persuasive, reading of that portion of the evidence is that Superintendent Care hoped that the business might at some point return to Clare Haig the sum of $500,000 and that she would then give that money to him.

[129] PIC Transcript DH Care 30 March 1999 p 101.

3.117 Having regard to common notions of marital assets, it might be expected that the money obtained by way of profit would be used for joint family purposes rather than solely to the benefit of Clare Haig. If that be correct, the law would appear to place significant restrictions upon the freedom of, *inter alia*, spouses of key officials to conduct business as they see fit. That result seems to be intentional rather than a coincidental, harsh, consequence of these provisions of the *Liquor Act 1982* and there is plainly a public interest supporting the restriction.

3.118 The better view is that the $500,000 was provided by way of a loan rather than a gift. A gift, as understood at common law, usually involves no return to the donor of a material advantage see *Leary v FCT (1980) 32 ALR 221*. Quite apart from the legal treatment of the transfer of the money, Superintendent Care himself described the transfer as a loan on several occasions. He sought to characterise the transfer other than in the context of meeting allegations of involvement in the liquor industry. The characterisation of the transfer in applications for loans, stands alone as documentary representation by Superintendent Care as to the nature of the transaction. The alleged 'gift' was not, and never has been documented as such. Moreover, Superintendent Care's various explanations for characterising the transfer as a gift were not persuasive. Those explanations lacked documentary support in circumstances in which it might have been expected.

3.119 Even if the $500,000 was a gift, the two were nevertheless involved in a 'financial association'. Financial is defined in the *Shorter Oxford Dictionary* as being 'of or pertaining to money matters'. Superintendent Care and Clare Haig had such an association.

3.120 Clare Haig was a 'close associate' of the licensees because she owned Clare Bear Pty Limited which in turn owned 49 per cent of The Monopoly Company Pty Limited. The latter company is the lessee of the premises at which the Stardust Hotel trades as licensed premises. In the initial period, Clare Haig was the sole director of The Monopoly Company. The licensee when the premises commenced trading was Gordon Campbell. It was always intended that Ross Visalli would be in actual control however was deemed desirable by those involved in the establishment of the hotel that he remain in the background, at least in the initial period. In any event, as a 49 per cent stakeholder, Clare Haig was able to 'exert significant influence over the management of the business' by virtue of that interest, regardless of who was, from time to time, the licensee. Ultimately, as was intended, Ross Visalli became the licensee.

4. EVIDENCE CONCERNING SUPERINTENDENT CARE AND CLARE HAIG'S FINANCIAL TRANSACTIONS WITH AUSFARM AQUACULTURE PTY LIMITED

4.1 This chapter presents evidence taken by the Commission concerning the financial involvement of Superintendent Care and his wife with Ausfarm Aquaculture Pty Limited (Ausfarm). It also examines evidence relating to proceedings in the Supreme Court of NSW regarding Superintendent Care's financial dealings with Ausfarm Aquaculture Pty Limited. It then examines evidence taken by the Commission in relation to Superintendent Care's memorandum to the then NSW Police Board concerning changes to his financial circumstances and assesses whether the information he provided was accurate.

BACKGROUND

4.2 On 27 October 1995, Superintendent Care caused a Creditor's Statutory Demand and Affidavit to be served on Ausfarm Aquaculture Pty Limited (Ausfarm), a prawn farm, for the return of a sum of $83,399.45.[130] Ausfarm then commenced proceedings against Superintendent Care seeking an order that the Statutory Demand be set-aside on the basis that there was a 'genuine dispute' as to whom Ausfarm owed the money.[131] The dispute related to the identity of Ausfarm Aquaculture Pty Limited's true creditor of an acknowledged loan to the company of $80,000.

4.3 The matter was heard on 20 and 21 May 1996 before Master Macready in the Equity Division of the Supreme Court of NSW. Ausfarm was successful in having the notice set-aside.[132] Ultimately, however, a settlement was reached and a Deed executed in which Ausfarm agreed to pay Superintendent Care the sum he had claimed, less Ausfarm's legal costs in the court proceeding.

THE AUSFARM / BUSINESS X TRANSACTIONS

4.4 The transactions, which were subsequently the subject of the abovementioned dispute, took place in September 1994. Superintendent Care gave evidence to the Commission that in September that year, there were two monetary transactions involving Superintendent Care and his wife, Clare Haig and another couple who were, at the time, friends of

[130] Exhibit 26B.
[131] Exhibit 55 & 56.
[132] Exhibit 55 & 56.

theirs called Peter and Barbara Sim.[133] At the time these transactions ocurred, Peter Sim and Barbara Sim were involved in two businesses:[134]

- a photographic developing business identified in this report as Business X of which Barbara Sim was a director and shareholder and which was, at one time, operated by Peter Sim; and

- a prawn farm operated by Ausfarm Aquaculture Pty Limited which was, in 1994 and the first months of 1995, managed by Peter Sim.

4.5 Superintendent Care and his wife advanced a total amount of $80,000 in two separate amounts of $20,000 and $60,000 respectively.[135] These funds were then directed into Ausfarm's bank account.[136]

THE BUSINESS X ARRANGEMENT

4.6 Superintendent Care outlined the arrangement for these funds in evidence to the Commission on 31 March 1999. Superintendent Care's evidence was that his wife, Clare Haig, was to purchase a 10 per cent shareholding in Business X for $20,000.[137] A further $60,000 was to be lent to Business X with a convertible option whereby Clare Haig could choose, if she wished, to invest this amount by taking up a further 30 per cent shareholding in the business when the loan matured rather than have the money returned.[138] He also said that it was agreed that Clare Haig was to become a director of the company and have the opportunity to work in the business.[139]

4.7 Superintendent Care gave further evidence to the Commission that, as a consequence of renovations being undertaken in the premises in which Business X was situated, the business was operating in temporary premises at the time of the transactions.[140] This meant that the future positioning of the shopfront was going to be a consideration when deciding whether to take up the investment option.[141] He indicated that the shop had

[133] PIC Transcript DH Care 31 March 1999 pp 133-135.
[134] PIC Transcript DH Care 31 March 1999 pp 133-135.
[135] PIC Transcript DH Care 31 March 1999 pp 134-135.
[136] Exhibit 37 & Exhibit 51.
[137] PIC Transcript DH Care 31 March 1999 p 138.
[138] PIC Transcript DH Care 31 March 1999 pp 137-138.
[139] PIC Transcript DH Care 31 March 1999 p 138.
[140] PIC Transcript DH Care 31 March 1999 p 139.
[141] PIC Transcript DH Care 31 March 1999 p 139.

previously been well situated and the whole deal was predicated on obtaining another good location:[142]

> Q. Was it the situation at the beginning that the reason for the agreement in respect of 10 per cent with a loan and an option for the further 30 per cent was related to the obtaining of the lease and the premises, and the business therefore, being set up in a suitable position?
> A. Yeah, I think the whole - from my memory, the whole deal was predicated on it being in a good location in the building.
>
> Q. Because that determined whether it was going to be a good investment?
> A. Sure.

THE AUSFARM ARRANGEMENT

4.8 In a report on Ausfarm company letterhead dated 25 August 1994, addressed 'To all shareholders', bearing the title 'Report After AGM' Peter Sim set out the company's and his own financial difficulties.[143] He sought working capital and offered shareholders three avenues for providing further funds being by way of a new share subscription, a loan to the prawn farm or a loan to Peter Sim secured against the 'possible subsequent sale' of Peter Sim's house.[144]

4.9 Superintendent Care's evidence to the Commission was that the arrangement to invest the money in Business X changed in early September. He stated that this change followed an approach from Peter Sim requesting that Superintendent Care lend the money to Ausfarm Aquaculture Pty Limited:[145]

> Q. The photo lab was situated in the [Business X location]; is that correct?
> A. Yes, the [Business X location].
>
> Q. Was the loan sought to purchase an interest in that business?
> A. Initially, yes.
>
> Q. Right. When did it change from a purchase of an interest in the business?
> A. Well, about early in September Sim approached my wife and I - and he'd also approached me the previous year and the previous year before that - about lending money to the prawn farm to solve the cash flow problems of the prawn farm, and he had an AGM a month or so or a few weeks before this all happened and he sent

[142] PIC Transcript DH Care 31 March 1999 p 139.
[143] Exhibit 71.
[144] Exhibit 71.
[145] PIC Transcript DH Care 31 March 1999 pp 135-136.

> out a flyer asking if anybody, any of the shareholders, could contribute urgently needed working capital for the prawn farm. You know, we said no - well, we didn't make any comment at all, we just got the flyer. Then he approached me about that, he said, "Look, hang on here, what I want to do, I'll lend this money to Ausfarm and I'll get you the money back, but everything is okay in relation to the photo lab and Clare can take up that if she wants to when we get paid back.

4.10 Superintendent Care maintained that the investment in Business X did not occur. Instead, he confirmed that the money was advanced to Ausfarm.[146]

THE TRANSACTIONS

4.11 The first transaction involved a cheque dated 8 September 1994 for $20,000, drawn by Superintendent Care upon his Police Credit Union account and made payable to Peter Sim. Handwritten on the reverse of the cheque is an endorsement by Peter Sim 'Please Pay Ausfarm'.[147] Superintendent Care was examined as to why he made the cheque payable to Peter Sim if he intended that the money be paid to Ausfarm:[148]

> Q. Why was the $20,000 payable to Peter Sim?
> A. He just said, "Give me the cheque", to him.
>
> Q. But you knew it was for Ausfarm?
> A. That's where it was going to go, yes.
>
> Q. Why did you make the cheque payable to Peter Sim?
> A. Because Peter asked me to make it payable to him.

4.12 The second transaction commenced with Clare Haig applying for a Commonwealth Bank loan for an amount of $60,000. The loan application form was dated 14 September 1994. Under the heading 'Purpose' was handwritten the following 'Purchase a share in a photo shop [Business X location] for $80,000'.[149] Superintendent Care told the Commission that his wife gave him the money which was then lent to Ausfarm.[150]

4.13 A cheque in the amount of $60,000 was drawn upon the Commonwealth Bank at Newtown and made payable to Barbara Sim.[151] The reverse side of the cheque was endorsed with the words 'Please pay Ausfarm Aquaculture P/L' followed by Barbara Sim's signature.[152]

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146 PIC Transcript DH Care 31 March 1999 p 136.
147 Exhibit 51.
148 PIC Transcript DH Care 31 March 1999 p 136.
149 Exhibit 39B.
150 PIC Transcript DH Care 31 March 1999 p 158.
151 Exhibit 37.
152 Exhibit 37.

4.14 Superintendent Care gave evidence regarding the reason why the cheque was made payable to Barbara Sim when she was not involved in Ausfarm but was a director and secretary of Business X. Superintendent Care explained that Peter Sim had instructed him to make the cheque payable to her because Peter Sim would not be available to collect the cheque:[153]

> Q. Why was the cheque payable to Barbara Sim?
> A. Well, what happened there was we were going to - at that stage he [Peter Sim] was pressing for the money and he said, you know, Barbara - he wanted us to go down and change it from [Business X], which we did, but we had to make the cheque payable to the person who was going to pick it up. And he said he wouldn't be available to pick it up, could we make it payable to Barbara.
>
> Q. Who told you that the cheque had to be made payable to the person who picked it up?
> A. That was my information from the bank.
>
> Q. Who told you that from the bank?
> A. Gee, I suppose it would be the loan officer there.
>
> Q. Well, who was it, Sir, that told you?
> A. I don't know.
>
> Q. Do you have any recollection of being told that fact, that it had to be made payable to the person who collected the cheque?
> A. Yes, it was - it had to - the ID - the person who picked it up, they had to ID the person who picked the cheque up and they had to have – you know, the person who picked it up had to be able to produce ID to the bank before they'd give them the cheque.
>
> Q. Why wasn't a courier arranged to pick up the cheque?
> A. Never thought about the courier.
>
> Q. So the cheque was payable to Barbara Sim —
> A. Yes.
>
> Q. — and the money went to the prawn farm?
> A. That's correct.

4.15 Superintendent Care was further examined with regard to the intended destination of the funds and his understanding of the purpose of the transaction:[154]

> Q. Was it the intention when the cheque was drawn that that money would go to Barbara Sim or to the prawn farm?
> A. No, to the prawn farm.

[153] PIC Transcript DH Care 31 March 1999 pp 136-137.

[154] PIC Transcript DH Care 31 March 1999 p 137.

Q. Was that money drawn payable to Barbara Sim a loan to Barbara Sim?
A. No, it was money to go to the prawn farm.

4.16 Clare Haig's evidence accords with that given by her husband. She stated that Peter Sim was not available to collect the cheque, which was then made payable to Barbara Sim.[155] She was questioned concerning why the cheque was made payable to Barbara Sim:[156]

Q. Now, that's the cheque, is it, that was drawn on the Commonwealth Bank, as you understand it, from the loan that you took out with the Commonwealth Bank, the small business loan?
A. Yes, sir.

Q. Why was the cheque payable to Barbara Sim?
A. It was made payable to Barbara Sim because at the time I was working full-time and Mr Sim, who was the managing director, was unavailable to pick it up and the bank wouldn't give it to anybody other than somebody who had their name on the cheque. So if we had it made out to Mr Sim, they would not give it to Mrs Sim, so the bank cheque was made out to Mrs Sim so she could avail herself of it.

Q. You were working full-time?
A. Yes, sir.

Q. Mr Sim was not available?
A. Yes, sir.

Q. Where was he?
A. He was out of Sydney. When we spoke last I couldn't remember exactly where, but I ascertained he may have been at the prawn farm, but I really don't nowhere [sic] he was.

Q. And you say the bank wouldn't give Barbara Sim a cheque payable to him?
A. No.

4.17 Clare Haig was asked why the cheque, if intended for Ausfarm, would be made payable to Peter Sim:[157]

Q. Why would a cheque be payable to him, that is, Peter Sim, in any event?
A. Because he was the managing director of the prawn farm. I don't know, maybe if he was available it could have been made out to Ausfarm with him as the managing director, but because he was not available it was made out to his wife so that she could then hand it on to her husband.

[155] PIC Transcript CEM Haig 13 April 1999 pp 287-288.
[156] PIC Transcript CEM Haig 13 April 1999 pp 287-288.
[157] PIC Transcript CEM Haig 13 April 1999 p 288.

Q. Did somebody at the bank tell you that?
A. They told my husband.

4.18 Barbara Sim, the wife of Peter Sim, also gave evidence to the Commission regarding the cheque for $60,000. Her evidence was that she did not know why the cheque for $60,000 was made out in her name.[158] She was also examined regarding Peter Sim's whereabouts on that date. Barbara Sim's evidence on this point differed to that given by Superintendent Care and Clare Haig, in that Barbara Sim stated that Peter Sim was, in fact, available to collect the cheque on 20 September 1994. Barbara Sim stated that it was Peter Sim who drove her to the bank in order to have her collect the cheque. She then endorsed the cheque and passed it to Peter Sim who drove her home.[159]

4.19 Superintendent Care's evidence to the Commission was that the $60,000 loan to Ausfarm required interest payments at a rate of 12 per cent which worked out at $600 per month.[160] Cheques, each in the sum of $600 were given to Superintendent Care monthly until May 1995. None of the cheques was drawn upon an Ausfarm account. They were drawn upon accounts held by Peter Sim, Barbara Sim, a business called Everything Travel and Business X. Superintendent Care told the Commission that Peter Sim had told him that he would pay the money back personally because the farm did not have sufficient money to pay the interest on the loan. He also said that the director of one of the businesses from which he received payments was also a director of Ausfarm:[161]

Q. The cheques that were received by you were given to you by Mr Sim?
A. Some were, yes.

Q. Those cheques that were given to you by Mr Sim were cheques drawn on [Business X]; is that right?
A. I don't know what they were drawn on. They could be, I - Sim had told me that he was paying that back personally because the farm didn't have enough money to pay me back the interest.

Q. I see. You'd agree, would you, that cheques were drawn on [Business X] and deposited to the Commonwealth Bank?
A. If that's what you've got in front of you, yes, I would.

Q. Was there also a cheque from Barbara Sim?
A. I don't know.

[158] PIC Transcript B Sim 14 April 1999 pp 339-340.
[159] PIC Transcript B Sim 14 April 1999 pp 339-340.
[160] PIC Transcript DH Care 31 March 1999 pp 146-147.
[161] PIC Transcript DH Care 31 March 1999 pp 148-149.

Q. And was there also a cheque drawn on an organisation called Everything Travel?
A. Yes.

Q. One cheque from an organisation called Everything Travel?
A. No, there were more than that. He was the other director of the company and he took over the payments when Sim didn't have any money to keep the payments going.

Q. Would you agree that there were no payments made by Ausfarm Pty Limited, the prawn farm company itself?
A. Well, I don't - without seeing the cheque – the cheque drawn on, I don't know. I just deposited the cheques in the account.

Q. Well, sir, I'll show you these deposit slips that represent eight sums of $600?
A. Yes, I've seen those.

Q. They went from 20 October 1994 through to 26 May 1995.
MR BARRETT: Commissioner, they are shown on tab 27.
THE WITNESS: It appears that's right, yes. There is also the one from Barbara Sim, payable by Peter and Barbara Sim.

MR BARRETT: Q. So in the period of eight months following the drawing of the cheque on 20 September, repayments are made by either [Business X], Peter and Barbara Sim or, in the case of one cheque, Everything Travel?
A. That's correct.

Q. That payment was the last one of that timeframe, the one from Everything Travel?
A. Yes, but John Kenny from Everything Travel who was the other director of Ausfarm kept making payments to me until September, until the annual general meeting.

4.20 In Supreme Court proceedings Superintendent Care was also examined further regarding the $600 in interest payments he received each month which equated to 12 per cent interest on a loan of $60,000, rather than a loan of $80,000.[162] Superintendent Care, in Supreme Court proceedings demanded repayment of a loan of $80,000 made to Ausfarm and was examined as follows by Mr Tregenza before Master Macready on 20 May 1996:[163]

TREGENZA: Q. Why did you receive only $600 interest a month?
OBJECTION. ON THE BASIS OF NOT ARISING. QUESTION ALLOWED
WITNESS: Can I go on to the explanation of the circumstances of the loan?
MASTER: Just answer the question.

[162] Exhibit 55.
[163] Exhibit 55.

TREGENZA: Q. If it is pertinent to answering the question?
A. Well it is pertinent because when Sim first approached me I had $20,000 in cash and it was only going to be in there for a short period of time. He knew that I had access to the other $60,000 and I only – I mean, I didn't want to screw the Ausfarm – sorry, sir – I didn't want to take advantage of the prawn farm as I was the foundation shareholder in the thing. All I wanted was the payment of the $600 to cover my expenses which were the expenses of the Commonwealth Bank and that is the reason why I claimed the $600 only. [STRIKEOUT BEGINS] But of course the verbal agreement that I had with Sim was that the moneys would be repaid when the –[STRIKEOUT ENDS]

OBJECTION. ON THE BASIS OF NOT BEING RESPONSIVE TO THE QUESTION. FROM THE WORDS 'BUT OF COURSE' STRUCK OUT AT HIS HONOUR'S DIRECTION

EVIDENCE OF A SHAREHOLDING IN BUSINESS X

4.21 Clare Haig gave evidence that because the money went into the prawn farm, she could not ascertain whether she ever purchased shares in Business X:[164]

Q. Did you purchase 10 per cent shareholding in [Business X]?
A. I, or my husband and I, drew a cheque for $20,000 which was given to the Sims and subsequently, with our knowledge, having asked us for that money to be paid to the prawn farm. That is how I see it in my mind. That is how I remember it.

Q. Was the cheque that was drawn for $20,000 payment for a purchase of a 10 per cent shareholding in [Business X]?
A. Sir, it was initially meant to be, yes.

Q. Well, did you ever purchase 10 per cent shareholding in [Business X]?
A. I really don't know. Since the money was given to Mr Sim to pay into the prawn farm, I couldn't rightly tell you whether or not shares were purchased.

4.22 Superintendent Care gave evidence to the effect that neither Superintendent Care nor his wife ever took up a shareholding in Business X:[165]

Q. Did you ever take up a shareholding in that company?
A. No.

Q. Did your wife ever take up a shareholding in that company?
A. No.

[164] PIC Transcript CEM Haig 13 April 1999 p 306.
[165] PIC Transcript DH Care 31 March 1999 pp 181-182.

Q. Did your wife ever subscribe any money to the company for purchase of shares?
A. No.

Q. Did your wife ever receive, or did you ever receive, an option to purchase any of the other shares —
A. No.

Q. — in the company?
A. No.

4.23 Contrary to Superintendent Care's evidence an allocation of shares was made to Clare Haig in Business X. A document lodged with the Australian Securities Commission named Clare Haig as a director of Business X on 13 September 1994, and notified an allotment of 20,000 shares in the company on that date.[166] Counsel Assisting the Commission put the sequence of events to Clare Haig in hearings:[167]

Q. If we go to the next page, please, that document lodged with the Australian Securities Commission would suggest that you became a director of [Business X] on 13 September and took an allotment of 20,000 shares on 13 September 1994?
A. It would appear so, yes.

Q. That date, 13 September 1994, was after $20,000 had been provided to Mr Peter Sim through a cheque drawn on your husband's account for $20,000?
A. That may be so. I don't know.

Q. What happened, I suggest, is this: that your husband drew a cheque for $20,000 and gave it to Mr Sim; then there were these transactions, the transfer of shares and the appointment of you as a director dated 13 September 1994; then subsequently, on 20 September 1994, a cheque for $60,000 was drawn payable to Barbara Sim. That's the chronology of events relating to those three things?
A. Okay.

4.24 Although Australian Securities Commission documents recorded a transfer of shares to Clare Haig, she gave evidence that she had no recollection of receiving shares in Business X:[168]

Q. In relation to the shares that were set out in that document signed by Mrs Sim – do you recall the Australian Securities Commission document - in relation to the shares, did you receive those shares?
A. I don't have a memory of receiving them, no.

[166] Exhibit 38B.
[167] PIC Transcript CEM Haig 13 April 1999 p 290.
[168] PIC Transcript CEM Haig 13 April 1999 p 292.

Q. I beg your pardon?
A. I have no memory of receiving them.

Q. Did you sign a receipt for having received a share certificate number 4 for 20,000 shares in the company [Business X]?
A. I don't remember.

4.25 Counsel Assisting then questioned Clare Haig about documents produced on subpoena in the Supreme Court proceedings involving Superintendent Care and Ausfarm.[169] Those documents included an application for shares and a share certificate signed by Clare Haig. Clare Haig gave evidence that she still had no recollection of signing that document for the receipt of shares.[170]

4.26 Clare Haig was then shown a letter dated 5 January 1995 from Knight Frank Hooker NSW Pty Limited addressed to Peter Sim, which recorded Clare Haig as a prospective guarantor of the lease for Business X. She gave evidence that she had not seen this document before, but maintained that at that stage she still held the belief that the money she had lent to the prawn farm would be returned and could then be invested in Business X.[171]

4.27 Clare Haig resigned as a director of Business X by letter dated 18 November 1994. Clare Haig gave evidence that she composed and faxed that letter to the accountants Magoulias and Associates Pty Limited in May 1996 after receiving information that she still remained on record as a director of Business X.[172]

4.28 Clare Haig gave further evidence that she had previously advised Peter and Barbara Sim in November 1994 of her resignation as director of Business X, but ascertained at a later date that this advice had not been actioned. She further maintained that she resigned because she and her husband had no further funds to pay into Business X and neither could see themselves getting any return from the business. She did not, however, agree that the arrangement at that stage appeared to be a poor investment:[173]

Q. Did you write that when you learned that you were recorded as a director of [Business X] still as at that time?
A. I was very surprised to learn that I was still written up as a director, because I had given direction to Mr and Mrs Sim as - or on about 18 November 1994 of resignation from that position. I believed that they had followed up on that and that I was no longer a director.

[169] PIC Transcript CEM Haig 13 April 1999 p 292.
[170] PIC Transcript CEM Haig 13 April 1999 pp 292-293.
[171] PIC Transcript CEM Haig 13 April 1999 pp 295-296.
[172] PIC Transcript CEM Haig 13 April 1999 p 293.
[173] PIC Transcript CEM Haig 13 April 1999 pp 293-294.

Q. Why did you resign in November 1994?
A. Well, there may have been a number of reasons. I can't quite recall exactly why that would be, but there were a number of things going on. We had given the money to Mr Sim to pay to the prawn farm, so therefore we didn't have any extra money to go into the [Business X] business with them. It didn't look at [sic] if we were going to be getting any of that money back in the short or possibly the long term and I didn't feel it would be right or correct or possible for me to be a director when there was no money to invest in the photo lab, and I think I was coming to the understanding in my own mind that it wasn't going to be.

Q. Were you coming to the understanding in your mind that it wasn't going to be because the photo lab did not appear to be such a good investment at that time?
A. No, sir. At that stage, I'm not quite sure, but I don't think that there had been any decision exactly where that photo lab was going to be positioned.

4.29 Clare Haig also gave evidence that it was her belief that Peter Sim had not removed her name as a director from the register because, at that time, he was obligated by law to list two directors.[174]

4.30 Barbara Sim, Peter Sim's wife at the time of these transactions, gave evidence to the Commission regarding the shareholding in Business X. Her evidence was that her husband allocated Clare Haig 20,000 $1 shares in Business X. This shareholding was also evidenced by Australian Securities Commission documents:[175]

Q. Then if I could take you to the next page, again it relates to [Business X]. The next page sets out the shareholding by yourself of 130,000 shares and then the shareholding by Clare Elizabeth Mary Haig of 20,000 shares and then shareholdings by those other two people to whom you referred of 40,000 shares and 10,000 shares respectively; do you see that?
A. Yes.

Q. That being the total shareholding or the total allotment of shares in that company. If I could take you now to the next page. Do you see there that that notification was signed by you on 13 September 1994 and signed by you as a director of the company?
A. Yes.

Q. Clearly you knew about those two sets of facts, the appointment of directors and the appointment of shareholders, or the allocation of shares, I should say; is that right?
A. I don't actually personally take note of them. Peter arranges it and just gets me to sign them.

[174] PIC Transcript CEM Haig 13 April 1999 pp 294-295.
[175] PIC Transcript B Sim 14 April 1999 p 337.

Q. You knew about it at the time, didn't you?
A. Yes.

4.31 Barbara Sim told the Commission that Business X was set up or used by her husband in order to assist him raise funds for the prawn farm. Barbara Sim maintained that as security for the funds raised, Superintendent Care and Clare Haig were granted shares in Business X, with the funds going directly into the prawn farm:[176]

Q. There was some arrangement made or reason why shares were allocated to Clare Haig, is that right, and a reason why she became a director of the company?
A. Mmm-hmm.

Q. Which you knew about at the time?
A. Yes.

Q. Did that have to do with the investment of some money by Clare Haig?
A. Well, I've told you this the last time I was here, too, that my understanding was that David Care was loaning the money to the farm and if at some stage the money don't [sic] come back, it was being guaranteed by a share in the photo shop. That was my understanding of it, but I don't know if there was more to it.

Q. Was the situation as you understood it that David Care was going to provide some money to your husband that he would use in the prawn farm?
A. That's right.

Q. Or for the prawn farm?
A. That's right.

Q. But he wasn't prepared to lend it directly to the prawn farm?
A. Yes.

Q. It was done by taking some shares in the photo lab business?
A. Yes.

Q. Was that the reason why the company [Business X] was set up?
A. Yes.

Q. To take over the business?
A. That's right.

Q. Was it set up to enable shares to be issued —
A. Yes.

[176] PIC Transcript B Sim 14 April 1999 pp 338-339.

Q. — or sold to enable money to be obtained for the prawn farm?
A. Yes.

Q. Was that the reason why Clare Haig became a director of the company as well as a shareholder?
A. That's how I understood it.

Q. Did you understand that shares were to be issued in the company in respect of the money provided by David Care?
A. (Witness nodded).

Q. Which money was intended to go to the prawn farm?
A. That's right.

Q. Before that company was set up, was money from time to time that had been earned or gained by [Business X], or the predecessor of [Business X], the photo lab, used by your husband from that business to assist the prawn farm business?
A. All the time.

Q. Was it a drain on the photo lab business?
A. Yes.

Q. Is that what happened?
A. Yes.

4.32 Barbara Sim gave further evidence in relation to a document dated 7 October 1994 which was headed 'Fax Transmission'. This document, addressed from her husband, Peter Sim, was to the then Managing Director of the prawn farm, S Y Chow and opened with the following sentence:[177]

> I have to consider carefully your latest proposal to 'takeover' the management of Ausfarm. If I think your action is hostile than [sic] we have to review the following considerations if I am to hand over the management of this farm to you:-

4.33 This letter then contained a request from Peter Sim that he be repaid salary owing to him along with loan funds. The list of loans contained therein omitted any reference to Superintendent Care and Clare Haig. At paragraph four however, Peter Sim stated 'my recent injection of $80,000 from sales of shares of my lab must be repaid.'[178] Barbara Sim gave the following evidence in relation to this document:[179]

Q. The lab your husband was referring to there, that was a short way of describing the photo lab shop?
A. Yes.

[177] Exhibit 50B.
[178] Exhibit 50B.
[179] PIC Transcript B Sim 14 April 1999 p 352.

Q. The [Business X] shop; is that right?
A. Yes.

Q. You agreed with me earlier that, in relation to those Securities Commission documents, they set out shareholdings that were held in [Business X]; there were no other shareholdings that weren't registered?
A. No, I only know of —

Q. You only know of those ones that I showed you?
A. Yes.

Q. Apart from the moneys, the $80,000 that you now know about provided by Mr Care, did anyone else buy $80,000 worth of shares in [Business X], or pay $80,000 for shares in [Business X]?
A. No, I don't think so.

ASSESSMENT

4.34 The evidence of Superintendent Care and Clare Haig is that Clare Haig was initially to invest $20,000 and lend $60,000 to Business X, however, they were persuaded by Peter Sim to redirect those funds into Ausfarm.

4.35 The funds were transacted in a cheque for $20,000 made out to Peter Sim and a further cheque for $60,000 made out to Barbara Sim. The Commission also notes that of the first eight months of interest paid on the loan, six payments were transacted in cheques drawn on an account of Business X, one on an account of Peter and Barbara Sim, and one on an account of Everything Travel Pty Limited. No interest payments were made directly by Ausfarm. Superintendent Care explained that the director of Everything Travel, one of the businesses from which he received repayments, was also a director of Ausfarm. Superintendent Care had been examined in Supreme Court proceedings concerning the quantum of the interest payments made to him which, at $600 per month, equated to a monthly interest payment of 12 per cent on $60,000 rather than $80,000. Superintendent Care claimed that the reason for this anomaly was that $600 was all he required to cover his loan expenses.

4.36 Superintendent Care and Clare Haig maintained that the cheque for $60,000 was not made payable to Ausfarm but to Barbara Sim because Peter Sim was not available on 20 September 1994 to collect the money. Barbara Sim's evidence was that it was Peter Sim who drove her to the bank.

4.37 An intention on the part of Superintendent Care and Clare Haig to invest in Business X was in evidence in the loan application stating the loan was for Business X. There were also share documents relating to Business X signed by Clare Haig and Clare Haig was appointed as a director of Business X. There was no evidence of direct consideration paid by

Superintendent Care and Clare Haig in exchange for the shares in Business X. Barbara Sim's evidence was that Superintendent Care and Clare Haig were given shares in Business X as security with the funds going directly into the prawn farm.

4.38 The 20,000 shares allotted to Clare Haig in Business X and her appointment as a director occurred on 13 September 1994. On the following day, 14 September 1994, Clare Haig sought the loan for $60,000. An application for funds stated that the money was for the purpose of purchasing a share in a photo shop, [Business X location] for $80,000. The sum sought was $60,000 with $20,000 having already been withdrawn from the Police Credit Union and paid to the credit of the prawn farm.

4.39 Superintendent Care and Clare Haig claim that the arrangement to invest in Business X changed, and that they invested $80,000 in the prawn farm with an option to take a further 30 per cent investment in Business X. Although the cheques amounting to $80,000 made out to Peter Sim and Barbara Sim were directed into Ausfarm by Peter Sim, the ensuing interest payments on the loan were not made by Ausfarm but by Peter Sim, Barbara Sim, Business X and Everything Travel.

4.40 It is the view of the Commission that the loan application was consistent with an understanding on behalf of Superintendent Care and Clare Haig that they were obtaining money to invest in Business X. Those funds were then diverted in the short term pursuant to an agreement to assist Ausfarm on the strength of a personal guarantee from Peter Sim that provision of the funds would guarantee the later availability of shares in Business X. The allocation of the 20,000 shares in Business X could have been a significant indication of good faith to Superintendent Care and Clare Haig which then affected a decision to agree to the diversion of the further funds in exchange for a guarantee of further shares in Business X.

4.41 The $60,000 was then lent against the security of a 10 per cent shareholding in Business X, with an option to increase the shareholding by a further 30 per cent. The reference in Peter Sim's letter to S Y Chow to his [Peter Sim's] recent injection of $80,000 is consistent with being a reference to the moneys provided by Superintendent Care and Clare Haig. This letter suggests that Peter Sim believed that Superintendent Care and Clare Haig had lent money to him personally in exchange for his own personal guarantee with Peter Sim then, in turn, lending the funds to Ausfarm.

4.42 This inference was also supported by the payments made by Peter Sim and Business X of interest payments due on the loan, save for the one immediately prior to the dispute as to repayment of the capital sum. The quantum of the interest payments, however, at $600 equated to a monthly interest payment of 12 per cent on a loan of $60,000 rather than $80,000.

EVIDENCE HEARD REGARDING A WRITTEN AGREEMENT CONCERNING AN INVESTMENT OPTION WITH BUSINESS X

4.43 There was conflicting evidence presented to the Commission by Superintendent Care as to whether the agreement regarding an option to invest in Business X was ever the subject of documentation. Superintendent Care asserted that there was a verbal agreement:[180]

> Q. Sir, we'll go on with this option. I asked you the next question:
> So there was an option, was there, to take 40 per cent in [Business X] at some stage?
> I'll read that again to you:
> So there was an option, was there, to take 40 per cent in [Business X] at some stage?
> Your answer was:
> Not a formal option, but a verbal option.
> I asked you this question:
> Q. A verbal option?
> A. Yeah.
> Do you understand those questions and answers?
> A. Say it again, please?

> Q. All right. After you gave that lengthy answer in which you said "would have meant that we would have been able to exercise that option to take over the 40 per cent, or my wife would have, if she was happy with where the shop was", I asked:
> Q. So there was an option, was there, to take 40 per cent in [Business X] at some stage?
> A. Not a formal option, but a verbal option.
> Q. A verbal option?
> A. Yeah.
> A. That's correct, but the process of events were we spoke to Sim about the whole deal. Initially he was going to do that and put the option - and we were going to lend the money, as we've said all along. But then he approached my wife and I and then it didn't eventuate because the money went to the prawn farm.

4.44 In other evidence, Superintendent Care stated that he and his wife were nervous about investing in the prawn farm and to assist them, Peter Sim provided written confirmation of the agreement. He recalled the agreement was between Clare Haig and Barbara Sim but could not recall whether the document was given to him or to his wife. Superintendent Care did not have a copy of the agreement and did not know whether his wife had one or not:[181]

> Q. Was that option in writing, the convertible option in writing?
> A. Peter - when we handed the money over, Peter Sim said, "Look, I'll make you feel better. I know that you're all concerned about

[180] PIC Transcript DH Care 31 March 1999 pp 184-185.
[181] PIC Transcript DH Care 31 March 1999 pp 140-141.

this", and he put some agreement in writing between, I think, my wife and Barbara, I think it was.

Q. And was that an agreement in writing between them in relation to the purchase of shares, the initial holding of shares, the initial proposed holding of shares of 20 per cent?
A. Look, I can't recall whether it was that or just the latter thing - the latter loan.

Q. Was that done at the time the money was paid —
A. Look, I can't —

Q. — that is, that Mr Sim wrote out an agreement between your wife and Barbara Sim?
A. Well, he said - he said, you know, "You're all very nervous about this and what we are going to do, I'll give you something in writing to make you feel better", I suppose, "so you know what's going on".

Q. All right. Did he do that? Did he give it to you in writing?
A. I don't know whether he gave it to me or whether he gave it to my wife. But I think there was something he wrote out, yeah.

Q. Do you have a copy of that?
A. No.

Q. Does your wife have a copy of that?
A. I don't know.

Q. When was that document provided by Mr Sim to your wife?
A. Well, it would have been after we gave him the money for the prawn farm because he said, you know, "To make you feel less nervous about the whole thing, I'll give you that document".

Q. And this was a document setting out the option for the shares?
A. I think so, yes.

4.45 At another point in hearings, Superintendent Care described the document as a 'letter of comfort'. He maintained that the letter of comfort was ineffectual because the money had been lent to Ausfarm:[182]

Q. Sir, I then asked you some questions about the prawn farm. I asked you this question at page 32. It followed on from those questions that I asked you a moment ago, or quoted to you a moment ago:
Q. At the time you say you lent the money to the prawn farm, was there some sort of agreement that there be an option to purchase shares or receive shares —
A. No, we were two friends sitting around talking about a business with a person who at that stage I thought was reasonably honourable.
A. Yes.

[182] PIC Transcript DH Care 31 March 1999 pp 185-186.

Q. The next question was, by me:
Q. Was there an agreement that you would take shares in [Business X] in lieu of the moneys if they were not repaid?
Your answer was:
I don't think so, no.
A. Yes.

Q. Today you told us that there was an option given?
A. There was a letter of comfort given.

Q. Which gave an option to purchase shares?
A. Yes, but it was a letter of comfort that had no effect because the money which had been lent had been lent to Sim on behalf of Ausfarm Aquaculture.

4.46 Counsel Assisting the Commission then examined Superintendent Care regarding the whereabouts of the 'letter of comfort', which Superintendent Care said Peter Sim had given to him or his wife relating to the option to purchase shares. Superintendent Care's evidence was that he had left this letter at Peter Sim's premises one day when he'd visited him to discuss the matter of the loan. He explained that he had become angry and left the 'letter of comfort' there because he believed it was no longer of any value as he had changed his mind about investing in Business X.[183]

4.47 On two occasions during hearings, Superintendent Care gave evidence that the option to take up shares in Business X was to come into effect if the money was not repaid to them by the prawn farm in six months time.[184] He later had trouble recollecting the contents of the agreement, recalling only that it granted the option to purchase shares in Business X.[185]

4.48 Barbara Sim was also examined concerning the existence of a written agreement setting out an option or security arrangement between the parties involved. Barbara Sim's evidence was that her knowledge of the arrangement did not arise from any direct involvement in organising the loans or running the business, but came from listening to conversations:[186]

Q. A few minutes ago you were describing a sort of arrangement that there was some sort of option or security for the loan being provided. Was there ever any document evidencing that, any written agreement, between Mr Care and Mr Sim or Mr Care and Ausfarm or Mr Care and [Business X] setting out some sort of option or security agreement?
A. No, not that I am aware of.

[183] PIC Transcript DH Care 31 March 1999 pp 160 & 181.
[184] PIC Transcript DH Care 31 March 1999 pp 144, 150-151.
[185] PIC Transcript DH Care 31 March 1999 p 161.
[186] PIC Transcript B Sim 14 April 1999 pp 350-351.

Q. All right. Was there any such document between Mrs Haig, Mr Care's wife, and [Business X] or Ausfarm or your husband?
A. No. I'm telling you from not actually having direct conversation with Peter Sim on this matter, or David Care or Clare Haig on this matter - from just being there at times sitting around with groups and listening to the conversation. That is how I understood that $60,000. As to how it exactly happened or was meant to happen or what happened, I'm –

Q. I take it because you were weren't giving input –
A. Yes.

Q. — you weren't involved in organising any of these loans; is that right?
A. That's right.

EVIDENCE OF A RECEIPT FOR THE LOAN

4.49 In evidence before the Commission, Superintendent Care maintained that prior to the expiration of six months from the time of his loan to Ausfarm, he had inquired about recovering the money.[187] With this aim, Superintendent Care issued a notice under the Corporations Law demanding the return of the money. On a number of occasions, Ausfarm requested that Superintendent Care produce evidence that he had made the loan to Ausfarm. Superintendent Care produced cheque butts, copies of cheques and deposit documents but was not able to produce other substantive evidence:[188]

Q. So apart from the cheque butts, or the copies of the cheques that established that those cheques had been drawn from your account on the credit union or drawn from the loan to the Commonwealth Bank, apart from the copies of the cheques and the deposit documents that related to them, there were no other documents produced by you evidencing the loan?
A. No.

Q. And you had advised the company in writing that there were no formal documents evidencing the loan produced?
A. There was no formal loan document, I think it was, yeah.

Q. And you told them that there were no documents, leaving aside the cheques butts as you've described them, copies of the cheques —
A. Yes.

Q. — there were no documents?
A. I think I said no formal documents. They were pressing for a - what do you call it? - a deed. They wanted a deed and a formal loan document, otherwise they weren't going to pay.

[187] PIC Transcript DH Care 31 March 1999 p 150.
[188] PIC Transcript DH Care 31 March 1999 p 152.

4.50 Superintendent Care was shown a letter dated 2 May 1995 which he confirmed he had written to Mr Y T Quek, the managing director of Ausfarm in Melbourne.[189] This letter regarding 'Loans advanced to Ausfarm Aquaculture Pty Ltd by David CARE.' referred to loans totalling $80,000 and repayments made by Peter Sim.[190] It also stated 'The agreement was verbal only.'[191] Superintendent Care conceded that this letter to Mr Quek contained a paragraph stating that there was no documentation signed between Peter Sim and himself regarding the loan.[192] The relevant paragraph read:[193]

> There was no documentation signed between myself, Peter Sim or the farm. The money was advanced to Peter Sim as managing director or Ausfarm Aquaculture Pty Ltd as a result of his personal representations and the Notice to Shareholders.

4.51 Superintendent Care then gave evidence to the Commission which varied from his claims in the letter to Mr Quek. His account, in this instance, was that he did have documentation concerning the loan in the form of a receipt. Superintendent Care's evidence was that his letter to Mr Quek was intended to refer to formal loan documents. He stated he had been informed by Ausfarm's solicitors, Ogge and Leigh, that Ausfarm would not pay him unless he produced a deed and formal agreement:[194]

> Q. You told us in relation to that letter that you wrote to Mr Quek that there were no formal loan documents?
> A. That's correct.
>
> Q. That differs, doesn't it, from what you said in that letter to Mr Quek that there was no documentation?
> A. No, I'd been talking - when I wrote that, I was talking about formal loan documents. I'd been in touch with Ogge & Lee, I think the solicitors were, and they told me that they weren't going to pay anything unless there was a deed and a formal agreement.

4.52 Superintendent Care gave evidence that from May 1995 until September 1995 he endeavoured to recover the money he had loaned to Ausfarm. He maintained to the Commission that in September 1995, following the Ausfarm Annual General Meeting, the interest payments he had been receiving ceased.[195] Ausfarm held its 1995 Annual General Meeting on

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189 PIC Transcript DH Care 31 March 1999 p 153-154.
190 Exhibit 24B.
191 Exhibit 24B.
192 PIC Transcript DH Care 31 March 1999 pp 152-153.
193 Exhibit 24B.
194 PIC Transcript DH Care 31 March 1999 p 161.
195 PIC Transcript DH Care 31 March 1999 pp 149-150.

23 September 1995.[196] Minutes for that meeting recorded that Superintendent Care was present and included the following paragraphs:[197]

> 1.9. Mr. C. P. Chew asked if the list under "Other Loans" (page 12 of F/R) was transferred from previous year's statements and that they are in the process of being verified. The accountant confirmed that they were. Mr. C. P. Chew then voiced concern that interest payments had been made to certain individuals in this list when these loans have not been verified. Mr. John Kenny replied that interest payments had been made by him personally and he will be personally responsible for all interest paid until these loans are verified.
>
> 1.9.1. Mr. David Care then said that he had provided a loan to Ausfarm and has the evidence to prove it. He was supported by Mr John Kenny and the accountant. Mr C. P. Chew suggested that this evidence be given to the company's lawyers and that the company should proceed according to legal advice. This was accepted.

4.53 Superintendent Care gave further evidence to the Commission that a receipt had been held at his solicitor's office, and he had not been able to produce it for Mr Quek, and had therefore failed to mention it in his letter:[198]

> Q. What you had was a receipt for the loan of the moneys; is that right?
> A. That's correct, but I didn't have the receipt at that stage.
>
> Q. Well, why didn't you have the receipt at that stage?
> A. Because it was in Mr MacElbing's, my solicitor, office.
>
> Q. You knew that?
> A. No, I didn't.
>
> Q. Well, had you forgotten about the existence of this receipt?
> A. No —
>
> Q. When you wrote the letter?
> A. No, no, I certainly didn't forget about it. I knew it had been - I suppose "executed" is the word, but I couldn't find it.
>
> Q. Why didn't you tell Mr Quek in your letter that Mr Sim had executed a receipt from Ausfarm, or on behalf of Ausfarm, for the money lent to Ausfarm by you?
> A. Because I couldn't produce the receipt.
>
> Q. Well, you say you hadn't forgotten about it?
> A. No.

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196 Exhibit 70B.

197 Exhibit 70B.

198 PIC Transcript DH Care 31 March 1999 pp 161-162.

Q. Your letter said there was no documentation?
A. Referring to the formal loan agreement.

Q. But you didn't say that in your letter; you said there was no documentation?
A. That's correct.

Q. You agree, don't you?
A. Yes, I do.

Q. You, however, say that you knew that you had some documentation in the form of a receipt executed on behalf of Ausfarm?
A. Yes.

Q. And that was some documentation evidencing your loan to Ausfarm, was it not?
A. That's correct.

4.54 Superintendent Care was further questioned as to why he failed to mention in his letter to Mr Quek, the existence of what may have been the only document which would assist him in recovering the money from Ausfarm. Superintendent Care's response was that he knew of its existence but was dealing with a hostile group of people. He could not explain why any reference to this document was omitted from his letter to Mr Quek:[199]

Q. Nowhere in your letter did you make any reference to a receipt having been executed on behalf of the Ausfarm company by Mr Sim?
A. That's correct.

Q. How do you explain that, sir?
A. Well, I was trying to get my money back and I was dealing with a very hostile group of individuals. I was caught between a really - a Chinese shootout, I suppose.

Q. Sir, you were dealing with a group of hostile individuals and you'd been told in no uncertain terms, in writing and in your conversation, that they wouldn't pay any moneys to you on account of a loan unless you proved it?
A. That's correct.

Q. Unless you proved it by documents?
A. That's correct. However, I was being told different things by Quek and also by SY Chow. As a matter of fact, Chow had offered - and that came up in evidence too - to pay me back $10,000.

[199] PIC Transcript DH Care 31 March 1999 pp 162-163.

Q. Leaving aside that, sir, can you now answer the question that they had indicated to you in no uncertain terms, in writing and in conversation, that they wouldn't pay any moneys to you on account of a loan unless you proved it by documents?
A. That's correct.

Q. One of those documents was something that you couldn't put your hands on at the time, but you knew about?
A. Yes.

Q. And you hadn't forgotten?
A. No, that's true.

Q. And you chose not to tell them about that document in that letter in which you gave detailed particulars?
A. That's correct.

4.55 Superintendent Care then gave evidence with regard to the misspelling of the company name Ausfarm on the receipt which appears incorrectly spelt as 'Austfarm'. Superintendent Care explained that this was a typographical error which arose because the receipt was prepared by his solicitor. His evidence was that the receipt was prepared at his request on a date after 20 September 1994.[200] This evidence also indicates that the receipt was prepared on a date after the second and last amount, which it was claimed formed part of the loan, being an amount of $60,000, was transacted on 20 September 1994.

4.56 Superintendent Care could not recall whether the request to his solicitor was made by telephone or during a consultation or whether his solicitor or one of his solicitor's staff gave the receipt to him. He also gave evidence that he had not received an account for the preparation of the receipt. [201]

4.57 Superintendent Care was then questioned regarding the recovery of the receipt. His response was that it was some 12 months after he gave instructions to his solicitor to prepare the receipt that he ascertained its whereabouts. He explained that Mr MacElbing, the solicitor Superintendent Care instructed regarding the recovery of the money, informed him that he'd found the receipt amongst Superintendent Care's documents:[202]

Q. Sir, what were the circumstances of you learning that the receipt dated 20 September 1994 was in the hands of your solicitor? Describe those circumstances, what happened?
A. Well, I went over to Mr MacElbing and we started to draw up the documents in terms of the action in the Supreme Court and Mr

[200] PIC Transcript DH Care 31 March 1999 pp 172-173.
[201] PIC Transcript DH Care 31 March 1999 p 173.
[202] PIC Transcript DH Care 31 March 1999 p 181.

> MacElbing indicated - informed me that he'd found the receipt in my documents filed at his office.
>
> Q. When you went to consult him for the purpose of drawing up documents?
> A. Yes.
>
> Q. When did that take place?
> A. That would have been probably, oh, in October, I think, when I first went across there and - I'd have to have a look at my documents, about October, I should imagine.
>
> Q. About October 1995?
> A. Yes, that's correct.

4.58 Mr MacElbing also gave evidence to the Commission. Mr MacElbing qualified his evidence by informing the Commission of the unreliability of his memory following a period of three months in a coma following surgery in 1996.[203]

4.59 Mr MacElbing's account regarding the origins of the receipt differed from that given by Superintendent Care. Mr MacElbing maintained that it was unlikely that he would have prepared the receipt.[204] He stated: [205]

> …If it is a receipt which is an acknowledgement of a loan, one wants to have the full terminology in there, and a lawyer would tend to write down more of an abbreviation of a loan document as opposed to a receipt of this nature.

4.60 He also gave evidence regarding two pages of notes he had handwritten relating to his consultation with Superintendent Care.[206] He stated that the notes related to a consultation on 29 September 1995, which was when Superintendent Care sought advice with regard to taking action to recover the money.[207]

4.61 Mr MacElbing stated that the second page of notes may have indicated that Superintendent Care produced a balance sheet relating to Ausfarm Aquaculture Pty Limited as at 30 June 1995.[208] This page also bore the words 'receipt held MacElbing & Associates'.[209] Mr MacElbing's evidence was that this perhaps related to the receipt dated 20 September 1994, which was subsequently annexed to an affidavit sworn by

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[203] PIC Transcript IJ MacElbing 1 April 1999 p 210.
[204] PIC Transcript IJ MacElbing 1 April 1999 pp 210-211.
[205] PIC Transcript IJ MacElbing 1 April 1999 p 211.
[206] Exhibit 30.
[207] PIC Transcript IJ MacElbing 1 April 1999 pp. 206-207.
[208] PIC Transcript IJ MacElbing 1 April 1999 p. 208.
[209] Exhibit 30.

Superintendent Care on 8 December 1995.[210] Mr MacElbing's evidence regarding this notation was as follows:[211]

> A. Well, it signifies that there is some type of acknowledgement of that debt held, whether as from that moment onwards or whether it had been there for some time past, that was held in or by our firm.

4.62 This reference to a receipt held by Mr MacElbing's office on 29 September 1995 was dated six days after Ausfarm had held its 1995 Annual General Meeting on 23 September 1995. Minutes of this meeting recorded Superintendent Care's attendance and documented discussion regarding the loan.[212]

4.63 Mr MacElbing was questioned as to whether he recalled receiving instructions from Superintendent Care to draw this receipt. His response was that if he had received that request he would not have drawn a document of this nature:[213]

> Q. Sir, do you have any recollection of ever receiving any instructions from Mr Care to draw a receipt between Ausfarm Aquaculture Pty Limited and Mr Care?
> A. I can't answer that question that I do recall ever receiving any instructions from him to draw a receipt. If I would have, I would have followed the procedure that I just explained by way of a loan document as opposed to a half-arsed receipt, pardon me using that expression.
>
> Q. The document that you had in front of you a moment ago is the document you are describing, perhaps fairly, as a half-arsed receipt?
> A. The document I have got in front of me, yes, half-arsed receipt and loan acknowledgement. Perhaps it's more of a loan acknowledgement than a receipt, as I look at it.
>
> Q. All right. It's not something that you would have been proud of drawing as a solicitor of your experience?
> A. Well, at that time I would have had over 30 years experience in general law as well as particularly criminal law. It would have been most unlikely that I would have lent myself to drawing a document of this nature. It is a possibility, but remote.

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[210] PIC Transcript IJ MacElbing 1 April 1999 pp. 208-209.
[211] PIC Transcript IJ MacElbing 1 April 1999 pp. 208.
[212] Exhibit 70B.
[213] PIC Transcript IJ MacElbing 1 April 1999 pp 211-212.

4.64 In further evidence, Mr MacElbing, stated that it was possible that a member of his staff may have created the document if requested to do so by a client:[214]

> Q. Sir, is it possible that a member of your staff in your practice in and before your illness could have drawn such a document on behalf of a client?
> A. Only if directed by the client; meaning, if the client would have said, "Would you mind" or "would one of the girls type out" and would have handed a draft copy and said "Would you please type this out for me".
>
> Q. What you are saying is that one of your staff, if it be a typist or receptionist or secretary, would not have drafted a document, but might have typed up something that had been drafted by a client?
> A. If they had been asked to.
>
> Q. That's something that possibly could have happened?
> A. That is always a possibility. Clients come in with letters to various people that they have written themselves and, rather than go through the formality of opening a file or seeing the principals of the firm, it is not unusual that they see [sic] could this or that be done. That is not so exceptional, particularly where the client has been a client for some time. But of his or her own accord I could not see a member of the staff entertaining drawing a document of this nature.

4.65 A letter dated 10 October 1995 from MacElbing and Associates addressed to the Secretary of Ausfarm sought repayment of the funds on behalf of Superintendent Care. The letter stated:[215]

> We are further instructed that no formal loan documentation was drawn up but we are in possession of a receipt acknowledging payment of the advance by Mr. Care which is signed by Mr. Peter Sim on behalf of your company. The receipt has been held on Mr. Care's general file by us, it is dated 20 September, 1994 and we enclose a copy herewith.

4.66 In hearings, Mr MacElbing was examined by Counsel Assisting the Commission concerning the files maintained by the firm for business concerning Superintendent Care.[216] These files had been produced for Commission hearings in response to notices. Mr MacElbing was questioned concerning the fact that no document called a 'general file' had been produced for the Commission.[217] Mr MacElbing was unable to state exactly what was being referred to as a 'general file' in his letter of

[214] PIC Transcript IJ MacElbing 1 April 1999 p 212.
[215] Exhibit 31.
[216] PIC Transcript IJ MacElbing 1 April 1999 pp 221-222.
[217] PIC Transcript IJ MacElbing 1 April 1999 pp 221-222.

10 October 1995.[218] He was then further examined concerning the existence of a general file:[219]

> Q. Some further documents have been produced, sir, by the firm that would indicate that no file was ever opened by your firm and described as a general file, or named as a general file in the firm from 1980?
> A. Well, I —
>
> Q. Would that mean it must therefore have been some other file that had —
> A. It could well be —
>
> Q. — a relationship with a specific transaction?
> A. It may well be that whichever of Mr Care's files had not been put away, could well have been used as a receptacle for the copy of the letter that I wrote on that day, and that, I would presume, would be the file from which the receipt would have been put in my hand.

4.67 Mr Mednis, of MacElbing, Mednis and Associates acted in the Supreme Court matter once instructions were taken by Mr MacElbing from Superintendent Care.[220]

4.68 Mr Mednis was examined by the Commissioner concerning the significance of the receipt to the proceedings before the Supreme Court.[221] His response was that the receipt became evidence as a result of an issue arising between the parties, relating to whether Superintendent Care had advanced the money to the company, Ausfarm, or to individuals. One reason for this issue arising was that the cheques had been made payable to individuals:[222]

> THE COMMISSIONER: I'm sorry, can I just ask something?
> Q. Do you know whether, proceeding on what you've said about your understanding that it [the receipt] was produced to the court and became an exhibit, part of the evidence so to speak —
> A. Yes.
>
> Q. — was that because of a real issue between the parties that required proof in the form of the tender of such a document, or was it in the nature of what I'll refer to as a technical aspect of the proceedings, but not in relation to a real issue between the parties?
> A. Well, it was in relation to a real issue.

[218] PIC Transcript IJ MacElbing 1 April 1999 pp 221-222.
[219] PIC Transcript IJ MacElbing 1 April 1999 p 222.
[220] Exhibit 74.
[221] Exhibit 74.
[222] Exhibit 74.

Q. Can you tell me what that real issue was?
A. The issue was basically whether Care had advanced moneys for the benefit of the company and it's my recollection that the cheques were actually drawn in favour of individual persons, not drawn directly in favour of a company, and there was an issue as to whether they were - or those payments represented loans to those persons or not. That was the defendant's case, as I understood it, and that caused some concern.

Q. So it was a significant document. It was tendered in evidence because it related to what, according to your memory, was a significant and real issue?
A. Yes.

ASSESSMENT

4.69 Superintendent Care advised the Managing Director of Ausfarm, in a letter dated 2 May 1995, that there was no documentation to substantiate the loan. Evidence was, however, tendered in Commission hearings referring to the existence of a receipt in relation to Ausfarm in Mr MacElbing's handwritten notes dated 29 September 1995.[223] This was dated six days following the Annual General Meeting of Ausfarm which took place on 23 September 1995.[224] At this meeting Superintendent Care had claimed he had evidence of his loan. He was advised to produce his evidence to the company's lawyers and that they would then proceed according to legal advice.[225]

4.70 The receipt purported to acknowledge an $80,000 loan to Ausfarm via the then Managing Director of Ausfarm from Superintendent Care. The Commission is of the opinion that it is highly likely that Superintendent Care would have mentioned this receipt in his letter to the Managing Director of Ausfarm, on 2 May 1995, had it existed at that time.

4.71 Superintendent Care's evidence that he did not mention the receipt in that letter because he did not then have it in his custody ought to be rejected, on the basis that it was so material to his claim that it is implausible he would not have made reference to it in the letter. Had the receipt existed, at the very least, Superintendent Care would have indicated to Ausfarm that Peter Sim had acknowledged the loan in writing. Failing to mention the receipt on the basis that it did not amount to 'formal loan documentation' is equally unlikely.

[223] Exhibit 30.
[224] Exhibit 70B.
[225] Exhibit 70B.

4.72 There is no evidence of the existence of this receipt until 29 September 1995. The terms of Mr MacElbing's file note of that date lend no support to Superintendent Care's assertion that the receipt was drafted by Mr MacElbing or Mr Mednis. The Commission is of the view that it is more likely that the receipt was prepared in order to satisfy Ausfarm's requirements for evidence that Superintendent Care had provided a loan to Ausfarm.

AFFIDAVIT TO THE SUPREME COURT IN THE MATTER OF AUSFARM AQUACULTURE PTY LIMITED V. DAVID HILLMAN CARE

4.73 Superintendent Care swore an affidavit in the Equity Division of the Supreme Court on 8 December 1995 in support of the Creditors Statutory Demand he had caused to be served on Ausfarm for the return of a sum of $80,000 plus interest less repayments.[226] Superintendent Care's evidence to the Commission was that this affidavit set out the circumstances and facts surrounding the loan to Ausfarm.[227]

4.74 Paragraph 8 of that affidavit read as follows:[228]

> On 20 September, 1994 a receipt acknowledging payment of the said sums totalling $80,000.00 was executed by Peter Sim on behalf of the plaintiff and by myself. Annexed hereto and marked with the letter "C" is a copy of the said receipt.

4.75 The account Superintendent Care had presented to the Commission departed from his assertion to the Court. During a private hearing on 24 March 1999, when examined by Counsel Assisting the Commission on the subject of his affidavit sworn 8 December 1995, Superintendent Care asserted that the receipt would have been executed by Peter Sim 'on or about 20 September'.[229] Upon further examination, Superintendent Care asserted that the receipt had been signed up to a month and a half after 20 September 1994.

4.76 During public hearings, Superintendent Care confirmed the evidence given by him in private including that he had instructed his solicitor to prepare the receipt relating to the $80,000 just after 20 September:[230]

> Q. When did you give him instructions about this document and its creation?
> A. It would have been just after 20 August.

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226 Exhibit 26B.

227 PIC Transcript DH Care 31 March 1999 pp 163-164.

228 Exhibit 26B.

229 Exhibit 88.

230 PIC Transcript DH Care 31 March 1999 p 173.

Q. Do you mean September?
A. September, I'm sorry, yes.

Q. You say that on your instructions to Mr MacElbing the document was prepared?
A. Yes.

4.77 Superintendent Care had also given evidence to the Commission that the cheque for $60,000 had been made payable to Barbara Sim because Peter Sim was not available to collect it on 20 September 1994.[231] This evidence differed from that in Superintendent Care's affidavit which asserted that Peter Sim and he had executed the receipt on 20 September 1994.

4.78 The receipt which is annexed to the affidavit incorrectly recorded the name of the prawn farm as 'Austfarm' rather than Ausfarm and bore the notation 'DATED: 20 September, 1994.'[232] Superintendent Care had informed the Commission that he had given instructions to his solicitor to prepare the document after 20 September 1994.[233] When questioned as to why the receipt bore the notation 'DATED: 20 September, 1994.', Superintendent Care stated 'Because that would have been the day upon which the loan was – actually became a loan.'[234]

4.79 Superintendent Care was examined by Counsel Assisting the Commission regarding inconsistencies apparent in the date of execution asserted in his affidavit to the Supreme Court and evidence he had given to the Commission. He conceded that the reference to the receipt in his affidavit should have read 'on or about 20 September 1994':[235]

Q. Then, in [paragraph] 8:
> On 20 September 1994 a receipt acknowledging payment of the said sums totalling $80,000 was executed by Peter Sim on behalf of the plaintiff and by myself.

A. Yes.

Q. "Annexed hereto and marked with the letter C is a copy of the said receipt"?
A. Yes.

Q. That's the receipt that we've been referring to that you did not mention in your letter to Mr Quek?
A. That's correct.

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231 PIC Transcript DH Care 31 March 1999 pp 136-137.
232 Exhibit 26B.
233 PIC Transcript DH Care 31 March 1999 p 173.
234 PIC Transcript DH Care 31 March 1999 p 174.
235 PIC Transcript DH Care 31 March 1999 pp 165-166.

Q. Okay. That paragraph 8 there you've told us, this Commission, is not correct?
A. Yes, that's correct. It was - I don't know, I must have misread it. It was on or about 20 September 1994.

Q. When you say "on or about 20 September 1994", do you say that it could have been on 20 September 1994?
A. I think it would be after 20 September 1994.

Q. Do you say that it was a day or two days or more than that after 20 September 1994?
A. Well, to the best of my recollection, it would be around about - within a month.

Q. Did you tell this Commission previously that it could have been up to a month and a half after 20 September 1994 when that receipt was executed?
A. Well, going off my memory, yes.

Q. Okay. By the way, that affidavit, in so far as it says, "On 20 September 1994, a receipt acknowledging payment" —
A. Yes.

Q. — "was executed by Peter Sim on behalf of the plaintiff and by myself", is not true?
A. It's incorrect, yes. It should have been on or about the 20th of September.

Q. And you say that about refers to a moveable feast that could be up to a month and a half after 20 September?
A. Yes, a month and a half after, yes.

4.80 Superintendent Care gave further evidence:[236]

Q. Sorry, the cheque that was made payable to Barbara Sim was made because Peter Sim was not available?
A. That's what we were told, yes.

Q. And therefore, if he was not available on 20 September to collect the cheque, he would not have been available to sign the receipt on that day?
A. Yeah, that's correct, yes.

Q. That would be the point, wouldn't it, that you [sic] couldn't be available to sign the receipt with you if he was not available to collect the cheque?
A. Yes.

[236] PIC Transcript DH Care 31 March 1999 pp 166-167.

4.81 Superintendent Care then admitted that he and Peter Sim had not signed the receipt on 20 September 1994, and that he had been aware of that fact when he swore the affidavit. He claimed that this was an oversight or a mistake:[237]

> Q. Where was Mr Sim on 20 September 1994?
> A. I don't know.
>
> Q. I see. But you do know that he was not available; is that what your evidence is?
> A. That's what Sim told us when he picked the cheque up, when he sent his wife to pick the cheque up, that he wouldn't be available.
>
> Q. All right. So it follows, therefore, does it, that if he was not available, he could not have signed the receipt on 20 September?
> A. Yes.
>
> Q. Okay. And you and he could not have signed it on 20 September if he was not available?
> A. Yes.
>
> Q. And, clearly, you knew, didn't you, that you did not sign it on 20 September?
> A. No, I think I signed it after 20 September.
>
> Q. And you knew that when you swore that affidavit?
> A. Yes, but I probably on an oversight filled that out.
>
> Q. Why would you on an oversight sign an affidavit on your oath that you and Peter Sim executed the receipt on 20 September?
> A. Well, I suppose I'm a human being, I make mistakes.
>
> Q. All right. Did you make that mistake deliberately?
> A. No.

4.82 Superintendent Care then asserted that he had made a mistake in reading the affidavit which had been prepared for him by his solicitor.[238] Superintendent Care was also examined regarding an error in the affidavit sworn by Peter Sim in relation to the Supreme Court proceedings.[239] A similar error appears in a draft of Peter Sim's affidavit in terms of the date the receipt was signed.[240] This same statement later appeared in paragraph 8 of Peter Sim's affidavit stating:[241]

> On the 20th day of September 1994 I signed a receipt, copy of which is annexed hereto and marked with the letter "A", acknowledging receipt

[237] PIC Transcript DH Care 31 March 1999 p 167.
[238] PIC Transcript DH Care 31 March 1999 p 167.
[239] PIC Transcript DH Care 31 March 1999 p 175.
[240] Exhibit 28.
[241] Exhibit 54B.

of such $80,000 by myself on behalf of Ausfarm Aquaculture Pty. Limited.

4.83 Superintendent Care's evidence regarding Peter Sim's affidavit was that he, Superintendent Care, obtained statements and typed them up before forwarding them to the solicitor:[242]

Q. So presumably Mr Sim also misread or misunderstood or overlooked the statement in the affidavit that on the 20th day of September 1994 he signed a receipt?
A. Well, I can't answer for Mr Sim.

Q. Are you sure of that?
A. Yes.

Q. Are you quite sure that you can't answer for Mr Sim in relation to his affidavit sworn in respect of your proceedings against Ausfarm Aquaculture?
A. No.

Q. Did you have anything to do with the drawing of Mr Sim's affidavit?
A. No. I went out and I obtained a couple of statements which I then gave to the lawyer and then he met with Sim and drew up his affidavit, as far as I know.

Q. The statements that you spoke of, were they statements that were typed?
A. They may have been, yes.

Q. Typed by you?
A. Yes, probably.

Q. And what did you do with them?
A. Well, I gave them to Mr Mednis, I think.

4.84 When further examined in relation to this, Superintendent Care stated that he had drafted the affidavit for Peter Sim which he had then faxed to the solicitor, Mr MacElbing, for his use in preparing documents for proceedings:[243]

Q. You typed out a draft affidavit and sent it to your solicitor —
A. That's correct.

Q. — being a draft of an affidavit of Mr Sim, and in that you put, "On 20 September 1994 I signed a receipt on behalf of Ausfarm Aquaculture Pty Limited for that amount of money"?
A. Yes.

[242] PIC Transcript DH Care 31 March 1999 p 175.
[243] PIC Transcript DH Care 31 March 1999 pp 178-180.

Q. And you sent it by facsimile from your office in the Police Service —
A. Yes.

Q. — to Mr MacElbing?
A. That's correct.

Q. To further your claim against Ausfarm?
A. Yes. Mr MacElbing asked me to get as many statements as I could from people to help prepare. I got other statements too, I think.

Q. Sir, perhaps you've missed the point. The issue that I'm taking you to is that you drafted this draft affidavit?
A. Yes.

Q. And gave it to your solicitor in respect of the proceedings?
A. Yes.

Q. You gave that draft affidavit to your solicitor and in it it purports to suggest that Mr Sim signed the receipt on 20 September 1994?
A. Well, that's what Sim may have told me. I can't recall when I typed the thing out.

Q. And you knew that to be false?
A. Well, I'm just typing the thing up. It had to go before Mr MacElbing and then put his own - do the own affidavit.

Q. Mr Care, did you draft this affidavit?
A. Yes, I did.

Q. And you drafted it on your knowledge of what you claim was the state of the arrangement between yourself and Mr Sim?
A. I drafted the affidavit, yes, I did.

Q. When you'd typed up the affidavit, these two pages of this draft affidavit —
A. Yes.

Q. — you did that at work?
A. I may have.

Q. You didn't do that with Mr Sim sitting across from you at the desk, did you?
A. No.

Q. So you did it on your knowledge of what you claim took place as opposed to instructions you were taking from Mr Sim?
A. No, I would have spoken to Mr Sim about it and then I typed up a document to send to Mr MacElbing that then could - he would then talk to Mr Sim and Mr Mednis, then put together an affidavit.

Q. You'd agree, wouldn't you, that nowhere did you note when sending it to Mr MacElbing that it was false or incorrect?
A. No.

Q. You sent it to Mr MacElbing for the purpose of him using it for the purpose of your proceedings?
A. No. It was sent to him to give him some idea, I suppose, before he spoke to Mr Sim about it.

Q. To give him knowledge of what Mr Sim would put in an affidavit?
A. What Mr Sim's knowledge was, yes.

Q. Including a statement that you knew to be false?
A. Well, I didn't think about it at the time. I've just typed it out and sent it over to Mr MacElbing.

4.85 Barbara Sim was also questioned concerning a statement she signed relating to Supreme Court proceedings. This document, which was not tendered in Supreme Court proceedings, contained the following paragraph:[244]

> I was present at our home when he [Peter Sim] said to David Care words to the effect of "Give me the money you were going to put into the photo lab and lend it to Ausfarm instead. You'll get your money back in March when the crop comes out." I also heard him tell David Care words to the effect of "Don"t [sic] worry, the former agreement to purchase shares in the photo lab if you want to still holds. When Ausfarm pays you back in March, you can decide."

4.86 Barbara Sim's evidence was that she had not heard the conversation referred to in her statement.[245] She also gave evidence concerning the circumstances surrounding the signing of this document. She stated that Peter Sim and Superintendent Care had prepared the document and that she had objected to signing it but ultimately gave in to pressure from Peter Sim to do so:[246]

Q. Do you remember me showing you that at the previous hearing?
A. Yes.

Q. And you told us this about it —
A. I remember this one. I had a fight with Peter about this letter.

Q. Yes.
A. Yes.

[244] Exhibit 46B.
[245] PIC Transcript B Sim 14 April 1999 pp 343-344.
[246] PIC Transcript B Sim 14 April 1999 pp 341-343.

Q. In answer to this question:
Were you ever asked by your husband or by David Care to provide a statement in relation to the moneys, the $60,000, that were the subject of that bank cheque?
You said:
A statement, no.
Then I showed it to you. After looking through it, you said:
I remember I was asked to sign this document by Peter Sim and we'd just had a fight and David Care was with him.
A. Yes.

Q. The fight you described:
I had a fight with Peter about getting me involved in so many different things.
A. Yes.

Q. Then you were asked this question:
Did you have a fight with Peter about getting you involved in so many different things in that you were being asked to sign something that said things that you had no knowledge of?

And you said:
Yes.
A. Yes.

Q. You were asked also:
What was the source of that document? Where did it come from?
Referring to that statement. You said:
It came from between Peter and David Care.
A. Yes.

Q. Was this the situation, that you were at home?
A. Yes.

Q. Your husband and David Care were there?
A. Yes.

Q. And you were shown that document, which is headed "Statement by Barbara Sim relating to a loan provided by David Hillman Care to Ausfarm Aquaculture Pty Limited". You were shown that document and asked to sign it?
A. Yes.

Q. You became upset?
A. Yes.

Q. And didn't initially sign it?
A. I didn't want to sign it, yes.

Q. You didn't want to sign it but ultimately you did sign it?
A. Yes.

4.87 Mr Mednis, the solicitor with the firm MacElbing, Mednis and Associates who acted in the Supreme Court matter, was examined by the Commissioner concerning why Peter Sim was not called to give evidence in Supreme Court proceedings. He stated that it was because Peter Sim would not have been considered a reliable witness:[247]

> THE COMMISSIONER: Mr Mednis, can I just take you back to something that you said a little earlier. I will just read to you the questions and the answers in which what I'm going to ask you about occurred.
> A. Yes.
>
> Q. Mr Barrett asked you this question:
> Why was Mr Sim not called to give evidence in the proceedings.
> Your answer was:
> We didn't believe that Mr Sim was a reliable witness.
> A. Yes.
>
> Q. Why did you and others not believe that Mr Sim was a reliable witness?
> A. I think the issue came down to an explanation of a particular letter, and I'm not sure of the contents of that letter at all now Mr Commissioner, but we took the view that he could not explain the contents of that letter and I think that that was an important letter in the plaintiff's case.
>
> Q. Well, I'm no better informed —
> A. No, I know.

4.88 The Commissioner then examined Mr Mednis concerning the letter as follows:[248]

> Q. Do you agree now, as you sit there, that that was a very important decision as well as being just tactical?
> A. Yes, it was.
>
> Q. Because Mr Sim's evidence in proof of this significant piece of evidence, the receipt, was very important, was it not?
> A. To back up Care, yes.
>
> Q. Well, are you able to assist me in relation to the grounds that led to you and counsel, and perhaps also Mr MacElbing, to come to this important decision not to call him?
> A. Yes. There was that one particular letter, Mr Commissioner. I can't assist you with what was contained in that letter, but it was certainly tendered in the proceedings and it did, to some extent, as I understand it, conflict with Mr Care's case and it was for that reason that you take the lesser of two evils, I suppose. In the end,

[247] Exhibit 74.
[248] Exhibit 74.

> in hindsight, it may have been appropriate to call Mr Sim but the decision was taken and it was on the basis of the contents of that particular letter, as I recall it, and there could be no reasonable explanation for that from him. That was the reason why we didn't call him.

4.89 Mr Mednis then confirmed that Peter Sim was not called to give evidence in proceedings because it was considered that Peter Sim would have had difficulty in explaining why the letter he, Peter Sim, had written to Mr Chow, the Managing Director of Ausfarm was (at paragraph four) inconsistent with the contents of Peter Sim's and Superintendent Care's affidavits.[249] Peter Sim, in this letter sought repayment of $80,000 and at paragraph 4 stated:[250]

> My recent injection of $80,000 from sales of shares of my lab. must be repaid.

4.90 Mr Mednis confirmed in hearings that the amount of $80,000 referred to in Peter Sim's letter was the same $80,000 Superintendent Care was seeking to recover from Ausfarm:[251]

> MR BARRETT: Yes, there is, Commissioner. Commissioner, might I ask the witness to have a look at a document.
> Q. Sir, the letter that you're talking about was a letter from Peter Sim?
> A. Yes.
>
> Q. Could I show you this document. I will have it shown on the screen - it might be more convenient - 5357882. It is not on the list, Commissioner. Down at item 4 there are some markings on it.
> A. Yes.
>
> Q. That's the part of the letter that was of concern to those that instructed you?
> A. Yes.
>
> Q. And that was the part of the letter that had been written by Mr Sim to Mr Chow in October 1994?
> A. Yes.
>
> Q. Mr Chow being the then managing director?
> A. That's the letter.
>
> Q. And that part of it, paragraph 4, was inconsistent with what Mr Sim had asserted in his affidavit?
> A. That's right.

[249] Exhibit 74.
[250] Exhibit 50B.
[251] Exhibit 74.

Q. And equally inconsistent with what Mr Care had asserted in his affidavits?
A. That's right.

Q. That the moneys, the $80,000 that he referred to in that paragraph 4, was the same $80,000 that Mr Care was seeking to recover —
A. Yes.

Q. — from the company?
A. Yes.

ASSESSMENT

4.91 Superintendent Care swore an affidavit in the Equity Division of the Supreme Court in proceedings to recover $80,000 from Ausfarm. This affidavit was misleading in a material particular, being the date the receipt was signed. The affidavit stated that the receipt was executed by Peter Sim and Superintendent Care on 20 September 1994, however Superintendent Care and his wife informed the Commission that Peter Sim was not available on that date. The inference was that if Peter Sim was not available to collect the cheque he would not have been available to execute the receipt. Superintendent Care had also given evidence to the Commission that he had instructed his solicitor to prepare the receipt on a date after the 20 September 1994.

4.92 Counsel for Superintendent Care and Clare Haig submitted that the incorrect date was merely a mistake and that there was no motive for Superintendent Care to make a false claim. The Commission, however, is of the opinion that the recovery of $80,000 was a motive. Superintendent Care had sought repayment from Ausfarm of $80,000. Ausfarm had not made this payment, their position being that there was no evidence in their books that Superintendent Care had provided the funds. Superintendent Care said on 2 May 1995 that the loan was not documented. Ausfarm had insisted on seeing documentation before agreeing to the payment. Within a week of Ausfarm's position being stated at the 1995 Annual General Meeting, Superintendent Care had a document that provided proof of the receipt by the former Managing Director of the funds on behalf of the company.

4.93 The same incorrect assertion as to the date the receipt was signed appeared in the affidavit sworn by Peter Sim which Superintendent Care had drafted. Superintendent Care conceded that this assertion was not correct and that the receipt should have read 'on or about 20 September 1994'.

4.94 Mr Mednis' evidence was that Peter Sim was not called to give evidence in Supreme Court proceedings, because he was not considered to be a reliable witness. The reason he was not considered reliable was due to inconsistencies between a letter Peter Sim had written to Mr Chow, the

Managing Director of Ausfarm requesting repayment of $80,000 he had injected into the business and claims made in the affidavits of Superintendent Care and Peter Sim that Superintendent Care had loaned the money to Ausfarm. Peter Sim's letter claimed that '$80,000 from sales of shares of my lab must be repaid'.

4.95 Superintendent Care claimed that the incorrect date on the receipt was an oversight. He also claimed that he knew when swearing his affidavit in the Supreme Court that the receipt was not signed on 20 September 1994 and was aware of the importance of this document. Superintendent Care also had a role in drafting Peter Sim's affidavit with the intention that it be sworn in terms corroborative of his own.

4.96 The Commission is of the opinion that Superintendent Care manufactured the receipt after May 1995 in order to seek repayment of the loan he believed to be owing to him by Ausfarm. His own and Peter Sim's affidavits sworn in the Equity proceedings then misrepresented the date the receipt was signed.

SUPERINTENDENT CARE'S MEMORANDUM TO THE NSW POLICE BOARD

4.97 Superintendent Care submitted a confidential memorandum to the then NSW Police Board dated 17 October 1994, which purported to advise the Board of changes in his financial status.[252]

4.98 This memorandum, which bore the heading, 'Changes to financial status of Chief Superintendent D H Care, District Commander, Illawarra.', made no reference to Ausfarm. The memorandum included statements to the effect that Superintendent Care's wife had purchased an interest in Business X and another that she had lent $60,000 to Barbara Sim:[253]

> My wife, Clare Elizabeth Haig has recently purchased a ten percent interest in [Business X], registered office, [location of Business X]. The cost of this purchase, $20,000 came from family savings in the Police Credit Union.
>
> The directors of this company are:
>
> Barbara Sim
>
> [address]

[252] Exhibit 44B.

[253] Exhibit 44B.

> [2 further directors listed]
>
> Clare Elizabeth Haig.
>
> My wife has also lent Barbara Sim $60,000, repayable within six months time, with a convertible option on 1 March 1995, to thirty percent of [Business X]. This money has been obtained with a business loan from the Commonwealth Bank.
>
> The business, which is managed by my son, Paul Leslie Hillman Care, conducts a photographic developing business in the [location of Business X].
>
> I have recently lent an interest free loan of $5 000 to Woodwell Pty Ltd, a company of which I am a director/shareholder. The funds for this loan came from my savings in the Police Credit Union.

4.99 Before a private hearing on 24 March 1999, following examination by Counsel Assisting the Commission on the subject of his memorandum to the NSW Police Board, Superintendent Care eventually accepted the Commissioner's statement that this memorandum was not a frank and truthful disclosure to the Police Board of changes in his financial status:[254]

> Q. So what was going to happen when you got the money back was that there was going to be an investment of $20,000?
> A. Sure.
>
> Q. And there was also going to be a loan repayable within six months time of the date of this document, or when it was lent to Barbara Sim?
> A. That was what was going to happen. That was the initial concept that Sim wanted to do, but then at the last moment he came and said to us, "Can you put the money into the prawn farm?", which we did.
>
> Q. If I can just take you to that sentence, that reads:
> My wife has also lent Barbara Sim
> $60,000.
> A. Yes.
>
> Q. It then goes on to read,:
> With a convertible option on 1 March 1995.
> Do you see that?
> A. I do.
>
> Q. 1 March 1995 was the time that you wanted to get the money back from the prawn farm, wasn't it?
> A. Yes.

[254] Exhibit 87.

Q. It wasn't what was intended to be happening with $60,000 in six months time, was it? Was it?
A. I think I also subsequently put another report in to the Secretary of the Police Board setting out what in actual fact happened.

Q. Where is that document, sir?
A. I should imagine it would be there with the secretary of the police board.

Q. Sir, this document was not a correct reflection, on your evidence that you've given us today, of the transaction that took place in September 1994, was it?
A. What took place in 1994 was what I set out in my affidavit - Sim approached us, we lent him the money. That document there is not correct. It was what was going to happen and what we intended to happen.

Q. This document is not a frank and truthful disclosure to the Police Service of the changes in your financial status as at 17 October 1994, is it?
A. Well, I suppose I was concerned that they'd issue - that my wife had been made a director of the company by Barbara Sim and I was concerned about that.

Q. Sir, if you were concerned about her being made a director of the company, why didn't you tell them that your wife had been made a director of the company and tell them about Ausfarm?
A. Well, I suppose I was going - I thought I was going to get the money back in a hurry. That's not correct, that was true, I should have put what was going to happen.

Q. So this was not a frank and truthful disclosure by you to the Police Service of your change in your financial status?
A. In my mind, that was what was going to happen after we got our money back.

THE COMMISSIONER: Q. That's of no assistance to me at all, Superintendent because you do not deal with - and, if I may say so, you have endeavoured not to deal with - the question that's been asked of you directly. I'll ask it of you.
A. Certainly.

Q. This document is not a frank and truthful disclosure to the police board of the changes in your financial status as at 17 October 1994?
A. No.

Q. Is it?
A. No.

Q. Do you agree with that?
A. I agree with that, sir.

4.100 Superintendent Care, however, also maintained to the Commission that what he set out in this memorandum had not occurred when he sent the memorandum:[255]

> Q. Okay. You've told this Commission that the things in that didn't happen?
> A. No, the things in that were going to happen when we were paid back the money from the prawn farm and I assumed it was going to happen.
>
> Q. Sir, the things in that had not happened when you sent that memorandum?
> A. That's correct.

4.101 He asserted that the memorandum to the Police Board contained what he thought at the time was going to happen:[256]

> Q. Sir, when you read the document, it doesn't say "proposed" or "potential changes to financial status", does it?
> A. That's correct, no.
>
> Q. It doesn't say that your wife might purchase 10 per cent?
> A. No.
>
> Q. That money might come from family savings?
> A. No.
>
> Q. That the directors are proposed to be?
> A. That's correct.
>
> Q. That your wife might lend Barbara Sim $60,000; that it might be repayable within six months; that there might be a convertible option; or that the money might be obtained by a business loan?
> A. That's correct.
>
> Q. All of those things are expressed as having happened, aren't they?
> A. They are.
>
> Q. And you, of course, say that you did not in your conduct as a police officer make false or misleading declarations to the Police Service?
> A. Well, possibly in my mind at the time that was what was going to happen in the very near future and I put the report in.

[255] PIC Transcript DH Care 31 March 1999 p 191.

[256] PIC Transcript DH Care 31 March 1999 p 192.

4.102 Clare Haig, likewise gave evidence that the letter set out what she and her husband intended to happen. Clare Haig denied that the money was lent to Barbara Sim and maintained that it went into the prawn farm.[257]

4.103 Superintendent Care gave evidence that he did not mention the memorandum he had written to the NSW Police Board to the solicitor representing him during proceedings against the prawn farm, or to the prawn farm itself. He claimed that he may have put the wrong date on this memorandum:[258]

> Q. Okay. None of those things you say in that thing other than that your son was managing the business [Business X] and that money had been lent to Woodwell, none of that had happened; is that right?
> A. That's correct. But what worries me about the date at the bottom is that maybe I put the wrong date on it when I sent it. I don't know.
>
> Q. Well, do you make a habit of putting the wrong dates on documents when you send them?
> A. No, I could have made a mistake.

4.104 Superintendent Care elaborated concerning the date and stated that it may have been a month earlier:[259]

> Q. Well, sir, why would you say today that you're concerned about the date of that document?
> A. Well, I can't recall what was in my mind when I put that in, but I assume that there's two options. One option is that it was – that was what was going to happen, and I assume that was what was going to happen. The second option may be I put the wrong date. It may have been a month earlier, when I knew that was what was happening before Sim had come and approached me about taking the money into the prawn farm.

4.105 Superintendent Care was questioned about each event described in the memorandum. The following statement appeared in the memorandum:[260]

> I have recently lent an interest free loan of $5 000 to Woodwell Pty Ltd, a company of which I am a director/shareholder. The funds for this loan came from my savings in the Police Credit Union.

4.106 Superintendent Care agreed that the withdrawal of $5,000, was not from the Police Credit Union account, but from a joint account he held with his

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257 PIC Transcript CEM Haig 13 April 1999 p 309.

258 PIC Transcript DH Care 31 March 1999 p 191.

259 PIC Transcript DH Care 31 March 1999 pp 191-192.

260 Exhibit 44B.

wife.[261] The evidence outlined before the Commission and confirmed by Superintendent Care was that this withdrawal occurred on 10 October 1994. The funds were drawn from the joint account with the Commonwealth Bank and credited to the Australian Private Capital Group, of which Woodwell was the holding company.[262]

4.107 In evidence before the Commission, Superintendent Care stated that the following events had in fact occurred:[263]

> Q. Sir, your wife you agreed became registered as a director of the company [Business X]?
> A. Yes.
>
> Q. Your wife was issued with shares to the extent of 10 per cent in [Business X]?
> A. Yes, she was.
>
> Q. To your knowledge?
> A. Yes, to my knowledge, yes.
>
> Q. A share certificate was issued in respect of same?
> A. I don't know about that.
>
> Q. All right. Your son did work for [Business X]?
> A. Yes, he did.
>
> Q. You did lend $5,000 to Woodwell?
> A. Yes.
>
> Q. And those other people that you've referred to in that declaration to the Police Service were also registered as directors of that company; is that right?
> A. That's correct, yes.
>
> Q. Okay. And 30 per cent of [Business X], on the figures that flow from what's contained in your letter would be $60,000?
> A. That's correct, yes.

4.108 When questioned further about this memorandum, his response was that he had issued a rebuttal letter to this document:[264]

> Q. Sir, is this document false?
> A. Is the document false?

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[261] PIC Transcript DH Care 14 April 1999 pp 382-383.
[262] PIC Transcript DH Care 14 April 1999 pp 382-383.
[263] PIC Transcript DH Care 31 March 1999 p 193.
[264] PIC Transcript DH Care 31 March 1999 pp 193-194.

Q. Yes.
A. Well, the document – as I said, I've thought about this document ever since the private hearing. I haven't had too much sleep either, I might say, but it's – I can only consider that when I put it in, I thought that that was what was going to happen and, in terms of the tense, yes, it is incorrect. I know that at some stage after I'm sure I put a rebuttal letter in in relation to this.

4.109 Superintendent Care was, however, unable to produce a copy of any rebuttal letter. Under examination from Counsel for the Police Service, Superintendent Care's evidence was that he may have retained a copy but had subsequently moved house and police stations on a number of occasions:[265]

Q. Leaving aside your excuses of your workload and your travelling, you wrote this as a chief superintendent and you wrote it to the Police Board?
A. That's correct.

Q. Did you not think it was incumbent upon you to at least get it right?
A. Well, all I can say is I made an error in judgment when I put it in.

Q. You might also recall that you said to Mr Barrett, "I'm sure I put in a rebuttal letter"?
A. Yes.

Q. Then later you said you "think"?
A. Well, I can certainly remember typing the thing out.

Q. But there is no evidence of any rebuttal letter or anything to contradict anything in this letter of 17 October, is there?
A. No.

4.110 He added that he would have submitted the document around Christmas of 1994 and that it contained words to the effect that he had lent the money to the prawn farm.[266] Superintendent Care, in his evidence, suggested that the Police Board records may be incomplete and raised questions about the procedures for tracking and storing documents on Police Board files.[267]

4.111 During hearings, Superintendent Care agreed with Counsel for the Commission, that this memorandum was inconsistent with the affidavit

[265] PIC Transcript DH Care 15 April 1999 p 407.
[266] PIC Transcript DH Care 14 April 1999 p 409.
[267] PIC Transcript DH Care 14 April 1999 pp 407-408.

presented on his behalf in proceedings against Ausfarm. He reiterated his claim that the document outlined what was going to happen in the future:[268]

> Q. Sir, this document cannot stand with your affidavit in the proceedings against Ausfarm that I referred you to, can it?
> A. No, that's correct.
>
> Q. One of them has to be false?
> A. Well, one of them was prepared with a different idea in mind.
>
> Q. Right. One of them was prepared because there are 80,000 reasons to prepare it; that is, the affidavit?
> A. No, one of them was prepared because that was what was going to happen at some time in the future.
>
> Q. This document describes what took place?
> A. That document describes what was going to take place in the future.
>
> Q. Why would you declare a change in your financial circumstances before it had happened?
> A. Well, I suppose that one of the reasons may well be that the - just thinking what it might have been, the fact that the shareholding, or not the shareholding, the directorship had been issued to my wife.

4.112 On 30 August 1995, Superintendent Care was interviewed by Mr Donald MacKay, who was then Chairman of the NSW Police Board, in relation to an application to continue to engage in secondary employment as a director of Woodwell Pty Limited.[269]

4.113 Prior to this interview Mr MacKay perused Superintendent Care's Police Board file and came across the memorandum of 17 October 1994 in relation to Superintendent Care's wife's interest in Business X.[270] Mr MacKay provided a statutory declaration to the Commission in relation to his interview with Superintendent Care which, in part, stated:[271]

> … I cannot recall his [Superintendent Care's] exact words, but the effect of what he told me was that the arrangement set out in the memorandum regarding [Business X] was no longer on foot. ...
>
> 5. At my meeting with Superintendent Care on 30th August 1995, he did not tell me that he had submitted a memorandum to the Police Board subsequent to the memorandum of the 17th October 1994 which clarified that his wife no longer had an interest in [Business X]. Furthermore, he made no mention of having an interest in a prawn farm or in any company other than Woodwell Pty Limited.

[268] PIC Transcript DH Care 31 March 1999 pp 196-197.
[269] Exhibit 79.
[270] Exhibit 79.
[271] Exhibit 79.

> 6. As a result of my meeting with Superintendent Care, I reported to the Police Board that his application was only in respect of Woodwell Pty Limited. His application was subsequently approved by the Board at its' meeting on the 6 September 1995, such a approval being for a period of one year. …

4.114 Counsel for Superintendent Care, in submissions to the Commission, has stated that this memorandum from Superintendent Care to the Police Board, dated 17 October 1994 'was either in error in its terms or, as Mr Care raised, perhaps wrongly dated.'[272]

ASSESSMENT

4.115 Superintendent Care's confidential memorandum to the NSW Police Board dated 17 October 1994 stated that a 10 per cent interest in Business X was purchased and that a further $60,000 was lent to Barbara Sim with a convertible option. This evidence differs from that given to the Commission by Superintendent Care and Clare Haig and differs to that given in sworn documents and filed in the Supreme Court proceedings. Both in the Supreme Court and before the Commission, Superintendent Care and Clare Haig maintained the $80,000 was lent to Ausfarm.

4.116 If Superintendent Care and Clare Haig intended to lend money to Ausfarm, the question arises as to why the cheque for $60,000 was not made payable to either Peter Sim or to Ausfarm. The Commission heard evidence that Peter Sim was available to drive Barbara Sim to the bank to collect the cheque. Given that Peter Sim was available to undertake this task, there appears to be no reason for the cheque being payable to Barbara Sim if Ausfarm was its intended destination. There is also evidence that Clare Haig's application for a business loan of $60,000 indicated that the purpose of the loan was for Business X not Ausfarm.

4.117 The funds, through Peter Sim, were ultimately credited to Ausfarm. No written agreement documenting a convertible option or other agreement with Business X was produced. Likewise, Clare Haig was clearly appointed as a director of Business X and received shares in this business. There was no document produced stating whether this share issue related to the amounts Superintendent Care and Clare Haig advanced to Ausfarm.

4.118 The evidence suggests that an agreement was made between Superintendent Care and Peter Sim to the effect that Superintendent Care and Clare Haig invested $20,000 and lent $60,000 to Peter Sim personally,

[272] Exhibit 82.

in exchange for a personal guarantee. Peter Sim in turn, then lent the funds to Ausfarm. This inference is supported by the payments made by Peter Sim, Business X and Everything Travel of interest payments due on the loan and in evidence given by Barbara Sim that Peter Sim used Business X to procure funds for Ausfarm. It is also supported by the amount of monthly repayments made to Superintendent Care which, at 12 per cent interest, were on an amount of $60,000 rather than $80,000. The receipt purporting to record the transaction of 20 September 1994, did not appear until 29 September 1995, six days after the Annual General Meeting of Ausfarm which took place on 23 September 1995. In all likelihood, that receipt was manufactured in order to support the Statutory Demand.

4.119 Superintendent Care's earlier claims that his memorandum to the NSW Police Board was a statement of future intention written in the past tense or that he misdated the memorandum are inconsistent with the other events set out in that memorandum which did occur.

4.120 The Commission was not able to locate a rebuttal letter Superintendent Care claimed he had sent to the NSW Police Board informing them of changes regarding his investment in Business X. Superintendent Care's claim that this letter was lost by the NSW Police Board offers a possible explanation.

4.121 That scenario was not, however, supported by Mr MacKay's evidence. If a letter of rebuttal existed, it seems likely that Superintendent Care would have reiterated this fact to Mr MacKay during his interview. Although Superintendent Care mentioned to Mr MacKay that the arrangement regarding Business X was no longer occurring, Mr MacKay's declaration stated there was no mention made of a subsequent letter or any investment in a prawn farm or any company other than Woodwell Pty Limited.

4.122 The conflict between the evidence presented by Superintendent Care and Peter Sim to the Supreme Court, with that presented by Superintendent Care to the NSW Police Board raises issues regarding Superintendent Care's possible motives. While there appears to be little motive for Superintendent Care to mislead the NSW Police Board in regard to these matters, there was a clear motive for presenting evidence to the Supreme Court which would assist Superintendent Care in recovering $80,000.

4.123 In submissions to the Commission, Counsel for Superintendent Care asserted that the document, of 17 October 1994, may have been wrongly dated.[273] Evidence to the contrary was obtained in that a withdrawal of

[273] Exhibit 82.

$5,000 was made by Superintendent Care and Clare Haig at the time indicated in this memorandum. This amount was then deposited in the account of a company associated with Woodwell Pty Limited. The Commission considers it highly likely that the memorandum from Superintendent Care to the NSW Police Board bears a correct date and that statements made by Superintendent Care and Peter Sim in evidence presented to the Supreme Court were, in part, false.

5. EVIDENCE CONCERNING SUPERINTENDENT CARE'S COMPUTER INQUIRIES

5.1 This chapter reports on evidence heard by the Commission concerning a number of computer inquiries conducted by Superintendent Care on the NSW Police Service computer system. These inquiries concerned his friends, Sam Souksamrane and Ross Visalli and his wife, Clare Haig.

5.2 An audit report on Superintendent Care's computer accesses to the NSW Police Service computer system during the period 1 April 1994 to 31 December 1994, revealed that Superintendent Care had made inquiries in relation to Sam Souksamrane on four occasions on 22 November 1994.[274] Superintendent Care was questioned regarding his relationship with Sam Souksamrane. He responded stating that Sam Souksamrane was a close personal friend of his who lived overseas.[275]

5.3 Superintendent Care then gave evidence that he had never investigated or been involved in an investigation of Sam Souksamrane.[276] When questioned about the computer inquiries he had made in relation to Sam Souksamrane, Superintendent Care's evidence was that he had no recollection. He also maintained that if Sam Souksamrane had requested that Superintendent Care conduct inquiries on the police computer, he would not have felt the need to disclose this fact to his superior as he would not have regarded it as 'personal use' of the police computer:[277]

> Q. Were you ever involved in carrying out an investigation of your personal friend Sam Souksamrane?
> A. No.
>
> Q. Why did you look him up on the police computer in 1994?
> A. I've got no recollection of that.
>
> Q. Well, unless you were conducting an investigation on behalf of the Police Service, there would be no need to look up your friend Sam Souksamrane on the police computer, would there?
> A. Well, there could be. He might have asked me were there any warrants out for him or were there - maybe he had some traffic matters outstanding.
>
> Q. Well, would that be police business if you were then to look him up in the computer, sir?
> A. To see if there was anything outstanding in relation to him, yes, if he asked me that question.

[274] Exhibit 20.
[275] PIC Transcript DH Care 31 March 1999 p 126.
[276] PIC Transcript DH Care 31 March 1999 p 126.
[277] PIC Transcript DH Care 31 March 1999 pp 126-127.

Q. I suppose you'd disclose that to your superior if that were to happen, wouldn't you?
A. No.

Q. I see. You would not regard that as being personal use of the police computer and equipment?
A. Not if he rang me up and said, "Have I got a warrant out for me", or, "Have I got" – whatever it might be - "Are the police looking for me", "Is there a warrant out for me?"

5.4 Superintendent Care did not agree that his use of the police computer to make inquiries about or on behalf of his friend presented a conflict of interest. He stated that operating the computer did not mean that he told Sam Souksamrane what the contents of the computer record were:[278]

Q. And you might have done it because he might have asked you to?
A. Well, if he - he may well have asked me as a police officer, did he have - Sam [Souksamrane] used to go back and forwards to Laos, he has got interests in Laos, and he travels backwards between Australia and Laos. He might have come back and said, "Have I been" - "Have the police been down at my house looking for me? Have I got any warrants?", or whatever it may be.

Q. I take it he would have been approaching you as a friend rather than a police officer?
A. I suppose he would be approaching me as both.

Q. Weren't you concerned that there might be a conflict if you looked him up on the computer and told him the contents of the computer?
A. You know, because I operated the computer doesn't mean to say I've told him what the contents were of the computer.

5.5 Superintendent Care then gave evidence in relation to a diary entry made for the day following his computer inquiries about Sam Souksamrane. A diary note for 23 November 1994 read '4pm – Sam Dinner'.[279] Superintendent Care could not recall any other friend he had called 'Sam'.[280] He was examined concerning a relationship between his computer inquiry and the dinner engagement. Although Superintendent Care stated that he could not recall making the inquiries, he stated that Sam Souksamrane might have asked him to see if the police had been round to see him or if there was an infringement notice for him:[281]

Q. Assuming it were Sam Souksamrane that you made an appointment to have dinner with, why would you be looking him up on the police computer the date before if he was concerned about some policing matter and you were acting as a policeman?

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[278] PIC Transcript DH Care 31 March 1999 p 127.
[279] PIC Transcript DH Care 31 March 1999 p 128.
[280] PIC Transcript DH Care 31 March 1999 p 128.
[281] PIC Transcript DH Care 31 March 1999 pp 128-129.

A. Well, he might have said to me, "Have I been" - he travels to and from Laos, as I explained before. He may well have rang me up and said, "Can you tell me if the police have been round to see me?", or, "Is there an infringement notice for me", or whatever it might be, "Can you find out what it is?" He may have had warrants and I've told him he's got to go and pay money at a certain place.

Q. Well, had the police, to your recollection, been to see Sam Souksamrane at that time?
A. I don't know. I'm just saying that could be a reason why I looked the thing up.

Q. That could be what you would consider to be an innocent explanation for you using the police computer to look up a friend of yours?
A. Certainly. I've got no recollection of the event.

5.6 Superintendent Care then gave evidence that he had also made inquiries on the police computer on behalf of his friend Ross Visalli. His evidence was that this was a normal inquiry and the reason for making it was that Ross Visalli had said there were police looking for him:[282]

Q. Superintendent Care, have you ever looked up any other friends of yourself on the police computer for any purpose?
A. Not that I can recall, except for Visalli. I think I had him looked up. He came back and he said that there were police looking for him, or something, and I'm not sure whether I looked it up or I got another officer to look up for him to see what had happened. I think he had - something about the Sheriff's officers were after him or there was warrants out for him, I think.

Q. Why would you not, when Mr Visalli made such an approach to you, refer it to another police officer?
A. Well, at the time - you know, what - you know, I'm happy to do that and do a normal inquiry.

Q. Do favours for your friends?
A. Not favours for my friends. If he wants to know whether police are looking for him or what it might be, you know, you don't tell the people what's on the record, you are just trying to ascertain whether there are warrants out for him and to satisfy the execution of the warrant, or if there is an inquiry by other police, to put him in touch with them.

5.7 Superintendent Care was questioned regarding whether he considered that this situation presented a conflict of interest. His reply was that this had not crossed his mind at the time. He added that if the person concerned

[282] PIC Transcript DH Care 31 March 1999 p 129.

had been an operational target, he would not have informed them about the computer's contents:[283]

> Q. Sir, wouldn't you be concerned that, by looking up the police computer, there might be a conflict of interest on the one hand of looking after your friend and your responsibility on the other hand as a police officer?
> A. Certainly, that never crossed my mind at the time I did it.
>
> Q. What if, in looking him up, you found that he was a target of some operation?
> A. You wouldn't tell him.
>
> Q. What would you tell him after having —
> A. Well, you just - I don't know.
>
> Q. After having gone and looked him up on the computer for him?
> A. You just say there is nothing there.
>
> Q. Would you then not disclose the fact that he'd approached you?
> A. If that sort of thing happened, of course, you'd then make some record of that because there could be a perceived conflict of interest.

5.8 Superintendent Care was then questioned as to why he would have looked up his wife, Clare Haig, on the police computer in January 1994.[284] His evidence was that it would have been out of boredom or curiosity and he expressed surprise that he had done this:[285]

> Q. Well, what reason would you have, sir, to look up your wife on the police computer?
> A. In July 1994? I suppose if I did it–
>
> Q. In January 1994, sir?
> A. January 1994 it would have just been boredom, or maybe curiosity. I don't know.
>
> Q. I see. Sir, is the use of the police computer in such a fashion something that you would approve of or have approved of your junior officers doing when you were commander, Illawarra?
> A. Yes.
>
> Q. You would have approved of them doing that?
> A. I'm sorry?

[283] PIC Transcript DH Care 31 March 1999 p 130.
[284] Exhibit 22.
[285] PIC Transcript DH Care 31 March 1999 pp 130-131.

> Q. Using the police computer by your junior officers to relieve their boredom or for curiosity purposes, would you have regarded that as being a proper use of the police computer?
> A. No, I'm absolutely amazed that that's there. I really am amazed.

5.9 Superintendent Care was later questioned whether he thought that boredom or curiosity were appropriate reasons for accessing someone's information on the police computer system. He said that he had dealt with subordinates for improper or illegal access of a police computer and conceded that he would probably have reprimanded an officer for accessing the computer due to boredom.[286]

5.10 Superintendent Care then maintained that when he was initially questioned about accessing his wife's information on the police computer he thought he was being asked about looking up her criminal record, rather than a traffic inquiry, and that this misunderstanding had influenced his response.[287]

5.11 Clare Haig later gave evidence that she could not recall whether or not she had asked her husband to access her name on the police computer, and added that his inquiry would have related to her car licence.[288] She believed that she was selling her car at about this time and the inquiry may have had something to do with the transfer of her Victorian licence to a NSW licence.[289]

5.12 When questioned whether such an inquiry could have readily been made with the Victorian counterpart of the NSW Roads and Traffic Authority, Clare Haig responded that she did not know.[290]

ASSESSMENT

5.13 During 1994 Superintendent Care used his access to the NSW Police Service computer system to make inquiries in relation to his friends Sam Souksamrane and Ross Visalli and his then future wife, Clare Haig.

5.14 Superintendent Care could not recall the reason for each of these inquiries. He suggested to the Commission that the inquiries in relation to his friends Sam Souksamrane and Ross Visalli were prompted by requests from these friends. The inquiry in relation to his wife, he suggested, may have been prompted by boredom or curiosity. Clare Haig's evidence was that the

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286 PIC Transcript DH Care 14 April 1999 pp 410-411.
287 PIC Transcript DH Care 14 April 1999 pp 412-413.
288 PIC Transcript CEM Haig 13 April 1999 p 318.
289 PIC Transcript CEM Haig 13 April 1999 p 318.
290 PIC Transcript CEM Haig 13 April 1999 p 319.

inquiry concerning herself may have been made in order to assist transfer her motor vehicle licence following her relocation to NSW from another State.

5.15 The Commission is of the opinion that the accessing of police computer held records relating to the friends or relatives of an officer constitutes a conflict of interest. A police officer should not undertake such inquiries. If circumstances arise in which an officer is required to access records concerning a friend or relative, the inquiries should be passed to another officer. An officer should not be in the position of forming a judgment, after having accessed sensitive material, as to whether that information should be passed to a relative or friend. An officer cannot form a completely objective assessment about the release of such information. Nor can an entirely objective assessment be made as to the reporting to a superior of the fact of a request after an inquiry is made, and the information disclosed by the computer holdings. This potential for conflict, affecting the officer's capacity to dispassionately discharge responsibilities, ought to have been apparent to an officer of Superintendent Care's seniority.

6. AFFECTED PERSONS

6.1 Persons against whom, in the Commission's opinion, substantial allegations have been made in the course of, or in connection with, an investigation, are 'affected' persons for the purposes of a report to Parliament by the Commission.

6.2 The report to Parliament must comply with section 97(2) of the *Police Integrity Commission Act 1996*. That section provides that:

> (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) the prosecution of a person for a specified criminal offence,
>
> (b) the taking of action against the person for a specified disciplinary offence;
>
> (c) the taking of action (including the making of an order under section 181D of the Police Service Act 1990) against the person as a police officer on specified grounds, with a view to dismissing, dispensing with the services or otherwise terminating the services of the police officer;
>
> (d) the taking of reviewable action within the meaning of section 173 of the Police Service Act 1990 against the person as a police officer.

6.3 In discharging its functions under section 97(2) the Commission is mindful of the provisions of section 40 of the *Police Integrity Commission Act 1996*. In particular, answers made and documents and other things produced on objection by a witness at a hearing before the Commission are not admissible against the witness in subsequent criminal or civil proceedings, except for proceedings for an offence against the *Police Integrity Commission Act 1996* or proceedings for contempt under that Act; section 40(3)(4). However, even if the objection is taken, such material is available to the Commissioner of Police in considering whether to make an order under section 173 or section 181D of the *Police Service Act 1990*. Such material is also admissible in proceedings under Division 1A or 1C of Part 9 of the *Police Service Act 1990* and any disciplinary proceedings; section 40(3).

6.4 Accordingly, the Commission must give due attention to the admissibility of evidence in considering what statements ought to be made in the Report to Parliament pursuant to section 97(2) of the *Police Integrity Commission Act 1996*.

6.5 The Commission considers that the following persons are 'affected' persons for the purposes of section 97(3) of the *Police Integrity Commission Act 1996*, namely:

- Superindentent David Hillman Care; and
- Peter Ling Choon Sim.

DAVID HILLMAN CARE

6.6 The Commission examined the circumstances in which Superintendent Care swore an affidavit for use in civil proceedings concerning a debt allegedly owed to him by Ausfarm Aquaculture Pty Limited. In his affidavit, sworn on 8 December 1995, Superintendent Care said that a receipt had been executed by himself and Peter Sim on 20 September 1994 acknowledging the debt allegedly owed by Ausfarm Aquaculture to Superintendent Care. In evidence during the Commission's Operation Algiers hearings, Superintendent Care said that the receipt had been signed 'on or about 20 September 1994' and in any event, within a month and a half of 20 September 1994.

6.7 Superintendent Care said that he drafted an affidavit which formed the basis of an affidavit sworn by Peter Sim for use in the Ausfarm Aquaculture proceedings. That draft affidavit, and the affidavit sworn by Peter Sim, asserted that the receipt had been executed on 20 September 1994.

6.8 Pursuant to section 97(2) of the Act, the Commission states in respect of Superintendent Care that the Commission is of the opinion that consideration should be given to the prosecution of Superintendent Care upon the following criminal offences:

- That David Hillman Care on or about 8 December 1995 at Campsie in the State of NSW in the proceedings entitled *Ausfarm Aquaculture v Care*, No. 4264 of 1995 in the Equity Division of the Supreme Court of NSW did make a false statement on oath knowing the statement to be false concerning a matter material to the proceedings namely, that 'On 20 September 1994 a receipt acknowledging payment of the said sums totalling $80,000 was executed by Peter Sim on behalf of the plaintiff and by myself.' [section 327 *Crimes Act 1900*]

- That Peter Ling Choon Sim on or about 21 December 1995 at Campsie in the State of NSW in the proceedings entitled *Ausfarm Aquaculture v Care*, No. 4264 of 1995 in the Equity Division of the Supreme Court of NSW did make a false statement on oath knowing the statement to be false concerning a matter material to the proceedings namely, that 'On 20 September 1994 I signed a receipt, a copy of which is annexed hereto and marked with the letter 'A', acknowledging receipt of such

$80,000 by myself on behalf of Ausfarm Aquaculture Pty Limited' and before the said serious indictable offence, David Hillman Care did procure and counsel the commission of the said offence. [sections 327, 346 *Crimes Act 1900*]

- That David Hillman Care at the hearing of the matter of Operation Algiers before Commissioner Urquhart QC on 24 March 1999 did give evidence that, to his knowledge, was false or misleading in a material particular, namely, that a receipt being annexure 'C' to his affidavit sworn in Supreme Court proceedings No. 4264 of 1995 in the Equity Division was executed by Peter Ling Choon Sim on or about 20 September 1994. [section 107 *Police Integrity Commission Act 1996*]

6.9 The Commission examined the circumstances in which Superintendent Care provided, on or about 17 October 1994, a document to the NSW Police Board purporting to advise the Board of changes in his financial circumstances. The document omitted reference to commercial loans made by Superintendent Care either to Peter Sim, or to Ausfarm Aquaculture Pty Limited. The Commission is of the opinion that Superintendent Care's failure to bring to the Police Board's attention the alleged commercial loans amounts to dereliction of duty of a kind that, if proven, would merit non-reviewable action within the meaning of section 173 of the *Police Service Act 1990*. However, this conduct would not merit the taking of reviewable disciplinary action within the meaning of section 173(2) of that Act.

6.10 Pursuant to section 97(2)(b) of the Act, the Commission states in respect of Superintendent Care that the Commission is **not** of the opinion that consideration should be given to the taking of reviewable action within the meaning of section 173(2) of the *Police Service Act 1990* against him with respect to his failure to disclose commercial loans to the NSW Police Board.

6.11 The Commission examined the circumstances in which Mrs Clare Elizabeth Haig, the wife of Superintendent Care, obtained via her company, Clare Bear Pty Limited, a 49 per cent shareholding in The Monopoly Company Pty Limited. The latter company, controlled by Clare Haig and Ross Visalli, obtained a lease of licensed premises known as the Stardust Hotel situated at 82-84 Broomfield Street, Cabramatta NSW. In the course of the establishment of those premises as trading licensed premises, Superintendent Care conducted negotiations with other interested parties, sought finance on behalf of The Monopoly Company, loaned funds to the company via Clare Haig and discussed the establishment of the hotel with Ross Visalli. Superintendent Care failed to alert the Commissioner of Police of his involvement in the establishment of the hotel. Superintendent

Care failed to seek authorisation for the secondary employment constituted by his actions in bringing about the establishment of the hotel.

6.12 Pursuant to section 97(2)(b) of the Act, the Commission states in respect of Superintendent Care that the Commission is of the opinion that consideration should be given to the taking of reviewable action within the meaning of section 173(2) of the *Police Service Act 1990* against him for misconduct, namely:

- That David Hillman Care did engage in secondary employment in the liquor industry, without first obtaining the approval of the Assistant Commissioner, Professional Responsibility, contrary to section 88 of the *Police Service Act 1990*.

6.13 The Commission examined the circumstances whereby Superintendent Care provided money to his wife, Mrs Clare Elizabeth Haig, which was then invested in The Monopoly Company Pty Limited in order for that company to enter into a lease with Milperra Hotel Pty Limited of the premises known as the Stardust Hotel.

6.14 Superintendent Care transferred the sum of $500,000 to Clare Haig. That money was obtained from two sources. The first source being the sale of residential property that had been their marital home, for which Superintendent Care held the title, and the second being the liquidation of Superintendent Care's superannuation policy. Superintendent Care asserted before the Commission that the sum was transferred to Clare Haig by way of a gift. Yet he asserted in two applications for finance that it had been by way of loan. Superintendent Care lent two further sums, ($18,000 and $20,000), to Clare Haig on the understanding that the sums would be lent in turn to The Monopoly Company Pty Limited to be used as working capital in the operation of the Stardust Hotel.

6.15 Section 105B(1)(d) of the *Liquor Act 1982* provides, as relevant, that a former key official must not, knowingly, have a financial association with a person known by the former key official to be a close associate of the licensee of licensed premises. Superintendent Care is a former key official. He had a financial association with Clare Haig, who he knew to be a close associate of the licensee of the Stardust Hotel.

6.16 Pursuant to section 97(2) of the Act, the Commission states in respect of Superintendent Care that the Commission is of the opinion that consideration should be given to the prosecution of Superintendent Care upon the following criminal offence:

- That David Hillman Care, a former key official, did, between 4 August 1997 and 30 March 1999, have a business or financial association

with Clare Elizabeth Haig, a person known by him to be a close associate of a licensee. [*Liquor Act 1982*, section 105B(1)(d)]

6.17 The Commission examined the circumstances in which Superintendent Care accessed the Police Service computer system in order to inspect entries relating to his wife and two friends. Superintendent Care asserted that he would not necessarily have passed on to those persons the details of the Service's holdings with respect to the person. It would depend upon what those holdings were. Superintendent Care failed to recognise that, whatever was held with respect to the person, the undertaking of the inquiry in those circumstances was such as to place him in a conflict of interest situation.

6.18 An adverse finding with respect to the accessing of computer held information would warrant action of the kind set out in schedule 1 to the *Police Service Act 1990* but not that described in section 173(2) of that Act. Accordingly, pursuant to section 97(2) of the Act, the Commission is **not** of the opinion that consideration should be given to the taking of disciplinary action against Superintendent Care with respect to the accessing of Police Service computers.

6.19 The foregoing matters relating to the conduct of Superintendent Care give rise to concerns as to his suitability to continue as a police officer, having regard to his competence, integrity, performance or conduct. Those concerns are raised with respect to some of the matters discussed above singly, and some by reason of a consideration of matters in combination. Accordingly, pursuant to section 97(2)(c) of the Act, the Commission is of the opinion that consideration should be given to the making of an order under section 181D of the *Police Service Act 1990* for the removal of Superintendent Care from the Police Service upon the following grounds:

- That David Hillman Care on or about 8 December 1995 at Campsie in the State of NSW in the proceedings entitled *Ausfarm Aquaculture v Care*, No. 4264 of 1995 in the Equity Division of the Supreme Court of NSW did make a false statement on oath knowing the statement to be false concerning a matter material to the proceedings namely, that 'On 20 September, 1994 a receipt acknowledging payment of the said sums totalling $80,000 was executed by Peter Sim on behalf of the plaintiff and by myself.' [section 327 *Crimes Act 1900*]

- That Peter Ling Choon Sim on or about 21 December 1995 at Campsie in the State of NSW in the proceedings entitled *Ausfarm Aquaculture v Care*, No. 4264 of 1995 in the Equity Division of the Supreme Court of NSW did make a false statement on oath knowing the statement to be false concerning a matter material to the proceedings namely, that 'On the 20th day of September 1994 I signed a receipt, a copy of

which is annexed hereto and marked with the letter 'A', acknowledging receipt of such $80,000 by myself on behalf of Ausfarm Aquaculture Pty Limited' and before the said serious indictable offence, David Hillman Care did procure and counsel the commission of the said offence. [sections 327, 346 *Crimes Act 1900*]

- That David Hillman Care at the hearing of the matter of Operation Algiers before Commissioner Urquhart QC on 24 March 1999 did give evidence that, to his knowledge, was false or misleading in a material particular, namely, that a receipt being annexure 'C' to his affidavit sworn in Supreme Court proceedings No. 4264 of 1995 in the Equity Division was executed by Peter Ling Choon Sim on or about 20 September 1994. [section 107 *Police Integrity Commission Act 1996*]

- That David Hillman Care did engage in secondary employment in the liquor industry, without first obtaining the approval of the Assistant Commissioner, Professional Responsibility, contrary to section 88, *Police Service Act 1990*.

- That David Hillman Care, a former key official, did have a business or financial association with Clare Elizabeth Haig, a person known by him to be a close associate of a licensee. [*Liquor Act 1982*, section 105B(1)(d)]

- That David Hillman Care acted in dereliction of his duty in accessing restricted information via Police Service computers with respect to the persons Sam Souksamrane and Clare Elizabeth Haig in circumstances giving rise to a conflict of interest.

PETER LING CHOON SIM

6.20 The Commission examined the circumstances in which Peter Ling Choon Sim swore an affidavit for use in proceedings in the Supreme Court of NSW, with respect to debts alleged by Superintendent Care to be owed to him by Ausfarm Aquaculture Pty Limited. Peter Sim was not at any time a member of the NSW Police Service. He was said to be a business associate of Superintendent Care. The Commission heard evidence that Peter Sim was absent overseas at the time of the Commission hearings, and that persons who knew him did not expect him to return to Australia within the foreseeable future. Accordingly, Peter Sim was not served with a summons commanding him to give evidence before the Commission. He did not give evidence before the Commission with respect to the circumstances of the swearing by him of an affidavit in the Ausfarm Aquaculture matter.

6.21 Having regard to the opinion formed by the Commission with respect to the circumstances of the swearing by Peter Sim of his affidavit in the Supreme Court proceedings, the Commission had material delivered by courier to Peter Sim in Bangkok which outlined the substance of the allegation made against him and which the Commission proposed to include in its Report. In reply to an invitation to respond to the allegation, Peter Sim wrote to the Commission asserting that:

- He signed the receipt on a date after 20 September 1994 but could not recall when;
- He did not object to the receipt being dated 20 September 1994 because that refers to the date of the loan and it was on or around the date that Ausfarm received the money, and was also the date required to calculate interest due on the loan;
- He did not think he was doing anything illegal in signing a back-dated receipt;
- For the foregoing reasons he did not object to paragraph 8 of his affidavit which was prepared by Superintendent Care's solicitor; and
- As he had genuinely borrowed from Superintendent Care for Ausfarm, he did not think he had committed a criminal offence.

The submission made by Peter Sim did not alter the opinion formed by the Commission with respect to the circumstances of the swearing by Peter Sim of his affidavit.

6.22 Pursuant to section 97 of the Act the Commission is of the opinion that consideration should be given to the prosecution of Peter Ling Choon Sim upon the following criminal offence:

- That Peter Ling Choon Sim on or about 21 December 1995 at Campsie in the State of NSW in the proceedings entitled *Ausfarm Aquaculture v Care*, No. 4262 of 1995 in the Equity Division of the Supreme Court of NSW, did make a false statement on oath knowing the statement to be false concerning a matter material to the proceedings namely, that 'On the 20th day of September 1994 I signed a receipt, a copy of which is annexed hereto and marked with the letter 'A' acknowledging receipt of such $80,000 by myself on behalf of Ausfarm Acquaculture Pty Limited'. [section 327 *Crimes Act 1900*]


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