

REPORT TO PARLIAMENT

OPERATION BELFAST

October 2000

REPORT TO PARLIAMENT OPERATION BELFAST
OCTOBER 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 Belfast, 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

October 2000

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EXECUTIVE SUMMARY

BACKGROUND

It has been over 10 years since the 3 November 1989 assault and murder of 14 year old Leigh Leigh during a party held at the North Stockton Surf Club at Stockton, NSW. Her convicted murderer, Matthew Webster, was charged by police on 16 February 1990. Despite his confession to the murder however, there has been, over the years, ongoing speculation about the circumstances of the murder and its investigation by police.

In December 1996 the New South Wales Crime Commission ('the Crime Commission') was provided with a reference to re-investigate the murder and other offences. The Crime Commission findings were released in a March 1998 Report that concluded, amongst other things, that Matthew Webster had acted alone when he committed the murder. Volume II of the Report, which was not released publicly, reviewed the police investigation into the murder. It highlighted a number of departures from proper police practice. In March 1998 Volume II of the Report was referred to the Police Integrity Commission ('the Commission') by the Minister for Police. The Commission commenced its own investigation of the matters raised in the Report. That investigation was codenamed Operation Belfast.

The Commission's investigation focused on two key dates in the police investigation of the murder. The first was 15 November 1989, when three of the main police suspects to the murder - Matthew Webster, Guy Wilson and a child,[1] known for the purpose the Commission's investigation as NC1 - were 'collected' separately from streets in Stockton and taken to Newcastle Police Station.[2] At the Police Station they were each questioned and ultimately charged with offences relating to events that took place at the party.

The second date was 16 February 1990. On that day Matthew Webster and Guy Wilson were taken from Stockton to Newcastle Police Station and placed together in an interview room that had been equipped with a listening device. The police had earlier applied for and obtained a listening device warrant for that purpose. After they had been in the interview room for one hour they were separately interviewed by police and during the course of that interview Matthew Webster confessed to the murder.

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1 The term 'juvenile' refers to a person under 18 years of age and was the term used previously in legislation. Since the enactment of new legislation affecting children in 1987, the *Children (Criminal Proceedings) Act 1987*, the term 'child' is used to refer to a person under 18 years of age.

2 The neutral term 'collected' came to be used during the hearings because considerable variation emerged in the evidence as to whether the suspects were arrested or came voluntarily in certain instances. Varying use was also made of the term 'custody'.

THE COMMISSION HEARINGS

Public hearings were held between 17 November 1998 and 9 February 1999 for the purpose of furthering the investigation. The scope and purpose of the Commission hearings was to obtain evidence in relation to the following:

- the investigation, by police, of incidents on 3 November 1989 in and around the North Stockton Surf Club premises including the death of Leigh Leigh;

- the interviewing, by police, at Stockton, Mayfield and Newcastle, of witnesses and potential witnesses to the incidents on 3 November 1989;

- the apprehension, detention, interviewing and charging, by police, of Matthew Webster, Guy Wilson and NC1, in respect of the incidents on 3 November 1989;

- the preparation of statements, exhibits, supporting documents, briefs of evidence, and the submission and disclosure of evidence and other matters to the prosecuting authorities and courts, in relation to Mr Webster, Mr Wilson, NC1 and their representatives;

- the evidence given by police in Court proceedings relating to Mr Webster, Mr Wilson and NC1;

- the apprehension, detention, interviewing and charging of Mr Webster in respect of an incident on 28 January 1990 at Stockton;

- whether there has been misconduct by any police in the aforesaid matters; and

- whether there has 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 aforesaid matters.

The Commission heard evidence from the police officers involved with the suspects on both of those days. During the course of the investigation statements were obtained from a number of other persons who had information about events that took place during the police investigation.

EVENTS OF 15 NOVEMBER 1989

Having considered the evidence in relation to the events of 15 November 1989 the Commission has formed the following views:

- NC1 was arrested when he was collected from the street in Stockton and the principle purpose of the police in arresting him was to question him about the murder.

- No effort was made by the police to contact the parents of the child NC1 on that day. This was clearly in breach of the Commissioner's Instructions regarding the custody and interviewing of children.

- The failure to contact the parents was most likely a deliberate strategy on the part of police to isolate NC1 in order to question him. NC1 was questioned alone by police about the murder prior to the conducting of the formal record of interview at which his mother was present.

- Matthew Webster was arrested in Stockton on that day and the principal purpose of his arrest was to question him about the murder.

- Guy Wilson would appear to have voluntarily accompanied police to Stockton Police Station in order to answer some questions about the murder and, accordingly, there was no impediment to questioning him about the murder.

- Police in 1989 had, as today, no power to arrest a person solely for the purpose of questioning them. As such, NC1 and Matthew Webster were improperly detained.

The Commission also heard evidence from Matthew Webster, Guy Wilson and NC1 that they were assaulted by police while in their custody on 15 November 1989. The Commission formed the opinion that, based on the evidence obtained, it is likely that Matthew Webster was assaulted by police on that day. Matthew Webster was unable, however, to identify specific officers as having committed the alleged assaults. On the evidence before it, the Commission was unable to form an opinion with respect to the assault allegations made by NC1. It was the view of the Commission that there was no evidence to substantiate the allegations of Guy Wilson that he was assaulted on that day.

The Commission also heard evidence about anomalies in the preparation of bail documents for Matthew Webster and Guy Wilson on 15 November 1989. Both of those persons could not recall bail being discussed with them on that night. It is the view of the Commission that Matthew Webster and Guy Wilson were not presented to a police officer for the purpose of making a bail determination on the night of 15 November 1989.

EVENTS OF 16 FEBRUARY 1990

With respect to evidence heard by the Commission about the events of 16 February 1990, the Commission has formed the view that Matthew Webster was arrested and forcibly placed in a police car and taken to Newcastle Police Station. It is the opinion of the Commission that the purpose of his arrest was two-fold, but that neither was lawful. Firstly, it was undertaken to contrive a situation whereby a conversation between Matthew Webster and Guy Wilson could be recorded by listening device regardless of whether or not Matthew Webster consented to being taken to the Police Station. Secondly, it was intended that Matthew Webster would be questioned in relation to the murder. There is no evidence that Guy Wilson was arrested that day and it is the view of the Commission that he attended the Police Station voluntarily.

The Commission was also disturbed by the lack of concern expressed by Detective Sergeant Lance Chaffey, the officer in charge of the investigation, about references in the recorded conversation between Matthew Webster and Guy Wilson to police bashings. It was clear that Detective Chaffey was aware of these allegations. The Commission was concerned that he had made no effort to make any inquiries about those comments.

OTHER MATTERS CONSIDERED BY THE COMMISSION

As a result of the Commission's hearings the Commission has made assessments about a number of aspects of police conduct during the investigation of the murder of Leigh Leigh in 1989-1990. Principal amongst the Commission's assessments are that police:

- questioned a child without the presence of a parent or guardian;
- failed to contact the parents of a child in police custody;
- falsely arrested suspects to the murder in order to question them about the murder;
- falsely arrested Matthew Webster in order that he be placed in a room equipped with a listening device; and
- probably assaulted Matthew Webster whilst he was in police custody.

Despite such actions constituting a serious violation of the rights of the suspects to the murder, it is possible that there are those who may feel some sympathy with the investigating police. After all, they were investigating the brutal rape and murder of a 14 year old girl and had little evidence to assist them in finding the murderer. In such circumstances some might argue that 'the end justifies the means'.

It is important that the Commission emphasise the dangers inherent in such reasoning and the potential harm that can result from such action by police. Abuse of police powers and the subversion of police procedures and legal principles in order to secure a conviction were identified by the Royal Commission into the NSW Police Service ('the Royal Commission') as forms of 'process corruption' or 'noble cause corruption'. This was described in the Final Report of the Royal Commission as 'one of the most obvious, pervasive and challenging forms of police corruption'.[3]

The Royal Commission Report listed a number of problems for the Police Service that result from any condoning of such activities,[4] but there are also immediate consequences that can result from abuse of police powers. The potentially harmful consequences of the actions of the investigating police in this instance are clear. The conduct of police during the investigation created the potential for the loss of critical evidence. Although NC1 was not involved in any way in the murder of Leigh Leigh, had NC1 been guilty of a murder, and had he confessed to that crime on 15 November 1989, his confession would have been inadmissible by reason of section 13 of the Children (Criminal Proceedings) Act 1987. More importantly, had the actual circumstances of the arrest and detention of Matthew Webster on 16 February 1990 been revealed, the admission of the confession as evidence in the murder trial might have been successfully challenged. Police had little other evidence against Matthew Webster and it is possible that, as a result of their actions, Mr Webster might not have been found guilty of the murder. Obviously such an outcome would have been a grave injustice to the Leigh family and to the community.

The Royal Commission made a number of recommendations that would support the elimination of process corruption from the Police Service. The investigation into the murder of Leigh Leigh, a matter which took place in the era prior to the Royal Commission, should serve as another example of the reality of this problem and its potentially dire consequences for the Police Service, victims and their families, and the community as a whole.

In remarking on the harmful consequences of police conduct during the investigation, the views of Mrs Robyn Leigh, mother of Leigh Leigh, should also be considered. The submissions of the Newcastle Legal Centre, made on behalf of Mrs Leigh, articulated the impact of the investigation upon her:[5]

> Mrs Leigh's doubt over the results of the initial police investigation into her daughter's death and the circumstances surrounding, was the spark for 10 years

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3 Royal Commission into the NSW Police Service, *Final Report Volume 1: Corruption*, May 1997, p. 36.

4 The Report listed the following as serious problems that result from encouragement of process corruption: it leaves an officer potentially compromised for all time; it teaches the ease with which a deception and cover-up can be maintained; it leads to lack of confidence on the part of the community in the criminal justice system; it becomes accepted as a rite of passage, a form of thrill seeking, or a means of releasing sociopathic tendencies; or it is seen as an easy alternative to skilled detective work. Royal Commission into the NSW Police Service *Final Report Volume 1: Corruption*, May 1997, p. 85.

5 PIC Exhibit 172.

> of further inquiry. She forced the involvement, at mammoth expense, of major State agencies to try and remedy and clarify the simple question: 'what happened to my daughter that night'? It has taken too long to answer this question, and the cost in emotional terms for Mrs Leigh and her surviving daughter Jessie are incalculable. This question should properly have been answered in 1990.

The submissions also state that Mrs Leigh is very concerned with the poor flow of information to her from police throughout the initial investigation. According to the submissions:[6]

> … it was this poor approach to communication with Mrs Leigh which contributed to an environment of suspicion and doubt about the veracity of the police investigation into the circumstances of the death of Leigh, and places a cloud over the entire investigation.

The Commission is unable to express any view about whether this poor communication represented an attempt by police to obscure their improper actions during the course of the investigation, or whether this simply represented a failure to appreciate the needs of the family of the victim. This has not been a matter addressed by the Commission in its investigations, as it lies outside the purpose of the investigation.

LEGAL ISSUES, POLICE PROCEDURE AND COMMISSION RECOMMENDATIONS

Several police officers explained their actions to the Commission by stating that they believed that they were entitled to question suspects after they had been arrested. Similarly, submissions made by Counsel on behalf of various police officers referred to the existence of a Commissioner's Instruction, extant at the time of the investigation, that had incorrectly stated that police were entitled to delay compliance with section 352 of the Crimes Act 1900 in order to question suspects after arrest. It is the opinion of the Commission that this is not a valid explanation for the actions of the police. While the Instruction was erroneous in part, it did correctly and clearly state that police were not able to detain a person in order to question them. It also stated that a person arrested was to be taken before a Justice without unreasonable delay. As noted above, the purpose of the arrests examined by the Commission was to interrogate or otherwise gather evidence.

The Commission received submissions, made on behalf of the Commissioner of Police, that the deficiencies found in the police conduct of the investigation are not likely to occur again due to the introduction of Part 10A of the Crimes Act 1900. This Part specifically provides for a period, after the arrest of a suspect, during which further inquiries can be made. It also provides for the creation of

6 PIC Exhibit 172.

the position of 'custody manager', an officer who is required to initiate a custody record for each person in custody, inform such persons of their rights and ensure that other rights as set out in the legislation are fulfilled. The Commission notes, however, that Part 10A, while providing for the regulation of detention, questioning and treatment of persons lawfully arrested, does not provide any new or expanded powers of arrest. It would not have made legal the arrests examined in the Commission's hearings.

The Commission also received submissions made on behalf of the Commissioner of Police that the custody manager and custody record provisions of Part 10A will in future prevent other kinds of abuses such as those that are alleged to have occurred in the course of the investigation of the murder of Leigh Leigh. In the Commission's opinion, this contention is, to a significant degree, correct. It is also the Commission's view, however, that there remains scope for improper detention of persons who initially attend a Police Station voluntarily to assist with inquiries, but are placed under arrest whilst there. In this Report the Commission examines examples provided by legislation and police procedures in the United Kingdom and in Victoria.

A recommendation is included in this Report for amending the Police Service Code of Practice so that when a person attends police premises voluntarily and the custody manager is informed, the custody manager must record certain details and must inform the person of their rights. Such amendments would promote the adherence to legal rights, the reliability of evidence gathered in interview and the reduction of the potential for complaints against police.

Other deficiencies identified in police procedures operating in 1989 led the Commission to examine relevant current procedures. This has resulted in a number of recommendations for minor changes to enhance the safeguards available in current procedures. This Report also describes changes made by the Police Service to procedures for the return and storage of used duty books in response to problems identified in these hearings.

Commission investigations revealed that Detective Senior Constable Mark Plant had retained his duty books and notebooks over the years. The Commission considers that the retention of this property was inappropriate. The books relevant to the period of the investigation of the murder of Leigh Leigh were not found along with the others, and it was the contention of Detective Plant that he had returned them in response to a request to return his Regional Crime Squad duty books. Given the contradictory information available on this matter, the Commission is not able to form a view as to whether or not Detective Plant's evidence explains the absence of the duty books relevant to the investigations of this Commission.

MATTERS ARISING FROM THE PUBLIC HEARING

A number of additional issues that were examined in the hearings are dealt with in this Report. One of these is the evidence provided by Associate Professor Kerry Carrington, a criminologist formerly of the University of Newcastle and now at the University of Western Sydney. Associate Professor Carrington has long been a critic of the police investigation of the murder of Leigh Leigh and has written a number of academic papers and a book on aspects of the murder. She was called to provide evidence at Commission hearings as some of her writings include what appear to be allegations of serious police misconduct. Examined in the hearings were issues of whether relevant material had been suppressed in the police briefs of evidence, in particular the full autopsy report detailing the injuries suffered by Leigh Leigh, and the possibility of an undisclosed witness to the murder. In both instances it was found by the Commission that there was no evidence of police misconduct or any improper conduct by police.

Another issue examined in the hearings was an allegation of sexual assault by police of teenage girls at the beach club party the night Leigh Leigh was murdered. This allegation appeared in the media on 12 September 1998. The Commission investigated this allegation but could find no evidence that such an event had occurred. As such, nothing can be inferred about police misconduct stemming from such events nor an inference drawn that those events had any impact on the investigation of Leigh Leigh's murder.

The Commission received submissions about the conduct of Associate Professor Carrington. It is not the role of the Commission to make any comment about Associate Professor Carrington's professional ability or judgment and as such the Commission makes no comment in response to those submissions.

This Report considers criticisms about the exercise of police discretion during the investigation into the murder. These criticisms related firstly to the alleged failure to prosecute persons for the alleged offence of sexual intercourse without consent of Leigh Leigh on 3 November 1989. Secondly, it was alleged that police failed to charge any other persons identified as taking part in illegal activities at the party on 3 November 1989, including persons alleged to have taken part in a common assault upon Leigh Leigh in the hours prior to her murder.

It is the view of the Commission that there was no aspect of police misconduct in the way that police dealt with evidence and made their decision on what charges to lay against NC1 in respect of the sexual assault allegations against him. In addition, it is the opinion of the Commission that police appropriately charged Matthew Webster with sexual assault at the time he was charged with murder and there can be no suggestion of misconduct by police in the fact that the charge was not proceeded with. It is also the opinion of the Commission that while there was evidence to support charges being laid against other persons for events that occurred on 3 November 1989, there is no evidence to suggest that the failure to charge those persons was the result of police misconduct.

Allegations were made during the course of the hearings about the manner in which Commission investigators had approached potential witnesses, and the wording on the heading of some statements made by witnesses. It was alleged that the statement heading demonstrated bias on the part of the Commission. The Commission has treated the headings to witness statements as irrelevant. Deliberations of the Commission have proceeded solely on the basis of the evidence properly before it. The Commission is of the view that there was no bias shown by the Commission and determined that no further action be taken in relation to the matter.

RECOMMENDATIONS FOR CONSIDERATION OF PROSECUTION OR DISCIPLINARY ACTION

This Report recommends that the Commissioner of Police give consideration to making an order pursuant to section 181D of the Police Service Act 1990 dismissing the following officer from the Police Service:

- Detective Sergeant Lance William Chaffey.

The Commission recommends that the Commissioner of Police give consideration to the taking of reviewable action pursuant to section 173 of the Police Service Act 1990 against the following officers:

- Detective Senior Constable Mark Baden Plant;
- Detective Constable Paul John Cunningham; and
- Detective Senior Constable Anthony Joseph Hetherington.

The Commission recommends that the Commissioner of Police give consideration to the taking of non-reviewable action within the meaning of section 173(1) of the Police Service Act 1990 in respect to the following officer:

- Detective Inspector Elwin Phillip Douglass.

It is recommended in this Report that the Director of Public Prosecutions give consideration to the prosecution of the following officers:

- Detective Senior Constable Mark Baden Plant;
- Detective Senior Constable Kel Stanley Graham;
- Detective Senior Constable Reuben Gregory Thurbon;
- Detective Sergeant David William Kane; and

- Detective Sergeant Grant Maurice Connelly.

RECOMMENDATIONS WITH RESPECT TO PROCEDURAL ISSUES

Having formed the view that current guidelines relating to persons attending a Police Station voluntarily are inadequate the Commission recommends that the Code of Practice (CRIME) should be amended so that when a person attends a Police Station voluntarily to assist with inquiries, and the custody manager is informed, the custody manager must record certain details in relation to the persons arrival at the Police Station, and must inform that person of his/her rights.[7]

If a person is returned to the custody manager, police having determined that the person is no longer free to leave the Police Station, the custody manager is to inform the person that he or she is under arrest and advise the person of the offence for which the arrest has been made.

The custody manager is also to comply with section 356M of the Crimes Act 1990 in advising a person orally and in writing that the person does not have to say or do anything, but that anything they do say may be used in evidence. The custody manager must give the person a summary of the provisions of this part of the Act and ensure that the person signs an acknowledgment that the information has been given.

Having noted that there is no requirement under current guidelines to record attempts made to contact a parent or guardian of a young person attending a Police Station the Commission recommends that the Code of Practice (CRIME), where it relates to custody managers assisting 'vulnerable persons', be amended to require that the custody manager records, on the custody record, all attempts made to contact a support person and the result of those attempts. This should include the time and date of contact, the name of the officer attempting the contact, the name of the person who was contacted, the method of contact used, and the result of the contact, or attempted contact, and any other information that the Police Service believes to be appropriate.

Having noted that current guidelines do not require that the signature of a support person be obtained on a typewritten record of interview or handwritten statement the Commission recommends that Annexure D and E of the Code of Practice (CRIME) be amended to include a requirement that adopting officers ask the support person to witness a typewritten or handwritten record of interview or a typewritten or handwritten statement. In the event of a refusal by such a person to witness such a document, that fact should be the subject of a contemporaneous

[7] The Commission's recommendations in relation to amending the Code of Practice (CRIME) are fully detailed in Chapter 9.

notebook entry by the interviewing officer and the support person should be invited to witness that note.

The Commission is of the opinion that consideration be given to amendments to the Listening Devices Act 1984 to the effect that the submission of false or misleading section 19 reports, whether by omission or commission, become the subject of express criminal sanction and further that appropriate procedures are initiated within the Police Service to ensure compliance with any such provision.

The Commission is of the opinion that current guidelines about the manner in which an adoption is to be conducted are much more specific than those in place in 1989-1990. It is noted, however, that the guidelines relating to typed records of interview or handwritten statements do not require the adopting officer to record the time of the adoption. As such the Commission recommends that guidelines on the adoption of typed records of interviews or handwritten statements should be amended to include the requirement that adopting officers write his/her name, rank, date and the time when signing an adoption.

1. INTRODUCTION

ORIGINS OF OPERATION BELFAST

1.1 On 3 November 1989 14 year old Leigh Leigh was assaulted and murdered at Stockton NSW. It has been over 10 years since her murder, yet the events of that night and the subsequent police investigation remain a subject of public attention. The years following Leigh Leigh's death were marked by public speculation about conspiracies and the possible involvement of other persons in the murder, apart from her convicted murderer Matthew Webster. The murder and its investigation have also been the subject of re-examination by legal and other sources.[8]

1.2 In May 1995 the circumstances of the assault and murder of Leigh Leigh were addressed in a successful appeal by the Leigh family from a decision of the Victim's Compensation Tribunal. The findings of Judge Moore on that appeal tended to support concerns that more than one person may have been involved in the murder.[9]

1.3 The Newcastle Legal Centre, which had represented Leigh Leigh's mother, Mrs Robyn Leigh in her compensation appeal, made representations to the NSW Attorney General to have Leigh Leigh's death re-investigated. On 26 July 1995 the Attorney General urged the NSW Minister for Police to re-open the investigation in light of the findings made by Judge Moore. The Newcastle Legal Centre representations were forwarded to the NSW Police Service ('the Police Service') and categorised as a complaint. This led to the initiation of preliminary inquiries and triggered the involvement of the Office of the NSW Ombudsman ('the Ombudsman').

1.4 The Police Service made documentation from the original investigation available to the Newcastle Legal Centre and, in May 1996, the Newcastle Legal Centre provided to the Police Service a Report entitled The Murder of Leigh Leigh, November, 1989, A Forensic Report. The report was critical of the police investigation and stated, amongst other things, that there was a real possibility that other persons could have been involved in the murder of Leigh Leigh.[10]

1.5 In October 1996 the New South Wales Crime Commission ('the Crime Commission') was asked to commence a review of the matter. In December 1996 it was provided with a Reference by the Management Committee of

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8 These include the Newcastle Legal Centre and Associate Professor Kerry Carrington.

9 PIC Exhibit 148C, 'Findings of Moore DCJ at Victims Compensation Hearing', The District Court of NSW at Newcastle, Wednesday 31 May 1995.

10 New South Wales Crime Commission, Investigation into the circumstances surrounding the murder of Leigh Leigh on 3 November 1989 and other offences: Hexham References, Vol 1, pp. 27, 28 ('Hexham Report').

the Crime Commission. That Reference enabled it to re-investigate the murder.

1.6 The Crime Commission released its findings on 31 March 1998 in two volumes. Volume I is a Report of the Crime Commission re-investigation of the murder and other offences. A number of conclusions were made in that volume. These include that:

- the offences for which persons were charged occurred substantially in the way described to the courts;
- Matthew Webster acted alone when he committed the murder and the assault which immediately preceded it;[11]
- while some of the police investigation methods were inappropriate, they did not lead to important relevant facts being omitted for the purpose of sentence proceedings; and
- while not disagreeing with the Newcastle Legal Centre proposition that the evidence suggests that other persons could have been charged with offences committed on the night of the murder, police did not act inappropriately in relation to the charging of other persons.[12]

1.7 Volume II consists of a review of the police inquiry into the matter. In that Volume the Commissioner of the Crime Commission found that while generally the police inquiry was carried out promptly and diligently there were some notable departures from proper practice. He further identified ten distinct types of misconduct that he considered had occurred.[13] For reasons stated in that volume, it was recommended that the findings of the review not be published and the matter be referred to the Police Integrity Commission ('the Commission'). On 19 March 1998, the matters contained in Volume II were referred to the Commission by the Honourable Mr Paul Whelan, Minister for Police. The Commissioner wrote to the Minister for Police agreeing to conduct an investigation into certain aspects of the conduct of police in the investigation of the murder of Leigh Leigh.

1.8 In April 1998 the Commission commenced an investigation, code-named Operation Belfast, of the 1989-1990 police inquiry into the assault and murder of Leigh Leigh. In doing so, the Commission undertook its own investigation of allegations of police misconduct first raised during the Crime Commission investigations.

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11 Crime Commission, Hexham Report Volume 1, p. 1.

12 Crime Commission, Hexham Report Volume 1, pp. 28-30.

13 PIC Exhibit 188, 'Further Submissions of Counsel Assisting dated October 1999'.

PUBLIC HEARINGS

1.9 Between 17 November 1998 and 9 February 1999, the Commission held a series of public hearings for the purpose of furthering the investigation of Operation Belfast. The general scope and purpose of the hearings was announced as follows:[14]

> To investigate:
>
> (1) the investigation by police of incidents on 3 November 1989 in and around the North Stockton Surf Club premises, including the death of Leigh Leigh;
>
> (2) the interviewing by police at Stockton, Mayfield and Newcastle of witnesses and potential witnesses to the incidents on 3 November 1989;
>
> (3) the apprehension, detention, interviewing and charging by police of Matthew Grant Webster, Guy Charles Wilson and a person who was then a child in respect of the incidents on 3 November 1989;
>
> (4) the preparation of statements, exhibits, supporting documents, briefs of evidence and the submission and disclosure of evidence and other matters to the prosecuting authorities, courts, those persons referred to in (3) above and their legal representatives;
>
> (5) the evidence given by police in court proceedings relating to those persons referred to in (3) above;
>
> (6) the apprehension, detention, interviewing and charging of Matthew Grant Webster in respect of an incident on 28 January 1990 at Stockton;
>
> (7) whether there has been misconduct by any police in the aforesaid matters;
>
> (8) whether there has 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 aforesaid matters.

1.10 In his opening remarks, Counsel Assisting the Commission ('Counsel Assisting') further addressed the purpose of the Commission's inquiries as follows:[15]

> The Police Integrity Commission is concerned in these hearings, however, with the conduct of the police who carried out the investigation

[14] PIC Transcript, 17 November 1998, p. 2.

[15] PIC Transcript, 17 November 1998, pp. 3-4.

into the murder and the investigation of other events and happenings on the night of 3 November 1989 at North Stockton Beach.

This Commission is not revisiting the circumstances of the murder and is not reinvestigating the events at the party on 3 November 1989 at the North Stockton Surf Club. These hearings are to examine the conduct of the police involved in the interviewing of witnesses, the arrest and detention of suspects and other persons, the charging of persons and the release to bail of persons charged.

THIS REPORT

1.11 In this Report, prepared and furnished pursuant to section 96 of the Police Integrity Commission Act 1996 ('the Act'), the Commission summarises the evidence heard by the Commission relating to the police investigation of the incidents on 3 November 1989.

1.12 The Report includes assessments made and opinions formed by the Commission as to the facts as found by the Commission during the course of its investigation. The Report also identifies and examines deficiencies in police procedures and failures to adhere to those procedures arising from the 1989-1990 investigation. It then examines relevant current procedures in order to assess whether those procedures should prevent similar failures occurring today. The Report makes recommendations about those matters where necessary.

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 New South Wales Police Service ('the Royal Commission'). 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:

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 by 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.[16]

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

[16] See paragraphs 2.14 and 2.15 for a description of the types of disciplinary action available under Part 9.

(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 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. This agreement specifies 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:

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.

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 (including police officers) for criminal or disciplinary offences;
- statements and recommendations as to whether consideration should or should not be given to the taking of certain action against police officers, namely:
- the taking of action (including the making of an order under section 181D of the Police Service Act 1990) against a police officer with a view to dismissing, dispensing with the services or otherwise terminating the services of a police officer;
  - the taking of reviewable action within the meaning of section 173 of the Police Service Act 1990 against a police officer;
  - recommendations that consideration be given to the taking of non-reviewable action within the meaning of section 173 of the Police Service Act 1990 against a police officer; and
- recommendations for other action, for example, changes to systems, procedures or policies.

2.14 Reviewable action is disciplinary action available against police officers for more serious breaches of discipline. A police officer may appeal the

imposition of a form of reviewable action to the Industrial Relations Commission. The available forms of reviewable action are:

- 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.

2.15 Non-reviewable action is disciplinary action available against police officers for less serious breaches of discipline. There is no avenue of appeal to the Industrial Relations Commission against the imposition of a form of non-reviewable action. The available forms of non-reviewable action are:

- coaching;
- mentoring;
- 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.

2.16 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.

2.17 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)).

2.18 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'. An affected person is a person who is the subject of substantial allegations made in the course of or connection with the investigation (section 97). If the affected person is a police officer, the Commission must also state whether consideration should be given to dismissing or dispensing with the services of the police officer or the taking of reviewable action against the police officer.

2.19 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. A prima facie case would be established if 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 (for example, 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.

2.20 It is noted that the power of the Commissioner of Police to prefer a departmental charge against a police officer for hearing by the Police Tribunal was repealed on 8 March 1999.[17] Since that date, the powers and obligations of the Commissioner 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.[18]

[17] Section 173, *Police Service Act 1990* (repealed).

[18] Schedule 4, Part 13, clause49, *Police Service Act 1990*.

3. BACKGROUND TO THE MURDER AND ITS INVESTIGATION

3.1 Much has been written about what took place on the night of 3 November 1989 with various interpretations about what actually took place being advanced. Certainly the police investigation revealed a number of conflicting recollections of minor and key events by those who were with Leigh Leigh on the night prior to her murder.[19] The activities described in this summary chapter are not intended to be a definitive statement of what occurred. Indeed this chapter attempts to describe the events in as neutral terms as possible. The aim is to provide readers, unfamiliar with the circumstances of the murder, some background to the key events and persons involved in order that the discussion of the subsequent police investigation in this Report can be better understood.

THE MURDER

3.2 On 3 November 1989, fourteen year old Leigh Leigh and a number of boys and girls about her age attended a 16th birthday party at the North Stockton Surf Club. At that party Leigh Leigh and others, although underage, consumed alcohol. Some other persons smoked cannabis.

3.3 During the evening Leigh Leigh left the immediate vicinity of the party and went to the beach with a 15 year old youth, referred to in the hearings as NC1, where sexual intercourse took place.[20]

3.4 Those at the party reported that when she returned from the beach Leigh Leigh was upset and crying and a number of witnesses later gave statements to police of words they recalled she said to them at that time. According to a number of reports from witnesses, she was then assaulted on two occasions by other partygoers including Matthew Webster and Guy Wilson. Matthew Webster and Guy Wilson had been invited to the party to act as 'bouncers' and, at 18 and 19 years of age respectively, were older than most of the others present. The assaults included kicking, pouring beer over her, spitting beer on her, and subjecting her to a variety of verbal taunts and abuse.

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[19] According to the Crime Commission Report 'the police investigation was also hampered by the fact that many of the witnesses were affected by alcohol and drugs at the time of the events and for this reason their recollections were impaired. The fact that they had been using these substances or had engaged in other conduct including sexual activity made them reluctant to speak about events … Some witnesses gave as many as three different accounts of important events.'; Crime Commission, Hexham Report, p. 4.

[20] Different opinions have been proffered over whether or not Leigh Leigh consented to that sexual intercourse or whether there is sufficient evidence to reach a conclusion. It is not the role of this Commission to form an opinion on this matter and it does not do so.

3.5 Later in the evening, although accounts vary, it appears that Matthew Webster came upon Leigh Leigh in or near salt bushes at the edge of the beach a short distance from the Surf Club. He then took her with him to a hollow between two mounds of sand and there attempted to have sexual intercourse with her. She resisted and he sexually assaulted her. Then, he strangled her to the point of semi-consciousness. While she was in a semi-conscious state lying on the ground, he took a large lump of concrete and struck her about the head with it, causing severe injuries which resulted almost immediately in her death.

THE INVESTIGATION

3.6 The investigation of Leigh Leigh's murder was conducted by the Newcastle Homicide Squad, a part of the Regional Crime Squad, North Region under the supervision of Detective Sergeant Lance Chaffey. The officer next in seniority to him during the initial stages of the investigation was then Detective Sergeant Elwin Douglass who was the officer in charge of detectives at Mayfield Police Station. With the inclusion of other detectives from the Regional Crime Squad, local area detectives and plain clothes police, a total of up to twenty police officers became involved in the initial phase of the investigation.

3.7 When Leigh Leigh's body was found on the morning of 4 November 1989, police sought to identify every person who had been at the party the night before. Ultimately they interviewed a large number of young people who had been present at the party.

3.8 By 15 November 1989, police had narrowed the list of suspects to a number of young people, but believed that Matthew Webster, Guy Wilson and NC1 were the three persons most likely to have been responsible for her murder and/or aware of who was involved. On that day those three persons were taken to Newcastle Police Station where they were each interviewed and charged with offences relating to events preceding the murder. Matthew Webster and Guy Wilson were kept in custody overnight and were bailed by the Magistrate at court the following day. NC1 was released in the early hours of the morning of that day into the custody of his mother (referred to in the hearings as NC2).

3.9 After 15 November the investigation was wound down for a variety of reasons. It was not until the week preceding 16 February 1990 that a number of further interviews were carried out by police and statements again taken from a number of witnesses. On 16 February 1990 Matthew Webster and Guy Wilson were taken separately to Newcastle Police Station. Before that day, police had applied for, and obtained from the Supreme Court, a warrant that empowered them to use a listening device to overhear and record conversation between Matthew Webster and Guy Wilson in an

interview room at Newcastle Police Station which had been set up for that purpose.

3.10 During the afternoon of 16 February 1990 Matthew Webster and Guy Wilson were placed together in that interview room and their conversation was recorded using the listening device. After about one hour they were taken from the interview room, and interviewed separately. During his interview Matthew Webster confessed to the murder of Leigh Leigh and a short time later Guy Wilson was released from the Police Station without charge. Webster was charged with Leigh Leigh's murder and sexual assault and ultimately he pleaded guilty to the charge of murder and is currently serving a sentence for that crime.

EVIDENCE PROVIDED TO THE COMMISSION

3.11 During the course of the Commission's hearings, a number of witnesses were called to assist the Commission in its investigation by providing evidence on aspects of the police investigation into the sexual assault and murder of Leigh Leigh. This included evidence both from the police and the major suspects. The evidence can largely be grouped around the two key events in the police investigation, namely:

- the arrest and charging on 15 November 1989 of suspects NC1, Guy Wilson and Matthew Webster with offences relating to events on the night of the murder; and

- the interview on 16 February 1990 of Guy Wilson and Matthew Webster and the charging that night of Matthew Webster with the sexual assault and murder of Leigh Leigh.

3.12 For each of those key events conflicting evidence has been given on:

- the identity of officers who 'collected' the suspects;

- the manner in which they were collected; their treatment while in police custody; and

- compliance with various procedures including those involving the interviewing of juveniles.

3.13 Key points of evidence are presented in the next two chapters together with an assessment of that evidence. In doing this it must be remembered that the events in question took place over nine years prior to witnesses giving their evidence to the Commission therefore difficulty in recollecting details, and variation in memories of persons present, are to be expected.

In making assessments and forming opinions this is a matter which the Commission has borne in mind.

4. THE POLICE INVESTIGATION - EVENTS OF 15 NOVEMBER 1989

4.1 By mid-November 1989 the police still had a number of suspects for the murder. They suspected however, that three persons - Matthew Webster, Guy Wilson and NC1 – had committed offences against Leigh Leigh on the evening and might be able to provide information with respect to the murder. The Commission heard evidence that the police formulated a plan to advance the investigation by charging those three with offences that had occurred on the night of the murder.

4.2 Detective Chaffey gave evidence to the Commission of a general plan that was to be carried out by investigators on 15 November 1989 as follows:[21]

> My recollection is that there was a conference held with the investigating police concerning the inquiries up to that point in time. Arrangements were made, or requests were made to locate three persons, Wilson, Webster and NC1, and for them to be interviewed at Newcastle police station.

4.3 He was asked about his recollection of which people were sent out to get those persons:[22]

> Well, the only people that I can recall was - Hetherington was given the task of locating Wilson, Plant was given the task of locating Webster, and Douglass the task of locating NC1.

4.4 Detective Chaffey was asked by Counsel Assisting why all three were to be interviewed simultaneously at Newcastle Police Station:[23]

> Q. All right. Was it necessary to take them to Newcastle so that they could all three be interviewed simultaneously?
> A. Yes.
>
> Q Why was it —
> A. Well, in the event of —
>
> Q. — necessary?
> A. My recollection was in the event of some information or evidence forthcoming, relating to that murder - some fresh information we could react to.
>
> Q. That you wanted them all at the one place at the one time?
> A. Yes.

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21 PIC Transcript, LW Chaffey, 24 November 1998, pp. 385-386.

22 PIC Transcript, LW Chaffey, 24 November 1998, p. 389.

23 PIC Transcript, LW Chaffey, 24 November 1998, p. 387.

4.5 At a later appearance at the Commission, Detective Chaffey gave additional evidence about the intended purpose of the interviews:[24]

> Q. The intention in interviewing all three of them - at the same time, or the same day, the same afternoon, the same evening - was to try to further the investigation of the murder?
> A. And the offences for which they'd been identified.
>
> Q. And in the course of so doing, trying to find out whether they were persons who were responsible for the murder?
> A. Or offer information concerning some other person.
>
> Q. You would have expected that each of them was to be interviewed about the events of the night of the death of Leigh Leigh?
> A. Yes.
>
> Q. And inquiries would have been made of each of those persons about what they knew of the events of the death of Leigh Leigh?
> A. Yes.

4.6 The effect of this plan was that NC1 was charged that night under section 66C(1) of the Crimes Act 1900 with sexual intercourse with a child between the ages of 10 and 16 and also with supplying cannabis resin. Matthew Webster made two statements that evening and was charged with assault and supplying cannabis. Guy Wilson was charged with assault. The assaults related to common assaults on Leigh Leigh both outside and inside the clubhouse prior to her murder.

COLLECTION OF NC1

NC1'S EVIDENCE OF HIS COLLECTION

4.7 On 14 December 1998 NC1 provided evidence to the Commission of being taken into custody by police at approximately 5.00 pm on 15 November 1989. The following exchange took place between the witness and Counsel Assisting:[25]

> Q. If you can cast your mind back to being at the street, Mitchell Street, outside Roberto's, you saw the people you thought were police sitting in the car.
> A. Yeah.
>
> Q. And then I think you said one or two got out?
> A. Yeah.

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[24] PIC Transcript, LW Chaffey, 1 February 1999, p. 1330. Similar reasons for interviewing the three persons simultaneously were also given in the evidence provided by Detective Chaffey on 24 November 1998 at p. 391.

[25] PIC Transcript, NC1, 14 December 1998, p. 901.

Q. And came over to you, spoke to you —
A. Yeah.

Q. What did they do when they spoke to you?
A. They just sort of like grabbed me and took me back - I had to get in the back seat of the car.

Q. When you say they grabbed you, what part of you did they grab hold of?
A. On the arms, both sides.

Q. Both arms?
A. Yeah.

Q. Both sides of you?
A. Yeah.

Q. And took you back to the police car?
A. Yep.

Q. And what part of the police car did you get into?
A. The back.

Q. And when you got in the back, what happened then?
A. Oh, they made me lie down when they drove through Stockton.

Q. They made you lie down?
A. Yeah.

Q. Did anyone say why?
A. No - so no-one could see me.

4.8 NC1 was also able to recall that when approached by the officers one of them had said to him 'You've got to come with us for more interviews'. He then went on to describe what happened after he was placed in the police car:[26]

> They took me to the police station and drove to the Stockton one, and I think one of them got out and had a talk to I think it was Lance Chaffey and then we went over to Newcastle. I was there for a few hours.

4.9 NC1 was later questioned by his Counsel as to whether he felt able to leave police custody:[27]

Q. When you went into the police car, did you feel free not to get into the police car?
A. No.

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[26] PIC Transcript, NC1, 14 December 1998, p. 900.

[27] PIC Transcript, NC1, 14 December 1998, p. 979.

Q. When you finally got to Newcastle police station and you got out of the car and you were on your way into the police station, did anyone have a hand on you?
A. No.

Q. Did you feel free to leave of your own accord?
A. No.

Q. How many police officers got out of the car and went with you into the police station?
A. Three.

Q. And where were they positioned in relation to you as you all went into the police station?
A. They were just walking around me. I didn't know where to go.

Q. So if not physically restrained by a hand, did you feel restrained by their physical presence around you?
A. Yes.

4.10 NC1 did not specifically identify any of the officers who collected him from Stockton and took him to Newcastle Police Station that day. The following points can, however, be taken from his evidence to the Commission:

- He stated that when the police car he was travelling in arrived at Stockton Police Station, one officer got out from the front passenger seat to speak to Detective Chaffey and then returned to that seat.

- He stated that, in addition to that officer, there was an officer in the driver's seat and another in the rear of the vehicle. While not specifically asked, he did not state that either of those officers left the car or that any other officer joined them in the car while at Stockton Police Station or at any other time before reaching Newcastle Police Station.[28]

- He stated that on arriving at Newcastle Police Station he was taken to an interview room by the same group of people who had travelled in the car with him, including the person who had got out of the car and spoken to Detective Chaffey.[29]

- He recalled two officers conducting a record of interview with him in the presence of his mother later that night in another interview room, one typing and one asking questions, and those two officers were the officers who had brought him to Newcastle from Stockton and had

[28] PIC Transcript, NC1, 14 December 1998, p. 902.
[29] PIC Transcript, NC1, 14 December 1998, p. 903.

then been with him in the first interview room. The record of interview identifies Detective Douglass as the person conducting the interview, Detective Yeomans as typist, and Detective Cunningham as also being present at the record of interview.[30]

EVIDENCE OF DETECTIVE ELWIN DOUGLASS

4.11 Detective Inspector Douglass was, in 1989, a detective sergeant in charge of the detectives at Mayfield Police Station, the patrol responsible for the Stockton area. He was second in command during the initial part of the investigation into the murder of Leigh Leigh, but during that time also continued his responsibilities with the Mayfield detectives. According to the evidence of Detective Chaffey he had been tasked on 15 November 1989 with locating NC1.

4.12 The duty book entry of Detective Douglass for that day, which was tendered as Exhibit 3, includes information about his actions in relation to NC1.[31] This entry reads:[32]

> … Then to Stockton P.S. re briefing with Det Sgt Chaffey on Leigh murder. Then with Det. Yeomans and Det. Cunningham from Stockton with [name and date of birth of NC1] of [address of NC1] to R.C.S. re further inquiries Leigh murder. Later contact mother [name of mother] re interview of [name of NC1] re sexual assault of deceased. R.O.I. re same. Later interview re supply of hash in block form on 3/11/89 handwritten statement obtained. Attend to charging of same. Attend to records and charging and interview with NBN3 at N.P. Station. Off duty 1:30 am

4.13 When questioned by Counsel Assisting on 18 November 1998 Detective Douglass had only a limited recollection of the events of 15 November 1989.[33] He could not recall being involved in collecting NC1 from a street in Stockton, nor could he recall transporting NC1 to Newcastle.[34] He could only recall interviewing NC1 at the Newcastle detectives office in Newcastle Police Station.

4.14 On 17 December 1998, Detective Douglass was questioned by Counsel for the Commissioner of Police who noted that his duty book stated that he, together with officers Cunningham and Yeomans, had taken NC1 from Stockton to Newcastle Regional Crime Squad (R.C.S.) - not from Stockton Police Station. Detective Douglass agreed that his duty book did make

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30 PIC Transcript, NC1, 14 December 1998, p. 909; PIC Exhibit 1B, barcode 5378121.

31 A duty book is a formal document issued to individual police officers and is a record kept, by them, of their duty on a day by day basis. The relevant duty books for Detectives Yeomans, and Cunningham, were not provided to the Commission as they could not be located.

32 PIC Exhibit 3.

33 PIC Transcript, EP Douglass, 18 November 1998, pp. 99-100.

34 PIC Transcript, EP Douglass, 18 November 1998, pp. 104, 112.

that statement but asserted that his own recollection was that the first time he saw NC1 was at Stockton Police Station.[35]

4.15 Detective Douglass also told the Commission on 18 November 1998, that he believed he was not involved in the arrest of NC1 on the basis that his duty book did not record his involvement in that arrest. He stated that his own examination of his duty book for that period had revealed entries for other arrests that he had made, and that this indicated that it had been his practice to record, in his duty book, his involvement in arrests.[36]

4.16 He later stated during questioning by Counsel Assisting that he thought NC1 was attending the Police Station voluntarily, based on his own records.[37]

4.17 At Detective Douglass's second appearance before the Commission, on 16 December 1998, Counsel Assisting described to him key aspects of evidence provided to the Commission by NC1 and his mother regarding NC1's arrest. He was then asked again about his recollection of his involvement in taking NC1 into custody. Detective Douglass maintained that he had no recollection of those events and that his duty book supported his belief that he was not involved in the arrest. He did concede, though, that his duty book records could have been incorrect in that regard, but in his view this was not likely.[38]

4.18 During the course of questioning by Counsel Assisting on 16 December 1998, Detective Douglass also questioned whether NC1 had, in fact, been under arrest when he was taken to Newcastle Police Station.[39]

4.19 In earlier evidence on 18 November 1998, Detective Douglass was referred to the charge sheet for NC1 that indicates that NC1 was apprehended at 8.00 pm on 15 November 1989 and records the apprehending officers as Detectives Douglass, Yeomans and Constable Cunningham.[40] According to Detective Douglass, he could not recall what had happened at 8.00 pm that night.[41] When it was put to him that 8.00 pm was not the time NC1 was arrested, however, he disagreed with this. The evidence continued as follows:[42]

> Q. Did you not say earlier that you have no recollection of what happened at 8pm?
> A. That's correct.

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35 PIC Transcript, EP Douglass, 17 December 1998, p. 1127.

36 PIC Transcript, EP Douglass, 18 November 1998, pp. 114-115.

37 PIC Transcript, EP Douglass, 18 November 1998, p. 160.

38 PIC Transcript, EP Douglass, 16 December 1998, p. 1104.

39 PIC Transcript, EP Douglass, 16 December 1998, pp. 1110, 1112.

40 PIC Exhibit 4.

41 PIC Transcript, EP Douglass, 18 November 1998, p. 111.

42 PIC Transcript, EP Douglass, 18 November 1998, p. 127.

Q. How then do you disagree with me when I suggested to you a moment ago that it was not the time that NC1 was apprehended?
A. On the basis that when this charge sheet was completed something presumably occurred that warranted me classifying the young person as being arrested at that time.

Q. What sort of event could have occurred then to warrant classifying his arrest at 8pm?
A. On the basis that he may have been there voluntarily up until then and at that point he didn't wish to remain.

Q. I see. That's not something you know of, it is something that could have occurred, do you say?
A. That could have happened. I don't recall.

4.20 On 16 December 1998, Counsel Assisting again brought to Detective Douglass' attention the charge book entry for NC1 which noted his time of arrest on 15 November 1989 as 8.00 pm. When asked what happened at 8.00 pm, Detective Douglass replied that he could not recall but that it was possible that at that time the young person 'declined to be there of his own volition', meaning that he had indicated that he wished to leave.[43]

4.21 Counsel for Detective Chaffey later suggested another possibility to Detective Douglass, that once NC1 had made certain admissions to Detective Douglass in relation to sexually assaulting Leigh Leigh he would not have been free to go. That is, that a person could be under arrest, without formally being told, because of circumstances where he or she makes an admission. Detective Douglass agreed that could be so.[44]

4.22 In later questioning of Detective Douglass by the Commissioner, it was revealed that Detective Douglass distinguished between physical arrests, which involved him locating a person and telling them they were under arrest, and other arrests which took place at a Police Station during the course of an interview where the person appeared voluntarily. According to Detective Douglass he recorded the former type of arrest in his duty book but not the latter.[45]

EVIDENCE OF DETECTIVE MICHAEL CUNNINGHAM

4.23 Detective Senior Constable Cunningham was, at the time of this investigation, a constable of police who had been brought in from another station to assist with the investigation. He had finished his police training only fourteen months before the investigation commenced. Detective

[43] PIC Transcript, EP Douglass, 16 December 1998, pp. 1115-1116.
[44] PIC Transcript, EP Douglass, 16 December 1998, p. 1121.
[45] PIC Transcript, EP Douglass, 16 December 1998, p. 1170.

Cunningham told the Commission that he had been unable to locate his duty book for the period covering 15 November 1989 and that he had been informed that it had been destroyed.[46]

4.24 Providing evidence on 17 November 1998, Detective Cunningham could recall his involvement in the collection of NC1. He told the Commission 'I arrested the - sorry, I took the - arrested or took the juvenile into custody, NC1'.[47] He went on to describe the events that led up to the taking of NC1 into custody:[48]

> To the best of my recollection, Commissioner, teams were formed. I went out with one of the teams to a street in Stockton, located NC1, the juvenile, took him into custody, took him back to Stockton police station for a period of time, then took him to Newcastle police station, where he was interviewed and later charged and bailed and released.

4.25 Detective Cunningham could not recall the identities of all those officers on his team or how many were on the team. He could recall that Detective Sergeant Douglass was the leader of the team but could not recall whether Detective Yeomans was part of the team. He could also recall that he was aware at the time that NC1 was a juvenile.[49]

4.26 While he could recall his involvement with other police in taking NC1 into custody, Detective Cunningham was unable to recall any of the details of how that took place. He could recall only that 'he was spoken to, taken into custody and taken back to Stockton Police Station'. He could not recall another person being present with NC1 on the street, nor could he recall NC1 being made to lie down in the police car.[50]

4.27 He could, however, recall what transpired after NC1 was placed in the car:[51]

> A. We went back to Stockton police station.
>
> Q. All right. What happened when you got back to Stockton police station?
> A. To the best of my recollection, I think Detective Sergeant Douglass spoke to some other police. Then we went to Newcastle police station.

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46 PIC Transcript, MPJ Cunningham, 21 December 1998, p. 1216.
47 PIC Transcript, MPJ Cunningham, 17 November 1998, p. 14.
48 PIC Transcript, MPJ Cunningham, 17 November 1998, pp. 14-15.
49 PIC Transcript, MPJ Cunningham, 17 November 1998, pp. 15-17.
50 PIC Transcript, MPJ Cunningham, 17 November 1998, pp. 17, 20-21, and 21 December 1998, p. 1217.
51 PIC Transcript, MPJ Cunningham, 17 November 1998, p. 21.

4.28 Shortly thereafter Detective Cunningham clarified this by stating that he recalled Detective Douglass going into Stockton Police Station while he waited outside. He speculated that Detective Douglass spoke to other police once inside the Police Station as after his return they went on with NC1 to Newcastle.[52]

4.29 In his evidence, Detective Cunningham stated that NC1 had been 'taken into custody', which he distinguished from arrest. He did not recall that NC1 was under arrest at the time he was taken from Stockton:[53]

> A. I don't recall him being arrested. All I recall is that he was taken into custody in the car and taken to Newcastle police station.
>
> Q. When you say he was taken into custody, is that distinguishable from being arrested?
> A. Custody, he was - for the word, he was taken in the car. I don't recall him being arrested.
>
> Q. All right. So he was taken in a car of his own free will; is that what happened?
> A. I recall - I don't recall that.
>
> Q. You don't recall that it was of his own free will?
> A. I don't recall him being spoken to in relation to it. I just recall him getting into the car and he was going to Stockton police station.
>
> Q. A team of police go out to collect a juvenile and you said the purpose of doing so was to arrest him or take him into custody, and that's what happened, wasn't it?
> A. Sir, I never said he was - the purpose was going to be arrested; I said we were going out to look for a juvenile NC1.

4.30 Further to this Detective Cunningham stated:[54]

> Q. In all events, he got in the car, the police car?
> A. Yes.
>
> Q. And you don't recall whether that happened because he was deprived of his liberty or because he came with you voluntarily?
> A. No, I don't recall that.
>
> Q. Right. Was he offered, when you got back to Stockton police station, the opportunity of leaving the police station?
> A. No, I don't recall that.
>
> Q. Because that never happened, did it?
> A. I don't recall it happening.

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52 PIC Transcript, MPJ Cunningham, 17 November 1998, p. 23.

53 PIC Transcript, MPJ Cunningham, 17 November 1998, pp. 24-25.

54 PIC Transcript, MPJ Cunningham, 17 November 1998, p. 26.

4.31 Detective Cunningham was not able to recall what time NC1 was located or what time they arrived at Newcastle Police Station. He was able to recall that it was daylight when they collected NC1.[55]

EVIDENCE OF DETECTIVE PETER YEOMANS

4.32 Detective Sergeant Yeomans was a plain clothes constable first class during the initial stages of the investigation into the murder of Leigh Leigh. As noted above, he was recorded on NC1's charge sheet as one of the three apprehending police and he was recorded in Detective Douglass' duty book as one of the officers involved in transporting NC1 to Newcastle.

4.33 In his evidence before the Commission, Detective Yeomans was unable to recall being involved in any way with the collection of NC1 from Stockton or taking him to Newcastle Police Station.[56] He stated he had no recollection of any of the events of 15 November 1989, except to the extent that his memory of it was refreshed by his examination of the record of interview between Detective Douglass and NC1. Assisted by the evidence of Detective Cunningham he recalled being present and typing the record of interview with NC1.[57]

4.34 Despite making inquiries at several locations, Detective Yeomans was unable to locate his duty book for this period. He gave evidence that he was informed by the record keeper at Bullaroo Police Station that it had been destroyed.[58]

OTHER EVIDENCE

4.35 In his evidence of 14 December 1998, NC1 recalled that another person had been with him at the time he was collected from the street by the police. He stated that he thought that the person, referred to in the hearings as NC3, could have been there.[59]

4.36 On 13 October 1998 the Commission obtained a written statement from NC3 which became Exhibit 90B. In that statement NC3 stated that he recalled an incident that took place on an afternoon in November 1989 while it was still broad daylight. He stated that he was at a bus stop seat in Mitchell Street, Stockton, with two or three others, when two men in plain clothes came over to NC1, each took him by an arm and escorted him to the car where he was placed in the back seat with one of the men.[60]

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55 PIC Transcript, MPJ Cunningham, 17 November 1998, pp. 28-29.

56 PIC Transcript, PC Yeomans, 17 November 1998, p. 53-55.

57 PIC Transcript, PC Yeomans, 17 November 1998, pp. 54-55.

58 PIC Transcript, PC Yeomans, 17 November 1998, p. 54, and 17 December 1998, p. 1180.

59 PIC Transcript, NC1, 14 December 1998, p. 900.

60 PIC Exhibit 90B.

CONTACTING THE MOTHER OF NC1

4.37 An issue which arose in the Commission's hearings was the length of time it took for NC2, the mother of NC1, to be brought to her son in Newcastle Police Station interview room. In 1989, the Commissioner's Instructions (the procedures for the Police Service at that time) required that a parent or guardian of a child in custody be contacted and present prior to the commencement of an interview or taking of a statement.[61]

4.38 In her evidence before the Commission, NC2 recalled the events of 15 November 1989. She stated that she had finished work that day at the usual time of 4.00 pm and went straight home, arriving at about 4.10 pm. Her daughter, referred to in the hearings as NC4, was there when she arrived home. Shortly thereafter another person living at the house, NC3, arrived home and told her that her son had been picked up by police and taken somewhere by car.[62] NC2 went on to describe her efforts to find her son:[63]

> Q. What did you do when you were told that [NC1 had been picked up by police]?
> A. I think I went - I don't know whether I rang up or I just went straight around to the police station. That's where I assumed he would be. When I got there, it was sort of deserted, and in the past there'd been a lot of activity because of the investigations, and there was one officer standing out the front and I approached him and asked him if [NC1] was there and he acted like he didn't know what I was talking about or who I was talking about and —
>
> Q. Do you recall who that was?
> A. I think it was Detective Chaffey because I'd seen him in the news and everything.
>
> Q. What did he say to you?
> A. Nothing much at all, just acted as if he didn't know what I was on about.
>
> Q. What were you on about?
> A. I was asked - looking for [NC1] And I asked him if he was there and he acted as if he didn't know him or - and then I just went.
>
> Q. Where did you go?
> A. I went back home and started ringing up to see if he was at Newcastle or - no, not Newcastle, I rang Mayfield first because that's where I thought he'd probably be. Then I just made more phone calls - I can't remember who to or anything because it's a long time ago - and I ended up finding out where he was and my sister-in-law and I went over to Newcastle police station.

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61 Commissioner's Instruction 31.18 and 35.08. Also, a child was defined by statute as a person under the age of 18 years. Commissioner's Instruction 35.04.

62 PIC Transcript, NC2, 15 December 1998, p. 990.

63 PIC Transcript, NC2, 15 December 1998, pp. 990-991.

Q. All right. Do you remember how it was that you found out where he was?
A. I think it was from the phone call. I'm not sure.

Q. A phone call to somebody?
A. To the Newcastle police. I think. I can't remember exactly.

4.39 According to NC2's evidence, on learning that her son was at Newcastle Police Station she went there accompanied by her sister-in-law. She stated that she inquired with a uniformed officer at the front counter after her son and was told she would need to wait. She recalled that she waited 'hours'.[64] During that time no police officer spoke to her or informed her of what was happening, however, they had confirmed to her that her son was in the station. In addition, she stated that while she was waiting at Newcastle Police Station NC4 (NC1's sister) would have remained at her home.[65]

4.40 NC1 stated in his evidence, that in November 1989 his mother finished work at 3.00 pm 'or something like that' and was generally home 5-10 minutes later.[66] He also told the Commission that none of the police officers with him had asked him for information that would assist in contacting his mother:[67]

Q. I just want to ask you this finally: before you were taken to where your mother was at the police station and taken into the room where your mother was, had anyone asked you about the whereabouts of your mother?
A. No.

Q. Had anyone asked you for your mother's phone number?
A. No.

Q. Had anyone asked you whether you wanted to see your mother or have your mother in attendance?
A. No.

PROCEDURES RELATING TO THE INTERVIEW AND CUSTODY OF JUVENILES AS AT 1989 AND RECORDS OF ATTENDANCE AT NEWCASTLE POLICE STATION

4.41 Mr Robert Collins was, in November 1989, a senior sergeant in charge of the uniformed officers carrying out general station duties at Newcastle Police Station. He gave evidence to the Commission on the procedures relating to juveniles in police custody in 1989. Those procedures, in the

64 PIC Transcript, NC2, 15 December 1998, p. 993.
65 PIC Transcript, NC2, 15 December 1998, pp. 998-999.
66 PIC Transcript, NC1, 14 December 1998, p. 914.
67 PIC Transcript, NC1, 14 December 1998, p. 916.

form of the Commissioner's Instructions, required that efforts be made to have a parent or other responsible adult with a juvenile and that, in support of this, occurrence pad or telephone pad entries be made of attempts to contact such adults. He also stated that it was the responsibility of whoever wanted to interview the juvenile to make efforts to contact the parent or responsible adult.[68] A more detailed description of the relevant procedures for that time can be found in Chapter 6.

4.42 The evidence provided by Detectives Douglass, Yeomans and Cunningham demonstrated that they understood the requirements of those procedures.[69] Detective Douglass also acknowledged that it would have been his responsibility to ensure the presence, or take steps to ensure the presence, of NC1's mother.[70]

4.43 Former Senior Sergeant Collins also gave evidence that in November 1989 there were no procedures in place at Newcastle Police Station to record the time when people were brought into the station in police custody. The first record of their presence in the station's records, as opposed to an individual officer's records, would be the creation of a charge book entry as the person was being formally charged. If the person was placed in the cells there would also be a cell book entry.[71]

4.44 According to former Senior Sergeant Collins, in 1989 it would have been possible for a juvenile, a suspect or a witness to be brought into the basement car park of Newcastle Police Station and taken to the detectives or regional crime squad offices using the lift. The general duties police on the ground floor would be unaware the person was in the building.[72] He also stated that, if a parent had entered the station inquiring about the presence of a juvenile, the officer attending at the counter where the public entered would telephone around the building inquiring after the juvenile. If a parent was then asked to wait, they would wait in the public waiting area that was within sight of the uniformed staff. He further stated that it would be unusual for a parent to wait there for some hours.[73]

4.45 Sergeant David Hughes and Senior Constable Wayne Gough were, on 15 November 1989, uniformed officers performing station duties at Newcastle Police Station from 3.00 pm to 11.30 pm. Sergeant Hughes stated that it

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68 PIC Transcript, RTD Collins, 19 November 1998, p. 254. It should also be noted that section 13(1) of the *Children (Criminal Proceedings) Act 1987* operated to render inadmissible evidence of admissions, confessions or information obtained during an interview in the absence of a parent, guardian or responsible adult, or a lawyer acting for the child. Section 13 of this Act was reproduced in full as Commissioner's Instruction 35.09.

69 PIC Transcript, EP Douglass, 18 November 1998, p. 154; PIC Transcript, PC Yeomans, 17 December 1998, p. 1185; and PIC Transcript, MPJ Cunningham, 17 November 1998, p. 41.

70 PIC Transcript, EP Douglass, 18 November 1998, p. 156.

71 PIC Transcript, RTD Collins, 19 November 1998, pp. 225-226.

72 PIC Transcript, RTD Collins, 19 November 1998, p. 256. This situation was also noted by Detective Douglass; PIC Transcript, EP Douglass, 18 November 1998, p. 158.

73 PIC Transcript, RTD Collins, 19 November 1998, pp. 256-257.

would not be unusual for there to be someone waiting for hours in the public waiting room for a variety of reasons, and he conceded that the mother of a juvenile could have waited for several hours in the waiting room.[74]

4.46 Senior Constable Gough was also able to recall that the Commissioner's Instructions at that time required that efforts to contact a parent or guardian be recorded on the occurrence pad. He stated that if a mother had arrived at the Police Station to inquire about the presence of her child, such a thing would not be recorded on an occurrence pad, but that if she had telephoned, that would be recorded.[75] He further stated that it would not be uncommon for a parent to wait a number of hours at the Police Station.[76]

EVIDENCE OF POLICE EFFORTS TO CONTACT NC2

4.47 Investigations by the Commission failed to reveal any record, either on occurrence pads or telephone pads from the Newcastle or Stockton Police Stations, of attempts made to contact either of NC1's parents. Similarly, no record was found of NC2's attempts to contact police dealing with her son.

4.48 Senior Constable Gough could not recall anyone making an entry on Newcastle Police Station occurrence pad on 15 November 1989 relating to attempts to contact a parent of NC1, nor anyone speaking about such a thing.[77] Both he and Sergeant Hughes gave evidence that they could not recall seeing NC1 or his mother on that night, nor a woman coming into the station seeking the whereabouts of her son.[78]

4.49 Both Detective Yeomans and Detective Cunningham gave evidence that they could not recall making any attempts to contact a parent or guardian of NC1.[79] Detective Yeomans had stated that it was his practice to record such attempts in his duty book and on the occurrence pad. He could not explain why there was no record made on either the Stockton or Newcastle occurrence pads and agreed that if he had followed his normal practice and had attempted to contact a parent a note should have been found on the occurrence pad.[80] Detective Cunningham could not recall any journey to the family home of NC1 or to any place where NC1's parents might be.[81]

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74 PIC Transcript, D Hughes, 25 November 1998, pp. 482-483.

75 PIC Transcript, W Gough, 3 December 1998, pp. 791-792.

76 PIC Transcript, W Gough, 3 December 1998, p. 789.

77 PIC Transcript, W Gough, 3 December 1998, pp. 791-793.

78 PIC Transcript, D Hughes, 25 November 1998, pp. 482-483; PIC Transcript, W Gough, 3 December 1998, p. 786.

79 PIC Transcript, PC Yeomans, 17 November 1998, p. 67; PIC Transcript, MJP Cunningham, 17 November 1998, p. 41.

80 PIC Transcript, PC Yeomans, 17 December 1999, p. 1185.

81 PIC Transcript, MJP Cunningham, 17 November 1998, p. 30.

4.50 When questioned on this matter Detective Douglass was referred to his duty book for 15 November 1989,[82] quoted at page 23, and questioned on the meaning of the passage where it states NC1 was taken to Newcastle Police Station regarding 'further inquiries Leigh murder' and then goes on 'later contact mother' regarding the interview of NC1 on the sexual assault of the deceased. The following exchange then took place with Counsel Assisting:[83]

> Q. What I want to suggest to you is this, that you have recorded the word 'later' because you're referring to later as being after the inquiries or further inquiries regarding the Leigh murder?
> A. I don't - I can't recollect that.
>
> Q. I see. You've recorded 'later contact mother re interview of NC1 re sexual assault of deceased'?
> A. Yes.
>
> Q. And then you've recorded 'ROI re same'; in other words, the next entry is record of interview has been conducted or it was conducted regarding the same?
> A. Yes.
>
> Q. And that's the record of interview that you remember doing with NC1?
> A. Yes, it is.
>
> Q. All right. When you recorded 'later contact mother re interview of NC1', what did you mean by that?
> A. Inquiries were conducted to secure her attendance.
>
> Q. What inquiries were conducted to secure her attendance?
> A. I don't recall.
>
> Q. Do you have any recollection of yourself making inquiries to secure her attendance?
> A. I don't personally, no.
>
> Q. Do you have any recollection of directing anyone under your command to make such inquiries?
> A. No, I don't.

4.51 Detective Douglass gave evidence that it was his belief that steps had been taken to contact the parents of NC1, though he had no recollection of the steps taken. He based his belief, that efforts were made to contact the mother, on the fact that she ultimately appeared at the station.[84] He also stated he was unaware whether steps were taken to record the efforts made

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82 PIC Exhibit 3.

83 PIC Transcript, EP Douglass, 18 November 1998, p. 118.

84 PIC Transcript, EP Douglass, 18 November 1998, pp. 150-151.

to locate a parent. He agreed, though, that as the informant in the matter it was his duty to ensure that occurrence pad entries had been made.[85]

4.52 Detective Douglass also gave evidence that he was unaware of attempts made by NC2 to locate her son by telephoning around Stockton, Mayfield and Newcastle Police Stations that afternoon. He also said that he was unaware of NC2 having to wait for her son at Newcastle Police Station.[86]

4.53 When asked by Counsel Assisting what steps would have been taken to inform him that the mother of a juvenile he was waiting to interview had arrived at the station, Detective Douglass stated that the uniform officers at the desk would have informed the officer in charge, in this case either himself or Detective Chaffey.[87] When then asked if it was possible that the mother of NC1 could have been at the station for a number of hours before he was informed, Detective Douglass stated that he did not think it was possible and that it was unsatisfactory if it did happen.

4.54 In his second appearance to give evidence on 16 December 1998, Detective Douglass put forward a possible explanation as to why there are no records of attempts made to contact NC1's mother:[88]

> Q. There are, I want to suggest to you, no records of any attempts being made to contact a parent of NC1?
> A. Well, I've had a chance to consider that and that may well be on the basis that the parent ultimately arrived.
>
> Q. Are you saying that records would not be created until a parent failed to arrive?
> A. That was my understanding of it, yes.
>
> Q. Given that the Commissioner's Instructions in relation to attempts to contact a parent were recorded, or were required to be recorded, would they not be recorded when the steps were taken?
> A. My understanding of it was that they were only to be recorded if the parent or nominated person was unable to be contacted and could not attend.

4.55 When directed by Counsel for the Commissioner of Police to examine the relevant Commissioner's Instruction on the interviewing of juveniles in place in 1989 - Instruction 35.11 - Detective Douglass agreed that while the explanation he had just provided was not explicit in the Instruction it remained his understanding of the intent of it.[89]

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85 PIC Transcript, EP Douglass, 18 November 1998, p. 155.

86 PIC Transcript, EP Douglass, 18 November 1998, pp. 152-153.

87 PIC Transcript, EP Douglass, 18 November 1998, p. 152.

88 PIC Transcript, EP Douglass, 16 December 1998, p. 1107.

89 PIC Transcript, EP Douglass, 16 December 1998, pp. 1134-1135; PIC Exhibit 78, barcode 5375637.

4.56 Counsel for the Commissioner of Police then put to Detective Douglass the following:[90]

> Q. All right. I suggest to you that the reason that no attempt was made to contact NC1's mother was that you didn't want it known that NC1 was at the police station?
> A. Well, I deny that.
>
> Q. And I suggest to you further that the reason that there were no notes made on the occurrence pad entry, no entries made on the occurrence pad, was for the same reason?
> A. Well, I reject that.
>
> Q. You didn't want any record of his presence at the police station?
> A. That's not true.
>
> Q. And you didn't want any record of your illegally detaining him for the purposes of questioning regarding the murder?
> A. No. Well, I reject that.

4.57 In his evidence Detective Chaffey denied speaking to NC2 on the night of 15 November 1989. He stated, in fact, 'I have never spoken to the mother of NC1'.[91]

OTHER EVIDENCE

4.58 On 25 September 1998, NC1's father made a statement to the Commission. In it he stated that a telephone was connected to the home of NC1's grandmother, where the father was living on 15 November 1989, and that NC1 knew how to contact him there. He also stated that no phone call was received there from police on that day.[92]

4.59 A statement was also made on 7 October 1998 to the Commission by NC4, the sister of NC1. In that statement she said that she recalled being at her mother's house on 15 November 1989 when her mother arrived home from work and someone informed them that NC1 and Matthew Webster had been taken into custody. She recalled going with her mother to Stockton Police Station at approximately 4.30 pm where they spoke to an officer inside the station, inquiring if NC1 was in custody as he had gone missing. She states that the officer had replied that he had not been missing long enough and no inquiries would be made. At that point, according to her statement, her mother went to make further inquiries.[93]

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90 PIC Transcript, EP Douglass, 16 December 1998, p. 1136.

91 PIC Transcript, LW Chaffey, 24 November 1998, p. 387.

92 PIC Exhibit 91B.

93 PIC Exhibit 89B.

4.60 In his statement of 13 October 1998, NC3 stated that, after NC1 was taken away by police from the street in Stockton, he returned to the home of NC1 where he was also living at the time. There he told NC2 and NC4 of the events that had just occurred. He recalled that NC2 then spent 'a lengthy period of time' making inquiries on the telephone trying to locate her son and that it was about two hours before she left the house.[94]

4.61 A statement was also obtained by the Commission on 28 October 1998 from Pam Miller, the sister-in-law of NC2. In the statement she recalled NC2 coming to her house and informing her that NC1 had been taken off the street by the police and that despite searching for him she could not find him. Ms Miller stated that she recalled going to Stockton Police Station and being told that NC1 was not there. She also recalled going with NC2 to Newcastle Police Station. She stated that she had some recollection that this was at dusk. She also stated that on arriving at the station NC2 was told that NC1 was being interviewed and was upstairs and that she would have to wait. Ms Miller also stated that she and NC2 waited some time, perhaps two or three hours, before NC2 was taken in to see her son.[95]

INTERVIEW OF NC1

4.62 It is clear from evidence obtained by the Commission that at some point later that night a formal record of interview was conducted with NC1 in the presence of his mother. The record of interview shows that NC1 was interviewed by Detective Douglass and Detective Yeomans acted as typist. It also records that Detective Cunningham and NC2 were present. The document further indicates that the interview commenced at 10.34 pm and concluded at 11.18 pm.[96]

4.63 The charge sheet relating to NC1 that night records Detectives Douglass, Yeomans and Cunningham as the apprehending officers, and Detective Douglass as the informant. The documents also record the time of apprehension as 8.00 pm.[97] The charge book in turn indicates NC1 was charged at 12.05 am 16 November 1989.[98]

4.64 A handwritten statement by NC1 was also completed that night relating to the supply of cannabis resin to persons at the party on the night of 3 November 1989.[99]

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94 PIC Exhibit 90B.

95 PIC Exhibit 93B.

96 PIC Exhibit 1B.

97 PIC Transcript, EP Douglass, 18 November 1998, pp. 110-111; PIC Exhibit 4.

98 PIC Exhibit 19.

99 PIC Exhibit 15.

4.65 In its hearings the Commission examined a number of matters relating to the events surrounding NC1 that evening. These included what might have transpired in the time between NC1's arrival at Newcastle Police Station and the commencement of the formal record of interview, the purpose of the interview, the manner in which the handwritten statement was obtained, and an allegation of assault by NC1.

PURPOSE OF THE INTERVIEW

4.66 Counsel Assisting examined a number of witnesses about whether NC1 was questioned about the murder of Leigh Leigh in the hours prior to the record of interview. It was noted that neither the record of interview nor the handwritten statement included anything relating to the circumstances of the murder.

4.67 Detective Douglass agreed, when it was put to him by Counsel Assisting, that the only power of police to arrest NC1 would have been for the purpose of charging him with an offence. Police in 1989 (as today) did not have the power to arrest a person for the purpose of interrogation. Again Detective Douglass agreed that on that basis police would have had no power to arrest NC1 and take him to Newcastle for the purpose of making inquiries into the Leigh Leigh murder, although interviewing him on the murder would have been proper if he had come voluntarily.[100]

4.68 Detective Douglass also agreed that it was necessary upon arresting an individual to proceed to charge the person with due diligence. When put by Counsel Assisting that this meant police could not delay doing this for the purpose of interrogation or interview, Detective Douglass agreed 'unless there was a juvenile involved, and it was necessary to obtain a parent or a guardian or adult to be present during an interview'.[101]

4.69 In his evidence of 14 December 1998, NC1 stated that on arriving at Newcastle Police Station he was taken to an interview room via the lifts, and also that the same officers who had driven him from Stockton to Newcastle went into the interview room with him. He further stated that, prior to his mother's arrival, he was questioned over a period of five or six hours about his knowledge of the murder of Leigh Leigh:[102]

> Q. Did they ask you about Leigh Leigh?
> A. Yeah.
>
> Q. And about her being killed?
> A. Yeah.

[100] PIC Transcript, EP Douglass, 18 November 1998, pp. 115-116.
[101] PIC Transcript, EP Douglass, 18 November 1998, p. 117.
[102] PIC Transcript, NC1, 14 December 1998, pp. 903-904.

> Q. Did they ask you whether you'd done it?
> A. Yeah.

4.70 He then stated that he was taken to another interview room in the Police Station where he was met by his mother and a formal record of interview was conducted.[103]

4.71 Detective Douglass denied that NC1 had been asked any questions about the murder of Leigh Leigh on 15 November 1989.[104] Counsel Assisting questioned Detective Douglass about the meaning of his duty book entry where he had recorded that NC1 was taken to the regional crime squad offices 're further inquiries Leigh murder':[105]

> Q. What was done at the regional crime squad office in relation to further inquiries in respect of the Leigh Leigh murder?
> A. I don't recall.
>
> Q. Did something happen there in relation to the Leigh Leigh murder inquiries?
> A. No. I recall that, or I believe that, we were waiting for NC1's mother to arrive.

4.72 When asked if there was any other possible interpretation of those words in his duty book Detective Douglass replied 'Yes, that it related to the circumstances, all the circumstances surrounding the murder of Leigh Leigh, including her sexual assault, assault by other people, and the distribution of drugs'.[106]

4.73 On 5 November 1989 a record of interview had been conducted between Detective Sergeant Henderson and NC1.[107] It was noted by Counsel Assisting that while the record of interview contained statements from NC1 that he had engaged in sexual intercourse with Leigh Leigh on 3 November 1989, it did not contain information establishing that NC1 knew Leigh Leigh's age at that time.

4.74 Counsel Assisting, referring to that statement, put to Detective Douglass that the police already had a statement made by NC1 where he admitted to having sexual relations with Leigh Leigh on the night of her murder, and that it was deficient only in respect of establishing that NC1 knew the age of Leigh Leigh. Detective Douglass agreed. Counsel Assisting then asked if rectifying that deficiency was the purpose of the record of interview on 15 November 1989. Detective Douglass replied, 'I believe so'. When

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[103] PIC Transcript, NC1, 14 December 1998, pp. 908-910.
[104] PIC Transcript, EP Douglass, 18 November 1998, pp. 121, 137.
[105] PIC Transcript, EP Douglass, 18 November 1998, pp. 106-107.
[106] PIC Transcript, EP Douglass, 18 November 1998, p. 138.
[107] PIC Exhibit 60C.

then asked what 'I believe so' meant and whether he had a recollection of the purpose of the interview, Detective Douglass replied 'No, I can't really say I have an independent recollection, no'.[108]

4.75 Counsel Assisting then questioned Detective Douglass about a conversation he had with NC1, purportedly in the presence of NC1's mother, prior to the formal record of interview taking place. That conversation was described in the statement prepared for court by Detective Douglass on 17 December 1989. Detective Douglass agreed that the statement records NC1 as having told him he knew that Leigh Leigh was 14. Detective Douglass also agreed that he could then have had NC1 write that in a handwritten statement, or record the conversation in a police notebook and then have NC1 sign it, but that instead he had conducted a record of interview.[109] The following exchange then took place between Detective Douglass and Counsel Assisting:[110]

> Q. And you've said that, aside from wanting to canvass that aspect, you don't know of any other reason or circumstances surrounding why that record of interview was done?
> A. No, I don't, other than it was customary to conduct records of interview in matters such as this.
>
> Q. When you say 'matters such as this', what do you mean?
> A. In sexual assault matters.

4.76 Counsel Assisting later put to Detective Douglass the following:[111]

> Q. Could it be that you took the record of interview and the handwritten statement from NC1 in order to explain or give some plausibility to his presence at the Newcastle police station?
> A. No, that's not right. It was necessary that he be reinterviewed about the sexual assault because of the age factor and with regards to the supply of the cannabis.
>
> Q. You could have asked him that at Stockton police station?
> A. That's possible too.

4.77 It was Detective Douglass' contention that NC1 had been interviewed at Newcastle Police Station because of the presence of suitable charging facilities there.[112]

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[108] PIC Transcript, EP Douglass, 18 November 1998, p. 133.

[109] PIC Transcript, EP Douglass, 18 November 1998, pp. 135-136; PIC Exhibit 7.

[110] PIC Transcript, EP Douglass, 18 November 1998, pp. 136-137.

[111] PIC Transcript, EP Douglass, 18 November 1998, p. 170.

[112] PIC Transcript, EP Douglass, 18 November 1998, pp. 139, 171.

4.78 When Detective Douglass' views on the purpose of the interview were put to Detective Chaffey he disagreed with Detective Douglass:[113]

> Q. We've heard evidence that in relation to NC1 he was only interviewed about the offence with which he was charged?
> A. I heard that, yes.
>
> Q. And not in relation to the murder inquiry?
> A. I find that difficult to understand.
>
> Q. It would be inconsistent with the whole purpose or significant purpose of the exercise —
> A. Yes.
>
> Q. — not to have interviewed him about the murder?
> A. Correct.

4.79 That evidence of Detective Chaffey was then put to Detective Douglass when he appeared before the Commission on 16 December 1998:[114]

> Q. I see. Do you maintain that you didn't ask NC1 questions about the murder investigation?
> A. That's correct.
>
> Q. Notwithstanding that, according to Detective Sergeant Chaffey, who was in charge of the investigation - and you were working, as you told us, as his second in command - the purpose, or significant purpose, of the exercise was to further the murder investigation?
> A. Yes, I heard that, yes.
>
> Q. And you still maintain that you didn't ask questions about the matters pertaining to the murder investigation of NC1?
> A. Well, I wasn't in a position to do that until his mother arrived, in any event.
>
> Q. But you didn't do that when his mother arrived in any event, did you?
> A. No, and I don't recall why.
>
> Q. I see. Was the recorded interview of NC1 done for the purpose of explaining the fact that NC1 had been in the custody of police for a number of hours?
> A. No.
>
> Q. Of course you are aware, aren't you, that he was there for perhaps five or six hours before your record of interview commenced?
> A. Yes, I believe so.

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[113] PIC Transcript, LW Chaffey, 25 November 1998, pp. 434-435.

[114] PIC Transcript, EP Douglass, 16 December 1998, pp. 1118-1119.

> Q. And, on reflection, does that concern you that he was there at the police station for that length of time?
> A. Yes. It doesn't - it's not satisfactory.

4.80 When questioned by Counsel for Detective Chaffey, Detective Douglass agreed that, as NC1 had not been in his presence for the entire time he was at Newcastle Police Station, it was possible that other police may have interviewed NC1 unknown to him. This, then, could have been consistent with Sergeant Chaffey's understanding that NC1, along with Matthew Webster and Guy Wilson, were to be interviewed about the murder.[115]

4.81 Detective Yeomans had no recollection of events prior to typing the formal record of interview. He also stated that because of his relative inexperience and being a junior officer at the time, he would not have asked NC1 any questions about the murder.[116]

4.82 On 17 November 1998 Detective Cunningham gave evidence about the purpose of the interview that was consistent with that of Detective Chaffey. He agreed that the purpose of taking NC1 into custody was to have him assist police with their inquiries into the murder of Leigh Leigh.[117]

4.83 In his second appearance before the Commission on 21 December 1998 Detective Cunningham revised his view of the purpose of the interview:[118]

> A. The purpose of the interview, I think, was something to do with the sexual assault on Leigh Leigh. I don't think it was for murder.
>
> Q. You didn't give that evidence on the last occasion, did you?
> A. Well, it was the whole - he was a suspect not so much for the murder but of - he was the suspect for an offence. I hadn't been told what he was a suspect for. It was my belief that he was a suspect for the murder when I was taken to the interview room or when I was at the interview room with him. It's since come to my attention then it was - he was interviewed for a sexual assault …

4.84 He continued by noting that as a junior officer he was kept away from the 'main pack of it' and generally used as a 'gopher'.

ALLEGATION OF ASSAULT DURING THE INTERVIEW

4.85 In his evidence NC1 alleged that in the hours prior to the conduct of the record of interview he was assaulted by Detective Chaffey in the interview

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115 PIC Transcript, EP Douglass, 16 December 1998, pp. 1122.
116 PIC Transcript, PC Yeomans, 17 December 1998, pp. 1182, 1206.
117 PIC Transcript, MPJ Cunningham, 17 November 1998, pp. 18-19.
118 PIC Transcript, MPJ Cunningham, 21 December 1998, p. 1218.

room of Newcastle Police Station. He provided the following evidence about what occurred after Detective Chaffey entered the interview room:[119]

> A. He'd come in blowing up and that. He'd come in and then he'd go out. He'd come in one time and just grab me around the throat and bring me up against the wall and slap me up the side of the head.
>
> …
>
> Q. All right. Then you said one time he came in and grabbed you around the throat?
> A. Yeah.
>
> Q. What happened when he did that?
> A. He just grabbed me around the throat, sort of like I was sitting in a little chair up against the wall, and just sort of rammed my head in the wall and slapped me up the side of the head and that was it. He didn't do it anymore.
>
> Q. Did he say anything to you when he did that?
> A. Yeah, when he did that he said, 'Someone will find you hanging from a tree with that flanno around your waist' - was going to hang me.

4.86 According to NC1 the three officers who had brought him in the car to Newcastle were in the room when Detective Chaffey allegedly did this.[120]

4.87 When asked whether he had told anyone of this alleged assault, NC1 replied that he had told Stanley Clyde Webster, father of Matthew Webster. He also stated that he believed he had told another person, known for the purpose of the hearings as NC5. He stated that he did not tell his lawyer as 'I didn't want to cause no more dramas'.[121]

4.88 In a statement made to the Commission on 27 October 1998, Stanley Clyde Webster stated that he recalled that, about the same time as his son was first charged with the assault of Leigh Leigh, NC1 came to his home and told him that he had also been interviewed about the murder of Leigh Leigh and that during that interview he had been assaulted by Detective Chaffey. He recalled that NC1 had said to him words to the effect of 'Chaffey just walked into the room and grabbed me around the throat and threatened to hang me up by my flannos'.[122]

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[119] PIC Transcript, NC1, 14 December 1998, pp. 904-905.
[120] PIC Transcript, NC1, 14 December 1998, pp. 907-909.
[121] PIC Transcript, NC1, 14 December 1998, p. 917.
[122] PIC Exhibit 110B.

4.89 On 1 December 1998 NC5 gave evidence that NC1 had spoken to him about the treatment he had received from the police. NC5 could not remember when this conversation took place but recalled that it took place around the time of NC5's second interview (14 November 1989) and he related the following:[123]

> When he was getting interviewed he said Detective Sergeant Lance Chaffey threatened to take him up to the mangroves and hang him by his flanny - the flannelette shirt that you wear around your waist.

4.90 Detective Chaffey refuted the allegation that he had assaulted NC1 on 15 November 1989. He asserted that he did not see nor speak to NC1 on 15 November 1989.[124]

4.91 Detective Cunningham stated that he did not recall Detective Chaffey entering the interview room that night, nor did he recall Detective Chaffey assaulting NC1.[125] Detective Yeomans could not recall coming into contact with NC1 prior to the formal record of interview.[126]

COMPLETION OF THE HANDWRITTEN STATEMENT

4.92 Another issue raised in relation to this interview was the time that the handwritten statement of NC1 was completed. According to NC1, he made that statement prior to the formal record of interview and prior to being taken to see his mother:[127]

> Q. Okay. Do you remember on that night writing out anything yourself, writing out anything by hand?
> A. Yeah. Yeah. I think I wrote something out when they were interviewing me about me mother being there.
>
> Q. Is that before you were taken to where your mother was?
> A. Yeah.

4.93 NC2 could recall signing the record of interview along with her son but she could not recall her son writing out a handwritten statement subsequent to the record of interview.[128]

4.94 Detective Yeomans could recall being present when NC1 completed a handwritten document wherein he admitted to the supply of cannabis resin on the night of 3 November 1989. Detective Yeomans could not, however,

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123 PIC Transcript, NC5 1 December 1998, pp. 663-664.

124 PIC Transcript, LW Chaffey, 24 November 1998, p. 397.

125 PIC Transcript, MPJ Cunningham, 21 December 1998, p. 1214.

126 PIC Transcript, PC Yeomans, 17 November 1998, pp. 60-61.

127 PIC Transcript, NC1, 14 December 1998, p. 913.

128 PIC Transcript, NC2, 15 December 1998, pp. 995-996.

recall if the mother of NC1 was present when this statement was made. He believed, but was not certain, that the statement had been written after the record of interview was completed.[129]

4.95 The duty book entry of Detective Douglass, quoted previously, indicates that the handwritten statement was prepared after the record of interview. In addition, a facts sheet prepared by Detective Douglass on 17 December 1989 for the courts in regard to the supply of cannabis resin matter stated that the handwritten statement had been made in the presence of NC1's mother.[130] On examining the handwritten statement, however, Detective Douglass agreed that it did not include the signature of NC1's mother and it did not include an adoption by a separate adopting police officer, though the record of interview was adopted. Detective Douglass agreed, in hindsight, that the handwritten statement should have been adopted as well.[131]

4.96 On 16 December 1998 Counsel Assisting again questioned Detective Douglass as to why the signature of NC2 did not appear on the handwritten statement of NC1 and why there was no adoption of that document:[132]

> Q. I see. The fact of the matter is that of the two documents that were created from the time that you were carrying out interviews of NC1, only one of them records having the mother present?
> A. I believe that's so, but I've spoken to counsel about that and there is a possibility that the adoption may have been undertaken on the rear of that original statement.
>
> Q. Just to make matters clear, I want to suggest this to you, that there is nothing on the back of the document. The back of the document, the original document, is blank.
> A. Yes. I don't understand why that would be the case. It should have been adopted.
>
> Q. You will recall that - the document speaks for itself - the record of interview has the signature of the mother of NC1, NC2, directly underneath the signature of NC1?
> A. Yes, it does.
>
> Q. And on the other document, the handwritten statement, her signature does not appear?
> A. Well, on the photocopy that I've been shown it doesn't appear, that's correct. A further possibility is that there was a second page.

4.97 Counsel Assisting went on to suggest that this would have been unlikely as it would have required further interviewing after the interview was signed

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129 PIC Transcript, PC Yeomans, 17 November 1998, pp. 70-71.

130 PIC Transcript, EP Douglass, 18 November 1998, pp. 159-160; PIC Exhibit 14.

131 PIC Transcript, EP Douglass, 18 November 1998, pp. 164-165; PIC Exhibit 15.

132 PIC Transcript, EP Douglass, 16 December 1998, p. 1108.

or additional questions of a nature incompatible with the questions noted at the bottom of the handwritten page. Further:[133]

> Q. Of course, had his mother been present when that document was done, you would have had the mother sign it underneath the signature of NC1, wouldn't you?
> A. I ought to have, yes.
>
> Q. You would have?
> A. Unless I omitted to do it.
>
> Q. I see. It is not something you omitted to do in relation to the typed record of interview?
> A. No, it's not.
>
> Q. Each of the pages, and each of the signatures where pages appear, was endorsed with the signature of the mother of NC1 under NC1's signature?
> A. That's correct.
>
> Q. You would have heard [NC2] say in evidence that she did not recall there being any questions about the drugs when she was present during the interview; do you remember that?
> A. No, I don't recall that. She may have said that.
>
> Q. Do you remember that she said that the interview was about the same thing; that is, the sexual assault upon Leigh Leigh by NC1?
> A. I believe she said that, yes.

4.98 On questioning by Counsel for Detective Chaffey, a third possibility was canvassed to explain why there was nothing on the handwritten statement indicating that NC1's mother was present:[134]

> Q. There's a third possibility, isn't there, that the fact that she was there and present was something within your knowledge which would have formed part of your statement for court if the juvenile had pleaded not guilty?
> A. That's correct.
>
> Q. And can I suggest to you that there is no requirement for a parent or relative or any other person to sign the fact that he or she was present whilst the juvenile was being questioned?
> A. That's correct.
>
> Q. Not only that, there is no requirement that a juvenile has to sign any document or any interview where he or she was present?
> A. That's true.

[133] PIC Transcript, EP Douglass, 16 December 1998, p. 1110.

[134] PIC Transcript, EP Douglass, 16 December 1998, pp. 119-1120.

Q. It is a matter entirely for them?
A. Yes.

Q. There can be no compulsion?
A. That's right.

Q. It may well be prudent, if possible, to obtain those signatures?
A. It generally is.

ADOPTION OF THE RECORD OF INTERVIEW AND HANDWRITTEN STATEMENT

4.99 In 1989, as today, after a person was interviewed by police and had either made a statement or participated in a record of interview, they would be asked some questions about the statement or interview by an officer independent of the investigation. Their answers would have been recorded in order to ensure that they had provided information voluntarily. This procedure was, and is, known as an 'adoption' of the statement or interview. The intent of the procedure is to provide a suspect with an opportunity to make any complaint that they might have as to the conduct of interviewing police and to assist in ensuring that documents are admissible as evidence in court. A number of questions were raised about the adoption of NC1's interview and his handwritten statement. The adoption record that was completed for the record of interview shows that it was carried out by former Senior Sergeant Collins.[135]

4.100 When questioned by Counsel Assisting, former Senior Sergeant Collins agreed, on being shown the adoption document, that he had written the name of NC1 on the document and signed it with the time 11.25 pm. He stated, however, that the handwriting of the answers written under each question was not his own. He suggested that the answers could have been filled in by someone else but refuted suggestions that they could have been filled in at a time other than 11.25 pm, that they had been completed before he had filled in the name of the person, or that the questions could have been asked by someone else.[136] It is also to be noted that the adoption was not signed by NC1 or his mother.

4.101 When questioned about the adoption, NC1 recalled that after the record of interview took place an older uniformed officer came into the room and asked him questions about the interview. He stated that he had told this uniformed officer that everything had been all right. He also stated that only he, his mother and the older officer were in the room at that time, none of the other officers were present.[137]

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[135] PIC Exhibit 21B.

[136] PIC Transcript, RTD Collins, 19 November 1998, pp. 229-231. PIC Exhibit 21B.

[137] PIC Transcript, NC1, 14 December 1998, pp. 911-913.

4.102 As noted above, the handwritten statement of NC1 does not include any signature that would indicate that the statement had been adopted by an independent officer. Former Senior Sergeant Collins gave evidence that he was not aware of having seen the document before and that his signature was not on that document.[138]

COURT DOCUMENTS

4.103 Counsel Assisting also questioned Detective Douglass about the statement prepared by him on 17 December 1989, which was tendered in the Children's Court proceedings against NC1 in 1990. That statement included the following paragraphs:[139]

> 2. About 10.25 pm on Wednesday the 15th November 1989, I saw the young person, [NC1], in an interview room at Newcastle Police Station in the company of his mother Mrs [NC2]. Shortly afterwards P.C. Senior Constable Yeomans and Constable Cunningham entered the room.
>
> 3. I said to the young person in the presence of his mother: 'My name is Detective Douglass…

4.104 On 18 November 1998 Counsel Assisting questioned Detective Douglass about this statement, noting that it made no mention of the circumstances in which Detective Douglass first came into contact with NC1, or that NC1 had been waiting at the station some time before the interview commenced.[140]

4.105 Counsel for the Police Service also questioned him on this matter, suggesting that an inference of the statement is that he had had nothing to do with NC1 prior to 10.25 pm. Detective Douglass agreed that was an inference. After further questioning on this matter, he also agreed that, with the benefit of hindsight, perhaps the statement should have included a reference to the arrest of NC1 at 8.00 pm.[141]

4.106 Detective Douglass was also questioned about the facts statement he prepared for the Court in relation to the hashish supply charge in which he wrote:[142]

> … [NC1] attended Newcastle Police Station on 15th November 1989 and in the presence of his mother made a hand-written statement about this matter.

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138 PIC Transcript, RTD Collins, 19 November 1998, p. 233.

139 PIC Exhibit 7.

140 PIC Transcript, EP Douglass, 18 November 1998, pp. 166-167.

141 PIC Transcript, EP Douglass, 17 December 1998, pp. 1143-1144.

142 PIC Transcript, EP Douglass, 18 November 1998, p. 160; PIC Exhibit 14.

4.107 Counsel Assisting suggested to Detective Douglass that the manner in which this was written was intended to convey that NC1 had voluntarily attended the Police Station. Detective Douglass responded that he suspected that it was intended to convey that he had not been at the Police Station being interviewed in relation to anything else, as a means of separating it from the circumstances surrounding the investigation of the death of a young person.[143] When further questioned on this by the Commissioner, Detective Douglass stated that he had prepared the facts sheet for the cannabis supply charge in a manner that it could be dealt with discretely and separately from the sexual assault charge.[144]

4.108 In his submissions to the Commission, Counsel Assisting stated it must have been in the contemplation of Detective Douglass that the Court, the prosecutor and NC1's legal advisers would rely upon those statements and that by leaving out the additional information the Court was deprived of an opportunity to consider the admissibility of the confessions made by NC1 in the statement and record of interview. He submitted that Detective Douglass sought to deliberately mislead the Court in that regard.[145]

4.109 In his submissions, Counsel for Detective Douglass, after noting that Detective Douglass had refuted any suggestion that he attempted to deliberately mislead the court, also noted that neither NC1 nor NC2 ever spoke to NC1's legal representatives about what they claim took place that night.[146]

ASSESSMENT REGARDING NC1

ASSESSMENT REGARDING NC1'S ARREST

4.110 It is the view of this Commission that on 15 November 1989 NC1 was arrested on the street in Stockton when he was taken by the arms by two or three police officers and placed in a police car. He was then driven to Stockton Police Station where one officer got out and spoke to another officer before re-entering the car and NC1 was taken to Newcastle Police Station to be interviewed. In forming this view, the Commission notes that NC1's version of events in respect of his collection from the street in Stockton is largely corroborated by the evidence of Detective Cunningham and NC2, and the statements of NC3 and NC4. The Commission is mindful that there is no corroboration of NC1's evidence that he was forced to lie down in the police car while it was driven out of Stockton. His account of that is, however, consistent with evidence that establishes that the police wished to question NC1 about the murder without hindrance.

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143 PIC Transcript, EP Douglass, 18 November 1998, p. 160.

144 PIC Transcript, EP Douglass, 18 November 1998, pp. 161-163.

145 PIC Exhibit 185.

146 PIC Exhibit 177, Submission on behalf of Detective Inspector EP Douglass.

4.111 There is some difficulty in establishing, exactly, the identity of the officers involved in arresting NC1 on the street. It is Detective Cunningham's evidence that he was involved. No other records exist that would identify the other officers with any certainty and NC1 is not able to identify specific officers. There is a range of evidence that, taken together, would indicate that Detectives Douglass and Yeomans were most probably the other officers involved. The Commission acknowledges that this evidence is stronger in implicating Detective Douglass in the arrest. This evidence includes:

- Detective Chaffey's evidence that Detective Douglass was placed in charge of locating NC1, and Detective Cunningham's evidence that Detective Douglass was the leader of the team (though it is acknowledged that team leadership alone does not necessarily mean that the team leader would accompany the team to collect a suspect).

- Detective Cunningham's evidence that Detective Douglass got out of the car at Stockton Police Station, while they stopped there, before NC1 was taken to Newcastle Police Station.

- The charge sheet, which records Detective Douglass and Detective Yeomans as the arresting officers, along with Detective Cunningham (though it is acknowledged that the charge sheet states the arrest took place at 8.00 pm when NC1 was in Newcastle Police Station).

- The evidence of NC1 in which he described how he was picked up and taken to Stockton Police Station and then transported to Newcastle, together with his recollection that the officers who transported him to Newcastle were the same as those who later interviewed him.

- The record of interview which records Detective Douglass, Detective Yeomans and Detective Cunningham as present.

- Detective Douglass' duty book which records himself, Detective Yeomans and Detective Cunningham as the officers responsible for transporting NC1 to Newcastle.

4.112 There is no evidence that any other police were involved with the collection, transport and interview of NC1 on 15 November 1989.[147]

4.113 Detectives Douglass, Yeomans and Cunningham each claim they cannot recall whether NC1 was under arrest when he arrived at Newcastle Police Station. It would seem reasonable, however, that if it can be established

[147] With the exception of former Senior Sergeant Collins, who is recorded as having conducted the adoption of the record of interview.

that those officers were the same officers who 'collected' NC1 it could be concluded that they must have known NC1 was under arrest. As noted above, it cannot be established with certainty that Detectives Douglass and Yeomans were the officers accompanying Detective Cunningham when NC1 was collected. A senior police officer, wishing to interview a suspect, would inform him or herself as to the suspect's status once at the Police Station, if he or she had not been involved in securing the person's attendance. On that basis, Detective Douglass should reasonably have been expected to have inquired about the status of NC1.

ASSESSMENT REGARDING THE PURPOSE OF NC1'S ARREST AND INTERVIEW

4.114 As stated, it is the view of the Commission that NC1 was under arrest when he was collected from the street in Stockton. The Commission is mindful that police had reasonable grounds to arrest him based on information they held about his sexual intercourse with Leigh Leigh and the supply of cannabis. The Commission is also mindful that Detective Douglass' explanation for the purpose of the record of interview, that it was intended to record that NC1 was aware of Leigh Leigh's age on 3 November 1989, is supported by the absence of such information in the initial statement NC1 made to police on 5 November 1989.

4.115 It is the view of the Commission, however, that the intention of police on that night, in their dealings with NC1, was to question him about the murder. That was the principal purpose for his arrest.

4.116 This view is based not only on the circumstances of NC1's arrest and interview on that night, but on the overall circumstances of police dealings with NC1, Matthew Webster and Guy Wilson, together, on 15 November 1989. The Commission assesses that the principal purpose in arresting NC1 and the others was to question each of them about the murder.[148] This assessment is based on the following evidence:

- Detective Chaffey gave evidence to the Commission that the purpose or the significant purpose of the exercise of 15 November 1989 was to further the murder investigation and that simultaneous interviews of the three would facilitate police responses to fresh evidence.

- Police were aware of the offences that NC1, Matthew Webster and Guy Wilson were ultimately charged with for several days before 15 November 1989. Despite this, they were all 'collected' at the same time, late in the day, and taken away from Stockton to Newcastle to be interviewed simultaneously.

[148] While evidence about what happened to Matthew Webster, and Guy Wilson, that night is provided later in this chapter, references to that information are included here to explain the Commission's reasons for its opinion.

- Only the three main suspects to the murder were collected and interviewed. None of the other persons of interest to the police in the inquiry were 'collected' or interviewed on 15 November 1989.

- Each was held for several hours before charging. No substantial reason was put forward for the delay between collection and charging.

- The arrests were timed for the end of the working day, after the Local Court had risen.[149]

- NC1, Matthew Webster and Guy Wilson each gave evidence that they were questioned about the murder by police on the night.

- Other police, notably Detective Cunningham and Detective Mullard in relation to the interviews of NC1 and Guy Wilson respectively, provided evidence that the main purpose in conducting the interviews was to ask the suspects about the murder.

- Detective Douglass suggested that all three were interviewed concurrently in order to compare what each was saying. There was, however, in the Commission's view no need to interview NC1 concurrently with the others if they were only questioned about the offences for which they were charged. NC1 was charged with offences that had little or nothing to do with those with which Matthew Webster and Guy Wilson were charged. He could well have been interviewed on a different day or at a different time. The only reason that they would all need to be interviewed together was if they were to be questioned about events on the night, apart from the singular offences for which they were charged.

- There is no other reasonable explanation for the extraordinary delay between the time of arrest of NC1, about 4.00 pm, and the time of commencement of the record of interview at 10.34 pm.

4.117 The evidence heard by the Commission indicates that NC1 was held in police custody for several hours prior to his recorded interview. It was the evidence of Detective Douglass that this time was spent waiting for NC1's mother to arrive and that no questions were asked of NC1 by him during this time. The Commission rejects the evidence of Detective Douglass in this regard. It is the view of the Commission that Detective Douglass was not being forthright with the Commission. A plain reading of his own

[149] The Final Report of the Royal Commission in discussing 'process corruption' referred to the police reaction to *Williams v The Queen* (1986) 161 CLR 278 whereby police continued to detain suspects for the purpose of investigation: 'under the fiction that the suspect had not been arrested but was present at the station 'voluntarily', to assist with inquiries; and by the stratagem of effecting arrests at times when magistrates were not immediately available ...' Royal Commission into the NSW Police Service, *Final Report Volume 1: Corruption*, May 1997, p. 36.

duty book recording the events of that night would indicate that NC1 was questioned prior to his record of interview.

ASSESSMENT REGARDING POLICE EFFORTS TO CONTACT THE PARENTS OF NC1

4.118 The Commission heard evidence that no record can be found of any attempt made to contact the parents of NC1. Detective Douglass provided evidence that the lack of records might be explained by the asserted absence of a requirement in the Commissioner's Instructions to make a record until a parent or guardian failed to appear. As will be seen in Chapter 6 such an interpretation of the Instructions is possible, though not obvious, if examining Instruction 31 rather than Instruction 35. It was not, however, asserted that he had an actual recollection of that being the reason for the absence of a record.

4.119 There is no evidence that police had made any attempt to contact NC1's parents. Both NC4, who remained at the mother's house, and NC1's father, gave evidence that they did not receive any call from the police to alert them that NC1 was in custody. None of the police involved with NC1 that night, who provided evidence at these hearings, could recall attempting to contact his parents. There is no police record, as there should have been, of the attempts of NC2 to locate her son and contact the detectives dealing with him.

4.120 The Commission accepts the evidence of NC2, corroborated by the statement of her sister-in-law and, in part, by the evidence of NC3 and NC4, that she spent considerable time trying to locate her son and waited several hours at Newcastle Police Station before being re-united with him. It would appear incredible that the officer at the desk was unable to contact detectives dealing with her son and inform them of her presence. If police had been trying to locate her, she would not have been kept waiting for several hours.

4.121 Taking all of this evidence into account, the Commission is of the opinion that no attempt was made to contact either parent of NC1 on 15 November 1989. The failure to attempt to contact a parent or guardian of a juvenile who was to be interviewed about a criminal matter in which he or she was a suspect was a clear breach of the Commissioner's Instructions operating at that time. It is also the view of the Commission that while there is some possibility that the failure to attempt to contact a parent of NC1 could have resulted from a series of mistakes and miscommunications, the more likely explanation is that this was a deliberate strategy to isolate NC1 while he was questioned. This view is based on consideration of a number of factors:

- The evidence of police that they were aware that NC1 was a juvenile when they dealt with him on 15 November 1989.

- The lack of effort by police to contact NC1's parents after he was collected, even though it would have been easy to do so and they knew where he lived.

- The time and manner in which NC1 was arrested in Stockton and then transported out of that town to Newcastle Police Station.

- The absence of police records, where there should have been, of phone calls from NC2 trying to locate her son.

- The fact that police had ample opportunity to provide NC1 with advance notice of a request for an interview, but failed to do so.

- The length of time NC2 was left to wait after arriving at Newcastle Police Station and presenting herself to the officer at the counter.

- The desire of police on that night to question NC1 about the murder.

4.122 The Commission is unable to form an opinion on the evidence of NC2 that she spoke to Detective Chaffey on 15 November 1989 and that he denied knowing the whereabouts of her son. This evidence is denied by Detective Chaffey and there is no other evidence to support her assertion. NC2 does not refer to having been introduced to Detective Chaffey and in her evidence indicated that her identification was entirely based upon her recollection of seeing him on television. Her identification could well be honest but mistaken.

ASSESSMENT REGARDING THE TAKING OF THE HANDWRITTEN STATEMENT FROM NC1 AND THE ADOPTION OF HIS STATEMENT

4.123 The Commission has heard evidence from NC1 and NC2 that indicates that police took a handwritten statement from NC1 before his mother arrived, a clear breach of the Commissioner's Instructions. In his evidence, however, Detective Douglass stated that the handwritten statement was made after the completion of the record of interview and his duty book records it as such. The Commission examined the time available to produce the handwritten statement after the completion of the record of interview as stated by Detective Douglass.

4.124 It was noted by the Commission that the record of interview was completed at 11.18 pm and its adoption completed at 11.25 pm. It seems improbable that the handwritten statement could be completed and the adoption for the interview conducted in that seven minute period.

4.125 The Commission then examined whether the handwritten statement could have been produced after the adoption of the interview. As noted, the adoption was completed at 11.25 pm and NC1 was charged at 12.05 am

the next day. Assuming those recorded times to be correct, which in itself is uncertain, it would appear that within those 40 minutes there must have been an interview of sorts about the matter contained in the handwritten statement, any necessary explanations about how to make a handwritten statement would have to be provided, NC1 would have to have completed the handwritten statement, the adoption questions asked by the interviewing officer would then have to be typed upon it, the questions asked and the answers recorded, and then NC1 would have to have travelled downstairs to where charging formalities took place. This might be possible, but the Commission also notes that under that scenario, the handwritten statement would have been completed after the adoption of the record of interview and police would then have failed to have the statement itself adopted before an independent officer, surely an inefficient way of proceeding at best. Moreover, the Commission also notes that police ensured that NC2 signed the record of interview, but her signature does not appear on the statement.

4.126 Despite the suggestions of Counsel for Detective Chaffey that might explain the absence NC2's signature, it is the view of the Commission that the more reasonable explanation is that the handwritten statement was completed prior to the arrival of NC2.

4.127 The Commission also notes the various irregularities found in the adoption of NC1's record of interview. The evidence of NC1 that he recalls a uniformed officer arriving and asking him questions about the interview allows the Commission to form the view that no adverse conclusions can be reached in respect of those irregularities.

ASSESSMENT REGARDING NC1'S ALLEGATION OF ASSAULT

4.128 With regard to NC1's allegations of assault made against Detective Chaffey, the Commission is of the view that there is minimal evidence to corroborate this allegation. The other officers recorded as interviewing NC1 that night all deny witnessing an assault upon NC1. NC1 did not inform his mother or his lawyers of the alleged assault and no recordings were made of any injuries. He did not inform the adopting officer when he was asked questions about the conduct of the interview. While two witnesses gave statements that NC1 had told them of the assault at the time they do not state they saw any injury, they only had NC1's word that such events took place.[150] There is insufficient evidence for the Commission to form an opinion that NC1 was assaulted by police.

[150] The Commission is mindful that the evidence of those two persons as to NC1's complaints of assault would now be admissible as evidence in a criminal prosecution pursuant to section 66 of the *Evidence Act 1995.* However, that evidence would not add much to support NC1's account.

ASSESSMENT REGARDING THE POLICE STATEMENT PREPARED BY DETECTIVE DOUGLASS

4.129 Counsel Assisting submitted that Detective Douglass sought to deliberately mislead the Court in the manner in which he prepared his statements for the prosecution of NC1, leaving out information about what happened to NC1 prior to the record of interview. While one explanation may be that Detective Douglass was concerned that information about the arrest of NC1 and the length of time that he was held might affect the admissibility of NC1's confession, it is also possible that he regarded this information as irrelevant or even prejudicial. While there is some evidence that Detective Douglass is now aware of the potential impact that the additional information may have had on the admissibility of the confession, there is no evidence that the pre-interview details were intentionally omitted in order to mislead.[151] While the omissions did result in the Court being misled, on the basis of the evidence before it the Commission is not able to form a view that Detective Douglass deliberately misled the Court.

COLLECTION OF MATTHEW WEBSTER

4.130 Matthew Webster was initially interviewed by police on 5 November 1989. In interviewing other witnesses who attended the party police received information about his involvement in an assault on Leigh Leigh and the supply of cannabis.

EVIDENCE OF MATTHEW WEBSTER

4.131 On 1 December 1998 Matthew Webster gave evidence relating to the circumstances in which he was collected by police from Stockton on 15 November 1989. He stated that while he could not remember the specific time, it was sometime after lunch but before the evening meal. He could also recall that he had been sitting on a fence outside the home of a friend, Adrian, when two police officers approached and asked him to go with them 'to clear up a few things' and that it would only take five minutes. On this basis he agreed to accompany them and walked with them past five or six houses to Stockton Police Station.[152]

4.132 In a statement made to the Commission on 1 December 1998 Matthew Webster stated that while at Stockton Police Station he told police he was not going to answer any further questions unless his mother or his solicitor were present, but that police had declined to allow them to be present.[153]

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[151] PIC Transcript, EP Douglass, 16 December 1998, p. 1114.

[152] PIC Transcript, MG Webster, 1 December 1998, p. 698.

[153] PIC Exhibit 115B.

EVIDENCE OF POLICE

4.133 According to the evidence of Detective Chaffey presented at the outset of this chapter, the person responsible for locating Matthew Webster and bringing him to Newcastle Police Station on 15 November 1989 was Detective Mark Plant.

4.134 Detective Senior Constable Plant was, in 1989, a detective senior constable attached to the Homicide Squad at Newcastle Police Station. Detective Plant stated to the Commission that, despite making inquiries, he was unable to produce his duty books for the period relating to the Leigh murder investigation. He was able to refer to the statement he had prepared on 26 February 1990 for court purposes, and this assisted him to recall that he first saw Matthew Webster at 6.00 pm on 15 November 1989.[154]

4.135 Detective Plant denied being involved in collecting Matthew Webster from the street, though he could recall taking him from Stockton Police Station to Newcastle Police Station with, he thought, Detective Graham and Detective Thurbon.[155] The statement prepared by Detective Plant on 26 February 1990 also records that he took Matthew Webster to Newcastle accompanied by Detectives Graham and Thurbon, arriving in Newcastle in time to commence speaking with Matthew Webster at 6.30 pm.[156] Detective Plant gave evidence that he could not recall how Matthew Webster came to be at Stockton Police Station on that day, he could not recall whether he was under arrest or not when he saw him there, nor could he recall whether Matthew Webster was handcuffed in the police car when he was taken to Newcastle.[157] The charge sheets relating to the charges laid against Matthew Webster that night list Detective Plant as the informant in the matter.[158]

4.136 Detective Senior Constable Reuben Thurbon was a detective senior constable attached to the armed hold-up squad in Newcastle in November 1989. Despite making inquiries, Detective Thurbon was unable to provide his duty book to the Commission for this period of the investigation. When questioned by Counsel Assisting, Detective Thurbon denied being one of the two officers suggested to have asked Matthew Webster back to Stockton Police Station.[159] When Counsel Assisting drew his attention to that part of Detective Plant's statement of 26 February 1990 which indicated he had participated in transporting Matthew Webster from Stockton to

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154 PIC Transcript, MB Plant, 23 November 1998, pp. 293, 305; PIC Exhibit 41B.

155 PIC Transcript, MB Plant, 23 November 1998, p. 294.

156 PIC Exhibit 41B.

157 PIC Transcript, MB Plant, 23 November 1998, pp. 294-295.

158 The informant is usually the senior officer, officer in charge of the case or officer in charge of a particular aspect of a case and that officer becomes responsible for following through the court aspects of the charge; PIC Exhibit 27.

159 PIC Transcript, RG Thurbon, 26 November 1998, pp. 512-513.

Newcastle, Detective Thurbon stated that he could not recall doing this.[160] He was certain, however, that he never took part in an interview with Matthew Webster despite the existence of a running sheet entry prepared by Detective Plant stating that he had.[161]

4.137 Detective Senior Constable Jeffrey Loy was a plain clothes constable first class attached to the Homicide Squad in November 1989. He had begun work on the investigation on return from leave on 14 November 1989. In providing evidence to the Commission he was taken through his duty book record for 15 November 1989 by Counsel Assisting. It read:[162]

> … meal 1pm to 2 pm, then to Stockton P.S. speak to Matthew WEBSTER, then assist Det PLANT, convey WEBSTER to Newcastle, charged re Assault, Supply Cannabis, so engaged til 12 midnight, off duty.

4.138 Detective Loy acknowledged the events recorded in his duty book and that they recorded his involvement in taking Matthew Webster from Stockton to Newcastle. He could not recall, however, speaking with Matthew Webster or Detective Plant, being at Newcastle Police Station with them, or being involved in the charging process of Matthew Webster on 15 November 1989.[163]

4.139 Counsel Assisting then referred Detective Loy to the charge sheets for Matthew Webster of 15 November 1989 and showed him that the time of arrest recorded was 7.30 pm by Detectives Loy and Graham. Detective Loy stated that he had no recollection of taking any part in the arrest of Matthew Webster on that day. He also stated that he could not recall if Matthew Webster was handcuffed when he transported him to Newcastle and he was uncertain whether or not Matthew Webster was already under arrest at that time.[164]

4.140 Detective Loy could recall seeing Matthew Webster at Stockton Police Station but when it was put to him by Counsel Assisting that he was one of the two officers who had spoken to Matthew Webster on the street in Stockton and taken him back to the station he stated that he could not recall this and that he had no idea how Matthew Webster came to be at Stockton Police Station.[165]

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160 PIC Transcript, RG Thurbon, 26 November 1998, p. 511; PIC Exhibit 41A.

161 PIC Transcript, RG Thurbon, 26 November 1998, pp. 509-510, 512; PIC Exhibit 24B.

162 PIC Exhibit 28B.

163 PIC Transcript, JA Loy, 24 November 1998, p. 325; PIC Exhibit 28B.

164 PIC Transcript, JA Loy, 24 November 1998, pp. 329-330; PIC Exhibit 27.

165 PIC Transcript, JA Loy, 24 November 1998, pp. 330, 331-332.

4.141 Detective Senior Constable Kel Graham was a plain clothes constable attached to Wallsend Police Station (near Stockton) in 1989. He also gave evidence that while he could recall being involved in taking Matthew Webster from Stockton to Newcastle and taking part in his interview there, he could not recall being involved in collecting Matthew Webster nor could he recall how Matthew Webster came to be at Stockton Police Station that night.[166] Also, while he could recall Detective Plant and Matthew Webster being in the car with him travelling to Newcastle, he could not recall Detective Loy or Detective Thurbon being in the car with them and agreed with the suggestion of Counsel Assisting that they might have travelled in another car, though he did not recall this having occurred.[167]

4.142 Detective Graham was then shown a copy of his duty book for 15 November 1989 by Counsel Assisting which reads:[168]

> …Out with Det Nolan and Cst Cunningham. Drop off Nolan NDC [Newcastle District Court]. Then to Stockton P.S. and confer with Det Sgt Chaffey re Leigh Leigh murder. Attend to inquiries, statements and running sheets re same. Meal 12 MD - 12:20 pm. Resume inquiries. Meal 6:30 - 7 pm. Arrest Matthew Claud [sic] Webster,[169] 18 old in connection with inquiry. With Dets Thurbon, Loy and Plant to Netle P.S [Newcastle Police Station]. Interview same. Admits assault on deceased and supply cannabis resin. Obtain statements and attend to charging re same. Attend to telex and facts re arrest …

4.143 Detective Graham was then questioned about this duty book entry and his role in the arrest of Matthew Webster[170] :

> Q. ... It then records, 'arrest Matthew Claude Webster, 18 old and you're talking about Matthew Webster, the person later charged with the murder of Leigh Leigh?
> A. Yes, sir.
>
> Q. 'In connection with inquiry'. That would suggest that you arrested him.
> A. Sir, I don't have any recollection of arresting Mr Webster. The duty book would have been done, as I said, later that day or early the next morning. What that indicates to me, from reading it now, is that obviously after the conclusion of the events of that night in précis that would indicate that at some stage during the evening he was arrested and conveyed to Newcastle police station and interviewed.

166 PIC Transcript, KS Graham, 30 November 1998, p. 599.

167 PIC Transcript, KS Graham, 30 November 1998, pp. 607-608.

168 PIC Exhibit 45B.

169 The use of 'Claude' as Matthew Webster's middle name in Detective Graham's duty book is an error. Detective Graham is referring to Matthew *Grant* Webster.

170 PIC Transcript, KS Graham, 30 November 1998, pp. 602-603.

Q. You've recorded your duty book in the form of a narrative chronologically of events; is that right?
A. Generally speaking, yes, sir, yes.

Q. You're not suggesting that the use of the expression 'arrest Matthew Claude Webster' means something other than arrest him at the time you came into contact with him, does it?
A. No, sir at some stage he was obviously under arrest. I just don't have any recollection of the time of arrest.

4.144 Detective Graham continued to maintain, despite his own duty book entry and the charge sheet entry which lists him as apprehending Matthew Webster at 7.30 pm together with Detective Loy, that he could not recall the circumstances of Matthew Webster's arrest or taking part in it. He maintained that he could not recall seeing Matthew Webster at Stockton Police Station.[171]

OTHER EVIDENCE

4.145 A statement was made to the Commission on 13 October 1998 by the person Matthew Webster described as his friend Adrian, who was sitting with him at the time police approached them. In that statement Adrian Parrott recalled that on 15 November 1989 two men he assumed to be police officers spoke to Matthew Webster and said words to the effect of 'Matt we are reinterviewing everyone in relation to the Leigh Leigh murder and we would like you to come down to the Police Station with us for a further interview it will only take about five minutes'.[172] He went on to state that Matthew Webster responded by saying 'Righto' and walked off between the two police officers. Mr Parrott also recalled in his statement that this took place shortly after 3.00 pm or 4.00 pm.[173] A statement was also made to the Commission on 1 November 1998 by Christopher Parrott, brother of Adrian Parrott, which concurs with that first statement.[174]

INTERVIEW OF MATTHEW WEBSTER

4.146 On 16 November 1989 a running sheet entry was completed by Detective Plant, which stated that Matthew Webster was reinterviewed on 15 November 1989 by Detectives Plant, Graham, Thurbon and Loy.[175] The entry does not indicate what time Matthew Webster was taken from Stockton to Newcastle or the time that the interview took place at Newcastle Police Station.[176] No record of interview was made that night, though

[171] PIC Transcript, KS Graham, 30 November 1998, pp. 603, 616-617; PIC Exhibit 27.
[172] PIC Exhibit 105B.
[173] PIC Exhibit 105B.
[174] PIC Exhibit 104B.
[175] PIC Exhibit 24B.
[176] PIC Exhibit 24AC; PIC Transcript, MB Plant, 23 November 1998, pp. 306-307, 311.

Matthew Webster did complete two handwritten statements relating to the assault and the supply of cannabis.

4.147 The 26 February 1990 statement prepared by Detective Plant also referred to interviewing Matthew Webster on 15 November 1989. According to the statement, Matthew Webster was questioned about his movements and the events on the night of the party. This included his movements after leaving the party.[177]

4.148 As noted above, Detective Loy could not recall being involved with Matthew Webster at Newcastle Police Station on 15 November 1989 and Detective Thurbon gave evidence that he was certain he had not participated in an interview with Matthew Webster.

4.149 Detective Graham gave evidence that while he had recorded in his duty book that he was with Detectives Thurbon, Loy and Plant when they travelled to Newcastle Police Station, he believed that Detectives Thurbon or Loy were not present during any interview. He stated that he and Detective Plant were the two police officers who interviewed Matthew Webster that evening.[178]

PURPOSE OF THE INTERVIEW

4.150 Detective Plant told the Commission that a decision had been made to charge Matthew Webster in relation to the assaults on Leigh Leigh and with the supply of cannabis. He also said that part of that process was to ask Matthew Webster about the murder. He disagreed, however, that the assault charge was merely a vehicle used in order to interview him about the murder - see the following exchange with Counsel Assisting:[179]

> Q. As at 15 November 1989 there was a decision made to reinterview or interview further those three persons - is that right? - Webster, Wilson and NC1?
> A. I don't know about the others, but there was certainly a decision taken to charge Webster in relation to the assaults and the cannabis.
>
> Q. Was it part of that decision-making process to endeavour to ask him some questions about the murder?
> A. It was part of the process to ask him about the murder, yes.
>
> Q. Because he was a suspect in the murder?
> A. Yes, he was.
>
> Q. The assault was a secondary matter, wasn't it?

[177] PIC Exhibit 41B.

[178] PIC Transcript, KS Graham, 30 November 1998, p. 608.

[179] PIC Transcript, MB Plant, 23 November 1998, p. 295.

A. Yes, it was.

Q. The charging of him with the assault, was that a vehicle used in order to get him to be at Newcastle police station so that he could be interviewed about the murder?
A. No, he was taken to Newcastle police station to be further interviewed in relation to the assault and also to be charged in relation to the assault – the assault and the cannabis situation – and to be charged in relation to those matters.

Q. If he was arrested before being taken there, wouldn't that require that he be charged as quickly as possible and taken before a magistrate?
A. There were still some outstanding issues in relation to the assault and the cannabis that needed to be clarified before he could be charged.

4.151 Detective Plant later added the following about the questions that were asked during the interview:[180]

Q. … were you speaking with him about your inquiries into the Leigh Leigh murder?
A. Yes, I spoke to him about his movements and also in relation to the assault matters and the cannabis matter.

4.152 Similar views were expressed by Detective Graham. It was his contention that it was planned to charge Matthew Webster with assault that evening, but that he was interviewed before charging in order to put allegations to him and provide him with the opportunity to provide information that could exculpate him. Counsel Assisting then questioned him about whether they asked Matthew Webster about the murder during the interview:[181]

A. … my understanding of the events of the evening was that he was taken back there [Newcastle Police Station] with us knowing that we had to speak about these issues [assault and supply cannabis resin]

Q. I see. All right. In relation to the murder?
A. Its all – sir, its all part of the actual events of the evening and of course he was spoken to in relation to that as part of the inquiry.

Q. You don't suggest you didn't make inquiries of him about the murder?
A. No, sir, we spoke to him about his movements on the evening.

Q. With a view to ascertaining whether he was the person who committed the murder, obviously?
A. Yes, but not solely for that reason, no.

[180] PIC Transcript, MB Plant, 23 November 1998, p. 306.
[181] PIC Transcript, KS Graham, 30 November 1998, p. 607.

Q. As it happened, he admitted other offences and he was charged with them?
A. Yes, they were put specifically to him as I understand.

ADOPTION OF THE HANDWRITTEN STATEMENTS

4.153 As noted previously, police procedures in 1989 required that statements and interviews should be 'adopted' by the subject of the interview in the presence of an officer independent of the investigation. The handwritten statements completed that night by Matthew Webster are signed just under the handwriting by both Matthew Webster and Detective Plant. Under those signatures there are a number of standard typewritten questions to be asked by the interviewing officer, with accompanying handwritten answers. This portion of each statement was also signed by Detective Plant and Matthew Webster. To the left-hand side of those questions there appears another signature, that of Sergeant David Hughes, which is dated and records the time as 10.30 pm on each.[182]

4.154 When providing evidence to the Commission, Sergeant Hughes recognised his signature on the two statements made by Matthew Webster. He could not recall, however, having conducted an adoption, signing the documents, or the circumstances in which he had seen the documents before.[183] Initially, he agreed it was possible that he could have endorsed his signature on them without having conducted an adoption, possibly acting as a witness in some capacity.[184] In later questioning by Counsel Assisting, however, he argued that the signatures most probably represent an adoption:[185]

Q. Again, is it possible that you may have, although you don't remember it, adopted these statements by interviewing Matthew Webster on 15 November?
A. It's possible, yes.

Q. Is it also possible that you signed in the left-hand column these documents at some other time than seeing him and interviewing him?
A. No.

Q. Is it possible that you signed your name and those particulars in the left-hand column for any purpose other than an adoption?
A. No.

[182] PIC Exhibits 51C and 52C.
[183] PIC Transcript, D Hughes, 25 November 1998, pp. 469-470.
[184] PIC Transcript, D Hughes, 25 November 1998, p. 470.
[185] PIC Transcript, D Hughes, 25 November 1998, pp. 472-473.

Q. So what you said a few moments ago that it might be possible that you'd signed it for some other reason would not now, on reflection, be possible?
A. Well, I don't know what was possible, but on the balance of probabilities I would say that I signed that for a reason, yes.

4.155 Matthew Webster was asked by Counsel Assisting whether, after he had signed the handwritten statements, he had been asked any further questions. He agreed he could recall that and identified his own handwriting under each of the typed questions. He did not recall writing those answers nor could he recall who asked the questions. He agreed when it was put to him by Counsel Assisting that it could have been Detective Plant who asked the questions and typed them in.[186]

4.156 In a statement made by Matthew Webster to the Commission on 1 December 1998, he stated that he did recall someone coming into the room and asking him the questions typed at the foot of the two statements.[187]

ALLEGATION OF ASSAULT

4.157 Matthew Webster gave evidence on 1 December 1998 of events that occurred after he was taken into Stockton Police Station on 15 November 1989. He recalled that he was taken into an interview room at the station, he further recalled that there were six police officers in the room with him at that time and he was questioned about events on the night of the party. He went on to provide evidence of events that occurred in that room in the following exchange with Counsel Assisting:[188]

Q. Whilst you were there do you remember anything, other than you being asked questions; do you remember anything happening?
A. Yes.

Q. Can you tell us what happened?
A. I was assaulted on several different occasions.

Q. In what way or ways were you assaulted?
A. I was punched and kicked.

Q. All right. Do you recall who the officer or officers were that punched you or kicked you?
A. No.

…

186 PIC Transcript, MG Webster, 1 December 1998, pp. 705-706.
187 PIC Exhibit 115B.
188 PIC Transcript, MG Webster, 1 December 1998, pp. 700-701.

Q. What part of your body was kicked?
A. I'm not sure; I was covering up - probably around me arms, me legs.

Q. To be kicked around your arms were you standing, or sitting at that stage; what were you doing?
A. I think at that stage I was on the ground.

Q. How did you get to be on the ground?
A. Pushed meself away from the table when they asked a question and I said I didn't want to be questioned any more until me solicitor or me parents were there and that's when one of them punched me in the head, knocked me off me chair or knocked me back in me chair.

4.158 Counsel Assisting went on to question Matthew Webster about his ability to identify the officers who allegedly assaulted him at Stockton Police Station:[189]

Q. All right. Do you recall the names of any of the police officers that were present whilst you were being interviewed at Stockton police station on that day, 15 November?
A. Detective Plant, that's the only one I remember.

Q. Was he there at the time you were assaulted?
A. I'm not sure.

Q. Did he assault you?
A. No, not that I remember, no.

Q. You say that your recollection is that Detective Plant did not assault you?
A. Yeah - no, he didn't.

Q. He didn't?
A. No.

4.159 In his evidence Matthew Webster recalled that he was then taken to Newcastle in a police car with two or three other police:[190]

Q. All right. I'd like to ask you about that. Did somebody tell you that you were going to Newcastle police station? What happened? Tell us about that.
A. I'm sitting in a room after they were assaulting me and someone said, 'You're free to go, but first you're coming with us. We're going to charge you with something'. And they handcuffed me and put me in the car.

[189] PIC Transcript, MG Webster, 1 December 1998, p. 701.
[190] PIC Transcript, MG Webster, 1 December 1998, p. 702.

4.160 He could not identify the officers who took him to Newcastle Police Station. He said, 'I'm not sure if it was Plant as well. I don't know. I don't recall.' [191]

4.161 Matthew Webster also gave evidence that he was assaulted again in the interview room at Newcastle Police Station, that he was punched in the head and he was punched because he denied that he committed the murder. Again, he could not identify the officers involved in the alleged assault.[192]

4.162 Counsel Assisting questioned Detective Plant on his knowledge of the assaults which Matthew Webster alleged took place at Stockton and Newcastle Police Stations:[193]

> Q. During the time that Webster was being interviewed - do you agree it was some hours on that occasion?
> A. Yes.
>
> Q. Was he in your custody?
> A. I believe so.
>
> Q. During the time of those interviews, was he assaulted?
> A. I don't believe so.
>
> Q. When you say you don't believe so, don't you remember?
> A. Well, he wasn't assaulted in my presence, I know that.
>
> Q. It is something you would remember as a policeman, isn't it, if he was assaulted?
> A. Certainly.

4.163 Shortly after, when further questioned about his knowledge of the alleged assaults Detective Plant denied more categorically that Matthew Webster had been assaulted:[194]

> Q. Was he [Mr Webster] asked whether he had killed Leigh Leigh on that night when he was interviewed?
> A. I don't recall it specifically, but he probably was.
>
> Q. During the interview, I want to suggest that he was punched whilst sitting down in a chair?
> A. I deny that.
>
> Q. And during the interview a chair was pulled out from underneath him and he fell to the ground?
> A. I deny that.

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[191] PIC Transcript, MG Webster, 1 December 1998, p. 701.

[192] PIC Transcript, MG Webster, 1 December 1998, p. 704.

[193] PIC Transcript, MB Plant, 23 November 1998, p. 308.

[194] PIC Transcript, MB Plant, 23 November 1998, p. 310.

Q. During the time that he was interviewed at the Newcastle police station he asked for his parents to be present?
A. I don't recall him saying that at all.

Q. Do you recall him asking for his solicitor to be present?
A. No.

4.164 Detective Loy denied assaulting Matthew Webster at Stockton Police Station when this was put to him by Counsel Assisting the Commission and similarly denied any knowledge of Matthew Webster being assaulted at Newcastle Police Station.[195]

4.165 Detective Graham also denied that Matthew Webster was assaulted by police on 15 November 1989, nor could he recall Matthew Webster requesting the presence of his parents or his solicitor.[196]

4.166 Evidence presented to the Commission indicates that two other police officers would have seen Matthew Webster that night. These were former Senior Sergeant Collins, who is recorded as having made his bail determination, and Sergeant Hughes, who is recorded as adopting the handwritten statements made by Matthew Webster.

4.167 Former Senior Sergeant Collins could not recall the events of that evening but stated that he would have sighted Matthew Webster when making his bail determination. He did not recall seeing any evidence of injuries on Matthew Webster. He stated that if he had seen any injuries he would have made an occurrence pad entry of them. He noted that he was further assisted by the cell book entry made at the shift changeover the next morning in which there was no record of a prisoner making a complaint.[197]

4.168 Sergeant Hughes stated that while he recognised his signature on the handwritten statements and believes he may have adopted them he could not recall seeing or speaking with Matthew Webster on 15 November 1989.[198] He also recognised his handwriting in the charge book relating to the recording of the charges against Matthew Webster at 10.30 pm, and stated that he would have seen Matthew Webster at the time the charge was recorded.[199] He could not, however, recall seeing Matthew Webster and, as a consequence, he could not recall seeing any injuries on Matthew Webster.[200]

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195 PIC Transcript, JA Loy, 24 November 1998, pp. 339-340.
196 PIC Transcript, KS Graham, 30 November 1998, pp. 621, 623.
197 PIC Transcript, RTD Collins, 19 November 1998, pp. 258-259.
198 PIC Transcript, D Hughes, 25 November 1998, pp. 468-469, 472-473.
199 PIC Transcript, D Hughes, 25 November 1998, pp. 477-478.
200 PIC Transcript, D Hughes, 25 November 1998, p. 481.

4.169 Adrian Parrott, who was with Matthew Webster at the time he was taken to Stockton Police Station in the company of police, provided a statement to the Commission in which he stated that when Matthew Webster left him he was, as best he can recall, 'in perfect physical condition' and showed no signs of any injuries.[201]

4.170 A number of statements were obtained by the Commission from persons who saw Matthew Webster shortly after 15 November 1998:

- Nadine Webster, sister of Matthew Webster, states on 27 October 1998, that she saw her brother Matthew at her parents' home the day he returned from being in police custody and that she immediately noticed that his face was swollen. She states that he pulled up his shirt and his back was swollen in parts and there were red blotches over his body. She states that he said words to the effect, 'The pigs gave me a hiding and I'm all bruised'.[202]

- Matthew Webster's father, Stanley Clyde Webster recalled seeing his son at the Police Station and at court the day after he was arrested. He recalled that he immediately noted that Matthew Webster's head was very swollen and puffed up. He recalls that his son told him that he had been bashed at Stockton Police Station where six officers were present and again at Newcastle Police Station when eight officers were present. He states he was aware his wife made arrangements to see doctors in Stockton but that he did not have any further conversations with Matthew about the incident.[203]

- Matthew Webster's mother, Josephine Webster, also stated that when she saw Matthew at Newcastle Police Station the next day his face was badly swollen and his eyes were puffy. She recalls that he told her 'The pigs got me'. Later that day she saw that he had large bruises on his chest and back. She made two appointments with local doctors that day for Matthew, but both were cancelled and, as they were the only doctors in Stockton, she did not pursue the matter further.[204]

- Brenda Slade, a neighbour of the Webster family at that time, stated on 7 October 1998 that she recalled going into the Webster house soon after the murder of Leigh Leigh and seeing Matthew Webster with a number of 'pinkish red welts' across his chest. She states that he told her 'The cops did it'.[205]

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201 PIC Exhibit 105B.

202 PIC Exhibit 92B.

203 PIC Exhibit 110B.

204 PIC Exhibit 111B.

205 PIC Exhibit 103B.

- NC3 stated that he saw Matthew Webster at the home of NC2, not long after the murder. He stated that Matthew Webster had pulled up his shirt and NC3 saw bruising on his body, mainly his back. In the statement he says that Matthew Webster told him the police were responsible for his injuries.[206]

4.171 In a statement provided to the Commission on 1 December 1998 by Matthew Webster, he stated that he could recall an officer coming into the interview room at Newcastle Police Station and asking him some questions about the handwritten statements. He also stated that at the time he was not prepared to make a complaint about the police officers to another police officer as 'the whole incident would have started again and I would have suffered more injuries'.[207]

4.172 In that statement Matthew Webster also refers to a letter which he wrote describing the assaults which he says took place at the Stockton and Newcastle Police Stations. While he states that he does not recall when he wrote that document he does recall it was prior to him being charged with the murder of Leigh Leigh.[208] When providing evidence on 2 December 1998, Matthew Webster again identified that letter as being written by him. He was unsure, however, as to the date that he wrote it and he was also unsure as to whom he gave it. He did agree with the suggestion of Counsel Assisting that it was probably written by him for the purpose of assisting his lawyer with what had happened.[209]

ASSESSMENT REGARDING MATTHEW WEBSTER

4.173 The Commission cannot identify the officers who approached Matthew Webster on the street in Stockton and asked him to return with them to the Police Station on 15 November 1989 'for five minutes'. The Commission also heard evidence that indicates that Matthew Webster went voluntarily to Stockton Police Station. It would seem probable, however, that those police officers knew of the plan to take Matthew Webster to Newcastle Police Station and charge him with assault. If this is so, then the officers who collected Matthew Webster lied to him and his consent to accompany the officers was obtained by lying to him. He cannot truly be regarded as accompanying the officers voluntarily. Matthew Webster was under arrest when he arrived at Stockton Police Station. He was not in fact free to leave when he pleased.

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206 PIC Exhibit 96B.

207 PIC Exhibit 115B.

208 PIC Exhibit 115B.

209 PIC Transcript, MG Webster, 2 December 1998, p. 737; PIC Exhibit 53B.

4.174 It would appear that the police did have reasonable cause to suspect Matthew Webster in relation to the assaults on Leigh Leigh and the supply of cannabis and this gave them the grounds to arrest him on those matters. If, however, police had grounds to arrest Matthew Webster for the assault and cannabis matters, they were obliged to deal with him according to the law once he was arrested. As the law stood in 1989, they were obliged to take him before a Justice, without unreasonable delay, for the purpose of the Court dealing with him according to law.[210] Interrogation in relation to the murder, in 1989, did not constitute reasonable delay.[211] Furthermore, the assault and cannabis matters did not require the simultaneous arrests of NC1 and Guy Wilson, nor an arrest outside of court hours.

4.175 Detective Graham's duty book would indicate that he, at least, knew that Matthew Webster was under arrest at the time they began to interview him. As noted in the assessments made in relation to NC1, a senior police officer, if he or she was not responsible for securing a suspect's attendance at a Police Station, would be expected to inform themselves as to the suspect's status once at the Police Station. As such, Detective Plant should reasonably have been expected to have inquired about the status of Matthew Webster.

4.176 It has been suggested by various Counsel, including Counsel for Detective Graham and Detective Plant that, as the result of an erroneous Police Circular, the police working on the murder investigation may have held the mistaken belief that they had power to question a person after arrest about the matter for which they had been arrested even if that meant delaying taking the person before a Justice (see Chapter 6).[212] Even if this argument is accepted, the police acting in this circumstance had no power to question Matthew Webster about matters beyond the assault and cannabis supply allegations. Detective Plant and Detective Graham have argued that questioning Matthew Webster about the assault allegations cannot be separated from questions about events leading up to the murder. There is some theoretical basis for that assertion. It is the opinion of the Commission, however, that the primary purpose of the police in dealing with Matthew Webster that night was to determine whether he was involved in the murder. This opinion is based on the circumstances of the collection of NC1, Matthew Webster and Guy Wilson on 15 November 1989 (as described earlier in the assessment relating to NC1). The compelling consideration is that the questioning in relation to the assaults and cannabis matters proceeded separately to that concerning the murder.

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[210] Section 352, *Crimes Act 1900*.

[211] *Williams v The Queen* (1986) 161 CLR 278.

[212] PIC Exhibit 167.

4.177 It is likely, in the Commission's opinion, that Matthew Webster was assaulted by police some time on 15 November 1989. His evidence is credible as to these assaults, even though he cannot now identify the perpetrators. His evidence is corroborated by that of a number of civilians who saw him after 15 November, both as to their reports of his complaints and their direct observations of his injuries. It is worthy to note that on 16 February 1990, when Matthew Webster and Guy Wilson were having what they thought to be a private conversation, Matthew Webster made reference to his expectation of being assaulted by police.[213]

4.178 The Commission also notes, however, the lack of any corroborating physical evidence in the form of photographs or doctors' reports, the denials of the police responsible for interviewing him that night, and the inability of other police officers unconnected with the investigation, who are recorded as seeing him that night, to recall seeing him or recall seeing any injuries on his person.[214] Also important is the inability of Matthew Webster to identify (with the exception of ruling out Detective Plant) any of the officers allegedly involved in such an assault. Accordingly, the Commission cannot ascertain which officer or officers assaulted Matthew Webster.

COLLECTION OF GUY WILSON

4.179 Guy Wilson had been interviewed by Detective Connelly and Detective Hetherington on 5 November 1989 as part of the police efforts to interview all the people who had attended the party on the night of Leigh Leigh's murder. On 15 November, having obtained information from other persons at the party about Guy Wilson's involvement in an assault on Ms Leigh prior to her murder, police reinterviewed him.

4.180 According to the earlier noted evidence of Detective Chaffey, Detective Hetherington had been given the responsibility of locating and collecting Guy Wilson. The charge sheet for Guy Wilson indicates that he was arrested at 8.00 pm on 15 November 1989.[215]

EVIDENCE OF GUY WILSON

4.181 Guy Wilson gave evidence before the Commission that on 15 November 1989, while on his way home from the Gladstone Hotel, he was approached by two or three police officers who said they wanted to make further

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213 Discussed further in Chapter 5. PIC Exhibit 65B.

214 The charge book indicates that a photo was taken when Matthew Webster was charged, but no further record of its existence or destruction exists and the photograph has not been located; PIC Exhibit 20.

215 PIC Exhibit 46.

inquiries into the murder.[216] He was then taken into Stockton Police Station. Guy Wilson then gave the following evidence:[217]

> I was asked questions and I admitted to a few other things that I'd done and they took me to the Newcastle police station.

4.182 Counsel Assisting asked Guy Wilson whether any of the police involved in picking him up were the same police who had interviewed him on 5 November 1989. He recalled that one of the officers who picked him up and took him to Stockton Police Station that day had also interviewed him on 5 November 1989. He described that person as having sandy hair and as being 'big' in both height and build.[218]

4.183 Guy Wilson told the Commission about something said to him by one of the officers during the journey by car from Stockton to Newcastle Police Station, '… he wanted to rip me earring out if I didn't wipe the smile off my face, or something like that'. He identified the officer who said this as the 'big one' he had referred to earlier.[219]

4.184 Guy Wilson also gave evidence that it was daylight when he was collected in Stockton and taken to Stockton Police Station and that it was still daylight when he was taken to Newcastle Police Station.[220]

EVIDENCE OF DETECTIVE HETHERINGTON AND OTHER POLICE

4.185 Detective Sergeant Anthony Hetherington was, in 1989, a detective senior constable attached to the Major Crime Squad at Newcastle. From August of that year he was attached to the homicide unit. Detective Hetherington's duty book record of 15 November 1989 indicates that he went to Stockton Police Station with Detective Connelly to speak with Guy Wilson and then conveyed Guy Wilson to Newcastle:[221]

> Duty 8am to 5pm, study and examination at Morpeth (approved course), return to Newcastle, then with Detective Connelly to Stockton PS, confer with Detective Sgt Chaffey, then with Connelly speak with Guy Charles Wilson, convey same to Newcastle, interview Guy Wilson, conduct ROI 9:30pm – 11:10pm, [with] Connelly/Mullard, OIC questions by S/Sgt Collins, charged Indictable Assault records to [12]MN off duty.

4.186 While Detective Hetherington acknowledged that his duty book states that he did those things, he could not remember doing them. He told the

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216 PIC Transcript, GC Wilson, 14 December 1998, p. 844.
217 PIC Transcript, GC Wilson, 14 December 1998, p. 845.
218 PIC Transcript, GC Wilson, 14 December 1998, p. 845.
219 PIC Transcript, GC Wilson, 14 December 1998, pp. 845-846.
220 PIC Transcript, GC Wilson, 14 December 1998, p. 852.
221 PIC Exhibit 61.

Commission he had no recollection of bringing Guy Wilson to Stockton Police Station. His interpretation of his duty book was that Guy Wilson was already at the station when he arrived. It was noted by Counsel Assisting, however, that the duty book did not state this explicitly.[222]

4.187 Detective Hetherington could not recall whether or not Guy Wilson was under arrest when he was taken from Stockton to Newcastle:[223]

> Q. I see. When you took him from Stockton to Newcastle, was he in custody in the sense that he was under arrest?
> A. I don't have any recollection one way or another.
>
> Q. Was he free to go when you took him from Stockton to Newcastle?
> A. Well, I don't have any recollection of what his status was, as to whether he was coming voluntarily or whether he was under arrest.

4.188 In his second appearance before the Commission Detective Hetherington agreed that he was the officer in charge in relation to Guy Wilson. He was questioned again by Counsel Assisting on the issue of whether or not Guy Wilson was under arrest, in particular if he was under arrest when the record of interview commenced at 9.30 pm:[224]

> Q. Was he under arrest at the time of that record of interview?
> A. He may well have been.
>
> Q. I see. Well, do you have any recollection of that?
> A. No.
>
> Q. None at all?
> A. None at all of - what, formally telling him he's under arrest or in a constructive sense?
>
> Q. Well, how about telling me this, firstly: is there a difference?
> A. Yes.
>
> Q. What's the difference?
> A. Formally one can place a person under arrest by telling them that or by physically touching them, physically restraining them, or in a constructive sense whereby during the course of the conversation a person may disclose something which is inculpatory to the extent that perhaps they may be then cautioned and, in a constructive sense, they would be under arrest, even though they may not be formally told of that.

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[222] PIC Transcript, AJ Hetherington, 26 November 1998, pp 580-581. Detective Hetherington was questioned on this matter by Counsel Assisting again on 15 December 1998 during which time Detective Hetherington stated that, according to his practice, if he had spoken to Guy Wilson, anywhere other than at Stockton Police Station he would have recorded that in his duty book; PIC Transcript, AJ Hetherington, 15 December 1998, p 1043.

[223] PIC Transcript, AJ Hetherington, 26 November 1998, p. 591.

[224] PIC Transcript, AJ Hetherington, 15 December 1998 pp, 1050-1051; PIC Exhibit 23C.

Q. Do you mean by the use of the expression 'in a constructive sense' to signify that the person would not be free to go?
A. That's right.

Q. When was it, to your knowledge, the case that Mr Wilson was not free to go?
A. I can't recall.

Q. I see. What about at Stockton police station, when you spoke with him?
A. I can't recall. He may have been under arrest or he may have been coming willingly; I just can't remember.

Q. Did you ever ask him whether he wanted to come willingly with you to Newcastle police station?
A. I can't recall.

4.189 Detective Hetherington was further questioned on this issue by Counsel for the Commissioner of Police on 15 December 1998:[225]

Q. … All right. You also gave evidence today that Mr Wilson may have been under arrest at the time of the record of interview which you conducted?
A. Yes.

Q. Do I take it that you're aware of the fact that if he hadn't been arrested, you had no authority to restrain him?
A. If he hadn't been arrested?

Q. You had no authority to restrain him?
A. That's right.

Q. And you're aware also, are you not, as a sergeant, a man with over decades of experience, that it would be fundamental to any admissibility of the record of interview that you conducted that it was given voluntarily?
A. Of course.

Q. And you then, as the officer conducting the record of interview, would want to know that he was there voluntarily, would you not?
A. Well, again —

Q. Yes or no?
A. Again it depends on whether he's been under arrest or not. A person can be under arrest and voluntarily participate in a record of interview and, equally, a person can be there voluntarily and voluntarily participate in a record of interview.

Q. Did you make any inquiries to satisfy yourself?
A. I've got no recollection.

[225] PIC Transcript, AJ Hetherington, 15 December 1998, pp. 1077-1078.

Q. Would that be something that you would have had to note in your duty book?
A. Not necessarily.

Q. You also said, in answer to Mr Barrett this afternoon, that it was possible that he was under arrest and not informed of his being under arrest?
A. Yes.

Q. How can that be so?
A. I thought I explained that.

Q. Perhaps you might explain it again.
A. Often - well, not often but there are circumstances which can occur where you are interviewing a person in relation to a matter and during the course of that interview the person may say something of an inculpatory nature which warrants your cautioning that person and, in a constructive sense, you may have then made the decision that there's a possibility that that person could be charged and in a constructive way that person would then be under arrest. You may not inform them of that fact, but again this is a hypothetical exercise, if that person then wished to leave the station, you would detain them.

Q. And tell him he was under arrest then?
A. Yes.

4.190 Former Detective Senior Constable James Mullard was, in 1989, attached to the Hamilton patrol in the Newcastle region where he was seconded to the group investigating the murder of Leigh Leigh. He took part in the interview of Guy Wilson on 15 November 1989. Former Detective Mullard was questioned by Counsel Assisting about his duty book entry relating to 15 November 1989. Former Detective Mullard agreed that the duty book entry showed that after his lunch break, taken from 1.30-2.00 pm, he returned to Stockton Police Station and conferred with Detective Chaffey and others regarding the Leigh murder. He also agreed that it was then recorded in the duty book that he had gone out with Detectives Connelly and Hetherington to Newcastle Police Station with Guy Wilson. He did not, however, have any recollection of events leading up to the interview of Guy Wilson in Newcastle Police Station.[226]

4.191 In his evidence to the Commission, former Detective Mullard, stated that he could not recall whether Guy Wilson was under arrest when at Newcastle Police Station, or whether he was there voluntarily. He also stated that he could not recall who the arresting officers were, though he believed he was not involved in the arrest as he had no recollection of it.[227]

[226] PIC Transcript, JK Mullard, 30 November 1998, pp. 629-630.
[227] PIC Transcript, JK Mullard, 30 November 1998, p. 633.

4.192 Detective Graham and Detective Loy were recorded as the apprehending officers on both the charge sheet and charge book entries of 15 November 1989 for Guy Wilson. Neither officer could recall taking part in the arrest of Guy Wilson and both considered the charge book entry to be incorrect.[228]

4.193 When questioned by Counsel for Detective Chaffey on 15 December 1998, Detective Hetherington agreed that the time of arrest, which was recorded as being 8.00 pm, could have come about had Guy Wilson made inculpatory statements in the informal interview, prior to the commencement of the formal record of interview at 9.30 pm. He also agreed that it was possible that the names of Detectives Graham and Loy may have 'come from the recording sergeant's misinformation', that is that their names were entered by mistake.[229] He had previously stated to Counsel Assisting that he could not recall seeing Detectives Graham or Loy at either Stockton or Newcastle Police Stations on that night.[230]

INTERVIEW OF GUY WILSON

PURPOSE OF THE INTERVIEW

4.194 In examining his duty book record for the date in question Detective Hetherington admitted that a conversation, recorded in his duty book as an 'interview' had taken place with Guy Wilson prior to the conduct of a formal record of interview from 9.30 pm to 11.10 pm. His duty book and the record of interview also list Detective Connelly and Detective Mullard as present at the record of interview.[231]

4.195 Detective Hetherington was questioned by Counsel Assisting about the purpose of taking Guy Wilson into custody and taking him to Newcastle Police Station. It was suggested to Detective Hetherington that Guy Wilson was taken into custody in order to question him in regard to the murder. In Detective Hetherington's view the matter of the assault and the murder investigation could not be separated:[232]

> Q. Right. And the interviewing of him did not only involve a charge relating to an indictable assault, but related to an investigation of his activities in so far as the murder inquiry was concerned; do you agree with that?
> A. Well, I don't think you could really separate the two, to be honest. If I'm interviewing Wilson in relation to his activities and his contact with Leigh Leigh that night, logically one can't necessarily separate that from the overall murder investigation.

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228 PIC Exhibit 46, barcode 5324776; PIC Transcript, JA Loy, 24 November 1998, pp. 337-338; PIC Transcript, KS Graham, 30 November 1998, pp. 620-621.

229 PIC Transcript, AJ Hetherington, 15 December 1998, pp.1081-1083.

230 PIC Transcript, AJ Hetherington, 15 December 1998, p. 1063.

231 PIC Transcript, AJ Hetherington, 26 November 1998, p. 582; PIC Exhibit 61.

232 PIC Transcript, AJ Hetherington, 26 November 1998, p. 588.

Q. Well, if that be so, then what was the logic in interviewing him in that record of interview and only putting questions in it about the indictable assault matter?
A. Well, that was the purpose he was there.

4.196 Detective Hetherington was further questioned by the Commissioner on the content of the conversations that took place that night outside of the record of interview:[233]

Q. What I'm going to take you back to is this: during the time at the Newcastle police station, do you see any difference in the substance of whatever the conversations were that you had with him between on the one hand the indictable offence, the indictable assault, and anything else on the other hand, or was it all to do with the indictable assault?
A. As I said before, I have no recollection of what conversation I had with Mr Wilson outside of the formal record of interview document. Within that document in my opinion there is material which relates to the indictable assault and to other incidents which occurred at the surf club that night.

4.197 In his second appearance before the Commission Detective Hetherington denied that Guy Wilson had been questioned about the murder prior to the record of interview:[234]

Q. The questioning of him about his knowledge of the murder took place before the recorded interview?
A. No.

Q. When did that take place?
A. I've got no specific recollection of conversations before or after, but I believed I'd established a good rapport with Mr Wilson and it's quite possible that I may have asked him at some stage after the interview whether he knew who was responsible, something along those lines. I mean, I have no recollection of it, but it's quite possible that I did.

Q. Could it be that you asked him questions about his knowledge of the murder or who did it before you did the recorded interview?
A. No. No.

…

Q. - did you ask him questions about his knowledge of, for example, whether other people have done it?
A. Well, as I said, I don't have any specific recollection of a particular conversation about it. What I'm saying is it is likely or possible that I may have asked him if he knew who were the person or persons responsible.

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[233] PIC Transcript, AJ Hetherington, 26 November 1998, p. 591.

[234] PIC Transcript, AJ Hetherington, 15 December 1998, pp. 1038-1039.

4.198 Detective Hetherington reiterated his purpose in interviewing and charging Guy Wilson that night:[235]

> Q. It was because they were significant potential suspects that it was decided, wasn't it, to your knowledge, to interview the three of them at the same time, in effect?
> A. No - well, they were significant potential suspects, but the reason they were being interviewed was because of their criminal acts that they had committed against Leigh Leigh. That was the reason.
>
> …
>
> Q. And that was done as part of a strategy to interview each of those three persons at the same place and time?
> A. Yes.

4.199 Detective Hetherington was later taken to Detective Chaffey's evidence that primacy was given to the murder inquiry in so far as persons were questioned on 15 November 1989. He disagreed with this.[236]

4.200 As described above, former Detective Mullard was questioned by Counsel Assisting about his duty book entry for 15 November 1989. Counsel Assisting noted that the duty book stated that he had gone with Detective Connelly and Detective Hetherington to Newcastle Police Station with Guy Wilson. He then read from the duty book where is stated '…then interview Wilson re murder charge same with assault upon Leigh Leigh attend to records to 12 midnight, off duty'.[237] It was agreed by former Detective Mullard that this should read 'interview Wilson re murder' then 'charge same with assault'. According to former Detective Mullard the assault charge was 'all part of the investigation with the murder in mind' and 'all the procedures would be in line with the investigation of the murder'.[238]

4.201 Former Detective Mullard also gave evidence to the Commission about his own recollection of the interview of Guy Wilson and the purpose of the formal record of interview:[239]

> Q. What was happening with Wilson before the record of interview was done?
> A. We were questioning him as to what - about the information we'd received.

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235 PIC Transcript, AJ Hetherington, 15 December 1998, pp. 1041-1042.

236 PIC Transcript, AJ Hetherington, 15 December 1998, p. 1048.

237 PIC Transcript, JK Mullard, 30 November 1998, pp. 630-631.

238 PIC Transcript, JK Mullard, 30 November 1998, p. 630.

239 PIC Transcript, JK Mullard, 30 November 1998, pp. 632-633.

Q. About the murder, I take it?
A. Yes.

Q. Is it the situation that during the course of that he told you certainly (sic) things about his own conduct that you then recorded in the record of interview?
A. I really can't recall whether he told us that or not. I had a feeling we already had knowledge of that through interviewing other people, but I really can't recall whether he actually give us those admissions prior to the record of interview. I really can't say.

Q. I see. Is it the case that there was no formal record of interview done in relation to your questions concerning the murder?
A. That's correct. The record of interview was about the assault.

Q. All right. It was confined to that for a specific purpose, I take it?
A. From my recollection of the record of interview; I've only seen it briefly since that time, yes.

Q. Given that he made admissions in it, it must have been done, do you think, with an expectation that he would make admissions in relation to the assault?
A. I really can't recall.

Q. But there was no attempt to do a record of interview in relation to the murder inquiry itself?
A. No.

4.202 Former Detective Mullard was asked by his Counsel further questions about his recollection about 'the murder inquiry questioning' of Guy Wilson. He replied:[240]

A. … I think the overall - when I say murder inquiry I meant the overall inquiry was part of the murder investigation in toto, so the actual questioning would be part of that plus the actual specific assault charges would have been part of that overall inquiry.

Q. So in your mind the expression 'murder inquiry' included the questioning about the assault as well?
A. That's correct.

Q. May we take it that that's because the events of the evening were what you and the other police were interested in asking about?
A. That's correct.

Q. And any suggested assault on the deceased would be included in that murder inquiry?
A. That's correct.

[240] PIC Transcript, JK Mullard, 30 November 1998, p. 642.

4.203 Counsel Assisting asked Guy Wilson about his own understanding of the purpose of the interview which took place on 15 November 1998:[241]

> Q. When you were interviewed on 15 November, were you asked questions about the murder?
> A. Yes. I think so.
>
> Q. What did you understand to be the reason why you were taken to Newcastle police station on 15 November?
> A. When they first picked me up or later on through the night?
>
> Q. When they first picked you up and then through into the evening.
> A. They said that they had a few more inquiries, a few more questions to ask me.
>
> Q. About what?
> A. Involving the murder.
>
> Q. I see. When you were at Newcastle police station through the evening there when you were being interviewed, what did you believe you were being interviewed about? What was the purpose that you understood of you being there?
> A. I sort of thought that they were trying to prosecute me as being involved in the murder or - yeah.

4.204 Guy Wilson stated to the Commission, that on 15 November 1989 he had told police additional things to which he had told them during his first interview on 5 November 1998. Those additional things had been recorded in the record of interview. He gave evidence that while at Newcastle Police Station he had admitted to police that he had lied when interviewed on 5 November 1998.[242]

4.205 He also gave evidence that during the interview he had asked to speak to his parents:[243]

> Q. When you were taken downstairs and charged and then you were placed in the cells, did anyone speak to you about making contact with your parents?
> A. No, they didn't. I asked a few times if I could speak to my parents.
>
> Q. Was that after you were taken down to be charged, or before that?
> A. That was before as well, yep.
>
> Q. Do you recall where it was when you asked if you could speak with your parents?
> A. I was in the interview in Newcastle interview room.

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241 PIC Transcript, GC Wilson, 14 December 1998, pp. 853-854.

242 PIC Transcript, GC Wilson, 14 December 1998, pp. 848-849.

243 PIC Transcript, GC Wilson, 14 December 1998, p. 852.

ALLEGATION OF ASSAULT

4.206 Guy Wilson gave evidence before the Commission of an assault that he alleges took place in Newcastle Police Station prior to his official record of interview:[244]

> There was like some yelling and a bit of slapping around the head and things like that until I admitted to a few more things and they kept asking me more questions and sort of kept going like that for a while.

4.207 Guy Wilson went on to say that there were three or four police in the room at one time but that he could not identify the officer who slapped him in the head. He was able to provide further evidence in regard to the 'big' officer he had referred to earlier:[245]

> Q. Did anything else happen?
> A. I was pushed - pulled from behind or pushed from behind the chair on to me back and then he put his foot on me chest so I could hardly breathe.
>
> …
>
> Q. On to what, on to the floor?
> A. On to the floor.
>
> Q. You said he put his foot on your chest so you could hardly breathe?
> A. Yes.
>
> Q. Who did that?
> A. That same big officer.
>
> Q. Were there other officers in the room at the time?
> A. Yes.
>
> Q. Were any of those officers present at Stockton before you'd been taken to Newcastle?
> A. I'm not sure, but I - yeah, I'm not sure.

4.208 Counsel Assisting asked Guy Wilson if anything was said to him by the officers at the time this was occurring to explain why that happened:[246]

> Q. When you were struck about the head, was anything said to you by any of the officers at that time as to why that happened?
> A. Just that I was lying, said I'd lied before, so they thought I was hiding things, and stuff like that.

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[244] PIC Transcript, GC Wilson, 14 December 1998, p. 846.

[245] PIC Transcript, GC Wilson, 14 December 1998, p. 847.

[246] PIC Transcript, GC Wilson, 14 December 1998, p. 848.

Q. Had you at that stage admitted that you'd lied before?
A. Yes.

4.209 Guy Wilson gave evidence to the Commission that after the record of interview was completed and he was taken downstairs to be charged he did not tell anyone at that time of the alleged assault that took place in the interview room. He also gave evidence that he did not inform the court of the allegations when he made a bail appearance the next day. He was asked by Counsel Assisting why he did not tell anyone:[247]

A. I don't know really. I just was a bit - a bit worried about it. I just didn't want anyone to get involved or anything. So I sort of left it to myself. I was a bit scared of what the repercussions might have been.

Q. Repercussions from what source?
A. Well, if I told me lawyer or someone like that, they might have - like tried to charge the police or something like that, and I just wanted to leave it there and then.

4.210 He also admitted that he never spoke of the alleged assaults to the lawyer who represented him on the assault charges.[248]

4.211 Detective Hetherington denied that he had witnessed or been involved with the alleged assault on Guy Wilson that night:[249]

Q. On 15 November, we've heard evidence that Wilson says he was assaulted during the course of interviews of him at Newcastle police station?
A. Yes.

Q. Did you assault Wilson?
A. No, I didn't.

Q. Were you present when any other officer assaulted Wilson?
A. Wilson was never assaulted in my presence.

4.212 Mr Mullard also gave evidence that Guy Wilson had not been assaulted in his presence.[250]

247 PIC Transcript, GC Wilson, 14 December 1998, p. 853.
248 PIC Transcript, GC Wilson, 14 December 1998, p. 854.
249 PIC Transcript, AJ Hetherington, 15 December 1998, p. 1073.
250 PIC Transcript, JK Mullard, 30 November 1998, pp. 635-636.

ADOPTION OF THE RECORD OF INTERVIEW

4.213 The record of interview between Detective Hetherington and Guy Wilson indicates that the interview concluded at 11.10 pm. It also indicates that it was adopted by Wilson in the presence of Senior Sergeant Collins at 11.52 pm.

4.214 Guy Wilson stated in his evidence that he could recall a series of questions that were asked, and answers given by him, at the end of the record of interview. He could not recall, however, a uniformed officer coming into the interview room at the end of the record of interview or speaking with a uniformed officer about the interview after it had concluded.[251]

4.215 Detective Hetherington gave evidence that he could not recall former Senior Sergeant Collins speaking to Guy Wilson, however, he stated that it was his practice to have a uniformed officer conduct an adoption at the conclusion of an interview and that he would not be in the interview room while the adoption took place.[252] His duty book entry for 15 November 1989 also records that 'OIC questions' were asked by Senior Sergeant Collins.[253]

4.216 On 19 November 1998 Counsel Assisting questioned former Senior Sergeant Collins about the adoption of the Wilson record of interview. Counsel Assisting noted that the available documents record that the adoption took place at 11.52pm, which would be unusual in that they also record that former Senior Sergeant Collins had already made a bail determination for Guy Wilson at 11.30 pm:[254]

> Q. Can you account for that?
> A. I was asked to adopt this record of interview, it appears, after he was charged.
>
> Q. You have no recollection of these events, apart from that which you've found from looking at these documents; is that right?
> A. That's right.
>
> Q. Sir, it wouldn't be that you were asked to endorse an adoption in relation to these records of interview at some later time?
> A. No.
>
> Q. It wouldn't be that you were asked to make documents or create documents in relation to bail determinations at some later time?
> A. No.

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[251] PIC Transcript, GC Wilson, 14 December 1998, p. 850.

[252] PIC Transcript, AJ Hetherington, 15 December 1998, p. 1095.

[253] PIC Exhibit 61.

[254] PIC Transcript, RTD Collins, 19 November 1998, pp. 251-252.

ASSESSMENT REGARDING GUY WILSON

4.217 The evidence before the Commission indicates that Guy Wilson voluntarily accompanied police to Stockton Police Station on 15 November 1989. According to his own evidence he was asked to answer some questions about the murder. Accordingly, there was no impediment to questioning him about the murder.

4.218 The Commission notes that police had reasonable grounds to suspect him of an assault on Leigh Leigh on the night of her murder, thus providing them with grounds to arrest and charge him with that offence. If he was at the Police Station voluntarily, there was no impediment to questioning him about the assault, as long as that was made clear to him and he was not deceived as to whether he was free to go from the station.

4.219 The only evidence before the Commission upon which an inference can be drawn that Guy Wilson was unlawfully detained is his allegation of being assaulted at Newcastle Police Station, and his evidence that he asked to see his parents and that apparently this had not been acted upon. It is the view of the Commission that there is no evidence to substantiate his allegations of assault by police while in their custody on 15 November 1989. Guy Wilson's evidence is refuted by all three police officers involved with him that night. Guy Wilson, himself, is unable to clearly identify any officer who allegedly assaulted him. According to his own evidence, Guy Wilson told no-one of the alleged assault and consequently there is no available corroboration.

4.220 While it is clear from listening device recordings made of Guy Wilson and Matthew Webster speaking on 16 February 1990 (see Chapter 5) that Guy Wilson was fearful of police 'bashings' and appeared to claim that he had experienced them to some degree prior to that time, there is insufficient evidence for the Commission to form an opinion that any assaults he might have been referring to took place on this day. Accordingly, the Commission cannot form an opinion that his detention and interview regarding the murder was unlawful.

PROVISION OF BAIL FOR WEBSTER AND WILSON

4.221 The charge book records tendered as exhibits in these hearings indicate that bail determinations were made with respect to Matthew Webster and Guy Wilson and NC1 on the night of 15 November 1989. According to the records the bail determination for NC1 was made that night by a uniformed sergeant at Newcastle Police Station by the name of McDonald and he was released into the custody of his mother. The records indicated that bail determinations for Matthew Webster and Guy Wilson were made by former Senior Sergeant Collins.

4.222 Guy Wilson told the Commission he could not recall being offered bail. Matthew Webster told the Commission that he was unaware of being spoken to, or asked about bail after being charged on 15 November 1989.[255]

4.223 In his evidence to the Commission, former Senior Sergeant Collins agreed that the charge book entry relating to Matthew Webster credits him with making a bail determination for Matthew Webster at 11.00 pm on the night of 15 November 1989. The records also credit him with making the bail determination for Guy Wilson at 11.30 pm that night. He noted, however, that neither the Webster nor the Wilson entry in the charge books were made in his handwriting and neither bears his signature.[256] Former Senior Sergeant Collins also gave evidence that he could not recall either Guy Wilson or Matthew Webster being at the station that night and that he could not recall making the bail determinations listed.[257] He was shown bail determinations in the names of Matthew Webster and Guy Wilson by Counsel Assisting and informed that the copies displayed had come from the records of the Newcastle Court via the Office of the Director of Public Prosecutions. Former Senior Sergeant Collins gave evidence that he did recognise his signature on those bail determinations, however, he denied authorship of the entries recording the bail determination in the charge book.[258]

4.224 Former Senior Sergeant Collins was shown the first page of the bail determination, signed by him, made on 15 November 1989 for Matthew Webster in relation to the charges of assault and supply cannabis resin. He was further shown that the document displayed the notation that it had been received at Newcastle Court on 23 November 1989, a week after Matthew Webster had been charged. The following exchange then took place between former Senior Sergeant Collins and Counsel Assisting:[259]

> Q. Do you have any knowledge of why such a document would be in the records of the court endorsed as having been received on 23 November 1989?
> A. No.
>
> Q. If the person Matthew Webster were taken to the court on 16 November 1989, the Thursday, at the next sittings of the court, you'd expect the bail determination document to be also at the court?
> A. Yes.

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255 PIC Transcript, MG Webster, 1 December 1998, p. 710; PIC Transcript, GC Wilson, 14 December 1998, p. 851.

256 PIC Transcript, RTD Collins, 19 November 1998, pp. 217-219; PIC Exhibit 20, barcode 5324617.

257 PIC Transcript, RTD Collins, 19 November 1998, p. 220.

258 PIC Transcript, RTD Collins, 19 November 1998, pp. 246, 248.

259 PIC Transcript, RTD Collins, 19 November 1998, p. 246.

Q. Because, as you said before, it was of interest to the court to make a determination as to bail?
A. Yes.

4.225 Earlier, when being questioned about procedures relating to the provision of bail, former Senior Sergeant Collins had given evidence that persons generally asked for bail and that it was so rare that a person charged would not ask for bail that he could not recall it ever happening.[260] Counsel Assisting took him to another part of the bail determination and the following questions were asked:[261]

Q. Sir, if you'd have a look at the document that's on your screen in the second of the spaces that have headings on them, the space headed 'request for bail', do you see that the words '1, made no request for bail' are endorsed thereon?
A. Yes.

Q. And the other alternative matters there have been crossed out?
A. Yes.

Q. This was a document that you signed?
A. Yes.

Q. And, according to the place where your signature is, recorded on 15 November 1989?
A. The back thereof. I'm looking at the front now.

Q. You're looking at the front page.
A. Yes.

Q. Which has on it that the accused has made no request for bail?
A. Yes.

Q. Is this one of those rare occasions where no request for bail was made?
A. Yes.

Q. I see - in your experience, an unusual situation?
A. Yes.

4.226 The bail determination of Guy Wilson, also signed by former Senior Sergeant Collins on 15 November 1989, was similarly shown to be stamped as received at Newcastle Court on 23 November 1989. It was also shown to have recorded that the accused made no request for bail. Former Senior Sergeant Collins was also questioned about the source of the information he had used in making the decision, as one of the recorded reasons for his determination regarding Guy Wilson was that the accused was unemployed.

[260] PIC Transcript, RTD Collins, 19 November 1998, p. 240.
[261] PIC Transcript, RTD Collins, 19 November 1998, p. 246.

Counsel Assisting put to former Senior Sergeant Collins that Guy Wilson did hold part-time employment at that time; however, former Senior Sergeant Collins could not recall how he had received the information.[262]

4.227 Counsel Assisting then put to former Senior Sergeant Collins that Matthew Webster and Guy Wilson were not considered for bail at all until after they had been taken to court on 16 November 1989. Former Senior Sergeant Collins indicated that he was satisfied he had made the bail determinations on 15 November 1989.[263] Counsel Assisting later put to former Senior Sergeant Collins that the bail documents had been created at some later time:[264]

> Q. It wouldn't be that you were asked to make documents or create documents in relation to bail determinations at some later time?
> A. No.
>
> Q. Than in fact occurred?
> A. No.
>
> Q. You're quite sure of that?
> A. According to records.
>
> Q. According to records?
> A. According to records we're looking at, yeah.
>
> Q. Because you don't have any memory of it at all?
> A. Not really, no.

4.228 Submissions received on behalf of former Senior Sergeant Collins dealt with some of the apparent anomalies in the times recorded. They noted that the times recorded in relation to Guy Wilson in respect of the completion of his interview, adoption and charging are in the chronological order one would expect - with the exception of the 11.30 pm bail determination. The submissions noted that former Senior Sergeant Collins had given evidence that he had not entered the times of the bail determinations himself and the entries were not in his handwriting. They also noted former Senior Sergeant Collins' evidence that the time of the bail determination may be recorded at some time later in the shift and not when the bail determination was made. These submissions infer the incorrect recording of the bail determination time.[265]

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262 PIC Transcript, RTD Collins, 19 November 1998, pp. 248-249.

263 PIC Transcript, RTD Collins, 19 November 1998, p. 249.

264 PIC Transcript, RTD Collins, 19 November 1998, p. 252.

265 PIC Exhibit 169.

ASSESSMENT REGARDING PROVISION OF BAIL

4.229 It is clear to the Commission that there were a number of anomalies in the preparation of the bail documents as noted above, not least of which was the apparent incorrect entry of the time of the bail determination for Guy Wilson in official records.

4.230 The Commission also notes the following:

- the evidence of Matthew Webster and Guy Wilson that they could not recall being offered bail;
- the evidence of former Senior Sergeant Collins that he could not recall making the bail determinations;
- the delay in the documents arriving at the Court; and the endorsement of both bail documents with what former Senior Sergeant Collins stated was a 'rare' event, being that the prisoner made no request for bail.

4.231 Each of the offences with which Guy Wilson and Matthew Webster were charged on 15 November 1989 was an offence carrying a presumption in favour of bail.[266] Each had an arguable case for bail, including their youth, community ties and the unlikelihood of jail sentences if convicted of the offences which they had then been charged.[267]

4.232 Failure to properly determine bail for persons charged with criminal offences amounts to misconduct, and to the denial of a person's liberty in circumstances where adherence to procedures could have resulted in the person regaining his or her liberty.

4.233 It is the view of the Commission that the evidence of Matthew Webster and Guy Wilson is to be preferred and that they were not presented to an officer for the purpose of the making of a bail determination on the night of 15 November 1989.

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[266] Section 9 *Bail Act 1978 NSW*. On 15 November 1989, Webster was charged with supplying cannabis and assault, and Wilson was charged with assault.

[267] Section 32 *Bail Act 1978*.

5. THE POLICE INVESTIGATION - EVENTS OF 16 FEBRUARY 1990

5.1 By 16 February 1990 the team investigating the murder of Leigh Leigh had determined a strategy to further the investigation. They planned to arrange for Matthew Webster and Guy Wilson to be present at Newcastle Police Station where they would be left alone together in a room fitted with a listening device. The use of the listening device had been authorised by a warrant which had been obtained. The listening device was installed in an interview room at the station. Police surveillance teams were directed to locate each of the two individuals and that afternoon teams were sent out to 'collect' Matthew Webster and Guy Wilson.

COLLECTION OF MATTHEW WEBSTER AND GUY WILSON

EVIDENCE OF MATTHEW WEBSTER AND OTHERS

5.2 On 2 December 1998 Matthew Webster gave evidence regarding the manner in which he was picked up by police officers on the afternoon of 16 February 1990:[268]

> Q. All right. I want to ask you about how that happened, if you could tell us what you remember first happened?
> A. I was walking along the street and a car pulled in the gutter pretty quickly and someone hopped out and he said, 'Do you remember me?' or something like that, and I said, 'No'. He said - well, I'm not sure what he said, but I think he wanted me to go with him.

5.3 Matthew Webster went on to state that he was probably aware that the person who spoke to him was a police officer and that he told them he did not want to go with them and that he was on his way to a doctor's appointment:[269]

> A. Well after I told them that I was going to the doctors they said, 'We'll fix that up' and the officers come around to put me in the car and I wouldn't - I wouldn't go in.
>
> Q. How many officers came around to put you in the car?
> A. One at that stage.
>
> Q. All right. The other officer that was in the car, did that officer do something?
> A. He did after I wrestled with the first one and locked the door or something and closed the back door.

[268] PIC Transcript, MG Webster, 2 December 1998, p. 723.

[269] PIC Transcript, MG Webster, 2 December 1998, pp. 723-724.

Q. Tell us what you did. You got into a wrestle with the first policeman, did you?
A. Yes.

…

Q. What happened then?
A. The other one opened the door and he hopped out to help put me in the car.

Q. When you say he helped to put you in the car, what did he actually do? Did he take hold of you exactly?
A. I don't know exactly. He probably did.

Q. Did the other officer have hold of you?
A. I think so, yes.

Q. Did he eventually get you in the car?
A. Eventually, yes.

Q. Were you trying not to get in the car?
A. Yes.

Q. You were pretty big at that time, weren't you?
A. Yes.

5.4 Matthew Webster also described seeing the mother of a friend on the street and calling out to her for assistance:[270]

Q. Where did you see her?
A. She was either walking in or out of her house, the front yard of her house.

Q. What did you do when you saw her?
A. I asked her if she could tell the police I didn't want to go with them.

Q. What did she say? Did she reply?
A. Yes.

…

Q. All right. Did she say anything to the police?
A. I can't remember what - yes, I think so, but I can't remember what.

Q. Do you remember her saying anything else at all?
A. I remember her saying to me to just go with them and she'd tell me mother where I was. I asked her to tell me mother where I was.

[270] PIC Transcript, MG Webster, 2 December 1998, pp. 725-726.

5.5 On 13 October 1998 the Commission obtained a statement from the woman referred to by Matthew Webster. In that statement she recalled seeing Matthew Webster, whom she had known for a number of years, on the street outside her home some time after the murder of Leigh Leigh. According to the statement, she recalls that a car pulled up to the kerb and two men got out and approached Matthew Webster. She could not overhear what they said to Matthew Webster but he suddenly called out to her asking for help. She states the men then pushed Matthew Webster into the car and while this was not done roughly it was done firmly, rather than gently: '… it was done in such a way that it was clear to me they wanted Matthew to go with them and they were clearly wanting to make sure he went with them'.[271]

5.6 According to the statement Matthew Webster asked the woman to tell his mother what had happened and she agreed. She also states that she repeatedly asked the persons who had placed Matthew Webster in the car where they were taking him, but that she was ignored. Eventually the officer driving the car stated that he was being taken 'To the Police Station'.[272]

5.7 She then went immediately inside her home and wrote a note to Mrs Webster which she took to their house and left under the door as no one was at home. In the note she wrote, 'just before 4.00 pm he was picked up near our place ...'.[273] In the statement she also recalled that there may have been a third person present, but did not recall him getting out of the car that Matthew Webster was placed in.

5.8 Mrs Josephine Webster, the mother of Matthew Webster, provided the Commission with a statement in which she recalled arriving home on 16 February 1990 with a neighbour. The neighbour found a note under the front door and gave it to Mrs Webster. It was a note from the woman referred to above informing her that Matthew Webster had been taken to the Police Station.[274]

EVIDENCE OF POLICE

5.9 On 19 November 1998 Detective David Kane gave evidence to the Commission that in February 1990 he was a detective senior constable attached to the Arson Squad, part of the Regional Crime Squad North at Newcastle Police Station. His involvement in the investigation of the murder of Leigh Leigh was limited to 16 February 1990. In his evidence he stated that on that day he, and then Detective Grant Connelly, went

[271] PIC Exhibit 107B.
[272] PIC Exhibit 107B.
[273] PIC Exhibit 107B.
[274] PIC Exhibit 111B.

from Newcastle to Stockton to find Matthew Webster after having received information on his whereabouts from other police. He gave evidence that they found Matthew Webster on the street and placed him in a police car and then took him back to Newcastle Police Station. While he recalled that other police, besides himself and Detective Connelly, had been there when Matthew Webster was approached, he could not recall their identities.[275]

5.10 Detective Kane provided greater detail of his recollection of the events of that day in an induced statement that he provided to the Commission on 4 November 1998.[276] In that statement he relates that on 16 February 1990 he was requested by either Detective Connelly or Detective Chaffey to go to Stockton, locate Matthew Webster and bring him back to Newcastle Police Station. He states that the tone of the request was that Matthew Webster was to be arrested and returned to the Police Station. He recalls that the vehicle he was in with Detective Connelly pulled up beside Matthew Webster in a street in Stockton and that Detective Connelly had a conversation with Matthew Webster and that Matthew Webster was given to understand that he was under arrest and that he was going with them. At that time Matthew Webster started to call out to other persons in the street and began to struggle. He recalls Matthew Webster called out to a woman on the street words to the effect, 'Tell my mum where I'm going'. Detective Kane recalled placing his hand on Matthew Webster's head to prevent him hitting his head as he got into the car. He is certain that at some point Matthew Webster was placed in handcuffs in the car.[277]

5.11 In this statement Detective Kane asserts that Matthew Webster was to be arrested, he was arrested and he had no choice but to go with them.[278]

5.12 Detective Connelly was not called in public hearings before the Commission and his evidence was taken privately due to his ill health. His evidence does not assist the Commission in its consideration of the events involving Matthew Webster on 16 February 1990.

5.13 Detective Plant also provided evidence to the Commission of his own involvement in the collection of Matthew Webster. He stated that having assisted in collecting Guy Wilson and taking him to Newcastle Police Station he returned to Stockton. He recalled receiving information on where Matthew Webster was to be found and that on arriving he assisted Detectives Kane and Connelly place Matthew Webster in the police car.

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[275] PIC Transcript, DW Kane, 19 November 1998, p. 201.

[276] This is a term which is commonly used to describe a statement which is obtained on the basis that the statement shall not be used in evidence against the maker of the statement in any civil or criminal proceedings which may be brought against that person except in the event that anything in the statement is false.

[277] PIC Exhibit 114B.

[278] PIC Exhibit 114B.

He also recalled a woman being present on the street while this occurred and that Matthew Webster had called out to her.[279]

5.14 Detective Plant later gave evidence that when he assisted placing Matthew Webster into the police car he believed he was under arrest:[280]

> Q. And you assisted the other police, Detective Kane and Detective Connelly, to put him in the police vehicle?
> A. Yes.
>
> Q. And you assisted them do that at a time when he was clearly not wanting to go with the police?
> A. He was shouting out something. He didn't appear to be wanting to go with the police.
>
> Q. Apart from him shouting out, his actions were such that it indicated to you that you needed to assist; isn't that right?
> A. That's correct.
>
> Q. And you went to the assistance of the other police officers?
> A. Yes, I did.
>
> Q. And assisted them in effecting the arrest of Mr Webster?
> A. No, I believe the arrest was already effected. I assisted them to put him into the car.
>
> Q. All right. You assisted them in completing the arrest?
> A. Yes.
>
> Q. And it was clear that Mr Webster didn't want to go with the police at that stage?
> A. Yes.

5.15 Detective Plant could recall that it took some force to get Matthew Webster into the police car. He could not recall, however, whether Matthew Webster was told what he was arrested for or whether he was cautioned.[281]

5.16 Detective Plant also gave evidence that he had formed the view on 16 February 1990 that there may have been sufficient evidence to charge Matthew Webster with the murder of Leigh Leigh:[282]

> Q. … just dealing with what your understanding was on 16 February, you say you believe there may have been sufficient evidence to charge Webster?
> A. Yes.

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279 PIC Transcript, MB Plant, 19 November 1998, pp. 269-270, and 23 November 1998, p. 293.

280 PIC Transcript, MB Plant, 23 November 1998, p. 285.

281 PIC Transcript, MB Plant, 23 November 1998, p. 290.

282 PIC Transcript, MB Plant, 23 November 1998, p. 275.

Q. There was no evidence upon which you could have charged Wilson, was there, at that time?
A. Not to the same extent as there was against Webster.

Q. To what extent was there material that may have justified charging Webster?
A. His behaviour during the night, his comments to other partygoers, including Wilson, about having sex with Leigh Leigh, the fact that he had been last seen walking towards the beach where Leigh Leigh was last seen to go, the fact that he had lied to try and fabricate an alibi by saying he went to the General Washington Hotel.

5.17 Detective Plant also gave evidence that he believed at that time (though he was in fact incorrect) that a taxi driver from the evening of the murder had provided information that potentially implicated Matthew Webster.[283]

5.18 Detective Chaffey concurred with the evidence provided by Detective Plant that there was sufficient evidence to arrest Matthew Webster for the murder on 16 February 1990:[284]

Q. At the time of getting the two - Wilson and Webster - into the interview room so that they could be overheard, you had insufficient material to charge either of them with the murder?
A. Well, I disagree with that.

Q. Well, if you had sufficient material with which to charge one of them with the murder —
A. I was of the view there was evidence to warrant the arrest of Matthew Webster and perhaps charge him with the murder.

Q. When you say 'to warrant the arrest and perhaps charge him', what do you mean by that?
A. Well, there were further things to be put to Webster. There were things that hadn't been put to him before.

Q. If you had sufficient material to arrest him, then were you not under a duty if you arrested him to charge him?
A. Well, I think I was also under a duty to put additional information to Mr Webster.

5.19 Detective Chaffey later repeated this assertion that there may have been sufficient evidence to charge Matthew Webster, but in fairness to him certain things needed to be put to him. He also stated that, at the time Matthew Webster was brought into the Police Station, he was unaware whether or not Matthew Webster was under arrest as he was not there when Matthew Webster was brought in.[285]

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283 PIC Transcript, MB Plant, 23 November 1998, p. 319.
284 PIC Transcript, LW Chaffey, 24 November 1998, p. 401.
285 PIC Transcript, LW Chaffey, 24 November 1998, p. 410.

5.20 Counsel Assisting then showed Detective Chaffey a copy of the affidavit sworn by Detective Chaffey in support of the application for the listening device warrant:[286]

> Q. I particularly want to take your attention to paragraph 16 of the document?
> A. Yes.
>
> Q. It reads: Traditional means and methods of obtaining evidence or information in relation to the stated offences have proven unsuccessful. Insufficient evidence is available to charge any person in relation to the offences.
> A. Yes.
>
> Q. That was a document sworn by you on 15 February
> A. Yes.
>
> Q. — 1990?
> A. That's correct.
>
> Q. In order to put forward before a judge of the Supreme Court for the purpose of obtaining a warrant?
> A. Yes.
>
> Q. Were the contents of the affidavit true?
> A. Yes.
>
> Q. So that was your position, was it, as at 15 February 1990?
> A. Yes.
>
> Q. That there was insufficient evidence available to charge any person in relation to the offences?
> A. Well, certainly in relation to Wilson. I don't know about Webster.
>
> Q. Well, it reads —
> A. 'Any person', I see that, yes.

5.21 Other officers who were taking part in the investigations that night have stated to the Commission that they believed that Matthew Webster had arrived at the Police Station voluntarily. Detective Loy was the main police officer to appear on the listening device tape with Matthew Webster and Guy Wilson as it was his role to enter the room from time to time and encourage discussion. He gave evidence that on 16 February 1990 he

[286] PIC Transcript, LW Chaffey, 24 November 1998, pp. 412-413.

believed that Matthew Webster had come to the Police Station voluntarily. Indeed he stated in his evidence:[287]

> … On that day the whole spirit of the operation was to get them back to the police station in an accompanying way, like under their own free will. That was the old -the whole gist of the operation.

5.22 He also noted, however, that if Matthew Webster had attempted to leave prior to the record of interview being made he would not have let Matthew Webster go without speaking to senior police.[288]

5.23 Detective Sergeant Mervyn Hunter was, in 1990, a detective senior constable attached to the Homicide Squad at the Regional Crime Squad, North Region. On 16 February 1990 he was the officer responsible for interviewing Matthew Webster. Like Detective Loy, he told the Commission that he believed that Matthew Webster was at the Police Station voluntarily:[289]

> Q. I see. When you commenced to interview Webster, were you of the view that he was under arrest?
> A. No.
>
> Q. What was your view in that regard, if any?
> A. Well, I thought he'd just come back to the police station.
>
> Q. When you say you thought he'd just come back to the police station, did you make any inquiry of any police officer as to the circumstances of him coming back to the police station?
> A. No.
>
> Q. Did that not concern you in determining whether you ought interview him?
> A. I don't think so at that stage, no.
>
> Q. Before you commenced the interview with him, were you interested in whether he'd been arrested or not?
> A. Well, I was under the impression he wasn't under arrest.
>
> Q. I see. Before you commenced the record of interview, was it your intention to charge him with the murder of Leigh Leigh?
> A. No.
>
> Q. Would it be fair to say that in your view at that stage you didn't have sufficient evidence upon which you could charge him?
> A. Yes.

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287 PIC Transcript, JA Loy, 24 November 1998, p. 345.

288 PIC Transcript, JA Loy, 24 November 1998, p. 346.

289 PIC Transcript, MJ Hunter, 26 November 1998, pp. 538-539.

5.24 Detective Hunter's view accorded with the charge sheet records that state that Matthew Webster came to be 'under arrest' at 5.30 pm, with the arresting officers being Detectives Hunter and Loy, when the record of interview lists the interview as commencing at 5.30 pm with Detectives Hunter and Loy present:[290]

> A. He was arrested during the interview - well, he wasn't told he was under arrest, but that's when it would come into effect, yes.
>
> Q. I see. During the interview?
> A. Yes.
>
> Q. All right. Assuming that is so, then how did the time 5.30 come about?
> A. I can't answer that. Someone's taken it off the interview, I would assume.

EVIDENCE CONCERNING THE COLLECTION OF GUY WILSON

5.25 Unlike Matthew Webster, Guy Wilson had been located by surveillance police earlier that day at a hotel he frequented. He was approached by Detectives Plant and Paget as he was walking on the street having left the hotel in the afternoon. According to the evidence of Detective Plant, Guy Wilson was not arrested but came willingly with police when asked.[291]

5.26 In his evidence, Detective Plant stated that to his knowledge Guy Wilson had never been under arrest, however he acknowledged that he would not have been free to go from the Police Station:[292]

> Q. I see. He wasn't free to go from the police station, was he?
> A. I don't think a situation arose where that - well, a situation arose where that would have to have happened, but I believe if he had attempted to leave, then he probably would have been arrested.

5.27 In 1990, Detective Sergeant Carl Paget was a detective attached to the Arson Squad within the Regional Crime Squad, North Region. He gave evidence to the Commission that on 16 February 1990 he was asked to assist with the collection of a person at Stockton. That person was Guy Wilson. He was unable to recall any details of his actions for the Commission.[293] He did say that he did not believe that the person he took back to the Police Station had been arrested. He held this view because he only recalled being asked to locate the person and bring him back to the crime squad offices and it was his view that if he had been required to

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[290] PIC Transcript, MJ Hunter, 26 November 1998, p. 545; PIC Exhibit 37C, barcodes 5355196-5355202.; PIC Exhibit 42.

[291] PIC Transcript, MB Plant, 23 November 1998, p. 279.

[292] PIC Transcript, MB Plant, 23 November 1998, p. 288.

[293] PIC Transcript, CL Paget, 3 December 1998, pp. 827-829.

arrest the person he would have wanted further information on the evidence for the arrest.[294]

5.28 Guy Wilson gave evidence that he believed he had gone to Newcastle Police Station on 16 February 1990 to report for bail (resulting from the earlier charge of assaulting Leigh Leigh). While he was there Detective Chaffey asked him to go upstairs so that they could ask him some more questions about the murder, and he went along with him.[295]

INTERVIEW OF WILSON PRIOR TO THE USE OF THE LISTENING DEVICE

5.29 Counsel Assisting questioned Guy Wilson about the discussion he had with Detective Chaffey after he was taken upstairs in Newcastle Police Station:[296]

> Q. What happened then?
> A. He just said a few things to me, that it had to be between me or Matt who did the murder and so I said, "Well, I know it's not me. Could I have a talk to him?", or something like that.
>
> Q. He said it had to be between you and Matt who did the murder?
> A. Yes.
>
> Q. What did you understand him to be saying to you when he said that?
> A. That it was just me or Matt and that there was no other way we could have got out of it. It was one or the other or both. That's all I could - yeah.
>
> Q. Did that concern you when he said that?
> A. Yes, it did.
>
> Q. What happened then?
> A. We were put in the room and Matt and I had a talk for a while.

5.30 Later, Counsel Assisting asked Guy Wilson if he had some apprehension at that time of being charged with the murder. Guy Wilson replied that he had.[297]

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294 PIC Transcript, CL Paget, 3 December 1998, pp. 833.

295 PIC Transcript, GC Wilson, 14 December 1998, pp. 855-856.

296 PIC Transcript, GC Wilson, 14 December 1998, p. 856.

297 PIC Transcript, GC Wilson, 14 December 1998, p. 859.

5.31 Detective Chaffey was asked by Counsel Assisting whether Guy Wilson was questioned by police prior to being taken into the interview room with the listening device. He was also asked whether Guy Wilson had been there voluntarily:[298]

> Q. Was Wilson questioned about the murder before the time when the two of them were placed in the interview room?
> A. I don't believe so, no.
>
> Q. So far as Wilson was concerned, or the situation with Wilson was concerned, was he in the custody of the police at the police station at Newcastle?
> A. No.
>
> Q. He was there voluntarily?
> A. Yes.
>
> Q. During the time that he was there voluntarily, did he indicate at any time that he wanted to leave?
> A. No.
>
> Q. Did he ask to leave?
> A. No.

5.32 On 14 December 1998 Guy Wilson gave evidence to the Commission that prior to being placed in an interview room with Matthew Webster, he had been slapped on the head and pushed to the floor. He identified the same 'big officer' whom he had alleged had assaulted him on 15 November 1989 as assaulting him again that day.[299]

5.33 Counsel Assisting put to Detective Chaffey that Guy Wilson was at the Police Station for two hours before Matthew Webster was brought in. Detective Chaffey considered this time to be too long and suggested that Detective Plant could have returned to Newcastle with Wilson, gone to Stockton to assist in picking up Webster and returned to Newcastle in approximately 40 minutes. It was then put to him that while waiting for Webster, police assaulted Guy Wilson:[300]

> Q. I want to suggest to you that in your presence another police officer struck Wilson about the head a number of times?
> A. That's rubbish.

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[298] PIC Transcript, LW Chaffey, 25 November 1998, pp. 427-428.

[299] PIC Transcript, GC Wilson, 14 December 1998, p. 858.

[300] PIC Transcript, LW Chaffey, 25 November 1998, pp. 429-430.

Q. And that you said when that was done, 'It's one of you two and you lied on your first interview. We have eliminated everyone else. You've lied before. We think you're hiding something from us. Otherwise why would you want to lie to us?'
A. That wasn't said.

Q. I want to suggest to you that when you said that, you shouted at Wilson, who was close in front of you?
A. That's not true.

Q. That Wilson said to you, 'I know I did not do it'?
A. I didn't interview Wilson in relation to the murder until after the listening device.

5.34 Detective Plant provided evidence that he may have had a short conversation with Guy Wilson prior to his being placed in the interview room equipped with the listening device, and that he would have spoken to him about the murder, but during that conversation he did not inform Guy Wilson that he was free to go at any time.[301]

USE OF THE LISTENING DEVICE

PURPOSE OF BRINGING IN WEBSTER AND WILSON

5.35 Detective Chaffey was questioned about the purpose of bringing Matthew Webster and Guy Wilson into the Police Station that day and how this related to what police could do if they had been brought in under arrest:[302]

Q. And it would be fair to say, wouldn't it, that the two of them, Wilson and Webster, were brought back to the police station for the purpose of being listened to in the hope of gathering evidence?
A. Yes.

Q. And not for the purpose of charging either of them or both of them with the murder?
A. No, it was done in the furtherance of the investigation.

Q. If one or other of them was arrested and brought back for that purpose, that would not be something that would be authorised by arrest?
A. No, as I said, my understanding was that they both came back - I wasn't under the impression they were under arrest at that particular stage.

[301] PIC Transcript, MB Plant, 23 November 1998, p. 291.
[302] PIC Transcript, LW Chaffey, 24 November 1998, p. 414.

5.36 Detective Chaffey was questioned on the right of police to delay charging a suspect after arrest and the use of a listening device to gain additional evidence. In his response Detective Chaffey put his views in general, but also stressed that in regard to the events of 16 February 1990, he did not believe Matthew Webster was under arrest at the time he was brought to Newcastle Police Station:[303]

> Q. So do you understand the power of the police officer to include the arrest of the person and placing of the person in a room with a listening device for the purpose of gathering evidence prior to charging or releasing the person?
> A. No. That would depend on the circumstances in which he's brought back to the station. My recollection is I was not given any impression at that particular point in time that he [Webster] be placed under arrest anyway.
>
> …
>
> Q. All right. There's no power on the part of a police officer to arrest a person for the purpose of interrogation, is there?
> A. That's correct.
>
> Q. And you can't read into, I suggest, the arrest of a person the power to delay charging or release of the person for the purpose of interrogation; is that right?
> A. Well, I don't know what you call about delay. You know, the policeman's got to be reasonable in what he does. It's for the courts and for other people to examine what happens in a situation. Any arrest and charge of a person is subject to examination.
>
> Q. If the person was arrested, would it be legitimate to put that person in a room with a listening device for the purpose of gathering evidence after his arrest?
> A. I don't see a problem with that.
>
> Q. I see. I'll just make sure the transcript reads correctly with what you said. You said, 'I don't see a problem with that'?
> A. No, that's right.

5.37 Detective Plant had also given evidence that the purpose of bringing Matthew Webster and Guy Wilson to the Police Station was principally to use the listening device and interview them in the hope of gaining further evidence. As noted previously, though, he maintained that there may have been sufficient evidence to charge Matthew Webster in any event.[304]

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[303] PIC Transcript, LW Chaffey, 24 November 1998, pp. 403-404.

[304] PIC Transcript, MB Plant, 23 November 1998, p. 288.

5.38 On 24 November 1998 Detective Loy gave evidence to the Commission about the purpose behind the use of the listening device by the police:[305]

> Q. What was it that prompted the obtaining of a listening device?
> A. From my recollection it was - as I say, I don't recall the exact conversations, but the gist of it was that we felt that Matt Webster was involved in the murder and Guy Wilson was there on the outskirts of which we were very uncertain as to his involvement. From my recollection, he still had himself at the scene late in the evening and stated he was sleeping in a car and we always felt that we were always unsure if they'd actually acted in unison in relation to the homicide.
>
> …
>
> Q. You didn't have the evidence that you needed to charge them; is that right?
> A. Yes, I would agree with that.
>
> Q. There was insufficient from your collation and analysis of the material, the evidence you did have, to charge Webster or Wilson with the murder?
> A. Certainly with Wilson we were always uncertain as to his involvement. With Webster there were a number of, if you like, circumstances and other evidence that pointed towards him. The decision to charge him I can't be too certain on. I would say that he was a lot closer to being charged than Wilson.
>
> Q. You needed something that you could use in addition to the falsehoods that he'd told police about his movements; would that be right?
> A. Yes, I would agree with that.
>
> Q. The falsehoods themselves pointed to him?
> A. They certainly did.
>
> Q. And pointed to him in a significant way but, would it be fair to say, didn't cement him as the person doing the murder?
> A. Yes, I'd have to agree with that.
>
> Q. Hence the plan to get the listening device?
> A. Yes.

5.39 Detective Loy gave evidence that there had been no intention by the investigating detectives to arrest either suspect in order to ensure they were brought into the Police Station.[306]

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[305] PIC Transcript, JA Loy, 24 November 1998, pp. 342-343.

[306] PIC Transcript, JA Loy, 24 November 1998, p. 345.

CONTACT WITH OTHERS

5.40 One of the issues raised in the hearings was whether it was a deliberate tactic of the police to ensure that no-one else knew that Guy Wilson and Matthew Webster had been taken to Newcastle Police Station. On this matter Counsel Assisting had the following exchange with Detective Plant:[307]

> Q. Mr Plant, would it be fair to say that there wasn't enough evidence to charge anybody and these two were the principal suspects and, if this didn't work, there wouldn't be much else that could be done, so it was very important from the police point of view to get it right and to make sure that everyone played their part and to make sure that the opportunities presented by the listening device were fully exploited; is that fair?
> A. It's fair, yes.
>
> Q. In order to use the listening device, you needed to have Webster and Wilson talking freely between themselves?
> A. Well, it would be better that they would be talking freely between themselves, yes.
>
> Q. And it would be better that nobody was intervening in relation to that happening?
> A. Yes.

5.41 Detective Plant also stated that it would not have made the exercise useless, from the point of evidence gathering, if Matthew Webster had arrived with his solicitor.[308]

5.42 Detective Chaffey was of the view that this had not been a consideration for him:[309]

> Q. Well, in order to use the listening device, you didn't want the intervention of other people?
> A. Well, if that was a consideration, but I have no recollection of considering that. My purpose was that - the purpose was to have them there at the same time. If it came off, it came off; if it didn't, it didn't.

5.43 Detective Loy provided a different perspective in his evidence on this issue:[310]

> Q. It would be highly likely, if they were telephoned and invited to come to the police station, that they'd take steps to communicate with their lawyers?
> A. That may be the case, yes.

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307 PIC Transcript, MB Plant, 23 November 1998, p. 284.

308 PIC Transcript, MB Plant, 23 November 1998, pp. 283-284.

309 PIC Transcript, LW Chaffey, 24 November 1998, p. 416.

310 PIC Transcript, JA Loy, 24 November 1998, p. 348.

Q. And it would foil the plan if that were to happen?
A. Yes.

Q. So the plan was to get them from the streets of Stockton quietly so that they could be put in the situation of being together in the interview room?
A. Yes.

Q. Without their lawyers or parents or anyone else intervening?
A. Well, that was never outlined as such as an issue, but I would imagine that would be the case.

Q. It obviously was an issue, wasn't it? You wanted them there at the police station at the same time alone so that they could be put together and talk?
A. If possible, yes.

5.44 As noted above, in a 27 October 1998 statement made to the Commission, Mrs Josephine Webster recalled returning to her home on 16 February 1990 in the company of a neighbour, Mrs Slade, to find a note telling her that her son Matthew had been taken to the Police Station. In her statement she recalled going to Stockton Police Station to enquire about her son's whereabouts but was told that he was not there. She further recalled telephoning their solicitor, Mr Fraser, who gave her some advice and told her he would ring a number of stations to locate Matthew Webster. She then called a number of Police Stations in the Newcastle area and she distinctly recalled telephoning the Regional Crime Squad at Newcastle Police Station where she was told everyone had gone home.[311]

5.45 In her statement Mrs Webster stated that she believes she telephoned Newcastle Police Station on three occasions that night without being able to establish the whereabouts of her son. She recalled later in the night receiving a call from Newcastle Police Station telling her that her son had been charged, but they would not tell her with what offence. She recalled that she arrived at Newcastle Police Station at 9.00 pm with her husband and daughter and was told Matthew had been charged with murder. She recalled asking him if he had been assaulted by police but he told her that he had not and there were no visible injuries to him.[312]

5.46 The events as described in Mrs Webster's statement are corroborated by statements made to the Commission by Mrs Slade and Mr Fraser.[313]

311 PIC Exhibit 111B.
312 PIC Exhibit 111B.
313 PIC Exhibits 103B and 113C.

5.47 Detective Hunter told the Commission in his evidence that he was unaware of attempts made by Matthew Webster's solicitor to contact him or determine his whereabouts on 16 February 1990. He also stated that prior to the commencement of the interview Matthew Webster did not say that he wanted his solicitor present, or that he wanted to speak to his parents.[314]

REFERENCES TO 'BASHINGS'

5.48 For the Commission, an important aspect of the conversations recorded by listening device on 16 February 1990 were apparent references by Matthew Webster and Guy Wilson to 'bashings'. A number of witnesses were questioned about the conversations recorded on the tape.

5.49 With the exception of Detective Chaffey, none of the investigating detectives involved in the events of that day (most of whom were listed on the listening device warrant) could recall monitoring the discussions of the two suspects while they were alone in the interview room. Detective Loy, who periodically entered the room in an effort to engender discussion, claimed that he did not monitor the conversations, rather he waited outside the room in the foyer area of the Regional Crime Squad office.[315] Detective Hunter also denied ever monitoring the conversations on the listening device, even though it had already been determined at that time by the police that he would conduct the interview of Matthew Webster later that night.[316] Detective Chaffey told the Commission that, while he could recall other police being present while he monitored the conversation, he could not recall who those officers were.[317]

5.50 In his evidence to the Commission on 25 November 1998, Detective Chaffey stated that he did not recall either Matthew Webster or Guy Wilson making any references to bashings, nor did he recall Matthew Webster saying that he did not want to be there.[318] Later, on 1 February 1999, Counsel for the Police Service questioned Detective Chaffey about the references to 'bashings' on a transcript prepared by Detective Chaffey from the original monitoring cassette tape:[319]

> Q. If you just go to the bottom of the page, Mr Chaffey, you'll see 'sounds of crying' written in inverted commas?
> A. Yes.

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314 PIC Transcript, MJ Hunter, 26 November 1998, pp. 546-547.

315 PIC Transcript, JA Loy, 24 November 1998, p. 351.

316 PIC Transcript, MJ Hunter, 26 November 1998, p. 530.

317 PIC Transcript, LW Chaffey, 1 February 1999, p. 1327.

318 PIC Transcript, LW Chaffey, 25 November 1998, pp. 432-433.

319 PIC Transcript, LW Chaffey, 1 February 1999, pp. 1343-1344.

Q. Underneath that, and this is your transcript, number 2 - I don't know who number 2 is, I assume it's Webster - it says: I'm definitely going to ask for it. Fucking sick of getting pushed around and shit.
A. That's Guy Wilson.

Q. And, 'I get fucking punched around'?
A. Yes.

Q. They're certainly in the past tense, aren't they? Those words used are in the past tense?
A. Yes.

Q. Then there's a blank and then, 'I hate the idea of bashing'?
A. Yes.

Q. That's certainly ambiguous, I'd agree with that, but the words that I've just read out to you and you've agreed, they're in the past tense. You listened to those words?
A. I obviously did at some stage, yes.

Q. And you typed the transcript?
A. Yes.

Q. Did it cause you any concern that either or both of them were referring to having been pushed around or punched around?
A. No.

Q. No?
A. No.

Q. Right. Did it cause you any concern that maybe one of the officers working for you or in your command had pushed or punched them around?
A. It would have been of concern, but I've never had any indication of that happening.

Q. As a result of hearing and typing and reading these words, did you see it as your role to take the matter any further or to make any inquiry as to whether any of your officers had punched or bashed either of those two?
A. No.

Q. Do you say that bearing in mind, as you gave your evidence earlier, that you were fully aware of your obligations?
A. Yes.

5.51 Earlier that day Counsel Assisting had referred Detective Chaffey to a copy of the transcript prepared by Detective Chaffey that he had sent to the Police Service's Internal Affairs Branch in March 1996 in response to

a request. It was noted that there was a discrepancy between the taped conversation and the transcript he had prepared:[320]

> Q. Wilson's reported on the next page - if we could go to 5405550 on all monitors. Do you see there Webster is reported as saying, 'I said I hope we don't get a fucking bashing', and then it reports, or it reads, Wilson - that is person number 2 - saying 'cause not' on that transcript?
> A. Yes.
>
> Q. We've heard the tape-recording that was played in these proceedings where it can be clearly heard, 'Of course we will'; do you recall that?
> A. I d idn't hear the tape, sorry.

5.52 The Commission also heard evidence that Guy Wilson was drunk at the time he was collected by police. Evidence was heard that Guy Wilson had been under surveillance at a hotel for some time before he left and was collected by police.[321]

5.53 Evidence was also given to the Commission by Matthew Webster that Guy Wilson was noticeably drunk when taken into the room with the listening device:[322]

> Q. Did you notice anything about Guy Wilson when you first saw him in that room?
> A. He was drunk.
>
> Q. What made you form that view?
> A. I could smell it.
>
> Q. You could smell alcohol on him?
> A. And the look of him.
>
> Q. And the look of him. Did he say anything or did anything that he said indicate to you that he was drunk?
> A. He was slurring his words, I think.

5.54 The transcript from the listening device placed in the interview room on 16 February 1990 also records Detective Loy asking the question 'Bit pissed, mate?' and Guy Wilson replying 'Yeah'.[323]

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320 PIC Transcript, LW Chaffey, 1 February 1999, p. 1327; PIC Exhibit 128B.

321 PIC Transcript, MB Plant, 23 November 1998, pp. 278, 282.

322 PIC Transcript, MG Webster, 2 December 1998, p. 728.

323 PIC Exhibit 65B.

INTERVIEW OF MATTHEW WEBSTER

5.55 Matthew Webster gave evidence to the Commission about conversations he had with investigators prior to being formally interviewed on 16 February 1990:[324]

> Q. After you were in the room with Guy Wilson you said you were taken to another interview room and you were spoken to before the recorded interview took place?
> A. Yes.
>
> Q. You told us you were asked questions about the death of Leigh Leigh?
> A. Yes.
>
> Q. Were you told anything by the police in relation to that?
> A. I think that they were - I think they said they were going to charge both Guy and I with that.
>
> Q. They told you that in the interview room, did they?
> A. Yes.
>
> Q. Were you told that once or more than once?
> A. More than once, I think.
>
> Q. All right. Were you told anything else by those police officers that were in the interview room?
> A. I'm not sure.
>
> Q. Before the recorded interview took place and you were speaking with these police in the interview room, were they the same police or different police to those who did the recorded interview?
> A. I'm not sure.

5.56 Detective Hunter gave evidence to the Commission that he never told Matthew Webster that the police were planning to charge Guy Wilson with any offence relating to the murder of Leigh Leigh:[325]

> Q. What I'm asking you is this: did you say anything to Webster about whether or not Wilson might be charged?
> A. No.
>
> Q. Did you know or have a belief at the time you interviewed Webster whether Wilson was going to be charged with any offence relating to the murder of Leigh Leigh?
> A. I wouldn't think he would have been charged with anything.

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[324] PIC Transcript, MG Webster, 2 December 1998, p. 731.

[325] PIC Transcript, MJ Hunter, 26 November 1998, pp. 539-540.

Q. I see. Were you given some information about that before you interviewed Webster?
A. Whether he was to be charged or not?

Q. Yes.
A. I don't recall. I was under the impression there was insufficient to charge Wilson.

5.57 Matthew Webster also gave evidence to the Commission that he had been told if he confessed he would only be charged with manslaughter rather than murder and he would be allowed to go home:[326]

Q. I'm sorry to jump around but I've been reminded about something I need to ask you Mr Webster. I want to take you back to the time that you were at the police station on 16 February 1990; that is, the time when you did the record of interview after you had been with Guy Wilson. During the time that you were interviewed by the police officers after you had been with Guy Wilson, was there ever any discussion with you about what you would be charged with?
A. Yes, the police officer was saying if I, you know, if I confessed I'd only be charged with manslaughter and I'd be able to go home with me parents.

Q. Are you able to say this: did that take place before or after you did the record of interview?
A. Before.

5.58 Matthew Webster agreed, however, in cross-examination, that he had never before told anyone of this alleged promise of a lesser charge and that he had only recalled the conversation whilst he was being brought to the Commission from prison in late November 1998.[327] Detective Hunter strongly denied having made such promises to Matthew Webster.[328]

5.59 On 25 November 1998 Senior Constable Kenneth Marsden, who was a uniformed general duties officer at Newcastle Police Station in February 1990, gave evidence that he could not recall Webster adopting the record of interview made on 16 February 1990 before him. He did, however, recognise his signature on the document. He could also recall being in the charge room with Matthew Webster and being involved in charging him.[329]

5.60 Senior Constable Marsden agreed that according to the record of the adoption conducted on 16 February 1990, he had recorded that there were no apparent injuries to Matthew Webster. It records Matthew Webster stating to him that the record of interview had been made voluntarily, that

[326] PIC Transcript, MG Webster, 2 December 1998, p. 739.
[327] PIC Transcript, MG Webster, 2 December 1998, pp. 740-742.
[328] PIC Transcript, MJ Hunter, 28 January 1999, p. 1319.
[329] PIC Transcript, KJ Marsden, 25 November 1998, p. 443.

it was accurate and that he did not have any complaints. The adoption was also signed by Matthew Webster.[330]

5.61 Matthew Webster told Counsel for Detective Chaffey that he did not think he made any complaint to his lawyer at the time about his confession.[331] On behalf of Detective Chaffey it was submitted that this circumstance, like the others where Matthew Webster, Guy Wilson and NC1 made allegations of police misconduct, has been the subject of judicial scrutiny. Proof of such allegations may have led to acquittals. In particular, Counsel for Detective Chaffey argues in the submissions that Matthew Webster was represented by senior counsel during his trial. It was submitted that as his own confession was critical, it must be assumed that Webster's counsel questioned him carefully in relation to the circumstances of his confession.[332]

5.62 It is apparent, however, from the transcripts of the committal proceedings for Matthew Webster on 23 May 1990, that his legal representative did question detectives about the nature of his collection from the street in Stockton. As will be noted later in this chapter, those detectives gave evidence that Matthew Webster had accompanied them voluntarily.

ASSESSMENT OF EVENTS OF 16 FEBRUARY 1990

5.63 The Commission considers that the evidence demonstrates clearly that Matthew Webster was arrested on the street in Stockton by Detectives Connelly, Kane and Plant on 16 February 1990. The events as described by Matthew Webster are closely corroborated by the evidence of Detective Kane and Detective Plant and by the statements provided by Detective Kane and the woman who spoke to Matthew Webster on the street.

5.64 It is the opinion of the Commission that the purpose of the arrest was two-fold, but neither purpose was lawful. Firstly, it was undertaken in order to contrive a situation whereby a conversation between Matthew Webster and Guy Wilson could be recorded by listening device. Secondly, it was intended that Matthew Webster would be questioned in relation to the murder. Each purpose contravened the power provided by section 352 of the Crimes Act 1900.

5.65 There is disagreement between the witnesses as to whether there was sufficient evidence to justify the arrest of either man for the murder. The application for the listening device warrant made it clear that insufficient evidence was available for police to arrest anyone. But that is not to the

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330 PIC Transcript, KJ Marsden, 25 November 1998, p. 449.

331 PIC Transcript, MG Webster, 3 December 1998, p. 767.

332 PIC Exhibit 175.

point. Had Matthew Webster been arrested lawfully, section 352 dictated that he be taken with due despatch before a Justice to be dealt with according to law.

5.66 There is no doubt that Matthew Webster was arrested. There was no compliance with section 352. At the time of these events, the police actions (had they been honestly disclosed to defence counsel), would have provided a powerful argument for the discretionary exclusion of the murder confession.[333] Had such conduct occurred after the passage of the Evidence Act 1995 NSW, the evidence would be rendered inadmissible as being unlawfully obtained, subject to a circumscribed discretion for its admission into evidence.

5.67 It appears somewhat bizarre to this Commission that the fact of Matthew Webster's arrest would remain unknown to Detective Chaffey, who might reasonably be expected to keep a close watch on developments during a crucial time in the murder investigation. Had there been a confession while the conversation between Matthew Webster and Guy Wilson was recorded by listening device, honest disclosure of the facts to the court would likely have led to the exclusion of the evidence. Detective Chaffey's apparent nonchalance as to whether the listening device strategy worked cannot be accepted. It is easy to feign ambivalence in light of Matthew Webster's later voluntary confession. At that stage of the investigation, however, there was, at the very highest, a weak circumstantial case against Matthew Webster. A confession, or some other solid evidence was necessary.

5.68 It is similarly strange that Detectives Hunter and Loy, who interviewed Matthew Webster, would also be unaware of his status as they should have known whether or not Matthew Webster would be allowed to leave the Police Station if he attempted to do so. They would surely have been concerned to ensure that the fruits of their labour would be admissible in evidence. There is, however, no evidence that they did in fact know or appreciate that he was under arrest and the official records would appear to support their version of events.

5.69 There is no evidence that Guy Wilson was arrested on 16 February 1990 and it is the view of the Commission that he attended the Police Station voluntarily that day. It is also the view of the Commission that Guy Wilson's evidence about that day is generally unreliable. The Commission is of the view that there is no evidence to support his statements about an assault upon him taking place on that day.

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[333] *Bunning v Cross* (1978) 126 CLR 321; *Foster v The Queen* (1993) 113 ALR 1.

5.70 That being said, it is clear from what was recorded on the listening device tape that both Matthew Webster and Guy Wilson were concerned about being assaulted by police. According to their words recorded on the tape, they had been assaulted in the past by police though they say nothing that would indicate the date such assaults had taken place or by whom. The Commission is concerned by Detective Chaffey's stated lack of concern over the references to 'bashings' made on those tapes - words that he was clearly aware of. It is of grave concern that Detective Chaffey made no effort to make any inquiries about their comments.

5.71 It is also clear to the Commission that Mrs Webster and her solicitor Mr Fraser made attempts to find Matthew Webster after he was taken into police custody. They experienced similar difficulties to those experienced by NC2 as described in Chapter 4, and were unsuccessful in their efforts. It is probable that their failure to locate him was the result of deliberate action by police to conceal his whereabouts. A number of factors point to this conclusion. These include:

- the circumstances of Matthew Webster's arrest and Guy Wilson's collection, where police appear to have waited until they could be collected from the streets away from others;

- the admissions made by officers in their evidence to the Commission that the listening device would be more effective in revealing information about the murder if the two men were left alone; and

- Mrs Webster's recollection that she was told that everyone from the homicide squad had left, when clearly a number of police were still there.

Had the solicitor been able to contact Matthew Webster, the police with him would most likely have been placed in a situation where they would be asked whether or not Matthew Webster was, in fact, under arrest and if so, on what charge.

5.72 Despite all that had occurred on that night it would appear that the formal interview itself was conducted according to police procedures and in a legal manner, though it was tainted by the earlier unlawful conduct. The record of interview was properly adopted and Matthew Webster made no complaint about the interview itself. T he Commission considered Matthew Webster's evidence that he was told before his record of interview that Guy Wilson was to be charged by the police and that if he confessed he would only be charged with manslaughter. In doing so, the Commission notes the evidence of Guy Wilson that the police dealing with him on that day made remarks that he understood to infer that he might be charged with the murder. This behaviour by police is consistent with that described

by Matthew Webster. Notwithstanding this consistency, the Commission is not able to arrive at a concluded opinion on the matter.

POLICE STATEMENTS PREPARED FOR THE WEBSTER BRIEF

5.73 The transcript of the conversation recorded on listening device between Matthew Webster and Guy Wilson clearly shows that Matthew Webster made no admission to committing the murder during that conversation. In fact, Matthew Webster's denials of any involvement in the murder were recorded several times in the transcript.

5.74 Evidence obtained by the Commission demonstrates, however, that the arrest of Matthew Webster in Stockton and the use of the listening device to attempt to obtain evidence in relation to the murder was never disclosed by police to the court or to Matthew Webster's legal representatives.

5.75 In reply to questioning by Counsel Assisting, Detective Plant agreed that his statement of 23 February 1990, prepared for the murder brief, contained details of his activities concerning Matthew Webster on 5 November 1989, 15 November 1989 and 17 February 1990. The statement did not contain any information about his involvement in the arrest of Matthew Webster on 16 February 1990 or the use of the listening device that day.[334]

5.76 He later told Counsel for the Commissioner of Police that this was explained by his limited involvement with Matthew Webster that day, which was largely restricted to assisting other police place him in a police car. His own actions on 16 February 1990 had largely involved Guy Wilson.[335] He gave evidence that he had never been specifically told by anyone to leave details about 16 February 1990 out of his statement. He told the Commission that he had discussed his statement with Detective Chaffey and that he had related to him his minor involvement in collecting Matthew Webster on 16 February, in particular, that he had not heard any conversation. That was why no reference was made to it in the statement. He recalled that in that discussion with Detective Chaffey he did not use the term 'arrested' in relation to the collection of Matthew Webster.[336] Detective Plant went on to state that, in leaving out details of his role in collecting Matthew Webster on 16 February 1990, he did not intend to mislead the court.[337]

5.77 Similarly, the statements prepared by Detectives Connelly and Kane for the Webster murder brief made no mention that Matthew Webster had

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[334] PIC Transcript, MB Plant, 23 November 1998, p. 303.

[335] PIC Transcript, MB Plant, 1 February 1999, p. 1382.

[336] PIC Transcript, MB Plant, 1 February 1999, pp. 1384, 1400.

[337] PIC Transcript, MB Plant, 1 February 1999, p. 1385.

been unwilling to go with police when collected from the street in Stockton.[338] In his written statement made to the Commission, Detective Kane revealed that in creating his statement of 19 February 1990 he had used a copy of the statement prepared by Detective Connelly, referring to relevant paragraphs in his statement. He stated that his use of Detective Connelly's statement to prepare his own is the only way he can explain the inconsistencies between his current recollection of the events of 16 February 1990 and what is recorded in the statement of 19 February 1990. In particular, that according to the statement of 19 February, it would appear that Matthew Webster had accompanied police voluntarily, when in fact he was under arrest. He also noted that the statement made no reference to resistance by Matthew Webster. He further stated that the words used by Detective Connelly were 'watered down'. To explain how the words of Detective Connelly appeared in his own statement he maintained that, when he prepared that document, it had been understood that Matthew Webster would ultimately plead guilty to the murder and that his statement was to be created for the sake of expediency.[339]

5.78 Counsel Assisting also questioned Detective Loy on the statement he prepared for court in the Leigh Leigh murder brief. He pointed out that the statement contained no reference to Detective Loy's involvement with Matthew Webster on 15 November 1989, or his role in the use of the listening device prior to the record of interview being obtained. Detective Loy gave evidence that he believed that this was not a matter of relevance as, particularly in relation to the listening device, no evidence relevant to the court was gleaned from that device. The following exchange then took place:[340]

> Q. Wouldn't it be of relevance to the court to know whether a record of interview in which there was a confession made was done voluntarily?
> A. Certainly.
>
> Q. Wouldn't it be of relevance to know whether a confession made in a record of interview had been obtained unfairly?
> A. Yes.
>
> Q. Wouldn't it be of relevance to know whether or not it had been obtained - the confession, that is - with due propriety?
> A. Yes.
>
> Q. With fairness?
> A. True.
>
> Q. Right. But there's no mention in your statement of the event that led up to your record of interview?

338 PIC Exhibit 124C.

339 PIC Exhibit 114B.

340 PIC Transcript, JA Loy, 24 November 1998, pp. 362-363.

A. I agree with that, yes.

Q. Weren't those events relevant to the questions of propriety and fairness and voluntariness?
A. Perhaps, yes.

Q. Yet they were left out of your statement?
A. Yes.

Q. Just as the events on 15 November were left out of your statement?
A. Yes.

Q. Why did you leave them out?
A. I can't answer that. I don't know.

5.79 The Commission also examined the transcripts of the evidence given by Detectives Kane and Connelly on 23 May 1990 before the Newcastle Local Court. Both Detectives gave evidence to the Court that their statements dated 17 February 1990 and 19 February 1990 respectively were true and correct. Both detectives had it put to them by Matthew Webster's legal representative that Matthew Webster had not gone with them willingly but had been forcibly placed into the police car. Both denied that such events had occurred.[341]

5.80 Counsel Assisting has submitted that the only inference is that the nature of the arrest of Matthew Webster and the use of the listening device was deliberately concealed by police in order to avoid any issue arising about the legality or admissibility of the later confession made by Matthew Webster to Detective Hunter. Counsel Assisting also stated in his submissions that it is clear that Detective Kane, when he gave his evidence before the Magistrate was not telling the truth.[342]

ASSESSMENT REGARDING POLICE STATEMENTS

5.81 It is clear that the brief of evidence tendered to the Court by the Crown indicated that Matthew Webster had gone voluntarily to Newcastle Police Station on 16 February 1990 and made no mention of the use of the listening device or the time spent by Matthew Webster in conversation with Guy Wilson in the interview room.

5.82 The question remains, however, whether police were aware that such information could call into question the admissibility of Matthew Webster's

[341] PIC Exhibits 192 and 162.

[342] PIC Exhibit 185. Counsel Assisting also made submissions in respect of Detective Connelly, that the Commission ought make a recommendation to the Director of Public Prosecutions to give consideration to the prosecution of Detective Connelly for, amongst other things, perverting or attempting to pervert the course of justice in relation to the evidence he gave before the magistrate in the committal proceedings against Matthew Webster.

confession and whether they then deliberately omitted that information in order to avoid the possibility of the confession being excluded.

5.83 There are a number of reasons why those responsible for preparing the murder brief may have chosen to make no reference to either the fact of the listening device, the product obtained from it, or its use while Matthew Webster was under arrest. One of those reasons could be that if it was mentioned it could taint the admissibility of the later confession by Matthew Webster to the murder and that this was appreciated by the officers involved. It might also be because it was considered to be irrelevant, particularly given that Matthew Webster made no admissions during his conversations with Guy Wilson. If Detective Kane's evidence is accepted, it suggests that, at least on his part, there may have been some degree of neglect in creating a more detailed statement on the basis that Matthew Webster was expected to plead guilty.

5.84 There is a strong inference that information about what happened to Matthew Webster on 16 February 1990 prior to his record of interview was deliberately concealed from his lawyers and the Court. This inference can be supported by the following:

- the overall actions of investigators on 16 February 1990;
- the fact that, without exception, all of the officers involved in the arrest omitted information from their statements about his unwillingness to go with police and all of the officers involved with the listening device omitted information from their statements about the listening device;
- the denials of guilt by Webster as recorded by the listening device could have been used by defence counsel to call into question the reliability of the typewritten admissions in the record of interview;
- the outright denials at the committal by Detectives Kane and Connelly that Matthew Webster had resisted coming with them; and
- the fact that an expectation of a plea of guilty by a defendant provides no basis for preparing abridged witness statements.

5.85 As noted above, however, it is not the only inference available. The Commission cannot form an opinion, on the available evidence, that the omissions in the statements were deliberately contrived to mislead the Court.

5.86 Despite this, it is the view of the Commission that the effect of those omissions was that the court was deceived about what occurred on 16 February 1990 before Matthew Webster made his confession.

6. PROCEDURAL MATTERS

6.1 During the course of the Operation Belfast public hearings a number of issues were raised relating to adherence to, and adequacy of, police procedures at the time of the events. Those matters will be discussed in this chapter.

'ARREST' AND INTERVIEW OF SUSPECTS

6.2 Police powers and procedures regarding arrest became matters of particular interest through the public hearings. Matters of concern included the following:

- The circumstances under which a person is considered to be under arrest and the powers of police to interview a person or otherwise continue to gather evidence after that person has been arrested.
- Accurate recording of the time and circumstances of arrests.
- Ensuring that persons being interviewed by police understand whether or not they are under arrest.
- Ensuring that persons being interviewed are informed of their rights.

A discussion of the special circumstances concerning the arrest and interview of children is contained in the next section.

POWERS OF ARREST AND INTERVIEWING OF SUSPECTS IN CUSTODY

6.3 In 1989 and 1990 the power to arrest was conferred by section 352 of the Crimes Act 1900.[343] Persons arrested in pursuance of this power were, and are, to be taken before a Justice to be dealt with according to law.[344]

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[343] Section 352. Person in act of committing or having committed offence
(1) Any constable or other person may without warrant apprehend,
(a) any person in the act of committing, or immediately after having committed, an offence punishable, whether by indictment, or on summary conviction, under any Act,
(b) any person who has committed a felony for which the person has not been tried, and take the person, and any property found upon the person, before a Justice to be dealt with according to law.
(2) Any constable may without warrant apprehend,
(a) any person whom he, with reasonable cause, suspects of having committed any such offence or crime,
(b) any person lying, or loitering, in any highway, yard, or other place during the night, whom he, with reasonable cause, suspects of being about to commit any felony, and take the person, and any property found upon the person, before a Justice to be dealt with according to law …

[344] See *Bales v Parmeter* (1935) 35 SR (NSW) 182 at 188-189.

6.4 Commissioner's Instruction 31, issued on 1 July 1989, referred to section 352 as setting out the basic powers of arrest.[345] The Instruction goes on to state that police investigating an offence are entitled, subject to certain restrictions, to put questions to any person who they believe may provide useful information. While police might put questions to any person, Instruction 31.08 goes on to state clearly that:

> Prior to arrest, Police have no authority to exercise any restraint whatever upon a person being questioned or to detain him/her in any way, whether upon Police premises or elsewhere, and such person is free to come and go as he/she pleases.

6.5 The law and the Commissioner's Instructions were clear. Taking someone off the street, other than in the course of stopping or preventing a breach of the peace, or arresting someone to be charged and taken before a Justice, is unlawful.

6.6 Despite the clarity of the law, police officers providing evidence to the Commission had difficulty recalling whether Matthew Webster, Guy Wilson or NC1 were under arrest or were in Police Stations voluntarily at the time they came into contact with them. When questioned about the arrest times recorded on the charge sheets in relation to events of 15 November 1989, the detectives who were dealing with the suspects at those times could not recall what events might have precipitated the arrests. No other documents were available to assist in providing information about the status of the suspects when they arrived at either the Stockton or Newcastle Police Stations, or the circumstances surrounding their actual arrests.

6.7 Along with evidence of confusion or uncertainty about the arrest status of the three suspects, the Commission also heard evidence from several officers that at that time they were able, even obliged, to question suspects after arrest in order to determine if a charge should ultimately be laid. These statements were in contrast to the law that had been affirmed by the High Court in the well known case of Williams v The Queen (1986) 161 CLR 278. In that case the High Court reaffirmed the principle prohibiting detention after arrest for the purpose of further investigation. This meant police were not able to delay taking an arrested person before a Justice in order to question that person about the offence for which they had been arrested.

6.8 A number of submissions made by various Counsel on behalf of police officers who gave evidence at these hearings brought to the attention of the Commission a Police Commission Circular number 88/98 issued on 15 June 1988.[346] That Circular, written to explain the effect of the decision

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[345] The *Commissioner's Instructions* from 1989-1990 relevant to this investigation were tendered as PIC Exhibit 178.

[346] PIC Exhibit 178.

in Williams, was incorrect in that it suggested that it was permissible to delay the charging and taking of the person before a Justice in order to interrogate the person about the offence or to make inquiries. That Circular made its way into the Commissioner's Instructions as Instruction 31.10 on 1 July 1989. Instruction 31.10 provided detailed instructions regarding police power to question persons after arrest. While noting that an arrested person must be brought before a Justice without 'unreasonable delay', it also stated that:[347]

> … in determining what is unreasonable delay allowance may be had for the making of a decision to prefer a charge or not. In making this decision it may only be fair to question the arrested person or conduct inquiries to confirm or dispel the suspicion on which the arrest was based.

6.9 It was not until later in 1990 that the Police Service attempted to have the Instruction re-drafted by the Crown Solicitor's office.

6.10 The importance of this matter to this investigation is that the incorrect Instruction was operating at the time of the investigation into the murder of Leigh Leigh. As noted in previous chapters, this factor is important in assessing the actions of the police involved in the investigation. A number of counsel for police officers submitted that their clients could hardly be blamed for an erroneous view of the law which had been provided to them by the Commissioner of Police and the Solicitor General. Further, if the police believed that they were acting lawfully pursuant to the advice, then there can be no evidence of any unlawful intent.

6.11 The Commission notes, however, that Instruction 31.10 commenced with the statement:

> Police should be aware that they do not have any general power to detain a citizen merely for the purpose of questioning him or her.

This statement was entirely correct then, as now.

RECORDING OF THE TIME AND CIRCUMSTANCES OF ARRESTS

6.12 The fallibility of memory enhances the importance of contemporary documents to an investigative agency. During its investigation into this matter, however, the Commission has found that records were of limited assistance in establishing important facts. Important records could not be located and others were inadequate. Doubt was cast on the accuracy of the arrest times and identity of the arresting officers as recorded on the

[347] PIC Exhibit 78, Police Commissioner's 'Instruction 31: Arrests and Checkpoints' 1 July 1989, barcodes 5375541-5375573.

charge sheets and in the charge books, as several errors and inconsistencies were found. In addition, the recorded times of arrest were contradicted by the versions of events described by Matthew Webster, Guy Wilson, NC1 and other civilians.

6.13 At critical times, NC1 and Matthew Webster were under arrest. They were compelled to accompany police and had been denied their liberty. The paucity and dubious reliability of records relating to those arrests renders difficult the identification of all of the police officers effecting those arrests.

6.14 In addition, the charge sheets and charge books, by their nature, do not assist in providing any information about the manner or circumstances in which persons were arrested. For example, in some instances the recorded arrest time infers that the suspects were 'arrested' while being interviewed, or waiting to be interviewed. But there is no record to show what was said, or happened, at that point in time, to occasion the arrest.

6.15 Those duty books and notebooks made available to the Commission, with the exception of Detective Graham's, do not contain any information about the arrest of Matthew Webster, Guy Wilson or NC1. Where the fact of an arrest was included, the entry failed to provide information about the time of arrest or the circumstances of the arrest. Similarly, the facts sheets and statements prepared for the various briefs did not record details about the arrests. So, while times of 8.00 pm and 7.30 pm on 15 November 1989 were recorded as times of arrest for Matthew Webster and Guy Wilson respectively, there is no information available to the Commission that would provide an explanation as to why they were arrested at those times.

6.16 Compounding these difficulties was the lack of any requirement, in 1989-1990, to record the time at which persons arriving for interviews entered the Police Station or to record whether or not they were under arrest.

ADVISING PERSONS UNDER ARREST OF THEIR RIGHTS

6.17 In 1989-1990 Commissioner's Instructions 31.09 and 32.03 both required an officer making an arrest to inform the person that they were under arrest. Instruction 32.03 specified that the arresting officers should inform the person of the reason for the arrest with certain exceptions which included: arresting a person in the act of committing an offence; occasions where the reason for the arrest is obvious to the suspect; or where it is not reasonably possible to notify the person of the reason for the arrest.[348]

[348] PIC Exhibit 78, barcodes 5375547-5375548 and 5375584-5375585.

6.18 According to the evidence heard by the Commission, none of the police involved in the investigation could recall informing NC1, Matthew Webster or Guy Wilson that they were under arrest, or even clarifying for them that they were not under arrest. It was the evidence of each of the three that they were never told that they were under arrest.

CURRENT PRACTICE

6.19 The introduction of the Crimes Amendment (Detention After Arrest) Act 1997, which has become Part 10A of the Crimes Act 1900 'Detention After Arrest for the Purposes of Investigation', clarifies some of the issues raised above.

6.20 The Crimes Act 1900 does not create any additional powers of arrest, though the definition of arrest has been extended. Section 355(2) of the Crimes Act 1900 provides that, for the purposes of Part 10A, a person is considered to be under arrest when they are in the company of a police officer for the purposes of participating in an investigative procedure and there is:

- sufficient evidence to establish that the person has committed the offence; or
- the person would be arrested if they attempted to leave; or
- the police officer has given the person reasonable grounds for believing the person would not be allowed to leave if they wished to do so.

6.21 Part 10A also gives police a statutory power to detain a person who is under arrest for a specified period of time in order to allow the investigation of that person's involvement in the commission of an offence. The obligation to take the arrested person before a Justice to be dealt with according to the law remains. The person may, however, be detained after arrest for the purpose of investigating whether the arrested person committed the offence.[349] The delay is limited to that which is reasonable to investigate the suspect's involvement, but must not exceed four hours, unless a detention warrant is issued by a Justice.[350] The Crimes Act 1900 provides a non-exclusive list of matters to be taken into account in determining what is a reasonable delay for investigation purposes.[351] Part 10A also allows police to investigate the person's involvement in the commission of any other offence if the officer forms a reasonable suspicion of their involvement.[352]

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[349] Section 356C(2), *Crimes Act 1900 NSW*.

[350] Sections 356D and 356G, *Crimes Act 1900 NSW*.

[351] Section 356E, *Crimes Act 1900 NSW*.

[352] Section 356C(3), *Crimes Act 1900 NSW*.

6.22 It is to be noted that Part 10A does not provide any power to arrest additional to that provided by section 352. In particular, it does not give police any power to arrest a person just to investigate whether a person may have been involved in the commission of a crime. Police do not have the power to arrest people merely to interview them. Police need reasonable cause to suspect that the person has committed an offence in order to make the arrest specified in section 352 of the Crimes Act 1900. What Part 10A does give police is the power to carry out investigative functions once a lawful arrest has been made.[353]

6.23 The Crimes Act 1900 makes specific provisions to safeguard the rights of suspects detained in police custody. This is largely accomplished through the establishment of the role of the custody manager and the Crimes Act 1900 specifies a number of duties required of a custody manager. Those legislatively based functions are incorporated into current Police Service guidelines as set out in 'The NSW Police Service Code of Practice for Custody, Rights, Investigation, Management and Evidence (CRIME)'. The guidelines also include additional functions for the custody manager.

6.24 The Code of Practice (CRIME) states that when an officer arrests a person, unless it is not reasonably practical to do so, the person must be taken to a designated Police Station (or designated place of detention if appropriate) where a custody manager is available. Similarly if a person is arrested at a Police Station, having come there voluntarily, they are to be taken directly to the custody manager.[354]

6.25 It is the custody manager's responsibility to caution arrested persons, both orally and by providing a document setting out the person's rights under Part 10A (this does not remove the obligation of investigating police to caution persons they are investigating where this is already required). The custody manager will also ask the person to sign as having received the form. As soon as possible after being detained, and certainly before an interview, it is the custody manager's responsibility to tell a person why he or she has been detained. In addition the custody manager must advise the person of the maximum investigative period for detention, make available to the arrested person facilities to contact friends, relatives, legal practitioners etc, and provide interpreters or medical facilities where required.[355]

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353 Savidge, N. and Shiels, M., 'Detention After Arrest' in *Policing Issues and Practice Journal*, October 1977, p. 58.

354 NSW Police Service, *Code of Practice for Custody, Rights, Investigation, Management and Evidence (CRIME)*, February 1998, pp. 7, 12. It continues at p. 7 that if a custody manager is not available, the person is to be taken to such a place where another officer can act as custody manager, and if neither option is possible, to a police station where another officer can act as custody manager.

355 Sections 356M, 356N, 356S, 356T, *Crimes Act 1900*; NSW Police Service, *Code of Practice for Custody, Rights, Investigation, Management and Evidence (CRIME)*, February 1998, pp. 12, 15-16, 19.

6.26 It should be noted that the Code of Practice (CRIME) also states that when an officer arrests a person the officer should ensure the person is told at the first opportunity in clear words that he or she is under arrest and the offence for which he or she has been arrested. It also states that an officer must caution the arrested person before arrest where necessary and otherwise the caution must be given as soon as possible after telling the person that he or she has been arrested.[356]

6.27 The creation of a custody record for each detained person is another responsibility of the custody manager. The custody record is to commence from the time the arrested person is brought to the Police Station and must include the time of arrest and arrival at the Police Station, the identity of the arresting or accompanying police, the grounds for the arrest, and details of property taken. It must also include the time the investigative procedures start and end, details of 'time outs',[357] and details of the transfer of the arrested person from the custody of one police officer to another.[358] Entries made on the custody record must be contemporaneous and a copy of the custody record is to be given to the arrested person when he or she is released or before he or she is taken before a Justice.[359] The custody manager is responsible for the accuracy and completeness of the custody record. Police Service guidelines state that all written entries to the custody record must be timed and signed by the person making the entry.

6.28 Part 10A of the Crimes Act 1900 does not deal with persons who attend a Police Station voluntarily to assist with inquiries. Such persons are, however, dealt with in the Code of Practice (CRIME) which states that if someone attends a Police Station to assist with inquiries, the police officer must immediately tell the custody manager of that person's attendance. The officer must also tell the person at the first opportunity that he or she is entitled to leave at any time unless placed under arrest. It further states that if the officer decides to prevent the person from leaving the officer must tell the person they are under arrest, this must be noted in the officer's notebook or other appropriate record and the person must be taken to the custody manager. The grounds of the person's detention must be recorded, in the officer's presence if possible.[360]

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356 NSW Police Service, *Code of Practice for Custody, Rights, Investigation, Management and Evidence (CRIME)*, February 1998, p. 8.

357 Section 356F of the Act specifies certain times to be disregarded in calculating the investigation period. Those times include the time reasonably required to convey the arrested person, time required to allow the person to communicate with a friend, relative, legal practitioner, time reasonably required to arrange an identification parade, time to carry out charging procedures etc.

358 Section 356V, *Crimes Act 1900*; NSW Police Service, *Code of Practice for Custody, Rights, Investigation, Management and Evidence (CRIME)*, February 1998, pp. 11-12.

359 Savidge, N. and Shiels, M., 'Detention After Arrest' in *Policing Issues and Practice Journal*, October 1977, pp. 63-64.

360 NSW Police Service, *Code of Practice for Custody, Rights, Investigation, Management and Evidence (CRIME)*, February 1998, p. 13.

6.29 The Code of Practice (CRIME) further specifies that none of the functions of the custody manager are to be performed by a police officer who is, at the time, involved in investigating the offence for which someone is in custody, except as a last resort in the complete absence of another available officer.

DISCUSSION

6.30 As noted above, submissions made on behalf of the Commissioner for Police and on behalf of Detectives Chaffey, Loy, Hetherington, and Graham asserted that the introduction of Part 10A of the Crimes Act 1900 solved the problems arising from the allegations concerning the dealings of police with NC1, Guy Wilson and Matthew Webster. Mr Steirn SC, for Detective Chaffey, said that:

> … ironically what was allegedly unlawful by police at the time of the Leigh murder investigation is now lawful.

6.31 The Commission does not accept these submissions. Section 356B(1)(a) of the Crimes Act 1900 makes it plain that Part 10A does not provide any new or expanded power of arrest. Part 10A provides for the regulation of the detention, questioning and treatment of persons lawfully arrested pursuant to section 352 of the Crimes Act 1900.[361]

6.32 It should also be noted that section 356B(2)(d) makes it clear that Part 10A is not intended to affect 'the right of a person to leave police custody if the person is not under arrest'.

6.33 Attention must be paid to the legitimate purpose of arrest. It is not lawful to arrest for the purpose of interrogation. The legitimate purpose, as prescribed by section 352, is to take a person before a Justice to be dealt with according to law. The statutory modification effected by Part 10A has not altered that purpose. It has merely provided, in a regulated way, for the interrogation of a person lawfully held, for the purpose of taking that person before a Justice to be dealt with according to law. The reason an arrested person is taken before a Justice is to lay an information charging the person with an offence and providing the person with an opportunity to apply for bail.

6.34 As noted in previous chapters, the police who arrested NC1, Guy Wilson and Matthew Webster did not have such a purpose. The purpose in each case was to interrogate or to otherwise gather evidence. If evidence sufficient to justify the preferring of a criminal charge was forthcoming, no doubt the person would have been taken before a Magistrate at some

[361] Section 352 of the *Crimes Act 1900* is fully quoted at footnote 343.

point. But that was a matter to be contemplated at a later stage, in changed circumstances.

6.35 As noted previously, Counsel for Detectives Chaffey, Douglass, Loy, Hetherington, Graham and Cunningham drew attention to the Circular 88/98 issued by the Commissioner of Police in reliance upon advice from the Solicitor-General with the approval of the Attorney-General.[362] The Circular was extant at the time of the investigation into the murder of Leigh Leigh. Counsel argued that police could scarcely be blamed for misapprehending the law of arrest in the face of erroneous advice from official quarters.[363]

6.36 Again, the submission cannot be accepted. It is true that the words quoted above[364] from Gibbs CJ's judgment appear in the Circular. However, the majority Judges rejected such an approach.[365] It is important to consider the substance of the Solicitor-General's advice in the Circular:

> Police have expressed concern about the extent of their powers and duties following the High Court case of Williams v The Queen.
>
> In accordance with advice from the Solicitor-General provided to me by the Attorney-General, the following instructions, endorsed by the Attorney-General are issued for the guidance of police investigating criminal offences.
>
> Police do not have any general power to detain a citizen merely for the purpose of questioning him or her. Similarly, if a person indicates that he or she does not wish to be questioned, police will not persist.
>
> The person who is arrested must be brought before a Justice without unreasonable delay.
>
> In determining what is unreasonable delay allowance may be made for the making of a decision to prefer a charge and the preferring of it. In making this decision it may only be fair to question the arrested person and conduct other inquiries in order to confirm or dispel the suspicion on which the arrest was based. [emphasis added]

6.37 The Circular contradicts the submissions here in question. In fact, the Circular puts two matters to the fore. Firstly, there is no power to arrest for interrogation. Secondly, the person arrested is to be taken before a Justice without unreasonable delay. As noted above, the purpose of the arrests here in question was to interrogate or otherwise gather evidence.

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362 PIC Exhibit 178.

363 Though it must be noted that it was presumed that regard was had to the Circular, since no officer asserted such reliance.

364 See the quote at p. 119.

365 Per Mason and Brennan JJ at 295; per Wilson and Dawson JJ at 306.

6.38 A further submission by some, in particular the Commissioner for Police, was that the Custody Manager and Custody Record provisions of Part 10A, together with the Code of Practice (CRIME), now prevent the kind of abuses alleged to have occurred in the course of the inquiry into the murder of Leigh Leigh. To a significant degree, that contention is correct. There are, however, important qualifications that ought to be addressed.

6.39 In the case of, at least, NC1 and Matthew Webster, it was claimed that those persons initially went voluntarily to the Police Station, but came to be regarded as being under arrest at some point. Those persons themselves were not informed at the time that they were no longer free to leave. Police could not accurately identify the time at which those persons were no longer free to leave, nor explain the times of arrest stated on the charge sheets. I f the police assertions as to initial voluntary attendance were correct, there would be no means, independent of the recollections of the police as to their subjective states of mind, of determining when the obligations under section 532 became enlivened. Accordingly, compliance with section 532 would be extremely difficult to assess.

6.40 Crimes (Detention after Arrest) Regulation 1998, clause 15(1) states that a separate custody record must be opened as soon as practicable for each detained person. The Code of Practice (CRIME), provides that a custody record is to be commenced for each person 'under arrest'. The Dictionary to the Code reflects Part 10A of the Crimes Act 1990 and defines arrest to include situations where:

(i) 'the police officer believes there is sufficient evidence to establish the person has committed an offence that is or is to be the subject of the investigation';

(ii) the 'officer would arrest the person if they attempted to leave'; and

(iii) the 'officer gives the person reasonable grounds for believing the person would not be allowed to leave if they wished to do so'.

As noted above, the Code provides that if someone attends the Police Station to help with inquiries the custody manager must be informed immediately and that people must be told at the first opportunity they are entitled to leave at anytime unless placed under arrest. There is no provision for recording the attendance of a person voluntarily assisting police with inquiries. Nor is there a requirement that the custody manager, that is, an officer unconnected with the inquiry, advise the person of his/her right to silence and to liberty.

6.41 Accordingly, there remains the possibility that a person may misapprehend his/her circumstances and rights. The requirement that a custody record be struck when the police officer reaches satisfaction as to the matters set

out in (i) to (iii), above, depends upon recognition by the officer of that state of satisfaction, and the taking of action accordingly. Thus, there remains scope for improper detention and questioning of suspects, and the making of allegations of police misconduct.

6.42 Such occurrences would surely be reduced if the presence of all persons assisting police with criminal inquiries at Police Stations was recorded and such persons were informed by a custody manager, unconnected with the inquiry, that the person is:

(i) not under arrest;

(ii) free to leave; and

(iii) not obliged to answer questions.

The purpose of the person's attendance should be both recorded and outlined to the person. Such an outline need not be extensive, and need not detail any questions or lines of inquiry that might be pursued. Something along the lines of 'officer X has asked that you assist with inquiries into an alleged assault upon Y' would generally be adequate. The time of attendance should be recorded. If such measures were taken, there would be considerably less scope for later complaints that police failed to inform a person that he or she was not under arrest or provided the reasons therefore. There would be less scope for complaints that police deceived a person as to his/her status or intentions in order to facilitate an interrogation.

6.43 The Commission has noted its concern as to the potential for the loss of critical evidence by reason of aspects of police conduct of the Leigh investigation. Had NC1 been guilty of Leigh Leigh's murder, and had he confessed to police on 15 November 1989, the evidence would have been rendered inadmissible by section 13 of the Children (Criminal Proceedings) Act 1987.[366]

6.44 Similarly, had the police honestly disclosed to the defence the actual circumstances of Matthew Webster's attendance at the Police Station on 16 February 1990, the admission of his confession might have been successfully challenged. Absent that confession, the case against Matthew Webster was not as strong. Such an outcome would obviously have been a grave injustice to the Leigh family and the community. Scrupulous adherence to the law of criminal investigation is critical to the maintenance of public confidence in evidence gathered by police.

[366] Quoted fully at footnote 380.

6.45 It is necessary to examine developments in the law relating to criminal investigation in order to gauge whether such a situation could occur again, and whether contemporary statutory and procedural modes of accountability would be likely to expose such conduct. The application for the listening device warrant was made on the basis of an assertion by Detective Chaffey that Matthew Webster and Guy Wilson would be invited to attend at the Police Station and asked to remain together in the room in which unbeknown to both of them a listening device had been secreted.[367] As discussed above, that is not how matters proceeded. Matthew Webster was taken to the Police Station against his will and placed in the room with Guy Wilson. Guy Wilson had gone voluntarily but was, to the knowledge of police, intoxicated.

6.46 The listening device warrant made lawful the use of the device, but anything incriminating said by Matthew Webster was liable to be rejected by a Court because his detention was unlawful.

6.47 The reporting provisions of the Listening Devices Act 1984 do not, on their face, require information of the kind that would expose the use of unlawful detention of the kind involved here to facilitate the use of the listening device.[368]

6.48 The introduction of Part 10A of the Crimes Act 1900, and the Code of Practice (CRIME) would not prevent recurrence of the conduct presently under discussion. The relevant provisions of the Act and the Code have been outlined above. If similar circumstances were to recur, it would remain within the control of the officer securing the attendance of the person to determine whether and at what stage the person would be spoken to by the custody manager. Accordingly, the potential for abuse remains.

6.49 Having examined the Code of Practice (CRIME), the Commission remains concerned as to whether procedures are adequate to ensure the proper distinction between those attending a Police Station voluntarily and those who are under arrest. The Final Report of the Royal Commission considered the police reaction to the decision of Williams v The Queen.[369] It noted that police practice was, however, little affected by this decision in NSW. One of the means by which police continued to interview suspects between arrest and appearance before a Justice was 'under the fiction that the suspect had not been arrested but was present at the station voluntarily to assist with inquiries …'[370] That abuse of power operates in tandem

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[367] PIC Exhibit 31C.

[368] See section 19 *Listening Devices Act 1984.*

[369] *Williams v The Queen* (1986) 161 CLR 278.

[370] Royal Commission into the NSW Police Service, *Final Report Volume 1: Corruption*, May 1997, p. 36.

with the practice deprecated by the Court of Appeal in 1990. v In Attorney General for NSW v Dean, the Court said:[371]

> The Court emphasises the importance of the legal obligation where a person has been arrested and charged that he or she should be taken as soon as practicable before a Justice: Bales v Parmeter (1935) 35 SR (NSW) 182 at 189; 52 WN (NSW) 41 at 43 and R v Zorad (190) 19 NSWLR 91 at 98. It is highly desirable, for the preservation of the proper relationship between the police and the judiciary, that arrangements should be made for this to be done, where necessary, during weekends and after hours. The obligation is one of abiding importance. It is to be observed at all times and not simply during usual working hours of weekdays. This requirement recognises the ordinary right to liberty of the citizen by ensuring that an accused person is transferred as soon as practicable after being charged by the executive branch of the government to the judicial branch of government where the question of bail can be independently considered.

6.50 While Part 10A of the Crimes Act 1900 has served to expand the definition of when a person is considered to be under arrest, there remains room for abuse.

6.51 In the United Kingdom, the Phillips Royal Commission on Criminal Procedure[372] gave impetus to the moves for reform that resulted in the enactment of the Police and Criminal Evidence Act 1984. This Act provides for a code with respect to matters of criminal investigation and procedure for England and Wales, including the arrest, detention and interrogation of persons by police. Part VI of this Act provides for the issue by the Secretary of State of Codes of Practice in connection with, amongst other things, 'the detention, treatment, questioning and identification of persons by police officers'.[373] Code C constitutes a Code of Practice for those purposes. An examination of the Code indicates the close attention paid to the Code by the draftspersons of Part 10A of the Crimes Act 1900 NSW, and the NSW Code of Practice (CRIME).

6.52 Code C applies to 'people who are in custody in Police Stations'.[374] Custody records are to be maintained with respect to all persons brought to the station under arrest or who are arrested having attended voluntarily.[375] If it is decided that a person who has attended voluntarily should not be permitted to leave, he or she must be informed at once that he or she is under arrest and then taken before the custody officer so that he or she may be informed of his/her rights.[376]

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371 (199) 20 NSWLR 651 per Gleeson CJ, Kirby P and Priestly JA at 653.

372 Royal Commission on Criminal Procedure, *The Investigation and Prosecution of Criminal Offences in England and Wales: the Law and Procedure*, Cmnd. 8092 – 1 HMSO, 1981.

373 Section 66, *Police and Criminal Evidence Act 1984 UK*.

374 Paragraph 1.10. A 'Note for guidance', No. 1A, provides that persons attending voluntarily to assist with inquiries 'should be treated with no less consideration … and enjoy an absolute right to obtain legal advice or communicate with anyone outside the police station'.

375 Code C, paragraph 2.1.

376 Code C, paragraph 3.15.

6.53 Victorian law and procedure also provides for a less comprehensive form of custody record. The Crimes Act 1958 Vic, provides that a person is 'in custody' if under arrest or is 'in the company of an investigating official' and is or will be questioned or investigated in relation to a criminal offence 'if there is sufficient information in the possession of the investigating official to justify the arrest of that person in relation to that offence'.[377] The Victoria Police Manual provides that persons in custody within the meaning of section 464(1) must be entered in the Attendance Register.[378] It is significant that this Victorian police rule extends the requirement of entry in the Register to those who meet the terms of section 464(1) of the Crimes Act 1958 Vic, but with respect to whom it is not said that there is sufficient evidence available to justify an arrest. Such a rule in New South Wales would go some way to meeting the deficiency in the provisions of Part 10A and the Code of Practice (CRIME) with respect to persons attending voluntarily to assist with criminal inquiries. It appears that the Code C provisions applicable in England and Wales replicate the deficiency in the New South Wales provisions.

ASSESSMENT

6.54 It is the view of the Commission that the requirements as currently set out in the Code of Practice (CRIME) relating to persons attending a Police Station voluntarily are inadequate. While current guidelines require an officer to inform the custody manager of such a person's presence, guidelines are not explicit in requiring that the custody manager record that he or she has received that information, or that the time that they are so informed should be recorded.[379] Moreover, there is no requirement that the custody manager speak to the person to ensure that the person understands the purpose of the attendance and his or her rights.

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377 Section 464(1), *Crimes Act 1958 Vic.*

378 Victoria Police Manual, revised 20.11.99, paragraph 4.6.1.2.

379 The Code of Practice states at page 13, in a sub-heading 'Documentation' under the heading 'People attending a police station voluntarily', that officers should record the grounds for someone's detention, in their presence if possible and record action taken under the above paragraphs and responses given. The 'above paragraphs' appear to be the paragraphs stating that officers should tell people at the police station voluntarily that they are free to leave unless placed under arrest; and that officers should tell a person he or she is under arrest if the officer does decide to prevent the person from leaving, record that in the officers notebook or other appropriate record and take the person to the custody manager. The guidelines do not state where those records should be made.

6.55 The Commission recommends that the Code of Practice (CRIME) should be amended so that when a person attends a Police Station voluntarily to assist with inquiries, and the custody manager is informed, the custody manager must

- record the name of the person, the name(s) of the officer(s) dealing with the person and the time of the person's arrival at the Police Station;
- inform the person of the purpose of his or her attendance at the Police Station;
- inform the person that he or she is not under arrest and is free to leave the Police Station;
- inform the person of his or her right to silence;
- inform the person of his or her right to seek legal assistance or to inform another person of his or her presence at the Police Station; and
- inform the person that if police decide that he or she is no longer free to leave the Police Station, the officer is obliged to inform the person and to return with the person to the custody manager for updating of the custody record.

6.56 If a person is returned to the custody manager, police having determined that the person is no longer free to leave the Police Station, the custody manager is to inform the person:

- that he or she is under arrest; and
- the offence for which the arrest has been made.

6.57 The custody manager is also to comply with section 356M of Part 10A of the Crimes Act 1900 in advising a person brought to him/her that he or she has been placed under arrest whilst in attendance at a Police Station.

6.58 The Commission is of the opinion that consideration be given to amendments to the Listening Devices Act 1984 to the effect that the submission of false or misleading section 19 reports, whether by omission or commission, become the subject of express criminal sanction and further that appropriate procedures are initiated within the Police Service to ensure compliance with any such provision.

CUSTODY AND INTERVIEW OF JUVENILES

6.59 Evidence before the Commission has raised a number of questions about the adequacy of the 1989 procedures relating to the custody and interviewing of juveniles.

RECORDING ATTEMPTS MADE TO CONTACT A PARENT OR GUARDIAN

6.60 In his evidence, as described in Chapter 4, Detective Douglass stated that it was his interpretation of the Commissioner's Instructions at that time, that it was not necessary to record attempts made to contact parents or guardians unless they failed to appear.

6.61 The relevant Commissioner's Instructions in force at that time can be found in Instruction 31 'Arrests and Checkpoints' and Instruction 35 'Child Offenders and Children'. Instruction 35 had been updated in January 1989 to reflect a raft of legislation dealing with child welfare and criminal matters.[380]

6.62 Instruction 31.18 'Questioning of Juveniles at Police Stations' stated:

> Where a juvenile is taken to a Police Station, or attends voluntarily at a Police Station, and is to be questioned concerning … committing an offence, steps shall be immediately taken to notify, or cause to be notified, a parent of, or any person aged 18 years or upwards who has the guardianship of the juvenile, that the juvenile is at the Police Station.

It went on to state that a juvenile shall be interviewed in the presence of a parent, guardian or nominated adult.

6.63 Instruction 31.19 'Questioning of Juveniles - Absence of Parent or Guardian' referred to circumstances where a parent or guardian could not

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[380] These Acts include the *Children (Criminal Proceedings) Act 1987* which, by section 13 provides:

(1) Any statement, confession, admission or information made or given to a member of the police force by a child who is a party to criminal proceedings shall not be admitted in evidence in those proceedings unless:
  (a) there was present at the place where, and throughout the period of time during which, it was made or given:
    (i) a person responsible for the child,
    (ii) an adult (other than a member of the police force) who was present with the consent of the person responsible for the child,
    (iii) in the case of a child who is of or above the age of 16 years – an adult (other than a member of the police force) who was present with the consent of the child, or
    (iv) a barrister or solicitor of the child's own choosing, or
  (b) the person acting judicially in those proceedings:
    (i) is satisfied that there was proper and sufficient reason for the absence of such an adult from the place where, or throughout the period of time during which, the statement, confession, admission or information was made or given, and
    (ii) considers that, in the particular circumstances of the case, the statement, confession, admission or information should be admitted in evidence in those proceedings.

or should not be present at the interview, or where the juvenile indicated an unwillingness to answer questions in the presence of such a person. The Instruction stated that in such circumstances a Senior Police Officer, not connected with the investigation, should be present at the interview to determine that it is conducted with propriety. The next paragraph, still under the same heading, stated:

> Because of the need to convince a Court that all reasonable steps have been taken to obtain the presence of a parent or other person referred to in 31.18, when interviewing a juvenile at a Police Station, Police shall record on the occurrence pad all steps taken in that regard, and such entry shall be initialled by the Police Officer who makes such attempts.

6.64 Instruction 35.08 'Questioning of Child Offenders at Police Stations' is similar in content to Instruction 31.18. Instruction 35.09, based on section 13 of the Children (Criminal Proceedings) Act 1987, advised police that any statement, confession or information provided by a child who is party to criminal proceedings would not be admitted in evidence unless it was made in the presence of a responsible adult other than a member of the Police Force. The Instruction further states:

> …The Act [reference to Children (Criminal Proceedings) Act] requires police officers to have an adult present WHEREVER a child is interviewed in relation to Criminal matters to which the child is a party. A Police officer CANNOT be used to sit in on an interview. [emphasis in original]

6.65 Instruction 35.10, like Instruction 31.19, notes there may be special circumstances were it is desirable that a parent or guardian should not be present. Instruction 35.11 makes a separate statement about the need to record steps taken to obtain the presence of a parent or other person for an interview 'because of the need to convince a court that all reasonable steps have be taken to obtain the presence of a parent or other person …'.

6.66 Most police officers who gave evidence on procedures relating to the interview of juveniles, as described in Chapter 4, were of the opinion that parents or guardians were to be contacted and present at an interview and that records were to be made of attempts to contact such persons. One officer, Detective Yeomans, was specifically questioned about Detective Douglass' interpretation of the Instructions and the need to record attempts made to contact parents. He stated that if a parent was to arrive shortly after being contacted then record of the contact might not be made, however, if there was to be any delay between the contact and the parent arriving, records would be made in order to establish that everything had been done properly.[381]

[381] PIC Transcript, PC Yeomans, 17 December 1998, p. 1186.

6.67 It is the opinion of the Commission that when examining Instruction 31.19 it is possible to adopt the interpretation provided by Detective Douglass, as the requirement to make records is contained within the same Instruction as a discussion of steps to take should a parent or guardian fail to arrive for an interview. However, Instruction 35.11, released early in 1989 is much more explicit concerning the need to record each attempt to contact a parent or guardian. As such, it is possible to accept that Detective Douglass had interpreted the Instructions in the manner he described, if he had in fact based his understanding on Instruction 31.19. It is possible that such an interpretation might explain the lack of police records of attempts made to contact NC1's parents. As noted in Chapter 4, however, that explanation is not persuasive. Police did not assert that the absence of records was in fact due to the contended interpretation of the Instructions. All other circumstances strongly point to a lack of any attempt to contact responsible adults and the Commission has formed the opinion that the failure to contact NC1's parents was a deliberate ploy by some of the police.

CURRENT POLICE GUIDELINES

6.68 Having regard to the failure to adhere to procedures in 1989 the Commission wished to consider whether such a situation could occur under existing police practices and guidelines.

6.69 A number of aspects of current procedures concerning the custody and interview of children remain largely the same as in 1989. Current guidelines for the arrest and interview of children, as outlined in the NSW Police Service Code of Practice (CRIME), state that when an officer arrests a child they should 'take reasonable steps to tell the parents or guardian immediately' and they must tell them the reason for the arrest and the whereabouts of the child.[382] The guidelines also state: 'Do not question a child you suspect of committing a criminal offence unless a support person is present. Do not use an employee of the Police Service for this.' Also included is the statement: 'This does not stop you from speaking to a child'.[383] Such guidelines are dictated by the terms of section 13 of the Children (Criminal Proceedings) Act 1987.

6.70 The most significant difference between 1989 and current practice is that in 1989 the procedures required the investigating officers to initiate and record contact with parents or guardians. Current legislation has introduced the role of the custody manager, described earlier in this chapter. While Part 10A of the Crimes Act 1900 applies to a person under 18 years of age

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382 NSW Police Service, *Code of Practice for Custody, Rights, Investigation, Management and Evidence (CRIME)*, February 1998, p. 10.

383 NSW Police Service, *Code of Practice for Custody, Rights, Investigation, Management and Evidence (CRIME)*, February 1998, p. 33.

who is under arrest, it does not require any special action by custody managers in dealing with children. This is dealt with in the Crimes (Detention after Arrest) Regulations 1998. The Regulations classify children (defined as a person under the age of 18 years) as 'vulnerable persons'. Part 4 of the Regulations provides 'General Provisions for Vulnerable Persons'. Those include a requirement that the custody manager assist the vulnerable person in exercising their rights under Part 10A of the Crimes Act 1900.[384] A vulnerable person is entitled to have a support person present 'during any investigative procedure in which the person is to participate'.[385] The custody manager is to so advise the child. In addition, a child 'cannot waive his or her right to have a support person present'.[386] A caution must be administered in the presence of a support person.[387]

6.71 Those provisions are reflected in the Code of Practice (CRIME) which also includes a child under the definition of 'vulnerable person'. When a vulnerable person is taken into custody the Code states that the custody manager is to take 'immediate steps' to contact a support person.[388] In the case of a child the custody manager is to tell the child's parent or guardian, as soon as possible of the arrest, the reason for it and where the child is. When a support person has arrived the custody manager must caution the child again in the presence of the support person and explain to that person that their role is to assist and support the detained person during an interview, observe whether it is being conducted properly and fairly and identify communication problems.[389]

ASSESSMENT

6.72 While the Commission believes giving an officer outside of the investigation some responsibility for the welfare of a child in custody is an improvement on the previous system, it notes that there is no requirement to record attempts made to contact a parent or guardian. The problems brought to light by the Commission investigation demonstrate that there is a need for the Police Service to be able to establish that all reasonable efforts had been made to contact such a person.

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384 Clause 20.

385 Clause 21(1).

386 Clause 23.

387 Clause 29(2).

388 The Code of Practice (CRIME) defines a support person for a child as someone who is 18 years of age or over and is the child's parent or guardian or has lawful custody of the child, someone who has care of the child, an adult (not a police officer) who is present with consent of one of the people mentioned previously, a legal representative of the child's choice, or if the child is 16 or over an adult (not a police officer) who is present with the consent of the child, p. 49.

389 NSW Police Service, *Code of Practice for Custody, Rights, Investigation, Management and Evidence (CRIME)*, February 1998, pp. 12-13.

6.73 The Commission recommends that the Code of Practice (CRIME), where it relates to custody managers assisting 'vulnerable persons', be amended to require that the custody manager records, on the custody record, all attempts made to contact a support person and the result of those attempts. This should include the time and date of contact, the name of the officer attempting the contact, the name of the person who was contacted, the method of contact used, and the result of the contact, or attempted contact, and any other information that the Police Service believes to be appropriate.

6.74 It is the view of the Commission that the problems such as those experienced by NC2 in attempting to locate her son, should be alleviated by the proper functioning of the custody management system. Under current practice a custody record would have been commenced for NC1 as soon as he arrived at Newcastle Police Station. Even if police maintained he was not under arrest the custody manager should have been informed of his presence. Accordingly, under section 356Q of the Crimes Act 1900, the custody manager must inform a person in custody when a person who claims to be a friend, relative or guardian of the detained person enquires of their whereabouts. In addition, the custody manager must provide that information to the person enquiring unless the detained person does not agree that the information be provided or unless certain other specific grounds apply.[390] If such laws had operated in 1989, when NC2 telephoned or appeared at Newcastle Police Station the desk officer should have contacted the custody manager who should have provided the necessary information after consulting with NC1. It can be noted that Mrs Webster would also have received the benefits of those legislative requirements in her search for her son on 16 February 1990.

6.75 The Commission also notes that there are specific guidelines in the Code of Practice (CRIME) for adopting interviews and statements of children. Those guidelines state that the adopting officer must conduct the necessary questioning in front of the support person and check the statement or record of interview for a statement indicating the support person was present during the interview. They must also ask the support person whether the statement has been recorded accurately and whether it was made voluntarily.[391]

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[390] These include that the custody manager believes on reasonable grounds that the person requesting the information is not a friend, relative or guardian of the detained person, (356(2)(b)) or the custody manager believes on reasonable grounds that doing so is likely to result in:
(i) an accomplice of the detained person avoiding arrest, or
(ii) the concealment, fabrication, destruction or loss of evidence or the intimidation of a witness, or
(iii) hindering the recovery of any person or property concerned in the offence under investigation, or
(iv) bodily injury being caused to any other person (356Q(2)(c)).

[391] NSW Police Service, *Code of Practice for Custody, Rights, Investigation, Management and Evidence (CRIME)*, February 1998, p. 33.

6.76 The Commission notes that there should be no cause for debate about the presence of, or answers provided by, a support person in an 'Electronic Recording of Interviews with Suspected Persons' (ERISP) interview, as their presence would be electronically recorded on both video and audio tape.[392] The guidelines, however, make no provision for obtaining the signature of the support person on a typewritten record of interview or a handwritten statement. The signature, in such circumstances, represents the means by which the presence of a support person can be can be verified.

6.77 As such, the Commission recommends that Annexure D and E of the Code of Practice (CRIME) be amended to include a requirement that adopting officers ask the support person to witness a typewritten or handwritten record of interview or a typewritten or handwritten statement.

POLICE RECORDS

RELIABILITY OF POLICE RECORDS

6.78 As noted previously in this Report, the lapse of time between the Commission's hearings and the events being investigated has increased the importance of police records, made at the time of the police investigation, in establishing the facts of what occurred. As has also been noted, the Commission has experienced difficulty in both accessing and relying on police records in its investigation of this matter. Aside from the matter of the location and availability of duty books from this period, which will be discussed later, there have been substantial discrepancies in other records obtained by the Commission.

6.79 An example of this can be found in the documents recording the collection and interview of Matthew Webster on 15 November 1989. Those records show substantially different information about the identity of officers transporting Matthew Webster from Stockton to Newcastle, arresting him and interviewing him.

6.80 The statement of Detective Plant made on 26 February 1990 records that Matthew Webster was transported to Newcastle by Detectives Plant, Thurbon and Graham.[393] The running sheet Detective Plant completed on

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[392] The use of the video and audio taping facility commenced in the Police Service in January 1991. Section 108 of the *Criminal Procedure Act 1986* (which replaces Section 424A of the *Crimes Act 1900*) requires admissions by accused person in relation to indictable offences to be tape recorded subject to certain limited exceptions in order that they can be admitted as evidence. The exceptions include those instances where the prosecution establishes that there is a reasonable excuse as to why a tape recording could not be made. Reasonable excuse is defined to include: a mechanical failure; the refusal of a person being questioned to have the questioning electronically recorded; or the lack of availability of recording equipment within a period in which it would be reasonable to detain the person being questioned.

[393] PIC Exhibit 41B, barcode 5545622.

16 November 1989 does not mention the manner in which Matthew Webster was collected, his transportation or details of his arrest, only that he was re-interviewed.[394] Despite inquiries, Detective Plant's duty book could not be located. The duty book of Detective Loy records that Matthew Webster was transported by Detectives Loy and Plant.[395] The duty book of Detective Graham records that transport was provided by Detectives Plant, Graham, Loy and Thurbon.[396]

6.81 Detective Loy's duty book makes no explicit mention of arresting Matthew Webster, though he is recorded as one of the arresting officers on the charge sheet together with Detective Graham. Detective Graham's duty book does record that Matthew Webster was arrested, but does not make explicit by whom and in his evidence he stated he could not recall arresting Matthew Webster. The timing of the arrest and transportation is also complicated. The charge sheet indicates the time of arrest as 7.30 pm. Detective Graham's duty book indicates that Matthew Webster was arrested after Detective Graham's meal break, from 6.30 pm - 7.00 pm, prior to taking Matthew Webster to Newcastle. Detective Plant's statement records that he had begun interviewing Matthew Webster in Newcastle at 6.30 pm.

6.82 Identifying those officers involved in interviewing Matthew Webster that night is hampered by the lack of a formal record of interview as Matthew Webster completed handwritten statements. The 26 February 1990 statement of Detective Plant notes that he was involved in speaking with Matthew Webster that night but does not identify any other officers. The running sheet entry Detective Plant made on the day following the interview records the presence of Detectives Plant, Graham, Thurbon and Loy. Yet, as noted in Chapter 4, Detective Thurbon is adamant that he did not speak with Matthew Webster at Newcastle Police Station that night and Detective Graham gave evidence that only he and Detective Plant were present at the interview of Matthew Webster.

6.83 Also, as previously noted in Chapter 4, Detective Hetherington has acknowledged that the charge sheet recording Detectives Loy and Graham as arresting Guy Wilson may be incorrect.

6.84 The ability to determine at what time NC1 was brought into Newcastle Police Station is hampered by the lack of any system at that time to record the arrival time of persons brought into the station to speak with police. This is compounded by the duty book entry of Detective Douglass, which does not specify the time, and unavailability of the duty books of Detectives Yeomans and Cunningham.

394 PIC Exhibit 24B.

395 PIC Exhibit 28B.

396 PIC Exhibit 45B.

6.85 Difficulties arising from the records of adoption are discussed in the section below. The accuracy of the bail determinations recorded for Webster and Wilson on 15 November 1998 have been discussed earlier in Chapter 4.

ADOPTION OF RECORDS OF INTERVIEW

6.86 Problems presented in the adoption of the various records of interview and handwritten statements taken on 15 November 1989 have been demonstrated previously in this Report. These can be summarised as follows:

- Recorded times indicate that Guy Wilson's record of interview was adopted after his bail determination was made. As noted in Chapter 4 this might be explained by the incorrect recording of the time of the bail determination.

- Guy Wilson's record of interview lacked a separate adoption statement. Adoption of that interview is only indicated by former Senior Sergeant Collins' signature on the record of interview itself.

- There is no indication that NC1 adopted the handwritten statement made on 15 November 1989 before an independent officer.

- The adoption record completed for the interview conducted with NC1 on 15 November 1989 lacks the signatures of NC1 and NC2 (though NC1 recalls a uniformed officer asking him questions about the interview at its conclusion).

- The adoption record of NC1's record of interview included handwriting that was not that of the adopting officer or NC1. The source of that handwriting has not been identified.

- Matthew Webster's handwritten statements are recorded as being adopted at 10.30 pm. It is also recorded that he was being charged in the charge room at 10.30 pm.

6.87 When questioned by Counsel Assisting about the appearance of handwriting that was not his own on the adoption of NC1's interview, former Senior Sergeant Collins stated that it could have belonged to another officer present at the adoption. On further questioning he stated that it was not unusual to have another officer present at the adoption and that this could be the officer who took the record of interview or one of his companions. Counsel Assisting then inquired as to the advisability of this practice given that the

adoption was intended to ensure that the interview had been done voluntarily:[397]

> Q. Do you think that that might stifle a person's inclination to complain in circumstances where one of the investigating officers was present?
> A. I wouldn't have thought so, no.
>
> Q. So it wouldn't have caused you concern that the investigator - that is, the interviewer, or one of his colleagues - was present when you were asking the questions?
> A. It wouldn't concern whom?
>
> Q. You?
> A. It wouldn't concern me, no.

6.88 Sergeant Hughes, who was recorded as adopting the handwritten statements of Matthew Webster on 15 November 1989, distinguished between adopting handwritten statements and adopting records of interviews. He was asked how it was that, according to the recorded times, Matthew Webster's statements were adopted at the same as he was being charged. In reply, he told the Commission that a statement could be adopted anywhere, including in a charge room and that the police who took the statement could be present at the adoption. Sergeant Hughes also held that it would not concern him that a person might not give forthright answers in response to questions about whether they had any complaints in such circumstances.[398] In his view, the adoption of a record of interview was a more formal procedure than the adoption of a statement and in that circumstance investigating police should not be present.[399]

6.89 Senior Constable Marsden, who appeared before the Commission in relation to his role in the adoption of interviews and charging of Matthew Webster on 16 February 1990, was also asked questions in relation to his practice when conducting an adoption. He replied that the adoption process was generally undertaken for both handwritten statements and records of interview, especially concerning indictable matters such as drug supply or sexual assault. He would also ensure, in the case of adopting a record of interview of a juvenile, that the responsible adult who attended the interview was present and that the interviewing police officers were not. This procedure was intended to ensure that the juvenile responded to the adoption questions honestly.[400]

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397 PIC Transcript, RTD Collins, 19 November 1998, pp. 234-235.

398 PIC Transcript, D Hughes, 25 November 1998, p. 480.

399 PIC Transcript, D Hughes, 25 November 1998, p. 481.

400 PIC Transcript, KJ Marsden, 25 November 1998, pp. 451, 457.

6.90 In 1989-1990, the Commissioner's Instructions emphasised the need to ensure that statements and answers in interviews were provided voluntarily. The Instructions included a number of procedures intended to ensure that statements and interviews would be admissible in court as evidence. One procedure was to ask a person to read his/her statement, or record of interview, and sign it. After it had been signed a number of questions, listed in the Instruction, were to be asked of the person interviewed by the interviewing officer with the questions and answers typed or written at the foot of the statement or record of interview.[401] The questions listed in the Instruction are the same or similar to those found on the bottom half of the handwritten statements and the end of the records of interview tendered to the Commission.

6.91 Instruction 31 also stated that on completion of a statement or record of interview the senior police officer available should be immediately consulted. The Instruction noted in parentheses that this person should be 'a member wherever possible not concerned with the investigation' (emphasis added). The Instruction further stated:[402]

> … he or she should ask the person making the statement or being interviewed whether the document is his/her statement, or a true record of the interview, whether the statement was free and voluntary, or whether the answers recorded in the record of interview were given freely and voluntarily, and whether he or she has any complaints in respect of it. Such Officer should initial and date the document and keep a full record in permanent form of the time and place and circumstances.

6.92 The Commission notes that the Instruction did not state where this adoption procedure should (or should not) take place. It also failed to specify that investigating officers should not be nearby when the adoption is undertaken. Nor did it state that any separate adoption record/statement should be signed by the person interviewed. Further, the Instruction did not describe what form the 'full record' of the time and place and circumstances should take - whether it should have been recorded on the document itself, a separate adoption statement (as were produced in relation to the records of interview of NC1 on 15 November 1989 and Matthew Webster on 16 February 1990), or a notation in the officer's notebook/duty book. It must be noted that, with the exception of the adoption statement made for Matthew Webster's confession of 16 February 1990, no record of the place or circumstances of the adoption could be found in relation to any of the other interviews or statements.

6.93 It might also be noted that the Instruction made no distinction between handwritten statements and records of interview.

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401 PIC Exhibit 78, Commissioner's Instruction 31.14 dated 1 July 1989, barcode 5375551.

402 PIC Exhibit 78, Commissioner's Instruction 31.15 dated 1 July 1989, barcode 5375552.

6.94 The Commission is of the view that the Instructions relating to the adoption of statements and records of interview in 1989-1990 failed to set out procedures that would ensure that adoptions fulfilled their intended purpose of safeguarding the rights of those interviewed. As such, the Commission examined current procedures for adopting statements and records of interview.

6.95 Current practices for the adoption of interviews and statements made by detained persons can be found in the Code of Practice (CRIME). As noted previously, today most interviews for serious offences are recorded electronically incorporating video and audio taping of interviews.[403] The Code of Practice (CRIME) states that once questioning is complete the record is to be adopted by the interviewee in the presence of a senior officer (the custody manager or other senior officer if the duty officer is unavailable). It further states that interviewing officers, after introducing the adopting officer, are to leave the interview room. The adopting officer then asks questions about whether the interview was voluntary and fair and at the both parties must state their name and the time. This is recorded electronically. Typed or written records of interview are to follow a similar format with the addition that the adopting officer also asks about the accuracy of the record of the interview. The adopting officer must record any comment the detained person makes. At the conclusion, the adopting officer asks the interviewee to sign the interview and then witnesses that signature by signing his/her own name together with the date.

6.96 In the case of a statement, the adopting officer asks a series of questions about whether the interview was voluntary and fair, asks the suspect to sign the statement, and witnesses the statement with his or her name and the date. [404]

6.97 Information about the time and place and circumstances of the interview would form part of the custody record of an individual who provided a statement or record of interview while under arrest. It is one of the requirements of the custody manager that he or she '… will conduct a thorough and professional check of the person's treatment by police …'.[405] This measure should serve to support the adoption process undertaken with the adopting officer.

6.98 The Commission is of the opinion that these guidelines are much more specific about the manner in which an adoption is to be conducted. It is noted, however, that the guidelines relating to typed records of interview

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403 See footnote 392.

404 NSW Police Service, *Code of Practice for Custody, Rights, Investigation, Management and Evidence (CRIME)*, February 1998, pp. 27, 30, and Annexures 'C', 'D', 'E'.

405 NSW Police Service, *Code of Practice for Custody, Rights, Investigation, Management and Evidence (CRIME)*, February 1998, p. 12.

or handwritten statements do not require the adopting officer to record the time of the adoption.

6.99 As such the Commission recommends that guidelines on the adoption of typed records of interviews or handwritten statements should be amended to include the requirement that adopting officers write his/her name, rank, date and time when signing an adoption, the place where it occurred and in whose presence it occurred.

DUTY BOOKS

6.100 In 1989-1990, as today, designated detectives, plain clothes police, trainee detectives and some other police officers of senior rank are issued with, and use, duty books for the purpose of recording their duty on a daily basis. Those books are used as a management tool to record hours and the place of duty and to record such things as overtime and shift allowances, as well as recording rest days and periods of leave.

6.101 Those books are, and have been, an accountable record and they are issued to the individual police officer concerned. Each book carries its own individual identification number for accountability purposes. There was in 1989 and 1990, and there is now, a requirement for police officers to return those duty books to the station of issue once completed.

6.102 Duty books can also be used as an aid to a police officer in the preparation of statements for court proceedings and as an aid to the police officer in giving evidence in court. As such, they are a very important document and it is expected that an officer's duty book will adequately and accurately reflect duty carried out by that officer. The relevant Commissioner's Instruction for duty books, in 1989, stated that times were to be recorded when an officer commenced duty, returned to the station and ceased duty for the day. Further:[406]

> Brief entries only need be made in duty books but these must include place visited, with whom, persons spoken to and action taken. Police will rely on information contained in their notebooks and other official documents if and when detailed particulars are required.

6.103 The questions arising, given these Instructions, are firstly, whether the duty book entries examined during the Commission's hearings were recorded in accordance with the Instructions. Secondly whether the Instructions were sufficient given that there were significant questions about the arrest and questioning of NC1, Matthew Webster and Guy Wilson. These questions cannot be answered.

[406] PIC Exhibit 78, Commissioner's Instruction 25.29 dated 1 August 1989, barcode 5375535.

6.104 None of the duty books available for examination in relation to the collection of NC1, Matthew Webster and Guy Wilson on 15 November 1989 record what time the officers, and the persons they intended to interview, returned to Newcastle Police Station.[407] The duty book of Detective Douglass does not record the identity of the officers he was with when he interviewed NC1. The duty book of Detective Loy does not record other officers besides Detective Plant as involved in transporting Matthew Webster though clearly other officers were involved. Further, between the point at which Matthew Webster was brought to Newcastle Police Station (with the time unspecified) only the brief notation '… charged re Assault, Supply Cannabis, so engaged til 12 midnight …' appears in his duty book. This entry provides no detail of Detective Loy's own actions over that time period. The duty book entry of Detective Graham is also brief in parts, with the only notation covering the time between the end of one meal break at 12.30 pm and the commencement of the next at 6.30 pm being 'Resume inquiries'. Like others he does not identify other officers involved in interviewing Matthew Webster.

6.105 The Commission also notes, however, the evidence of a number of officers, including Detectives Douglass and Loy, that duty books are an outline of their duty on a particular day and are often brief in detail. Detective Yeomans agreed with Counsel for Detective Chaffey that a number of other record sources are available to those wishing to check details of a particular event, including running sheets, records of interview, adoptions, charge sheets and charge books and bail documents. Also, that a number of those records were more contemporaneous to the actual events than the duty book entry. Detective Yeomans made the point that it would not be possible to put every piece of data available to an officer in their duty book.[408]

6.106 Despite the argument that duty books are not meant to provide a complete record regarding particular events, and that other records exist to provide a complete picture, the Commission has found that if all the records relating to the events it has investigated are examined it is still not possible to form an accurate view of what took place. Contradictions are common and information is often incomplete or unreliable, as demonstrated in this section and above.

6.107 It would appear that this situation would not be alleviated by current practices regarding duty books alone. The Commission notes that current guidelines regarding entries in duty books have changed little since 1989. The Police Service Handbook advises officers issued with duty books that

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[407] See PIC Exhibit 3, duty book of Detective Douglass; PIC Exhibit 28B, duty book of Detective Loy; PIC Exhibit 45B, duty book of Detective Graham; PIC Exhibit 61, duty book of Detective Hetherington.

[408] PIC Transcript, EP Douglass, 18 November 1998, p. 138; PIC Transcript, JA Loy, 24 November 1998, p. 332; PIC Transcript, PC Yeomans, 17 December 1998, pp. 1197-1200.

they should make their entries in pen, that they should 'write in each phase of duty with time commenced and completed, including meal times, times in and out of your location etc' and 'include places visited, people spoken to and action taken (record detailed information in your notebook)'.[409]

6.108 Additional information about arrests should be available through the custody record, but that record provides little scope for documenting the circumstances of a person's arrest. COPS, the police computer database, on which all arrests and charges are registered does provide scope for inclusion of information about arrests. Whether these new systems will prove adequate to reconstruct the circumstances of an arrest cannot be determined within the scope of this Report.

ACCESS TO DUTY BOOKS

6.109 While other record sources may contain detailed information about particular events, the duty book remains the one record of the activities of a particular officer over a set period of time and retains a unique importance. It was of concern to the Commission that significant difficulties were encountered in obtaining all duty books relevant to this investigation.

6.110 Several duty books were received from the Crime Commission pursuant to notice under section 26 of the Act, including those of Detectives Douglass, Chaffey, Hunter and Hetherington. Duty books for Detectives Mulligan, Kane, Thurbon (19 January 1990 onwards) Graham, former Detective Mullard and Senior Constable Marsden were received from the Police Service.

6.111 Duty books for Detective Sergeant Douglass (being copies of duty books he had provided to the Crime Commission) and Detective Loy were received from those officers respectively pursuant to a notice issued under section 26 of the Act.

6.112 Detectives Cunningham, Yeomans, Plant, Connelly, Hughes, Sergeant Paget, Senior Constable Nichols and former Sergeant Freeman advised, in response to section 26 notices issued to them, that they were unable to produce or locate duty books for the relevant period. Duty books for Detective Thurbon prior to 19 January 1990 were also unable to be located.

6.113 A number of the officers who were unable to locate their past duty books and notebooks told the Commission that they had made inquiries at a number of stations without success. They reported that they had contacted a number of stations where they had previously worked on the possibility

[409] NSW Police Service; *The Police Service Handbook* 'Notebooks' (updated 1 September 1999), p. N3-N5.

that the relevant records had been handed in and retained there. Some also reported being directed to other Police Stations as locations where records were being centrally stored, again without success. Some were told their duty books had been destroyed. [410]

6.114 Detective Thurbon told the Commission that his duty books containing entries prior to 19 January 1990 had been returned to the Regional Crime Squad in Newcastle. According to his evidence, within a year of leaving the squad in February 1990, he had received a request for the return of his duty books and notebooks used while at the Regional Crime Squad as he had been transferred to other stations. He returned those books pertaining to his time there, but retained the duty book that he had commenced using in January 1990. He also stated that he was told when making recent inquiries for the returned duty books, that the duty books and notebooks from the disbanded Regional Crime Squad, North Region had been sent to Crime Agencies in Sydney for storage when it was formed.[411] Sergeant Paget was also told that the duty books for the Regional Crime Squad were stored at Crime Agencies. Crime Agencies had told him the relevant duty books could not be found.[412]

6.115 Detective Plant told the Commission that he had made enquiries, without success, about the relevant duty books and notebooks at several stations at which he had worked. He informed the Commission that administration staff at Newcastle Police Station had told him that all the duty books and notebooks from that time had been forwarded to Crime Agencies. He also told the Commission that when he enquired at Crime Agencies for those duty books and notebooks he was told there was no record of them being there.[413]

6.116 On 1 February 1999 Detective Plant was further questioned by Counsel Assisting about the whereabouts of his duty books. Detective Plant told the Commission that, despite Commissioner's Instructions requiring the return of completed duty books, it has been his practice to retain his duty books and notebooks in his personal possession. He also stated that six months prior to his leaving the Regional Crime Squad he was requested to return his duty books issued by that squad and he did return two or three duty books for which he did not receive a receipt. He retained one duty book issued by the Regional Crime Squad that he had taken with him when he transferred to another Police Station. Detective Plant could not explain how it was that despite his evidence of returning the books there

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410 PIC Transcript, PC Yeomans, 17 November 1998, p. 54, and 17 December 1998, p. 1181; PIC Transcript, MPJ Cunningham, 21 December 1998, p. 1216.

411 PIC Transcript, RG Thurbon, 26 November 1998, pp. 507, 523-524.

412 PIC Transcript, CL Paget 3 December 1998, p. 834.

413 PIC Transcript, MB Plant, 23 November 1998, p. 302.

was no record of them amongst the duty books received by Crime Agencies from the former Regional Crime Squad in Newcastle.[414]

6.117 When asked why he kept his duty books in his possession he stated that it was to keep them safe and provide ease of access, rather than have to travel to different stations looking for a duty book required for court or to answer an inquiry on a file. He also gave evidence that this was a common practice at that time, despite Commissioner's Instructions to the contrary.[415]

6.118 Detective Plant also gave evidence that he believed that previously, when a duty book he was using was subpoenaed by a court, he had used his private diary to make notes of his duty. He believed this because his diary for a period in 1990 contained more detailed notes than was typical for him to make.[416] That diary for 1990 and his private diary for 1989 were provided to the Commission in response to a notice. While Detective Plant was giving evidence to the Commission on 1 February 1999 steps were taken by the Commission to have the contents of his police locker examined. The results of that action are discussed below in Chapter 7.

6.119 Commission investigators also made their own inquiries using Police Service records in an attempt to locate certain duty books. Investigators found significant gaps in Police Service records regarding the retention and location of duty books from the 1989-1990 period.

6.120 Procedures for the maintenance and storage of completed duty books have changed a number of times since 1990. The Police Service has also been restructured significantly. These factors are likely to be partly responsible for the difficulties encountered by the Commission in locating these documents.

6.121 Commissioner's Instruction 25, issued 1 August 1989, stated that records should be kept, in each Police Station, of the various books on issue to police, including notebooks and duty books. Those records were to have also included: a date of issue, date of return, signatures of the officer returning a book, and the signature of the officer receiving and filing completed books. Duty books were to accompany an officer on transfer and completed duty books were to be stored at the Police Station where the officer was attached on its completion. The Instruction also stated that when a filed duty book was required for court or other purposes a record was to be made of its re-issue and its return. An officer was to be able to retain a re-issued duty book for up to two months and the responsibility

414 PIC Transcript, MB Plant, 1 February 1999, pp. 1371-1376.

415 PIC Transcript, MB Plant, 1 February 1999, pp. 1375, 1379, 1387.

416 PIC Transcript, MB Plant, 1 February 1999, pp. 1454-1455.

for its return would rest with the police officer concerned, not the issuing officer.[417] Duty books and notebooks in that period were destroyed after a five year period.

6.122 Changes to the retention and disposal procedures for duty books came about as a result of the Royal Commission. Initially, on 13 May 1994 a Police Commissioner's Memorandum was sent out calling on officers holding a delegation in respect of the destruction of Service documents to exercise 'the utmost care and discretion when approving, in accordance with policy, the disposal of such material …'.[418]

6.123 A Police Commissioner's Memorandum of 8 September 1994 stated that duty books and notebooks were no longer to be destroyed in accordance with the then current destruction policy but were to be retained indefinitely. Access to filed duty books was to be for legitimate purposes and photocopies provided in lieu of originals whenever possible. A Commissioner's Notice of 20 March 1995 required all Commanders to ensure an inventory of duty books, notebooks and diaries was compiled and kept current. Requests for access to filed books were to be made in writing with access only provided upon the Commander being satisfied such access was for legitimate police purposes. Where possible the original was to be retained and, if necessary to remove it, a photocopy was to be taken and preserved until the original was returned. Commissioner's Instruction 25 and 28 on the filing and access to filed duty books was formally changed on 1 May 1995.[419]

6.124 On 10 November 1997 the culling of all corporate records recommenced with culling to be carried out by trained staff. Records identified as required for the State archives were to be transferred to the corporate archivist and all other records were to be confidentially destroyed.[420]

6.125 In his submissions, Counsel Assisting described the system of accounting for Police Service duty books and the system or systems for their storage and disposal as 'makeshift at best'. He noted the evidence of some officers that no satisfactory procedure or method was in place for the collection of used duty books and no satisfactory procedure or system was in place for their storage.[421]

6.126 Counsel Assisting surmised that those officers who chose to retain their duty books, contrary to the Commissioner's Instructions, did so because

[417] PIC Exhibit 78, barcodes 5375536-5375538.

[418] PIC Exhibit 80.

[419] PIC Exhibits 81 and 82.

[420] PIC Exhibit 83, 'Culling Your Records', *Police Service Weekly* 10 November 1997, Vol 9, No 45.

[421] PIC Exhibit 185.

they feared that those duty books might be lost if they were returned to the station or agency where they were issued. Commissioner's Instructions were not complied with and no procedures were in place to ensure compliance.

6.127 He submitted that, to this day, the requirements that are in place and the systems or procedures used to ensure compliance with those requirements, are inadequate to ensure that accountable records, namely duty books and notebooks, are retained to enable them to be used for future reference. He went on to recommend a system that could be introduced to ensure that books were returned and stored such that they are intact and accessible for a period of at least 5 or 7 years, or as long as required. In his submissions Counsel Assisting recommended a number of alternatives:[422]

1. That duty books, as they generally last about one year, be in the form of a one year diary, either the financial year or the calendar year. Each officer would then be expected to return one book annually, simplifying record keeping.

2. Officers should be required to enter into COPS (Computerized Operational Policing System) their duty each day. Such a system would facilitate storage and retrieval and could be established so that information could not be amended more than a day following the date of the entry, preventing officers from completing duty records weeks or even months in arrears.[423] This would enable the material contained in the duty book to be seen as contemporaneous or reasonably contemporaneous and would make the duty book entry a far better document for evidentiary purposes. Such a system would also enable a manager to refer to the duty books of officers under their command without the need to communicate directly with an officer who may be in the field.

3. To ensure that duty books and notebooks are returned as required, introduce a system whereby new books would not be issued until a previous duty book or notebook is returned.

4. Implement a system whereby officers record in a new duty book or notebook the identification of the previous duty book or notebook together with sufficient information to identify where the previous duty book is situated.

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[422] PIC Exhibit 185.

[423] Evidence about such practices has been received by the Commission during the hearings for Operation Saigon.

6.128 Submissions made on behalf of the Commissioner of Police addressed the alternatives recommended by Counsel Assisting. The submissions noted that on 18 March 1999 the Commissioner's Executive Team met and discussed, among other things, concerns revealed by the Commission's hearings regarding duty books. The Executive Team resolved to amend the Police Service policy regarding the issuing and return of duty books such that if an officer is transferred, or seconded to a specialist command, the officer's then current duty book and/or notebook is to be filed with that officer's current command and new books would be issued at the officer's new work location. The responsibility of filing completed books is to remain the responsibility of the Local Area Command. The period of time that completed duty books and notebooks is to be retained by the Police Service is to remain five years.[424] At that meeting the Commissioner's Executive Team also decided that an amnesty for returning completed duty books and notebooks was to be implemented.

6.129 The submissions on behalf of the Commissioner of Police also included an examination of the feasibility of the submissions made by Counsel Assisting as listed above. According to those submissions, the view of the Commissioner of Police was that annual duty books would not be feasible as such duty books would be too big and cumbersome. The submissions also noted that the Police Service was to introduce a new computer system, STAR (Solution for Technological Administration of Resources), that would incorporate records relating to rostering, overtime allowances, training and other records, as well as all duties of all police officers. The daily duties and activities of each police officer would be stored in that system.[425] That system has since been implemented.

6.130 The submissions also reported that, as a result of the Commissioner's Executive Team Meeting of 18 March 1999, a 'Police Service Circular' was issued by Deputy Commissioner Jarratt on 31 May 1999.[426] The following procedures were announced or reaffirmed in that Circular:[427]

- a new for old policy, in that officers would not be issued with a new duty book until the used book was handed in;

- books should be returned as soon as completed;

[424] PIC Exhibit 170.

[425] PIC Exhibit 170, barcode 5487191.

[426] Police Service Circular 99/15.

[427] PIC Exhibit 170, barcode 5487220.

- books were to be filed at the location from where they were issued;

- officers were no longer permitted to keep completed duty books for two months for ongoing investigations, instead, they were to photocopy any information they might need;

- when an officer was transferred or seconded to a specialist area their books should be ruled off as complete and new books issued to them at their new location;

- administration officers were required to record the number of the recovered book on the same line as the new book number in the accountable books register; and

- filed duty books and notebooks were not to be reissued without written approval of the Commander of the area where they are filed.

6.131 The Police Service Handbook was updated on 1 September 1999 to reflect the guidelines contained in the Circular of 31 May 1999. It also calls on the Commander to nominate an officer at each location to ensure new and completed books are kept secure, issue books, maintain records and file used books alphabetically using officers' names. The Commission notes that these new guidelines address a number of the submissions made by Counsel Assisting.

6.132 The Commission also received from the Police Service a memorandum prepared by the Commander Crime Agencies for his staff in response to evidence provided during the Commission hearings. The memorandum was dated 2 February 1999 and reinforced the necessity of returning books. It also explicitly stated that, under no circumstances were personal diaries to be kept by non-commissioned officers when uncompleted notebooks or duty books were subpoenaed or a notice was received for their production. It goes on to outline a number of practices that can be adopted to avoid this situation, including providing certified photocopies of relevant material to the court, where permissible, or closing off the book to be produced and issuing the officer with a new book.[428]

[428] NSW Police Service, Crime Agencies 'Memorandum from Commander Crime Agencies re: duty books, notebooks and vehicle diaries, dated 2 February 1999', barcode 5414966-5414967.

6.133 In further submissions dated October 1999, Counsel Assisting noted that an examination of current duty books indicates that they had available pages for 254 days and that most such books last officers for periods exceeding one year, taking into account leave, sick leave and other events. He repeated his previous submission that duty books could be issued at a standard date (e.g. 1 January) for all officers and that such a use of duty books would not be bulky or cumbersome as suggested in the submissions of Counsel for the Commissioner of Police.[429] The Commissioner of Police, in further submissions, maintained his submission that the suggestion of standard 12 month duty books was not feasible.[430]

[429] PIC Exhibit 188.

[430] PIC Exhibit 190.

7. OTHER MATTERS ARISING FROM THE PUBLIC HEARINGS

7.1 This chapter will examine a number of issues that have arisen subsequent to the police investigation of 1989-1990 and in some cases as a result of the Commission's own investigations. These include:

- issues raised by Associate Professor Kerry Carrington;
- recent allegations that police associated with the investigation were involved in a sexual assault on 3 November 1989;
- issues about the use of police discretion;
- allegations about the Commission's investigation of this matter; and
- production of duty books and notebooks to the Commission by Detective Plant.

CONCERNS RAISED BY ASSOCIATE PROFESSOR KERRY CARRINGTON

7.2 Associate Professor Kerry Carrington, a criminologist formerly of the University of Newcastle and now at the University of Western Sydney, became involved in researching the murder of Leigh Leigh whilst working at the University of Newcastle in 1993. She took part, with the Newcastle Legal Centre, in preparing the 1995 District Court appeal by the family of Leigh Leigh, from the decision of the Victims Compensation Tribunal. At that hearing Judge Moore made a number of findings consistent with concerns that had been raised by Associate Professor Carrington, the Newcastle Legal Centre and the Leigh family regarding the police investigation of the events of 3 November 1989.

7.3 Associate Professor Carrington has, over the years, published concerns about the police investigation into the murder through several academic papers and more recently in a 1998 book titled Who Killed Leigh Leigh?: A Story of Shame and Mateship in an Australian Town.[431] She also made a submission, to the Royal Commission, which contained allegations in relation to the conduct of the police inquiry.[432]

[431] PIC Exhibit 72, Carrington, K., *Who killed Leigh Leigh?: A Story of Shame and Mateship in an Australian Town*, Sydney, Random House, 1998.

[432] Crime Commission, Hexham Report, p. 31.

7.4 A number of the matters raised by Associate Professor Carrington were examined by the Crime Commission during its investigation into Leigh Leigh's murder. In relation to those matters its report stated:[433]

> Not all of the allegations raised in Dr Carrington's various works have been dealt with in this report. They have each been investigated. Those that have not been reported on are regarded as groundless. As to the rest, most, but not all, are inconsistent with the Commission's findings.

7.5 Associate Professor Carrington was summonsed to provide evidence at Commission hearings. During the course of that evidence the reasons for calling on Associate Professor Carrington were summarised by the Commissioner as follows:[434]

> … in your [Associate Professor Carrington's] book and in the interviews that you have had with people, that is, in what you have written and in what you have said, there appear to be allegations of serious police misconduct and serious police misconduct is something that this Commission investigates.

7.6 This section will present evidence obtained by the Commission through the public hearings on those issues and it will also present information uncovered by the Commission through its own investigations. Some issues raised during Associate Professor Carrington's evidence are also dealt with in other sections of this chapter.

SUPPRESSION OF RELEVANT MATERIAL IN POLICE BRIEFS OF EVIDENCE

7.7 Associate Professor Carrington has suggested on a number of occasions that relevant material had not been properly presented to the Courts in hearings for both Matthew Webster and NC1.

7.8 In a television interview conducted on 29 June 1995, Associate Professor Carrington had stated:[435]

> … you have to remember that Matthew Webster's murder hearing was not a test of the facts of this case. It was a very carefully selected police brief in which very significant and relevant information pointing to the involvement of others in extremely brutal sexual violence and murder was censored out …

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433 Crime Commission, Hexham Report, pp. 31-32.

434 PIC Transcript, KL Carrington, 8 February 1999, p. 1540.

435 PIC Exhibit 144, Transcript of an Interview Between Steve Liebman and Dr Kerry Carrington on the Nine Network 'Today' Show dated 29 June 1995.

7.9 Earlier that month, in a radio interview conducted on 1 June 1995 with Mr Jeff Jay, Associate Professor Carrington was asked how Judge Moore was able to come to a decision that NC1 had raped Leigh Leigh when all the evidence had been previously presented. She replied:[436]

> KC: … none of the evidence was presented by the police. The police construction of the case deliberately - oh - excluded a great deal of the evidence. We - Mrs Leigh's lawyers subpoenaed a whole mass of documentation, including the full autopsy report, which was suppressed from all those hearings. So, the police chose to suppress a whole range of very relevant material and that very relevant material has been suppressed, so the Judges didn't have it put before them, and if you don't have the relevant material put before you, you can't make those judgments.

7.10 Later, in her book, she indicated that the police brief of evidence and statement of facts in the prosecution of Matthew Webster were deficient and that the police had overlooked forensic and witness evidence that cast doubt on his confession.[437] In the book she also suggests that police actions in this regard had had an impact on the sentence received by Matthew Webster:[438]

> It seems to me that the police conception of the crime, as outlined in Detective Chaffey's facts statement, was based on a careful selection and editing of the available evidence. So much failed to surface during Webster's sentence hearing that the official version of the objective gravity of this crime was considerably weakened. And these things related to the determination of Webster's sentence.

7.11 The Commission notes that the sentencing of Matthew Webster was previously addressed by the Crime Commission in its report. That report concluded that the police investigation did not lead to important relevant facts being omitted for the purpose of sentence proceedings and that the sentence imposed on Webster was appropriate.[439] It also concluded that Matthew Webster acted alone in murdering Leigh Leigh.[440]

7.12 Associate Professor Carrington gave evidence to the Commission on 28 January 1999 that it was now her belief that Matthew Webster had acted alone, in a legal sense, when he murdered Leigh Leigh.[441]

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436 PIC Exhibit 142, Transcript of Interview Between Radio 2HD's Jeff Jay and Dr Kerry Carrington of 1 June 1995.

437 PIC Exhibit 72, pp. 78-83.

438 PIC Exhibit 72, p. 94.

439 Crime Commission, Hexham Report, p. 29.

440 Crime Commission, Hexham Report, p. 28.

441 PIC Transcript, KL Carrington, 28 January 1999, p. 1251. In her evidence Associate Professor Carrington maintained that she believed that it was a 'common purpose' murder and that other persons were involved in a criminological sense, though not a legal sense.

7.13 Associate Professor Carrington was questioned on these matters at the Commission hearings by Counsel for Detective Chaffey. She was asked about her current views on the deliberate exclusion of evidence by police, as stated in the interview with Mr Jay. She replied that she had since discovered material that would not lead her to those conclusions now. She was asked further questions about that statement by the Commissioner:[442]

> Q. Well, are you talking now about the material that you had at the time of the interview with Mr Jay, that had it been properly examined you wouldn't have come to those conclusions, or are you talking about something by way of material that has come your way since then?
> A. In all honesty I can say that's what I thought at the time with the material I had. On closer examination of the material, I didn't come to that conclusion, and - but I've sat through six days of hearings here. I've read the Crime Commission report and my views have changed.
>
> Q. Well, whatever you said to Mr Jay, do you say to me now that you do not hold the view that the police, in the construction of the case concerning the murder of Leigh Leigh, excluded a great deal of evidence?
> A. I hold the view that there was an exclusion of material, but not that it was deliberate.
>
> Q. Concerning the murder of Leigh Leigh?
> A. Mostly about the sexual violence.

7.14 This reference to the exclusion of material about sexual violence alludes to another concern expressed by Associate Professor Carrington in her writings and in the media. She has stated on a number of occasions that the full autopsy report of Leigh Leigh, which contained full details of the genital injuries she suffered, was not on the brief of evidence provided to Justice James Wood for the sentencing of Matthew Webster. She further contends that, as a result, the gravity of the sexual assault was not available to Justice Wood in determining sentence.[443]

7.15 Because of the seriousness of this issue it was examined by the Commission even though it did not involve a specific allegation of police misconduct. Investigations carried out by this Commission found that the full medical report of the post mortem by Dr Oettle was, in fact, tendered as part of the

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[442] PIC Transcript, KL Carrington, 8 February 1999, p. 1526.

[443] PIC Transcript, KL Carrington, 9 February 1999, p. 1590; PIC Exhibit 72, p. 78. Associate Professor Carrington also told the Commission that she formed this belief because the full autopsy report was not included in a copy of the brief that was provided to her under a covering letter from Detective Chaffey stating that the enclosed brief was the police brief provided to Justice Wood; PIC Transcript, KL Carrington, 9 February 1999, p. 1641.

prosecution's brief of evidence. Moreover, at the sentencing of Matthew Webster on 24 October 1990 at the Supreme Court, Newcastle, Justice Wood had in his possession that full Medical Report and all relevant material upon which he could hand down an appropriate sentence.[444] Further, the Court of Criminal Appeal also had in its possession all relevant material upon which it could made its finding, including the two post mortem reports.[445]

7.16 In submissions made on behalf of Associate Professor Carrington, the wording of the facts sheet written by Detective Chaffey was criticised for seriously understating the gravity of the sexual violence inflicted upon Leigh Leigh. The submissions also include the statement:[446]

> If Matthew Webster decided to plead guilty on the basis that an agreed set of facts be submitted on sentence that reduced the gravity of the sexual violence, then it may be correct in a technical legal sense to state that 'important relevant facts' were not omitted for the purpose of sentence. However, if this be the case it is submitted that this formulation disguised the substance of what happened at Webster's sentence hearing.

7.17 The Commission is of the view that these remarks suggest some collusion by parties unnamed to deliberately reduce the effect of important information. The Commission is of the view that such a collusion would be unlikely. Both prosecuting and defence attorneys would be aware that the sentencing judge would note that the basic facts were as stated in the 'facts' document; but also that a sentencing judge takes into consideration all material admitted into evidence. In this case that included the autopsy report.

7.18 The Commission is of the opinion that, from the evidence it has received, no relevant material relating to the manner in which the murder was committed was excluded from the police briefs. There is no evidence to support allegations that police deliberately excluded such evidence. The possibility of deliberate exclusion of other evidence from police statements relating to the arrest and questioning of Matthew Webster has been dealt with earlier in this Report.

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444 A copy of the six page post-mortem report of 4 April 1990 contained in the Court of Criminal Appeal file, number 60582, of 1990 was tendered as PIC Exhibit 163.

445 Officers of the Commission examined the Court of Criminal Appeal file for the matter of *Webster v R*. Included on that file was the police brief that went before Justice Wood for the sentencing of Matthew Webster on 24 October 1990. Within the police brief are found both the Interim and Medical Report of the post mortem and both reports are contained in the table of contents for the brief. The Medical Report was stamped as having been received at the Newcastle Court House on 18 April 1990. Files received by this Commission from the Crime Commission included the police copy of the Webster murder brief submitted to the DPP. The full Medical Report was part of that brief.

446 PIC Exhibit 181B.

UNCOVERED 'WITNESS STATEMENT' ON THE MURDER

7.19 On a number of occasions in the past, Associate Professor Carrington has stated publicly that she is in possession of a witness statement to the murder which indicated that more than one person was involved in the actual murder of Leigh Leigh. In a television interview on 29 June 1995 the following exchange took place:[447]

> SL: Do you know the identities of the others that you allege were involved in the murder of Leigh Leigh?
> KC: Yes - and I have a witness statement actually describing an account of who else was involved in the murder, in addition to Matthew Webster. I've made that public knowledge since the Telegraph Mirror article on Saturday. No one has asked me for that statement. I've rung up the Attorney-General's office. I've tried to give them that evidence. I have just - this has just been buck passed from one authority to another. No one wants to take any responsibility for the mantle of justice here.

7.20 In referring to this document in her book Associate Professor Carrington wrote that, after the police had charged Matthew Webster, the author of the document (given the pseudonym Simpson by her) had written a letter to someone in the police hierarchy to tell them they had made a mistake in not charging others with the murder. She also described how she came into possession of the document. While qualifying the reliability of the material she wrote that, 'this letter gives every indication of there being close and established networks of communications between someone in officialdom and at least one informant in the community'. She continues here that she is not suggesting anything untoward in this.[448]

7.21 It was her opinion that the events of the murder as described in the letter better fit the forensic evidence than the confession provided by Matthew Webster.

7.22 On 28 January 1999 Associate Professor Carrington repeated to the Commission her assertion that she had a witness statement in her possession:[449]

> Q. Do you have any statement from any witness to the actual murder of Leigh Leigh?
> A. One.

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[447] PIC Exhibit 144, Transcript of an Interview Between Steve Liebman and Dr Kerry Carrington on the Nine Network 'Today' Show dated 29 June 1995.

[448] PIC Exhibit 72, pp. 101-103.

[449] PIC Transcript, KL Carrington, 28 January 1999, p. 1252.

7.23 Associate Professor Carrington identified the author of the statement to be Raymond McDermott. She provided evidence that while she had not spoken to that person, he had claimed authorship of the statement publicly through a press article.[450]

7.24 On further questioning Associate Professor Carrington explained that the document, which was handwritten and undated was not actually that of an eyewitness to the murder but written by someone who had overheard others talking and was 'witness to admissions'.[451] She was questioned further about this by the Commissioner to clarify her statements:[452]

> Q. I'm just a little concerned as to why we've now departed from your answer 'one' to the question 'Do you have any statement from any witness to the actual murder of Leigh Leigh?', to your most recent evidence that you don't have a statement from any witness to the actual murder of Leigh Leigh. Is that where we've reached now?
> A. I think that's a fair interpretation, yes.
>
> Q. And that is the fact, is it; namely, that you've never had a statement other than those gathered, whatever they may have been, from police from a witness to the actual murder of Leigh Leigh?
> A. No, not to the actual murder, no.

7.25 When questioned, Associate Professor Carrington confirmed that the letter by Raymond McDermott was the 'witness statement' she spoke of in her 1995 interview referred to above.

7.26 Associate Professor Carrington was later referred to PIC Exhibit 125AC which was a statement made by Raymond McDermott to police on 9 November 1989. It was agreed that there was nothing in that statement that asserts directly that Mr McDermott had any knowledge of who committed the murder. Counsel Assisting then took Associate Professor Carrington to an entry on a police running sheet referring to a phone call to police from Mr McDermott later that day in which he sought to correct something he had said in his statement about the source of his information:[453]

> Q. And it records him having said that the source of his information that was contained in the last paragraph of his statement was that he had heard something from a person who told him that he'd heard somebody else say something about what somebody else had said?
> A. Yes.

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[450] PIC Transcript, KL Carrington, 28 January 1999, p. 1253.

[451] PIC Transcript, KL Carrington, 28 January 1999, p. 1256.

[452] PIC Transcript, KL Carrington, 28 January 1999, pp. 1256-1257.

[453] PIC Transcript, KL Carrington, 28 January 1999, pp. 1271, 1281.

7.27 These points of contact were the only ones that police investigating the murder had with Mr McDermott. It was also revealed by Counsel Assisting that the McDermott letter had been written at the time that the family of Leigh Leigh made their application for victim's compensation, that is, well after Matthew Webster was sentenced.[454] The letter had not been available to police at the time of the initial investigation or during the time between when he was charged and when he was sentenced. In fact, Mr McDermott apparently claimed that he had sent it to the Police Minister, not to the investigating police.[455]

7.28 Counsel Assisting also revealed that Mr McDermott had said on oath that he had not known that the information contained in the letter was true, but that he had surmised it because he did not believe that Matthew Webster had acted alone.[456]

7.29 Associate Professor Carrington was asked whether she had made any attempt to verify the contents of the letter. She replied that that had been her intention in sending the letter to the Royal Commission and then the Crime Commission. She did not see herself as equipped to judge it.[457]

7.30 It is the opinion of the Commission that the evidence before it relating to Mr McDermott discloses that he had no information that might have assisted the murder investigation. Further, it is noted that there is no evidence that the letter, to which Associate Professor Carrington referred, was ever made available to the police investigators although they were in possession of his earlier formal statement.

CONCERNS OVER FORENSIC TESTING OF CLOTHING

7.31 In her book Associate Professor Carrington writes that Detective Plant recorded that he had taken clothing from Matthew Webster's premises on 5 November 1989, but that it was still unclear whether these clothes were ever tested. She goes on to state that four years later she was told by a detective from the Homicide Unit that no clothing taken from suspects was tested.[458]

7.32 Later she wrote:[459]

> The official records indicate that clothing and blood samples were taken into police possession from suspects, even if not tested. But it remains

454 PIC Transcript, KL Carrington, 28 January 1999, p. 1296.
455 PIC Transcript, KL Carrington, 8 February 1999, p. 1505.
456 PIC Transcript, KL Carrington, 28 January 1999, p. 1295.
457 PIC Transcript, KL Carrington, 28 January 1999, p. 1295.
458 PIC Exhibit 72, p. 61.
459 PIC Exhibit 72, p. 71.

> undiscoverable to those of us who've searched for years, whether forensic testing of an evidentiary significant nature was ever carried out. At the very least, three items were missing from the forensic biologist's report; it is unknown whether testing of a highly crucial significance on Pott's [pseudonym for Wilson] blood stained t-shirt was ever done at all; and police later admitted no DNA testing was undertaken despite some very public claims to the contrary in the first couple of weeks into the investigation.

7.33 Earlier she had written that the forensic biologist had received only four items for testing from the Newcastle police (only two of which were items of clothing). She also quotes the biologist's report which listed the items that had been scientifically examined. That list numbered the items as '1. Blood, 5. Shorts, 6. Panties' and '7. Rock'.[460]

7.34 The Commission was of the view that such statements indicated possible police mishandling of forensic material important to the original investigation and undertook to examine this issue, though it was not raised in the public hearings.

7.35 The Crime Commission had already conducted some inquiry in this area and a number of relevant documents from the original investigation were obtained through it.

7.36 Review of these documents and evidence provided to the Crime Commission during their hearings, revealed the following:

- Over 35 items, mainly clothing, were examined by the Division of Forensic Medicine. The four items appearing on the forensic biologist's report (numbers 1,5,6 and 7) appear to have been listed as they were the only ones that showed a positive result and were relevant to the brief prepared for the murder charge against Matthew Webster.[461]

- A number of items of clothing collected by police were not tested as they did not have any visible stains on them. The general rule that operated at the time, confirmed by the forensic biologist who undertook the testing, was 'if you cannot see a blood stain, you cannot group it'.

- Items of clothing collected from Matthew Webster after his initial interview on 5 November 1989 and further items obtained after his confession on 16 February 1990 appear not to have been tested as they did not have any visible stains.

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[460] PIC Exhibit 72, p. 70.

[461] A T-shirt, which Guy Wilson provided to police and which appeared to have blood stains on it, was tested but the results did not indicate any link to the murder of Leigh Leigh.

- There was no follow-up examination of Matthew Webster's clothing, despite the possible need for corroborative forensic evidence after his confession of 16 February 1990.

- Records kept of the movement of clothing obtained from Matthew Webster were inadequate for continuity purposes and no adequate record was made of the return or destruction of his clothing once a conviction had been secured.

7.37 On the basis of these investigations the Commission is of the view that investigative police collected articles of clothing from a number of persons who attended the party on 3 November 1989 and that the clothing was tested to the extent that such tests were possible at that time.

CONCERN ABOUT POLICE INFLUENCE ON THE OPINION OF DR OETTLE

7.38 In her 1998 book, Associate Professor Carrington wrote about a telephone conversation she had in 1994 with Dr Geoffrey Oettle, the doctor who performed the post mortem on Leigh Leigh (referred to in the book by the pseudonym Dr Mead). She writes:[462]

> … I asked Dr Mead whether there was forensic evidence of multiple sexual assaults upon the victim. Confirming this, he directed me to the nature of the genital injuries described in his report. After discussing the case with the homicide detectives, however, he changed his assessment of the nature of the injuries.

7.39 The Commission was concerned that this reference suggested some form of police influence on Dr Oettle to improperly change his opinion on the analysis of the injuries.

7.40 Dr Oettle was contacted by Commission investigators and was questioned whether he recalled the two conversations he had with Associate Professor Carrington in 1994. Dr Oettle stated that he did and that he recalled that during the first conversation he indicated to Associate Professor Carrington that at the post mortem examination of Leigh Leigh on 4 November 1989 he had formed an impression that the genital injuries were such that they may have been caused either by a single person or multiple persons. He had also noted that there was, however, none of the normal evidence present to corroborate a strong belief in the latter, for example the presence of different semen in the vagina.

7.41 Dr Oettle further recalled that following this conversation with Associate Professor Carrington he contacted the investigating detectives and requested

[462] PIC Exhibit 72, pp. 63-64.

he be allowed to read the depositions, particularly those of NC1 and Matthew Webster. Having done so Dr Oettle told Associate Professor Carrington, on the next occasion they spoke, that the genital injuries were consistent with the versions of the events provided by both NC1 (consensual intercourse) and Matthew Webster (sexual assault using his fingers).

7.42 It is the opinion of the Commission that there is no indication that Dr Oettle was unduly pressured by police to change his opinion on the facts. Most importantly, the conversations between Dr Oettle and Associate Professor Carrington took place in 1994 and hence had no bearing on the course of the investigation or prosecution of those involved in 1989-1990.

ALLEGATION OF SEXUAL ASSAULT OF TEENAGE GIRLS BY POLICE AT THE PARTY

7.43 An allegation that police had sexually assaulted teenage girls at the party of 3 November 1989 was first reported in public in a newspaper article by Greg Bearup published in The Newcastle Herald and The Sydney Morning Herald on 12 September 1998. That article reported on the Commission's investigation into alleged serious misconduct by police who had investigated the Leigh Leigh murder and that this included claims that police had 'seriously sexually assaulted teenaged girls'. Mr Bearup also wrote in the article: 'The Herald has spoken to a community worker who claims a young girl, questioned by police during the murder investigation, had been sexually abused by police'.[463]

7.44 On 5 November 1998 Associate Professor Carrington appeared in an interview on the Channel 9 'Today' Show where she was asked about the allegations reported in that newspaper article. Associate Professor Carrington told the interviewer that she had been approached shortly after the publication of her book by persons who had information about the case, including a person who had informed her of an allegation of police sexual assault on the night of the murder. Transcripts of that interview record the following exchange:[464]

> TH: So, what have they been saying?
> KC: Well there are, sort of, a whole raft of allegations of course which, many of which I, I certainly don't want to air. But, the essential one has been that the missing piece of the whole jigsaw puzzle is precisely that, the reason none of the boys were charged with a whole range of offences that night is because there's a serious allegation about the police themselves being involved in sexually assaulting young women.

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463 Bearup, G., 'Secret Leigh Leigh report alleges Police sexually assaulted teenagers Police Integrity Commission investigation', *The Newcastle Herald*, 12 September 1998, p. 1; Bearup, G., 'New inquiry over Leigh case', *The Sydney Morning Herald*, 12 September 1998, p. n/a.

464 PIC Exhibit 75, Tape Recorded Interview Between 'Today' Show Host Hugh Rimmington and Dr Kerry Carrington on the 5 November 1998.

…

KC: The nature of the allegation is that a girl at the party was raped by a police officer that night.

TH: Right. And so that would, and that would have been known, perhaps by other youths who were also at the party?
KC: And, yes. And known by certain detectives.

TH: And, and so is the suggestion that the police might not have pushed, or might have been willing to let people get away with things, in some sort of tacit deal. You don't talk too much about what we're up to, we won't push too hard about you were up to [sic]?
KC: That's certainly the, the nature of the allegation.

TH: Is it credible?
KC: The sources I have are pretty credible. One is, a community worker who actually has a file and dealt with and housed the young girl who was the victim of sexual assault at the time. And the other one is somebody who worked very closely with the Homicide Detectives.

7.45 The Commission took such an allegation very seriously and undertook to investigate the allegations as described by Associate Professor Carrington.

7.46 Associate Professor Carrington gave evidence to the Commission that around 14 August 1998 she had a conversation with an acquaintance, Francis Demanuel, who she also identified as a social worker. She described that conversation as follows:[465]

> I can't give you the precise words. He said to me - he called me over to the car and he said, 'I've got something to tell you'. He said, 'I know a little bit about that Leigh Leigh case'. I said, 'What?' He said words to the effect that he knew why no-one was charged with rape and he knew why so many boys got off, of assault and other charges. I said, 'Why, what do you know?' And he said - he said he'd been frightened and he didn't want to tell me. He knew I was writing the book and he said, 'While you're writing it, I was going to tell you but I was too scared to tell you and I didn't tell you'. Just let me think how he said it next. Then he said that he could tell me why. I asked him why and what did he know and he said, 'Because the police were in on it too', and I said, 'In on what', and then he said, 'Well, one of the police officers at the party was in on raping one of the girls at the party that night'. And I said, 'How do you know that?', words to that effect, and he said that he knew the girl, he met the girl when he was working in a youth refuge, and then I said, 'Well, have you got any evidence of it, have you got anything?' I think I said things like, 'I'm sick of this case, I don't want anything to do with it', and he said he had a file and he said the file was somewhere in his garage. And I said, 'Well, can you get the file?' I said, 'If you can get the file then you could take it to the

[465] PIC Transcript, KL Carrington, 28 January 1999, p. 1268.

> PIC or something else', and he said words to the effect that he'd have to talk to the girl first because of - he was very, very concerned about client confidentiality and he said he'd have to clear it with her first. And I said 'okay' and left it at that.

7.47 On further questioning Associate Professor Carrington stated that she was certain that Mr Demanuel had used the term 'rape' and that the girl he had met was the girl who had been raped, however she was not certain if on that first occasion he had said that the rape occurred at the party of 3 November 1989 but that he had clarified that point at a later stage.[466] Associate Professor Carrington also stated that Mr Demanuel had later told her that the file in question had been shredded and also that he had contacted the girl in question but that she had refused permission to release the file.[467]

7.48 On 2 February 1999 Mr Demanuel appeared at a public hearing of the Commission. At that time Exhibit 130 was tendered, being the transcript of a private hearing held with that witness on 27 January 1999. Mr Demanuel was then questioned by Counsel Assisting about the evidence he had given on 27 January 1999:[468]

> Q. You told the Commission when you gave your evidence that that girl had not told you that she had been raped?
> A. That's correct.
>
> Q. She told you about what she'd been told by somebody else?
> A. That's correct.
>
> Q. That girl had not told you that she had been raped by anyone, and she didn't tell you that she'd at any time been raped by a policeman?
> A. That's correct.
>
> Q. Nor did she tell you that she'd been raped at a party?
> A. That's correct.
>
> Q. Now, you gave some evidence that the girl had told you that she'd been told something or she knew something about some girls who had been molested?
> A. Sexually - sexually harassed.

7.49 Mr Demanuel also gave evidence that he had told Associate Professor Carrington of what the girl had told him. He stated that he may have used the term 'rape' in his conversation with her. He also stated that he had never told Associate Professor Carrington that he held a file on the girl or that a file on the girl had been shredded.[469]

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466 PIC Transcript, KL Carrington, 28 January 1999, pp. 1269-1270.

467 PIC Transcript, KL Carrington, 28 January 1999, pp. 1270-1271.

468 PIC Transcript, FX Demanuel, 2 February 1999, pp. 1422-1423.

469 PIC Transcript, FX Demanuel, 2 February 1999, pp. 1423-1424.

7.50 It is clear from Mr Demanuel's evidence, provided in both public and private hearings that he did interchangeably use the terms 'raped' and 'molested'. Counsel Assisting and a Commission investigator were also present during a telephone conversation on 10 November 1998 between Associate Professor Carrington and Mr Demanuel, some of which was played out over a monitor so that Counsel Assisting and the Commission investigator could hear Mr Demanuel.[470] During that conversation the Commission's representatives heard Mr Demanuel refer to a file that had been shredded.

7.51 The transcript of the hearing held on 27 January 1999 also includes evidence from Mr Demanuel that he had been told by this girl that the other girl(s) she was speaking of had been molested by police two weeks prior to Leigh Leigh's murder, without specifying where those police were located. He further stated that she had told him that the girl(s) had been at the party at the North Stockton Surf Club on 3 November 1989.[471] Nothing in his evidence indicates that any police were involved in a sexual assault the night of the party. The reference by the girl to Leigh Leigh appeared only to be to place the alleged sexual harassment in the context of time.

7.52 On 28 January 1999 the evidence of Mr Demanuel was put to Associate Professor Carrington in the following exchange:[472]

> Q. ... I want to suggest to you that he [Mr Demanuel] said on his oath that he did not tell you that he had any knowledge of a girl being raped by a police officer on the night of the party?
> A Well, that's what he told me.
>
> Q. Could it be that you have confused or connected what he did tell you with the party in some way?
> A. The possibility is that - he certainly didn't say it in the first conversation that we had. He said that the girl at the refuge alleged she was raped by a police officer at the party, and it wasn't - I didn't make the connection with the party until afterwards.
>
> Q. Did you make the connection with the party in the same way as you made the connection with the girl who got an extension of time on her essay with the party?
> A. I don't think so because he said that it was one of the girls at the party who was raped by the police officer. Now, whether he meant that night or by that police officer at another time is another possibility. But that's what I understood him to mean later on down the track.

[470] PIC Transcript, KL Carrington, 28 January 1999, pp. 1270-1271, 1284.

[471] PIC Exhibit 130, Transcript of Evidence Given by the Person codenamed NC20 at a hearing of this Commission on 27 January 1999, pp. 10-13.

[472] PIC Transcript, KL Carrington, 28 January 1999, p. 1292.

7.53 The Commission undertook substantial efforts to find the girl using the name provided to it by Mr Demanuel. Those efforts proved fruitless.

7.54 Associate Professor Carrington was also questioned about her conversation with her 'second source' of information, given the codename NC24 for the purposes of this hearing:[473]

> Q. Would it be correct to say that that person did not tell you anything about any sexual assault by a police officer at the party on the night of Leigh Leigh's murder?
> A. In the context of the conversation when we were - when it arose, I asked her - I asked her whether she was aware of any of those - talk of that kind and I asked her the question was she aware of any police officer involved in sexual assault of the girls who were at the party, and she said she was aware of talk about it in the homicide unit, yes. We didn't have any detailed discussion about it.
>
> Q. Do I take it she did not tell you that she knew that any such event —
> A. Not directly.

7.55 Commission investigators spoke to NC24 regarding the allegation of sexual assault of girls at the party by police. She was unable to provide any information about those allegations or provide any information that would assist in advancing the investigation of those allegations.

7.56 When questioned by Counsel for the Commissioner of Police, Associate Professor Carrington mentioned another means by which she had attempted to verify the allegations - by speaking to Greg Bearup about it. According to her evidence he said that he would seek to verify the information with the Commission and that later he had told her he had confirmed it.[474] That aspect of her evidence will be dealt with later in this chapter.

7.57 There had been some reference that the girls referred to in the allegation of sexual assault of girls at the party by police might have some connection with two girls who attended the party on 3 November 1989 who were referred to as the 'runaways' in the original police investigation.[475] Those two persons were located and interviewed by representatives of the Commission during Operation Belfast. Each was asked whether they had any complaint to make about police sexually assaulting them either at the party, the day after or at any time during their contact with the investigating police. Neither had any complaint to make, rather they stated that they had received assistance from police to re-unite them with their families.

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[473] PIC Transcript, KL Carrington, 28 January 1999, p. 1288.

[474] PIC Transcript, KL Carrington, 8 February 1999, pp. 1486-1487.

[475] PIC Transcript, KL Carrington, 28 January 1999, pp. 1275-1276.

7.58 There is no evidence or information available to the Commission from which the identity of any person who was alleged to have been sexually assaulted by police can be identified. Further, there is no evidence or information as to the identity of any person who might be able to assist the Commission to identify any such person. The evidence provided to the Commission by Mr Demanuel and NC24 clearly does not contain the allegations, or any information supporting the allegations, that Associate Professor Carrington states that they gave to her.

7.59 The Commission is not in a position to know what those witnesses in fact said to Associate Professor Carrington. It is clear, however, that those persons who were said to be able to provide information about the alleged sexual assaults by police have not provided it.

7.60 The Commission is of the opinion that there is no evidence of such events occurring. Therefore it cannot be said that those events had any impact on the investigation of Leigh Leigh's murder, and nothing can be inferred about police misconduct stemming from such events.

EXERCISE OF POLICE DISCRETION

7.61 The exercise of discretion by police in determining whether or not to arrest a person or lay charges has long been acknowledged in the Police Service. It is inherent in the legislation empowering police to make arrests. Section 352 of the Crimes Act 1900 says that police must have reasonable cause to suspect a person has committed a statutory offence. The assessment of whether an officer has reasonable cause will itself require an individual exercise of discretion. The current Code of Practice (CRIME) lists a number of things police should consider, besides strength of the case, before exercising their discretion to arrest. This includes the seriousness of the offence and the likelihood the offender, if not apprehended, would offend again, interfere with the evidence, or hinder the police investigation, amongst others.[476]

7.62 Police are able to exercise discretion in deciding whether or not to charge a person with an offence, and further can exercise discretion in determining the particular offences with which to charge. In Operation Belfast two areas where police discretion was exercised have been criticised, namely:

- The failure to prosecute for the rape of Leigh Leigh.
- The failure to charge other persons identified as taking part in illegal activities at the party of 3 November 1989.

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[476] NSW Police Service, *Code of Practice for Custody, Rights, Investigation, Management and Evidence (CRIME)*, February 1998, pp. 7-8.

7.63 The question before this Commission is whether the police discretion was exercised in a manner that could be understood to constitute misconduct.

FAILURE TO PROSECUTE FOR THE RAPE OF LEIGH LEIGH

7.64 The criticisms in this area are twofold:

- The failure to prosecute Matthew Webster for the sexual assault of Leigh Leigh, although he was initially charged with Maliciously Inflict Grievous Bodily Harm with Intent to have Sexual Intercourse under section 61B(1) of the Crimes Act 1900.

- The decision of police to charge NC1 under section 66C(1) of the Crimes Act 1900, having sexual intercourse with a child between the ages of 10 and 16, rather than a more serious charge of sexual assault.

7.65 In her book, Associate Professor Carrington noted that Matthew Webster was initially charged with sexual assault but that the charges were dropped 'without any apparent reason or explanation'. She continued by stating 'Even more troubling is why the police decided to drop the sexual assault charge against Matthew Webster in the first place …'.[477]

7.66 Associate Professor Carrington continued to address the issue of the failure to prosecute anyone for the rape of Leigh Leigh in radio and television interviews during 1998. In one instance, when asked why police never charged anybody with rape, she replied that there was forensic evidence of a violent sexual assault on Leigh Leigh and that 'they just simply exercised their discretion'.[478]

7.67 Later in that interview she appeared to limit the role the police would have played in that decision. Having stated that 'they' dropped the charge she was asked why this would have happened and she replied:[479]

> I think you'll have to ask them. The Crime Commission certainly has not shed any new light on this matter at all. They haven't explained why the police simply…not just the police, sorry, the, the, DPP as well… I don't want to put the blame entire at the feet, for the police either…

7.68 On 8 February 1999 Associate Professor Carrington was questioned at the Commission on her understanding of the dropping of the sexual assault charge against Matthew Webster. When asked: 'You're not suggesting at all that police had anything to do with withdrawing charges against Webster'

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[477] PIC Exhibit 72, p. 81.

[478] PIC Exhibit 77, Tape Recorded Interview Between Kerry Carrington and Philip Clark of Radio Station 2BL Broadcast on Tuesday, 28 July, 1998; PIC Exhibit 75.

[479] PIC Exhibit 77.

she replied: 'Absolutely not …'[480]. She then went on to point out that she had made it clear in her book that she understood that police and the Director of Public Prosecutions sometimes chose not to pursue prosecutions of rape for pragmatic reasons and that while she understood this at an intellectual level she had difficulty accepting this as a just outcome. She goes on to state:[481]

> I do not blame the police for that. If you have a look at some other radio interviews, I say I do not put this at the feet of the police at all and I also say that police have fair discretion. I understand that. They can use their discretion and I understand that prosecutors make pragmatic reasons, and I'm not questioning that. All I'm questioning it at is at an emotional level.

7.69 The decision of police to charge NC1 under section 66(1) of the Crimes Act 1900, having sexual intercourse with a child between the ages of 10 and 16, has become contentious, largely because of a statement by Judge Moore of the District Court on 31 May 1995 in his judgment upon a criminal injuries compensation application, in which he expressed the opinion that the sexual intercourse involving NC1 and Leigh Leigh was not consensual.[482]

7.70 Shortly after that decision Associate Professor Carrington stated on a radio interview:[483]

> You ask Detective Chaffey why he chose not to charge that boy with rape. I think a – a lot of these questions need to be put to Detective Chaffey: …why he chose not to charge that boy with rape, whereas, clearly , there is indisputable evidence that he raped her, and Judge Moore yesterday came down firmly on our side, agreeing absolutely, entirely that she was raped by that boy….

7.71 The decision by police has already been addressed by the Crime Commission in its report.[484] It should be noted that the Crime Commission's investigations took place after the judgment of Judge Moore and had before it all of the information that Judge Moore had access to. The Crime Commission concluded that:[485]

> It is unlikely that the evidence would ever establish beyond doubt whether there was mutual consent to this sexual activity. Certainly, the evidence does not establish to the criminal standard that [NC1] forced Leigh to have sex.

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480 PIC Transcript, KL Carrington, 8 February 1999, p. 1500.

481 PIC Transcript, KL Carrington, 8 February 1999, p. 1501.

482 PIC Exhibit 148C.

483 PIC Exhibit 142.

484 Crime Commission, Hexham Report, pp. 11-15.

485 Crime Commission, Hexham Report, p. 14.

7.72 On 9 February 1999 Associate Professor Carrington was questioned by Counsel for Detective Chaffey about her concern that NC1 had not been charged with rape. She replied:[486]

> I am concerned about it. I have qualified though, my concerns, that I can understand at an intellectual level the very pragmatic reasons why they didn't, namely, that the victim was dead so they don't have her evidence. I can understand and comprehend that at an intellectual level. What I cannot accept at an emotional level, I cannot accept that you can conclude that it was with consent or that you can in any way, in any fairness to her, describe it as her act of intercourse.

7.73 Her reference in the above quote to the description 'her act of intercourse' is a reference to a phrase included in the fact sheet prepared for the court hearing of Matthew Webster by Detective Chaffey.

7.74 While there has not been any allegation of misconduct by police in their exercise of discretion in relation to the handling of the charges against NC1 and Matthew Webster, the public profile given to these issues caused the Commission to examine them in order to ensure that no misconduct took place. This, however, was not a major focus of the Commission's investigations.

7.75 The Commission is aware of the extensive examination of the evidence relating to the charges laid against NC1 by the Crime Commission. The Commission's own investigations reveal no aspect of misconduct in the way that the police dealt with the evidence available to them on this matter, or the manner in which they determined the charges to be laid. Further, it is the opinion of the Commission that the decision of the police to charge NC1 with the offence under section 66(1) was appropriate in the context of the evidence available. While there may have been some evidence to support a more serious charge of sexual assault the police do have a role in determining whether there is sufficient evidence to support a charge. In the circumstances, there is no reason to criticise the police involved in the investigation for their decision.

7.76 It is also the opinion of the Commission that the police charged Matthew Webster appropriately with the offence under section 61B(1) of the Crimes Act 1900 at the time he was charged with murder. That charge was not proceeded with at the time Webster pleaded guilty to the murder. The police did not withdraw the charge and there is no evidence or other material to suggest that they had any input into the decision to discontinue it.

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[486] PIC Transcript, KL Carrington, 9 February 1999, p. 1588.

7.77 It has been noted that the 'facts' and evidence, tendered upon sentence for the murder charge, included all of the material relevant to the sexual assault committed by Matthew Webster upon Leigh Leigh. It is noted, further, that it is not unusual under current practice for prosecutors to accept a plea to a principal charge of murder and subsume into the facts the other offences committed upon the victim immediately before the killing. It appears that this occurred in respect to Webster. It is not the role of the Commission to comment on the appropriateness of this practice. It is the view of this Commission, however, that there can be no suggestion of misconduct or inappropriate action by police in the fact that the charge was not proceeded with.

FAILURE TO CHARGE OTHERS WITH OFFENCES OCCURRING ON THE NIGHT OF 3 NOVEMBER 1989

7.78 Concern has also been expressed about the exercise of police discretion in the decision not to charge other individuals with offences committed at the party on the night of 3 November 1989, including other offences involving Leigh Leigh. Other persons who might have been charged include the person who allegedly supplied Leigh Leigh with alcohol and others who were alleged to have taken part in the assaults on her both inside and outside the clubhouse.[487] The police also had information about the supply of liquor to under aged persons, supply of prohibited drugs, other sexual intercourse involving minors and other assaults committed at the party.

7.79 Submissions to the Commission on behalf of Mrs Robyn Leigh state:[488]

> Not all those persons who harmed Leigh Leigh have been brought before the Courts. In a real sense the degradation and assaults committed upon her prior to the murder have been seen as 'collateral damage'. The initial Police investigation identifies many offences against not only Leigh Leigh, but also a number of other young people, which have gone unpunished. For Mrs Leigh this has been a continual rebuke to her struggle to bring to justice all those persons who committed offences against her daughter.
>
> It is our submission that proper inquiry was not made into the circumstances surrounding Leigh Leigh's death. There has been a failure to prosecute a number of people who were involved in assaults upon Leigh Leigh.
>
> …

[487] The 1995 Findings of Judge Moore of the District Court, found that the assaults on Leigh Leigh inside and outside the clubhouse on the night of the party constituted a separate 'act of violence' which took place and he named a number of persons who were alleged to have been involved in those assaults who were not charged by police; PIC Exhibit 148C.

[488] PIC Exhibit 172.

> We submit that it is an abject failure of the judicial system not to have prosecuted those who mistreated Leigh Leigh that night. No adequate answer has ever been given to Mrs Leigh about why so many people, who can be identified, were not prosecuted.

7.80 Associate Professor Carrington has also criticised the exercise of discretion in the decision not to pursue other charges relating to events at the party. She does note in her book, however, that there are reasons why 'some may argue' in favour of this use of discretion.[489]

7.81 The Commission wished to examine this issue solely from the perspective of whether police misconduct had played any role in the manner in which police exercised their discretion in these matters. In doing so it examined, in part, remarks made by Associate Professor Carrington that suggest that information was available that police had acted improperly.

7.82 The first instance derives from an answer given by Associate Professor Carrington to a question she was asked during an interview on the 'Today' Show in 1995. The interviewer in that instance had asked whether he was correct in stating that she, Associate Professor Carrington, had been saying that police were involved in protecting others involved in the death of Leigh Leigh and that she had likened the case to the Anita Cobby case. Associate Professor Carrington had answered 'Yes, very similar'.[490]

7.83 Associate Professor Carrington told the Commission that the affirmation in her reply referred only to the final part of the interviewer's proposition in which he compared the murder of Leigh Leigh to that of Anita Cobby. The following exchange then took place:[491]

> Q. So there is no suggestion that you are now saying, or you did in 1995, that the police were protecting others?
> A. No.

7.84 Secondly, as has been already described, during a 5 November 1998 television appearance, Associate Professor Carrington had suggested that the existence of a serious allegation that police themselves were involved in a sexual assault that night might explain the failure to charge other boys with offences committed at the party. It is suggested that the alleged sexual assaults were known to the youth at the party and certain detectives, and that there may have been some sort of tacit deal struck as a result. As

[489] PIC Exhibit 72, p. 96.

[490] PIC Exhibit 144.

[491] PIC Transcript, KL Carrington, 8 February 1999, p. 1483.

stated previously, the Commission has formed the view that there is no evidence that the alleged sexual assault actually occurred. Following from this there could have been no 'tacit deal' struck between partygoers and detectives that resulted in charges not being laid.

7.85 The Crime Commission in examining the issue of police discretion in the laying of charges concluded that while other charges could have been laid, the police did not act inappropriately in relation to the charging of other persons.[492]

7.86 It is the opinion of the Commission from all of the material it has obtained on this matter, that although, as noted by the Crime Commission, there was evidence to support charges being laid against other persons, there is no evidence to suggest that the failure to charge them was the result of police misconduct.

7.87 The Commission is also of the view that there is no evidence that any police acted corruptly in not charging other persons, or that any police officers were protecting any person by not charging them.

7.88 The Commission notes that the submissions in reply on behalf of Associate Professor Carrington where they state:[493]

> It does not suffice to assert that the exercise of a discretion was 'not inappropriate' whilst showing no interest in defining relevant criteria of appropriateness or in a careful examination of precisely how and why the particular discretion was exercised …

7.89 Be that as it may, it is not the role of this Commission to address the broader issue of the appropriate standards to apply in the exercise of police discretion arising out of this investigation. It is suggested to Associate Professor Carrington by the Commission, that by attempting to explain the exercise of discretion in this matter through suggestions of collusion, protection of suspects, suppression of relevant material and police misconduct, Associate Professor Carrington has sidetracked the very discussion of general principles that she professes she would like to take place.

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[492] Crime Commission, Hexham Report, pp. 29-30.

[493] PIC Exhibit 186.

SUBMISSIONS MADE IN REGARD TO ASSOCIATE PROFESSOR CARRINGTON

7.90 Submissions made on behalf of the Commissioner of Police are as follows:[494]

> In our submission, it is not enough for this Commission to conclude that there is no evidence to substantiate Carrington's claims and allegations against the individual officers and the Police Service. She should be condemned in the strongest possible terms.
>
> …
>
> We submit that unless Carrington is condemned or criticised in the strongest possible terms this case will never rest.

7.91 Similarly, submissions made on behalf of Detective Chaffey state:[495]

> We submit that notwithstanding her professional qualifications, she had demonstrated a complete lack of intellectual rigour in her treatment of the material upon which she alleges supports her allegations.
>
> …
>
> We anticipate that she [Associate Professor Carrington] will reject the findings of this Inquiry if they conflict with her own perverse views. This would not be in the public interest. Accordingly, we respectfully submit that this aspect should be dealt with and preempted in any final report. We further respectfully submit that any failure to preempt her reaction will allow her to continue her outpourings to the media in pursuit of her own agenda. We submit that the findings of this Commission should make it abundantly clear that her allegations were always baseless and remain so in trenchant terms.

7.92 These submissions appear to be based upon particular views held about Associate Professor Carrington's motives, professional ability and the intellectual rigour with which she dealt with material that she used to support her allegations. They submit, in essence, that the Commission should make some comment about these.

7.93 Whilst it is of considerable concern to the Commission that persons of Associate Professor Carrington's position have acted in a manner in which their actions can be criticised, quite properly, as being based on rumour and hearsay, it is nevertheless the role of the Commission to investigate allegations of police misconduct. It was the intention of the legislature

[494] PIC Exhibit 170.

[495] PIC Exhibit 175.

(and this is reflected in the words of the Act itself) that as far as possible the Commission should turn its attention to serious police misconduct. As such it has investigated the allegations made by Associate Professor Carrington where they related to alleged police misconduct. No misconduct was found as a result of any of those allegations and the Commission has expressed relevant views and opinions on those matters.

7.94 It is not the role of this Commission to make any comment about Associate Professor Carrington's professional ability or judgment.[496] That is most certainly the role of other bodies to assess and determine if they consider it necessary. Also, it would neither be appropriate nor in the public interest for the Commission to pre-empt or to comment upon, in this Report, the likely reaction of any person to its findings or recommendations. As such the Commission makes no comment in reply to those submissions made on behalf of the Commissioner of Police and Detective Chaffey.

ALLEGATIONS ABOUT THE COMMISSION INVESTIGATION

SUBMISSIONS REGARDING BIAS IN COMMISSION INVESTIGATIONS

7.95 During the course of the public hearings Counsel for Detective Chaffey questioned several times the manner in which Commission investigators had approached potential witnesses. On 1 December 1998 he raised with the Commissioner the existence of a document that contained the heading 'Statement in the matter of the prosecution of certain Newcastle area police'. Counsel for Detective Chaffey then stated:[497]

> In my submission that means that this investigation has been prejudged. It should be of concern to you Mr Commissioner that those who carry out these investigations are not doing it in an objective way.
>
> For example, Senior Investigator Voyez back on 2 July 1998 had already determined, without the investigation being completed, that certain police were to be prosecuted. In my submission that's just wrong. My client can have no confidence in an investigation which heads its statement by that way.

7.96 Similarly, on 14 December when Counsel for Detective Chaffey questioned NC1, he asked the witness whether he had been told by investigators that they were investigating police from the Newcastle area and their actions. Later, NC1 was asked whether he had understood that they intended to prosecute these police eventually.[498]

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[496] The Commissioner addressed this issue during the hearings when he stated to Associate Professor Carrington: 'It is not for me to decide whether or not things that you have said in your book, or in these interviews, were maliciously wrong - or wrong or right - or what your motivation was, or what your motivation was not …'; PIC Transcript, KL Carrington, 8 February 1999, p. 1540.

[497] PIC Transcript, NC5, 1 December 1998, p. 679.

[498] PIC Transcript, NC1, 14 December 1998, pp. 927-928.

7.97 Submissions made on behalf of Detective Chaffey include the following observation:[499]

> … the initial investigation conducted by Police Integrity Commission investigators was biased against the police concerned. An example of this is demonstrated in the evidence of NC1 who states that Mr Voyez told him that the Commission was investigating the conduct of the police concerned in the murder investigation. See P-927.22-37. Further, before a statement was taken from each witness, it was headed, 'Statement in the matter of the prosecution of certain Newcastle area police.' [P927.47-49]. We submit that this approach creates a fundamental flaw in the investigation process and any objective approach is lost.

7.98 Further submissions on behalf of Detective Chaffey stated that once the investigator had mentioned the names of certain police officers to a potential witness making a statement containing that heading, they would be entitled to assume that the police so mentioned were to be the 'certain' police referred to in 'the prosecution of certain Newcastle area police'. Also:[500]

> The wording at the commencement of the statement is evidence of the bias of the investigator personally, and the potential witness would be entitled to perceive bias in that investigator against those police. It is submitted that this could influence the witness' subsequent statement.

7.99 It is also noted in the submissions on behalf of Chaffey that the period during which the Operation Belfast investigation took place coincided with a period during which the Commission had as a performance indicator 'number of persons charged as a result of the Commission's activities'. From this it is submitted that this performance indicator is an illustration of built-in bias in favour of prosecuting police and that an investigator employed by the Commission, who would need to be aware of the Commission's performance criteria, would be influenced by those criteria in carrying out his or her role as an investigator.[501]

7.100 In forming opinions and making assessments with respect to this investigation, the Commission has treated the headings to witness statements as irrelevant. Deliberations of the Commission have proceeded solely on the basis of the evidence properly before it. The Commission is of the view that there was no bias shown by Senior Investigator Voyez and has determined that no further action be taken in relation to the matter.

499 PIC Exhibit 175.

500 PIC Exhibit 189.

501 PIC Exhibit 189.

ALLEGATION OF A POLICE INTEGRITY COMMISSION 'LEAK'

7.101 The principal aim of the Commission in investigating the matter of the alleged sexual assault of teenage girls at the party was to determine whether there was any substance to those investigations. The results of that investigation are reported earlier in this chapter.

7.102 The Commission was not, generally, concerned with the manner in which the allegations became a matter of public knowledge as this did not relate to any aspect of police misconduct. This altered when Associate Professor Carrington stated in her evidence to this Commission that the journalist Greg Bearup had told her that he had confirmed the allegation through a 'leak' from the Commission.

7.103 During the course of questioning about the sources of the allegation of police sexual assault on teenage girls, Associate Professor Carrington gave evidence about the steps she had taken to confirm the information provided to her by Mr Demanuel, which included speaking to NC24 about the matter. She also told Counsel for the Commissioner of Police that her efforts to have the story verified included contacting the journalist Greg Bearup who told her he would seek to verify it with the Commission. She also stated that she had provided the names of her two sources, Mr Demanuel and NC24, to Mr Bearup.[502]

7.104 Associate Professor Carrington then told the Commission that a third credible source for the allegation was Mr Bearup 'who said he confirmed it with a leak from the PIC'.[503]

7.105 She later gave evidence that while she had placed Mr Bearup in contact with Mr Demanuel and NC24 she had not put him into contact with a person who had a contact at the Commission. When asked about the ambiguity as to whether Mr Bearup had a direct contact at the Commission or contact with someone who had a contact at the Commission, she stated that the information was not second-hand, that the contact was direct.[504]

7.106 When pressed on this point later, Associate Professor Carrington stated that Mr Bearup had told her that his source was an investigator at the Commission.[505]

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[502] PIC Transcript, KL Carrington, 8 February 1999, pp. 1486-1487.

[503] PIC Transcript, KL Carrington, 8 February 1999, p. 1488. Submissions on behalf of Associate Professor Carrington include statements that Mr Bearup had told her that the 'principal source' of the story was someone from inside the Commission with references to PIC Transcript (PIC Exhibit 181B). An examination of the transcript does not reveal any evidence from Associate Professor Carrington that Mr Bearup had told her the principal source of the story was from someone in the Commission.

[504] PIC Transcript, KL Carrington, 9 February 1999, p. 1611.

[505] PIC Transcript, KL Carrington, 9 February 1999, pp. 1613, 1638.

7.107 She also gave evidence of a telephone conversation with Mr Bearup after she had received a summons to appear at this Commission in which she had asked him whether he thought he might also be summonsed to the Commission:[506]

> Q. Dr Carrington, I asked you did Mr Bearup tell you why he thought that there was no way he thought he'd ever be summonsed to PIC. Did he tell you why he thought there was no way he'd be summonsed to PIC?
> A. Yes.
>
> Q. Why was that?
> A. He said they'd be stupid because one of his sources - not one, his source was an investigator from PIC. I said. —
>
> Q. So he thought he was protected fauna, he was protected?
> A. Yes.

7.108 The Commission takes this evidence, that there is an investigator 'leaking' information from the Commission, and that a journalist might be 'protected' from being summonsed to provide evidence to the Commission, very seriously.

7.109 The Commission examined its own records in relation to the sexual assault allegations and found that no information relating to this matter appeared in Commission information holdings prior to Greg Bearup asking a question about the allegations during a meeting with Commission representatives. As such, it became readily apparent that it would have been impossible for Commission staff to 'leak' information about the allegations to Mr Bearup, confirm them, or add credibility to them in any way, as the only information about them available to the Commission, prior to the publication of Mr Bearup's newspaper article, came from Mr Bearup himself. The Commission later obtained other information on this matter from Associate Professor Carrington and through its own investigations based on the information provided by Associate Professor Carrington and Mr Bearup.

7.110 The Commission is not in a position to form any opinion about what Mr Bearup may have told Associate Professor Carrington, or what interpretation she might have made of Mr Bearup's words. It is to be noted, however, that any follow-up of allegations provided to any investigative agency should not be construed by any person as some form of independent corroboration of the validity of the allegations. An investigation is simply an investigation.

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[506] PIC Transcript, KL Carrington, 9 February 1999, p. 1613.

DETECTIVE PLANT AND PRODUCTION OF DOCUMENTS

7.111 As noted in Chapter 6, Detective Plant gave evidence to the Commission that he had been unable to locate his duty books pertaining to the period of the investigation of the murder of Leigh Leigh. According to his evidence it was his practice to retain his duty books himself, contrary to Commissioner's Instructions. He also told the Commission that he had returned two or three duty books issued to him by the Regional Crime Squad at Newcastle Police Station in response to a specific request for the return of duty books issued by them. He also told the Commission that he had been told by Police Service staff in Newcastle that all of the books from that period had been sent to Crime Agencies in Sydney when the Police Service restructured. Crime Agencies, however, had no record of Detective Plant's duty books or notebooks.[507]

7.112 Counsel Assisting asked Detective Plant whether the reason Crime Agencies had no record of his duty books was because he never returned them, but Detective Plant denied this.[508] Counsel Assisting also asked whether, given that he had so carefully maintained possession of all of the rest of his duty books contrary to Commissioner's Instructions, he had taken steps to ensure that some record was made of him returning those books. Detective Plant replied that he had not.[509]

7.113 Counsel Assisting also asked Detective Plant why he had gone to Lake Macquarie and Waratah Local Area Commands notwithstanding that he had never handed duty books in at those places:[510]

> Q: What I'm wondering is this, why would you find it necessary to go to Lake Macquarie or Waratah local area commands when you knew that the only books you ever returned were returned to the regional crime squad?
> A. I did that just in case my recollection was faulty and to explore all avenues to make sure that I could find - if the book was able to be located, I located it.

7.114 Whilst Detective Plant was at the Commission to give evidence, steps were taken by the Commission to have Detective Plant's locker at Charlestown Police Station examined by officers of the Police Internal Affairs.

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507 PIC Transcript, MB Plant, 1 February 1999, p. 1371.
508 PIC Transcript, MB Plant, 1 February 1999, p. 1372.
509 PIC Transcript, MB Plant, 1 February 1999, p. 1375.
510 PIC Transcript, MB Plant, 1 February 1999, pp. 1375-1376.

7.115 All of Detective Plant's duty books, including books that were used by him during the period of his employment at the Regional Crime Squad, Newcastle, except the books for the period relevant to the Leigh Leigh murder investigation, were found in his locker. In addition, two notebooks both on issue to him at the relevant time were found together with a duty book of another officer which was also found in Detective Plant's locker.

7.116 On 3 February 1999 Detective Plant was reminded by Counsel Assisting of the requirements of the section 26 notice issued to him under the Act, those requirements being the production of all documents or things in his custody, possession or power, relating to the investigation of the death of Leigh Leigh and most specifically 'and the subsequent apprehension, detention, interviewing, charging and conviction or finding of guilt' of the three named persons.[511]

7.117 He was also reminded that he had provided evidence to the Commission that he had returned all of his Regional Crime Squad North issued duty books with the exception of the book that he took with him when he transferred to Charlestown Police Station. When it was put to Detective Plant that he had made that transfer in 1993 he stated that he could not recall the date.[512]

7.118 Detective Plant was shown a number of duty books that had been taken from his locker at the request of officers of this Commission. He was shown a book that commenced on 4 April 1990 and was completed on 9 May 1991 which was issued to him at the Regional Crime Squad and completed while he was still at the Regional Crime Squad. Counsel Assisting then took him to a number of entries relating to the charges against Webster which were contained in that duty book.[513]

7.119 Counsel Assisting again took Detective Plant to his earlier evidence to the Commission. In that evidence he had said that he had retained the duty book issued to him by the Fraud Squad prior to his joining the Homicide Squad at Regional Crime Squad. He had said that he had retained the duty book that he was using when he left the Regional Crime Squad and moved to Charlestown. He had also said that he did not have any duty books used between those times. Detective Plant then told the Commission: 'Well, that answer - well, that's the answer I made, but obviously it was incorrect'.[514]

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511 PIC Transcript, MB Plant, 3 February 1999, p. 1432.

512 PIC Transcript, MB Plant, 3 February 1999, p. 1436, 1438.

513 PIC Transcript, MB Plant, 3 February 1999, pp. 1439-1440; PIC Exhibit 134C.

514 PIC Transcript, MB Plant, 3 February 1999, p. 1442.

7.120 The following exchange between Counsel Assisting and Detective Plant then took place:[515]

> Q. But, you see, you gave evidence, didn't you, to this Commission that you had returned your duty books that were on issue to you from the Regional Crime Squad North to the Regional Crime Squad North except the one that was issued to you that was current when you moved to Charlestown?
> A. I don't know if I said that. What I meant to say was I returned all the books that I had current at the time that - well, that I completed at the time of the request to return the books. That's what I meant. I don't know if I returned books after the notice. I believe the notice was served - the request was made some time shortly before I went to Charlestown. However, from the books that are now present, I'd say that the actual request came before that, probably during the time that I was completing that particular book there. I don't know that; I'm only assuming it.
>
> Q. So what you're saying now, if I understand what you've just said, is that you might have returned some books, but the request might have been much earlier?
> A. Apparently, yes.
>
> Q. Why did you say then at page 1373:
> I don't have any of the books that were issued to me from the crime squad, except the last book that I received and which I carried over into Charlestown police station.
> A. Because that was my recollection.

7.121 Counsel Assisting also showed Detective Plant another duty book taken from his locker which covered the period 10 May 1991 to 13 July 1992, during which time Detective Plant was attached to the Regional Crime Squad, North Region. That book contained a reference to Detective Plant's involvement in an aspect of Matthew Webster's appeal against his sentence. He was then shown a third duty book, which was issued at the Regional Crime Squad North and commenced on 14 July 1992 and continued over his commencement of duty at Charlestown Police Station on 7 June 1993. Detective Plant stated that the request for his duty books must have come earlier than he had previously thought.[516]

7.122 Counsel Assisting also showed Detective Plant the duty book found in his locker that he had taken with him from the fraud squad to the Regional Crime Squad North and was completed in August 1988. He also drew Detective Plant's attention to numbers made on the spines of the recovered duty books and Detective Plant confirmed that he had sequentially

[515] PIC Transcript, MB Plant, 3 February 1999, p. 1443.
[516] PIC Transcript, MB Plant, 3 February 1999, p. 1448.

numbered all of the duty books issued to him. He agreed that there were two duty books missing, the latter of which would have been the duty book applicable to the time of the Leigh Leigh investigation. It was his contention, however, that he had returned those duty books after a request for them, but that this request might have come earlier than he had believed, probably whilst he was using the duty book which commenced on 4 April 1990 and was finalised on 9 May 1991.[517]

7.123 Detective Plant went on to give evidence that he had examined the duty books in his locker in response to receiving the Commission's notice to produce documents, but that he had restricted his search for the period of the investigation itself.[518]

7.124 Detective Plant further told the Commission that he had in his locker two notebooks on issue to him at the time of the investigation into the murder of Leigh Leigh but, notwithstanding the terms of the section 26 notice issued to him, he did not produce those notebooks because he did not believe they contained anything of interest.[519]

ASSESSMENT

7.125 It is clear to the Commission that Detective Plant has, over the years, continually disregarded the general Commissioner's Instructions regarding the return of completed duty books and notebooks. There is no evidence available to the Commission as to whether or not a request was sent to him in respect of the return of his Regional Crime Squad duty books. The Commission does note, however, that Detective Thurbon gave evidence, discussed in Chapter 6, that he had received a request for the return of his duty books, sometime between February 1990 and February 1991, as he had left the Regional Crime Squad. While the estimated time of receiving that letter falls within the same period as Detective Plant estimates he received such a letter, the circumstances for such a request differ. While Detective Thurbon stated he had received the request for his duty books because he had left the Regional Crime Squad, Detective Plant remained attached to that area until 1993. Other members of the Regional Crime Squad who remained throughout that period, such as Detectives Chaffey and Loy, were able to produce their duty books to the Commission for that period. Given this contradictory information, the Commission is not able to form a view as to whether or not Detective Plant's contention that he had returned his duty books in response to a specific request explains the absence of the duty book relevant to the investigations of this Commission.

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[517] PIC Transcript, MB Plant, 3 February 1999, pp. 1450-1451.

[518] PIC Transcript, MB Plant, 3 February 1999, p. 1451.

[519] PIC Transcript, MB Plant, 3 February 1999, p. 1452.

7.126 It is, however, the view of the Commission that Detective Plant was not forthright, or was selective, in the way he answered questions about efforts made by him to produce his duty books and notebooks in accordance with the notice issued under section 26.

7.127 Detective Plant ought to have produced the two notebooks that were on issue to him which were subject to the section 26 notice and ought to have produced his duty book, Exhibit 133C, which was used by him during the time of the proceedings against Matthew Webster in 1990. His production of his private diaries for that period does not justify his selective response to the notice. The Commission has made recommendations in this Report with respect to proper accountability of duty books and important police records.[520]

[520] These recommendations are detailed in Chapter 6.

8. AFFECTED PERSONS

8.1 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.

8.2 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.

8.3 In discharging its functions under section 97(2) the Commission is mindful of the provision of section 40 of the Act. 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 Act or proceedings for contempt under that Act; section 40(3). Even if the objection is taken, however, 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).

8.4 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 Act.

8.5 As detailed in Chapter 4, the Commission heard evidence with respect to aspects of the investigation conducted on 15 November 1989 of the murder of Leigh Leigh. On that day police interviewed NC1, Guy Wilson and Matthew Webster. In his evidence before the Commission NC1 made allegations that he was forcibly taken into custody. The Commission formed the opinion that there was no compliance with section 352 of the Crimes Act 1900 in effecting the attendance of NC1 at the Police Station. Accordingly, there are allegations before the Commission of the assault of NC1 by the police officers who took him into custody, and of the common law misdemeanour of false imprisonment. Evidence before the Commission tended to suggest that the three officers involved in the detention of NC1 were Detective Constable Paul John Cunningham, Detective Inspector Elwin Phillip Douglass and Detective Sergeant Peter Charles Yeomans.

- There having been substantial allegations made with respect to Detectives Cunningham, Douglass and Yeomans, they are 'affected persons' within the meaning of section 97(3) of the Police Integrity Commission Act 1996.

8.6 Only Detective Constable Paul John Cunningham gave evidence that he was involved in the detention of NC1 on 15 November 1989. This evidence cannot be used against him in criminal proceedings, and there is no independent evidence capable of establishing beyond reasonable doubt his involvement in those events.

- The Commission is not of the opinion that consideration should be given to the prosecution of Detective Constable Paul John Cunningham for a specified criminal offence.

8.7 Detective Constable Cunningham did not identify those with whom he acted in detaining NC1. Nor was there evidence capable of establishing beyond reasonable doubt the involvement of Detective Inspector Elwin Phillip Douglass nor Detective Sergeant Peter Charles Yeomans in the detention of NC1.

- The Commission is not of the opinion that consideration should be given to the prosecution of Detective Inspector Elwin Phillip Douglass for a specified criminal offence.

- The Commission is not of the opinion that consideration should be given to the prosecution of Detective Sergeant Peter Charles Yeomans for a specified criminal offence.

8.8 There is, however, no proscription upon the use by the Commissioner of Police of evidence given by an officer in a Commission hearing which in the opinion of the Commissioner of Police justifies the making of an order pursuant to section 181D of the Police Service Act 1990 or the taking of reviewable action within the meaning of section 173 of that Act. Detective Constable Cunningham's actions in forcibly detaining NC1 are capable of satisfying the Commissioner of Police that the making of an order pursuant to 181D or the taking of action pursuant to section173 of the Police Service Act 1990 is warranted.

- With respect to Detective Constable Paul John Cunningham the Commission is of the opinion that consideration should be given to taking reviewable action against that officer pursuant to section 173 of the Police Service Act 1990.

8.9 NC1 made a further allegation to the effect that he was assaulted on 15 November 1989, whilst in custody, by Detective Sergeant Lance William Chaffey. There was little or no corroboration of this allegation. It was denied by Detective Sergeant Chaffey. The Commission is of the opinion that the available evidence is not capable of satisfying a tribunal of fact beyond reasonable doubt.

- The Commission is not of the opinion that consideration should be given to the prosecution of Detective Sergeant Lance William Chaffey for a specified criminal offence.

8.10 The Commission examined the evidence relating to the making of a witness statement by Detective Inspector Elwin Phillip Douglass with respect to events concerning the arrest and detention of NC1 on 15 November 1989. In that statement there is no reference to the circumstances of NC1's arrest and detention. The evidence before the Commission is not capable of satisfying a tribunal of fact that there was an intentional omission of relevant material, and so the Commission is not of the opinion that the evidence is capable of supporting a charge of attempting to pervert the course of justice.

- The Commission is not of the opinion that consideration should be given to the prosecution of Detective Inspector Elwin Phillip Douglass for the offence of attempting to pervert the course of justice.

8.11 The failure by Detective Inspector Elwin Phillip Douglass to include in his statement material facts concerning the dealings of police with NC1, particularly given that he was a juvenile, is a matter capable of satisfying the Commissioner of Police that non-reviewable disciplinary action within the meaning of section 173(1) of the Police Service Act 1990 be taken.

- With respect to Detective Inspector Elwin Phillip Douglass, the Commission recommends that consideration should be given to the taking of non-reviewable action within the meaning of section 173(1) of the Police Service Act 1990.

8.12 As detailed in Chapter 4, the Commission examined the circumstances of the interrogation and charging of Matthew Webster on 15 November 1989. Mr Webster gave evidence that he was informed by an officer that police wished to ask him some questions in relation to the murder investigation for about five minutes. On that basis he accompanied officers to Stockton Police Station. Thereafter he was conveyed to Newcastle Police Station and questioned about the murder, a common assault committed by him upon Leigh Leigh and the supply by him of a small quantity of cannabis resin to two juveniles. Detective Senior Constable Mark Baden Plant told the Commission that he was one of the officers responsible for collecting Webster and taking him to Stockton Police Station. He said that he conveyed Webster from Stockton Police Station to Newcastle Police Station together with Detective Senior Constable Kel Stanley Graham and Detective Senior Constable Reuben Gregory Thurbon. Notwithstanding that evidence, Detective Thurbon denied taking Mr Webster from Stockton to Newcastle. Detective Senior Constable Jeffrey Allen Loy recorded in his duty book that he took Mr Webster to Newcastle Police Station together with Detective Plant. Detective Loy is also recorded on the charge sheet as having arrested Mr Webster on 15 November 1989. Detective Senior Constable Kel Stanley Graham had no recall as to how Mr Webster came to be at Stockton Police Station, but recalled accompanying Mr Webster to Newcastle Police Station with Detective Plant. He could not recall Detective Loy or Detective Thurbon being involved. However, his duty book recorded that he arrested Mr Webster on 15 November 1989, and went with him to Newcastle Police Station together with Detectives Thurbon, Loy and Plant. There he interviewed Webster.

8.13 The Commission formed the opinion that the police who asked Mr Webster to attend the station on 15 November 1989 for about five minutes intentionally misled Mr Webster as to the basis upon which the request was made. The Commission has also determined that the purpose of the arrest was to interrogate Mr Webster in relation to the murder, and not, as was represented to the Commission, to charge him with minor offences of assault and supply cannabis resin. Nor was he free to leave. He was falsely arrested and detained. There was no compliance with section 352 of the Crimes Act 1900.

- There are allegations against Detective Senior Constable Mark Baden Plant, Detective Senior Constable Kel Stanley Graham, Detective Senior Constable Jefferey Allen Loy and Detective Senior Constable Reuben Gregory Thurbon with respect to the common law misdemeanour of false imprisonment. Those officers are 'affected

persons' within the meaning of section 97(3) of the Police Integrity Commission Act 1996.

8.14 With respect to Detective Senior Constable Mark Baden Plant, his evidence before the Commission cannot be used against him upon a criminal charge.[521] However, Detective Graham's evidence would be available.

- The Commission is of the opinion that the Director of Public Prosecutions should give consideration to the prosecution of Detective Senior Constable Mark Baden Plant for the common law misdemeanour of false imprisonment.

8.15 With respect to Detective Senior Constable Kel Stanley Graham, Detective Plant's evidence is admissible in relation to his role in detaining Mr Webster on 15 November 1989.

- The Commission is of the opinion that the Director of Public Prosecutions should give consideration to the prosecution of Detective Senior Constable Kel Stanley Graham for the common law misdemeanour of false imprisonment.

8.16 With respect to Detective Senior Constable Reuben Gregory Thurbon, Detective Plant's evidence is admissible in relation to his role in detaining Mr Webster on 15 November 1989.

- The Commission is of the opinion that the Director of Public Prosecutions should give consideration to the prosecution of Detective Senior Constable Reuben Gregory Thurbon for the common law misdemeanour of false imprisonment.

8.17 With respect to Detective Senior Constable Jeffrey Allen Loy, the Commission is of the opinion that there is no evidence capable of satisfying a tribunal of fact beyond reasonable doubt that he was involved in the detention of Mr Webster on 15 November 1989.

- The Commission is not of the opinion that consideration ought to be given to the prosecution of Detective Jeffrey Allen Loy for a specified criminal offence.

[521] Save for an offence against the *Police Integrity Commission Act 1996*.

8.18 The Commission examined the claim by Mr Webster that he was assaulted by police whilst in custody on 15 November 1989. He said that he was punched and kicked whilst in the interview room. There was a significant body of credible evidence corroborating Mr Webster's claim. Mr Webster was, however, not able to identify his assailants. He was only able to identify one officer who he says was present; Detective Senior Constable Plant. However, he said that Detective Plant did not assault him. Accordingly, Detective Plant is not, in the Commission's opinion, an 'affected person' with respect to the allegation of assault. There is no evidence before the Commission capable of satisfying a tribunal of fact as to the identity of any police officer as Mr Webster's assailant.

8.19 The Commission examined the circumstances of the detention and interrogation of Mr Wilson on 15 November 1989. Detective Sergeant Lance William Chaffey said that Detective Sergeant Anthony Joseph Hetherington had the task of collecting Guy Wilson. However, Guy Wilson indicated that he was asked to accompany police to the Police Station in order to answer inquiries with respect to the murder of Leigh Leigh. He went voluntarily. Accordingly, he was not detained. However, he alleged that during the course of questioning, he was slapped about the head, pushed onto the floor, and had a foot placed on his chest until he had difficulty breathing. He was unable to identify his assailant other than by reference to him as a 'big officer'. Detective Hetherington and former Detective Senior Constable James Kenneth Mullard were present at his interrogation. Each denied seeing anyone assault Mr Wilson. The Commission is not able to make a finding as to whether Mr Wilson was assaulted, nor those who must have been present when, or if, such an act took place. There are no 'affected persons' with respect to his allegation.

8.20 Both Mr Webster and Mr Wilson asserted a lack of recollection as to the raising with them on 15 November 1989 of the question of bail. The Commission examined the circumstances in which they were interrogated on the evening of the 15 November 1989, charged with comparatively minor offences, kept in custody in the Police Station, and presented to the Newcastle Local Court on the morning of 16 November 1989. Records relating to the determination of bail on 15 November 1989 were forwarded to the Newcastle Local Court only on 23 November 1989. In the ordinary course those papers would be presented to the Court when the defendants were charged before the Court. Former Senior Sergeant Robert Terry Dexter Collins was recorded as the officer determining bail. However, he denied authorship of the bail determination records. Those records indicated that neither Mr Wilson nor Mr Webster sought bail. The Commission found as a fact that the question of bail had not been raised with either defendant.

8.21 There is, however, no evidence before the Commission capable of satisfying a tribunal of fact as to

(1) the identity of the officer who failed to present the two for a bail determination; or

(2) who it was who misrepresented the position of the two prisoners to the officer who made the bail determination.

Furthermore, there is no evidence before the Commission capable of satisfying a tribunal of fact beyond reasonable doubt that Former Senior Sergeant Collins was the officer who completed the records that purported to record that neither defendant sought bail. Accordingly there are no 'affected persons' with respect to allegations of criminal conduct concerning the failure to make bail determinations with respect to Mr Wilson and Mr Webster or the falsification of bail records.

8.22 The Commission is of the opinion that the informant in a criminal matter has a strict responsibility to ensure that a person charged with a criminal matter is given a proper opportunity to seek a bail determination by the authorised officer. The Commission has found that the evidence of Mr Wilson and Mr Webster to the effect that they were not offered bail determinations is credible. Accordingly, the informants with respect to the charges recorded against Mr Wilson and Mr Webster on 15 November 1989 are 'affected persons' in relation to allegations of dereliction of duty.

- With respect to Detective Senior Constable Mark Baden Plant the Commission is of the opinion that consideration should be given to the taking of reviewable action pursuant section 173 of the Police Service Act 1990 in relation to the failure to present Matthew Webster for a bail determination on 15 November 1989.

- With respect to Detective Senior Constable Anthony Joseph Hetherington he Commission is of the opinion that consideration should be given to the taking of reviewable action pursuant section 173 of the Police Service Act 1990 in relation to the failure to present Guy Wilson for a bail determination on 15 November 1989.

8.23 The Commission examined the circumstances of the interrogation of Matthew Webster and Guy Wilson on 16 February 1990. Mr Webster was on his way to a medical appointment. He was physically detained by a number of police, forcibly placed into a police vehicle, and taken to Newcastle Police Station. He was unwilling to go with police. He sought the intervention of woman passer-by. That person sought answers from the police as to their intentions and was fobbed off, with a police officer eventually telling her that Mr Webster was being taken to 'the Police

Station'.[522] That woman left a note for Webster's mother indicating that he was with the police. Mrs Webster thereafter sought to discover his whereabouts and, in the opinion of the Commission, was misled so that she could not, by herself or with the assistance of a legal representative, intervene on his behalf.

8.24 Police had obtained the issue of a warrant authorising the use of a listening device at Newcastle Police Station. The purpose of the application was to place Mr Webster and Mr Wilson together in a confined space in the hope that they might converse and disclose information that might further the murder investigation. To that end, Mr Wilson was surveilled at an hotel, and was approached upon his exit there from. He agreed to accompany police to the station to answer questions. The officers were aware that he was intoxicated.

8.25 Mr Webster and Mr Wilson were placed together in an interview room. Their conversation was recorded. Only Detective Sergeant Lance William Chaffey admitted to monitoring the conversation. He also said that he typed up the transcript of the conversation. Neither Mr Wilson nor Mr Webster made admissions of criminal conduct. However, each made statements that, upon their natural meaning, suggested assaults upon their persons by police in the past and fears of a repetition thereof.

8.26 The affidavit sworn by Detective Sergeant Lance William Chaffey in support of the warrant application asserted that police were not in possession of evidence capable of supporting a charge of murder against any person. The strategic plan put forward was that the two would be invited to attend voluntarily at the Police Station at which the device would be installed. That was necessarily so as police did not have a basis to charge either Webster or Wilson, and thus no power to arrest; section 352 Crimes Act 1900.

8.27 Detective Sergeant David William Kane said that he and former Detective Sergeant Grant Maurice Connelly were sent to find Mr Webster. Detective Kane's evidence was that his orders were that Mr Webster was to be arrested. Detective Kane's evidence was that those orders were carried out. The aforementioned officers are 'affected persons' with respect to an allegation that Mr Webster was falsely imprisoned on 16 February 1990. There is evidence before the Commission that is capable of satisfying a tribunal of fact that the aforementioned officers detained Mr Webster on 16 February 1990 without lawful authority, in circumstances in which they knew, or ought reasonably to have known, that they had no lawful authority to detain Mr Webster.

[522] PIC Exhibit 107B.

- The Commission is of the opinion that the Director of Public Prosecutions should give consideration to the prosecution of Detective Sergeant David William Kane for the common law misdemeanour of the false imprisonment of Matthew Webster on 16 February 1990.

- The Commission is of the opinion that the Director of Public Prosecutions should give consideration to the prosecution of former Detective Sergeant Grant Maurice Connelly for the common law misdemeanour of the false imprisonment of Matthew Webster on 16 February 1990.

8.28 Only Detective Senior Constable Mark Baden Plant gave evidence that he was involved in the detention of Matthew Webster on 16 February 1990. However, this evidence cannot be used against him in criminal proceedings, and there is no independent evidence capable of establishing beyond reasonable doubt his involvement in those events.

- The Commission is not of the opinion that consideration should be given to the prosecution of Detective Senior Constable Mark Baden Plant for the common law misdemeanour of the false imprisonment of Matthew Webster on 16 February 1990.

8.29 Guy Wilson claimed that he was assaulted prior to being asked questions about the murder on 16 February 1990. However, he was unable to identify his assailant. The evidence before the Commission could not satisfy a tribunal of fact as to the identity of any such assailant. The Commission cannot determine whether Mr Wilson was assaulted on 16 February 1990. There are no 'affected persons' with respect to Mr Wilson's allegation of assault on 16 February 1990.

8.30 The Commission investigated the making of statements by police with respect to their dealings with Matthew Webster on 16 February 1990. The Commission has discussed in this Report the plan to obtain a listening device warrant, to secrete it in an interview room and to invite Mr Wilson and Mr Webster to converse together in that room in the hope of gathering evidence in the murder inquiry. Mr Webster was, contrary to the affidavit supporting the warrant application, forcibly taken into custody. During the course of his recorded conversation with Mr Wilson he denied involvement in the murder of Leigh Leigh. None of those events were disclosed in the statements of police witnesses. No credible explanation was proffered for those omissions. The statements of Detective Sergeant David William Kane and former Detective Sergeant Grant Maurice Connelly were tendered as part of the police brief of evidence in the committal proceedings concerning the charge of murder against Mr Webster. Each of those detectives gave evidence before the Magistrate to the effect that their statements were true and correct. It was put to each that Mr Webster had not gone with them willingly on 16 February 1990.

Each denied the allegation. Each detective is an 'affected person' with respect to an allegation that, in each case, he committed perjury before the Magistrate in that he denied that Webster had been forcibly taken into police custody on 16 February 1990. There is available credible evidence admissible in criminal proceedings capable of satisfying a tribunal of fact that each detective intentionally gave untrue evidence before the Magistrate in the committal proceedings referred to above.

- The Commission is of the opinion that the Director of Public Prosecutions should give consideration to the prosecution of Detective Sergeant David William Kane upon a charge of perjury pursuant to section 327 Crimes Act 1900.

- The Commission is of the opinion that the Director of Public Prosecutions should give consideration to the prosecution of former Detective Sergeant Grant Maurice Connelly upon a charge of perjury pursuant to section 327 Crimes Act 1900.

8.31 In its examination of the circumstances of the arrest, detention, interrogation and charging of Matthew Webster on 16 February 1990, the Commission received evidence with respect to aspects of the police investigation that contravened the Crimes Act 1900 and amounted to poor police practice. Detective Sergeant Lance William Chaffey was the officer in charge of the investigation. Detective Chaffey is an 'affected person' in relation to allegations of gross dereliction of duty in the oversight of the Leigh Leigh murder investigation.

8.32 Detective Chaffey swore an affidavit in support of an application for a listening device warrant. That affidavit was placed before a Judge of the Supreme Court. It asserted that Mr Wilson and Mr Webster would be 'invited' to attend a Police Station so that they could be placed together and their conversation monitored. However, Mr Webster was forcibly taken into custody. On his own evidence, and notwithstanding his affidavit, Detective Chaffey took no steps to ascertain the circumstances in which Mr Webster came to the Police Station. During the conversation between Mr Webster and Mr Wilson, each made statements that bore as their natural meaning the assertion that each had, at some time, been assaulted by police. Detective Chaffey, on his own evidence, did nothing at all to investigate those matters. He ought to have done so for two reasons. Firstly, those allegations raised the possibility that police officers acting under his supervision had assaulted two citizens. Secondly, the allegations raised the possibility that police officers had acted in such a way as to potentially compromise the admissibility of evidence in a murder inquiry.

8.33 As it happened, Mr Webster had murdered Leigh Leigh, and confessed to that crime. The conduct of the police investigation on 16 February 1990 was such that, had the true position been made known to the defence and to the Court, Mr Webster's confession may have been excluded. Absent that confession, the Crown did not have a case against Mr Webster for the murder he committed.

- The Commission is of the opinion that consideration should be given to the making by the Commissioner of Police of an order pursuant to section 181D of the Police Service Act 1990 dismissing Detective Sergeant Lance William Chaffey from the Police Service.

9. SUMMARY OF RECOMMENDATIONS

Recommendations with respect to consideration of prosecution and disciplinary action are detailed in Chapter 8.

9.1 Having formed the view that current guidelines relating to persons attending a Police Station voluntarily are inadequate the Commission recommends that:

- The Code of Practice (CRIME) should be amended so that when a person attends a Police Station voluntarily to assist with inquiries, and the custody manager is informed, the custody manager must:
  - record the name of the person, the name(s) of the officer(s) dealing with the person and the time of the person's arrival at the Police Station;
  - inform the person of the purpose of his or her attendance at the Police Station;
  - inform the person that he or she is not under arrest and is free to leave the Police Station;
  - inform the person of his or her right to silence;
  - inform the person of his or her right to seek legal assistance or to inform another person of his or her presence at the Police Station; and
  - inform the person that if police decide the he or she is no longer free to leave the Police Station, the officer is obliged to inform the person and to return with the person to the custody manager for updating of the custody record.
- If a person is returned to the custody manager, police having determined that the person is no longer free to leave the Police Station, the custody manager is to inform the person:
  - that he or she is under arrest; and
  - the offence for which the arrest has been made.
- The custody manager is also to comply with section 356M of the Crimes Act 1990 in advising a person brought to them having been placed under arrest whilst in attendance at a Police Station.

9.2 Having noted that there is no requirement under current guidelines to record attempts made to contact a parent or guardian of a young person attending a Police Station the Commission recommends that:

- The Code of Practice (CRIME), where it relates to custody managers assisting 'vulnerable persons', be amended to require that the custody manager records, on the custody record, all attempts made to contact a support person and the result of those attempts. This should include the time and date of contact, the name of the officer attempting the contact, the name of the person who was contacted, the method of contact used, and the result of the contact, or attempted contact, and any other information that the Police Service believes to be appropriate.

9.3 Having noted that current guidelines do not require that the signature of a support person be obtained on a typewritten record of interview or handwritten statement the Commission recommends that:

- Annexure D and E of the Code of Practice (CRIME) be amended to include a requirement that adopting officers ask the support person to witness a typewritten or handwritten record of interview or a typewritten or handwritten statement. In the event of a refusal by such a person to witness such a document, that fact should be the subject of a contemporaneous note book entry by the interviewing officer and the support person should be invited to witness that note.

9.4 The Commission is of the opinion that:

- Consideration be given to amendments to the Listening Devices Act 1984 to the effect that the submission of false or misleading section 19 reports, whether by omission or commission, become the subject of express criminal sanction and further that appropriate procedures are initiated within the Police Service to ensure compliance with any such provision.

9.5 The Commission is of the opinion that current guidelines about the manner in which an adoption is to be conducted are much more specific than those in place in 1989-1990. It is noted, however, that the guidelines relating to typed records of interview or handwritten statements do not require the adopting officer to record the time of the adoption. As such the Commission recommends:

- That guidelines on the adoption of typed records of interviews or handwritten statements should be amended to include the requirement that adopting officers write his/her name, rank, date and the time when signing an adoption.

10. APPENDIX

The following is a list of witnesses appearing before the Commission in public hearings on this matter:

- Associate Professor Kerry Lyn Carrington
- Francis Xavier Demanuel
- Witness Codenamed NC1
- Witness Codenamed NC2
- Witness Codenamed NC5
- Matthew Grant Webster
- Guy Charles Wilson
- Senior Constable Robert John Asser
- Detective Sergeant Lance William Chaffey
- Former Senior Sergeant Robert Terry Dexter Collins (for evidence provided on 28 January 1999)
- Detective Senior Constable Michael Paul John Cunningham
- Detective Senior Constable Gary Roger Dore
- Detective Inspector Elwin Phillip Douglass
- Senior Constable Mark James Evans
- Former Sergeant Gregory Leonard Freeman
- Senior Constable Wayne Gough
- Detective Senior Constable Kel Stanley Graham
- Detective Sergeant Anthony Joseph Hetherington
- Senior Sergeant Lance William Hopkins

- Sergeant David Hughes
- Detective Sergeant Mervyn James Hunter
- Detective Sergeant David William Kane
- Detective Senior Constable Jeffrey Allen Loy
- Senior Constable Kenneth John Marsden
- Sergeant Robert Clancy McDonald
- Former Officer James Kenneth Mullard
- Detective Sergeant Rhonda Joy Mulligan
- Senior Constable Gregory John Nichols
- Sergeant Carl Leslie Paget
- Detective Senior Constable Mark Baden Plant
- Acting Detective Sergeant Reuben Gregory Thurbon
- Detective Sergeant Peter Charles Yeomans


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