

REPORT TO PARLIAMENT

OPERATIONS

COPPER
TRITON
NICKEL

June 2000

REPORT TO PARLIAMENT OPERATIONS COPPER, TRITON, NICKEL
JUNE 2000

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

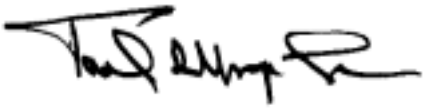
The Hon John Murray MP
Speaker
Legislative Assembly
Parliament House
SYDNEY NSW 2000

Dear Madam President and Mr Speaker

In accordance with section 96(2) of the *Police Integrity Commission Act 1996*, the Commission hereby furnishes to you a report regarding Operation Copper, Operation Triton and Operation Nickel, being a report in relation to matters as to which the Commission has conducted public hearings.

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

Yours faithfully



Judge P D Urquhart QC
Commissioner

June 2000

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EXECUTIVE SUMMARY

BACKGROUND

In 1998 a number of unrelated complaints were received by the Police Integrity Commission ('the Commission'). Each of these involved the falsification of the signature of a police officer, by another police officer, on documents intended for court proceedings. The Commission was concerned that this could reflect a practice which may not be uncommon in the NSW Police Service ('the Police Service').

Three separate investigations, each of which included a public hearing component, were conducted by the Commission. The public hearings for Operation Copper were held on 4-6 May 1998, the public hearings for Operation Triton were held on 6-8 July and 16 July 1998, and the public hearings for Operation Nickel were held on 13-15 July 1998.

SUMMARY OF THE OPERATIONS

OPERATION COPPER

Operation Copper investigated the preparation of a statement in the name of a then Probationary Constable (known for the purpose of the Commission's hearing as 'D1'), and the insertion of what supposedly represented that junior officer's signature by a more senior police officer, Constable Stuart Byrnes. Whilst that particular statement was not ultimately tendered before the court, it was provided to the prosecutor as a part of the brief of evidence for the relevant case.

In an internal police investigation of this matter, Constable Byrnes admitted preparing and signing the statement in the name of D1. He contended, however, that he had done so as a training exercise to assist the junior officer.

Later, whilst the internal investigation was underway, D1 discovered an anonymous threatening letter in her pigeonhole at the police station where she worked. The letter was recorded in the station's Miscellaneous Property and Receipt Book.[1] The careless handling of the letter saw D1 exposed to general gossip and speculation at her station.

D1 was then approached by an Education Development Officer, Senior Constable Keith Ridley, who was a friend of Constable Byrnes, in a way that she, quite reasonably, perceived as being a further threat.

[1] The Miscellaneous Property and Receipt Book is kept in the general reception area of the police station and is used by police to record receipt of all property handed in to the police station, or that which comes into police custody, and is not retained as an exhibit.

In relation to these matters, the Commission has formed the following opinions:

- While no evidence is available as to what motive Constable Byrnes might have had for including the statement he prepared in the name of D1 in the brief, his explanation that it was intended for training purposes only cannot be accepted.

- Even if the Commission could accept Constable Byrne's explanation, it would have been inappropriate to have attempted to imitate the signature of D1 on the statement without indicating that it was only a training exercise. Furthermore, it was highly improper to have provided the statement to the Prosecutor who could reasonably be expected to believe that it was authentic.

- On the available evidence, it is not possible to know who was responsible for the anonymous letter being placed in D1's pigeonhole.

- It was inappropriate for the existence of the anonymous letter to be recorded in the Miscellaneous Property and Receipt Book. It may have been the intention of the author of the entry to make a record of the receipt of the letter for continuity purposes. It had, however, the undesirable effect of alerting the general police population of the station to the fact that D1 had received an anonymous threatening letter from another police officer.

- It was inappropriate for Senior Constable Ridley, as Education Development Officer, to approach D1 in the manner in which he did. It was reasonable in the circumstances for D1 to interpret Senior Constable Ridley's approach to her as a fact finding mission on behalf of his friend Constable Byrnes, and to perceive that he was threatening her. The Commission is of the opinion that Senior Constable Ridley demonstrated a lack of judgment in his conversation with D1.

The Commission is of the opinion that consideration should be given to the criminal prosecution of Constable Byrnes, and that consideration should be given to taking action against him with a view to dismissing him from the police service.

In respect to Senior Constable Ridley, the Commission is of the opinion that consideration should not be given to any criminal prosecution of him, or the taking of any action with a view to dismissing him from the Police Service.

OPERATION TRITON

The purpose of Operation Triton was to investigate the preparation of a facts sheet by Senior Constable Dean Blacker who was involved in the arrest of a defendant.[2] Upon preparing the facts sheet Senior Constable Blacker signed what supposedly represented another officer's signature. For the purpose of the Commission's hearing, that officer was known as 'E1'. The facts sheet was then incorporated within a police brief of evidence and provided to officers of the Police Prosecution Branch.

E1 first discovered the false signature on the facts sheets some weeks later when he was approached by police prosecutors at court seeking further statements relevant to the police brief of evidence. E1 reported the matter to his then Patrol Commander, Inspector Price, who commenced an investigation.

Inspector Price decided that the complaint by E1 should be handled at patrol level only, and did not forward a copy of the complaint to Internal Affairs. At the conclusion of his investigation he determined that, on the information available to him, it was most likely that the person who had signed the signature of E1 was Senior Constable Blacker. He decided that the matter should be handled as an internal management matter by counselling Senior Constable Blacker and making an entry on the Behaviour Incident Data System (BIDS) then under trial. The BIDS record was not forwarded to Internal Affairs, notwithstanding Inspector Price's understanding otherwise.

The matter was revisited by Senior Sergeant Matthews, duty officer at E1's next station, who had cause to speak to E1 about his declining work performance. E1 expressed his disquiet over the way the incident had been handled. Following his inquiries, Senior Sergeant Matthews concluded that the matter had been efficiently investigated and determined by Inspector Price.

The evidence of Senior Constable Blacker before the Commission was that he had always been frank and honest in his acknowledgement that he had prepared and signed the facts sheet. He asserts that shortly after the arrest of the defendant, he told E1 that he had done so, and, when questioned by Inspector Price, he had also made a full and frank admission. The evidence of Inspector Price and E1 does not corroborate these aspects of Senior Constable Blacker's evidence.

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[2] A facts sheet is a brief narration of the circumstances of the offence (summary or indictable), written by the officer in charge of the arrest and used in court.

Senior Constable Blacker gave evidence that on the afternoon of the arrest, he presented the unsigned facts sheet he had prepared to the checking officer, Sergeant Ken Moroney. He had inserted the name of E1 as the informant. Senior Constable Blacker told Sergeant Moroney that E1 was the informant for the briefs in relation to the co-offenders, and that E1 was using it for his investigator's training course. Sergeant Moroney told Senior Constable Blacker that the sheet had to be signed. According to his evidence, Senior Constable Blacker turned to the desk beside Sergeant Moroney and signed the name of E1. Within seconds, he presented the document back to Sergeant Moroney, who signed it as checking officer.

In the course of the Commission's investigation, Sergeant Moroney made contradictory statements regarding his memory of the circumstances in relation to the facts sheet.

In relation to these matters, the Commission has formed the following opinions:

- It was inappropriate and unacceptable for Senior Constable Blacker to have signed the signature of another person in any circumstances.

- The act of a police officer signing the signature of another person, particularly on a document intended for court, displays a degree of dishonesty which, having regard to the inherent need for integrity of police officers, ought to have warranted a complaint being registered and the Ombudsman being notified, regardless of whether or not such conduct amounts to a criminal offence. Inspector Price may not have fully appreciated the seriousness of the complaint that he was investigating.

- Senior Sergeant Matthews' investigation focused on the accuracy of the facts in the document, and did not sufficiently identify the integrity issue raised when one police officer signs the signature of another officer.

While noting that Senior Constable Blacker was frank in his admissions to this Commission, the Commission is of the opinion that consideration should be given to the criminal prosecution of Senior Constable Blacker. Further, that consideration should be given to taking action against him with a view to dismissing him from the Police Service.

The Commission is of the opinion that consideration should not be given to any criminal prosecution of Sergeant Moroney, or the taking of any action with a view to dismissing him from the Police Service.

OPERATION NICKEL

The purpose of Operation Nickel was to investigate the discovery, by a then probationary constable (known for the purpose of the Commission's hearing as 'G1'), of two police statements, both of which included what was supposedly his signature. They were not his statements, nor were they his signatures.

Senior Constable Simon Field, with whom G1 had arrested and charged the person who was the subject of the statements, admitted to the Commission that he had prepared the first statement in the name of G1. The statement had what purported to be G1's signature written at the foot of each page. In the section of the statement allocated for the signature of the witness, there was also written the actual signature of Senior Constable Field. Senior Constable Field denied impressing the name of G1 on that statement.

The second statement was that of Senior Constable Field. It was signed by him as author of the statement, and in the sections allocated for the signature of the witness to that statement there were written the apparently forged signatures of the probationary constable. Senior Constable Field denied to the Commission that he had signed the name of G1 on that statement.

Both statements were found at the Prosecutors Office filed and incorporated within a police minibrief relating to the defendant.[3] Having denied writing G1's signature on those documents, it was Senior Constable Field's contention that he had sent to prosecutors other versions of those statements, those statements having his signature but not that of G1.

In relation to these matters, the Commission formed the following opinions:

- Circumstances make Senior Constable Field's explanation for his actions difficult to accept. Even if the Commission were to accept his explanation, that he had prepared a statement on behalf of G1 and had not included on it G1's signature, it would have been inappropriate for Senior Constable Field to prepare a statement in G1's name and include it in the minibrief prior to it being seen by G1.

- Senior Constable Field's explanations for inappropriately signing and witnessing the statements that he says he sent to police prosecutors (that it was a 'bad habit', that other officers were unavailable to sign as a witness, and that presenting the statements in that form would indicate that they were

[3] A minibrief is a brief which contains a charge sheet, comprehensive facts sheet, antecedents, statement(s) of victim(s), all other available statements and in any case sufficient statements to establish the proofs of the offences. Minibriefs must be delivered to the police prosecutor before the first court appearance of the defendant. NSW Police Distance Education Package 'Revised Brief Handling Package', November 1996.

drafts) were unconvincing. Senior Constable Field demonstrated that he properly understood the procedures for signing and witnessing statements. In this respect his training is not at issue.

- Having carefully considered the circumstances, the evidence of the witnesses and the material tendered, his denials of falsifying the signatures of G1 ought to be rejected.

The Commission is of the opinion that consideration should be given to the criminal prosecution of Senior Constable Field, and that consideration should be given to taking action against him with a view to dismissing him from the Police Service.

GENERAL CONSIDERATIONS

The evidence from these hearings has disclosed three similar incidents where one police officer has forged the signature of another officer and presented the document to prosecuting authorities. The Commission also heard evidence of loose practice adopted by some police in relation to the dating and witnessing of statements. The Commission is of the opinion that this evidence demonstrates an attitude of general disregard by some police officers to the role and function of court documents, and by extension, to the courts themselves. The dangers of allowing such conduct to continue unchecked would include loss of confidence by the courts in documents presented by police officers, and lack of confidence and trust by both the courts and the community in evidence presented by police officers.

The Commission does not suggest that the conduct exposed in these hearings is symptomatic of the more traditional forms of dishonesty exposed by the Royal Commission into the NSW Police Service ('the Royal Commission'). The failure, however, to discourage such conduct can have a negative impact on the Police Service and impede the reform process in the following ways:

- management failure to identify the integrity issue raised by such conduct has the potential to lead officers to believe that the reforms being promulgated by the management of the Police Service are simply rhetoric;

- inexperienced officers are inducted into a work ethic which is antithetical to the reform process;

- such conduct can be seen as an expedient alternative to diligent and skilled policing work; and

- it encourages disregard for court process and evidence, and teaches that deceptions can be maintained and covered up.

One of the Commission's corruption investigation and prevention strategies is to identify and address patterns of behaviour, and this has been the intention of the Commission in conducting this series of hearings. In conducting these hearings the Commission wished to draw the attention of the management of the Police Service to these issues, and to send a message to officers that this conduct is not acceptable, thereby acting as a deterrent to engaging in such practices in the future.

ISSUES OF BRIEF MANAGEMENT

Other issues addressed by the Commission through these hearings were those of brief preparation and handling and the management of original documents. Subsequent to the hearings the Commission has received reports from the Police Service on measures being undertaken to improve the process of brief production, particularly in respect of quality control.

The model for brief management recommended in these reports has a number of features the Commission would consider essential in a brief management system. These include the standardisation of brief management and quality assurance procedures throughout the Service and the increased use of information systems to facilitate the tracking and management of briefs.

In the course of the hearings the Commission also heard evidence about practices for the storing of original documents during brief preparation. The potential for corrupt activity to result from these practices has led the Commission to recommend that Police Service devise a system to ensure secure storage of original documents used in briefs of evidence.

RESPONSE OF THE NSW POLICE SERVICE

The submissions by Counsel for the Commissioner of Police in relation to Operation Triton outlined a number of measures taken by the Police Service in response to these hearings to ensure that their officers fully understand that the practice of falsifying another officer's signature is unacceptable. These measures included the circulation of a notice through the *Police Service Weekly*; the appearance of the Assistant Deputy Commissioner on a special broadcast of the 'Police TV' network; and the direction by Deputy Commissioner Jarratt to Commanders to reinforce with their officers the unacceptable nature of this type of conduct.

The Commission also notes that Commissioner Ryan has established a Corporate Brief Improvement Project, with an initial aim of identifying and developing a best practice model for brief management. A report was released by that group in December 1999.

1. INTRODUCTION

BACKGROUND

1.1 In 1998 a number of complaints came to the attention of the Police Integrity Commission ('the Commission'). Each of these related to the falsification of the signature of a police officer, by another police officer, on documents intended for court proceedings.

1.2 The Commission was concerned at the number of complaints received, particularly as the complaints were unrelated to one another and occurred at different locations. The Commission was concerned that this may reflect a practice which may not be uncommon in the NSW Police Service ('the Police Service').

1.3 Three separate investigations were undertaken by the Commission. These were referred to as Operation Copper, Operation Triton and Operation Nickel. The public hearings for Operation Copper were held on 4-6 May 1998, the public hearings for Operation Triton were held on 6-8 July and 16 July 1998, and the public hearings for Operation Nickel were held on 13-15 July 1998.

SUMMARY OF THE OPERATIONS

OPERATION COPPER

1.4 Operation Copper concerned the preparation of a statement in the name of a then probationary constable by a more senior police officer, and the insertion of what supposedly represented that junior officer's signature. It was not her signature.

1.5 That statement was filed and incorporated within a police brief of evidence relating to a defendant. The brief of evidence was provided to police prosecutors at the local court and later used by a police prosecutor in the presentation of evidence at an ex parte hearing before that court. Whilst that particular statement was not tendered in the hearing, it formed a part of the brief of evidence in the matter before the court.

1.6 The probationary constable discovered the offending statement sometime later when she sought to refer to the brief. The officer reported the matter to her local Commander and an investigation was commenced.

1.7 Later, whilst these investigations were underway, the probationary constable discovered an anonymous threatening letter in her pigeonhole at her police station.

OPERATION TRITON

1.8 Operation Triton involved the preparation of a facts sheet by a senior constable who was involved in the arrest of a defendant. Upon preparing the facts sheet that officer impressed what supposedly represented another officer's signature. The facts sheet was then incorporated within a police brief of evidence and provided to officers of the Police Prosecution Branch.

1.9 The junior officer first discovered the false signature on the facts sheets some weeks later when he was approached by police prosecutors at court seeking further statements relevant to the police brief of evidence. He reported the matter to his patrol commander and an investigation was commenced.

OPERATION NICKEL

1.10 Operation Nickel concerned a police officer who, while a probationary constable in his first year of service, discovered two police statements, both of which had impressed upon them what supposedly represented his signature. They were not his statements and nor were they his signatures.

1.11 The first statement was apparently prepared on his behalf and in his name by a senior constable with whom he had arrested and charged a person who was the subject of the statements. The statement had what purported to be the probationary constable's signature impressed at the foot of each page. In the section of the statement allocated for the signature of the witness, there was also impressed the actual signature of the senior constable.

1.12 The second statement was that of the senior constable. It was apparently signed by him as author of the statement, and in the sections allocated for the signature of the witness to that statement there were impressed the apparently forged signatures of the probationary constable.

1.13 Both statements were filed and incorporated within a minibrief provided to the police prosecutor.

THIS REPORT

1.14 This Report is prepared and furnished pursuant to section 96 of the *Police Integrity Commission Act 1996* ('the Act'). As each of the hearings for Operation Copper, Operation Triton and Operation Nickel addressed similar issues it is appropriate that they be the subject of a single Report.

1.15 This Report includes:

- a summary of the evidence heard by the Commission in the public hearings for Operation Copper, Operation Triton and Operation Nickel, in Chapters 3 to 5; and

- discussion of procedural, training and general issues arising out of evidence provided in the hearings, in Chapters 6 and 8.

1.16 In this Report the Commission makes assessments and forms opinions on the evidence as heard during the course of the hearings. The Commission also makes statements with regard to a number of persons who are found to be 'affected persons' within the meaning of the Act (sub-section 97(3)) in Chapter 7. The Report also includes recommendations for changes to police practices, policies and procedures which, it is hoped, will serve to help prevent corruption and police misconduct in the future.

2. THE COMMISSION'S APPROACH

ROLE AND FUNCTIONS OF THE COMMISSION

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

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

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

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

> a) to undertake inquiries into or audits of any aspect of police activities for the purpose of ascertaining whether there is police misconduct or any circumstances that may be conducive to police misconduct,
>
> b) in particular, to monitor the quality of the management of investigations conducted within the Police Service and to undertake audits of those investigations,
>
> c) to make recommendations concerning police corruption education programs, police corruption prevention programs, and similar programs, conducted within the Police Service or by the Ombudsman or 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*. See paragraph 2.18 for a description of the types of disciplinary action available under Part 9.

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

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

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

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

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

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

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

(b) bribery;

(c) blackmail;

(d) obtaining or offering secret commissions;

(e) fraud;

(f) theft;

(g) perverting the course of justice;

(h) embezzlement;

(i) election bribery;

(j) election funding offences;

(k) election fraud;

(l) treating;

(m) tax evasion;

(n) revenue evasion;

(o) currency violations;

(p) illegal drug dealings;

(q) illegal gambling;

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

(s) bankruptcy and currency violations;

(t) harbouring criminals;

(u) forgery;

(v) treason or other offences against the sovereign;

(w) homicide or violence;

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

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

2.9 The Commission wished to provide more detailed guidance to the NSW Ombudsman and the Police Service about the type of complaints regarding police that the Commission is likely to have an interest. As a means to do this, 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:[4]

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.

[4] PIC, *Annual Report 1998-1999*, p. 86.

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 for criminal or disciplinary offences;

- statements and recommendations that consideration be given to the taking of disciplinary action against police officers or other persons; and

- recommendations for other action, for example, changes to systems, procedures or policies.

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

2.15 Bearing in mind that the Commission is an investigative agency, and not a court or tribunal in the sense that it may adjudicate upon the legal rights of persons, the Commission may not make a finding, or form an opinion, that a specified person is guilty of or has committed, is committing or is about to commit a criminal or disciplinary offence (sub-section 16(2)(a)). An opinion that a person has engaged, is engaging or about to engage in police misconduct or other specified conduct (being conduct that constitutes or involves or could constitute or involve police misconduct) is not a finding or opinion that the person is guilty of or has committed, or is committing or is about to commit a criminal offence (sub-section 16(3)).

2.16 A statement as to whether consideration should be given to the prosecution of a person for a specified criminal or disciplinary offence must be included in each report to Parliament if the person is an 'affected person'. 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).

2.17 The Commission will recommend or state that consideration should be given to the prosecution of a person for a specified criminal or disciplinary offence if the facts, as found by the Commission, are sufficient to establish a prima facie case against the person in relation to the offence. 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.

2.18 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.[5] Since that date, the powers and obligations of the Commission to recommend or state whether consideration should be given to the prosecution of a person for a specified *'disciplinary offence'* (sections 16(1)(b), 97(2)(b)) has no effective application to police officers. This is so even for police misconduct that occurred before this date.[6] Instead, the Commission may make

[5] *Police Service Act 1990*, s 173 (repealed).

[6] *Police Service Act 1990*, Sch 4, Pt 13, cl 49.

recommendations that consideration be given to the taking of disciplinary action under Part 9 of the *Police Service Act 1990*. Disciplinary action may include the following:

- non-reviewable action, that is:
  - coaching;
  - mentoring;
  - training and development;
  - increased professional, administrative or educational supervision;
  - counselling;
  - reprimand;
  - warning;
  - retraining;
  - personal development;
  - performance enhancement agreements;
  - non-disciplinary transfer;
  - change of shift (but only if the change results in no financial loss and is imposed for a limited period and is subject to review);
  - restricted duties; and
  - recording of adverse findings;
- reviewable action, that is:
  - a reduction in a police officer's rank or grade;
  - a reduction in the police officer's seniority;
  - a deferral of the police officer's salary increment; and
  - any other action (other than dismissal or the imposition of a fine) that the Commissioner of Police considers appropriate.

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

3. OPERATION COPPER

SCOPE AND PURPOSE

3.1 The public hearings in relation to Operation Copper were held on 4 - 6 May 1998. At the commencement of the public hearings, Commissioner Urquhart QC announced the general scope and purpose in the following terms:[7]

> Pursuant to section 32(3) of the Act, I announce that the general scope and purpose of this hearing is to investigate:
>
> (1) The circumstances by which a police statement dated 2 June 1997, bearing a signature purporting to be the signature of a probationary constable who, for the purposes of this hearing, will be referred to and known as D1, was created and signed and incorporated in a New South Wales Police Service brief of evidence in the matter of Police v English, listed at the Downing Centre Local Court on 11 June 1997;
>
> (2) The events following the discovery of the said statement;
>
> (3) The actions taken by the New South Wales Police Service to investigate the creation of the statement and the subsequent events….

WITNESSES

3.2 The following witnesses appeared before the Commission and gave evidence:

- Witness code named D1;
- Constable Stuart Edward Byrnes;
- Senior Constable Keith Robert Ridley;
- Senior Constable Wayne Alan Pernice;
- Inspector Robert James Holley;
- Superintendent Allan Frederick Tayler;
- Senior Constable Bradley William Leonard;

[7] PIC Transcript 4 May 1998 p 2.

- Sergeant Susan Elizabeth Waites; and
- Constable Haidee Nicola Stephen.

BACKGROUND

3.3 The first witness at the hearings was a probationary constable at the time the incident which was the subject of the hearing took place. She was given the code name 'D1', and non-publication orders were made by the Commissioner to protect her real identity.[8]

3.4 Witness D1 graduated from the Goulburn Police Academy on 16 May 1997.[9] The events that are the subject of this hearing stemmed from an arrest by Constable Stuart Edward Byrnes and D1 of a person on suspicion of having been involved in a shoplifting offence on 21 May 1997,[10] five days after D1 had graduated from the Academy. The Commission heard evidence that D1 had not worked with Constable Byrnes before this incident,[11] and indeed, D1 did not even know Constable Byrnes at this time.[12] Constable Byrnes joined the Police Service on 21 August 1994.[13]

3.5 At court on 11 June 1997, in the absence of the defendant, the matter was adjourned and set down for hearing on 1 July 1997.[14] Constable Byrnes subsequently requested D1 to obtain a statement from two civilian witnesses. D1 duly obtained the statements and placed them in Constable Byrnes' pigeonhole.[15]

3.6 On or about 26 or 27 June 1997, Constable Byrnes asked D1 to provide him with a copy of her relevant notebook entry, which she did.[16]

3.7 D1 subsequently prepared a draft of her statement for the proceedings. D1 did not ever provide a copy of this statement to Constable Byrnes.

3.8 On 1 July 1997, the matter proceeded on an ex parte basis before the Downing Centre Local Court. The statement of Constable Byrnes and the statements obtained by D1 of the civilians who witnessed the offence were tendered as exhibits.

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8 PIC Transcript D1 4 May 1998 p 6.
9 PIC Transcript D1 4 May 1998 p 7.
10 PIC Transcript D1 4 May 1998 p 7.
11 PIC Transcript SE Byrnes 4 May 1998 p 84.
12 PIC Transcript D1 4 May 1998 p 7.
13 PIC Transcript SE Byrnes 4 May 1998 p 80.
14 PIC Transcript WA Pernice 4 May 1998 p 70; Exhibit 24.
15 Police stations have a system whereby each officer is allocated a 'pigeonhole' which is used like a letterbox to distribute and receive correspondence.
16 PIC Transcript D1 4 May 1998.

3.9 As part of her training as a probationary constable, D1 was required to submit a case study of an actual police brief of evidence. D1 elected to use this brief of the shoplifting offence for her case study.

3.10 D1 sought a copy of the brief on 16 July 1997, and, upon perusing the brief, discovered a statement which purported to have been made and signed by her. She had not seen the statement before and the signature was not her signature. The statement will be referred to in this chapter as the 'D1 statement'.

THE D1 STATEMENT

3.11 Constable Byrnes acknowledges preparing the D1 statement. In response to a notice to produce information served on Constable Byrnes pursuant to section 25 of the Act, he wrote:[17]

> Throughout this period I was preparing an example statement that [D1] could use as a guide for her own statement for her own case write up. As I had very little contact with [D1] during this time, I did not tell her I was preparing this statement for her benefit.

3.12 Constable Byrnes acknowledges signing the name of D1 on the D1 statement in a cursive style similar to her signature.[18]

3.13 Constable Byrnes acknowledges that he copied the signature of D1 from the statements of the civilian witnesses which D1 had signed as a witness and provided to him previously.[19]

3.14 D1 gave evidence that on the evening of the arrest, 21 May 1997, she asked Constable Byrnes whether he required a statement from her and she was told by Constable Byrnes that he did not.[20]

3.15 D1 gave the following evidence:[21]

> Q. Was there any request made by you of Byrnes or Byrnes of you to prepare a statement from yourself?
> A. Well, initially the night of the incident I asked him if he required a statement from me. I can't be 100 per cent certain on the date of when he said to me in passing once again, 'Oh, can you do a statement or give me your notebook entry for the incident?'. I said, 'Fine, okay'. That would have been towards the end of the month.

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17 Operation Copper Exhibit 40B.

18 PIC Transcript SE Byrnes 5 May 1998 p 139.

19 PIC Transcript SE Byrnes 5 May 1998 p 139.

20 PIC Transcript D1 4 May 1998 p 9.

21 PIC Transcript D1 4 May 1998 pp 10-12; see Operation Copper Exhibit 13AC.

> Q. Shortly after 26 June, just after the Ladd statement?
> A. Yes, it would have been around that time.
>
> Q. Right. There was a conversation about, what, 'Do a statement', or 'Give me a copy of you notebook entry'?
> A. Yeah. Yeah, once again it was in passing. It wasn't sort of a standing conversation.
>
> Q. Mmm - hmm. What did you do about that?
> A. Well, on the weekend of the 30th I did a statement at home on my home computer. . . . . .
>
> ...
>
> Q. Did you provide your draft statement to him or discuss it with him - -
> A. No.
>
> Q. - -in that time?
> A. No, I didn't. Well, I had no conversation with Constable Byrnes past the 26th after his request for the statement, and as I had the 30th and the night shift on the 1st, I just presumed that my statement wasn't required. So I did nothing further.

3.16 Constable Byrnes gave evidence that he could not recall asking D1 to prepare a statement for the prosecution or to provide him with a copy of her relevant notebook entry.[22]

CONSTABLE BYRNES' REASON FOR PREPARING THE D1 STATEMENT

3.17 In his response to the section 25 notice, Constable Byrnes stated that his reason for preparing the D1 statement was as a guide for D1 to use for her case study write up:[23]

> As a result of Probationary Constable [D1's] request to use this incident as her Case Write Up, I prepared a statement of evidence that I would have been prepared to use in Court if the situation was to arise, however my statement was also necessary for Probationary Constable [D1's] Case Write Up to complete a brief of evidence
>
> ...
>
> I made this statement in order to show the Probationary Constable what I believed to be how an entire, professionally completed statement should be prepared for court. For the purpose of showing a completed document I signed and witnessed the document.

[22] PIC Transcript DE Byrnes 5 May 1999 p 129.
[23] Operation Copper Exhibit 40B.

3.18 During examination by Counsel for Constable Byrnes, D1 gave the following evidence about her conversation with Constable Byrnes regarding using the arrest for her case study write up:[24]

> Q. Either in the station or in the truck or at any other time that you were with Constable Byrnes, do you remember speaking to him about the fact that you were required to do, I am not sure whether they are called the case write up or an assignment or both?
> A. Yes. Actually it was back at the station, I think, from my recollection Constable Byrnes needed a brief for a CDP [Constable Development Program] and I said 'I want it for a case write up'. It was in a joking sort of manner.
>
> Q. In any event, the fact that you needed or you thought you might like to use something like this shoplifting incident for part of your police education came up between you and Constable Byrnes?
> A. As more of a banter thing, not as a one on one discussion.
>
> Q. But it was communicated to you by Constable Byrnes at least the concept that you could do something like this shoplifting incident -
> A. Yes.
>
> Q. - - as your case write up?
> A. Yes, the same as he communicated he wanted a brief for his CDP.

3.19 Constable Byrnes' evidence regarding this conversation with D1 is that the conversation was more pointed and that D1 came and asked him. He disagreed that it was 'merely some banter'.[25]

3.20 At no stage did Constable Byrnes tell D1 that he was preparing and signing a statement for her, as a training exercise to assist her with her case study assignment. In his written response to the section 25 notice, Constable Byrnes explained his reasons for not telling D1 he was drafting a statement in her name as a guide for her:[26]

> As I had very little contact with Probationary Constable [D1] during this time, I did not tell her I was preparing this statement for her benefit.

3.21 Constable Byrnes confirmed this in his evidence:[27]

> Q. You weren't intending to prepare her statement if it was a guilty plea, were you?
> A. Well, it was - I was to prepare it for the purposes of her assignment for her to use for her assignment,

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[24] PIC Transcript D1 4 May 1998 p 55.

[25] PIC Transcript SE Byrnes 5 May 1998 p 128.

[26] Operation Copper Exhibit 40B.

[27] PIC Transcript SE Byrnes 5 May 1998 p 150; see also PIC Transcript SE Byrnes 5 May 1998 pp 128-129 and 141-142.

> Q. You never told her that, did you?
> A. No, that's right.
>
> Q. At any stage?
> A. No.

3.22 Constable Byrnes asserted that he prepared the D1 statement for the benefit of D1 to show her 'what a professionally completed statement should look like'. Notwithstanding that assertion, Constable Byrnes did not ever provide a copy of the statement to her.

3.23 In addition, on or around 16 June 1997, Constable Byrnes asked D1 to obtain a statement from the owner of the shop where the shoplifting offence occurred. D1 obtained the statement from this civilian witness on the day she was requested to by Constable Byrnes. She placed the completed statement in Constable Byrnes' pigeonhole.[28] D1 was asked by Counsel Assisting whether she heard anything from Constable Byrnes about whether the statement was satisfactory. She replied:[29]

> A. Not really. I think he said at the time, 'Oh, it will be all right', so I left it at that.

3.24 On or around 26 June 1997, Constable Byrnes asked D1 to obtain a statement from another civilian witness, which she did, and again placed in Constable Byrnes' pigeonhole.[30]

3.25 Constable Byrnes confirmed in evidence that the civilian statements which D1 had obtained were satisfactory for him to include in the brief and provide to the prosecutor.[31]

INCLUSION OF D1 STATEMENT IN BRIEF

3.26 Constable Byrnes included the D1 statement in the brief which he provided to the police prosecution branch.[32] D1 was listed as one of the witnesses on the brief cover sheet.[33]

3.27 Constable Byrnes did not ever advise the prosecutor that the statement purporting to be that of D1 had been prepared and signed by him for the purposes of training only and was not for use in the court proceedings.

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28 PIC Transcript D1 4 May 1998 p 9; see Operation Copper Exhibit 8B.
29 PIC Transcript D1 4 May 1998 p 9; see Operation Copper Exhibit 8B.
30 PIC Transcript D1 4 May 1998 pp. 9-10; see Operation Copper Exhibit 9B.
31 PIC Transcript SE Byrnes 5 May 1998 pp. 114-115.
32 PIC Transcript SE Byrnes 5 May 1998 p 138; see also p 142.
33 Operation Copper Exhibit 17AC.

He gave the following answers in reply to questions from Counsel Assisting:[34]

> Q. And at no stage did you advise the prosecutor that her statement wasn't to be used or was not to be relied on, did you?
> A. Yes, he was told that the witness wouldn't be there.
>
> Q. But you never told him that it was merely a training exercise or anything like that?
> A. Well, he - -
>
> Q. Did you?
> A. I mean, why would he have to know that, I'm sorry?
>
> Q. Right. Because he had a statement that you say was a training exercise on a police brief in the prosecution branch; that's why I might have to know
> A. I understand, sorry. Well, he was made aware that that witness wouldn't be there, so that witness - that statement wasn't for the purpose of court.
>
> Q. So you thought it was quite okay to leave it there in official police documents?
> A. Well, at the time it didn't cross my mind.
>
> Q. You didn't think to put 'training purposes only' on it, or something like that?
> A. I've thought about that numerous times since then, but at the time, no.

3.28 Police Prosecutor, Acting Sergeant Wayne Pernice, gave evidence as to the weight that might be attached to the statement of D1 in the context of an ex parte hearing:[35]

> Q. . . . you perused the statements of both police officers to satisfy yourself of what areas they covered?
> A. Yes.
>
> Q. In going through the process of perusing the police statements, did you put your mind to whether one corroborated the other?
> A. Yes, I did.
>
> Q. That's your ordinary practice when considering statements from police in respect of ex parte hearings?
> A. Yes, it is.

[34] PIC Transcript SE Byrnes 5 May 1998 pp 138-139.

[35] PIC Transcript WA Pernice 4 May 1998 p 75.

Q. Indeed, that would be a precaution in your mind so as to satisfy yourself of the appropriateness of the charge and sufficient proof being available to proceed ex parte?
A. Yes, that's correct.

Q. It is also, as I understand it, the practice in ex parte hearings to not necessarily call the second or corroborative police witness if you have one there available to give evidence?
A That's correct.

Q. Presumably because there would be no-one there to challenge their evidence, as it were, from the defence point of view?
A. Well, that's correct. If the first officer gives evidence and the second officer's evidence is just such as to corroborate that, there is no point calling that second officer.

Q. On the other hand, if the matter is defended, you would require, I would imagine, both officers so as to support each other in the prosecution and proofs that are required?
A. Certainly would.

3.29 And further:[36]

Q. So when you receive a brief for an ex parte hearing with, in this case, two police and two civilians and you've got the two civilians there, but no police officer, you would endeavour to try to contact one or other to have them there to conclude the ex parte hearing?
A. Yes, you would need one or the other.

Q. And if, for example, and I just put this as a hypothetical, the informant on this occasion, Byrnes, wasn't there, you may well have tried to get the witness D1 along to give evidence?
A. Yes.

Q. And that's the practice that is adopted by the prosecution branch there at the Downing Centre anyway to try to deal with matters both judicially and expeditiously; is that so?
A. Yes.

3.30 Constable Byrnes originally sought to explain that the D1 statement had been included in the brief because it was among other papers that were being photocopied for this purpose:[37]

Q. So why did you include her statement in the prosecution brief?
A. As I said, when everything was photocopied, it was all put together and run through the photocopier.

[36] PIC Transcript WA Pernice 4 May 1998 p 78.
[37] PIC Transcript SE Byrnes 5 May 1998 p 144.

3.31 Under later examination by the Commissioner, Constable Byrnes conceded that a selection process is applied to whether a document is included in a brief, and that the mere fact that a document is included among papers to be photocopied does not mean that it is included in a brief:[38]

> Q. Mr Byrnes, without being selective as to the matters that might or might not trouble me, I just want to tell you what I have gathered from part of your evidence about the preparation of a brief and you tell me whether this be correct or incorrect, because it is what I gathered from the evidence: that you get all of the pieces of paper together, you put it into the photocopier and whatever comes out the other end forms the brief? Is it as simple or as trite? Is it really what you do?
> A. Well, obviously there are certain documents that you don't put in there.
>
> Q. What sorts of documents do you not put in there?
> A. Things such as the form C and form D and that - other memos from the prosecutors.
>
> Q. But everything else goes in, does it?
> A. Well —
>
> Q. What about - and let me be absurd for a moment —
> A. Yes, sir.
>
> Q. — let's say that you had your Franklin's shopping list and it was in there, it shouldn't have been in there but somehow or other you lost it and it happened to find its way into this bundle of papers?
> A. Yes.
>
> Q. Would that go into the photocopying machine and come out the other end and form part of the brief, or is there some selection process that you use that would ensure it would not be in the brief?
> A. There is a selection process, yes.
>
> Q. And is the selection process such that only things that should be in the brief go in the brief?
> A. Well, yes.

3.32 It is unclear whether Constable Byrnes was intending to suggest that inclusion of the D1 statement in the brief occurred inadvertently, as a result of the statement being caught up with other papers being photocopied for the brief. In any event, the fact that the list of contents of the brief of evidence, which had been prepared by Constable Byrnes, listed the D1 statement establishes that it was not unintentional that the statement be

[38] PIC Transcript SE Byrnes 5 May 1998 p 172.

included in the brief. Constable Byrnes himself acknowledged that he intended to place the statement in the brief (emphasis added):[39]

> Q. You see, you know full well if it is in the brief it could well get to court?
> A. Not if that person's not going to be in attendance.
>
> Q. But it gets to the prosecutor?
> A. Yes.
>
> Q. And certainly, on first view, it appears to be a purely corroborative statement to yours?
> A. On first view?
>
> Q. Yes?
> A. I suppose so, yes.
>
> Q. And seems to be a signed up, correct statement?
> A. That's what I was aiming for, yes.
>
> Q. Yes. *And you put it in the brief that went to the prosecutors?*
> A. *Put everything together, yes.*

3.33 As well as being aware that the statement was included in the brief, Constable Byrnes was aware of the possibility that the D1 statement might have been used at court:[40]

> Q. …you agree, do you not, that it was inappropriate for you to prepare a statement on behalf of D1?
> A. For the purposes of court, it would have been inappropriate.
>
> Q. It was with the court, wasn't it, with the prosecutor at court?
> A. Yes.
>
> Q. And you acknowledge that it could well have been used had you not been there?
> A. Yes.
>
> Q. In the prosecution of the case against the offender?
> A. Yes.
>
> Q. And it is merely by chance that it wasn't used; is that so?
> A. No.
>
> Q. No? Because you were there?
> A. Because I was there and I was aware that the other constable wasn't going to be present.

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39 PIC Transcript SE Byrnes 5 May 1998 pp 144-145.

40 PIC Transcript SE Byrnes 5 May 1998 p 149.

ASSESSMENT

3.34 It is clear that the D1 statement, dated 2 June 1997, was not prepared by D1. D1 was off-duty on this day. Constable Byrnes admitted that he was the author of the D1 statement and that he signed the statement with what purported to be the signature of D1. Constable Byrnes agreed with suggestions that he may have copied or imitated D1's signature from other statements which were available to him at the time.

3.35 Constable Byrnes' explanation for preparing and signing the D1 statement was to demonstrate to D1 how a professionally completed statement ought be composed and appear. That is, according to Constable Byrnes, he drew and signed the statement for training purposes. Constable Byrnes relied, for this assertion, on what he had been informed by D1, that is, that she intended to use the arrest as a case study for her case study write up.

3.36 It was not disputed that D1 did consider using this shoplifting matter as a case study for training purposes. The statement was not, however, used exclusively for these purposes. Constable Byrnes deliberately incorporated the statement into the prosecution brief of evidence which was provided to the police prosecutor. In so doing, he was aware that the statement may be used in evidence. Constable Byrnes explained that it was not intended that the D1 statement be used in evidence because it was not proposed that D1 attend at court during the hearing.

3.37 No evidence is available as to what motive Constable Byrnes might have had for including the D1 statement in the brief, and the Commission offers no opinion in this regard. Nor is there any evidence for how or why Constable Byrnes held the view that D1 would not be required to give evidence.

3.38 The concessions by Constable Byrnes that he prepared the D1 statement, imitated her signature on the statement and included it in the brief of evidence in the knowledge that it may be required in evidence combine to suggest that Constable Byrnes' explanation that the statement was intended for training purposes only cannot be accepted. That the statement was not intended for training purposes only appears to be supported by the following evidence:

- At no time did Constable Byrnes inform D1 of the fact that he was preparing the statement for training purposes.

- Despite the availability of at least two opportunities, at no time did Constable Byrnes inform D1 of the fact that he had prepared a statement in her name which had been included in the prosecution brief of evidence. Indeed, but for D1's initiative in obtaining a copy of the brief of evidence some 15 days after the hearing, D1 may never have

become aware of the fact that a statement in her name had been tendered into evidence in court.

- The fact that Constable Byrnes was satisfied with statements obtained by D1 from two civilian witnesses suggests that she was perfectly competent to have prepared her own statement.

- Constable Byrnes did not advise the prosecutor that he was the author of the D1 statement. Nor did he advise the prosecutor that the signature on that statement was not the signature of D1, but had been placed there by him.

3.39 Even if the Commission could accept Constable Byrnes' explanation that the only purpose in signing the statement was for training purposes, it would have been inappropriate for Constable Byrnes to have done so without indicating that it was only a training exercise. Furthermore, it was highly improper to have provided the statement to the prosecutor who could be reasonably expected to (and, in fact, did) believe that it was authentic.

ANONYMOUS LETTER

3.40 On 8 August 1997, in the course of her duties, D1 attended her pigeonhole in the muster room at the police station to check her correspondence. In her pigeonhole, D1 located a blank brief envelope which contained an anonymous typed letter with the words: [41]

> You are a fucken stupid women. Use what little common sense you have. Really think before you act in future, a fool like you can cause a lot of damage. You have been warned.

3.41 D1 immediately reported her discovery of the letter to the shift supervisor, who notified the duty officer, who contacted the Local Area Commander, Superintendent Tayler. The letter was sent away for fingerprinting, but analysis was not able to assist in identifying the author(s). D1 was transferred to another police station after receiving the anonymous letter.

3.42 Constable Byrnes denied any knowledge of, or involvement in, the anonymous letter being sent to D1:[42]

> Q. This letter that we have seen in the Commission, the letter that was left in D1's pigeon hole, the threatening letter?
> A. Yes.

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41 PIC Transcript D1 4 May 1998 p 30; Exhibit 14.

42 PIC Transcript SE Byrnes 5 May 1998 p 171; see also PIC Transcript SE Byrnes 5 May 1998 p 171.

Q. Do you know what I am talking about?
A. Yes.

Q. Did you write that?
A. No.

Q. Do you know who did write it?
A. No. I'd like to know.

3.43 Consequent to the discovery of the anonymous letter, an entry was made in the Miscellaneous Property and Receipt Book.[43] This book is kept in the general reception area of the police station and is used by police to record receipt of all property handed in to the police station, or that which comes into police custody, and is not retained as an exhibit.

3.44 The entry was apparently made by Sergeant Porter who was the relieving duty officer when the letter was discovered. Inspector Holley signed the book the following day.

3.45 Constable Haidee Stephen gave evidence that when she arrived at work, the entry in the Miscellaneous Property and Receipt Book regarding the letter was drawn to her attention by another police officer. She was also told that the letter had been located in D1's pigeonhole.[44] The book was being passed around the station and it was the subject of discussion. The entry attracted particular interest because it had been signed by an Inspector, which was apparently unusual.[45]

3.46 Constable Stephen subsequently telephoned Constable Byrnes at home to advise him that there was an entry in the Miscellaneous Property and Receipt Book relating to a letter:[46]

Q. When you contacted him, what did you tell him?
A. I can't remember the conversation. I would imagine all I said to him is, 'There is a - something's been entered up in the miscellaneous property book. It's - that's about all really. It is of a serious nature. Like, I don't know what was - what it was regarding, what was in the letter. That's just what I had heard from - as soon as I came in, rumour from the station, from the other constables that were already there looking at it.

43 Operation Copper Exhibit 33B.
44 PIC Transcript HN Stephen 6 May 1998 p 304.
45 PIC Transcript HN Stephen 6 May 1998 p 302.
46 PIC Transcript HN Stephen 6 May 1998 p 302.

3.47 Constable Stephen was asked about her reason for contacting Constable Byrnes:[47]

> Q. Why did you ring Constable Byrnes about it?
> A. The only reason I rang Constable Byrnes about it was because I was aware of an incident which had occurred between D1 and himself prior. I'm unsure of how long.
>
> Q. What sort of an incident was that?
> A. It was only once again rumours that I had heard, something about an incident. I'm not - about the statement.
>
> Q. About a statement?
> A. Yes.
>
> Q. Was that about a false statement?
> A. Well, I wasn't sure at the time. It was only rumour as far as I was concerned.

3.48 Superintendent Tayler, the Local Area Commander, acknowledged the unfortunate consequence at the station resulting from the entry regarding the letter being placed in the Miscellaneous Property and Receipt Book. He gave the following responses in reply to questions from Counsel Assisting:[48]

> Q. Do you have any view on the propriety or otherwise of entering an entry about such a confidential and concerning document as this threatening letter?
> A. Yes, I do have a view and clearly it shouldn't have occurred that way on the basis of retaining confidentiality. By that, I mean that it should not have been placed into a document that was easily accessible by the other 160 odd members of the command.

ASSESSMENT

3.49 It is clear from the evidence that:

- D1 received an anonymous threatening letter in her pigeonhole at the police station where she was working.
- Constable Byrnes denied any knowledge of, or involvement in, the anonymous letter being sent to D1.
- Fingerprint analysis did not assist in identifying who was responsible for the letter.

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47 PIC Transcript HN Stephen 6 May 1998 pp 302-303.

48 PIC Transcript AF Tayler 5 May 1998 p 194.

- Consequent to the discovery of the anonymous letter, an entry was made in the Miscellaneous Property and Receipt Book which was kept in the general reception area of the police station.

- The existence of the letter and the fact that it had been entered in the Miscellaneous Property and Receipt Book was common knowledge at the police station. The entry attracted particular interest because it had been signed by an Inspector.

- Constable Stephen contacted Constable Byrnes by telephone at his home to advise him about the entry in the Miscellaneous Property and Receipt Book concerning the letter.

3.50 On the available evidence, it is not possible to know who was responsible for the anonymous letter being placed in D1's pigeonhole.

3.51 The Commission is of the view that, in the circumstances, it was inappropriate for the existence of the anonymous letter to be recorded in the Miscellaneous Property and Receipt Book. While it may have been the intention of the author of the entry to make a record of the receipt of the letter for continuity purposes, it had the undesirable effect of alerting the general police population of the station to the fact that D1 had received an anonymous threatening letter.

APPROACH TO D1 BY SENIOR CONSTABLE RIDLEY

EVIDENCE OF D1

3.52 Shortly after the discovery of the anonymous letter, D1 was approached by Senior Constable Keith Ridley to have a discussion.[49] Senior Constable Ridley was one of two Education Development Officers (EDO) at the station where D1 worked. The EDO is responsible for supervising the completion of the education and training requirements of probationary constables.

3.53 When asked by Counsel Assisting, D1 gave the following account of her conversation with Senior Constable Ridley, which took place in Superintendent Tayler's office:[50]

> Q. Do you recall telling him anything else about the complaint?
> A. Well, I more or less - as soon as I sat down and started talking with him I told him everything that happened and - -

[49] PIC Transcript D1 4 May 1998 pp 35-36.

[50] PIC Transcript D1 4 May 1998 pp 37-38.

Q. Can you be a bit more specific on what you mean by 'everything that happened'?
A. Well, that I discovered - you know, I formed my case write up after going and getting a copy of the brief, that I'd discovered a statement as part of that brief that I didn't do and certainly didn't sign and that I'd made a formal complaint about that. That's when he decided to tell me he was a friend of Constable Byrnes.

Q. He then said something to you about it won't affect - -
A. Yes.

Q. - - his role?
A. Yes, his role as my education officer and he started to talk about how he'd had to sack probationary constables and certain things can affect, you know, how they view you and they have the power to sack you and, you know, things along those lines.

Q. When you say the word 'they', who are you referring to?
A. Education officers.

Q. After telling you he was a friend of Byrnes, he then proceed to tell you how he has had to sack probationary constables?
A. That's correct.

Q. Did he give you any specifics as to that possibility?
A. Well, I think he gave me an example about a young fellow and I mean by this stage I was - -

Q. Just take your time. It's very important if you can recall.
A. I honestly can't recall this whole incident. I remember him telling me an incident where he'd had to make a recommendation that a probationary constable wasn't suitable. At that stage I remember thinking 'This is not good', because of the line it was taking. It made me feel very uncomfortable.

3.54 D1 acknowledged, when asked by Counsel for Senior Constable Ridley, that Senior Constable Ridley had condemned what had been done by Constable Byrnes:[51]

Q. . . . Do you agree that Mr Ridley indicated to you that he didn't approve of what Mr Byrnes had apparently done?
A. Yes, he did.

Q. All right. I suggest to you that that was put in fairly concrete terms; that is he said that he condemned what had been done by Mr Byrnes and it just simply wasn't excusable. Is that generally the way it was put to you?
A. Yes, I'd say from memory, yes.

[51] PIC Transcript D1 4 May 1998 p 51.

3.55 D1 was asked by Counsel Assisting how the conversation with Senior Constable Ridley had made her feel:[52]

> Q. In what way did it make you feel uncomfortable? You'd divulged to him the essence of your complaint?
> A. Yes.
>
> Q. You were upset about that, I assume.
> A. Yes.
>
> Q. He'd then told you he was a friend of the person apparently involved in the complaint?
> A. Mmm
>
> Q. And then told you about the previous dismissals of probationary constables by himself?
> A. Well, it seemed to me like the first thing that came to mind was that it was a fact finding mission after, you know, his revealing that he was a friend of Constable Byrnes and to me it was threatening, you know, I interpreted it as being threatening to be reminded that he was in a position to be able to recommend termination of probationary constables.

EVIDENCE OF SENIOR CONSTABLE RIDLEY

3.56 Senior Constable Ridley confirmed in his evidence that he sought out D1 to speak with her[53] and that the discussion took place after D1 had received the anonymous letter.[54] Senior Constable Ridley was aware at this time, from rumour and discussion with Constable Byrnes, of the allegation that Constable Byrnes had prepared and signed a false statement and that the complaint involved D1.[55]

3.57 Senior Constable Ridley was served with a notice to produce information pursuant to section 25 of the Act. In his response, he stated that he had been referred to D1 by Senior Constable Leonard and Sergeant Webb:[56]

> Some time after the 8th of August 1997, after the letter had been located I was approached on the same day by two police officers at Surry Hills being Sergeant Webb and Senior Constable Leonard. Sergeant Webb is in charge of property at Surry Hills and has been stationed there for many years. Senior Constable Leonard was either the Shift Supervisor or Mobile Supervisor. Senior Constable Leonard was also a Peer Support Officer at Surry Hills. I can't remember the actual day, but I

52 PIC Transcript D1 4 May 1998 pp 38-39.
53 PIC Transcript KR Ridley 5 May 1998 p 216.
54 PIC Transcript KR Ridley 5 May 1998 p 217.
55 PIC Transcript KR Ridley 5 May 1998 p 217.
56 Operation Copper Exhibit 32B.

> was approached separately by both officers in the early afternoon. Both officers had informed me that Probationary Constable [D1] had been upset and crying. They told me that other officers had been ignoring her and as I was her Education Officer I should speak to her.

3.58 Senior Constable Ridley denied, when asked by Counsel Assisting, that he had approached Senior Constable Leonard or Sergeant Webb about D1.[57]

3.59 Senior Constable Leonard gave evidence about the circumstances of his conversation with Senior Constable Ridley as follows:[58]

> A. Well Keith and I were drinking coffee in the meal room and we were talking about other matters, I suppose. It wasn't unusual for us to have a coffee in the meal room about mid-morning. As far as I can recall, it was just he and I there. And the conversation turned to what had happened with the witness D1 and Constable Byrnes.
>
> Q. Can I just stop you there. How did it turn to that?
> A. Keith said something along the lines of, you know, 'It's a shame about what's happening with [D1's name] and Stuart'; Constable Byrnes.

3.60 Although Senior Constable Leonard did not specifically recommend that Senior Constable Ridley talk to D1, he was not surprised to find out that Senior Constable Ridley had done just that. In answer to Counsel for Senior Constable Ridley, Senior Constable Leonard replied as follows:[59]

> A. No, I didn't tell Keith it would be a good idea to speak to her.
>
> Q. You wanted to infer that, did you not?
> A. I saw that that was a logical outcome of what I was saying, but whether or not I intended to - whether I intended to speak to her, I can't say. I don't think so.
>
> Q. You saw that it was the logical outcome of what you were saying to him that he would infer that you wanted him to give her some slack and, indeed, to tell her that she had some slack; correct?
> A. I think those are logical inferences, yes.

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57 PIC Transcript KR Ridley 6 May 1998 pp 247 and 248.

58 PIC Transcript BW Leonard 6 May 1998 p 278.

59 PIC Transcript BW Leonard 6 May 1998 p 288.

3.61 Counsel Assisting asked Senior Constable Ridley about the latter's disclosure to D1 that he was a friend of Constable Byrnes:[60]

> Q. - - did you disclose to her that you were a friend of Constable Byrnes?
> A. Only in the fact that I knew him at the station as a work colleague, nothing more than that.
>
> Q. You didn't indicate to her that he was a mate or a friend, as it were?
> A. I would have used the word 'friend', but not the word 'mate', no.
>
> Q. At the start of your conversation or near the end or at the end?
> A. Off - how the conversation came about, I asked her to tell me what had happened and then after she had told me what had happened, then I would have then said around that time that, yes, he was a friend in the station.
>
> Q. She commenced by telling you about the complaint; that is, the false statement?
> A. Yes.
>
> Q. Did you not think it was prudent to perhaps warn her, 'Look, I'm a friend of Constable Byrnes'. It's gelled in your mind, no doubt, at this stage?
> A. But I was like friends with everyone at the station. It wasn't a differentiation between him specifically being a personal friend as, 'Yes, I know Constable Byrnes. I worked here for x amount of years and I've known him since he's been at the Surry Hills command'.

3.62 Senior Constable Ridley confirmed in evidence that when he spoke to D1, he mentioned to her that in the past, he had considered recommending the dismissal of a probationary constable.[61] He said that he had mentioned this in the context of counselling. In an attempt to demonstrate empathy with D1, he relayed to her how he had recommended dismissing a probationary constable, and that as a result, he had suffered from the adverse attitude of other police. His intention was to:[62]

> . . .let the probationer know that I had suffered similar experiences from other police for taking subsequent actions against police. I believed that I may have had an understanding of what she may have been going through because of my role as an education officer.

60 PIC Transcript KR Ridley 5 May 1998 p 222.
61 PIC Transcript KR Ridley 6 May 1998 p 237.
62 PIC Transcript KR Ridley 6 May 1998 p 237.

3.63 The Commissioner asked Senior Constable Ridley why it was necessary for him to go into such detail:[63]

> Q. . . . Why was it not enough if you wanted her to accept you as somebody about whom others had made complaints, that you just simply said to her, 'People have made complaints about me in what I'm doing and in my function' and leave it at that? Why trouble her with the details of what you conveyed to her being actions you have taken in relation to probationary constables?
> A. I didn't realise at the time what I was saying was troubling. I thought - I'm very open when I speak to people. I like to, as I said earlier, speak from experiences that I've received. I thought by relaying these experiences, I thought that D1 could then perhaps see that well, there is someone else there who has received this type of thing from other police before and I can understand what she might be going through and I was there to assist her. As I said, I didn't realise at the time that what I was saying in such details was concerning her.

3.64 In examination by Counsel for Senior Constable Ridley, D1 conceded that it was a possibility that Senior Constable Ridley may have said to her that he had been ridiculed by other people in the Police Service because he had taken action against one probationer on at least two occasions due to his or her unsuitability as a police officer.[64]

3.65 Senior Constable Ridley was aware that shortly after his conversation with D1 she left work for the day, and was then transferred to another police station. When questioned by Counsel Assisting, Senior Constable Ridley gave evidence that he believed that D1's transfer was related to the conversation he had with her:[65]

> Q. You heard later that she'd made a complaint about your interview with her?
> A. Initially what I'd heard is that she'd been removed from the police station later that afternoon after I'd already left work for the day. My natural assumption is that it was based around our conversation.
>
> Q. So you didn't hear that she'd complained about you, as it were.
> A. Well, I'm assuming that she complained about me based after our conversation.
>
> Q. Why would you assume that?
> A. It just was - just the nature of me having spoken to her and then she being removed from the station and then the next day she's not there and other police are telling me she's been removed from the station and it was pretty well after I had spoken to her; so it's my natural assumption that it is, yes, it's because of what I've said.

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63 PIC Transcript KR Ridley 6 May 1998 p 238-239.

64 PIC Transcript D1 5 May 1998 p 52.

65 PIC Transcript KR Ridley 5 May 1998 p 223.

...

Q. And it could well be prudent to move an officer straight away out of the station from where she'd received a threat?
A. Yes.

Q. But you thought it related to your conversation with her?
A. Yes.

Q. Was there any aspect of your conversation that you thought may have caused sufficient problem for her to be moved?
A. None.

Q. Any particular aspect of your conversation that formed the basis of you thinking she had complained about your conversation with her?
A. None.

3.66 Senior Constable Ridley acknowledged that in hindsight, there were parts of his conversation with D1 which she could have perceived as being threatening:[66]

A. . . . there was all sorts of aspects in there which now, in hindsight, you could look at and interpret as like being a friend of someone, talking about dismissal or transferring of probationers. Yeah, that could easily be misinterpreted.

Q, They're three aspects that you concede now could easily have been misinterpreted as a threat?
A. Yes.

Q. Either individually or jointly?
A. Yes.

3.67 Senior Constable Ridley later agreed with Counsel Assisting that, in speaking with D1, it was imprudent for him (Ridley) to have relayed his experiences to D1.[67]

ASSESSMENT

3.68 It is clear from the evidence that:

- Senior Constable Ridley was an Education Development Officer and responsible for the completion of the education and training requirements of D1. He was therefore in a position of influence and authority over D1.

[66] PIC Transcript KR Ridley p 245.
[67] PIC Transcript KR Ridley p 246.

- Shortly after the discovery of the anonymous letter, Senior Constable Ridley approached D1 for a discussion.

- Senior Constable Ridley asked D1 to tell him about the statement and the letter. After D1 had confided in Senior Constable Ridley, he told her that Constable Byrnes was a friend of his.

- In the course of his conversation with D1, Senior Constable Ridley told her that in the past, he had recommended the dismissal of a probationary constable. D1 agreed that Senior Constable Ridley may also have said to her that he had been ridiculed by other people in the Police Service because he had to take action against one probationer, on at least two occasions, due to his or her unsuitability as a police officer.

- Shortly after D1's conversation with Senior Constable Ridley, she was transferred to another police station.

3.69 Senior Constable Ridley gave evidence that in telling D1 that he had to recommend the dismissal of a probationary constable, it was his intention to demonstrate his empathy with her situation in the sense that he had suffered from the adverse response of other police who disagreed with his action. Senior Constable Ridley conceded in examination that relaying this experience to D1 was imprudent.

3.70 The Commission is of the opinion that it was inappropriate for Senior Constable Ridley, as Education Development Officer, to approach D1 in the manner in which he did. It was reasonable in the circumstances for D1 to interpret Senior Constable Ridley's approach to her as a fact finding mission on behalf of his friend Constable Byrnes, and to perceive that he was threatening her. The Commission is of the opinion that Senior Constable Ridley demonstrated a lack of judgment in his conversation with D1.

4. OPERATION TRITON

SCOPE AND PURPOSE

4.1 At the commencement of the public hearings for Operation Triton, the Commissioner announced the general scope and purpose of the hearing as follows:[68]

> …. I announce that the general scope and purpose of this hearing is to investigate:
>
> (1) The circumstances by which a facts sheet bearing a signature purporting to be the signature of a constable who shall hereafter be referred to by a codename, was created and signed and incorporated in a New South Wales Police Service brief of evidence in the matter of Police v Fulham, determined at Sutherland Local Court on 20 November 1997;
>
> (2) The events following the discovery of the said facts sheet; and
>
> (3) The action taken by the New South Wales Police Service to investigate the creation of the facts sheet.

WITNESSES

4.2 The following witnesses appeared before the Commission and gave evidence:

- Witness code named E1;
- Senior Constable Dean William Blacker;
- Chief Inspector Raymond Kenneth Rootes;
- Senior Sergeant Malcolm Bruce Matthews; and
- Sergeant Kenneth Alan Moroney.

4.3 The first witness at the hearing was given the code name 'E1'. Non-publication orders were made to protect his real identity.

[68] PIC Transcript 6 July 1998 p 2.

BACKGROUND

4.4 On 18 February 1997, E1, Senior Constable Blacker, and other police charged two persons in relation to robbery offences. One other alleged offender, Benjamin Fulham, fled from the scene.

4.5 E1 was the nominated informant and charging officer in respect of the two detained offenders. He initiated the charging procedures, prepared the relevant facts sheet[69] for the two offenders, and made an entry on the Computerised Operational Policing System (COPS) database.

4.6 E1 subsequently discovered a facts sheet for the Fulham brief, which he had not prepared, and which bore his falsified signature.

ARREST OF THE OFFENDER FULHAM

4.7 On 29 March 1997, Senior Constable Blacker and another police officer arrested Fulham. Senior Constable Blacker gave evidence that, following the arrest, he contacted E1 by telephone at the latter's home:[70]

> Q. What did you say to E1?
> A. If there was prepared facts sheets.
>
> Q. What did he say?
> A. No.
>
> Q. What did you say?
> A. Was there anything else in relation to it, and he said only what was in relation to the two co-offenders.
>
> Q. Did he tell you what was available in relation to those co-offenders?
> A. At this point of time, I can't recall exactly what he told me was there. I can't recall exactly what he told me was there, and that he wasn't going to come in until his shift was to commence later that evening.
>
> Q. Did you ask him to come in?
> A. It was a practice. I put that offer to him.
>
> Q. I want to know what was said, officer?
> A. The exact words, I can't recall.
>
> Q. The effect of the words was?
> A. The offer of coming in early, if he wished to interview Mr Fulham himself.

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[69] A facts sheet is a brief narration of the circumstances of the offence (summary or indictable), written by the officer in charge of the arrest and used in court.

[70] PIC Transcript DW Blacker 7 July 1998 pp 113-114.

Q. And prepare a facts sheet?
A. If that be the case, yes.

Q. What did you ask him, what offer did you make to him?
A. If he wanted to come in and continue with the brief.

4.8 Senior Constable Blacker gave evidence that where a warrant had been taken out, or a person was wanted as a suspect for an offence, it was police practice that a facts sheet would be drawn up in advance.[71] The purpose of his telephone call to E1 was to inquire whether E1 had prepared a facts sheet in anticipation of the arrest of Fulham. Also, he was aware that E1 had looked after the original two offenders and he believed that E1 wanted to maintain the position of informant for the brief.[72] Senior Constable Blacker gave evidence that when E1 declined to attend the station to attend to the interviewing and charging of the offender that he willingly and happily undertook to attend to the process himself.[73]

4.9 E1 confirmed that Senior Constable Blacker contacted him by telephone at his home to advise E1 that he had arrested the offender Fulham. He gave the following evidence about that conversation:[74]

> A. I don't remember the exact wording of the conversation now, but it was along the lines of that he'd arrested Benjamin Fulham, whether I'd prepared a facts sheet, I said I hadn't. He then asked me whether I was coming in to interview him. I said I had other things to do, and I also informed him that all associated paperwork was in my pigeonhole in a brief titled '[names of victims] robbery'.

4.10 Some days later, E1 located in his pigeonhole paperwork relating to the Fulham brief. This included the on line charging sheets and the facts sheet. E1 noticed on the charge sheets that the name of Senior Constable Blacker had been crossed out and that his name had been inserted in handwriting.[75] E1 looked at the title page of the facts sheet, and saw that it mentioned the name of the offender, place of offence, and date of birth of the offender.[76] He then put those papers with the brief in relation to the co-offenders.

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71 PIC Transcript DW Blacker 7 July 1998 p 113.
72 PIC Transcript DW Blacker 7 July 1998 p 114.
73 PIC Transcript DW Blacker 7 July 1998 p 116.
74 PIC Transcript E1 6 July 1998 p 12.
75 PIC Transcript E1 6 July 1998 pp 15-16.
76 PIC Transcript E1 6 July 1998 p 16.

DISCOVERY OF THE FACTS SHEET

4.11 E1 was attending Sutherland Local Court for an unrelated matter, when he was approached by the police prosecutor in relation to the Fulham brief. He showed E1 the prosecutor's copy of the facts sheet. E1 saw that the facts sheet bore a signature purporting to be his, but was not, and that the facts sheet had not been prepared by him.[77] E1 acknowledged in evidence that there was nothing in the document, apart from his signature, which to his knowledge was false.[78]

4.12 E1 was concerned about the false signature on the facts sheet for a number of reasons. Firstly, he believed that the person who had falsified his signature on a court document had committed a criminal offence; secondly, he was concerned that the prosecution of the offender could fail due to a 'technicality'; and thirdly, E1 believed that he may be required to give evidence about the facts sheet and he was unwilling to give false evidence about the preparation of that document.[79]

4.13 E1 decided that he would advise his patrol commander, Inspector Price, of his discovery, and not mention the matter to the prosecutor. When he returned to the station, he obtained the copy of the facts sheet from his pigeonhole and placed it in an envelope on the patrol commander's desk with a note. The note advised Inspector Price that he thought that Senior Constable Blacker had prepared the facts sheet and signed it with E1's signature. Inspector Price contacted E1 at home that evening and they arranged to meet the following day to discuss the matter. The investigation conducted by Inspector Price will be discussed later in this chapter.

SIGNING OF THE FACTS SHEET

EVIDENCE OF SENIOR CONSTABLE BLACKER

4.14 Senior Constable Blacker acknowledges that he prepared the facts sheet and signed on it the name of E1.[80] He was familiar with how E1 signed his name as he had worked with him previously, and he tried to imitate E1's signature on the document so as to present what purported to be his signature.[81] He also acknowledges that the name of E1 as the informant was inserted in the Charge Sheet form at his request, although he cannot recall who made the handwritten amendment.[82]

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77 Operation Triton Exhibit 4AC and 4B.

78 PIC Transcript E1 6 July 1998 p 50.

79 PIC Transcript E1 6 July 1998 pp 23- 24.

80 PIC Transcript DW Blacker 7 July 1998 p 101; Operation Triton Exhibit 4A.

81 PIC Transcript DW Blacker 7 July 1008 pp 122-123.

82 PIC Transcript DW Blacker 7 July 1998 pp 101-103.

CIRCUMSTANCES IN WHICH SENIOR CONSTABLE BLACKER CAME TO SIGN THE FACTS SHEET

4.15 Senior Constable Blacker gave evidence that on the afternoon of the arrest, he prepared the facts sheet, and presented the unsigned document to the checking officer, Sergeant Ken Moroney. He had inserted the name of E1 as the informant. According to his evidence, Senior Constable Blacker told Sergeant Moroney that E1 was the informant for the briefs in relation to the co-offenders, and that E1 was using it for his investigator's training course.[83] Counsel Assisting asked Senior Constable Blacker what was the response, if any, from Sergeant Moroney:[84]

> A. Well, once the facts sheet was inspected, they were okayed, but he made the mention that a signature needed to be put there. I said, 'If I am not to be the informant, how are we going to do it? You can't run through without the signature'.
>
> Q. I will just stop you there. You seem to be quite clear on this conversation; is that so?
> A. Well, the order of events, yes, sir. Over the recent week, a lot of things have been refreshed to me.
>
> Q. 'If I am not going to be the informant, how are we going to do it? You can't run through without the signature' - that is what you said to Moroney?
> A. That is what he said to me. It can't be presented, forwarded on, without a signature.
>
> Q. So the rest of the conversation?
> A. That was pretty well it. Then I just, on that supervisor's desk right next to him, signed it.
>
> Q. Signed on each of the pages?
> A. That's correct, sir.
>
> Q. What purported to be the signature of E1?
> A. That's correct, sir.

4.16 Constable Blacker gave evidence that he signed the facts sheet with the signature of E1 just to the side of Sergeant Moroney. According to Constable Blacker, if Sergeant Moroney had been looking in his direction, it would have been within his view. He then presented the signed facts sheet to Sergeant Moroney. This occurred within a matter of seconds.[85]

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83 PIC Transcript DW Blacker 7 July 1998 p 121.

84 PIC Transcript DW Blacker 7 July 1998 p 121.

85 PIC Transcript DW Blacker 7 July 1998 p 123.

4.17 Senior Constable Blacker explained why he signed the facts sheet:[86]

> A. You're making it sound like it's a prior incident to deceive or to pervert something, which is incorrect on your behalf. I don't mean to be disrespectful to you or the Commissioner, but you're making out I had some prior agenda or that I had some cause to do this. The only basic effect of this, and the reason behind it, was to facilitate E1 to maintain as informant, like he maintained all the way from 18 February 1997. He still showed that desire and interest on 29 March, he still showed that interest all the way through to June, on telephone station pad entries, also in his duties going out, which he gave evidence of yesterday, in the car and patrolling around the Oatley area for the offender. So that was continued all the way through.
>
> All I maintained, or tried to do, prior to placing this issue was to facilitate him being the common informant so that presentation at court would have been better and he would have had his finger on the pulse for all three offenders. I made the error of judgment, which was stupid on my part, when I was asked to put a signature there, I placed a signature there in his name. If I had placed my own there on his name, would we have been here today?

EVIDENCE OF SERGEANT MORONEY

4.18 Sergeant Moroney confirmed in evidence that the signature of the checking officer was his signature.[87] On 16 July 1998, when asked by Counsel Assisting what his recollection of signing the facts sheet was, Sergeant Moroney gave the following evidence:[88]

> A. I have no recollection at all of signing it. I have signed hundreds of fact sheets over the last few years. All I can say is I have no recollection of it at all.

4.19 And later:[89]

> Q. Do I understand your earlier response correctly in that you now, today, have absolutely no recollection whatsoever of any of the circumstances surrounding the signing of this fact sheet?
> A. I've got no recollection.

4.20 Sergeant Moroney was served with a notice pursuant to section 25 of the Act, requiring him to produce a statement of information.[90] At question four, Sergeant Moroney was asked to state the sequence of events which

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86 PIC Transcript DW Blacker 7 July 1998 p 138.
87 PIC Transcript KA Moroney 16 July 1998 p 316.
88 PIC Transcript KA Moroney 16 July 1998 p 316.
89 PIC Transcript KA Moroney 16 July 1998 p 317.
90 Operation Triton Exhibit 36AC.

led to his signing the facts sheet as the checking officer. He replied as follows on 1 July 1998:[91]

> I cannot fully recall the chain of events leading up to me signing the Fact Sheet on the 29/3/97. I remember Senior Constable Blacker approaching me with the Fact Sheet for me to check. I cannot recall if Senior Constable Blacker spoke to me about signing the fact Sheet on behalf of [E1] or not.
>
> My vague recollection of the matter was that [E1] had investigated the matter several days before and circulated Fulham as wanted. Senior Constable Blacker on the night of 29/3/97 located Fulham and arrested him. A fact sheet was prepared and given to me for checking just prior to Fulham being charged. I examined it and found the item listed at 3 above to be in order. I then signed it as checking officer.

4.21 Counsel Assisting drew Sergeant Moroney's attention to the discrepancy between his written response to the section 25 notice and his evidence. Sergeant Moroney explained:[92]

> A. I've said that. In hindsight I actually don't remember him approaching me. I thought it was obvious to this Commission that he did. I've assumed that. I don't remember anything in relation to the fact sheet at all. I've got to believe he approached me with it.
>
> Q. Why do you have to believe that?
> A. I just assumed that's what happened.

4.22 Sergeant Moroney suggested that what he stated in his section 25 response was not his recollection of events, but rather, it was his reconstruction of events from the fact that he identified his signature on the facts sheet.[93]

4.23 Sergeant Moroney gave the following evidence in reply to Counsel Assisting:[94]

> Q. So you don't wish to reconsider your explanation for why you've made the written statements . . . when today you tell us you have no recollection of those features?
> A. I can only go on what I've said. I know what you're getting at, but I have to be honest. I've written this. I can see in hindsight it's written - worded wrongly. I've written in hindsight by taking facts off the facts sheet. I know what you're saying - it is wrong.

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91 Operation Triton Exhibit 37B.

92 PIC Transcript KA Moroney 16 July 1998 p 322.

93 PIC Transcript KA Moroney 16 July 1998 p 323.

94 PIC Transcript KA Moroney 16 July 1998 p 339.

DISCUSSION BETWEEN SENIOR CONSTABLE BLACKER AND E1 REGARDING THE FACTS SHEET

4.24 Senior Constable Blacker gave evidence that when E1 arrived at work on the night of the arrest, he told E1 that E1 was to be the informant in the Fulham brief and E1, at that time, raised no objection.[95]

4.25 Senior Constable Blacker also gave evidence that he informed E1 that he had signed E1's signature on the facts sheet, although he is not sure whether that conversation took place on the evening of the arrest of Fulham:[96]

> Q. You did tell him at some stage that you had signed his name on the facts sheet?
> A. That's correct; I admitted it to him.
>
> Q. And you don't recall telling him on the night of the arrest?
> A. As I just said, I can't recall whether it was on that night or a couple of days later, but he was informed of that.
>
> Q. By you?
> A. That's correct, I have never denied that.
>
> Q. You are certain, however, that you told him that some days later?
> A In that timeframe, sir, yes.
>
> Q. You are not really sure whether you told him on the 29th, that evening, or a few days later?
> A. I can't recall the exact time of that, no.
>
> Q. Be that as it may, your evidence is that you did tell him once?
> A. That's correct, sir.
>
> Q. But you are not sure when it was?
> A. No, sir.
>
> Q. On the first occasion, you did tell him that you had put him down as the informant?
> A. That's correct.

4.26 E1 denied that Senior Constable Blacker ever advised him that he (Blacker) prepared or signed the facts sheet on his behalf.[97]

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95 PIC Transcript DW Blacker 7 July 1998 pp 119-120.

96 PIC Transcript DW Blacker 6 July 1998 pp 119-120 and also p 125.

97 PIC Transcript E1 6 July 1998 p 39.

EVIDENCE OF ADMISSIONS BY SENIOR CONSTABLE BLACKER

4.27 Inspector Price was the Local Area Commander who initially investigated the complaint by E1. He gave evidence that Senior Constable Blacker did not ever admit to him that he had signed the facts sheet with the name of E1.[98] Inspector Price produced contemporaneous notes from his duty book and a Behavioural Incident Data System (BIDS) entry in support of his recollection of his conversations with Senior Constable Blacker.

4.28 The evidence of Senior Sergeant Matthews was that Inspector Price told him that Senior Constable Blacker had made an admission to Inspector Price that he had signed the facts sheet.[99] Senior Sergeant Matthews produced rough contemporaneous notes in support of his recollection of the conversation.

4.29 Inspector Price gave evidence that he could recall speaking to Senior Sergeant Matthews about Senior Constable Blacker. He could not, however, recall advising the Senior Sergeant that Senior Constable Blacker had admitted signing the document.[100] Inspector Price did not refer to any of his notes when he spoke to Senior Sergeant Matthews. The investigation by Inspector Price is considered in further detail later in this report.

ASSESSMENT

Signing of the Facts Sheet by Senior Constable Blacker

4.30 It is clear from the evidence that:

- Senior Constable Blacker signed and prepared the facts sheet in the matter of the prosecution of the offender Fulham.
- The facts as set out in the facts sheet were accurate.

4.31 The evidence of Senior Constable Blacker before the Commission was that he had always been frank and honest in his acknowledgement that he had prepared and signed the facts sheet. He asserts that shortly after the arrest of Fulham, he told E1 that he had done so, and, when questioned by Inspector Price, he had also made a full and frank admission.

4.32 E1 denies that he was ever told by Senior Constable Blacker that he (Blacker) had prepared and signed the facts sheet with the name of E1.

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98 PIC Transcript KC Price 8 July 1998 pp 221-222.

99 Operation Triton Exhibit 32AC.

100 PIC Transcript KC Price 8 July 1998 p 256.

4.33 The Commission is of the view that it was inappropriate and unacceptable for Senior Constable Blacker to have signed the signature of another person in any circumstance. It is not clear from the evidence whether or not Senior Constable Blacker admitted to his actions during the investigation by Inspector Price.

Evidence of Sergeant Moroney

4.34 Senior Constable Blacker gave evidence that on the afternoon of the arrest, he presented the unsigned facts sheet he had prepared to the checking officer, Sergeant Moroney.[101] He had inserted the name of E1 as the informant. Senior Constable Blacker told Sergeant Moroney that E1 was the informant for the briefs in relation to the co-offenders, and that E1 was using it for his investigator's training course.

4.35 According to Senior Constable Blacker's evidence, Sergeant Moroney told Senior Constable Blacker that the facts sheet had to be signed. Senior Constable Blacker turned to the desk beside Sergeant Moroney and signed the name of E1. Within seconds, he presented the document back to Sergeant Moroney, who signed it as checking officer.[102]

4.36 On 1 July 1998, in response to a section 25 notice served on him, Sergeant Moroney stated that he remembered Senior Constable Blacker approaching him with the facts sheet for him to check. He stated he could not recall if Senior Constable Blacker spoke to him about signing the facts sheet on behalf of E1 or not. He examined it and found the items he was checking for to be in order. He then signed it as checking officer.[103]

4.37 When Sergeant Moroney gave evidence before the Commission on 16 July 1998, he stated that while he could identify the signature of the checking officer as being his signature, he had absolutely no recollection whatsoever of any of the circumstances surrounding the signing of the facts sheet.[104]

4.38 Sergeant Moroney explained his contradictory statements by saying that when he was served with the section 25 notice, he was also provided with a copy of the facts sheet. He recognised his own signature, and so he 'assumed' the events he stated in his section 25 response had occurred, rather than actually 'remembering' those events.[105]

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[101] PIC Transcript DW Blacker 7 July 1998 p 121.

[102] PIC Transcript DW Blacker 7 July 1998 p 121.

[103] Operation Triton Exhibit 37B.

[104] PIC Transcript KA Moroney 16 July 1998 pp 316-317.

[105] PIC Transcript KA Moroney 16 July 1998 pp 316-317.

4.39 The Commission is concerned by the differences between the written response to the section 25 notice and Sergeant Moroney's subsequent evidence, especially in the circumstances that Sergeant Moroney is an experienced police officer. At best, this situation suggests that Sergeant Moroney lacked diligence when he responded to the section 25 notice served on him by the Commission. There is, however, no evidence as to whether he has deliberately changed his story.

INVESTIGATION BY INSPECTOR PRICE

4.40 Inspector Price gave evidence that after E1 had reported the falsified signature on the facts sheet to him, he (Inspector Price) contacted Chief Inspector Rootes who was the Commander of Prosecuting Services South. The purpose of Inspector Price's call to Chief Inspector Rootes was to determine whether an offence had been committed by falsifying a signature on the facts sheet. He also wished to inquire about the effect of the false signature on the document and its relevance in a legal sense.[106] In response to a notice served on him pursuant to section 25 of the Act, Inspector Price made the following statement about his conversation with Chief Inspector Rootes:[107]

> I fully explained the situation and he advised me that it's 'not a problem' (I believe that those were his words), as the evidence presented in court was required to be supported in court under oath. Indeed, he said words to the effect that it did not matter who signed the facts sheet providing the facts were correct and the signature was in the correct format. I recall him telling me that, even if the facts sheet was not signed, the matter could still have proceeded.

4.41 Inspector Price gave evidence that Chief Inspector Rootes suggested that another facts sheet should be prepared and signed by E1, which was subsequently done and provided to the prosecutor.[108]

4.42 Chief Inspector Rootes gave evidence that his office handles a significant number of inquires daily and he has no recollection of this discussion with Inspector Price.[109]

4.43 Inspector Price spoke to the other arresting officer who had been with Senior Constable Blacker, and to Sergeant Moroney, and asked whether they had signed the falsified signature. Both officers denied signing the signature of E1.[110]

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[106] PIC Transcript KC Price 8 July 1998 p 226.

[107] Operation Triton Exhibit 25AC quoted in transcript at PIC Transcript KC Price 7 July 1998 p 228.

[108] PIC Transcript KC Price 8 July 1998 pp 227, 229.

[109] PIC Transcript RK Rootes 7 July 1998 p 149.

[110] PIC Transcript KC Price 8 July 1998 pp 218-219.

4.44 Inspector Price then spoke to Senior Constable Blacker. In his section 25 response, Inspector Price asserts that Senior Constable Blacker said he could not recall whether he signed the facts sheet or not:[111]

> I contacted Senior Constable Blacker and he stated that he did not remember signing the document, however, he admitted charging the offender.

4.45 In his duty book on 29 May 1997, Inspector Price recorded the following contemporaneous note in relation to his first conversation with Senior Constable Blacker:[112]

> Blacker stated could not remember signing the documents.

4.46 Inspector Price had a further conversation with Senior Constable Blacker which the former described in his response to the section 25 notice as follows:[113]

> I had a further conversation with Blacker, I am not sure whether it was the same day or one or two days later regarding the signing of the fact sheet. He agreed that he did type the facts sheet and indicated that he may have signed the document but could not recall doing so. He told me that if he did sign the document it was not meant in any way to deceive the court. He stated that he may have signed the document for expediency.

4.47 Inspector Price gave evidence about his second conversation with Senior Constable Blacker:[114]

> Q. When you had your second conversation with Officer Blacker, can you tell us that conversation?
> A. Again, I can't do it verbatim. I remember clearly it happening, though. He was in my office. I took him in there. I was pretty - I was very concerned about it because it was an allegation of impropriety, and I spoke to him. I told him that - I reminded him of the previous conversation. I said to him, 'It's alleged that you've signed this. I've spoken to Farrell and Moroney, they didn't sign it.'
>
> Q. Please speak slowly.
> A. 'I've spoken to Constable Farrell and Sergeant Moroney and they didn't sign it', and he said to me, 'Honestly, boss, I don't remember signing it' and his - he had his hands sort of pointed out in front of him. He sort of looked and he said, 'If I did sign it, it would only be for expediency.' Whether he used the word 'expediency', I'm

111 Operation Triton Exhibit 25B.
112 Operation Triton Exhibit 27B.
113 Operation Triton Exhibit 25B.
114 PIC Transcript KC Price 8 July 1998 p 220.

not 100 per cent sure of that. That may have been my word I put to him.

Q. Did he give any explanation as to why he might have signed it?
A. No, only that it would, as I said, be for expediency.

Q. Did he amplify on 'expediency'?
A. Not at all.

4.48 Senior Constable Blacker rejected the suggestion by Counsel Assisting that when questioned by Inspector Price he may have said that he did not remember signing the document:[115]

Q. Your evidence is, of course, that if there was any suggestion by Inspector Price that you were vague and couldn't recall whether you had signed it or not, that would be quite incorrect?
A. Yes, sir.

Q. And any suggestion that you said the words, 'Honestly, boss, I really don't remember signing it', would just be quite inappropriate, you wouldn't have said anything like that, would you?
A. No. I have admitted signing the facts sheet. The charge sheets, no, I have no idea who (sic) that writing is or who changed them.

Q. So you wouldn't have said anything like that, would you?
A. About the facts sheet?

Q. 'Honestly, boss, I really don't remember signing it'?
A. No.

4.49 Inspector Price gave evidence that in each of the conversations with Senior Constable Blacker, he did not ever actually admit to signing the facts sheet.[116]

4.50 Inspector Price concluded, however, that on the information available to him, it was most likely that Senior Constable Blacker had indeed been the person who had signed the signature of E1. Inspector Price decided to handle the incident as an internal management matter by counselling Senior Constable Blacker, and making an entry on the Behaviour Incident Data System (BIDS). The BIDS is described and considered in more detail later in this chapter.

[115] PIC Transcript DW Blacker 7 July 1998 p 139.
[116] PIC Transcript KC Price 8 July 1998 pp 221-222.

4.51 Inspector Price believed that he would have typed the entry in the presence of Senior Constable Blacker and shown it to him and given him a copy.[117] The entry read:[118]

> Blacker does not recall signing the document but other police present on the day deny signing the page, coupled with this information Blacker indicated that he might have signed the form.

4.52 In evidence, Inspector Price stated one of his main concerns was whether the facts were correct and, by extension, whether there was going to be any impropriety in the facts to be presented to the court. E1 told Inspector Price that the facts as set out were true.[119] It was on this basis that Inspector Price apparently elected to deal with the matter as an internal management issue under BIDS.

4.53 Counsel Assisting drew Inspector Price's attention to the BIDS guidelines which had been produced by Inspector Price pursuant to a notice served on him under section 26 of the Act. The guidelines exclude from being handled under BIDS conduct which demonstrates a serious neglect or omission of duty which, if proved, might warrant the commencement of departmental proceedings.[120] Inspector Price gave the following evidence in response to questions from Counsel Assisting:[121]

> Q. You agree that the material you had before you at that time, at the first and then second discussion, would certainly fall within that parameter of conduct?
> A. On reflection now, probably. At the time I spoke to Chief Inspector Rootes, he told me it was a procedural matter. There was certainly absolutely no question that the facts had been changed and I felt as though it wouldn't fall within that.
>
> Q. So was the test for you as to whether it fell within that - and by that you refer to serious neglect or omission of duty which, if proved, might warrant the institution of departmental proceedings - that the facts were accurate within the document, therefore the only sin was the forged signature?
> A. Yes.
>
> Q. Do you maintain that view today?
> A. I think with the benefit of hindsight, speaking to my counsel, maybe not, no.
>
> Q. Well, 'maybe not'?
> A. Well, no, no.

[117] PIC Transcript KC Price 8 July 1998 p 221.
[118] Operation Triton Exhibit 27B.
[119] PIC Transcript KC Price 8 July 1998 pp 222 and 228.
[120] PIC Transcript KC Price 8 July 1998 p 232.
[121] PIC Transcript KC Price 8 July 1998 pp 232-233.

Q. I'm concerned about your prevarication, Inspector?
A. No, I think there certainly was a criminal offence involved in it. I think it certainly should have been serious misconduct and perhaps it should have been initiated under the complaints information system.

4.54 When examined by his own Counsel, Inspector Price gave evidence that he had not seen the document he produced until he made specific inquiries in relation to the section 26 notice.

4.55 During examination by his own Counsel, Inspector Price gave evidence that it was his understanding that when information was recorded on BIDS, it would go to head office at the Police Service and ultimately would be reviewed by the Ombudsman's Office.[122] Inspector Price gave the following evidence regarding his belief about the consequences for an officer who was the subject of a BIDS entry:[123]

Q. I think we've heard some evidence from earlier witnesses that it was their understanding that BIDS entries would be available to persons when consideration was being given to promotion, for example. Was that your understanding as well?
A. Yes, that's right.

Q. So in the case of Constable Blacker, your actions constituted a recording of material adverse to him which would be available to the BIDS working party; that's correct?
A. Correct.

Q. To the Ombudsman?
A. Yes.

Q. And to persons who were considering the promotion of Constable Blacker at some time in the future?
A. I suspect so, yes.

Q. I think you've also had a belief that it would be available to Internal Affairs if they were making inquiries about him subsequently; is that correct?
A. Like all other records within the Service.

Q. So it's true to say, is it not, that your actions were likely to have some substantial detrimental effect on Constable Blacker's future career?
A. Yes, that's right.

Q. Your actions constituted more than a mere recording of the incident; that's correct, isn't it?
A. Absolutely. It wasn't a toy.

[122] PIC Transcript KC Price 8 July 1998 p 241.
[123] PIC transcript KC Price 8 July 1998 p 242.

4.56 In his submissions, Counsel for the Commissioner of Police noted that some of Inspector Price's honestly held beliefs about the BIDS were inconsistent with the terms of the BIDS guidelines as described in Exhibit 30.[124] He submitted that the important areas of difference are the following:[125]

> - Internal Affairs did not get access to BIDS data in the normal course. With conduct of the type under consideration the appropriate course would have been to forward it to Internal Affairs as well as dealing with it under BIDS. In addition, if Senior Constable Blacker were to be under investigation subsequently for another matter, the BIDS data would not be available to Internal Affairs in the absence of separate notification by the Patrol Commander.
>
> - BIDS records were not generally available. The BIDS system was a 'stand-alone' computer system.

4.57 The Employee Management System document that contained the BIDS guidelines, stated that the BIDS records will 'not be used for promotional purposes'.[126] As noted in the section on BIDS found at the end of this chapter, that system is no longer in operation.

ASSESSMENT

4.58 Inspector Price decided that the complaint by E1 should be handled at patrol level only and did not forward a copy of the complaint to Internal Affairs. At the conclusion of his investigation, he determined that on the information available to him, it was most likely that the person who had signed the signature of E1 was Senior Constable Blacker. He decided that the matter should be handled as an internal management matter by counselling Senior Constable Blacker and making an entry on the BIDS. The BIDS record was not forwarded to Internal Affairs, notwithstanding Inspector Price's understanding otherwise.

4.59 The Commission is of the opinion that Inspector Price may not have fully appreciated the seriousness of the complaint that he was investigating. This may have been because of his conversation with the police prosecutor which Inspector Price interpreted as suggesting that the conduct was a 'procedural' issue.[127]

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[124] BIDS guidelines tendered as Operation Triton Exhibit 30.

[125] Operation Triton Exhibit 41, page 3.

[126] Operation Triton Exhibit 30.

[127] PIC Transcript KC Price 8 July 1998 pp 232-233.

4.60 Even if the actions of Senior Constable Blacker, in imitating the signature of another officer, did not amount to a criminal offence, the mere fact that he intended, if only for reasons of expediency, to falsify another officer's signature without regard for the possible consequences of his actions displays a degree of dishonesty. That degree of dishonesty, having regard to the inherent need for integrity of police officers, ought have amounted to misconduct sufficiently serious as to have warranted a complaint being registered on the Complaints Information System (CIS) with subsequent notification to the Ombudsman. This dishonesty distinguished the conduct from a mere procedural error. A new regime may have been under trial for dealing with minor complaints against police, which allowed for matters not to be notified to the Ombudsman. Nevertheless, there was provision for matters involving serious misconduct to continue to be notified to the Ombudsman if they were dealt with as complaints for the purposes of the CIS. Misconduct evidencing a lack of integrity should be dealt with in a manner that makes provision for notification to the Ombudsman. As much is recognised by the agreement which has since been entered into between the Ombudsman and the Commissioner of the Police Integrity Commission pursuant to section 121 of the *Police Service Act 1990*. This agreement sets out those types of non-Category 1 complaints which, having regard to their seriousness, must be notified to the Ombudsman.

4.61 Inspector Price focused his inquiries on the truth and accuracy of the contents of the facts sheet. As a result, he may not have given adequate consideration to the inherent dishonesty in the act of a police officer signing another police officer's signature when he was assessing the seriousness of the conduct.

INVESTIGATION BY SENIOR SERGEANT MATTHEWS

4.62 On 14 November 1997, Senior Sergeant Matthews spoke to E1 about his declining work performance. E1 advised Senior Sergeant Matthews of his disquiet concerning the matter involving Senior Constable Blacker. As requested, E1 provided Senior Sergeant Matthews with a comprehensive written report regarding the matter on 26 November 1997.

4.63 Senior Sergeant Matthews viewed E1's report as constituting a complaint under the *Police Service Act 1990*.[128] He forwarded E1's report under cover of a report by himself to Internal Affairs and to the Internal Witness Support Unit.[129] Senior Sergeant Matthews was subsequently instructed by the relieving patrol commander to conduct a preliminary inquiry.

[128] PIC Transcript MB Matthews 8 July 1998 p 292.

[129] PIC Transcript MB Matthews 8 July 1998 p 292.

4.64 Senior Sergeant Matthews inquired of E1 whether the facts as recounted in the document were true and E1 advised him that they were true.[130] He spoke to two senior prosecutors with a view to determining whether a criminal offence had been committed by the person who signed the falsified signature. He was advised that it was arguable that an offence had been committed under the *Crimes Act 1900*.[131] Senior Sergeant Matthews also spoke to two senior Internal Affairs investigators.

4.65 Senior Sergeant Matthews contacted Inspector Price. In response to a notice served on him by the Commission pursuant to section 25 of the Act, Senior Sergeant Matthews made the following statement about that conversation:[132]

> At 4.05 pm on Thursday the 1 January 1998 I interviewed Inspector Price over the telephone I took some contemporaneous notes of that conversation.
>
> Inspector Price told me that Constable Blacker had admitted to him that 'Yes I did it. I didn't mean to do it. I didn't think it was unlawful.' Inspector Price stated that during his inquiries he sought the advice of a police prosecutor, Senior Sergeant Ted Warner, and was told by him that the action of Constable Blacker was not a criminal offence.

4.66 Senior Sergeant Matthews made contemporaneous notes of his conversation with Inspector Price.[133]

4.67 Counsel for Senior Sergeant Matthews examined Inspector Price about his telephone conversation with Senior Sergeant Matthews:[134]

> Q. Do you recall saying to Mr Matthews that Senior Constable Blacker had said, 'I didn't mean to do it, didn't think it was unlawful'. Do you recall saying that to Mr Matthews, or words to that effect?
> A. No, I don't.
>
> Q. If Mr Matthews had made a note of that, would you accept that as being an accurate record of his conversation with you?
> A. If that's what he wrote, but it's contrary to what I wrote in my diary in relation to the incident. It is certainly contrary to what is on the BIDS system.
>
> Q. Let me just ask you this: you've already indicated that Blacker told you that if he had signed it, it was for expediency. That's true, isn't it?
> A. Yes.

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130 PIC Transcript MB Matthews 8 July 1998 p 281.

131 PIC Transcript MB Matthews 8 July 1998 pp 283-284.

132 Operation Triton Exhibit 32B.

133 Operation Triton Exhibit 24AC.

134 PIC Transcript KC Price 8 July 1998 pp 255-256.

Q. Do you not think that the words, 'I didn't mean to do it, didn't think it was unlawful', could be another way of expressing expedience - done for the sake of expedience?
A. I suppose it could, but I don't recall saying those words to him.

Q. To Mr Matthews?
A. Yes.

4.68 And later:[135]

Q. You'd also formed the view, from what you've said earlier to me and in evidence today, that Blacker had accepted that he'd signed the document?
A. Yes.

Q. Would you think that you may have conveyed that impression to Mr Matthews, that Blacker had accepted that he'd signed the document?
A. Because I was of that view, if he'd have asked me, I would have conveyed that, yes.

Q. Do you think that conveyance of information to Mr Matthews may have taken the form, 'Yes, I did it' as representing Mr Blacker's position?
A. I don't recall the incident. I don't recall the conversation in total. The conversation was very short. It was - certainly I didn't refer to any document, to my knowledge, in relation to that. It was more just a courtesy call to make sure that I'd followed up on E1. I don't recall saying anything else.

Q. You know the distinction between not recalling something and being in a position to deny something's been said, don't you?
A. Obviously, yes.

Q. This is a situation where you are unable to recall what was said?
A. That's right.

4.69 Senior Sergeant Matthews did not speak with Senior Constable Blacker as part of his inquiries.

4.70 Senior Sergeant Matthews concluded that the matter was efficiently investigated and concluded by Inspector Price. He recommended that the matter ought be deemed finalised and no further action or investigation necessary. He also recommended that Constable E1 be informed of the original outcome, and that Senior Constable Blacker and E1 should not work on the same shifts or the same work locations.[136]

[135] PIC Transcript KC Price 8 July 1998 p 256.
[136] Operation Triton Exhibits 32AC and 34AC.

4.71 In examination by Counsel Assisting, Senior Sergeant Matthews agreed that impressing the falsified signature was dishonest and untruthful and that this conduct constituted a breach of police regulations.[137] He stated that he considered issues of internal disciplinary recommendations or breaches of police regulations when compiling his report, however, he never mentioned them in his report:[138]

> Q. But there was no specific reference to, for example, the police regulations?
> A. No.
>
> Q. Internal discipline?
> A. No.
>
> Q. Any particular code of conduct that applies to police officers?
> A. No.
>
> Q. It merely focused on criminal offences?
> A. Yes, in that regard, yes.

4.72 Senior Sergeant Matthews agreed, in answers to questions from Counsel Assisting, that his investigation could have addressed this additional area:[139]

> A. The area that could be deserving of change is the recommendation of neglect of duty, something along those lines.

4.73 And:

> A. I still think what I thought - I still think what I did then was correct, but I can see there's - yeah, there could be neglect of duty there.

ASSESSMENT

4.74 Following his inquiries, Senior Sergeant Matthews concluded that the matter had been efficiently investigated and determined by Inspector Price. He recommended that the matter should be 'finalised' and that no further action or investigation was necessary. He also recommended that E1 be informed of the outcome of Inspector Price's investigation and that Senior Constable Blacker and E1 should not work together.

4.75 The Commission is of the opinion that Senior Sergeant Matthews' investigation focused on the accuracy of the facts in the document and did not sufficiently identify the integrity issue raised when one police officer signs the signature of another officer.

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[137] PIC Transcript MB Matthews 8 July 1998 pp 285-286.

[138] PIC Transcript MB Matthews 8 July 1998 p 287.

[139] PIC Transcript MB Matthews 16 July 1998 p 310.

BEHAVIOURAL INCIDENT DATABASE SYSTEM

4.76 Counsel for the Commissioner of Police provided the following information in his submissions by way of background to the situation for handling complaints prevailing at the time of this incident:[140]

> In March 1997, Deputy Commissioner Jarratt sought from Commissioner Ryan and obtained from him the sole delegation to prefer departmental charges. This was in line with the desire of the Police Service to implement an Employee Management System which adopted a more streamlined, less bureaucratic and legalistic approach to matters of performance and conduct than the existing disciplinary system, as suggested by the Royal Commission in its second interim report. The rationale appeared to be that the Deputy Commissioner would only approve charges when no other course of remedial managerial action was considered appropriate.
>
> ...
>
> As a result of this the Deputy Commissioner returned the files which were awaiting consideration of advice for disciplinary charges, and has withdrawn most pending cases before the Police Tribunal. No matters have been preferred for disciplinary charges since this time.
>
> In late April 1997 Deputy Commissioner Jarratt wrote to all Region Commanders advising that their authority to prefer departmental charges had been withdrawn. They were advised that in cases in which a departmental charge was considered appropriate, they were to consider if the conduct warranted section 181D action, and if not, what managerial action was to be taken. They were further advised that the initial response to such conduct was to be taken by Patrol Commanders or their equivalent. It was recognised that some problems would be encountered and some mistakes made, specially amongst Patrol Commanders who were not appropriately trained or did not feel sufficiently skilled in employee management.

4.77 BIDS was the database developed to record the data collected from the new system. If the complaint was dealt with only at patrol level and not forwarded to Internal Affairs, the record would be recorded on BIDS. As noted above, there was no requirement to forward BIDS records to Internal Affairs. Accordingly, there would be no central recording of such information which would be available for purposes such as promotion.

4.78 Complaints of a more serious nature were still required to be notified to Internal Affairs. The complaint would then be recorded on the CIS and a CIS number allocated. The CIS records, while also being recorded on BIDS, would also be required to be forwarded to and maintained by Internal Affairs.

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[140] Operation Triton Exhibit 41.

5. OPERATION NICKEL

SCOPE AND PURPOSE

5.1 At the commencement of the public hearing for Operation Nickel the Commissioner announced the general scope and purpose of the hearing as follows:[141]

> Pursuant to section 32 (3), I announce that the general scope and purpose of this hearing is to investigate:
>
> (1) The circumstances by which a police statement dated 19 August 1997, bearing a signature purporting to be the signature of [G1] was created and signed and incorporated in a New South Wales Police Service brief of evidence in the matter of Police v [G2] listed at Sutherland Local Court on 3 December 1997; and
>
> (2) The circumstances by which a signature purporting to be the signature of [G1] was endorsed as a witness on a Police statement of Senior Constable Simon Field, dated 18 August 1997 for the matter of Police v [G2].

WITNESSES

5.2 The following witnesses appeared before the Commission and gave evidence:

- Witness code name G1;
- Senior Constable Simon Peter Field; and
- Senior Constable Toni Louise Mathewson.

5.3 The first witness at the hearing was a probationary constable at the time the matter took place. He was given a code name 'G1'. Non-publication orders were made to protect his real identity. The Commissioner also ascribed the code name 'G2' to the person to whom the Police papers, brief of evidence and court proceedings mentioned in this hearing related, as that person was a juvenile at the time the events occurred. Similar non-publication orders to those made for G1 were made for G2.

[141] PIC Transcript 13 July 1998 p 2.

BACKGROUND

5.4 The events that are the subject of this hearing stem from an arrest made by Senior Constable Field and G1 on 12 August 1997. According to evidence presented to the Commission, in August 1997 Senior Constable Field and G1 were assigned to separate teams at Kogarah police station and did not normally work together. On 12 August 1997, however, shift rostering had resulted in their performing general police duties together for the first time. During that shift they arrested and charged G2 for an alleged robbery.

5.5 Both Senior Constable Field and G1 gave evidence that Senior Constable Field took charge of the arrest and charging procedures for G2, as the informant for the matter. Also, that Senior Constable Field completed a number of documents in relation to the charging process.[142]

5.6 Later, Senior Constable Mathewson, the brief handling manager at Kogarah Local Area Command, received a 'Notification of Table 1 Offence', dated 5 September 1997 by Sutherland prosecutors.[143] That notification required a minibrief[144] to be provided to Sutherland police prosecutors for the next court mention date of the matter on 16 September 1997.[145]

5.7 The Commission heard evidence from both G1 and Senior Constable Field that, at some time before 16 September 1997, each received a copy of that notification. The Commission also heard that the two officers had a brief conversation before that date about Senior Constable Field preparing the minibrief.[146] Senior Constable Field gave evidence that he had prepared a statement on the matter in his own name on 18 August 1997, but that he had not informed G1 of that.[147]

5.8 G1 told the Commission that after his September conversation with Senior Constable Field regarding the minibrief he had nothing further to do with the matter in regard to G2. That was, until 27 November 1997, when he received a note from Senior Constable Mathewson.

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[142] PIC Transcript G1 13 July 1998 pp 7-9; PIC Transcript SP Field 14 July 1998 pp 102-103.

[143] 'Table 1 Offences' are indictable offences which may be dealt with summarily. Those offences are found in Table 1 in the *Criminal Procedures Amendment (Indictable Offences) Act 1995*.

[144] A minibrief is a brief which contains a charge sheet, comprehensive facts sheet, antecedents, statement(s) of victim(s), and all other available statements and in any case sufficient statements to establish the proofs of the offences. Minibriefs must be delivered to the police prosecutor before the first court appearance of the defendant. NSW Police Distance Education Package 'Revised Brief Handling Package' – November 1996.

[145] PIC Transcript TL Mathewson 15 July 1998 p 241; Operation Nickel Exhibit 18AC.

[146] PIC Transcript G1 13 July 1998 pp 11,13; and PIC Transcript SP Field 14 July 1998 pp 121-122.

[147] PIC Transcript SP Field 14 July 1998 p 108.

PRODUCTION OF STATEMENTS – EVIDENCE OF SENIOR CONSTABLE FIELD

5.9 Senior Constable Field gave evidence to the Commission that he was reminded of the need for the minibrief by a message received via the station telephone message pad. That message requested the minibrief and, he recalled, it was required with some urgency.[148] He also stated that the request was for the brief to go to the brief handling manager at Sutherland courts, rather than the brief handling manager at Kogarah Local Area Command.[149] Evidence was heard that the usual procedure was for officers to provide briefs to their brief handling manager for checking before they were forwarded to the courts.[150]

5.10 Counsel Assisting the Commission showed Senior Constable Field an entry dated 15 September 1997 on the general station message pad and addressed to him, which inquired whether the brief for G2 had been served. Senior Constable Field stated that he would have telephoned Sutherland prosecutors at that time and assured them that the minibrief would be prepared for them by the mention date of 16 September 1997 in order that the prosecutors could serve the minibrief on the defence.[151]

5.11 Senior Constable Field's evidence on the steps he took to prepare the necessary documents for the minibrief was unclear in that he had difficulty recalling the timing of his actions. According to his evidence he prepared a number of documents for the minibrief, including statements in his own and G1's names. His evidence revealed that he had prepared two versions of each of those statements prior to completing the minibrief, namely:

- First statement in the name of Field dated 18 August 1997, which he states he completed and signed on 18 August 1997 and upon which the falsified signature of G1 as witness was ultimately discovered (Exhibits 3AC and 13AC).

- Second statement in the name of Field dated 18 August 1997, signed by Senior Constable Field but not bearing a witness signature (Exhibits 5AC and 20AC), which differs from the previous statement in that it includes the hand-written date '18/8/97' underneath Senior Constable Field's signature.

[148] PIC Transcript SP Field 14 July 1998 pp 107, 120.
[149] PIC Transcript SP Field 14 July 1998 p 134.
[150] PIC Transcript SP Field 14 July 1998 p 109.
[151] PIC Transcript SP Field 14 July 1998 pp 140-141, 146; Operation Nickel Exhibit 20AC.

- First statement in the name of G1 dated 19 August 1997, which Senior Constable Field states he completed some time after his conversation with G1, which he signed as witness, and upon which the falsified signature of G1 was ultimately discovered (Exhibits 4AC and 17AC).

- Second statement in the name of G1 dated 19 August 1997, witnessed by Field but unsigned (Exhibits 6AC and 19AC) which differs from the previous statement in that the name of Senior Constable Field does not appear in the 'header' on the second and third pages.

5.12 In respect of the two versions of his own statement, Senior Constable Field gave evidence that he had noted the absence of the date under his signature while preparing the minibrief for distribution to the prosecutors on 15 September 1997. He stated that he had prepared the second statement with the date under his signature in order that it should accord with *Commissioner's Instructions* regarding signatures.[152]

5.13 Senior Constable Field acknowledged preparing the statement in the name of G1 and signing his own name on the witness signature line.[153] He stated that he prepared a second version of that statement on 15 September 1997, after he noted the inclusion of his own name in the 'header' of the document, his name having been placed there automatically by the computer pro forma used to generate the statement. He stated that he entered the electronic version of the document to manually remove his name and print another version of the document before signing it as a witness.[154]

5.14 In his evidence Senior Constable Field stated that, having made the modifications, he prepared several copies of the minibrief in its entirety using the second version of each of the statements, sent two copies to the brief handling manager at Sutherland Local Court and retained the original himself.[155]

DISCOVERY OF FALSIFIED SIGNATURES

5.15 Subsequent to the 16 September 1997 court mention, the matter relating to G2 was listed for hearing on 3 December 1997. On 27 November 1997 Senior Constable Mathewson was contacted by the legal representative of G2 who indicated that he had not yet received a copy of the prosecution brief.[156]

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[152] PIC Transcript SP Field 14 July 1998 pp 155-156, 159. *Commissioner's Instructions* require that signatures be accompanied by the printed name of the signatory, rank and date.

[153] PIC Transcript SP Field 14 July 1998 pp 127, 133.

[154] PIC Transcript SP Field 14 July 1998 pp 144-145.

[155] PIC Transcript SP Field 14 July 1998 pp 143, 175.

[156] PIC Transcript TL Mathewson 15 July 1998 pp 252-253.

5.16 Senior Constable Mathewson determined from her own records that she had not received a copy of the brief, and having unsuccessfully tried to locate a copy of it in Senior Constable Field's station pigeonhole, she obtained a copy from Sutherland prosecutors. That brief included two police statements that were eventually discovered to have impressed on them the falsified signatures of G1. A copy of that brief was faxed to the legal representatives for G2.[157]

5.17 Having become aware that Senior Constable Field was on leave, Senior Constable Mathewson contacted G1 to let him know that he would be required to contact witnesses and attend court. She then left a copy of the brief in G1's pigeonhole with a note. According to her evidence, when she spoke to G1 prior to his receiving the brief he advised her that he did not recall preparing a statement for the matter.[158]

5.18 Counsel Assisting asked G1 about his actions following receipt of the note. G1 gave the following evidence in response:[159]

> A. First of all, I had to rack my brain to try to remember whether I'd made a statement or not. I checked through my computer floppy disk. I keep all my statements recorded on my disk. I couldn't find my statement in relation to that. I contacted Senior Constable Mathewson in relation to obtaining a copy of the brief. I think, from memory, on that date too I had also checked through the pigeonhole of Senior Constable Field trying to locate the brief. I also tried to contact him at home, but I wasn't able to contact him.

5.19 G1 stated he was unable to locate a copy of the statement he would have made for the brief amongst his own records. Then, on 30 November 1997, he received a copy of the brief from Senior Constable Mathewson. Upon examining it he noted discrepancies in the signatures on the two police statements.[160] Counsel Assisting then took G1 to two police statements, one under his own name, which included a signature purporting to be his (Exhibit 4AC), the other under the name of Senior Constable Field which included a signature purporting to be that of G1 on the witness line (Exhibit 3AC). G1 identified both of these documents as the statements he found with the brief on 30 November 1997.[161]

5.20 G1 also gave evidence that the signatures purporting to be his own had his surname spelt incorrectly. Moreover, while it was his custom to include the date below his signature, the date did not appear under his signature on those statements.[162]

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[157] PIC Transcript TL Mathewson 15 July 1998 pp 253-257.
[158] PIC Transcript TL Mathewson 15 July 1998 pp 260-261.
[159] PIC Transcript G1 13 July 1998 p 14.
[160] PIC Transcript G1 13 July 1998 p 15.
[161] PIC Transcript G1 13 July 1998 pp 16-20.
[162] PIC Transcript G1 13 July 1998 pp 17-18.

5.21 On 1 December 1997 G1 was able to contact Senior Constable Mathewson from his home to tell her of his discovery of the falsified signatures on the two statements. Senior Constable Mathewson described for the Commission G1's reaction to this discovery:[163]

> Q. Consequent to him advising you of that, did he express any view about the court matter?
> A. Yes, he told me that he was reluctant to go to the court matter, he was quite distressed over the fact that there was a statement saying that it was his signature on there, and he told me that he wasn't prepared to go to the court matter because he didn't want to, as he put it, get himself into trouble, and he wasn't prepared to give the evidence in that statement as his.

INTERNAL INVESTIGATION OF THE MATTER

5.22 Having tried unsuccessfully to locate Senior Constable Field, Senior Constable Mathewson reported the matter to Detective Inspector Beaumont.[164] G1 was recalled to duty on 1 December 1997, at which time he was requested to submit a written report on what had transpired.[165] An internal investigation of the matter was commenced at the Local Area Command.

5.23 On 1 January 1998 G1 was interviewed about the matter as part of that internal investigation. Senior Constable Field and Senior Constable Mathewson were also interviewed and provided written reports.

5.24 Having had the falsified signatures brought to the attention of his supervisor and other senior officers at the station, G1 was put into contact with the Internal Witness Support Unit. In his evidence before the Commission he stated that he had found that unit to be of assistance to him. He also stated that while both he and Senior Constable Field continue to work at Kogarah police station on different teams, he had had no adverse contact with Senior Constable Field since the revelations concerning this matter.[166] Since the conclusion of this hearing G1 has sought and received a transfer from Kogarah station.

5.25 In regard to the court matter, G1 was able to provide his evidence at the trial of G2 from memory by arrangement with the prosecutor. He was also aware that the prosecutor had divulged the difficulty with the statements to the defence.[167]

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[163] PIC Transcript TL Mathewson 15 July 1998 p 261.

[164] Evidence was heard that Senior Constable Field was on sick leave followed by annual leave from 20 October to 12 December 1997; PIC Transcript SP Field 14 July 1998 p 177.

[165] PIC Transcript G1 13 July 1998 pp 24-26.

[166] PIC Transcript G1 13 July 1998 p 40.

[167] PIC Transcript G1 13 July 1998 pp 28-29.

DENIAL OF FALSIFICATION OF SIGNATURES BY SENIOR CONSTABLE FIELD

5.26 In his evidence of 14 July 1998, Senior Constable Field admitted to having included in the minibrief he sent to Sutherland prosecutors a signed, but unwitnessed version of his own statement, and a statement which he had prepared in the name of G1 and signed as a witness. He denied impressing the falsified signature of G1 on either of those statements:[168]

> Q. Did you sign the statement on behalf of G1?
> A. No.
>
> Q. Are you quite sure about that?
> A. Yes.
>
> Q. Did you sign on behalf of G1 as a witness to your statement?
> A. No.

5.27 Counsel Assisting later put it to Senior Constable Field that it might appear that he would be the person most likely to have falsified the signature:[169]

> Q. You understand the importance of these apparently falsified signatures on the two statements?
> A. Sure.
>
> Q. Do you understand that on one view an outside observer may conclude that you signed them?
> A. I can understand that, yeah.
>
> Q. Is there any way you can suggest to this Commission that that is not an appropriate view to form?
> A. Well, I didn't sign his name. I had no reason to sign his name.
>
> Q. There was, to your mind, significant urgency to get the statements in the mini brief in a completed format?
> A. Well, they were submitted as a draft copy. I needed to get a mini brief, so to speak, that highlighted the evidence which this - essential evidence which would possibly be given in court, what we were relying on.
>
> ...
>
> Q. Did you just assume that they [the prosecutors] would presume they were draft statements?
> A. That's right.

[168] PIC Transcript SP Field 14 July 1998 p 175.

[169] PIC Transcript SP Field 14 July 1998 pp 182-184.

Q. Did you assume, therefore, that the prosecutor would tell the court and/or defence, 'The mini brief isn't complete'?
A. That's right.

5.28 It was further revealed that Senior Constable Field had not written the word 'draft' on either of the statements.[170]

5.29 Counsel Assisting also questioned Senior Constable Field about assertions he had made in the report he prepared for the Internal Affairs investigation of this matter. In that report Senior Constable Field had stated that having prepared new copies of the statements for the Sutherland prosecutors, he left copies of the minibrief containing the initial versions of the statements in a brief envelope out on a desk in the station.[171] It was these 'initial versions' that ultimately appeared on the prosecutor's brief bearing the falsified signatures of G1. Later the following exchange with Counsel Assisting took place:[172]

Q. You offered in your explanation to Sergeant Austen the suggestion: 'With the number of probationary constables who like to read briefs to use as guides around Kogarah, perhaps one of them has thought they would sign the statements and submit it thinking they were doing me a favour'?
A. Yes.

Q. Do you seriously suggest that as an explanation for the insertion of the falsified signature of G1 on his statement prepared by you and on your statement?
A. That was the only logical reason that I could think of that someone would do that.

Q. With great respect to you, do you really see that as a logical reason for a probationary constable to falsify another probationary constable's signature in a matter which I presume would have nothing to do with him or her?
A. I can't say. People do silly things.

OTHER ASPECTS OF THE STATEMENTS PREPARED BY SENIOR CONSTABLE FIELD

PREPARING THE STATEMENT IN G1'S NAME

5.30 Senior Constable Field was questioned by Counsel Assisting on whether he had told G1 that he planned to prepare a statement in G1's name. Senior

[170] PIC Transcript SP Field 14 July 1998 pp 185-186.
[171] PIC Transcript SP Field 14 July 1998 p 173.
[172] PIC Transcript SP Field 14 July 1998 pp 191-192.

Constable Field stated that he told G1 that he would undertake to do a statement for him during their short conversation prior to 16 September 1997. Asked to recall that conversation Senior Constable Field was able to provide a summary:[173]

> A. G1 came into the room and informed me that he'd placed - that a brief was - a mini brief was required, and he placed a notice from the brief handling manager at Sutherland to have a brief prepared - a mini brief prepared - and it had been mistakenly sent to him as the informant.
>
> ...
>
> Q. Did you say anything in response?
> A. Yes, I said I'd prepare a statement for him and give it to him to check.
>
> Q. Did you say anything about your statement?
> A. No.
>
> Q. You didn't tell him you'd already prepared one?
> A. No.
>
> Q. You didn't tell him anything about that at all?
> A. No, I didn't.
>
> Q. Why did you tell him that you'd prepare one for him?
> A. So he could use it as a referral, so we could get something to the prosecutors.

5.31 G1 could also recall a conversation with Senior Constable Field on this matter which he stated took place '… in a period of days or a week from when I discovered the note initially from Senior Constable Mathewson.'[174] He was then asked to recall his conversation with Senior Constable Field which he related as follows:[175]

> A. From memory, Senior Constable Field was sitting at a computer typing. I can't remember the total gist of the conversation, but it was basically did he get the message, or so forth, in relation to the brief G2. Senior Constable Field said he was working on a brief at the time and he'd be working on the [G2] one after that - sorry, the one for G2 after that.

[173] PIC Transcript SP Field 14 July 1998 pp 122-123.
[174] PIC Transcript G1 13 July 1998 p 13.
[175] PIC Transcript G1 13 July 1998 p 13.

5.32 G1 was asked by Counsel Assisting whether it was possible that Senior Constable Field had told him that he would prepare a draft statement on G1's behalf:[176]

> Q. Just in respect of the brief relating to G2, was there ever any approach or discussion made by Officer Field to or with you in respect of the preparation of any statements on your behalf?
> A. None that I can recall.
>
> Q. Was there ever any discussion as to a statement being typed up for you and being submitted to you for your approval?
> A. No, there wasn't.
>
> Q. Was there any discussion ever between you and Senior Constable Field as to whether a statement would be completed and provided to you for your signature?
> A. No, there wasn't.
>
> Q. Have you ever had, prior to this incident, any officer prepare statements on your behalf?
> A. No, I haven't.
>
> Q. Since this incident, have you ever had any officer prepare statements on your behalf?
> A. No, I haven't.
>
> Q. From your point of view, is it a practice that you would adopt?
> A. It's not a practice I would adopt. I'd prefer my statement to be my own work in my own words.

5.33 When questioned by Counsel for Senior Constable Field, G1 was even more emphatic in his denial that the conversation took place as suggested by Senior Constable Field: [177]

> A. What I'm referring to is the way you rephrased it just a couple of minutes ago, which made it refer to the fact that he might have said he was going to prepare a statement for me, as in my statement, and then submit it to me. I disagreed that any conversation like that would have taken place because I would have turned around at the time and said, 'I'll do my own statement. I don't want anyone making it for me.' As I said earlier, I don't recall the whole of the conversation that may have taken place at that time. You suggest that Field may have told me that he was going to prepare a statement to submit to me. I would have assumed, if that conversation had taken place, that he would have been referring to his own statement.

[176] PIC Transcript G1 13 July 1998 pp 20-21.

[177] PIC Transcript G1 13 July 1998 p 69.

5.34 When questioned by Counsel Assisting, Senior Constable Field could not recall whether he had ever prepared a statement in another officer's name before.[178] When questioned as to how G1 reacted to his suggestion during their conversation, Senior Constable Field stated that G1 had not replied and, in light of G1's evidence to the Commission, he believed that G1 may not have heard him or may have misunderstood him.[179]

5.35 Senior Constable Field was further questioned by Counsel Assisting as to why he would undertake to provide a statement for G1:[180]

> Q. Why did you suggest to him that you'd prepare a statement for him?
> A. Well, I had - just from the dealings with him working on that day and from conversations I'd had with other police concerning his ability to prepare a statement.
>
> Q. So, what, you felt he needed some assistance with it?
> A. That's right.

5.36 He also gave evidence that the statement he prepared was a draft that he intended to show to G1 in order that he could look at it and alter if he wished.[181] In his report for the internal Police Service investigation, he provided as an explanation that, if necessary, he could have had G1 sign the statement after its submission, for evidentiary purposes, or G1 could have prepared a new statement and withdrawn the unsigned statement.[182]

5.37 It was also his evidence, however, that he never did provide G1 with a draft copy of the statement or afforded him the opportunity to sign it or reject it in favour of a different version.[183]

5.38 Senior Constable Mathewson was later questioned by Counsel for G1 on G1's abilities in regard to the preparation of statements and briefs:[184]

> Q. Can you tell us, please, from your observations of G1 over the period since May 1997 to the present what your view is of his diligence and competence in relation to the preparation of statements and the provision of briefs?
> A. Offhand, I can't remember having to resubmit any statements to him. Like I said, he's always one to ask questions. He will - may often be in the process of compiling a statement and he may ask me if he's doing it the right way, but I certainly haven't had reason

[178] PIC Transcript SP Field 14 July 1998 p 125.
[179] PIC Transcript SP Field 14 July 1998 p 126.
[180] PIC Transcript SP Field 14 July 1998 p 124.
[181] PIC Transcript SP Field 15 July 1998 p 207.
[182] Operation Nickel Exhibit 25B.
[183] PIC Transcript SP Field 14 July 1998 pp 142, 165, 184.
[184] PIC Transcript TL Mathewson 15 July 1998 pp 271-272.

to speak to a supervisor or return a statement to him for being in the wrong context.

Q. I realise there must be a lot of police officers under your purview, as it were, but I take your evidence to be that as far as you are concerned you are quite satisfied with his diligence and competence as a police officer in relation to the preparation of statements and the presentation of briefs; is that correct?
A. Yes, that's right.

WITNESSING OF SIGNATURES

5.39 Senior Constable Field was shown the statement in his name (Exhibit 13AC) and he identified his signature on it. He gave evidence that he would have signed the statement when he had printed it. Senior Constable Field was then questioned by Counsel Assisting about the witnessing of his signature:[185]

Q. Did you have any person witness the statement?
A. No, I didn't.

Q. Why not?
A. Just tardiness on my behalf.

Q. Why do you say that's tardiness?
A. Well, I went to the station, everyone was pretty busy, so I just left it.

5.40 On further questioning, Senior Constable Field explained that behind the requirement that a statement be signed by a witness, is the intention that the witness should observe the signing of the statement. That is, witnessing that the person who is signing the statement is the person who has made the statement. On that basis he was then questioned further as to why he did not have anyone witness his signature when he printed the document and signed it. He provided the following explanation:[186]

A. I didn't feel it was necessary. I was there on the day off. I'd done the statement in belief that it may be a not guilty, from what G2 said at the time. It's quite easy to print up another copy and have someone witness it.

...

Q. What possible reason could you have for signing it on the 18th?
A. It's just a habit.

[185] PIC Transcript SP Field 14 July 1998 p 114.
[186] PIC Transcript SP Field 14 July 1998 pp 115-116.

Q. When you signed it, is it your evidence that you had no intention of getting someone to witness it?
A. No.

Q. That's not your evidence?
A. No.

Q. Well, what did you intend when you signed it?
A. When I signed it, I went to the station to get someone to witness it. As I said, they were busy and I just left it.

5.41 Senior Constable Field was then questioned about the circumstances where he would sign a statement first and then seek a witness:[187]

Q. You've prepared it and signed it and then gone to seek a witness?
A. That's correct.

Q. That would, don't you agree, defeat the purpose you've described that a witness must do, that is, witness you signing the document?
A. That's right, it's a bad habit that I've got.

Q. So, contrary to your evidence as to your understanding of the role of a witness - that is, to witness the signatory on the statement, and it is that signatory's statement - you signed them before the witness ever sees it?
A. On this occasion I did, yes.

Q. You said that's a bad habit you have?
A. Yes.

Q. I assume by the word 'habit' you suggest you have developed a habit of presigning documents before they are witnessed?
A. Not all documents, but some statements, yes.

Q. Well, does that mean you have, prior to this incident, signed documents such as statements prior to showing them to the witness?
A. I may have.

Q. Why did you use the word or words 'bad habit'?
A. On this occasion, it's obviously a bad habit that I signed it first and then going to get someone to witness it.

Q. You acknowledge, however, you've done it on other occasions; is that so?
A. I may have done. I can't deny that I haven't done it.

[187] PIC Transcript SP Field 14 July 1998 pp 117-118.

5.42 G1 was questioned by Counsel Assisting on practices of other police observed by him at Kogarah station with respect to the witnessing of signatures. He reported that officers will sign in front of the person who is going to witness it:[188]

> Q. So you're not aware of perhaps occasions where someone might sign it and leave it for a witness to sign at some other stage?
> A. No. Well, there'd be no need to because Kogarah's a 24-hour station and there's always an abundance of police on hand to witness a statement.
>
> Q. By that, there's always someone around who could witness it?
> A. That's right.

5.43 Senior Constable Field was also asked about the appearance of his signature on the witness line of the statement he had prepared on behalf of G1. He acknowledged that he had made that signature and he provided the following explanation for witnessing an unsigned statement:[189]

> A. When I placed a signature, my signature, on the witness line, my intention was to show the brief handling manager at Sutherland that it was merely a copy and it was incomplete.

5.44 Later, Senior Constable Field was questioned about his report for the Internal Affairs investigation and the explanation he gave in it that in signing G1's statement along the witness line it would show that he had printed the document:[190]

> Q. How do you suggest that by you signing his statement, that would suggest that you had printed it?
> A. As my name's the only name that appears, I would suggest that persons would be of the opinion that I printed it up or I submitted it.
>
> Q. Don't you think the more realistic interpretation would be that you had merely signed in the witness spot whilst it hadn't been signed by the deponent?
> A. No.
>
> Q. I just have some trouble understanding how you inserting your signature in the witness section of an unsigned statement for G1 would suggest that you printed the statement?
> A. Well, as my signature's the only signature that appears, it shows that it's a draft - in my belief, it shows that it's a draft copy and I printed it up as my name is the only name that appears.

[188] PIC Transcript G1 13 July 1998 p 34.
[189] PIC Transcript SP Field 14 July 1998 pp 133-134.
[190] PIC Transcript SP Field 14 July 1998 p 172.

DATING OF THE STATEMENTS

5.45 Counsel Assisting the Commission questioned Senior Constable Field about the appearance of the date '18/8/97' beneath his signature on the second version of his statement, rather than the date 15 September 1997:[191]

> Q. Just so I understand it, if you prepared another copy of the statement on 15 September for the purposes of inserting the date, would you have dated it 15 September?
> A. No.
>
> Q. That's the day you would have signed it?
> A. That's right.
>
> Q. But you would have backdated it?
> A. Well, the signature is for a statement which was made on that day, 18 August.
>
> ...
>
> Q. Don't you understand that, when signing the statement, it should have the date it is signed inserted underneath it?
> A. My belief was that in signing the statement, you're signing to say you made that statement on that day and you sign that statement on the 18th.

5.46 On further questioning Senior Constable Field suggested that it would not have been backdating the document if he had simply dated a signature that had been made previously:[192]

> Q. So are you suggesting that if it was already signed, you didn't backdate it because you signed it on the date that is at the top of the statement - that is, 18 August 1997?
> A. That's my belief.
>
> Q. If, however, you printed another copy from your computer disk, and it came up with the date 18 August 1997 in the typewritten section, and you then signed it at the bottom, printed your name, put your rank and then wrote the date, 18/8/97, then that would effectively be a backdating of your signature?
> A. You could see it that way.
>
> Q. Well, do you agree that that is what you did or you did not?
> A. I don't recall whether I just signed it or not, whether it was just a copy or -

[191] PIC Transcript SP Field 14 July 1998 p 157.
[192] PIC Transcript SP Field 14 July 1998 p 161.

5.47 Counsel Assisting then showed Senior Constable Field copies of the two versions of his statement. Senior Constable Field acknowledged that the signatures were indeed different and on that basis he must have signed a second copy of the document and backdated the signature.[193]

5.48 Senior Constable Field was also questioned about the date appearing on the statement he had prepared for G1. He conceded that the first version of the G1 statement, with his own name in the header, must have been prepared after he received the notification for the minibrief, that is after 5 September 1997. The date appearing on the statement is 19 August 1997, however. In his evidence Senior Constable Field denied backdating the document:[194]

> Q. If you did do that, how would the date 19 August be impressed on his statement?
> A. I don't know. It might have been a typographical error.
>
> Q. It might have been. You see, you say that you used your statement as the draft for his?
> A. That's right, yep.
>
> Q. And if your statement was prepared on the 18th, that is the date that would be impressed; that's right?
> A. Usually.
>
> Q. Well, there's no occasion where it wouldn't, unless you alter it?
> A. That's right.
>
> Q. And if you prepared his statement using your statement after 5 September 1997, how do you explain the appearance of 19 August 1997?
> A. I can't, other than it's a typographical error.
>
> Q. By you?
> A. That's right.
>
> Q. You wouldn't have backdated it, would you?
> A. No.
>
> Q. Are you quite sure about that?
> A. Yes.

5.49 Senior Constable Field did agree that the version of the statement he had prepared in G1's name, which included the blank header and which he

[193] PIC Transcript SP Field 14 July 1998 p 162.

[194] PIC Transcript SP Field 14 July 1998 pp 150-151.

states he sent to Sutherland prosecutors (Exhibit 19AC), was prepared on 15 September 1997. Yet it too carried the date 19 August 1997.[195]

OTHER MATTERS

5.50 Evidence was presented in the hearing that Senior Constable Field had, on a previous occasion, falsified the signature and an entry of his supervising Sergeant in his official police notebook whilst stationed at Albury NSW. Upon discovery and investigation he was dealt with by way of police disciplinary proceedings for Disobedience and Misconduct.[196]

ASSESSMENT

5.51 It is clear from the evidence that:

- A statement prepared by Senior Constable Field in the name of G1 was included in a minibrief sent to prosecutors without the named 'author' having seen the document or signed it.
- Two statements which had been impressed with the falsified signature of G1 were found on a prosecutor's minibrief.
- A statement had been signed without the signature being witnessed and a second unsigned statement included a signature on the witness line.
- Signatures were backdated.

5.52 There is no question that the contents of the statement which Senior Constable Field prepared in the name of G1 accurately reflected the events as recalled by G1. G1 gave evidence that, aside from some small details, he could agree with the facts as set forth in the statement purporting to be his.[197] As with the other matters in this report, however, the accuracy of the document is not the only point of concern.

5.53 Senior Constable Field admitted to writing the G1 statement on the basis that it was a draft that he intended to show G1. He asserted that he included it on the minibrief as a draft that he intended to provide to G1 in order that

[195] PIC Transcript SP Field 14 July 1998 p 152.
[196] PIC Transcript SP Field 14 July 1998 pp 188-189.
[197] PIC Transcript G1 13 July 1998 pp 40-41.

G1 could later sign it or reject it in favour of a version that he had prepared. Senior Constable Field also provided as an explanation for undertaking a statement on behalf of G1 that it was his understanding that G1 need assistance in preparing statements.

5.54 In the opinion of the Commission there are a number of factors that make Senior Constable Field's explanations difficult to accept:

- He did not provide G1 with a draft of the statement prior to sending it to the police prosecutors and G1 disputes that the matter was ever discussed between them.

- He did not afford G1 an opportunity, even after the minibrief had been sent to police prosecutors, to sign the statement or prepare his own version.

- He did not mark the statement as a draft or otherwise inform the police prosecutors or the brief handling manager at the Court that it was a draft.

- The evidence of Senior Constable Mathewson contradicts that of Senior Constable Field on the competency of G1 in preparing statements.

5.55 Even if the Commission were to accept Senior Constable Field's explanation, it would have been inappropriate for Senior Constable Field to prepare a statement in the name of G1, and include it in the minibrief without informing G1 or showing the statement to him.

5.56 Senior Constable Field admitted in his evidence to inappropriately signing and witnessing the statements that he contends he sent to Sutherland prosecutors. His explanations for his actions, that they were a 'bad habit', that other officers were unavailable to sign as a witness, and that presenting the statements in that form would indicate that they were drafts, were unconvincing. Senior Constable Field demonstrated that he properly understood the procedures for signing and witnessing statements. In this respect his training is not at issue. The Commission is of the opinion that his actions demonstrate lack of willingness on his part to conform to proper procedures.

5.57 The Commission is of the view that the scenario provided by Senior Constable Field to explain the appearance of the statements with the falsified signatures on the prosecutor's minibrief is implausible. That is, that an unnamed and unknown probationary constable may have come upon the copied statements, signed them with falsified signatures and submitted them to the prosecutor.

5.58 Senior Constable Field strongly denied falsifying G1's signature. The Commission carefully considered the circumstances of the situation, including: the time pressure that Senior Constable Field was under to provide the minibrief; the difficulties presented in accepting Senior Constable Field's explanations for his actions; the evidence of the other witnesses and the material tendered. Having considered all of the available evidence, it is the opinion of this Commission that Senior Constable Field's denials of falsifying the signatures ought to be rejected.

6. PROCEDURAL ISSUES

6.1 Preceding chapters have addressed specific issues about procedures that arose in respect of the individual investigations. This chapter will examine broader procedural issues relating to the falsification of signatures on police documents, as well as brief management and handling procedures. The chapter will also provide information about actions undertaken by the Police Service in those areas since the conclusion of hearings for Operation Copper, Operation Triton and Operation Nickel.

RESPONSE OF THE POLICE SERVICE ON THE FALSIFICATION OF SIGNATURES

6.2 Submissions provided by Counsel for the Commissioner of Police during the Operation Triton hearings clearly outlined the position of the Commissioner of Police on falsification of signatures, as follows:[198]

> Needless to say, the Commissioner of Police views with concern and alarm any evidence which tends to suggest that there may be an accepted practice of signing other officers' or witnesses' names to any documents, let alone documents to be relied upon in courts by judicial officers. There is no excuse for such conduct in any circumstances. The proposition that one should not forge another's signature seems so trite that it ought not need stating in Commissioner's Instructions, Academy course notes and the like.

6.3 The Commission also notes the steps that were undertaken by the Police Service, as described in those submissions, to ensure that their officers fully understand that proposition. Those measures included:[199]

- circulation of a notice in the August [1998] edition of the *Police Service Weekly* to all police;
- the appearance by the Assistant Deputy Commissioner of Police on a special broadcast on the 'Police TV' network to reinforce the message;
- the direction by Deputy Commissioner Jarratt to all Region Commanders, Specialist Operation Commanders and the Director of Operational Programs, to reinforce to their officers the unacceptable nature of the type of conduct under investigation by the Commission in any circumstances.

[198] Operation Triton Exhibit 41 p 1.
[199] Operation Triton Exhibit 41 p 1.

6.4 The notice published in *Police Service Weekly* on 3 August 1998 by Assistant Deputy Commissioner Chris Evans drew attention to the Commission's hearings, and stated in part:[200]

> It is of great concern to the Commissioner and the Executive that in some circumstances, this type of behaviour has been regarded as appropriate.
>
> I want to impress on you and leave you in no doubt, not only is this behaviour very serious and raises serious ethical questions, it is unlawful. The NSW Police Service does not condone this type of behaviour and you can be assured serious consequences will follow if police adopt this practice.

6.5 The Police Service also indicated in its submissions that 'transcripts of the relevant evidence are being provided to the Police Academy to ensure that the appropriate emphasis on ethical requirements in all stages of brief preparation is being taught, with the assistance of the experience of the matters examined by the Commission.'[201]

BRIEF HANDLING ISSUES

6.6 Operation Copper, Operation Triton and Operation Nickel dealt specifically with allegations of falsification of signatures. The evidence provided in the hearings, however, also highlighted problems that existed at that time with brief preparation and handling in general and the management of original documents.

6.7 Although those issues did not fall directly within the scope and purpose outlined for each hearing, it is the opinion of the Commission that they were relevant to the environment in which the events investigated took place. This chapter then, will briefly describe the evidence provided on those matters and examine relevant procedures.

6.8 It will also describe work being undertaken by the Police Service to improve brief management and brief handling through the NSW Police Service Brief Improvement Project.

ROLE OF THE BRIEF HANDLING MANAGER

6.9 During the hearing for Operation Nickel, Senior Constable Mathewson, Brief Handling Manager at Kogarah Local Area Command provided information and comment about the role of the brief handling manager.

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[200] Operation Triton Exhibit 42 p 9.

[201] Operation Triton Exhibit 41.

She described the duties of the position at that time to include the overseeing of brief preparation, checking the contents of briefs, issuing reminders of brief submission deadlines, and co-ordinating requirements for documents between police and prosecution officers.[202]

6.10 Senior Constable Mathewson also described for the Commission a computer system she had devised to record details of ongoing briefs of evidence and their status. It was noted that systems for tracking briefs had developed in Local Area Commands on an area-by-area basis.[203]

FORWARDING OF BRIEFS

6.11 From Senior Constable Mathewson's evidence, certain difficulties with the brief management system as it existed at the time became evident to the Commission. One issue was the inability to ensure that all briefs produced by officers at Kogarah police station went through the brief handling manager before being forwarded:[204]

> Q. You're very emphatic that the briefs should go through you before they go on to the prosecutors?
> A. Yes, that's right.
>
> Q. That didn't happen in this particular case?
> A. No.
>
> Q. Have you been able to go back through the procedures to see if there is a way that this could have been made more failsafe, to ensure that —
> A. Basically there's no way of me stopping an officer either serving a brief or forwarding a brief on elsewhere…
>
> Q. I take your point, of course, if someone wishes to bypass you and send a brief straight to the prosecutors, that's something you wouldn't be aware of?
> A. I wouldn't be aware of it, no.
>
> Q. You might be aware, though, from access to your computer system, that you had requested a brief in a particular matter to be provided to you by X date and X date was upon you or had passed and you hadn't yet received a brief. In the normal course, would that cause you to make inquiries of the relevant informant?
> A. No, I wouldn't make inquiries of them. I would just record the fact that I received no brief for that matter. I have had occasion to speak to some people and say, 'Look, you don't seem to send your briefs through me. Do you know they have to come through me?' No, I would not normally chase them up for a brief. I believe

[202] PIC Transcript TL Mathewson 15 July 1998 p 241.
[203] PIC Transcript TL Mathewson 15 July 1998 pp 242-248, 266.
[204] PIC Transcript TL Mathewson 15 July 1998 p 267.

> it's their responsibility to follow up a brief and to also follow the procedures. I can't make them.

6.12 It is perhaps indicative of changing attitudes that a more recent recruit, that is G1, provided the following evidence on his understanding of particular procedures for reporting to the brief handling manager:[205]

> A. As far as I'm aware, whenever a brief is involved, once the brief has been completed, it has to be submitted to the brief handling manager so it can be checked before it goes anywhere else at all.
>
> Q. Is there a particular tray or pigeonhole for that officer?
> A. There's a tray in the office of the brief handling manager.
>
> ...
>
> Q. Do you know whether it's a requirement for all briefs from the station to actually go through or via the brief handling manager?
> A. Yes, it's a requirement.

6.13 An examination of police procedures shows the requirements for the handling of briefs have not been entirely clear on two counts:

- ensuring briefs were provided to brief handling managers before they were sent to prosecutors; and
- clarifying exactly who was responsible for providing briefs to the prosecutors.

6.14 Course materials received from the NSW Police Academy during the Operation Nickel hearing included substantial information about the preparation of briefs. In that material it clearly stated that the informant must deliver two copies of the brief to the brief handling manager at least four days prior to the date fixed for service on the Office of the Director of Public Prosecutions.[206]

6.15 Current police guidelines, as found in the *NSW Police Service Handbook*, are not as clear. The guidelines do not provide a clear requirement that the police officer acting as informant for a matter must, or even should, provide the brief to the brief handling manager. Under the heading 'Indictable matters' the Handbook states that investigating police should,

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[205] PIC Transcript G1 13 July 1998 p 35.

[206] NSW Police Academy Police Recruitment Education Program (PREP) Strand 6 February 1998, p 172.

in cases involving Table 1 offences, '... deliver three copies [of the minibrief] to the police prosecutor before the first appearance'.[207] In a further sub-heading 'Brief handling manager'. It states:[208]

> Check all briefs and send them (completed or not) to the relevant prosecuting authority.
>
> If you consider a brief to be unsatisfactory, advise the informant to correct it. Tell the DPP of your actions.

6.16 The Commission is of the view that it is possible to interpret those guidelines as suggesting that two persons are each responsible for delivering briefs, or minibriefs, for indictable offences to prosecuting authorities. Unnecessary confusion or, at minimum, duplication of work, is likely to result. At worst this could potentially provide an opportunity for corrupt conduct.

6.17 The Commission is also of the view that it is problematic to require the brief handling manager to check all briefs when instructions have not been clear that officers must send all briefs to that manager. While current training materials reflect that requirement, the evidence of Senior Constable Mathewson together with the instructions in Handbook make it apparent that not all officers were aware of, or cared to abide by, this procedure.

6.18 The Commission notes that a brief management model has been proposed in a December 1999 report by the Police Service's Corporate Brief Improvement Project (described further below). In that model it is proposed that the principal responsibility for brief quality assurance be assigned to the re-titled 'brief manager'. It would appear that the model, once in effect, would alleviate some of the problems described above in the following ways: [209]

- Certification of a brief, by the brief manager, will be required before it can be served or proceed to relevant prosecuting authorities. This should ensure that all briefs must be provided to the brief manager.

- While not explicitly stated in the report, it appears that the principal case officer (formerly known as the informant) will be responsible for the forwarding of briefs to prosecutors. It is clear from the report that the principal case officer will be responsible for brief service.

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[207] NSW Police Service *NSW Police Service Handbook* January 1999 p C-45.

[208] NSW Police Service *NSW Police Service Handbook* January 1999 p C-46.

[209] NSW Police Service Brief Improvement Project 'Report of the Brief Management Focus Group' 10 December 1999 p 3.

TIMELINESS OF BRIEF PREPARATION

6.19 Ensuring the timeliness of brief preparation was another issue that arose through the evidence provided. When questioned by Counsel Assisting, Senior Constable Mathewson provided the following evidence about the responsibility for ensuring timeliness:[210]

> Q. So it's not part of the Brief Handling Manager's role as you perceive it and as you act in it to chase up the informants to make sure that you get the brief before it is forwarded to the prosecutors?
> A. I think it is a brief handling manager's responsibility to remind them that they are overdue with getting their brief to me for checking. As for chasing them up, when - I don't think that's my responsibility, but I certainly do feel that I should let them know that a brief is outstanding or is overdue.

6.20 Senior Constable Mathewson went on to point out that it is the informant's responsibility to ensure that matters are followed through to their end.[211] She noted though, that there were some officers who regularly did not provide her with briefs within the time-frame requested. She was questioned about what she did in response in such circumstances:[212]

> Q. And is it part of your role, as you see it, in relation to these officers who may regularly or more frequently fail to meet the timetables, to speak to them about that, counsel them, assist them in their brief preparation?
> A. I think it should be my responsibility to bring that to the attention of their supervisor. At Kogarah each team - I think we have five teams - has a supervisor. I'm talking specifically for general duties. I think that I should let the supervisor know what they are doing. Basically the supervisor is in charge of their team. I would prefer to bring it to the attention of the supervisor, rather than myself just speaking to the officer.

6.21 The *NSW Police Service Handbook* states under 'Responsibility for court proceedings':[213]

> Proceedings which you [arresting police] initiate are solely your responsibility. Promptly attend to your court matters and follow through to completion. Be in court for all defended hearings unless excused.

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[210] PIC Transcript TL Mathewson 15 July 1998 pp 267-268.

[211] PIC Transcript TL Mathewson 15 July 1998 p 269.

[212] PIC Transcript TL Mathewson 15 July 1998 pp 269-270.

[213] NSW Police Service *NSW Police Service Handbook* January 1999, p C-45.

6.22 Officers are further advised by the Handbook that, in relation to Table 1 offences, if they cannot prepare a minibrief on time they must send a report to the police prosecutor through their commander, explaining why and indicating when the brief will be available.

6.23 This identifies arresting officers as ultimately responsible for their court matters and for ensuring that briefs are forwarded on time. Also, as noted above, officers preparing briefs are not explicitly required to forward briefs to the brief handling manager and are, in fact, instructed to forward them themselves to prosecuting authorities.

6.24 Given this, it is difficult to understand how a brief handling manager could be expected to comply with the 'Statement of Brief Handling Managers Duties' found within the NSW Police Service Distance Education 'Revised Brief Handling Package' dated November 1996. In that package the duties required of all brief handling managers include:[214]

> Ensure briefs of evidence are delivered to prosecuting officers in accordance with stipulated time frames.

6.25 Difficulties in adhering to specified time-frames may have been a contributing factor to the difficulties found in the hearings for Operation Copper and Operation Nickel. At least one other officer was said to have claimed expediency to explain his actions. It is not clear, however, whether those difficulties are the result of work practices of individual officers or of a more general situation of heavy workloads and limited resources.

6.26 The proposed brief management model would assist in reducing the time required for brief preparation as the proposed computer systems would streamline and increasingly automate the preparation of briefs. In addition, the system will monitor the preparation of the brief and produce notifications automatically to ensure the brief is served within existing legislative constraints.[215] The monitoring system will also assist supervisors in identifying overdue briefs.

6.27 The initiation of uniform post-prosecution debriefs following the conclusion of judicial proceedings, and the review of all dismissed prosecutions, should further assist in identifying matters where time constraints have resulted in problems with the brief produced.

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[214] NSW Police Distance Education Package 'Revised Brief Handling Package' November 1996 p 2.

[215] NSW Police Service Brief Improvement Project 'Report of the Brief Management Focus Group' 10 December 1999 p 3.

POLICE SERVICE EFFORTS TO IMPROVE BRIEF MANAGEMENT

6.28 During 1998 Commissioner Ryan established a Police Briefs of Evidence Improvement Project to address concerns about the quality of briefs presented at court. A report entitled *Final Report on Police Briefs of Evidence Improvement Project, NSW Police Service*, dated February 1999 was released by the Commissioner's Office. That report examined a number of issues relating to brief preparation and management. It also examined the role of education and training, information technology and managerial accountability. Evidence obtained by the Commission through these hearings about deficiencies in the brief management system are also noted in the report. The report makes a large number of recommendations in relation to brief preparation, brief handling, education and management accountability.[216]

6.29 Subsequently a Corporate Brief Improvement Project was commissioned with an initial aim to identify and develop a 'best practice' model for brief management and the role of the Brief Manager. To achieve this, a focus group was formed which developed a set of user specifications for a 'best practice', computer-based brief management system. A condensed version of the results of that work was released in a report entitled *Report of the Brief Management Focus Group*, in December 1999. That report included 52 recommendations mainly relating to the role of the Brief Manager, brief service, and enhancements to police computer based systems. The Police Service is initiating a number of activities intended to enhance brief management and quality.[217]

6.30 The model adopted by the focus group has a number of features the Commission would consider essential in a brief management system:

- It would establish a standardised brief management and quality assurance process across the Police Service. This should alleviate problems created by the lack of consistency in procedures and exacerbated by the existence of a number of stand-alone information recording systems.

- It would detail the duties and responsibilities of those involved in brief management and brief quality assurance and assign accountability for decisions affecting the quality of a brief of evidence.

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[216] Tanya Bright 'Final Report on Police Briefs of Evidence Improvement Project' NSW Police Service February 1999.

[217] NSW Police Service, Brief Improvement Project 'Report of the Brief Management Focus Group', 10 December 1999.

- It would use information systems to enable the tracking of the status of each brief, provide notifications to those requiring information and reminders to those who must complete specific taskings.

ASSESSMENT

6.31 The hearings for Operation Copper, Operation Triton and Operation Nickel raised a number of specific issues to do with the overall brief preparation and handling procedures of the Police Service. It has become apparent to the Commission that the Police Service has not only acknowledged those specific difficulties, but has examined many others as well in the course of its own review of brief preparation, handling and management procedures.

6.32 The Commission commends the Police Service for commencing a process of quality improvement in the area of brief preparation and handling and for the substantial work that has occurred in this area. This improvement process, once implemented should enhance the prevention of corruption and other misconduct in this area.

6.33 It is the view of the Commission that while the new model described by the Police Service promises to significantly improve the preparation, handling and management of briefs, the success of the system will lie in its implementation. Ensuring that all officers are fully educated about the new systems and procedures, and use them, will be critical. The Commission notes that the reports prepared by the Police Service to date have focused on devising a new system. It expects that further consideration will be given to the education and training of all police involved in preparing briefs as the new systems come into effect. The Commission also expects that such training would not be restricted to the operation of the new computer based functionalities for brief preparation and handling, but also the underlying philosophy of the new system and the responsibility of individuals within it.

6.34 The Commission wishes to be kept appraised by the Police Service of further developments in this area, particularly in the implementation of the new systems, and the education and training that will be provided to police officers in their use.

6.35 Further, the Commission recommends:

- **that the section of the NSW Police Service Handbook on 'Preparing a Brief' be rewritten to better describe procedures.**

MAINTAINING ORIGINAL DOCUMENTS FOR BRIEFS

6.36 The practice of officers keeping original documents required for briefs in their pigeonholes was canvassed by Counsel for the Police Service with Senior Constable Mathewson:[218]

> Q. We've also heard some evidence of officers keeping in their pigeonhole a brief which has been prepared and, on occasions where someone has to look for a brief conducting a search of the station, not being able to find a brief anywhere. Is there any particular system at Kogarah whereby a brief that is going through the stages of preparation is kept in a particular spot in the station, or is it up to individual informants?
> A. Well, as of 1 January I introduced a new filing system at Kogarah, whereby every original document was to be forwarded to me for filing, whether it be a statement, a witness statement or, for instance, a piece of paper that would be later on used as evidence. The system that I introduced as of 1 January was that they were to forward it to me with a signed print-out to say they were giving it to me and I was taking responsibility for it and I lock that away now under lock and key. Prior to 1 January there was no such system and there was basically paperwork everywhere within the station.
>
> Q. So now there's a system whereby all original statements are kept in a centralised location?
> A. That's right.
>
> Q. And upon a particular brief being completed, is it maintained in that central location until being forwarded to the prosecutors?
> A. The officers can have access to this locked area at any time of the day. There's two keys. I have one when I'm working and the station supervisor will have one when I'm not working. They can take these documents any time but they are signed out to say that they take responsibility for them. When they return them to me, I will sign them back in to say I have received the originals. If I see that I have received a photocopy, I will note that down and it will also be there for future reference. In case anyone goes to the particular envelope, they will see the date that the originals were removed and the date that the photocopies were sent back.

6.37 Later, the Commissioner returned to this issue of control of original documents and asked the witness questions about a practice commonly known as 'pulling a brief':[219]

> Q. Would it surprise you to know that - I won't speak about the present or the past or the future - on occasions material that comprises a brief goes missing, material that is fundamental to a successful

[218] PIC Transcript TL Mathewson 15 July 1998 pp 270-271.
[219] PIC Transcript TL Mathewson 15 July 1998 pp 300-301.

prosecution, and, when it goes missing, naturally the prosecution will not be successful? Does that surprise you?

A. It does surprise me.

Q. All right. Let me pursue it this way: you've introduced a new system whereby, as I understand it, the originals of statements are required to be handed over to you, you keep them in your possession, but a chain of possession is maintained and is able to be proved?

A. Yes.

Q. In just the same way as things that are referred to as exhibits - whether that be the correct or the incorrect word I'm not concerned with at the moment - are entered up into appropriate logs and the chain of possession of them is recorded and able to be proved; it's not a dissimilar procedure?

A. No.

Q. You introduced that, I take it, because you had a concern to ensure that the original statements, in so far as the area of brief handling was concerned, had an integrity about it?

A. Yes.

Q. Did you have any difficulty in having that system initiated?

A. No, it was actually through consultation with myself and the crime manager that I told him I was concerned about the fact that constables were leaving original documents in their pigeonholes and that they could be removed for one reason or another. So I brought that to the attention of the crime manager and he realised that there was a problem - not only briefs but also in relation to other investigations that officers at Kogarah would be conducting. So then we sat down together and worked out a filing system and a security system, and that was then put into place on 1 January.

6.38 The Commissioner later noted in the hearing that such a system was a form of a corruption prevention risk management strategy.[220]

6.39 Evidence was also received in hearings for Operation Copper and Operation Triton that described leaving documents to be included in briefs of evidence in police pigeonholes.[221] It can be inferred from this that such practices are probably common in police stations. Given the potential for corruption and misconduct to arise from this practice, it seems appropriate that the Police Service should ensure that a system is introduced that will maintain original documents required for briefs in a secure location, rather than in individual officers' pigeonholes.

[220] PIC Transcript TL Mathewson 15 July 1998 p 302.

[221] PIC Transcript D1 4 May 1998 pp 9-10; PIC Transcript E1 6 July 1998 pp 12-13.

6.40 It is noted that the new brief preparation model described above will increase the extent to which documents for briefs are produced, stored and linked together in electronic form. It must remain, however, that at some point in time significant documents for a brief are produced in hard-copy in order to be signed and the requirement will remain for those documents to be compiled and stored until the brief is forwarded to prosecutors and served on defendants. As such, the security of those documents will remain an issue.

6.41 The Commission recommends**:**

- **that the Police Service devise a system to ensure the secure storage of original documents used in the preparation of briefs.**

7. AFFECTED PERSONS

7.1 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 (section 97(3)).

7.2 Under section 97(2) of the Act, the Commission is required to include in each report to Parliament, 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.

7.3 As explained in Chapter 2, due to recent changes in the *Police Service Act 1990*, the obligation imposed upon the Commission by sub-section 97(2)(b) to include in a report to Parliament in respect of each 'affected person' a statement as to whether consideration should be given to the taking of action against the person for a specified disciplinary offence, can no longer have any application to police officers. This is the reason for the apparently anomalous situation whereby the Commission may state in respect of a police officer that consideration should be given to prosecution of the police officer for a criminal offence as well as that the services of the police officer be terminated, but that consideration should not be given to prosecution of the police officer for a specified disciplinary offence.

7.4 The Commission considers that the following are 'affected persons' for the purposes of section 97(3) of the Act, namely:

- **Operation Copper:**
  - Constable Stuart Edward Byrnes;
  - Senior Constable Keith Robert Ridley.

- **Operation Triton:**
  - Senior Constable Dean William Blacker;
  - Sergeant Kenneth Alan Moroney.
- **Operation Nickel:**
  - Senior Constable Simon Peter Field.

OPERATION COPPER

CONSTABLE STUART EDWARD BYRNES

7.5 The Commission is of the opinion that Constable Stuart Edward Byrnes is an 'affected person' within the meaning of section 97 of the Act because he is the subject of a substantial allegation, namely, that without D1's knowledge or consent he prepared a statement purportedly by D1, impressed it with the falsified signature of D1, and included such statement within a brief of evidence in the knowledge that the brief would be relied upon by a police prosecutor in his assessment and prosecution of the defendant.

7.6 Pursuant to sub-section 97(2) of the Act, the Commission states that it is of the opinion that:

(a) consideration should be given to the prosecution of Constable Byrnes for the following criminal offences:

(i) make false instrument, contrary to sub-section 300(1) of the *Crimes Act 1900*;

(ii) use false instrument, contrary to sub-section 300(2) of the *Crimes Act 1900*; and

(iii) tamper with evidence, contrary to section 317 of the *Crimes Act 1900*;

(b) consideration should **not** be given to the prosecution of Constable Byrnes for a specified disciplinary offence;

(c) consideration should be given to the taking of action (including the making of an order under section 181D of the *Police Service Act 1990*) against Constable Byrnes as a police officer, with a view to dismissing,

dispensing with the services or otherwise terminating the services of the police officer, on the ground that the Commissioner of Police would be entitled to form an opinion that he no longer has confidence in the suitability of Constable Byrnes to continue as a police officer, having regard to Constable Byrnes' conduct and lack of integrity; and

(d) in the event that action is not taken in accordance with paragraph (c) above, consideration should be given to the taking of reviewable action within the meaning of section 173 of the *Police Service Act 1990* against Constable Byrnes.

SENIOR CONSTABLE KEITH ROBERT RIDLEY

7.7 The Commission is of the opinion that Senior Constable Keith Robert Ridley is an 'affected person' within the meaning of section 97 of the Act because he is the subject of a substantial allegation, namely, that he approached D1 in a manner that she, quite reasonably, perceived to be threatening and on behalf of Constable Byrnes.

7.8 Pursuant to section 97(2) of the Act, the Commission states in respect of Senior Constable Ridley, that in all the circumstances, the Commission is of the opinion that:

(a) consideration should **not** be given to the prosecution of Senior Constable Ridley for a specified criminal offence;

(b) consideration should **not** be given to the taking of action against Senior Constable Ridley for a specified disciplinary offence;

(c) consideration should **not** be given to the taking of action (including the making of an order under section 181D of the *Police Service Act 1990*) against Senior Constable Ridley as a police officer in specified grounds, with a view to dismissing, dispensing with the services or otherwise terminating the services of Senior Constable Ridley; and

(d) consideration should **not** be given to the taking of reviewable action within the meaning of section 173 of the *Police Service Act 1990* against Senior Constable Ridley as a police officer.

OPERATION TRITON

SENIOR CONSTABLE DEAN WILLIAM BLACKER

7.9 The Commission is of the opinion that Senior Constable Dean William Blacker is an 'affected person' within the meaning of section 97 of the Act because he is the subject of a substantial allegation, namely, that he

prepared a facts sheet in the name of another police officer, E1, without the knowledge or consent of E1, falsified the signature of E1 on the facts sheet and included the facts sheet within a brief of evidence.

7.10 Pursuant to sub-section 97(2) of the Act, the Commission states that it is of the opinion that:

(a) consideration should be given to the prosecution of Senior Constable Blacker for the following criminal offences:

(i) make false instrument, contrary to sub-section 300(1) of the *Crimes Act 1900*; and

(ii) use false instrument, contrary to sub-section 300(2) of the *Crimes Act 1900*;

(b) consideration should **not** be given to the prosecution of Senior Constable Blacker for a specified disciplinary offence;

(c) consideration should be given to the taking of action (including the making of an order under section 181D of *the Police Service Act 1990*) against Senior Constable Blacker as a police officer, with a view to dismissing, dispensing with the services or otherwise terminating the services of the police officer, on the ground that the Commissioner of Police would be entitled to form an opinion that he no longer has confidence in the suitability of Senior Constable Blacker to continue as a police officer, having regard to Senior Constable Blacker's conduct and lack of integrity; and

(d) in the event that action is not taken in accordance with paragraph (c) above, consideration should be given to the taking of reviewable action within the meaning of section 173 of the *Police Service Act 1990* against Senior Constable Blacker.

SERGEANT KENNETH ALAN MORONEY

7.11 The Commission is of the opinion that Sergeant Kenneth Alan Moroney is an 'affected person' within the meaning of section 97 of the Act because he is the subject of a substantial allegation, namely, that he produced a statement of information in response to a notice issued by the Commission pursuant to section 25 of the Act, the truth of which was in doubt. At best, the statement of information evidenced a lack of diligence on the part of Sergeant Moroney in his preparation of same.

7.12 Pursuant to section 97(2) of the Act, the Commission states that it is of the opinion that:

(a) consideration should **not** be given to the prosecution of Sergeant Moroney for a specified criminal offence;

(b) consideration should **not** be given to the taking of action against Sergeant Moroney for a specified disciplinary offence;

(c) consideration should **not** be given to the taking of action (including the making of an order under section 181D of the *Police Service Act 1990*) against Sergeant Moroney as a police officer on specified grounds, with a view to dismissing, dispensing with the services or otherwise terminating the services of Sergeant Moroney;

(d) consideration should **not** be given to the taking of reviewable action within the meaning of section 173 of the *Police Service Act 1990* against Sergeant Moroney as a police officer.

OPERATION NICKEL

SENIOR CONSTABLE SIMON PETER FIELD

7.13 The Commission is of the opinion that Senior Constable Simon Peter Field is an 'affected person' within the meaning of section 97 of the Act because he is the subject of a substantial allegation, namely, that he:

(a) without G1's knowledge or consent, prepared a statement by G1, impressed it with the falsified signature of G1, and included such statement within a minibrief of evidence sent to Sutherland prosecutors; and

(b) deliberately falsified G1's signature as a witness to a statement prepared and signed by Senior Constable Field, and included such statement within a minibrief of evidence sent to Sutherland prosecutors.

7.14 Pursuant to sub-section 97(2) of the Act, the Commission states that it is of the opinion that:

(a) consideration should be given to the prosecution of Senior Constable Field for the following criminal offences:

(i) make false instrument, contrary to sub-section 300(1) of the *Crimes Act 1900* (2 counts);

(ii) use false instrument, contrary to sub-section 300(2) of the *Crimes Act 1900* (2 counts); and

(iii) tamper with evidence, contrary to section 317 of the *Crimes Act 1900* (2 counts);

(b) consideration should **not** be given to the prosecution of Senior Constable Field for a specified disciplinary offence;

(c) consideration should be given to the taking of action (including the making of an order under section 181D of the *Police Service Act 1990*) against Senior Constable Field as a police officer, with a view to dismissing, dispensing with the services or otherwise terminating the services of the police officer, on the ground that the Commissioner of Police would be entitled to form an opinion that he no longer has confidence in the suitability of Senior Constable Field to continue as a police officer, having regard to Senior Constable Field's conduct and lack of integrity; and

(d) in the event that action is not taken in accordance with paragraph (c) above, consideration should be given to the taking of reviewable action within the meaning of section 173 of the *Police Service Act 1990* against Senior Constable Field.

8. GENERAL OBSERVATIONS AND SUMMARY OF RECOMMENDATIONS

8.1 The evidence from these hearings has disclosed three similar incidents where a police officer has falsified the signature of another officer. Each hearing involved different officers and occurred at different geographical locations. Extrapolating from this evidence, it is valid to surmise that there are probably other similar incidents which have occurred in the Police Service, but which have been unreported. One of the Commission's corruption investigation and prevention strategies is to identify and address patterns of behaviour, and this has been the intention of the Commission in conducting this series of hearings. In the course of these hearings, a number of other issues of a general nature have become apparent. These issues are considered below.

8.2 Assessments and conclusions reached by the Commission in respect of the individual investigations can be found in the relevant chapters for those investigations. Statements made in respect of 'affected persons' can be found in Chapter 7.

PRODUCTION OF COURT DOCUMENTS

8.3 The Commission heard evidence in relation to the production of court documents which included:

- the loose practice adopted by some police in relation to the dating and witnessing of statements. This included backdating statements, and failing to have the signing of the statement witnessed correctly; and

- the presentation to prosecuting authorities of documents which bore a false signature.

8.4 The Commission is of the opinion that this evidence demonstrates an attitude of general disregard by some police officers to the role and function of court documents, and, by extension, to courts themselves. There are a number of dangers in allowing such conduct to continue unchecked, including that:

- courts will not have confidence in the integrity of documents presented by police officers;

- courts and the community will lack confidence and trust in evidence presented by police officers; and

- police officers may be prepared to give false evidence.

REFORM OF THE POLICE SERVICE

8.5 The evidence disclosed examples of experienced and more senior officers falsifying the signatures of junior officers. In two cases, the persons whose signatures were falsified were probationary constables at the time. One probationary constable had been out of the Police Academy for only five days when the incident took place which became the subject of the Commission's hearing. Such an induction to the Police Service was undoubtedly extremely distressing, confusing, and demoralising for that officer.

8.6 It is commendable that these junior constables had the courage to bring the incidents of misconduct to the attention of their supervisors. While the reporting of these incidents demonstrates individual probity and principle, it may also demonstrate that the training of police officers by the Academy is effective in turning out officers of honesty and integrity.

8.7 Unfortunately, the hearings also disclosed evidence that officers who report misconduct may find themselves subject to persecution and harassment by other police officers. One officer reporting misconduct received a threatening letter at the police station where she worked. The careless handling of this letter saw her exposed to general station gossip and speculation. She was then approached by an Education Development Officer in a way that she reasonably perceived as being a further threat.

8.8 One of the greatest obstacles encountered by the Royal Commission was police culture which discourages police from reporting incidents of misconduct and corruption, and the persecution of those who broke the code of silence.[222] While the police who complained in these matters valued the support of the Internal Witness Support Unit, it does not appear that the same support was available from some of the Local Area Commanders. The evidence demonstrates that this remains one of the challenges for the reform of the Police Service.

ATTITUDE OF MANAGEMENT

8.9 The Commission has been concerned that the managers investigating the complaints have tended to focus on whether or not the facts in the document bearing the false signature are true or not. This approach seems to view the act of compiling a factually correct document, but signing the signature of another officer, as a procedural issue which amounts to no more than a corner cutting exercise.

[222] Royal Commission into the NSW Police Service *First Interim Report* February 1996 p 34.

8.10 While of course, factual accuracy of the contents of the document is of the utmost importance, the exclusion of all else has resulted in insufficient consideration being given to of the inherent dishonesty demonstrated by the act of signing another person's signature. Where the document is produced for court purposes, there is also potential for misleading a court relying on such document. A court presented with a signed document is entitled to make certain assumptions, including that the person who has signed the document has read it and adopted the contents.

8.11 These hearings have identified the following issues:

- the lack of appreciation by management of the impropriety of what had occurred; and

- the absence of any clear policy or consensus in the Police Service as to the appropriate response to such practices.

8.12 The Commission does not suggest that the conduct exposed in these hearings is symptomatic of the more traditional forms of dishonesty exposed by the Royal Commission. However, the failure to discourage such conduct can have a negative impact on the Police Service and impede the reform process in the following ways:

- management failure to identify the integrity issue raised by such conduct has the potential to lead officers to believe that the reforms being promulgated by the management of the Police Service are simply rhetoric;

- inexperienced officers are inducted into a work ethic which is antithetical to the reform process;

- such conduct can be seen as an expedient alternative to diligent and skilled policing work; and

- it encourages disregard for court process and evidence, and teaches that deceptions can be maintained and covered up.

8.13 It has been the intention of the Commission to draw the attention of the management of the Police Service to these issues, and to send a message to officers that this conduct is not acceptable, thereby acting as a deterrent to future use of such practices. Actions taken by the Police Service in response to these hearings have been outlined in Chapter 6.


POLICE INTEGRITY
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