Report to Parliament | December 2009

Operation Alford

NSW Police Integrity Commission



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The Hon Amanda Fazio MLC
President
Legislative Council
Parliament House
SYDNEY NSW 2000

The Hon Richard Torbay MP
Speaker
Legislative Assembly
Parliament House
SYDNEY NSW 2000

Dear Madam President and Mr Speaker

In accordance with section 96(1) of the *Police Integrity Commission Act 1996*, the Commission hereby furnishes to you a Report regarding Operation Alford, being a Report in relation to a matter as to which the Commission has conducted an investigation.

I draw your attention to section 103(2) of the *Police Integrity Commission Act 1996*, pursuant to which I recommend that this Report be made public forthwith.

Yours faithfully



J Pritchard
Commissioner

December 2009

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OPERATION ALFORD

BACKGROUND

1. On 21 December 2005 the Police Integrity Commission (the Commission) furnished to the President of the Legislative Council and to the Speaker of the Legislative Assembly, a report regarding Operation Whistler (Whistler Report). In accordance with the Commission's recommendation, the Whistler Report was made public that day.

2. The Whistler Report was primarily concerned with the actions of certain police from Wagga Wagga involved in the arrest and prosecution of Allan Frederick Hathaway (Hathaway) following a pursuit at Wagga Wagga on 6 February 2003. As a result of that incident Hathaway was charged with the following offences:

   a) driving while disqualified
   b) using an unregistered vehicle;
   c) using an uninsured vehicle;
   d) driving in a manner dangerous to the public;
   e) resisting Constable Cox in the execution of his duty;
   f) possession of an offensive weapon (a knife) with intent to prevent lawful apprehension;
   g) break and enter a dwelling house, and, while therein, stealing property;
   h) assaulting Constable Cox while in the execution of his duty;
   i) assaulting Constable Jackson while in the execution of his duty, and thereby occasioning actual bodily harm; and
   j) resisting Constable Jackson while in the execution of his duty.

3. Hathaway pleaded guilty to charges (a) to (e) above. The remaining charges were heard at the Wagga Wagga Local Court in December 2003, and March 2004 and dismissed on 24 March 2004 by Magistrate W Pierce.

4. The Whistler Report was critical of a number of police officers involved in the Hathaway arrest and prosecution, including Detective Senior Constable Timothy Scott Briggs (Briggs), Senior Constable Christopher John Jackson (Jackson), Senior Constable Julie Teresa Philpott (Philpott) and Constable Amanda Rae Deissel (Deissel).

5. On 11 December 2007, the Commission received from the Honourable P J Moss QC, Inspector of the Police Integrity Commission (the Inspector), a report of an investigation which he had carried out of a complaint concerning the Whistler Report lodged with his office by Briggs.

6. The Inspector upheld the complaint and found that Briggs had been denied procedural fairness by the Presiding Commissioner and the Commission.

7. The Commission accepted that Briggs had been denied procedural fairness in the manner described by the Inspector. It became apparent to the Commission that in addition to Briggs, other police officers named in paragraph 9.7(g) of the Whistler Report (Deissel, Jackson and Philpott) had also been denied procedural fairness because they had not received notice that in the Whistler Report the Commission would rely upon comments made by the Magistrate in the Wagga Wagga Local Court proceedings against Hathaway.

8. The Commission took steps in an attempt to address the problem caused by the offending material in the Whistler Report, not only in the case of Briggs, but in the case of Deissel, Jackson and Philpott.

9. It appeared to the Commission that adding material to the relevant parts of the Whistler Report stating that no reliance should be placed on that material could create confusion in the eyes of some readers and that it might provide a more effective remedy to excise the offending material from the Whistler Report.

10. Accordingly:

- the Commission prepared an amended version of the Whistler Report for its website with the offending material omitted;
- the omitted material consisted of the extracts affecting Briggs and also the extracts affecting Deissel, Jackson and Philpott referred to above;
- the amended version of the Whistler Report was attached to the Commission's website on 7 January 2008;
- the Commission forwarded a media release to media outlets on 7 January 2008 advising that the Whistler Report had been amended and drawing attention to the amended paragraphs and the opinions which had remained unchanged;
- the Commission sent a letter on 10 January 2008 to each of Briggs, Deissel, Jackson and Philpott explaining the steps taken by the Commission and offering the Commission's apologies for any confusion or inconvenience caused by the inclusion of the offending passages in the Whistler Report; and
- a copy of the letters sent to Briggs, Deissel, Jackson and Philpott were also supplied to the Wagga Wagga Local Area Commander and the Commander of the Professional Standards Command of the NSW Police Force.

11. On 12 March 2008 the Commission received from the Inspector a further report of an investigation he had carried out of a second complaint concerning the Whistler Report lodged with his office by Briggs. The Inspector concluded that the objections taken by Briggs should be seen as reasonable and reflecting a lack of procedural fairness on the part of the Commission.

COMMENCEMENT OF OPERATION ALFORD

12. Following receipt of the Inspector's second report into the complaints by Briggs the Commission sought the advice of Senior Counsel as to how best to address the breaches of procedural fairness which had occurred in the Whistler Report.

13. The Commission was advised that it was not open to the Commission to amend the content of a report prepared under section 96 of the *Police Integrity Commission Act 1996* (the Act) which had been furnished to the Presiding Officer of each House of Parliament. However it was open to the Commission to commence a further investigation into the matters that were the subject of such a report. The Commission could then prepare a report on that further investigation even if the opinions which it formed were different to the opinions that it previously formed and which were recorded in its earlier report. In conducting such an investigation the Commission was entitled to take into consideration all relevant information including the information and evidence that was the subject of the earlier investigation.

14. The Commission determined to commence a fresh investigation not only in relation to the matters complained of concerning Briggs but also in relation to the other officers who had also been denied procedural fairness because of the opinions expressed by the Commission about the evidence they gave in the Hathaway prosecution. One of the objects of this new investigation was to ensure that all persons were accorded procedural fairness in the investigation of those matters which had not been dealt with appropriately in the Whistler Report. Further, the Commission also decided to restore the original Whistler Report to the Commission's website, given that the attempt to amend that Report had been found to be of no effect.

15. On 7 April 2008 the new investigation was commenced under the codename Operation Alford. The purpose of the investigation was to investigate:

> 1 Whether Senior Constable Christopher John Jackson, Constable Julie Teresa Philpott, Constable Amanda Rae Deissel and Senior Constable Timothy Scott Briggs gave untruthful or unreliable evidence in the Wagga Wagga Local Court during the hearing of charges against Allan Hathaway arising from an incident at Wagga Wagga on 6 February 2003;
>
> 2a) Whether there was any police misconduct associated with Senior Constable Briggs' role in a Critical Incident called in relation to the arrest of Allan Hathaway on 6 February 2003 at Wagga Wagga; and
>
> 2b) The extent of Senior Constable Briggs' knowledge of the existence of a medical report prepared by Dr Kuswanto in relation to injuries sustained by Allan Hathaway on 6 February 2003 at Wagga Wagga.

16. In the meantime, in 2006 Hathaway had commenced proceedings claiming damages in the Supreme Court of New South Wales against the State of New South Wales, alleging it was vicariously liable for alleged wrongful acts or omissions arising out of his arrest on 6 February 2003 and the consequent prosecution.

17. Following completion of the evidence in the Supreme Court proceedings, on 14 November 2008 the Commission amended the purpose of its investigation to investigate:

> 1. Whether Christopher John Jackson, Julie Teresa Philpott, Amanda Rae Deissel and Timothy Scott Briggs gave untruthful or unreliable evidence in the Wagga Wagga Local Court during the hearing of charges against Allan Hathaway arising from an incident at Wagga Wagga on 6 February 2003
>
> 2. Whether there was any police misconduct associated with Timothy Scott Briggs' role in the Critical Incident called in relation to the arrest of Allan Hathaway on 6 February 2003 at Wagga Wagga and in the subsequent investigation and prosecution of Hathaway;
>
> 3. Whether Christopher John Jackson, Julie Teresa Philpott, Amanda Rae Deissel and Timothy Scott Briggs, gave untruthful or unreliable evidence in the Operation Whistler hearing at the Police Integrity Commission;
>
> 4. Whether Christopher John Jackson, Julie Teresa Philpott, Amanda Rae Deissel and Timothy Scott Briggs, gave untruthful or unreliable evidence in the Wagga Wagga Local Court during the hearing of charges against Christopher John Jackson arising from the arrest of Allan Hathaway at Wagga Wagga on 6 February 2003;
>
> 5. Whether Christopher John Jackson, Julie Teresa Philpott and Timothy Scott Briggs gave untruthful or unreliable evidence in the Supreme Court of New South Wales at Sydney in proceedings brought by Allan Hathaway against the State arising out of his arrest at Wagga Wagga on 6 February 2003 and subsequent prosecution by NSW Police.

18. The Commission proposed to conduct hearings in its investigation but submissions were made to the Commission on 8 December 2008, on behalf of Jackson (and supported by submissions on behalf of Briggs, Deissel and Philpott), which included a submission that the Commission's exercise of power was spent and that it had no power to commence further hearings.

19. The Commission considered the submissions which had been made and came to the view that having regard to the delay which had occurred since 11 April 2008 (which was the date when Briggs, Deissel, Jackson and Philpott were notified by the Commission of the purpose of Operation Alford) and the facts that: (i) the Commission had not yet commenced the proposed hearings in Operation Alford; (ii) the evidence and submissions had been completed in the Hathaway proceedings in the Supreme Court heard by Simpson J; and (iii) her Honour could be expected to make findings of fact based on evidence which would be investigated by the Commission in Operation Alford, it should discontinue its Operation Alford investigation. On 30 January 2009 the Commission notified the involved officers of its decision.

20. On 23 April 2009 judgment was delivered by Simpson J in the Supreme Court proceedings brought by Hathaway. An appeal has been lodged against Her Honour's decision.

21. The details of Her Honour's judgement will not be repeated in this Report. She did not make findings on the particular issues being investigated by the Commission. The purposes of this Report are to: identify publicly the breaches of procedural fairness which occurred in the Whistler Report and make public the fact that those passages which have been identified as containing the breaches are invalid and should not have appeared.

THE BREACHES OF PROCEDURAL FAIRNESS

22. The paragraphs of the Whistler Report which contain the breaches of procedural fairness are identified in paragraphs 22.1-22.4 and 23 below:

DETECTIVE SENIOR CONSTABLE TIMOTHY SCOTT BRIGGS

22.1 Paragraphs 7.15, 7.23 and 10.15 to the extent that they refer to Briggs, paragraphs 9.7(g), 9.11(b), 9.12 (to the extent that it refers to the allegation in 9.11 (b)) and paragraph 9.14.

In the Executive Summary at page xii the reference to the evidence Briggs gave at the Wagga Wagga Local Court, and the reference to consideration being given to the taking of action pursuant to subsection 97(2)(d) of the Act, should also not have appeared.

CONSTABLE AMANDA RAE DEISSEL

22.2 Paragraphs 9.7(g), 9.15(b) and the first and last sentences in 9.17.

In the Executive Summary the reference at the bottom of page xii to consideration being given to the taking of non-reviewable action should not have appeared.

SENIOR CONSTABLE CHRISTOPHER JOHN JACKSON

22.3 Paragraphs 9.7(g), 9.22(b), 9.23 and 9.26 to the extent that they relate to the evidence he gave at the Wagga Wagga Local Court.

In the Executive Summary at page xiii the reference to the evidence he gave to the Wagga Wagga Local Court should not have appeared.

SENIOR CONSTABLE JULIE TERESA PHILPOTT

22.4 Paragraphs 9.7(g), 9.56(b), 9.58 and the second sentence in 9.59.

In the Executive Summary the reference at the middle of page xiv to consideration being given to the taking of non-reviewable action should not have appeared.

23. In addition the third paragraph on page i of the Executive Summary should not have appeared.

24. Appendix 1 to this Report sets out in full each of the paragraphs of the Whistler Report referred to in paragraph 22, not including the Executive Summary.

25. The above-mentioned portions of the Whistler Report affected by the failures to accord procedural fairness should not have appeared and should be regarded as invalid.

26. The Commission will recommend that this Report be made public. If it is made public the Commission will add to its website a link between this Report and the Whistler Report indicating to readers of the Whistler Report that this Alford Report identifies breaches of procedural fairness which occurred in the Whistler Report and which are accordingly invalid.

27. The Commission regrets that the breaches of procedural fairness occurred and apologises to Detective Senior Constable Timothy Scott Briggs, Constable Amanda Rae Deissel, Senior Constable Christopher John Jackson, and Senior Constable Julie Teresa Philpott.

CONCLUSION

28. The Commission, having discontinued Operation Alford, reached no conclusions and makes no recommendations about the matters examined in that investigation.

29. For the purposes of section 97 of the Act, in the Commission's opinion each of Detective Senior Constable Briggs, Constable Deissel, Senior Constable Jackson and Senior Constable Philpott is an "affected person". In relation to each of those persons the Commission is not of the opinion that consideration should be given to any of the action referred to at subsection 97(2) of the Act.

APPENDIX

The paragraphs of the Whistler Report that contained breaches of procedural fairness as identified in paragraph 22 of this Report, not including the Executive Summary, are as follows:

DETECTIVE SENIOR CONSTABLE TIMOTHY SCOTT BRIGGS

7.15 On the evidence available one criticism that can be directed at Morgan is her apparent failure to make rudimentary inquiries in relation to certain issues that had arisen during the course of the evidence in December 2003, before the proceedings recommenced in March 2004. By that time, Morgan knew that there was no forensic evidence linking Hathaway to the knife,[1] and that Briggs had given evidence acknowledging that the Critical Incident Investigation Team had obtained a medical report in relation to Hathaway's injuries.[2] In relation to her failure to make any inquiries about the medical report she said:[3]

> A: If it was a document that formed part of the critical incident investigation, then I wasn't aware of it. It was, as you have said, put to Detective Briggs about the existence of the document. That didn't – I believe the critical incident investigation file, as I said, was subject to privilege, but I'm prosecuting the matter, it's obviously not my duty to be investigating it, but …
>
> Q: Call me old-fashioned, but there's not much to investigate, is there, apart from saying to Briggs, "What are you talking about?" That's the extent of the investigation you had to make.
> A: Yes.
>
> Q: Why didn't you do it?
> A: Well, then it's an oversight on my part. I don't remember the question being asked until you just read it to me now.

…

7.23 In the present matter, there was a clear failure by both NSW Police and at least two officers involved in the proceedings to ensure that the prosecutor, Morgan, was fully aware of all relevant information to properly discharge her duty. It is necessary to cite but two examples. First, clearly the Officer in Charge of the matter, Briggs, knew of the existence of Dr Kuswanto's report.[4] Morgan was unaware of the existence of the report until she gave evidence before the Commission. Secondly, Murphy was aware that Jackson had

1 PIC Transcript, VA Morgan, 9 March 2005, pp. 574-576
2 PIC Transcript, VA Morgan, 9 March 2005, pp. 586-587
3 PIC Transcript, VA Morgan, 9 March 2005, p. 588
4 PIC Transcript, VA Morgan, 9 March 2005, p. 586

admitted causing Hathaway's facial injuries. This information was never conveyed to Morgan.[5]

…

9.7(g) That Jackson, Briggs, Deissel and Philpott, gave untruthful or unreliable evidence in the Wagga Wagga Local Court proceedings against Hathaway in relation to the charges arising out of the incident on 6 February 2003.

…

9.11 Briggs is an affected person because he is the subject of substantial allegations that:

(a) on 6 February 2003 he, being a police officer involved in a critical incident, failed in his duty to ensure that the critical incident was dealt with in accordance with established guidelines for the management and investigation of critical incidents. Even without a critical incident being called Briggs should have recognised that the incident was a serious incident or crime scene and acted accordingly. Instead he acquiesced in the steps taken by Murphy that made it difficult if not impossible for the incident to be properly and independently investigated; and

(b) he gave untruthful evidence in the Wagga Wagga Local Court proceedings against Hathaway in relation to the charges arising out of the incident on 6 February 2003.

9.12 The Commission is of the opinion that Briggs engaged in police misconduct in relation to both of the above allegations: subsection 16(1)(a) of the Act.

…

9.14 Briggs is a serving NSW Police Officer so it is necessary to consider the issues raised by subsections 97(2)(b)(c) and (d) of the Act. In doing so the evidence Briggs gave to the Commission may be considered. Brigg's failure to take any of the steps required of the first officer at the scene of a serious incident, his acquiescence in Murphy's decision to have the bedroom cleaned, his failure to include all relevant information in the brief of evidence and his decision to pursue the prosecution of Hathaway for offences relating to the knife, despite a complete lack of forensic and other evidence linking Hathaway to the knife, all reflect adversely on Brigg's competence, integrity and conduct as a police officer. The Commission is of the opinion that consideration **should** be given to the taking of action against Briggs pursuant to section 173 of the Police Act 1990: subsection 97(2)(d) of the Act.

5 PIC Transcript, VA Morgan, 9 March 2005, p. 579

…

10.15 Morgan said that she had spoken to Jackson around the time of the incident, at which time he told her "…something about it…".[6] She denied that her friendship with Jackson was the reason she did not make any inquiries in relation to the medical report that had been obtained by the Critical Incident Investigation Team and to which Briggs had referred in evidence in the Local Court in December 2004.[7]

PROBATIONARY CONSTABLE AMANDA RAE DEISSEL

9.7(g) That Jackson, Briggs, Deissel and Philpott, gave untruthful or unreliable evidence in the Wagga Wagga Local Court proceedings against Hathaway in relation to the charges arising out of the incident on 6 February 2003.

…

9.15 Deissel is an affected person because she is the subject of the substantial allegations that:

(a) on 6 February 2003, she, being a police officer involved in a critical incident, failed in her duty to ensure that the critical incident was dealt with in accordance with established guidelines for the management and investigation of critical incidents; and

(b) she gave unreliable evidence in the Wagga Wagga Local Court proceedings against Hathaway in relation to the charges arising out of the incident on 6 February 2003.

…

9.17 However her failure to make any record of the incident in her notebook, and the manner in which she gave her evidence, before both the Local Court and the Commission, all reflect adversely on her integrity and conduct as a police officer. The Commission is **not** of the opinion that consideration **should** be given to the taking of action against her pursuant to subsections 97(2)(a)(b)(c) or (d) of the Act. The Commission is of the opinion, however, that consideration **should** be given to the taking of non-reviewable action against Deissel pursuant to section 173(1) and Schedule 1 of the Police Act 1990 (subsection 97(4) of the Police Integrity Commission Act 1996).

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6 PIC Transcript, VA Morgan, 9 March 2005, p. 576-577

7 PIC Transcript, VA Morgan, 9 March 2005, p. 587-588

SENIOR CONSTABLE CHRISTOPHER JOHN JACKSON

9.7(g) That Jackson, Briggs, Deissel and Philpott, gave untruthful or unreliable evidence in the Wagga Wagga Local Court proceedings against Hathaway in relation to the charges arising out of the incident on 6 February 2003.

…

9.22 Jackson is an affected person because he is the subject of the substantial allegations that:

(a) on 6 February 2003, he applied excessive force to Hathaway during his arrest thereby causing him actual bodily harm, namely, significant injuries. In particular, he struck Hathaway a number of times with his baton causing a laceration to Hathaway's right cheek, swelling to Hathaway's knees, extensive facial fractures and fractures of the right ulna and finger;

(b) he gave untruthful evidence in Wagga Wagga Local Court proceedings against Hathaway in relation to the charges arising out of the incident on 6 February 2003;

(c) on 16 February 2002, he applied excessive force to WH-1 during his arrest thereby causing him actual bodily harm, namely, bruising and swelling; and

(d) he gave evidence to the Commission that he knew to be false or misleading in a material particular.

9.23 The Commission is of the opinion that Jackson engaged in police misconduct in relation to his involvement in the Hathaway incident and in relation to the evidence he gave in the Local Court and at the Commission. The Commission is not in a position to be able to make a statement of opinion of police misconduct in relation to his involvement in the arrest of WH-1: subsection 16(1)(a) of the Act.

…

9.26 In relation to the allegations (b) and (c) above the Commission is however **not** of the opinion that consideration **should** be given to the prosecution of Jackson for a specified criminal offence.

CONSTABLE JULIE THERESE PHILPOTT

9.7(g) That Jackson, Briggs, Deissel and Philpott, gave untruthful or unreliable evidence in the Wagga Wagga Local Court proceedings against Hathaway in relation to the charges arising out of the incident on 6 February 2003.

…

9.56 Philpott is an affected person because she is the subject of the substantial allegations that:

(a) on 6 February 2003, she, being a police officer involved in a critical incident, failed in her duty to ensure that the critical incident was dealt with in accordance with established guidelines for the management and investigation of critical incidents; and

(b) she gave untruthful evidence in the Wagga Wagga Local Court proceedings against Hathaway in relation to the charges arising out of the incident on 6 February 2003.

…

9.58 However her failure to make a full record of the incident in her notebook (she omitted reference to her conversation with Jackson about what occurred in the bedroom), the discrepancy between her statement and her notebook entry (there is no reference to Hathaway looking around the room in her statement) and the manner in which she gave her evidence, both before the Local Court and the Commission, all reflect adversely on her integrity and conduct as a police officer.

9.59 The Commission is **not** of the opinion that consideration **should** be given to the taking of action against her pursuant to subsections 97(2)(a)(b)(c) or (d) of the Act. The Commission is of the opinion, however, that consideration **should** be given to the taking of non-reviewable action against Philpott, pursuant to section 173(1) and Schedule 1 of the Police Act 1990 (subsection 97(4) of the Police Integrity Commission Act 1996).

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