Report to Parliament | June 2013

Operation Binda

NSW Police Integrity Commission



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ISBN 1 74003 172 5

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The Hon Don Harwin MLC
President
Legislative Council
Parliament House
SYDNEY NSW 2000

The Hon Shelley Hancock MP
Speaker
Legislative Assembly
Parliament House
SYDNEY NSW 2000

Dear Mr President and Madam Speaker

In accordance with section 96(3) of the *Police Integrity Commission Act 1996*, the Commission hereby furnishes to you a Report regarding Operation Binda, being a Report in relation to a matter as to which the Commission has conducted a public hearing.

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

Yours faithfully

The Hon Bruce James QC
Commissioner

June 2013

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EXECUTIVE SUMMARY

Operation Binda was an investigation by the Commission into allegations of serious police misconduct by Senior Constable Hoan Thien Pham, a New South Wales Police Force officer, and several persons associated with him. In the investigation the Commission conducted both public and private hearings.

Senior Constable Pham was born in Vietnam and speaks Vietnamese. He came to Australia at a young age. On 29 April 2005 he joined the New South Wales Police Force. He is a Justice of the Peace for New South Wales. For a number of years down to and including the time of the public hearing Senior Constable Pham was in a de facto relationship with Bich Tuyen Kha. In June 2011 Bich Tuyen Kha gave birth to a child BN1. Senior Constable Pham is BN1's father.

The persons associated with Senior Constable Pham against whom substantial allegations were made were: Bich Tuyen Kha, Tan Dung Kha, Hoang Thi Lieu, Van Thanh Nguyen, Kim Yen Dang, Hue Tran Dang and Phu Van Duong. Accordingly, all of these persons together with Senior Constable Pham were "affected" persons for the purposes of s 97 of the *Police Integrity Commission Act 1996* (NSW).

As already noted, Bich Tuyen Kha is the de facto partner of Senior Constable Pham and the mother of BN1. On 30 December 2001 Bich Tuyen Kha married in Vietnam Phu Van Duong. On 17 November 2008 Bich Tuyen Kha and Phu Van Duong were divorced. On 18 January 2010 in Vietnam Bich Tuyen Kha married Hoang Thi Lieu and this marriage was legally subsisting at the time of the hearing.

In 2010 Hoang Thi Lieu made an application to the Department of Immigration and Citizenship for a partner visa for Australia. Bich Tuyen Kha, purporting to be Hoang Thi Lieu's partner, acted as sponsor in his application. In the application it was represented that Bich Tuyen Kha and Hoang Thi Lieu were in a relationship with each other.

In May 2012 a female Vietnamese citizen named Hue Tran Dang made an application to the Department of Immigration and Citizenship for a partner visa for Australia. Senior Constable Pham, purporting to be Hue Tran Dang's partner, acted as her sponsor in this application. In the application it was represented that Senior Constable Pham and Hue Tran Dang were in a relationship with each other. It was represented that Senior Constable Pham had on 25 May 2011 proposed marriage to Hue Tran Dang and that she had accepted the proposal. In January 2012 Senior Constable Pham travelled to Vietnam and in Vietnam participated in an engagement ceremony with Hue Tran Dang.

At the time of the hearing Senior Constable Pham and Bich Tuyen Kha were living together in a property owned by Bich Tuyen Kha in Lansvale, a suburb of Sydney. Bich Tuyen Kha's parents and her brother, Tan Dung Kha, also lived in the property.

Bich Tuyen Kha, like Senior Constable Pham, is a Justice of the Peace for New South Wales.

In May 2012 Tan Dung Kha provided an amount of $18,900 in cash to Senior Constable Pham, which Senior Constable Pham deposited in a bank account in his name.

In a birth certificate for BN1 issued by the NSW Registry of Births, Deaths and Marriages Hoang Thi Lieu is falsely shown as being the child's father.

Van Thanh Nguyen is an uncle of Hoang Thi Lieu, who was living with him in Sydney at the time of the hearing. On 4 November 2010 Van Thanh Nguyen signed a cheque for $30 000 in favour of Senior Constable Pham.

Kim Yen Dang is a sister of Hue Tran Dang. She played a part in Hue Tran Dang's application for a partner visa.

Although Chau Long Pham was not a person against whom any allegation was made, he gave evidence at the public hearing. Chau Long Pham is Senior Constable Pham's brother.

The allegations which were investigated by the Commission and the opinions formed by the Commission in relation to those allegations as a result of its investigation, are as follows.

SENIOR CONSTABLE HOAN THIEN PHAM

(1) Allegation - Senior Constable Pham received and dealt with the sum of $18 900 in cash provided to him by Tan Dung Kha knowing that it was the proceeds of crime or being reckless as to whether it was the proceeds of crime.

The Commission is of the opinion that this allegation was established. The Commission is further of the opinion that consideration should be given to the prosecution of Senior Constable Pham for an offence under s 193B(2) or, alternatively, s 193B(3) of the *Crimes Act 1900* (NSW).

(2) Allegation - Senior Constable Pham proposed to his brother Chau Long Pham that Chau Long Pham with the assistance of Senior Constable Pham break and enter the Lansvale property and steal money which was in the possession of Tan Dung Kha.

The Commission is of the opinion that this allegation was established. However, for reasons given in this report the Commission is not of the opinion that consideration should be given to the prosecution of Senior Constable Pham for any criminal offence in relation to this allegation.

(3) Allegation - Senior Constable Pham had prior to 24 May 2012 committed an offence of breaking, entering and stealing.

The Commission is of the opinion that this allegation was not established.

(4) Allegation - Senior Constable Pham sent a SMS giving notice of a purported execution of a search warrant with the intent of causing the bringing of cash and other property from the premises where the search warrant was to be executed to the Lansvale property so that the cash and other property could be stolen from the Lansvale property.

The Commission is of the opinion that this allegation was not established.

(5) Allegation - Senior Constable Pham participated for a fee with Bich Tuyen Kha and Hoang Thi Lieu in an arrangement to obtain from the Department of Immigration and Citizenship

a partner visa for Australia for Hoang Thi Lieu by falsely representing to the Department of Immigration and Citizenship that Hoang Thi Lieu and Bich Tuyen Kha were in a relationship with each other.

The Commission is of the opinion that this allegation was established. The Commission is further of the opinion that consideration should be given to the prosecution of Senior Constable Pham for aiding and abetting offences committed by Bich Tuyen Kha and Hoang Thi Lieu under s 234(1)(b) of the *Migration Act 1958* (Cth) and for an offence under s 400.6(1) of the *Criminal Code 1995* (Cth).

(6) Allegation - Senior Constable Pham participated in the obtaining from the NSW Registry of Births, Deaths and Marriages, as evidence to be used in support of Hoang Thi Lieu's application for a partner visa, of a birth certificate for the child BN1 showing Hoang Thi Lieu as being the child's father, by falsely representing to the Registry that Hoang Thi Lieu, and not Senior Constable Pham, was BN1's father.

The Commission is of the opinion that this allegation was not established.

(7) Allegation - Senior Constable Pham participated in an application by Bich Tuyen Kha for a Family Assistance payment, in which she falsely represented that Hoang Thi Lieu was her partner.

The Commission is of the opinion that this allegation was established. However, for reasons given in this report the Commission is not of the opinion that consideration should be given to the prosecution of Senior Constable Pham for any criminal offence in relation to this allegation.

(8) Allegation - Senior Constable Pham participated in the obtaining by Bich Tuyen Kha of a rebate of childcare fees by falsely representing that Hoang Thi Lieu was Bich Tuyen Kha's partner and the father of BN1.

The Commission is of the opinion that this allegation was established. However, for reasons given in this report the Commission is not of the opinion that consideration should be given to the prosecution of Senior Constable Pham for any criminal offence in relation to this allegation.

(9) Allegation - Senior Constable Pham participated in the making of an application by Bich Tuyen Kha for a First Home Owners grant and a refund of stamp duty on the purchase by Bich Tuyen Kha of the Lansvale property, in which Bich Tuyen Kha falsely represented that Hoang Thi Lieu was her partner.

The Commission is of the opinion that this allegation was established. However, for reasons given in this report the Commission is not of the opinion that consideration should be given to the prosecution of Senior Constable Pham for any criminal offence in relation to this allegation.

(10) Allegation - Senior Constable Pham participated for a fee with Hue Tran Dang, Bich Tuyen Kha and Kim Yen Dang in an arrangement to obtain from the Department of Immigration and Citizenship a partner visa for Australia for Hue Tran Dang by falsely representing that he and Hue Tran Dang were in a relationship with each other.

The Commission is of the opinion that this allegation was established. The Commission is further of the opinion that consideration should be given to the prosecution of Senior Constable Pham for an offence under s 234(1)(b), or alternatively, s 243(3) of the *Migration Act 1958* (Cth).

(11) Allegation - Senior Constable Pham participated in an arrangement with Bich Tuyen Kha and Phu Van Duong to falsely represent that the marriage between Bich Tuyen Kha and Phu Van Duong was a genuine marriage.

The Commission is of the opinion that this allegation was not established.

(12) Allegation - Senior Constable Pham engaged in misconduct in relation to the NSW Police Force's Computerised Operational Policing System.

The Commission is of the opinion that this allegation was established. The Commission is further of the opinion that consideration should be given to the prosecution of Senior Constable Pham for the common law offence of misconduct in public office.

(13) Allegation - Senior Constable Pham had in his possession items of property belonging to the NSW Police Force or the Australian Federal Police which he was not entitled to have in his possession.

The Commission is of the opinion that part of this allegation was established. The Commission is further of the opinion that consideration should be given to the prosecution of Senior Constable Pham for an offence under s 7 of the *Weapons Prohibition Act 1998* (NSW).

(14) Allegation - Senior Constable Pham attempted to use for his own benefit information about another person's credit card which had been obtained by him in the course of his duties as a police officer.

The Commission is of the opinion that this allegation was established. The Commission is further of the opinion that consideration should be given to the prosecution of Senior Constable Pham for an offence under s 142.2(1) of the *Criminal Code 1995* (Cth) or, alternatively, for an attempt to commit an offence under s 178BA of the *Crimes Act 1900* (NSW), as then in force.

(15) Allegation - Senior Constable Pham on a number of occasions breached his obligations as a Justice of the Peace for New South Wales.

The Commission is of the opinion that this allegation was established. The Commission is not of the opinion that consideration should be given to the prosecution of Senior Constable Pham for a criminal offence in relation to this allegation.

(16) Allegation - Senior Constable Pham wrote on a number of documents signatures purporting to be Bich Tuyen Kha's signature as a Justice of the Peace for New South Wales.

The Commission is of the opinion that this allegation was established. The Commission is further of the opinion that consideration should be given to the prosecution of Senior Constable Pham for an offence under s 254 of the *Crimes Act 1900* (NSW).

Senior Constable Pham gave evidence at the public hearing. The Commission is of the opinion that parts of Senior Constable Pham's evidence which are detailed in this report were knowingly false in a material particular. In relation to these parts of his evidence the Commission is of the opinion that consideration should be given to the prosecution of Senior Constable Pham for offences under s 107(1) of the *Police Integrity Commission Act 1996* (NSW).

The Commission also recommends that consideration be given by the Attorney-General to recommending to the Governor, pursuant to s 9(2) of the *Justices of the Peace Act 2002* (NSW), that Senior Constable Pham be removed from office as a Justice of the Peace in New South Wales.

In the Commission's opinion Senior Constable Pham engaged in police misconduct in relation to each of the allegations that the Commission has found to be established.

The allegations against Senior Constable Pham which the Commission has found to be established would have been sufficient for the Commission to form the opinion that consideration should be given to the taking of action under paragraphs (c) or (d) of s 97(2) of the *Police Integrity Commission Act 1996* (NSW). However, after the conclusion of the public hearing Senior Constable Pham tendered his resignation as a police officer and this resignation was accepted by the NSW Police Force and, accordingly, paragraphs (c) and (d) of s 97(2) of the *Police Integrity Commission Act* no longer apply to him.

All of the matters that were the subject of allegations against Senior Constable Pham investigated by the Commission occurred whilst Senior Constable Pham was a serving police officer in New South Wales and it has been convenient in this Executive Summary to refer to him as Senior Constable Pham.

BICH TUYEN KHA

(1) Allegation - Bich Tuyen Kha participated for a fee with Hoang Thi Lieu and Senior Constable Pham in an arrangement to obtain from the Department of Immigration and Citizenship a partner visa for Australia for Hoang Thi Lieu by falsely representing that she and Hoang Thi Lieu were in a relationship with each other.

The Commission is of the opinion that this allegation was established. The Commission is further of the opinion that consideration should be given to the prosecution of Bich Tuyen Kha for an offence under s 234(1)(b) or, alternatively, s 243(3) of the *Migration Act 1958* (Cth). Part of the contents of a statutory declaration made by Bich Tuyen Kha in support of the application for a partner visa was untrue and the Commission is of the opinion that consideration should be given to the prosecution of Bich Tuyen Kha for an offence under s 11 of the *Statutory Declarations Act 1959* (Cth).

(2) Allegation - Bich Tuyen Kha applied for and obtained from the NSW Registry of Birth, Deaths and Marriages, as evidence to be used in support of Hoang Thi Lieu's application for a partner visa, a birth certificate for her child BN1 showing Hoang Thi Lieu as being the child's father, by falsely representing to the Registry that Hoang Thi Lieu, and not Senior Constable Pham, was BN1's father.

The Commission is of the opinion that this allegation was established. The Commission is further of the opinion that consideration should be given to the prosecution of Bich Tuyen Kha for an offence under s 336(1) of the *Crimes Act 1900* (NSW).

(3) Allegation - Bich Tuyen Kha applied for and obtained a Family Assistance payment by falsely representing that Hoang Thi Lieu was her partner.

The Commission is of the opinion that this allegation was established. The Commission is further of the opinion that consideration should be given to the prosecution of Bich Tuyen Kha for an offence under s 135.4(5) of the *Criminal Code 1995* (Cth).

(4) Allegation - Bich Tuyen Kha applied for and obtained a rebate of childcare fees by falsely representing that Hoang Thi Lieu was her partner and the father of BN1.

The Commission is of the opinion that this allegation was established. However, for reasons given in this report the Commission is not of the opinion that consideration should be given to the prosecution of Bich Tuyen Kha for any criminal offence in relation to this allegation.

(5) Allegation - Bich Tuyen Kha, in an application for a First Home Owners grant and a refund of stamp duty on the purchase by her of the Lansvale property, falsely represented that Hoang Thi Lieu was her partner.

The Commission is of the opinion that this allegation was established. However, for reasons given in this report the Commission is not of the opinion that consideration should be given to the prosecution of Bich Tuyen Kha for any criminal offence in relation to this allegation.

(6) Allegation - Bich Tuyen Kha participated for a fee with Senior Constable Pham, Hue Tran Dang and Kim Yen Dang in an arrangement to obtain from the Department of Immigration and Citizenship a partner visa for Australia for Hue Tran Dang by falsely representing that Senior Constable Pham and Hue Tran Dang were in a relationship with each other.

The Commission is of the opinion that this allegation was established. The Commission is further of the opinion that consideration should be given to the prosecution of Bich Tuyen Kha for an offence of aiding and abetting an offence committed by Senior Constable Pham under s 234(1)(b) of the *Migration Act 1958* (Cth) or, alternatively, an offence under s 240(1) of that Act and an offence under s 400.7(1) of the *Criminal Code 1995* (Cth).

(7) Allegation – Bich Tuyen Kha participated in an arrangement with Phu Van Duong and Senior Constable Pham to falsely represent that the marriage between her and Phu Van Duong was a genuine marriage.

The Commission is of the opinion that this allegation was not established.

The Commission recommends that consideration be given by the Attorney-General to recommending to the Governor, pursuant to s 9(2) of the *Justices of the Peace Act 2002* (NSW), that Bich Tuyen Kha be removed from office as a Justice of the Peace in New South Wales.

HOANG THI LIEU

(1) Allegation - Hoang Thi Lieu participated with Bich Tuyen Kha and Senior Constable Pham in an arrangement to obtain from the Department of Immigration and Citizenship a partner visa for Australia for himself by falsely representing that he and Bich Tuyen Kha were in a relationship with each other.

The Commission is of the opinion that this allegation was established. The Commission is further of the opinion that consideration should be given to the prosecution of Hoang Thi Lieu for an offence under s 234(1)(b) or, alternatively, s 243(3) of the *Migration Act 1958* (Cth). Part of the contents of a statutory declaration made by Hoang Thi Lieu in support of the application for a partner visa was untrue and the Commission is of the opinion that consideration should be given to the prosecution of Hoang Thi Lieu for an offence under s 11 of the *Statutory Declarations Act 1959* (Cth).

(2) Allegation - Hoang Thi Lieu participated in the obtaining from the NSW Registry of Births, Deaths and Marriages of a birth certificate for BN1 showing him as being the child's father, by falsely representing to the Registry that he, and not Senior Constable Pham, was BN1's father.

The Commission is of the opinion that this allegation was established. The Commission is further of the opinion that consideration should be given to the prosecution of Hoang Thi Lieu for an offence under s 336(1) of the *Crimes Act 1900* (NSW).

VAN THANH NGUYEN

The sole allegation against Van Thanh Nguyen investigated by the Commission was that he participated with Bich Tuyen Kha, Hoang Thi Lieu and Senior Constable Pham in an arrangement to obtain from the Department of Immigration and Citizenship a partner visa for Australia for Hoang Thi Lieu, by falsely representing to the Department of Immigration and Citizenship that Hoang Thi Lieu and Bich Tuyen Kha were in a relationship with each other.

The Commission is of the opinion that this allegation was established. The Commission is further of the opinion that consideration should be given to the prosecution of Van Thanh Nguyen for an offence against s 400.6(1) of the *Criminal Code 1995* (Cth).

KIM YEN DANG

The sole allegation against Kim Yen Dang investigated by the Commission was that she participated with her sister Hue Tran Dang, Senior Constable Pham and Bich Tuyen Kha in an arrangement to obtain from the Department of Immigration and Citizenship a partner visa for Australia for Hue Tran Dang, by falsely representing to the Department of Immigration and Citizenship that Hue Tran Dang and Senior Constable Pham were in a relationship with each other.

The Commission is of the opinion that this allegation was established. The Commission is further of the opinion that consideration should be given to the prosecution of Kim Yen Dang for the aiding and abetting of offences committed by Senior Constable Pham under s 234(1)(b) of the *Migration Act 1958* (Cth) or, alternatively, an offence under s 240(1) of that Act.

HUE TRAN DANG

The sole allegation against Hue Tran Dang investigated by the Commission was that she participated with Senior Constable Pham, her sister Kim Yen Dang and Bich Tuyen Kha in an arrangement to obtain from the Department of Immigration and Citizenship a partner visa for Australia for herself, by falsely representing to the Department of Immigration and Citizenship that she and Senior Constable Pham were in a relationship with each other.

At all relevant times Hue Tran Dang resided in Vietnam. She was not called to give evidence before the Commission and was not served with the submissions of Counsel Assisting. In these circumstances, the Commission does not express an opinion about the allegation against her. The Commission is not of the opinion that consideration should be given to the prosecution of Hue Tran Dang for any criminal offence.

PHU VAN DUONG

The sole allegation against Phu Van Duong investigated by the Commission was that he participated in an arrangement with Bich Tuyen Kha and Senior Constable Pham to falsely represent that the marriage between him and Bich Tuyen Kha was a genuine marriage.

The Commission is of the opinion that this allegation was not established. Accordingly, the Commission is not of the opinion that consideration should be given to the prosecution of Phu Van Duong for any criminal offence.

TAN DUNG KHA

The sole allegation against Tan Dung Kha was that he received and dealt with the sum of $18,900 in cash, which he provided to Senior Constable Pham, knowing that it was the proceeds of crime or being reckless as to whether it was the proceeds of crime.

For reasons given in this report the Commission is not of the opinion that consideration should be given to the prosecution of Tan Dung Kha for any criminal offence in relation to this allegation.

CHAU LONG PHAM

As already noted, Chau Long Pham gave evidence at the public hearing of this Commission. The Commission is of the opinion that part of Chau Long Pham's evidence was knowingly false. In relation to this evidence the Commission is of the opinion that consideration should be given to the prosecution of Chau Long Pham for an offence under s 107(1) of the *Police Integrity Commission Act 1996* (NSW).

1 INTRODUCTION

1.1 Operation Binda was an investigation by the Commission into allegations of serious police misconduct engaged in by Senior Constable Hoan Thien Pham ("Pham"), a New South Wales Police Force ("NSWPF") officer, and several persons associated with him.

1.2 In early 2011 the Commission received information that Pham was involved in receiving and dealing in large amounts of money. As a result of receiving this information the Commission commenced an investigation pursuant to the *Police Integrity Commission Act 1996* (NSW) ("the Act").

1.3 In the investigation a number of notices pursuant to ss 25 or 26 of the Act were issued and information obtained as a result of such notices was analysed. A number of warrants pursuant to the *Telecommunications (Interception and Access) Act 1979* (Cth) were obtained and a number of telephone conversations were intercepted pursuant to those warrants. On 30 May 2012 the Commission executed three search warrants pursuant to s 45 of the Act at the residential premises of Pham, at a commercial unit he had owned and at his workplace. Pursuant to these warrants a number of items of property were seized.

1.4 A public hearing in Operation Binda was held between 29 October 2012 and 5 November 2012. The general scope and purpose of the hearing was as follows:

> To investigate whether Senior Constable Hoan Thien Pham, a serving NSW Police Officer, or any other police officer or person associated with him have been or are currently involved in serious police misconduct or criminal activity.

2 PROVISIONS OF THE *POLICE INTEGRITY COMMISSION ACT 1996*

2.1 This report is prepared pursuant to ss 96 and 97 in Part 8 of the Act.

2.2 Under s 96(2) of the Act the Commission is required to prepare a report in relation to matters, such as the present, as to which the Commission has conducted a public hearing.

2.3 Section 16 of the Act provides, so far as is relevant:

> (1) The Commission may:
>
> (a) make assessments and form opinions, on the basis of its investigations… as to whether police misconduct or other misconduct..:
>
> • has or may have occurred,
>
> ….
>
> (b) make recommendations as to whether consideration should or should not be given to the prosecution of or the taking of action under Part 9 of the *Police Act 1990* or other disciplinary action against particular persons, and
>
> (c) make recommendations for the taking of other action that the Commission considers should be taken in relation to the subject-matter of its assessments or opinions or the results of any such investigations.

2.4 Section 97(1) of the Act provides:

> The Commission is authorised to include in a report under section 96:
>
> (a) statements as to any of its assessments, opinions and recommendations, and
>
> (b) statements as to the Commission's reasons for any of its assessments, opinions and recommendations.

2.5 The other provisions of s 97, which relate to "affected" persons will be set out and considered later in this report.

2.6 The term "police misconduct" which occurs in s 16(1)(a) of the Act is the subject of s 5 of the Act.

2.7 Section 5(1) of the Act provides:

> **Definition**
>
> For the purposes of this Act, ***police misconduct*** means misconduct (by way of action or inaction or alleged action or inaction) of a police officer:
>
> (a) whether or not it also involves non-police participants, and
>
> (b) whether or not it occurs while the police officer is officially on duty, and
>
> (c) whether or not it occurred before the commencement of this subsection, and
>
> (d) whether or not it occurred outside the State or outside Australia.

2.8 Section 5(2) provides:

Examples

Police misconduct can involve (but is not limited to) any of the following:

(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 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 Act 1990*.

3 THE WITNESSES

3.1 Six persons, including Pham, gave evidence at the public hearing. One person gave evidence before the Commission only at a private hearing. One person gave evidence both at the public hearing and in a private hearing. Most of the witnesses at the public hearing and the witness who gave evidence only at a private hearing were persons against whom substantial allegations had been made.

3.2 Pham was the only serving NSWPF officer among the witnesses. None of the matters which the Commission investigated involved any police officer other than Pham. The remaining five witnesses at the public hearing and the witness at the private hearing were civilians who were in some way associated with Pham.

3.3 Short profiles of the witnesses are as follows.

HOAN THIEN PHAM

3.4 Pham was born in Vietnam and speaks Vietnamese. He came to Australia at a young age. On 29 April 2005 Pham joined the NSWPF. He began his service as a general duties officer stationed at Cabramatta. Later, he served in the Transit Police and the Graffiti Task Force. Between 30 July 2007 and 24 July 2010 Pham was seconded to the Australian Federal Police and was stationed at Kingsford Smith Airport. Pham is a Justice of the Peace for New South Wales.

3.5 For a number of years down to and including the time of the public hearing Pham was in a de facto relationship with Bich Tuyen Kha. In October 2006 Pham and Bich Tuyen Kha participated in a ceremony which was similar to a marriage ceremony but did not constitute a valid marriage. In June 2011 Bich Tuyen Kha gave birth to a child BN1. Pham is BN1's father.

3.6 In May 2012 a female Vietnamese citizen named Hue Tran Dang made an application to the Department of Immigration and Citizenship ("DIAC") for a partner visa for Australia. Pham, purporting to be Hue Tran Dang's partner, acted as her sponsor in this application. In the application it was represented that Pham and Hue Tran Dang were in a relationship with each other. It was represented that Pham had on 25 May 2011 proposed marriage to Hue Tran Dang and that she had accepted the proposal. In January 2012 Pham travelled to Vietnam and in Vietnam participated in an engagement ceremony with Hue Tran Dang.

BICH TUYEN KHA

3.7 As already noted, Bich Tuyen Kha was in a de facto relationship with Pham for a number of years down to and including the time of the public hearing. She is the mother of BN1.

3.8 On 30 December 2001 Bich Tuyen Kha married in Vietnam a person named Phu Van Duong ("Duong"). On 17 November 2008 Bich Tuyen Kha and Duong were divorced. On 18 January 2010 in Vietnam Bich Tuyen Kha married Hoang Thi Lieu ("Lieu") and this marriage was legally subsisting at the time of the hearing.

3.9 At the time of the hearing Pham and Bich Tuyen Kha were living together in a property owned by Bich Tuyen Kha in Lansvale, a suburb of Sydney ("the Lansvale property").

The Lansvale property had been sold to Bich Tuyen Kha by her parents and her brother Tan Dung Kha in May 2011. After the sale Bich Tuyen Kha's parents and her brother continued to live in the Lansvale property.

3.10 Bich Tuyen Kha, like Pham, is a Justice of the Peace for New South Wales.

TAN DUNG KHA

3.11 Tan Dung Kha is Bich Tuyen Kha's brother. At the time of the hearing Tan Dung Kha was conducting an automechanical repair business in Sydney.

3.12 In May 2012 Tan Dung Kha provided an amount of $18 900 in cash to Pham, which Pham deposited in a bank account in his name. This cash had been part of a larger amount of cash in the possession of Tan Dung Kha.

HOANG THI LIEU

3.13 Lieu is a person of Vietnamese origin who at the time of the hearing was living in Sydney with his uncle Van Thanh Nguyen ("Nguyen").

3.14 Lieu married Bich Tuyen Kha in Vietnam on 18 January 2010. Lieu made an application to DIAC for a partner visa for Australia. Bich Tuyen Kha, purporting to be Lieu's partner, acted as his sponsor in this application. In the application it was represented that Lieu and Bich Tuyen Kha were in a relationship with each other. Pursuant to this application a provisional partner visa was granted to Lieu on 19 October 2010.

3.15 In a birth certificate for BN1 issued by the NSW Registry of Births, Deaths and Marriages Lieu is falsely shown as being the child's father.

VAN THANH NGUYEN

3.16 Nguyen is an uncle of Lieu, who was living with him in Sydney at the time of the hearing. On 4 November 2010 Nguyen signed a cheque for $30 000 in favour of Pham. This cheque was connected to Lieu's application for a partner visa.

KIM YEN DANG

3.17 Kim Yen Dang is a sister of Hue Tran Dang. She lives in Melbourne. She played a part in Hue Tran Dang's application for a partner visa.

CHAU LONG PHAM

3.18 Chau Long Pham ("Chau Pham") is Pham's brother. He lives in Bankstown.

4 ALLEGATIONS INVESTIGATED BY THE COMMISSION

4.1 The general nature of the allegations which the Commission investigated in Operation Binda can be stated as follows.

ALLEGATIONS AGAINST PHAM

4.2 The allegations against Pham investigated by the Commission were as follows:

(1) he received and dealt with the sum of $18 900 in cash provided to him by Tan Dung Kha knowing that it was the proceeds of crime or being reckless as to whether it was the proceeds of crime

(2) he proposed to his brother Chau Pham that Chau Pham with the assistance of Pham break and enter the Lansvale property and steal money which was in the possession of Tan Dung Kha

(3) he had prior to 24 May 2012 committed an offence of breaking, entering and stealing

(4) he sent a SMS giving notice of a purported execution of a search warrant with the intent of causing the bringing of cash and other property from the premises where the search warrant was to be executed to the Lansvale property so that the cash and other property could be stolen from the Lansvale property

(5) he participated for a fee with Bich Tuyen Kha, Lieu and Nguyen in an arrangement to obtain from DIAC a partner visa for Australia for Lieu by falsely representing to DIAC that Lieu and Bich Tuyen Kha were in a relationship with each other

(6) he participated in the obtaining from the NSW Registry of Births, Deaths and Marriages, as evidence to be used in support of Lieu's application for a partner visa, of a birth certificate for the child BN1 showing Lieu as being the child's father, by falsely representing to the Registry that Lieu, and not Pham, was BN1's father

(7) he participated in an application by Bich Tuyen Kha for a Family Assistance payment in which she falsely represented that Lieu was her partner

(8) he participated in the obtaining by Bich Tuyen Kha of a rebate of childcare fees by falsely representing that Lieu was Bich Tuyen Kha's partner and the father of BN1

(9) he participated in the making of an application by Bich Tuyen Kha for a First Home Owners grant and a refund of stamp duty on the purchase by Bich Tuyen Kha of the Lansvale property, in which Bich Tuyen Kha falsely represented that Lieu was her partner

(10) he participated for a fee with Hue Tran Dang, Bich Tuyen Kha and Kim Yen

Dang in an arrangement to obtain from DIAC a partner visa for Australia for Hue Tran Dang by falsely representing that he and Hue Tran Dang were in a relationship with each other

(11) he participated in an arrangement with Bich Tuyen Kha and Duong to falsely represent that the marriage between Bich Tuyen Kha and Duong was a genuine marriage

(12) he engaged in misconduct in relation to the NSWPF's Computerised Operational Policing System

(13) he had in his possession items of property belonging to the NSWPF or the Australian Federal Police which he was not entitled to have in his possession

(14) he attempted to use for his own benefit information about another person's credit card which had been obtained by him in the course of his duties as a police officer

(15) on a number of occasions he breached his obligations as a Justice of the Peace for New South Wales

(16) he wrote on a number of documents signatures purporting to be Bich Tuyen Kha's signature as a Justice of the Peace for New South Wales.

ALLEGATIONS AGAINST BICH TUYEN KHA

4.3 The allegations against Bich Tuyen Kha investigated by the Commission were as follows:

(1) she participated for a fee with Lieu, Nguyen and Pham in an arrangement to obtain from DIAC a partner visa for Australia for Lieu by falsely representing that she and Lieu were in a relationship with each other

(2) she applied for and obtained from the NSW Registry of Birth, Deaths and Marriages, as evidence to be used in support of Lieu's application for a partner visa, a birth certificate for her child BN1 showing Lieu as being the child's father by falsely representing to the Registry that Lieu, and not Pham, was BN1's father

(3) she applied for and obtained a Family Assistance payment by falsely representing that Lieu was her partner

(4) she applied for and obtained a rebate of childcare fees by falsely representing that Lieu was her partner and the father of BN1

(5) in an application for a First Home Owners grant and a refund of stamp duty on the purchase by her of the Lansvale property she falsely represented that Lieu was her partner

(6) she participated for a fee with Pham, Hue Tran Dang and Kim Yen Dang in an

arrangement to obtain from DIAC a partner visa for Australia for Hue Tran Dang by falsely representing that Pham and Hue Tran Dang were in a relationship with each other

(7) she participated in an arrangement with Duong and Pham to falsely represent that the marriage between her and Duong was a genuine marriage.

4.4 It is apparent that the seven allegations against Bich Tuyen Kha were similar, respectively, to allegations (5) to (11) in the allegations against Pham.

ALLEGATIONS AGAINST LIEU

4.5 The allegations against Lieu investigated by the Commission were as follows:

(1) he participated with Bich Tuyen Kha, Pham and Nguyen in an arrangement to obtain from DIAC a partner visa for himself by falsely representing that he and Bich Tuyen Kha were in a relationship with each other

(2) he participated in the obtaining from the NSW Registry of Births, Deaths and Marriages of a birth certificate for BN1 showing him as being the child's father by falsely representing to the Registry that he, and not Pham, was BN1's father.

4.6 It is apparent that the two allegations against Lieu were similar, respectively, to allegations (5) and (6) in the allegations against Pham.

ALLEGATION AGAINST NGUYEN

4.7 The allegation against Nguyen investigated by the Commission was as follows:

he participated with Bich Tuyen Kha, Lieu and Pham in an arrangement to obtain from DIAC a partner visa for Australia for Lieu by falsely representing to DIAC that Lieu and Bich Tuyen Kha were in a relationship with each other.

4.8 It is apparent that the allegation against Nguyen was similar to allegation (5) in the allegations against Pham.

ALLEGATION AGAINST KIM YEN DANG

4.9 The allegation against Kim Yen Dang investigated by the Commission was as follows:

she participated with her sister Hue Tran Dang, Pham and Bich Tuyen Kha in an arrangement to obtain from DIAC a partner visa for Australia for Hue Tran Dang by falsely representing to DIAC that Hue Tran Dang and Pham were in a relationship with each other.

4.10 It is apparent that the allegation against Kim Yen Dang was similar to allegation (10) in the allegations against Pham.

ALLEGATION AGAINST HUE TRAN DANG

4.11 The allegation against Hue Tran Dang investigated by the Commission was as follows:

> she participated with her sister Kim Yen Dang, Pham and Bich Tuyen Kha in an arrangement to obtain from DIAC a partner visa for Australia for herself by falsely representing to DIAC that she and Pham were in a relationship with each other.

4.12 It is apparent that the allegation against Hue Tran Dang was similar to allegation (10) in the allegations against Pham.

ALLEGATION AGAINST DUONG

4.13 The allegation against Duong investigated by the Commission was as follows:

> he participated in an arrangement with Bich Tuyen Kha and Pham to falsely represent that the marriage between him and Bich Tuyen Kha was a genuine marriage.

4.14 It is apparent that this allegation was similar to allegation (11) in the allegations against Pham.

ALLEGATION AGAINST TAN DUNG KHA

4.15 The allegation against Tan Dung Kha investigated by the Commission was as follows:

> he received and dealt with the sum of $18 900 in cash, which he provided to Pham, knowing that it was the proceeds of crime or being reckless as to whether it was the proceeds of crime.

4.16 It is apparent that this allegation was similar to allegation (1) in the allegations against Pham.

CHAU PHAM

4.17 No allegation was made against Chau Pham in the course of the investigation. However, Chau Pham gave evidence at the public hearing and Counsel Assisting submitted that some of the evidence he gave was knowingly false in a material particular.

5 SUBMISSIONS

5.1 Senior Counsel who had been appointed as Counsel Assisting the Commission pursuant to s 12 of the Act prepared comprehensive written submissions at the conclusion of the public hearing.

5.2 In conformity with s 137A of the Act, copies of the written submissions of Counsel Assisting were served on all the witnesses or their legal representatives and they were given the opportunity of making their own submissions.

5.3 Written submissions were received by the Commission from the legal representatives of the witnesses Tan Dung Kha and Kim Yen Dang and from Chau Pham, who was not legally represented at the hearing. The legal representatives of Pham and Bich Tuyen Kha informed the Commission in writing that they had been instructed by their clients not to make any submissions. No submissions were received from Lieu or Nguyen, neither of whom was legally represented at the hearing.

5.4 In preparing this report the Commission has taken into account all of the submissions it received.

6 ASSESSMENTS OF THE ALLEGATIONS

6.1 As already noted, all of the allegations against persons other than Pham related to some of the allegations against Pham. In these circumstances it will be convenient to consider individually the various allegations against Pham, referring, where appropriate, to any similar allegation against another person.

6.2 In making assessments and forming opinions within s 16 of the Act the Commission applies the civil standard of proof, as explained by Dixon J in *Briginshaw v Briginshaw* (1938) 60 CLR 336. His Honour said, at p. 361:

> The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding are considerations which must affect the answer to the question whether the issue has been proved to the reasonable satisfaction of the tribunal. In such matters, "reasonable satisfaction" should not be produced by inexact proofs, indefinite testimony or indirect inferences.

6.3 Some of the evidence before the Commission, such as lawfully intercepted telephone conversations, was originally in the Vietnamese language and was translated by qualified interpreters engaged by the Commission.

(1) RECEIVING AND DEALING WITH $18,900 IN CASH

SIMILAR ALLEGATION AGAINST TAN DUNG KHA – THE SOLE ALLEGATION

6.4 At 10.34am on 24 May 2012 Pham deposited $18,900 in cash into his account at the Cabramatta Branch of the ANZ Bank.[1] CCTV footage taken at the bank showed Pham depositing two neatly packed bundles of cash consisting of seventy eight $50 notes and one hundred and fifty $100 notes.[2]

6.5 Pham gave evidence that he had borrowed the cash from Tan Dung Kha. The cash was part of an amount of cash which Tan Dung Kha kept in a wardrobe in his room in the Lansvale property.[3]

6.6 Pham gave evidence that he had never been suspicious about the source of the cash held by Tan Dung Kha and had never thought that it might be the proceeds of some criminal activity.[4] He believed that the cash was the proceeds of Tan Dung Kha's legitimate business.[5]

6.7 The following questions and answers occurred in Counsel Assisting's examination of Pham:

Q. Were you suspicious about where that money had come from?

A. As a matter of fact, I don't, because the fact that he's a business man and he owns a business that generates cash, which is a common thing.

Q. Are you saying that you were never suspicious about that money?

A. No, sir.

[1] PIC Transcript, Hoan Thien Pham, 29 October 2012, p.29; Exhibit 74C
[2] Exhibits 16 & 74C
[3] PIC Transcript, Hoan Thien Pham, 29 October 2012, pp.30-31
[4] ibid, pp.29-32and p.37
[5] ibid, p.36

Q. You didn't ever think that it might be illegal money; is that right?

A. No, sir.

THE COMMISSIONER:

Q. You never thought that?

A. I never thought that, sir.

MR GORMLY:

Q. You never thought that it might be the proceeds of some criminal activity?

A. Never at any stage of my life, sir.

Q. Did you ever ask him where the money came from?

A. He always tells me that he sells cars in the premises and, as a result, he gets commission from the sales of the cars.

Q. Did you ever think that it was illegal drug money?

A. Never at any stage, sir, because I always remind him that I am as a police officer, and - I always remind him of all the crimes that happens, so I don't think he would dare to.[6]

6.8 However, other evidence before the Commission shows that Pham knew more about the source of the cash in Tan Dung Kha's room than he disclosed in the evidence just quoted.

6.9 In an intercepted telephone conversation with his brother Chau Pham at 1.11pm on 24 May 2012 Pham said the following:

> Ga guy brought home fifty thousand last night. In cash, you know. That's the money from some junkies, they fuckin' got er, his friends got searched, you know? The police took almost half a million dollars from them. They gave some to each one of them, you know? Now there's – Clears the throat – fifty thousand in er, in his wardrobe, alright?[7]

6.10 Pham gave evidence that Tan Dung Kha was sometimes referred to as *"Ga",* because Tan Dung Kha was born in the year of the chicken.[8] *"Ga"* is the Vietnamese word for chicken.

6.11 Later in the telephone conversation Pham told his brother that *"the guy that gave him the money already got arrested"* and that *"this is not his money, you know. He's holding it to pay for legal fees, for the guy in gaol."*[9]

6.12 Later still in the conversation Pham told Chau Pham that:

> He gave me twenty thousand to put in to, 'cause I was going to buy the house next door, you know. They're selling it for only three hundred and eighty, you know….he left here one hundred and twenty, he gave me twenty to put into my bank to get the saving, you know?[10]

[6] ibid, pp.31-32
[7] Exhibits 2 and 3B
[8] PIC Transcript, Hoan Thien Pham, 29 October 2012, p.38
[9] Exhibits 2 and 3B
[10] ibid

6.13 This telephone conversation between Pham and Chau Pham was terminated when another telephone call was received by Pham, who told Chau Pham that he would ring him back.

6.14 At 1.24pm Pham telephoned Chau Pham and told him that Tan Dung Kha *"always play round with fuckin' junkies, with drug dealers." Pham* and Chau Pham discussed the fact that Tan Dung Kha had lent Pham *"twenty thousand"* and that Pham could decide not to pay him back.[11]

6.15 In this telephone conversation Pham referred to having seen the remainder of the money held by Tan Dung Kha, telling Chau Pham that:

> Pham: I saw it, you know? I opened his bag, er his wardrobe
>
> Chau Pham: Mm
>
> Pham: fuckin' one whole plastic bag, piles in fifty dollar notes, six piles[12]

6.16 Recordings of both conversations between Pham and his brother on 24 May 2012 were played to Pham while he was giving evidence before the Commission.[13] His immediate response was that the conversations were a *"joke",* an attempt or *"bluff"* to impress his brother and a venting of the anger and frustration he felt for Tan Dung Kha.[14]

6.17 Chau Pham also gave evidence that the conversations on 24 May 2012 were a joke.[15] He said that Pham was always *"mucking around"* and playing *"stupid jokes"* and these conversations represented one such joke.[16]

6.18 Pham's and Chau Pham's evidence that what Pham said in the telephone conversations was a *"joke"* or a *"bluff"* on the part of Pham is not credible. There is no sound of laughter in the recordings of the conversations and the tone of the voices suggests that both Pham and Chau Pham intended what they said to be taken seriously. What Pham said in the conversations is strong evidence that Pham knew or at least suspected that the cash he received from Tan Dung Kha was the proceeds of criminal activity.

6.19 There was much other evidence before the Commission showing that Pham knew or at least suspected that the cash he received from Tan Dung Kha was the proceeds of criminal activity, including the following evidence:

(i) On 18 May 2012, only six days before Tan Dung Kha provided the cash to Pham, Tan Dung Kha had sought to borrow $2000 from Pham and Bich Tuyen Kha,[17] from which it can be inferred that Tan Dung Kha did not on 18 May 2012 have the substantial amount of cash he provided to Pham on 24 May 2012.

(ii) Pham knew that the cash Tan Dung Kha provided to him had been part of a larger amount of cash kept by Tan Dung Kha in a wardrobe in his room.

[11] Exhibits 142 and 143
[12] ibid
[13] PIC Transcript, Hoan Thien Pham, 29 October 2012, pp.41-67
[14] PIC Transcript, Hoan Thien Pham, 29 October 2012, p.39,p. 40, pp.42-50 and pp.53-54; PIC Transcript, Hoan Thien Pham, 5 November 2012, pp.265-266
[15] PIC Transcript, Chau Long Pham, 29 October 2012, p.74
[16] ibid, p.80
[17] PIC Transcript, Hoan Thien Pham, 5 November 2012, pp.267-268; Exhibit 140

(iii) In one of the telephone conversations on 24 May 2012 Pham told Chau Pham that, if the cash was stolen from Tan Dung Kha, Tan Dung Kha would not *"dare"* say anything about it, meaning, it can be inferred, that, if the cash was stolen from him, Tan Dung Kha would not report the theft to the police.[18]

(iv) Chau Pham in his evidence before the Commission agreed that Pham had told him that Tan Dung Kha *"hung around with junkies and drug dealers."*[19]

(v) Pham gave evidence that he believed that Tan Dung Kha consorted with drug dealers, although he did add that he had no evidence to support that belief.[20]

(vi) In a telephone conversation with an acquaintance on 7 August 2012 Pham said that a few days before the execution of the search warrant on 30 May 2012 Tan Dung Kha had brought money to the Lansvale property to safeguard for *"friends"* and that the cash seized in the execution of the search warrant was part of that money.[21]

(vii) On 30 May 2012, that is six days after Pham deposited the sum of $18,900 into his bank account, the Commission executed a search warrant at the Lansvale property. In executing the search warrant Commission officers found $19,000 in cash consisting of $50 notes wrapped in neatly packed bundles in a wardrobe in Tan Dung Kha's room.[22]

6.20 Tan Dung Kha gave evidence in a private hearing on 30 October 2012. In his evidence he asserted that the cash in his wardrobe was the legitimate proceeds of his business.[23] He denied that he had ever held money for persons involved in drug sales.[24] He denied that the money in his wardrobe came from BN2.[25]

6.21 The Commission is satisfied on the basis of the evidence it has referred to that Pham knew that the cash he received from Tan Dung Kha and dealt with was the proceeds of criminal activity or was reckless as to whether it was the proceeds of criminal activity. However, not all the evidence which would be admissible against Pham would be admissible against Tan Dung Kha. The Commission is of the opinion that there is insufficient evidence admissible against Tan Dung Kha to establish the allegation against him.

(2) PROPOSAL TO CHAU PHAM FOR A BREAKING, ENTERING AND STEALING

6.22 The two conversations between Pham and Chau Pham on 24 May 2012 disclose an attempt by Pham to induce Chau Pham to participate with him in a serious criminal act.

6.23 In the first of the conversations Pham proposed that he would arrange for the other occupants of the Lansvale property to be absent from it and would provide Chau Pham with certain information and that Chau Pham, using the information provided by Pham, would break into the Lansvale property, steal the cash kept in Tan Dung Kha's room and leave the premises in such a state as to make it appear that a random break-in had occurred.[26]

[18] Exhibits 142 and 143
[19] PIC Transcript, Chau Long Pham, 29 October 2012, pp.75-76
[20] ibid, p.65
[21] Exhibit 49AC
[22] Exhibits 15, 87AC, 88C and 89.
[23] Exhibit 141 (transcript of private hearing AZY, Tan Dung Kha, 30 October 2012), pp.14-16
[24] ibid, p.16
[25] ibid, p.18
[26] Exhibits 2 and 3B

6.24 When this proposal was made by Pham, Chau Pham would appear to have immediately rejected it. Due to a technical error in the recording of this part of the conversation, the recording of what Chau Pham said is unintelligible but an inference that Chau Pham rejected the proposal can be drawn from what was subsequently said by Pham, the recording of which is intelligible.[27]

6.25 In the second of these conversations Chau Pham counselled Pham against the proposal on the grounds that, if there was any break in, Tan Dung Kha would suspect that Pham was involved.[28]

6.26 As already noted, both Pham and Chau Pham asserted in evidence that much of what Pham said in their conversations was a *"joke"* or a *"bluff".* Consistently with this general position, Pham claimed that he had never had any real intention that there should be a breaking and entering of the Lansvale property.

6.27 For reasons which have already been given, the Commission does not accept that what Pham said in the conversations on 24 May 2012 was a *"joke"* or a *"bluff"* and finds that Pham's proposal for a breaking and entering of the Lansvale property and a stealing of money was seriously made by him.

(3) PRIOR OFFENCE OF BREAKING, ENTERING AND STEALING

6.28 A further matter arising from the second conversation on 24 May 2012 between Pham and Chau Pham is that parts of that conversation suggest that Pham might previously have committed an offence of breaking, entering and stealing.

6.29 Parts of the second telephone conversation were as follows:

Chau Pham: He wouldn't dare say anything but he would suspect that it's your work, you know?

Pham: Mm

Chau Pham: Are you with me? You're the first priority that he would suspect, you know. Yeah, therefore, be careful, yeah.

Pham: Mm, I think so too.

Chau Pham: Mm. Because you know what. If, if you didn't set up the other one in the past that would be okay.

Pham: Mm

Chau Pham: Fuckin' er, I'd support you. But now you're already set up such thing, right?

……

Chau Pham: You're fuckin one that used to set up this sort of thing, right? But um, only you would dare to do that, no one else would.

……

[27] ibid
[28] Exhibit 142 and 143

Chau Pham: If you hadn't done such thing in the past, it could be done. But now he...[29]

6.30 During his evidence before the Commission it was put to Pham by Counsel Assisting that in these parts of the conversation Chau Pham had evinced a belief that Pham had previously *"set up"* an offence of breaking, entering and stealing and that the only reason why Chau Pham would have had such a belief was that Pham had in fact previously *"set up"* such an offence. Pham rejected those suggestions.[30]

6.31 When pressed by Counsel Assisting on why Chau Pham would have said such things in the conversation, Pham offered the following explanation:

> Well, as a Police Officer, I attend many, many, many break and enters and I told him, this is just, like, insurance work, so that's why I told him the story. This is what happens. So there's never been any sort of plan like this is happen. It is just a bluff to my brother as a joke.[31]

The Commission considers that this explanation lacks any plausibility and should be rejected.

6.32 When Chau Pham was questioned by Counsel Assisting about the parts of the conversation on 24 May 2012 which have been quoted, Chau Pham said that what he and Pham had been referring to were incidents in which Pham had done *"role play"* robberies to *"make us to be aware of the consequences of not locking the doors properly."*[32] One such *"role play"* robbery had taken place at Chau Pham's house and Chau Pham presumed that Pham had carried out a similar "role play" robbery at the Lansvale property.[33]

6.33 As already stated, the Commission is of the opinion that the evidence of Pham and Chau Pham that the telephone conversations on 24 May 2012 were a *"joke"* or a *"bluff"* should not be accepted. The Commission is also of the opinion that the above explanation of parts of the second conversation as referring to *"role play"*, and not actual, robberies should not be accepted.

6.34 However, there is no other evidence before the Commission of Pham committing any actual offence of breaking, entering and stealing and the Commission considers that the statements made in the second conversation of 24 May 2012 are an insufficient basis for any finding that Pham had previously committed an offence of breaking, entering and stealing.

(4) SENDING A SMS RELATING TO A SEARCH WARRANT

6.35 At 8.54 am on 30 May 2012 the following SMS was sent from a mobile phone used by Pham to a mobile phone used by Tan Dung Kha:

> A friend of mine, who is a Detective at Fairfield asked for my assistant (sic) to executive (sic) multiple search warrant *(sic)* on this Friday morning 9am including

[29] ibid
[30] PIC Transcript, Hoan Thien Pham, 29 October 2012, pp.53-54 and p.58
[31] ibid, p.54
[32] PIC Transcript, Chau Long Pham, 29 October 2012, pp.78-79
[33] ibid, p.79

[BN2] house at Fairfield so tell his wife to empty all drugs, stolen goods n large amounts of money or else they will lock her up as well. Delete this sms immediately after read n don't reply.[34]

6.36 At a private hearing Tan Dung Kha gave evidence that he knew both BN2 and BN2's wife. He described BN2 as a friend.[35] Pham said in his evidence that he did not know BN2.[36]

6.37 On 12 May 2012 BN2 was arrested by officers of the Australian Federal Police and charged with drug and other offences. Tan Dung Kha became aware of the arrest and the charges soon afterwards.[37] BN2 was granted bail on 23 May 2012 and released on bail.

6.38 After the SMS was received by him Tan Dung Kha sent the SMS to another mobile phone in his possession and then sent the SMS from that second mobile phone to a mobile phone used by BN2's wife.[38]

6.39 The terms of the SMS suggest that it was sent by a police officer who knew a detective at Fairfield and who had been asked to assist in the execution of search warrants and that the sender was alerting the recipient to the search warrants and suggesting that the recipient warn BN2's wife to remove all drugs, stolen goods and large amounts of money from BN2's house.

6.40 However, inquiries made by the Commission revealed that there were no such search warrants and that Pham had not been asked by any detective at Fairfield to assist in the execution of any search warrant. Pham denied in his evidence that he knew any police officer stationed at Fairfield.[39]

6.41 In his evidence before the Commission Pham accepted that the SMS had been sent from his phone but denied that it was he who had sent the SMS.[40] He said that his phone had been *"left outside"* for charging and that some other person must have used his phone to send the SMS.[41] He said that he could not say who might have used his phone to send the SMS but ultimately agreed that the only person apart from himself who could have sent the message would have been Tan Dung Kha.[42]

6.42 There were inconsistencies in Pham's evidence about the message. In one part of his evidence he said that "Andy" (Tan Dung Kha) had told him that he had used Pham's phone to *"text his friend, because they were harassing him."*[43] However, later in his evidence he said that the first he knew of the SMS was on the day of his giving evidence before the Commission and that Tan Dung Kha had not shown him the SMS or talked to him about SMS.[44]

6.43 It appeared to the Commission that the SMS might have been sent by Pham as a means of inducing BN2 or BN2's wife to move the property referred to in the SMS from BN2's

[34] Exhibit 1B; Note BN2 is a codename given to an associate of Tan Dung Kha's by the Commission.
[35] Exhibit 141 (transcript of private hearing AZY, Tan Dung Kha, 30 October 2012), p.7
[36] PIC Transcript, Hoan Thien Pham, 29 October 2012, p.34
[37] Exhibit 141 (transcript of private hearing AZY, Tan Dung Kha, 30 October 2012), p.7
[38] Exhibit 141 (transcript of private hearing AZY, Tan Dung Kha, 30 October 2012), pp.8-9; Exhibits 94C and 95C
[39] PIC Transcript, Hoan Thien Pham, 29 October 2012, pp.34-35
[40] ibid, pp.33-34
[41] ibid, p.35 and p.68
[42] ibid, pp.68-69
[43] ibid, p.33
[44] ibid, p.68

house to the Lansvale property. This could be linked to the evidence already referred to that Pham was contemplating a breaking and entering of the Lansvale property and a stealing of the cash in Tan Dung Kha's room. Pham denied in his evidence that the SMS had been sent by him in an attempt to induce BN2 to transfer his cash to Tan Dung Kha.[45]

6.44 In his evidence before the Commission Tan Dung Kha said it was he who had sent the SMS. He had sent the SMS from Pham's phone to his own phone and from that phone to a second phone in his possession. From that phone he had sent the SMS to BN2's wife.[46]

6.45 The explanation he gave for sending the SMS to BN2's wife was that he had been attempting to discourage BN2 and his wife from dealing in illicit drugs by *"scaring them off"* so that they would *"stop what they were doing."*[47]

6.46 Tan Dung Kha said in his evidence that he had initially sent the SMS from Pham's phone to *"make it look real."*[48] It was put to Tan Dung Kha, and he accepted, that the recipient of a SMS would only be aware of who was the immediate sender of the message to the recipient and that when a message has been transmitted through a succession of mobile phones, the ultimate recipient would not be aware of who was the original sender of the SMS.[49] The following questions and answers occurred:

> Q. No-one would ever know that it came from Constable Pham's phone, if you sent it through two phones, would they?
>
> A. No, because - that's the same. He - that's why I - that time, that's what I'm thinking of. That's the only way I think of during that time; that's why I sent to her - that way; by doing it that way.
>
> ....
>
> Q. There was no point in putting it into Constable Pham's phone, was there?
>
> A. Well, that's - that how - is the point. That's the first time, that's how I think. That's what - I did it that way.[50]

6.47 It was submitted on behalf of Tan Dung Kha that, although his evidence about the sending of the SMS was *"confus[ed]"* and *"muddled"* the Commission could not find that it was untrue. However, the Commission is of the opinion that Tan Dung Kha's evidence on this subject was implausible and incapable of acceptance.

6.48 The Commission also considers that Pham's evidence about the sending of the SMS was unpersuasive. However, in the absence of any direct evidence as to who sent the SMS from Pham's phone the Commission considers that it would not be justified in making a finding that it was Pham who sent the SMS from his phone.

[45] ibid, p.71
[46] Exhibit 141 (transcript of private hearing AZY, Tan Dung Kha, 30 October 2012), pp.7-8
[47] ibid, p.7
[48] ibid
[49] ibid, p.10
[50] ibid, pp.10-11

(5) PARTICIPATING IN AN ARRANGEMENT TO OBTAIN A PARTNER VISA FOR LIEU BY FALSELY REPRESENTING THAT LIEU AND BICH TUYEN KHA WERE IN A RELATIONSHIP

SIMILAR ALLEGATION AGAINST BICH TUYEN KHA – ALLEGATION (1)

SIMILAR ALLEGATION AGAINST LIEU - ALLEGATION (1)

SIMILAR ALLEGATION AGAINST NGUYEN – THE SOLE ALLEGATION

6.49 Before examining any of the evidence, it is convenient to summarise some of the legislative provisions and some of the procedures which apply to an application to DIAC for a partner visa.

6.50 A person who is not a citizen of Australia but who is in a de facto or married relationship with an Australian citizen is able to apply to DIAC for a visa to travel to and remain in Australia. The terms *"de facto relationship"* and *"married relationship"* are defined in the Migration Act 1958 (Cth). That Act provides that a person is in a *"married relationship"* or a *"de facto relationship"* with another person where, inter alia, they have a mutual commitment to each other to the exclusion of all others and they are in a genuine and continuing relationship. When, for the purposes of a visa application, DIAC is considering whether such a relationship exists a number of factors are taken into account including joint responsibility for children, shared financial arrangements, whether the persons represent themselves as being in a relationship socially and the living arrangements of the persons.[51]

6.51 An application for a partner visa is made using a prescribed form. The person sponsoring the applicant is also required to fill out a prescribed form and give certain undertakings. These forms require both the applicant and the sponsor to make certain statements which attest to the genuine nature of their relationship and that it was not entered into solely for the purpose of gaining permanent residency for the applicant.

6.52 The prescribed forms may also be accompanied by supporting evidence from the applicant which would be relevant to DIAC's decision about the nature of his or her relationship with the sponsor. Supporting evidence can include photos, evidence of contact between the parties such as phone bills or emails and statements by each party setting out the history and nature of their relationship.

6.53 Where successful, an applicant for a partner visa is granted a provisional visa to enter and remain in Australia whilst their application for a permanent visa is being considered. The application for a permanent visa is generally considered two years after the provisional visa is granted. DIAC requests further information from the applicant and the sponsor and, if satisfied that they remain in a de facto or married relationship, grants a permanent visa. The further information is commonly presented in statutory declarations made by the applicant and the sponsor.

6.54 On 19 April 2010 Lieu lodged an application with DIAC for a partner visa. Bich Tuyen Kha was Lieu's sponsor. The application was made on the basis that Lieu and Bich Tuyen Kha

[51] See Migration Act 1958 (Cth) s 5CB and s 5F; Migration Regulation 1994 (Cth) cl 1.09A and 1.15A

were in a genuine relationship with each other. Reference was made in the application to a marriage which had taken place between them in Vietnam on 18 January 2010.[52]

6.55 The application contained statements by both Lieu and Bich Tuyen Kha that they intended to maintain their relationship and that they had not entered into the relationship solely to gain permanent residency in Australia for Lieu.[53] Copies of a number of documents were attached to the application including some copies which Pham in his capacity as a Justice of the Peace had certified as being true copies of the original documents.[54]

6.56 Pursuant to this application Lieu was granted in October 2010 a provisional partner visa.

6.57 In accordance with its usual procedures for determining whether a permanent partner visa should be granted, DIAC invited Lieu and Bich Tuyen Kha to provide further information which would show that they remained in a genuine relationship with each other. The further information was required to be supplied by statutory declarations made by Lieu and Bich Tuyen Kha.

6.58 In response to this invitation Lieu and Bich Tuyen Kha each made a statutory declaration on 24 March 2012. These declarations included alleged details about the nature of their relationship, their life at home, their joint responsibility for the care and support of BN1 and their joint financial responsibilities. The statutory declarations attested that each had a *"mutual commitment to a shared life as a husband and wife..to the exclusion of all others"* and that their relationship was *"genuine and continuing."*[55] The statutory declarations were made before Pham in his capacity as a Justice of the Peace.[56]

6.59 Documents which were attached to the statutory declarations included a copy of the birth certificate of BN1 which showed Lieu as being the child's father, photographs of Lieu, Bich Tuyen Kha and BN1 together appearing to be a family unit and copies of correspondence indicating that Lieu was living at the Lansvale property.[57]

6.60 The statutory declaration made by Lieu recorded Pham and Nguyen as persons who would be willing, if requested, to furnish statements to DIAC about the nature of the relationship between Bich Tuyen Kha and Lieu.[58]

6.61 The representations made by Lieu and Bich Tuyen Kha to DIAC that they were in a genuine and committed relationship with each other to the exclusion of all other persons were inconsistent with other evidence before the Commission, which the Commission accepts. This evidence included:

(i) documentary evidence showing that Bich Tuyen Kha and Pham were in a de facto relationship

(ii) records of the Roads and Traffic Authority of New South Wales showing the Lansvale property as having been the residential address of Pham and Bich Tuyen Kha since February 2006[59]

[52] Exhibit 70C
[53] ibid
[54] ibid
[55] Exhibit 11B
[56] ibid
[57] ibid
[58] ibid
[59] Exhibits 78C and 51C

(iii) entries in the passports of Pham and Bich Tuyen Kha and DIAC records showing that Pham and Bich Tuyen Kha had travelled overseas together on a number of occasions from November 2001 onwards[60]

(iv) personal details for Pham in personnel records of the Australian Federal Police dated 11 April 2010 showing Bich Tuyen Kha as Pham's *"next of kin"* and describing her as his *"spouse"*[61]

(v) two applications for leave made by Pham to the NSWPF on the grounds of the illness of his "wife" who he named as Bich Tuyen Kha[62]

(vi) an email from Pham to a school friend in which Pham referred to Bich Tuyen Kha as his *"wife"*, who he had married in 2006[63]

(vii) in October 2006 a ceremony similar to a wedding ceremony took place in Sydney between Pham and Bich Tuyen Kha. Photographs taken at the ceremony show that a large number of guests attended. A banner at the venue for the ceremony welcomed guests to *"Wedding Party of Thien and Tuyen."*[64] The ceremony was not registered as a legal marriage in Australia. At the time of the ceremony Bich Tuyen Kha was still married to Duong

(viii) oral evidence of Pham and Bich Tuyen Kha that they are the parents of the child BN1 born in June 2011.[65]

6.62 In evidence before the Commission Bich Tuyen Kha admitted that the purported marriage between her and Lieu was not a genuine marriage but a *"fake"* marriage.[66] She gave evidence that during a period of disharmony between Pham and her they had travelled together to Vietnam. While they were in Vietnam Pham had been hospitalised for two weeks and during this period Bich Tuyen Kha had met Lieu. Bich Tuyen Kha and Lieu became friendly and they discussed the possibility of their marrying. However, after Pham and Bich Tuyen Kha had returned to Australia their relationship had improved and Bich Tuyen Kha had terminated her friendship with Lieu. Lieu then proposed that for a fee of $30,000 Bich Tuyen Kha could assist him in obtaining a visa to Australia and Bich Tuyen Kha agreed to do so.[67]

6.63 The amount of $30,000 was paid by means of a cheque dated 4 November 2010 drawn by Lieu's uncle Nguyen in favour of Pham. The cheque was drawn in favour of Pham and not Bich Tuyen Kha; because it was thought that a payment into an account of hers might prejudice the application for a visa.[68]

6.64 In her evidence Bich Tuyen Kha admitted that the statement made by her which was submitted to DIAC contained a number of false assertions which she had known to be false at the time she signed the statement. Bich Tuyen Kha admitted that the birth

[60] Exhibits 52C, 53C, 54C, 55C, 57C, 58C, 59C and 60C; Although these documents do not record persons who are accompanying the traveller the dates of entry and exit to a number of countries coincide between Pham and Bich Tuyen Kha
[61] Exhibit 64C
[62] Exhibits 62C and 63C
[63] PIC Transcript, Hoan Thien Pham, 30 October 2012, p.114; Exhibit 73C
[64] Exhibits 8 and 98C
[65] PIC Transcript, Hoan Thien Pham, 29 October 2012, p.28; PIC Transcript, Hoan Thien Pham, 30 October 2012, p.111, p.132 and p.198; PIC Transcript, Bich Tuyen Kha, 31 October 2012, p.239
[66] PIC Transcript, Bich Tuyen Kha, 31 October 2012, p.242 and p.245
[67] ibid, p.243
[68] ibid, pp.243-244
[69] ibid, pp.251-252

certificate for BN1 falsely showing Lieu as being her child's father and the photographs showing her, Lieu and BN1 together had been submitted to DIAC with the intention of misleading DIAC.[70]

6.65 In his evidence before the Commission Nguyen agreed that he had paid Pham $30,000 by means of a cheque and that the payment was for Bich Tuyen Kha sponsoring Lieu's visa application.[71] Bich Tuyen Kha had directed him that the cheque should be in favour of Pham.[72]

6.66 There was much evidence before the Commission showing that Pham was aware of an arrangement whereby for a payment of $30,000 Bich Tuyen Kha would assist Lieu to falsely represent to DIAC that there was a genuine relationship between Lieu and Bich Tuyen Kha so that Lieu would be granted a partner visa and that Pham himself provided extensive assistance in implementing the plan. This evidence included evidence of the following conduct by Pham:

(i) he allowed himself to be nominated in the statutory declaration by Lieu which was provided to DIAC, as being a person who would verify the relationship which it was being asserted existed between Bich Tuyen Kha and Lieu[73]

(ii) in his capacity as a Justice of the Peace he certified, as being true copies of originals, documents which were submitted to DIAC in support of the application[74]

(iii) as a Justice of the Peace he witnessed the statutory declarations made by Bich Tuyen Kha and Lieu in support of the application.[75] These statutory declarations contained assertions which Pham knew to be false

(iv) he downloaded from a computer two photographs which were used as evidence in support of the application. One photograph was of Bich Tuyen Kha, Lieu and BN1 together, appearing to be a family unit. The other photograph was of Bich Tuyen Kha and Lieu together appearing to be a married couple. These photographs were then attached to statutory declarations by Lieu and Bich Tuyen Kha which were provided to DIAC[76]

(v) he was aware it was being falsely asserted to DIAC that Lieu, Bich Tuyen Kha and BN1 were a family unit and permitted this to occur, including by certifying a copy of BN1's birth certificate which falsely showed Lieu as being the child's father as being a true copy of the original

(vi) he received and deposited into his bank account the cheque for $30 000 signed by Nguyen.

6.67 Early in his evidence before the Commission and before recordings of intercepted telephone conversations had been played to him, Pham denied that the purported marriage between Lieu and Bich Tuyen Kha was not a genuine marriage.[77] He said that the marriage had taken place after a breakdown of his relationship with Bich Tuyen Kha.[78]

[70] ibid, p.247
[71] PIC Transcript, Van Thanh Nguyen, 31 October 2012, pp.255-256
[72] ibid, p.257
[73] PIC Transcript, Hoan Thien Pham, 30 October 2012, p.193; Exhibit 33AC
[74] PIC Transcript, Hoan Thien Pham, 30 October 2012, p.196; Exhibits 69AC and 70C
[75] PIC Transcript, Hoan Thien Pham, 30 October 2012, p.189; Exhibit 33AC and 68AC
[76] PIC Transcript, Hoan Thien Pham, 31 October 2012, p.230; Exhibit 133C
[77] PIC Transcript, Hoan Thien Pham, 30 October 2012, pp.118-119, p.125, p.172 and p.187
[78] ibid, p.120,p.172 and p.198

He admitted that he had received a cheque for $30 000 from Nguyen but asserted that the payment was a loan from Bich Tuyen Kha and *"her husband"* for a friend of Pham in Vietnam.[79] He disagreed with a suggestion put to him that the payment was for Bich Tuyen Kha sponsoring Lieu to come to Australia.[80]

6.68 After recordings of intercepted telephone conversations had been played to him Pham conceded that:

(i) the purported marriage between Bich Tuyen Kha and Lieu was not a genuine marriage[81]

(ii) he had taken part in the preparation of documents which were attached to the statutory declarations of Bich Tuyen Kha and Lieu which were provided to DIAC.[82] These documents contained the false assertion that Lieu and Bich Tuyen Kha were in a genuine relationship with each other

(iii) he had allowed himself to be nominated as a person who would verify that there was a genuine relationship between Lieu and Bich Tuyen Kha was a genuine relationship[83]

(iv) in his capacity as a Justice of the Peace he had witnessed the statutory declarations made by Lieu and Bich Tuyen Kha, which, to his knowledge, contained false information[84]

(v) he knew that a copy of his child's birth certificate, which falsely showed Lieu as being the child's father and which he as a Justice of the Peace had certified as being a true copy of the original birth certificate, had been provided to DIAC[85]

(vi) he had known that Lieu, Bich Tuyen Kha and BN1 had been photographed together as if they were a family unit. He claimed that he had not been aware that these photographs would be provided to DIAC in support of Lieu's application for a visa.[86] Copies of these photographs were in fact attached to the statutory declarations made by Lieu and Bich Tuyen Kha which were witnessed by Pham.

6.69 The Commission is satisfied that the evidence it has referred to establishes that Pham, knowing that he himself was in a de facto relationship with Bich Tuyen Kha and that there was no genuine relationship between Lieu and Bich Tuyen Kha, participated in an arrangement to obtain from DIAC a partner visa for Australia for Lieu by falsely representing to DIAC that Lieu and Bich Tuyen Kha were in a relationship with each other. The consideration for Pham and Bich Tuyen Kha participating in the arrangement was to be a payment of $30,000 by Lieu's uncle, Nguyen. A cheque for this amount was signed by Nguyen which was payable to Pham and was deposited by Pham into his bank account. In receiving and depositing the cheque Pham knew that it was a payment for the participation by him and Bich Tuyen Kha in the arrangement to obtain a partner visa for Lieu.

[79] ibid, p.119 and pp.123-125
[80] ibid, p.125
[81] ibid, pp.231-232
[82] ibid, p.230
[83] ibid, pp.193-196
[84] ibid, p.197
[85] ibid, pp.196-197
[86] ibid, p.134

6.70 The Commission is also satisfied that on the basis of the evidence it has referred to the first allegation against Bich Tuyen Kha is established, the first allegation against Lieu is established and the only allegation against Nguyen is established.

(6) PARTICIPATING IN OBTAINING A BIRTH CERTIFICATE FOR BN1 FALSELY SHOWING LIEU AS BEING BN1'S FATHER

SIMILAR ALLEGATION AGAINST BICH TUYEN KHA - ALLEGATION (2)

SIMILAR ALLEGATION AGAINST LIEU – ALLEGATION (2)

6.71 In July 2011 Bich Tuyen Kha gave birth to BN1. Both Pham and Bich Tuyen Kha gave evidence at the hearing that Pham was the father of BN1.[87]

6.72 A Birth Registration Statement for the birth of BN1 was lodged with the NSW Registry of Births, Deaths and Marriages. In the Birth Registration Statement Lieu was shown as being the child's father. Both Bich Tuyen Kha and Lieu signed the Birth Registration Statement.[88]

6.73 Copies of the birth certificate for BN1 showing Lieu as being BN1's father were attached to the statutory declarations made by Lieu and Bich Tuyen Kha which were provided to DIAC in support of the application by Lieu for a visa.[89] Pham as a Justice of the Peace certified that these copies were true copies of the original birth certificate.[90]

6.74 Bich Tuyen Kha gave evidence that a copy of the birth certificate showing Lieu as BN1's father had been attached to Lieu's statutory declaration with a view to assisting Lieu's application for a visa.[91] The Birth Registration Statement had been filled out by Bich Tuyen Kha. She did not remember discussing it with Pham but agreed that he would have been aware of the Birth Registration Statement and would have seen the statement after it had been completed.[92]

6.75 Pham gave evidence that the Birth Registration Statement had been filled out by Bich Tuyen Kha.[93] He said that he had not become aware that Lieu was shown on the birth certificate as being BN1's father until a few months after BN1's birth.[94] He denied that Lieu had been shown as BN1's father in order to assist Lieu in obtaining a visa.[95] However, he knew at the time of certifying that a copy of the birth certificate was a true copy of the original *"that [his] son's name was being used to support Lieu's application."*[96] When Pham was asked why he had been prepared to certify a copy of the birth certificate when it had the wrong father's name in it, he replied, *"I don't know."*[97]

6.76 The Commission considers that Pham's evidence about his state of knowledge that Lieu was shown as the father of BN1 on the Birth Registration Statement lodged with the NSW Registry of Births, Deaths and Marriages was unpersuasive. There was, however, no

[87] PIC Transcript, Hoan Thien Pham, 29 October 2012, p.28; PIC Transcript, Hoan Thien Pham, 30 October 2012, p.111, p.132 and p.198; PIC Transcript, Bich Tuyen Kha, 31 October 2012, p.239
[88] Exhibit 144B
[89] PIC Transcript, Bich Tuyen Kha, 31 October 2012, pp.246-247; Exhibit 11B
[90] PIC Transcript, Hoan Thien Pham, 30 October 2012, p.196; Exhibit 11B
[91] PIC Transcript, Bich Tuyen Kha, 31 October 2012, pp.245-247
[92] ibid, p.246
[93] PIC Transcript, Hoan Thien Pham, 30 October 2012, p.198
[94] ibid, p.132
[95] ibid
[96] ibid, p.197
[97] ibid

direct evidence before the Commission to indicate that, at the time the Birth Registration Statement was lodged, Pham was aware that Lieu was shown as the father of BN1. The Commission considers that in the absence of such evidence it should not find that the sixth allegation against Pham has been established.

6.77 The Commission is satisfied on the basis of the evidence it has referred to that the second allegation against Bich Tuyen Kha is established and that the second allegation against Lieu is established.

(7) PARTICIPATING IN THE OBTAINING OF A FAMILY ASSISTANCE PAYMENT BY FALSE REPRESENTATIONS

SIMILAR ALLEGATION AGAINST BICH TUYEN KHA – ALLEGATION (3)

6.78 On 27 June 2011 Bich Tuyen Kha lodged with Centrelink an application for a Family Assistance payment based on the birth of BN1. The application was signed by Bich Tuyen Kha and Lieu. In the application Lieu was described as being Bich Tuyen Kha's partner.[98]

6.79 In her evidence Bich Tuyen Kha agreed the assertion made in the application that Lieu was her partner was false.[99] She accepted that she had obtained a Family Assistance payment by making that false assertion.[100]

6.80 In his evidence Pham admitted that he had known of the application for a Family Assistance payment and that the application contained a false statement that Lieu was Bich Tuyen Kha's partner.[101]

6.81 The Commission considers it should conclude that Pham participated in the obtaining by Bich Tuyen Kha of a Family Assistance payment by falsely representing that Lieu was Bich Tuyen Kha's partner.

6.82 The Commission is also satisfied on the basis of the evidence it has referred to that the third allegation against Bich Tuyen Kha is established.

(8) PARTICIPATING IN THE OBTAINING OF A REBATE FOR CHILDCARE FEES BY FALSE REPRESENTATIONS

SIMILAR ALLEGATION AGAINST BICH TUYEN KHA – ALLEGATION (4)

6.83 Bich Tuyen Kha made an application for a rebate of childcare fees. In her application Bich Tuyen Kha falsely asserted that Lieu was her partner and that Lieu was the father of her child BN1.[102]

6.84 In his evidence Pham admitted that he had been aware that the application was being made and that it contained false information that Lieu was Bich Tuyen Kha's partner and the father of BN1. He accepted that the false information had been provided in the application because entitlement to the rebate was means tested and Lieu had only a small income compared with Pham's income and the amount of the rebate would be greater, if Lieu and not Pham was regarded as Bich Tuyen Kha's partner and the child's father.[103]

[98] Exhibit 17B
[99] PIC Transcript, Bich Tuyen Kha, 31 October 2012, p.247
[100] ibid
[101] PIC Transcript, Hoan Thien Pham, 31 October 2012, pp.216-218
[102] PIC Transcript, Bich Tuyen Kha, 31 October 2012, p.247
[103] PIC Transcript, Hoan Thien Pham, 31 October 2012, pp.218-219

6.85 The Commission considers that it should conclude that Pham participated in the obtaining by Bich Tuyen Kha of a rebate of childcare fees by falsely representing that Lieu was Bich Tuyen Kha's partner and the father of BN1.

6.86 The Commission is also satisfied on the basis of the evidence it has referred to that the fourth allegation against Bich Tuyen Kha is established.

(9) PARTICIPATING IN THE MAKING OF AN APPLICATION BY BICH TUYEN KHA FOR A FIRST HOME OWNERS GRANT AND A REFUND OF STAMP DUTY, IN WHICH BICH TUYEN KHA MADE A FALSE REPRESENTATION

SIMILAR ALLEGATION AGAINST BICH TUYEN KHA – ALLEGATION (5)

6.87 Bich Tuyen Kha is the registered proprietor of the Lansvale property, having purchased it from her parents and brother in May 2011. After the purchase Bich Tuyen Kha applied to the NSW Office of State Revenue for a First Home Owners Grant and also applied for a refund of stamp duty paid by her on the purchase.[104]

6.88 In the applications Lieu was nominated as being Bich Tuyen Kha's partner. One of the applications was supported by statutory declarations by Bich Tuyen Kha and Lieu which had been witnessed by Pham as a Justice of the Peace.[105]

6.89 In his evidence Pham accepted that he had known at the time the applications were made that the applications contained a false assertion that Lieu was Bich Tuyen Kha's partner. He accepted that it was a breach of his obligations as a Justice of the Peace to witness a statutory declaration which he knew contained false information.[106]

6.90 The Commission concludes that Pham participated in the making of an application by Bich Tuyen Kha for a First Home Owners grant and a refund of stamp duty on the purchase by Bich Tuyen Kha of the Lansvale property, in which Bich Tuyen Kha made a false representation that Lieu was her partner. However, on the evidence available to the Commission it would appear that the false assertion was not material to the success of her applications.

6.91 The Commission is also satisfied on the basis of the evidence it has referred to that the fifth allegation against Bich Tuyen Kha is established.

(10) PARTICIPATING IN AN ARRANGEMENT TO OBTAIN A PARTNER VISA FOR HUE TRAN DANG BY FALSELY REPRESENTING THAT PHAM AND HUE TRAN DANG WERE IN A RELATIONSHIP

SIMILAR ALLEGATION AGAINST BICH TUYEN KHA – ALLEGATION (6)

SIMILAR ALLEGATION AGAINST KIM YEN DANG – THE SOLE ALLEGATION

SIMILAR ALLEGATION AGAINST HUE TRAN DANG – THE SOLE ALLEGATION

6.92 In April 2012 Hue Tran Dang, a woman living in Vietnam, made an application to DIAC for a partner visa for Australia. Pham sponsored Hue Tran Dang's application. The application

[104] Exhibit 47AC
[105] PIC Transcript, Hoan Thien Pham, 31 October 2012, pp.221-222; PIC Transcript, Bich Tuyen Kha, 31 October 2012, p. 248; Exhibit 47AC
[106] PIC Transcript, Hoan Thien Pham, 31 October 2012, p.222

was made on the basis that there was a genuine and continuing relationship between Hue Tran Dang and Pham to the exclusion of all other persons. It was asserted in the application that Hue Tran Dang and Pham had recently become engaged.[107]

6.93 In the application Pham stated his occupation as being a NSWPF officer and answered *"Yes"* to the question *"Do you and your fiancé or partner intend to maintain a lasting relationship?"* He answered *"No"* to the questions *"Did you enter into this relationship solely to gain permanent residence in Australia for your fiancé or partner?"* and *"Are you engaged to, legally married, or in a de facto relationship with a person other than the person you are sponsoring?"*[108]

6.94 The application was signed by Pham. Immediately above the place for his signature were a number of printed statements which a person signing would be taken as affirming. These statements included:

- I declare that the information I have supplied in this form is complete, correct and up to date in every detail.
- I am aware that any person who provides false or misleading information or who deceives or misleads or who presents a false document to an Australian Government official may be prosecuted.[109]

6.95 The application was supported by a document dated 21 April 2012 headed Statement of Relationship which was signed by Pham and Hue Tran Dang.[110] In the Statement of Relationship it was asserted that they had met in September 2010 during a visit by Pham to Vietnam, that they had fallen in love, that Pham had made a proposal of marriage which Hue Tran Dang had accepted and that there had been an engagement ceremony in Vietnam on 15 January 2012. The statement of relationship concluded with the sentence *"We do swear the above statement is completely true."*[111]

6.96 Copies of a number of documents were attached to the application, which were certified to be true copies of the original documents. Bich Tuyen Kha, as a Justice of the Peace, had certified some of the copies as being true copies. Also attached to the application was a letter from an Australian civil marriage celebrant indicating that a tentative arrangement had been made for a civil marriage ceremony between Pham and Hue Tran Dang.[112]

6.97 When Pham was first asked in his evidence at the hearing about his sponsorship of Hue Tran Dang, he asserted that he had had a genuine relationship with Hue Tran Dang. He said that the relationship had commenced after a breakdown of his relationship with Bich Tuyen Kha. He said that Hue Tran Dang would meet his family's expectations in a way in which Bich Tuyen Kha had not been able to.[113]

6.98 Subsequently in his evidence Pham said that he had come to feel that *"Tran wasn't there for me"* and his love for his son had developed and he had come to feel that he

[107] Exhibit 32AC
[108] ibid
[109] ibid
[110] ibid
[111] ibid
[112] ibid
[113] PIC Transcript, Hoan Thien Pham, 30 October 2012, p.121

"should be there to give him a complete family." As a result his relationship with Hue Tran Dang had broken down and he no longer thought that he would sponsor her to come to Australia.[114]

6.99 Pham denied that he would receive a sum of money, if he married Hue Tran Dang or Hue Tran Dang obtained a visa for permanent residency in Australia.[115]

6.100 Recordings of a number of intercepted telephone conversations were then played to Pham. In some of these telephone conversations:

(i) Pham and Bich Tuyen Kha discussed the sending of emails between Pham and Hue Tran Dang and how emails from Pham could be made to appear more indicative of a genuine relationship between them[116]

(ii) Pham, Bich Tuyen Kha and Hue Tran Dang's sister in Australia Kim Yen Dang discussed the concocting of evidence to support Hue Tran Dang's application, such as emails, photographs and records of purported telephone conversations between Pham and Hue Tran Dang[117]

(iii) Pham and Bich Tuyen Kha discussed Kim Yen Dang sending money to Pham to travel to Vietnam. They also discussed *"leaving the phone on"* to *"get minutes."*[118] (that is, creating records to make it appear that Pham and Hue Tran Dang had had lengthy telephone conversations with each other)

(iv) Pham and "My", a female cousin of Hue Tran Dang living in Vietnam, discussed Pham telephoning *"to get a bill."*[119]

6.101 In an intercepted telephone conversation between Kim Yen Dang and Bich Tuyen Kha a recording of which was played to Pham, Bich Tuyen Kha said that in assessing Hue Tran Dang's application DIAC would be unlikely to undertake extensive inquiries, once it become aware that Pham was a police officer. Part of this conversation was as follows:

Bich Tuyen Kha: …they will ask Tran what her husband's job and Tran will say her husband is a police officer, then they start to back away, you know.

Kim Yen Dang: Mm

Bich Tuyen Kha: Because he's is a police officer, like they've got integrity, you know? So they've got a kind of trust, you know?

Kim Yen Dang: Mm

Bich Tuyen Kha: Better than people doing different types of trades, you know. They won't er, and besides both he and Tran are never married, it's very easy, you know.

Kim Yen Dang: Mm

Bich Tuyen Kha: Only those that are separated, divorced plus children are complicated.[120]

[114] ibid
[115] PIC Transcript, Hoan Thien Pham, 30 October 2012,p.123, p.127, pp.135-136 and p.160
[116] PIC Transcript, Hoan Thien Pham, 30 October 2012, pp.135-141; Exhibits 21 and 22
[117] PIC Transcript, Hoan Thien Pham, 30 October 2012, pp.141-160; Exhibits 23 and 24
[118] PIC Transcript, Hoan Thien Pham, 30 October 2012, pp.160-164; Exhibits 25 and 26
[119] PIC Transcript, Hoan Thien Pham, 30 October 2012, p.164-166 ; Exhibit 27 and 28
[120] Exhibits 23 and 24

6.102 In his evidence Pham denied that he had used his position as a police officer to improve the chances of Hue Tran Dang's application succeeding. However, he agreed that *"police officers are expected to be people of integrity…and to tell the truth."*[121]

6.103 After recordings of the intercepted telephone conversations had been played, Pham continued to maintain that he had genuinely intended to marry Hue Tran Dang.[122] He said that discussions in the telephone conversations about obtaining evidence were discussions about how to obtain evidence of the genuine relationship that he asserted existed between himself and Hue Tran Dang.[123] He denied that he had sought to deceive DIAC.[124] He denied he had concocted evidence with Bich Tuyen Kha, Hue Tran Dang and "My".[125]

6.104 Pham initially denied that he knew that Hue Tran Dang's cousin My had been concocting emails purporting to be from Hue Tran Dang in order to deceive DIAC or that she had made telephone calls so as to increase the amounts of telephone bills.[126] However, after a transcript of a particular intercepted telephone conversation had been shown to him, he said he remembered having a conversation with Kim Yen Dang about My writing emails on behalf of Hue Tran Dang.[127] At this stage of his evidence he continued to deny that his asserted relationship with Hue Tran Dang was a pretence or concoction or that he was paid money for his role in Hue Tran Dang's application for a visa.[128]

6.105 However, after further questioning Pham ultimately conceded that the proposed marriage with Hue Tran Dang was a "sham marriage", which he had falsely represented to DIAC as being a genuine proposed marriage.[129] He admitted that he had never intended to have and had never had a relationship with Hue Tran Dang. He admitted that the application for a partner visa was full of false statements and that the Statement of Relationship was *"all false"* and was intended to deceive DIAC into granting Hue Tran Dang a visa.[130]

6.106 Even after admitting that there had not been any genuine relationship between himself and Hue Tran Dang, Pham continued to deny that he had joined in the application to DIAC for the purposes of receiving a payment of money, other than a payment that he had received for his airfares to go to Vietnam to meet Hue Tran Dang.[131]

6.107 However, after the recording of a further telephone conversation was played to Pham, he conceded that Kim Yen Dang had agreed to pay him money for his sponsorship of Hue Tran Dang.[132] He had already been paid $15,000.[133] He was uncertain about the total amount he was to be paid but thought it was between $25,000 and $30,000.[134] Later in his evidence he agreed that the total amount of money he was to receive was $30,000, plus money for expenses such as airfares, immigration fees and migration agent fees.[135]

[121] PIC Transcript, Hoan Thien Pham, 30 October 2012, pp.155-156
[122] ibid, p.138, pp.149-150 and p.153
[123] ibid, pp.138-140 and p.148
[124] bid, pp.149-150 and p.166
[125] ibid, p.144, p.149, p.150 and p.153
[126] ibid, p.145
[127] PIC Transcript, Hoan Thien Pham, 30 October 2012, p.146; Exhibits 23 and 24
[128] PIC Transcript, Hoan Thien Pham, 30 October 2012, p.148, p.149 and p. 160
[129] ibid, p.169
[130] ibid, pp.182-184
[131] ibid, pp.169-170
[132] PIC Transcript, Hoan Thien Pham, 30 October 2012, pp.174-175
[133] ibid
[134] ibid, p.175
[135] PIC Transcript, Hoan Thien Pham, 5 November 2012, p.264

6.108 In her evidence Bich Tuyen Kha accepted that the proposed marriage of Pham to Hue Tran Dang was a fake marriage proposal, which had been arranged and that she and Pham had entered into an arrangement with Hue Tran Dang and her sister for the purpose of receiving a fee.[136] The arrangement was that she and Pham would for a fee assist Hue Tran Dang in obtaining a visa to Australia. The arrangement had been made through Kim Yen Dang.[137] The amount of the fee was $30,000 plus the cost of airfares. She agreed that the only reason that she and Pham had entered into the arrangement was to obtain $30,000 for use by them in purchasing some property.[138]

6.109 Other evidence showing that Bich Tuyen Kha was involved in the implementation of the arrangement included evidence that:

(i) on 24 February 2012 she received from Kim Yen Dang the sum of $5,000 in part payment of the fee[139]

(ii) on 23 April 2012 she received from Kim Yen Dang the sum of $2,600, which was partly a repayment of an amount Pham had transferred to Hue Tran Dang to enable her to pay the cost of the visa application and partly a sum of $500 which Kim Yen Dang had asked Pham to transfer to Hue Tran Dang[140]

(iii) she assisted in writing emails to Hue Tran Dang purporting to be from Pham, which could later be provided to DIAC as evidence of there being a genuine relationship between Pham and Hue Tran Dang[141]

(iv) she provided advice that Pham and Hue Tran Dang *"could just leave the phone on"* to *"get the minutes",* thereby creating records of apparently long telephone conversations between them which could be used as evidence of there being a genuine relationship between Pham and Hue Tran Dang[142]

(v) she provided advice to Kim Yen Dang about what evidence should be obtained to support the application for a visa and what answers Hue Tran Dang should give to DIAC officers when they interviewed her.[143]

6.110 In her evidence at the hearing Kim Yen Dang agreed that there had not been any genuine relationship between Pham and Hue Tran Dang.[144] The purpose of asserting that there was a genuine relationship had been to enable Hue Tran Dang to obtain a visa.[145] The fee to be paid to Pham and Bich Tuyen Kha under the arrangement with them was $30,000, plus the cost of airfares.[146] She had already paid the sum of $15,000.[147]

6.111 It was submitted to the Commission on behalf of Kim Yen Dang that, while Kim Yen Dang had been aware that there was no genuine relationship between Pham and Hue Tran Dang and while she had had the intention of assisting Hue Tran Dang to come to Australia, there was no evidence before the Commission that Kim Yen Dang had falsified documents or fabricated evidence or had had the intention of deceiving DIAC.

[136] PIC Transcript, Bich Tuyen Kha, 31 October 2012, p.239
[137] ibid, pp.239-240
[138] ibid, p.251
[139] Exhibits 80C, 111, 112, 113C, 114 and 115
[140] PIC Transcript, Kim Yen Dang, 5 November 2012, p.278; Exhibits 81C, 123 and 124
[141] Exhibits 23 and 24
[142] Exhibits 25 and 26
[143] Exhibits 131 and 132
[144] PIC Transcript, Kim Yen Dang, 5 November 2012, p.277
[145] ibid
[146] PIC Transcript, Kim Yen Dang, 5 November 2012, p.276
[147] ibid, p.278

6.112 The Commission does not accept these submissions made on behalf of Kim Yen Dang. There was substantial evidence before the Commission that Kim Yen Dang assisted Pham and Bich Tuyen Kha in the preparation of the application to DIAC, that she took part in the fabrication of emails and other evidence to be used in support of the application and that she made payments in the implementation of the arrangement with Pham and Bich Tuyen Kha. The Commission finds that Kim Yen Dang participated in the arrangement to obtain a partner visa for Hue Tran Dang by falsely representing that there was a relationship between Hue Tran Dang and Pham.

6.113 On the basis of evidence before the Commission and, in particular, the admissions by Pham, Bich Tuyen Kha and Kim Yen Dang the Commission considers the following matters were established in relation to the application by Hue Tran Dang for a partner visa:

(i) Pham participated in an arrangement with Hue Tran Dang, Kim Yen Dang and Bich Tuyen Kha to obtain from DIAC a partner visa for Hue Tran Dang by falsely representing that there was a genuine and committed relationship between Pham and Hue Tran Dang. As part of the arrangement Pham and Bich Tuyen Kha were to receive a fee of $30,000, plus some expenses

(ii) pursuant to this arrangement Pham, purporting to be Hue Tran Dang's partner and sponsor, participated in the making of an application to DIAC for a visa for Hue Tran Dang, knowing that the application contained a number of false statements

(iii) Pham participated with Kim Yen Dang and Bich Tuyen Kha in the fabrication of false evidence to support the application[148]

(iv) Pham received part payment of the fee agreed to be paid under the arrangement.[149]

6.114 The Commission is satisfied on the basis of the evidence it has referred to that the sixth allegation against Bich Tuyen Kha is established and that the only allegation against Kim Yen Dang is established.

6.115 Hue Tran Dang resided in Vietnam at all relevant times. She was not called to give evidence before the Commission and was not served with the submissions of Counsel Assisting. In these circumstances, the Commission does not express an opinion about the allegation against her.

(11) PARTICIPATING IN AN ARRANGEMENT TO REPRESENT THAT THE MARRIAGE BETWEEN BICH TUYEN KHA AND DUONG WAS A GENUINE MARRIAGE

SIMILAR ALLEGATION AGAINST BICH TUYEN KHA – ALLEGATION (7)

SIMILAR ALLEGATION AGAINST DUONG – THE SOLE ALLEGATION

6.116 Bich Tuyen Kha and Duong were married in Australia on 30 December 2001. After they were married Duong applied for a visa which would permit him to remain in Australia. Duong was granted a provisional, and then a permanent, visa to remain in Australia.[150]

[148] Examples of these email exchanges are contained in Exhibit 135AC; Exhibits 23, 24, 25, 26, 27 and 28 contain discussions about the concoction of evidence of phone conversations
[149] PIC Transcript, Kim Yen Dang, 5 November 2012, p.278
[150] Exhibit 71C

6.117 Evidence obtained by the Commission before the commencement of the public hearing suggested that Bich Tuyen Kha's marriage with Duong might have been entered into for the purpose of enabling Duong to obtain a visa permitting him to remain in Australia and that Pham might have assisted Bich Tuyen Kha in this project.

6.118 In her evidence at the public hearing Bich Tuyen Kha said that, although she had met Pham in late 2000, they *"weren't [then] really a couple."*[151] Her family and particularly her mother had encouraged her to marry Duong and she had done so.[152] Bich Tuyen Kha denied that any fee had been paid by anyone in relation to her marriage with Duong or that the purpose of her marrying Duong had been to enable him to obtain a visa.[153]

6.119 Pham in his evidence denied that the marriage between Bich Tuyen Kha and Duong had been a fake marriage.[154]

6.120 There was no evidence at the hearing to rebut the assertions made by Bich Tuyen Kha and Pham in their evidence that Bich Tuyen Kha's marriage to Duong had been a genuine marriage and the Commission considers that it could not make any finding that the marriage was not a genuine one or that the allegations against Pham, Bich Tuyen Kha or Duong in relation to Duong's marriage to Bich Tuyen Kha had been established.

(12) MISCONDUCT IN RELATION TO THE NSW POLICE FORCE'S COMPUTERISED OPERATIONAL POLICING SYSTEM

6.121 The NSWPF's Computerised Operational Policing System ("COPS") is a computerised database which stores operational information and intelligence for use by police officers in the performance of their duties. One class of such intelligence which is stored in COPS consists of information reports about suspected criminal activities.

6.122 In his evidence Pham accepted that as a police officer he had an obligation not to access COPS otherwise than for an authorised police purpose and had an obligation not to convey to any unauthorised person information which he had accessed on COPS.[155] Pham also gave evidence that he was familiar with the rules of the NSWPF requiring him to advise a superior officer of any conflict of interest that might arise in the course of performing his duties as a police officer, including where a relative had provided him with information.[156]

6.123 In November 2011 Chau Pham, Pham's brother, spoke to Pham about some disturbances involving motor vehicles that were occurring near Chau Pham's home in Bankstown.[157]

6.124 At about 6 pm on 1 December 2011 Pham created an information report on COPS about the premises next door to Chau Pham's home. The information report was in the following terms:

[151] PIC Transcript, Bich Tuyen Kha, 31 October 2012, p.248
[152] ibid, pp.248-249
[153] ibid
[154] PIC Transcript, Hoan Thien Pham, 30 October 2012, p.117 and p.172
[155] PIC Transcript, Hoan Thien Pham, 29 October 2012, p.91, p.95 and p.101; Exhibit 19
[156] PIC Transcript, Hoan Thien Pham, 29 October 2012, pp.91-92
[157] ibid, p.91

> Information received from a community source that at the above time/date and location, the above POI is loitering at the location. The POI was seen screaming on a mobile phone in Arabic language and starring (sic) at houses nearby.
>
> Community sourse (sic) further stated that one of their car (sic) was damaged recently when they parked outside their home at number XX XXXX St, Bankstown.
>
> Submitted for future taskings to be conducted at the nominated trouble times.[158]

6.125 On the same evening Pham made a search on COPS for any information about Chau Pham's home.[159] He found and accessed an information report that a person named *"Tony"* was suspected of dealing in drugs from Chau Pham's home.[160]

6.126 About thirty minutes after accessing the information report, Pham telephoned Chau Pham and told him that he had just created a *"report"* so that Bankstown Police *"would patrol the street."*[161] Pham conveyed to his brother the information he had acquired by accessing the information report on COPS, namely, that a *"guy called Tony"* was selling drugs from Chau Pham's house and said that *"from now on they're gonna target your house."*[162] Pham knew that a person called *"Tony"* was residing in a flat attached to Chau Pham's premises.[163]

6.127 In his evidence before the Commission Pham denied that he had created the first information report as a pretext for accessing any information on COPS about Chau Pham's premises.[164] He denied that in making the information report he had selected premises next door to his brother's home rather than his brother's home to conceal the fact that he was accessing COPS for a personal, unauthorised, purpose.[165] He also denied that he had conveyed to anyone the information on COPS which he had accessed.[166]

6.128 However, after a recording of the telephone conversation between himself and his brother was played, Pham admitted that he had conveyed to his brother information he had accessed on COPS.[167] He said that he had conveyed to his brother information about *"Tony"* so that his brother would *"get him out."*[168] He accepted that the conveying of the information to his brother was inappropriate.[169] Pham also admitted that, if the information his brother had allegedly given to him about disturbances near his home was genuine, he should have reported to a superior officer the information that had been supplied to him by his brother and should also have reported the action he had taken in creating the information report.[170]

6.129 The Commission is satisfied that the evidence establishes that:

(i) Pham created an information report on COPS for the private purpose of having more police resources directed to the neighbourhood of his brother's home.

[158] PIC Transcript, Hoan Thien Pham, 29 October 2012, p.96; Exhibit 86C (address redacted)
[159] PIC Transcript, Hoan Thien Pham, 29 October 2012, p.92; Exhibit 84C
[160] PIC Transcript, Hoan Thien Pham, 29 October 2012, pp.92-94; Exhibits 84C & 85C
[161] Exhibits 100 and 101
[162] ibid
[163] PIC Transcript, Hoan Thien Pham, 29 October 2012, pp.103-104
[164] ibid, pp.98-99
[165] ibid, p.96
[166] ibid, p.99
[167] PIC Transcript, Hoan Thien Pham, 29 October 2012, pp.101-102; PIC Transcript, Hoan Thien Pham, 30 October 2012, pp.109-110
[168] PIC Transcript, Hoan Thien Pham, 29 October 2012, p.104
[169] ibid
[170] PIC Transcript, Hoan Thien Pham, 29 October 2012, p.95 and p.105

In the information report Pham supplied the address of the premises next door to his brother's home in an attempt to conceal his private purpose

(ii) Pham accessed COPS for a private purpose, namely, to search for any information about his brother's home

(iii) having discovered on COPS confidential police information about someone selling drugs from his brother's home, he conveyed that information to his brother

(iv) Pham failed to report to a superior officer what his brother had told him about disturbances near his brother's home and also failed to report to a superior officer what he had done as a result of what his brother had told him.

(13) UNAUTHORISED POSSESSION OF ITEMS OF POLICE PROPERTY

6.130 When the Commission executed a search warrant at the premises of Pham a number of items which were the property of the NSWPF or the Australian Federal Police were found. These included:

(i) seven Australian Federal Police caps

(ii) an extendable baton, which had been issued by the Australian Federal Police

(iii) a set of personal body armour, which had been issued by the NSWPF.[171]

6.131 Pham said in evidence that the Australian Federal Police caps and baton were *"souvenirs"* but that the body armour was his, having been issued to him by the NSWPF.[172]

6.132 In his evidence Pham accepted that he should not have retained in his possession either the caps or the baton.[173] He accepted that the retention of the baton was a serious matter, as it was a restricted item which could not be lawfully possessed without a licence and Pham did not have a licence.[174]

6.133 The Commission is of the view Pham should not have retained the items which were the property of the Australian Federal Police found during the execution of the search warrant. The Commission is therefore satisfied, on the basis of the evidence referred to, that that part of the thirteenth allegation against Pham is established.

(14) ATTEMPTING TO USE INFORMATION OBTAINED ABOUT ANOTHER PERSON'S CREDIT CARD

6.134 Between 30 July 2007 and 24 July 2010 Pham was seconded to the Australian Federal Police. During this period he was stationed at Kingsford Smith Airport, Sydney.

6.135 In November 2009 Pham and two other Australian Federal Police officers investigated an incident in which an airline passenger had been found to have in her possession a credit card in a name other than her own. Pham wrote down in his Australian Federal Police notebook the number of the credit card, the name on the card, its expiry date and the CVC number. He was the only one of the investigating officers to do so.[175]

[171] PIC Transcript, Hoan Thien Pham, 31 October 2012, p.223; Exhibits 88C, 96 and 97AC
[172] PIC Transcript, Hoan Thien Pham, 31 October 2012, pp.223-224
[173] PIC Transcript, Hoan Thien Pham, 31 October 2012, pp.223-224
[174] ibid, p.224
[175] PIC Transcript, Hoan Thien Pham, 31 October 2012, pp.225-228; Exhibit 48AC

6.136 Subsequently, Pham used his knowledge of these details of the credit card in an attempt to purchase an iPhone worth about $1,000 from an online store.[176] The online store detected that the alleged purchase was fraudulent and cancelled the transaction.[177]

6.137 There was substantial evidence connecting Pham with the attempted purchase. The attempted purchase was made from an internet service in the name of Tan Dung Kha and connected at the business premises owned at the time by Pham and leased to Tan Dung Kha. The iPhone was to be delivered to a person with whom Pham had an association. The email address given to the online store was registered overseas to an unknown person but the user ID for the email address was the same user ID as was assigned to the email address of Pham's supervisor in the Australian Federal Police.[178]

6.138 In his evidence Pham admitted that he had attempted to purchase the iPhone using the credit card details he had obtained.[179]

6.139 The Commission is satisfied on the basis of the evidence referred to that this allegation is established.

(15) BREACHES OF OBLIGATIONS AS A JUSTICE OF THE PEACE

6.140 Pham was appointed as a Justice of the Peace on 23 September 2009.[180] On 19 October 2009 he swore the oath of office as a Justice of the Peace.[181] At the hearing Pham gave evidence that he was aware of the Code of Conduct for Justices of the Peace, of his obligations as a Justice of the Peace and of the importance of complying with those obligations.[182]

6.141 Evidence was given at the hearing of four occasions on which Pham engaged in conduct which breached his obligations as a Justice of the Peace. In his evidence Pham admitted that on each occasion he had engaged in the conduct alleged and that his conduct had breached his obligations as a Justice of the Peace. The four occasions were:

(i) On 13 June 2012 a friend of Pham telephoned him, asking for his details as a Justice of the Peace so that she could use them for a friend. Pham supplied the details[183]

(ii) On 19 July 2012 the same friend telephoned Pham, asking again for his details as a Justice of the Peace. In the conversation, which was intercepted and recorded, Pham said, *"just sign on my behalf, Christ's sake"* and provided his details as a Justice of the Peace[184]

(iii) On 4 May 2012 a relative of Pham sent him a SMS asking for his details as a Justice of the Peace for the purposes of an application for sick leave.[185] Pham sent the relative his details as a Justice of the Peace[186]

[176] PIC Transcript, Hoan Thien Pham, 31 October 2012, pp.228-229; Exhibit 73C
[177] Exhibit 73C
[178] ibid
[179] PIC Transcript, Hoan Thien Pham, 31 October 2012, pp.228-230
[180] Exhibit 36AC
[181] ibid
[182] PIC Transcript, Hoan Thien Pham, 30 October 2012, pp.201-205
[183] PIC Transcript, Hoan Thien Pham, 30 October 2012, p.206; Exhibits 39AC and 40AC
[184] PIC Transcript, Hoan Thien Pham, 30 October 2012, pp.207-208; Exhibits 41AC and 42AC
[185] Exhibit 43AC
[186] PIC Transcript, Hoan Thien Pham, 31 October 2012, pp.211-212; Exhibit 44AC

(iv) On 22 January 2012 Pham was requested by another family member to supply his details as a Justice of the Peace. Pham provided his details as a Justice of the Peace and also provided information about the wording which should be used when a person is signing a document as a Justice of the Peace.[187]

6.142 The Commission is satisfied on the basis of the evidence referred to that Pham breached his obligations as a Justice of the Peace on the four occasions alleged.

(16) SIGNING OF BICH TUYEN KHA'S SIGNATURE AS A JUSTICE OF THE PEACE

6.143 Pham was required for the purposes of the application by Hue Tran Dang for a partner visa in which he was acting as the sponsor, to obtain a certificate that he was not married ("a single status certificate"). An application for a single status certificate is made to the NSW Registry of Births, Deaths and Marriages.

6.144 Pham's application for a single status certificate was required to be supported by certified copies of his passport, credit card and Medicare card. Copies of each of these documents were provided to the Registry. Each copy bore a certificate by Bich Tuyen Kha as a Justice of the Peace that it was a true copy of the original document.[188] All of the purported certificates by Bich Tuyen Kha were dated 19 December 2011.[189] On 19 December 2011 Pham was in Australia but Bich Tuyen Kha was in Vietnam.[190]

6.145 In his evidence before the Commission Pham admitted that the signatures in the certificates on the copy documents purporting to be Bich Tuyen Kha's had been written by him. He claimed that he had signed the certificates *"on behalf"* of Bich Tuyen Kha.[191] However, he accepted that he had not had any right to sign her name, even if she had purported to authorise him to do so.[192]

6.146 The Commission is satisfied on the basis of the evidence referred to that this allegation is established.

SUMMARY

6.147 The Commission is satisfied that allegations (1), (2), (5), (7), (8), (9), (10), (12), (14), (15), (16) made against Pham have been established and that part of allegation (13) made against him has been established. The Commission is satisfied that allegations (1), (2), (3), (4), (5) and (6) made against Bich Tuyen Kha have been established. The Commission is satisfied that allegations (1) and (2) made against Lieu have been established. The Commission is satisfied that the only allegation made against Nguyen has been established and that the only allegation made against Kim Yen Dang has been established.

[187] PIC Transcript, Hoan Thien Pham, 31 October 2012, pp.212-213; Exhibit 45AC
[188] Exhibit 46AC
[189] ibid
[190] Exhibits 53C and 55C
[191] PIC Transcript, Hoan Thien Pham, 31 October 2012, p.215
[192] ibid, p.215

7 FALSE EVIDENCE AT THE COMMISSION'S HEARING

7.1 The Commission considers that knowingly false evidence was given at the public hearing by Pham and by Chau Pham. The Commission does not consider that knowingly false evidence was given at the public hearing by any other witness, including Bich Tuyen Kha.

KNOWINGLY FALSE EVIDENCE BY PHAM

(1) Evidence given by Pham which Pham later in his evidence admitted was false.

(i) Evidence concerning his alleged relationship with Hue Tran Dang

7.2 Pham initially gave evidence asserting that he had a genuine relationship with Hue Tran Dang.[193] He said that he had fallen in love with Hue Tran Dang in 2011 after a breakdown in his relationship with Bich Tuyen Kha. He said that Hue Tran Dang was more pleasing to his family and particularly his mother than Bich Tuyen Kha had been.[194] He denied that the proposed marriage with Hue Tran Dang was a fake marriage.[195] He denied that a relationship between him and Hue Tran Dang had been fabricated in order to deceive DIAC.[196]

7.3 Later in this evidence Pham admitted that he had lied in his earlier evidence about his alleged relationship with Hue Tran Dang.[197] He admitted that he had never had and did not intend to have a genuine relationship with Hue Tran Dang.[198] He admitted that the application to DIAC for a partner visa for Hue Tran Dang and the documents supporting that application contained a number of false statements.[199] The Commission is satisfied that all of the evidence given by Pham referred to in paragraph 7.2 was false and knowingly false.

(ii) Evidence concerning the payment of money in connection with Pham's alleged proposed marriage with Hue Tran Dang and Hue Tran Dang's visa application

7.4 Pham initially gave evidence that no money would change hands or be paid to him in connection with his alleged proposed marriage to Hue Tran Dang.[200]

7.5 After Pham had admitted that the proposed marriage with Hue Tran Dang was a fake, he admitted that he had received money from Kim Yen Dang for airfares but asserted that he had not received any other payment from her in connection with the alleged marriage.[201]

7.6 After recordings of further intercepted telephone conversations had been played to him Pham admitted that he had received $15,000 from Kim Yen Dang and expected to receive around $25,000 to $30,000 in connection with the proposed marriage with Hue Tran Dang.[202] Still later in his evidence Pham admitted that the amount he was to receive in connection with the proposed marriage was $30,000 plus an amount for expenses.[203]

(iii) Evidence concerning Pham's disclosure to Chau Pham of information accessed by him on COPS

193 PIC Transcript, Hoan Thien Pham, 30 October 2012, p.125, p.138 and p.141
194 ibid, p.121 and p.159
195 ibid, p.125, p.138 and p.141
196 ibid, pp.147-150 and p.153
197 ibid, pp.168-169
198 ibid, p.169
199 ibid, pp.183-184 and p.187
200 ibid, p.123, p.127, pp.135-136 and p.160
201 ibid, pp.169-170
202 PIC Transcript, Hoan Thien Pham, 30 October 2012, pp.174-175 & p.187, PIC Transcript, Hoan Thien Pham, 5 November 2012, p.264
203 PIC Transcript, Hoan Thien Pham, 5 November 2012, p.264

7.7 Pham initially gave evidence denying that he had made an unauthorised disclosure of information from COPS about drug activity suspected to be occurring at his brother's home.[204] Later in his evidence he admitted that he had disclosed this information to his brother.[205]

(iv) Evidence about the nature of the marriage between Bich Tuyen Kha and Lieu

7.8 Pham gave evidence that the purported marriage between Lieu and Bich Tuyen Kha was a genuine marriage of love and not a fake marriage.[206] He said that the main bedroom in the Lansvale property was occupied by Bich Tuyen Kha and Lieu.[207] Later in his evidence Pham admitted that the marriage between Bich Tuyen Kha and Lieu was a fake marriage.[208] He admitted that he had described the marriage as a fake one to an associate in a telephone conversation and that he had done so because it was fake to his knowledge.[209]

(2) EVIDENCE GIVEN BY PHAM INCONSISTENT WITH OTHER EVIDENCE WHICH IS ACCEPTED BY THE COMMISSION

7.9 In his evidence Pham made a number of assertions which he did not subsequently admit were untrue but which are inconsistent with other evidence which the Commission accepts.

(i) Evidence about Pham's knowledge of money kept in the room of Tan Dung Kha

7.10 Pham gave evidence that he had never seen any money in Tan Dung Kha's room in the Lansvale property and that he did not know where Tan Dung Kha would have kept any such money.[210] He said that there were numerous wardrobes in Tan Dung Kha's room and that he had never seen any cash in any of those wardrobes.[211]

7.11 This evidence by Pham is inconsistent with the following evidence at the hearing.

7.12 In the earlier of the telephone conversations with Chau Pham on 24 May 2012 Pham referred to Tan Dung Kha bringing *"fifty thousand"* and it being *"in his wardrobe."* In this conversation Pham made the proposal that Chau Pham break and enter the Lansvale property and steal Tan Dung Kha's money. In the conversation he told his brother that Tan Dung Kha's money was in the wardrobe in Tan Dung Kha's room.[212]

7.13 In the later of the conversations on 24 May 2012 Pham described to Chau Pham how he had opened the wardrobe in Tan Dung Kha's room and seen *"one whole plastic bag, piles in fifty dollar notes, six piles."*[213] Pham sought, unavailingly in the opinion of the Commission, to explain what he had said as having been *"my interpretation of my belief. I believed that the cash is there."*[214]

[204] PIC Transcript, Hoan Thien Pham, 29 October 2012, p.99
[205] ibid, pp.101-104
[206] ibid, pp.118-119, p.125, p.172 and p.187
[207] ibid, p.125
[208] PIC Transcript, Hoan Thien Pham, 31 October 2012, pp.231-232
[209] PIC Transcript, Hoan Thien Pham, 31 October 2012, p.231; Exhibit 49AC
[210] PIC Transcript, Hoan Thien Pham, 29 October 2012, p.31
[211] ibid, p.45 and p.58
[212] Exhibit 2 and 3B
[213] Exhibit 142 and 143
[214] PIC Transcript, Hoan Thien Pham, 29 October 2012, p.58

7.14 When officers of the Commission executed a search warrant at the Lansvale property on 30 May 2012, $19,000 in cash was found in two bundles of $50 notes in a plastic bag in the only wardrobe in Tan Dung Kha's room.[215]

(ii) Evidence about Pham's knowledge of whether the money in Tan Dung Kha's room was the proceeds of criminal activity

7.15 Pham gave evidence that he did not have any suspicion that the cash provided to him by Tan Dung Kha was the proceeds of criminal activity.[216]

7.16 This evidence by Pham is inconsistent with the following evidence.

7.17 In one of the telephone conversations with Chau Pham on 24 May 2012 Pham told his brother that Tan Dung Kha *"always play[s] around with fuckin' junkies, with drug dealers."*[217] In one of the telephone conversations Pham told his brother that Tan Dung Kha *"had brought home fifty thousand last night. In cash, you know. That's the money from some junkies, they fuckin' got er, his friends got searched, you know? The police took almost half a million dollars from them",* that *"the guy that gave him the money already got arrested"* and that Tan Dung Kha was *"holding it to pay for legal fees, for the guy in gaol."*[218] Pham told his brother that Tan Dung Kha had given him *"twenty"* to *"put into my bank."*[219]

7.18 On 18 May 2012, only six days before Tan Dung Kha had provided $18,900 in cash to Pham, Tan Dung Kha had himself sought to borrow $2,000 from Pham and Bich Tuyen Kha.[220] It can be inferred that Pham was aware that the substantial amount of cash which was provided to him by Tan Dung Kha had been acquired by Tan Dung Kha within the short period of time between 18 May 2012 and 24 May 2012.

(iii) Evidence about the nature of the payment of $30,000 from Nguyen to Pham

7.19 Pham gave evidence that the payment of $30,000 he had received from Nguyen was a loan he had obtained from Bich Tuyen Kha and *"her husband"* for a friend of his in Vietnam who had a business which was struggling.[221] He denied that Nguyen had agreed to pay the money, because Bich Tuyen Kha was sponsoring Nguyen's nephew Lieu in an application for a partner visa.[222]

7.20 This evidence is inconsistent with the following evidence.

7.21 Bich Tuyen Kha gave evidence that the payment of $30,000 was for her sponsoring Lieu in an application for a partner visa.[223] She said that the payment had been made to Pham, and not to her, because it would look inappropriate and might prejudice the visa application, if the payment went into an account of hers.[224] She said that the payment

[215] Exhibit 87AC and 89
[216] PIC Transcript, Hoan Thien Pham, 29 October 2012, pp.31-32, p.53, pp.66-67; PIC Transcript, Hoan Thien Pham, 5 November 2012, p.269
[217] Exhibits 142 and 143
[218] Exhibits 2 and 3B
[219] ibid
[220] PIC Transcript, Hoan Thien Pham, 5 November 2012, pp.267-268
[221] PIC Transcript, Hoan Thien Pham, 30 October 2012, p.119 and pp.123-125
[222] PIC Transcript, Hoan Thien Pham, 30 October 2012, p.125
[223] PIC Transcript, Bich Tuyen Kha, 31 October 2012, p.243
[224] ibid, p.244

to Pham was a loan but would become the payment of Pham and Bich Tuyen Kha's fee, upon Lieu being granted a permanent visa.[225]

KNOWINGLY FALSE EVIDENCE BY CHAU PHAM

7.22 Chau Pham gave evidence that he believed that the relationship between his brother Pham and Hue Tran Dang was a genuine relationship based on love.[226] Chau Pham gave evidence that he had and his brother were *"very close"* and capable of discussing personal matters with each other.[227]

7.23 After Pham had himself admitted that there was no genuine relationship between himself and Hue Tran Dang, Chau Pham was recalled to give further evidence. In his further evidence Chau Pham continued to maintain that to his knowledge there was a genuine relationship between Pham and Hue Tran Dang.[228]

7.24 The evidence by Chau Pham that he believed that there was a genuine relationship between Pham and Hue Tran Dang is inconsistent with evidence given at the hearing of an intercepted telephone conversation between Pham and Chau Pham. In this conversation Pham told Chau Pham that he was about to fly to Vietnam to *"do some business"* and that he was *"going back there , I'll do a marriage, I'll get money to buy a house."*[229]

7.25 When Chau Pham was questioned about this conversation he said that he recalled the conversation but denied that the evidence he had previously given was false. He asserted that he had thought that in this conversation his brother was *"mucking around"* and not being serious. He claimed that he had first found out that there was no genuine relationship between Pham and Hue Tran Dang when he heard evidence to that effect at the Commission hearing.[230]

7.26 The Commission does not accept that Chau Pham believed that what Pham said in the conversation between them was not seriously intended. The Commission considers that Chau Pham's evidence that he believed that there was a genuine relationship between Pham and Hue Tran Dang was false and knowingly false.

[225] ibid
[226] PIC Transcript, Chau Long Pham, 29 October 2012, pp.84-85
[227] ibid
[228] PIC Transcript, Chau Long Pham, 31 October 2012, pp.236-237
[229] Exhibit 139
[230] PIC Transcript, Chau Long Pham, 31 October 2012, p.236

8 AFFECTED PERSONS

8.1 Sections 97(2), (3) and (4) of the Act provide:

(2) The report must include, in respect of each "affected" person, a statement as to whether or not in all the circumstances the Commission is of the opinion that consideration should be given to the following:

(a) the prosecution of a person for a specified criminal offence,

(b) the taking of action against the person for a specified disciplinary offence,

(c) the taking of action (including the making of an order under section 181D of the *Police 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 Act 1990* against the person as a police officer.

(3) An "affected" person is a person against whom, in the Commission's opinion, substantial allegations have been made in the course of or in connection with the investigation concerned.

(4) Subsection (2) does not limit the kind of statement that a report can contain concerning any such "affected" person and does not prevent a report from containing a statement described in that subsection in respect of any other person.

8.2 In deciding whether the Commission should form the opinion that consideration be given to the prosecution of a person for a criminal offence, it is necessary for the Commission to take into account some of the provisions of s 40 and the provisions of s 41 of the Act.

8.3 Sections 40(2), (3) and (4) of the Act provide:

(2) A witness summoned to attend or appearing before the Commission at a hearing is not excused from answering any question or producing any document or other thing on the ground that the answer or production may incriminate or tend to incriminate the witness, or on any other ground of privilege, or on the ground of a duty of secrecy or other restriction on disclosure, or on any other ground.

(3) An answer made, or document or other thing produced, by a witness at a hearing before the Commission is not (except as otherwise provided in this section) admissible in evidence against the person in any civil or criminal proceedings, but may be used in deciding whether to make an order under section 173 or 181D of the *Police Act 1990* and is admissible in any proceedings under Division 1A or 1C of Part 9 of that Act, an order under section 183A of that Act or any proceedings for the purposes of Division 2A of Part 9 of that Act with respect to an order under section 183A of that Act and in any disciplinary proceedings (including for the purposes of taking disciplinary action under Part 2.7 of the *Public Sector Employment and Management Act 2002)*.

(4) Nothing in this section makes inadmissible:

(a) any answer, document or other thing in proceedings for an offence against this Act or in proceedings for contempt under this Act, or

(b) any answer, document or other thing in any civil or criminal proceedings if the witness does not object to giving the answer or producing the document or other thing irrespective of the provisions of subsection (2), or

(c) any document in any civil proceedings for or in respect of any right or liability conferred or imposed by the document or other thing.

8.4 Section 41 of the Act provides:

> The Commissioner or person presiding at the hearing may declare that all or any classes of answers given by a witness or that all or any classes of documents or other things produced by a witness will be regarded as having been given or produced on objection by the witness, and there is accordingly no need for the witness to make an objection in respect of each such answer, document or other thing.

8.5 All the witnesses at the public hearing and all the witnesses in the private hearings gave their evidence after a declaration had been made under s 41 of the Act.

8.6 In Operation Binda the following persons are "affected" persons as being persons against whom substantial allegations were made in the course of the investigation: Pham, Bich Tuyen Kha, Lieu, Nguyen, Kim Yen Dang, Hue Tran Dang, Tan Dung Kha and Duong.

PHAM

8.7 Pham is an "affected" person because he is a person against whom the substantial allegations listed in paragraph 4.2 of this report were made. Of these allegations the Commission has formed the opinion that allegations (1), (2), (5), (7), (8), (9), (10), (12), (14), (15), (16) have been established and that part of allegation (13) has been established. In the Commission's opinion Pham has engaged in police misconduct in relation to each of the allegations that the Commission has found to be established. The Commission is of the opinion that consideration should be given to the prosecution of Pham for the following criminal offences:

(1) Receiving and dealing with $18,900 in cash

8.8 Section 193B of the Crimes Act 1900 (NSW) provides:

…

(2) A person who deals with proceeds of crime knowing that it is proceeds of crime is guilty of an offence.

(3) A person who deals with proceeds of crime being reckless as to whether it is proceeds of crime is guilty of an offence.

…

8.9 The Commission is of the opinion that consideration should be given to the prosecution of Pham for an offence under s 193B(2) or, alternatively, s 193B(3) of the *Crimes Act 1900* (NSW).

(2) Proposal to Chau Pham for a breaking, entering and stealing

8.10 Although the Commission has found that Pham made a serious proposal that there be a breaking and entering of the Lansvale property and a stealing of money in the possession of Tan Dung Kha, the proposal was immediately rejected by Chau Pham and no breaking and entering actually occurred. In these circumstances, the Commission is not of the opinion that consideration should be given to the prosecution of Pham for a criminal offence.

(5) Participating in an arrangement to obtain a partner visa for Lieu by falsely representing that Lieu and Bich Tuyen Kha were in a relationship

8.11 Section 11.2 of the Criminal Code 1995 (Cth) provides that a person who aids, abets, counsels or procures an offence by another person is taken to have committed that offence and is punishable accordingly. This section applies as an extension of liability of a principal offence and applies to all offences created by Commonwealth statutes, including the Migration Act 1958 (Cth).[231]

8.12 In order to be guilty under this section:

- the person's conduct must have in fact aided, abetted, counselled or procured the commission of the offence by the other person
- the offence must have been committed by the other person

and further, the person must have intended that:

- his or her conduct would aid, abet, counsel or procure the commission of any offence (including its fault elements) of the type the other person committed or
- his or her conduct would aid, abet, counsel or procure the commission of an offence and have been reckless about the commission of the offence (including its fault elements) that the other person in fact committed.

8.13 Section 234 of the Migration Act 1958 (Cth) holds:

> (1) A person shall not, in connexion with the entry, proposed entry or immigration clearance, of a non-citizen (including that person himself or herself) into Australia or with an application for a visa or a further visa permitting a non-citizen (including that person himself or herself) to remain in Australia:
>
> (a) …
>
> (b) make, or cause to be made, to an officer or a person exercising powers or performing functions under this Act a statement that, to the person's knowledge, is false or misleading in a material particular; or
>
> (c) …

[231] "Offence" is defined by the Dictionary in *Criminal Code 1995* (Cth) as meaning "offence against a law of the Commonwealth".

8.14 There is a significant body of evidence adduced before the Commission which would be admissible in a prosecution of Pham to show that Pham aided and abetted Bich Tuyen Kha and Lieu, in connection with Lieu's application for a visa, to make to an immigration officer statements which were knowingly false. Accordingly, the Commission is of the opinion that consideration should be given to the prosecution of Pham for aiding and abetting offences committed by Bich Tuyen Kha and Lieu under s 234(1)(b) of the *Migration Act 1958* (Cth).

8.15 Section 400.6(1) of the Criminal Code 1995 (Cth) provides:

> A person is guilty of an offence if:
>
> (a) the person deals with money or other property; and
>
> (b) either:
>
> (i) the money or property is, and the person believes it to be, proceeds of crime; or
>
> (ii) the person intends that the money or property will become an instrument of crime; and
>
> (c) at the time of the dealing, the value of the money and other property is $10,000 or more.

8.16 Pham received from Nguyen and dealt with the sum of $30,000 in connection with the application for a visa for Lieu. The Commission is of the opinion that consideration should be given to the prosecution of Pham for an offence under s 400.6(1) of the *Criminal Code 1995* (Cth).

(7) Participating in the obtaining of a Family Assistance payment by false representations

8.17 The admissions which were made by Pham of knowledge of the making of this application by Bich Tuyen Kha and Lieu were made by him under objection and hence evidence of the admissions would not be admissible in a prosecution of Pham for a criminal offence. The Commission is of the opinion that there is insufficient other evidence which would be admissible in a prosecution of Pham, to establish criminal liability. Accordingly, the Commission is not of the opinion that consideration should be given to the prosecution of Pham for a criminal offence.

(8) Participating in the obtaining of a rebate for childcare fees by false representations

8.18 For similar reasons to those given in paragraph 8.17, the Commission is not of the opinion that consideration should be given to the prosecution of Pham for a criminal offence.

(9) Participating in the making of an application by Bich Tuyen Kha for a First Home Owners grant and a refund of stamp duty, in which Bich Tuyen Kha made a false representation

8.19 Any offence for which the Commission could recommend that consideration be given

to the prosecution of Pham in relation to this allegation would be a summary offence. Section 179 of the Criminal Procedure Act 1986 (NSW) provides that proceedings for a summary offence must be commenced not later than six months from when the offence was alleged to have been committed. As any offence was committed more than six months ago no proceedings could now be brought. Accordingly, the Commission is not of the opinion that consideration should be given to the prosecution of Pham for any criminal offence in relation to this allegation.

(10) Participating in an arrangement to obtain a partner visa for Hue Tran Dang by falsely representing that Pham and Hue Tran Dang were in a relationship

8.20 The terms of s 234(1)(b) of the *Migration Act 1958* (Cth) are set out in paragraph 8.13 above.

8.21 Section 243(3) of the *Migration Act 1958* (Cth) provides:

> A person must not nominate an applicant for a stay visa on the basis of the applicant satisfying a criterion for the visa because of being the spouse or de facto partner of the person if, at the time of the application, the person does not intend to live permanently with the applicant in a married relationship (within the meaning of subsection 5F(2)) or de facto relationship (within the meaning of subsection 5CB(2)), as appropriate.

8.22 The Commission is of the opinion that consideration should be given to the prosecution of Pham for an offence under s 234(1)(b), or alternatively, s 243(3) of the *Migration Act 1958* (Cth).

(12) Misconduct in relation to the NSWPF's Computerised Operational Policing System

8.23 The common law offence of misconduct in public office has the following elements:

(i) a public official

(ii) in the course of or connected to his or her public office

(iii) wilfully misconducts him or herself by act or omission, for example, by wilfully neglecting or failing to perform his or her duty,

(iv) without reasonable excuse or justification, and

(v) where such misconduct is serious and meriting criminal punishment having regard to the responsibilities of the office and the officeholder, the importance of the public objects which they serve and the nature and extent of the departure from those objects.[232]

8.24 The Commission is of the opinion that consideration should be given to the prosecution of Pham for the common law offence of misconduct in public office.

(13) Unauthorised possession of items of police property

8.25 Section 7 of the Weapons Prohibition Act 1998 (NSW) provides:

[232] *R v Quach* (2010) 201 A Crim R 522 at 535

(1) A person must not possess or use a prohibited weapon unless the person is authorised to do so by a permit.

(2) Without limiting the operation of subsection (1), a person who is the holder of a permit to possess or use a prohibited weapon is guilty of an offence under this section if the person:

(a) possesses or uses the prohibited weapon for any purpose otherwise than in connection with the purpose established by the person as being the genuine reason for possessing or using the weapon, or

(b) contravenes any condition of the permit.

8.26 Schedule 1 of the *Weapons Prohibition Act 1998* (NSW) (read with s 4) provides that "extendable or telescopic batons" are "prohibited weapons" within the meaning of that Act.

8.27 The Commission is of the opinion that consideration should be given to the prosecution of Pham for an offence under s 7 of the *Weapons Prohibition Act 1998* (NSW).

(14) Attempting to use information obtained about another person's credit card

8.28 Section 142.2(1) of the Criminal Code 1995 (Cth) provides:

(1) A Commonwealth public official is guilty of an offence if:

(a) the official:

…

(iii) uses any information that the official has obtained in the official's capacity as a Commonwealth public official; and

(b) the official does so with the intention of:

(i) dishonestly obtaining a benefit for himself or herself or for another person; or

(ii) dishonestly causing a detriment to another person.

8.29 Section 178BA(1) of the Crimes Act 1900 (NSW), as in force in November 2009, provided:

Whosoever by any deception dishonestly obtains for himself or herself or another person any money or valuable thing or any financial advantage of any kind whatsoever shall be liable to imprisonment for 5 years

8.30 The Commission is of the opinion that consideration should be given to the prosecution of Pham for an offence under s 142.2(1) of the *Criminal Code 1995* (Cth) or, alternatively, for an attempt to commit an offence under s 178BA of the *Crimes Act 1900* (NSW).

(15) Breaching his obligations as a Justice of the Peace

8.31 The Commission is of the opinion that this allegation is established but is not of the opinion that consideration should be given to the prosecution of Pham for a specified criminal offence.

(16) Signing of Bich Tuyen Kha's signature as a Justice of the Peace

8.32 Section 254 of the Crimes Act 1900 (NSW) provides:

> A person who uses a false document, knowing that it is false, with the intention of:
>
> (a) inducing some person to accept it as genuine, and
>
> (b) because of its being accepted as genuine:
>
> …
>
> (iii) influencing the exercise of a public duty,
>
> is guilty of an offence.

8.33 Section 250 of that Act states that a document is false where, inter alia, the document purports "to have been made in the form in which it is made by a person who did not in fact make it in that form."

8.34 The Commission is of the opinion that consideration should be given to the prosecution of Pham for an offence under s 254 of the *Crimes Act 1900* (NSW).

False evidence by Pham

8.35 Section 107(1) of the Act provides:

> A person who, at a hearing before the Commission, gives evidence that is, to the knowledge of the person, false or misleading in a material particular is guilty of an indictable offence.

8.36 The Commission is of the opinion that consideration should be given to the prosecution of Pham for offences of knowingly giving the items of false evidence referred to in Chapter 7 of this report.

Recommendations under ss 97(2) (c) and (d) of the Act

8.37 The police misconduct in which the Commission has found Pham engaged would have been sufficient for the Commission to form the opinion that consideration should be given to the taking of action under paragraphs (c) or (d) of subsection (2) of section 97 of the Act. However, after the conclusion of the public hearing Pham had tendered his resignation as a police officer and this resignation was accepted by the NSWPF. Consequently, paragraphs (c) and (d) of s 97(2) can no longer apply to Pham.

Other recommendations

8.38 Section 9(2) of the *Justices of the Peace Act 2002* (NSW) provides that, on the recommendation of the Minister (who in this case is the Attorney-General), the Governor may remove a Justice of the Peace from office. Grounds on which such a removal may be made are set out in s 9(3) and include where a person no longer satisfies the criteria for the appointment of a Justice of the Peace or where a person has failed to carry out properly their functions as a Justice of the Peace.[233]

[233] See *Justice of the Peace Regulation 2009* cl 7 read with s 9(3) of the Justices of the Peace Act 2002; Note the criteria for appointment of a Justice of a Peace are set out by *Justice of the Peace Regulation 2009* cl 4 and include that a "person must be of good character."

8.39 The Commission recommends that consideration be given by the Attorney-General to recommending, pursuant to s 9(2) of the *Justices of the Peace Act 2002* (NSW), that Pham be removed from office as a Justice of the Peace in New South Wales.

BICH TUYEN KHA

8.40 Bich Tuyen Kha is an "affected" person because she is a person against whom the substantial allegations listed in paragraph 4.3 of this report were made. Of these allegations the Commission has formed the opinion that allegations (1), (2), (3), (4), (5) and (6) have been established. The Commission is of the opinion that consideration should be given to the prosecution of Bich Tuyen Kha for the following criminal offences:

(1) Participating in an arrangement to obtain a partner visa for Lieu by falsely representing that Lieu and Bich Tuyen Kha were in a relationship

8.41 The terms of ss 234(1)(b) and 243(3) of the *Migration Act 1958* (Cth) are set out above in paragraphs 8.13 and 8.21 respectively.

8.42 The Commission is of the opinion that consideration should be given to the prosecution of Bich Tuyen Kha for an offence under s 234(1)(b) or, alternatively, s 243(3) of the *Migration Act 1958* (Cth).

8.43 Part of Lieu's application was made by way of a statutory declaration by Bich Tuyen Kha under the *Statutory Declarations Act 1959* (Cth).

8.44 Section 11 of the *Statutory Declarations Act 1959* (Cth) provides:

> A person must not intentionally make a false statement in a statutory declaration.

8.45 The Commission is also of the opinion that consideration should be given to the prosecution of Bich Tuyen Kha for an offence under s 11 of the *Statutory Declarations Act 1959* (Cth).

(2) Participating in obtaining a birth certificate for BN1 falsely showing Lieu as being BN1's father

8.46 Section 336(1) of the *Crimes Act 1900* (NSW) provides:

> A person who for an improper purpose makes a statement for the making of an entry in any register kept by a public officer for a public purpose, knowing the statement to be false or misleading in a material particular, is liable to imprisonment for 5 years.

8.47 The Commission is of the opinion that consideration should be given to the prosecution of Bich Tuyen Kha for an offence under s 336(1) of the *Crimes Act 1900* (NSW).

8.48 The Commission also recommends that consideration be given by the Registrar of Births, Deaths and Marriages to rectifying the Registry's records relating to the birth of BN1.

(3) Participating in the obtaining of a Family Assistance payment by false representations

8.49 Section 135.4(5) of the *Criminal Code 1995* (Cth) holds:

A person is guilty of an offence if:

(a) the person conspires with another person to dishonestly cause a loss, or to dishonestly cause a risk of loss, to a third person; and

(b) the first-mentioned person knows or believes that the loss will occur or that there is a substantial risk of the loss occurring; and

(c) the third person is a Commonwealth entity.

8.50 The Commission is of the opinion that consideration should be given to the prosecution of Bich Tuyen Kha for an offence under s 135.4(5) of the *Criminal Code 1995* (Cth).

(4) Participating in the obtaining of a rebate for childcare fees by false representations

8.51 The admissions which were made by Bich Tuyen Kha of her making of this application were made by her under objection and hence evidence of the admissions would not be admissible in a prosecution of Bich Tuyen Kha for a criminal offence. The Commission is of the opinion that there is insufficient other evidence, which would be admissible in a prosecution of Bich Tuyen Kha, to establish criminal liability. Accordingly, the Commission is not of the opinion that consideration should be given to the prosecution of Bich Tuyen Kha for a criminal offence.

(5) Making an application for First Home Owners grant and a refund of stamp duty on the purchase by her of the Lansvale property, falsely representing that Lieu was her partner

8.52 Any offence for which the Commission could recommend that consideration be given to the prosecution of Bich Tuyen Kha in relation to this allegation would be a summary offence. Section 179 of the *Criminal Procedure Act 1986* (NSW) provides that proceedings for a summary offence must be commenced not later than six months from when the offence was alleged to have been committed. As any offence was committed more than six months ago no proceedings could now be brought. Accordingly, the Commission is not of the opinion that consideration should be given to the prosecution of Bich Tuyen Kha for any criminal offence in relation to this allegation.

(6) Participating in an arrangement to obtain a partner visa for Hue Tran Dang by falsely representing that Pham and Hue Tran Dang were in a relationship

8.53 The terms of s 234(1)(b) of the *Migration Act 1958* (Cth) are set out in paragraph 8.13 above. The terms of s 11.2 of the Criminal Code 1995 (Cth) are set out in paragraph 8.11 above.

8.54 Section 240(1) of the Migration Act 1958 (Cth) provides:

A person must not arrange a marriage between other persons with the intention of assisting one of those other persons to get a stay visa by satisfying a criterion for the visa because of the marriage.

8.55 The Commission is of the opinion that consideration should be given to the prosecution of Bich Tuyen Kha for an offence of aiding and abetting an offence committed by Pham under s 234(1)(b) of the *Migration Act 1958* (Cth) or, alternatively, an offence under s 240(1) of that Act.

8.56 Section 400.7(1) of the *Criminal Code 1995* (Cth) provides:

A person is guilty of an offence if:

(a) the person deals with money or other property; and

(b) either:

(i) the money or property is, and the person believes it to be, proceeds of crime; or

(ii) the person intends that the money or property will become an instrument of crime; and

(c) at the time of the dealing, the value of the money and other property is $1,000 or more.

8.57 The Commission is of the opinion that consideration should be given to the prosecution of Bich Tuyen Kha for an offence under s 400.7(1) of the *Criminal Code 1995* (Cth).

OTHER RECOMMENDATIONS

8.58 The Commission recommends that consideration be given by the Attorney-General to recommending, pursuant to s 9(2) of the *Justices of the Peace Act 2002* (NSW), that Bich Tuyen Kha be removed from office as a Justice of the Peace in New South Wales.

LIEU

8.59 Lieu is an "affected" person as being a person against whom the substantial allegations listed in paragraph 4.5 of this report were made. The Commission has formed the opinion that both allegations (1) and (2) have been established. The Commission is of the opinion that consideration should be given to the prosecution of Lieu for the following criminal offences:

(1) Participating in an arrangement to obtain a partner visa for Lieu by falsely representing that Lieu and Bich Tuyen Kha were in a relationship

8.60 The terms of ss 234(1)(b) and 243(3) of the Migration Act 1958 (Cth) are set out above in paragraphs 8.13 and 8.21 respectively.

8.61 The Commission is of the opinion that consideration should be given to the prosecution of Lieu for an offence under s 234(1)(b) or, alternatively, s 243(3) of the *Migration Act 1958* (Cth).

8.62 Part of Lieu's application was made by way of a statutory declaration by him under the *Statutory Declarations Act 1959* (Cth).

8.63 The terms of s 11 of the *Statutory Declarations Act 1959* (Cth) are set out in paragraph 8.44 above.

8.64 The Commission is also of the opinion that consideration should be given to the prosecution of Lieu for an offence under s 11 of the *Statutory Declarations Act 1959* (Cth)

(2) Participating in obtaining a birth certificate for BN1 falsely showing Lieu as being BN1's father

8.65 The terms of s 336(1) of the *Crimes Act 1900* (NSW) are set out in paragraph 8.46 above.

8.66 The Commission is of the opinion that consideration should be given to the prosecution of Lieu for an offence under s 336(1) of the *Crimes Act 1900* (NSW).

NGUYEN

8.67 Nguyen is an "affected" person as being a person against whom the substantial allegation set out in paragraph 4.7 of this report was made. The Commission has formed the opinion that that allegation has been established. The Commission is of the opinion that consideration should be given to the prosecution of Nguyen for an offence against s 400.6(1) of the *Criminal Code 1995* (Cth).

KIM YEN DANG

8.68 Kim Yen Dang is an "affected" person as being a person against whom the substantial allegation set out in paragraph 4.9 of this report was made. The Commission has formed the opinion that that allegation has been established. The Commission is of the opinion that consideration should be given to the prosecution of Kim Yen Dang for the aiding and abetting of offences committed by Pham under s 234(1)(b) of the *Migration Act 1958* (Cth) or, alternatively, an offence under s 240(1) of that Act.

HUE TRAN DANG

8.69 Hue Tran Dang is an "affected" person as being a person against whom the substantial allegation set out in paragraph 4.11 of this report was made. As already noted, at all relevant times Hue Tran Dang resided in Vietnam. She was not called to give evidence before the Commission and she was not served with the submissions of Counsel Assisting. The Commission is not of the opinion that consideration should be given to the prosecution of Hue Tran Dang for a specified criminal offence.

DUONG

8.70 Duong is an "affected" person being a person against whom the substantial allegation set out in paragraph 4.13 of this report was made. As already noted the Commission is of the opinion that the allegation against Duong was not established. Accordingly, the Commission is not of the opinion that consideration should be given to the prosecution of Duong for a specified criminal offence.

TAN DUNG KHA

8.71 Tan Dung Kha is an "affected" person being a person against whom the substantial allegation set out in paragraph 4.15 of this report was made.

8.72 The admissible evidence against Pham in relation to this allegation is not all admissible against Tan Dung Kha. The Commission is of the opinion that there is insufficient other evidence, which would be admissible in a prosecution of Tan Dung Kha, to establish criminal liability. Accordingly, the Commission is not of the opinion that consideration should be given to the prosecution of Tan Dung Kha for a specified criminal offence.

CHAU PHAM

8.73 Chau Pham is not an "affected" person because he is not a person against whom substantial allegations were made in the course of the investigation. However, he gave evidence at a hearing of the Commission and the Commission is of the opinion that the evidence given by Chau Pham referred to in paragraph 7.26 was knowingly false in a material particular and that consideration should be given to the prosecution of Chau Pham for an offence under s 107(1) of the Act.

APPENDIX 1 - THE ROLE AND FUNCTIONS OF THE POLICE INTEGRITY COMMISSION

The Commission was established under the *Police Integrity Commission Act 1996* ('the Act') on the recommendation of the Royal Commission into the New South Wales Police Service. The principal functions of the Commission, at the time of its commencement, were set out in s 13(1) of the Act, as follows:

> (a) to prevent police misconduct,
>
> (b) to detect or investigate, or manage other agencies in the detection or investigation of, police misconduct,
>
> (c) (repealed)
>
> (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.

In January 2007 the Act was amended to provide for a system of investigation, referral and oversight of complaints against certain members of the NSW Police Force who are not police officers. Sections 5A and 13A were inserted into the Act. Section 5A defines corrupt conduct of administrative officers as any conduct of an administrative officer that is corrupt conduct for the purposes of the *Independent Commission Against Corruption Act 1988*. Section 13A sets out the functions of the Commission in relation to administrative officers as follows:

> (a) to prevent corrupt conduct of administrative officers,
>
> (b) to detect or investigate, or oversee other agencies in the detection or investigation of, corrupt conduct of administrative officers.

As far as practicable, the Commission is required to turn its attention principally to serious corrupt conduct of administrative officers (s 13A(2)).

In July 2008 the Act was further amended to extend the Commission's jurisdiction to include the detection, investigation and prevention of misconduct of officers of the New South Wales Crime Commission. Sections 5B and 13B were inserted into the Act.

In 2012 further amendments were made to the Act which included a consolidation of the Commission's various functions under a single heading, and the introduction of the umbrella term *'officer misconduct'*. Accordingly s 13 was amended to read:

> **13 Principal functions**
>
> (1) The principal functions of the Commission are as follows:
>
> (a) to prevent officer misconduct,
>
> (b) to detect or investigate, or manage or oversee other agencies in the detection or investigation of, officer misconduct,

(c) 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) The Commission is, as far as practicable, required to turn its attention principally to serious officer misconduct.

(3) The reference in this section to managing other agencies in the detection or investigation of officer misconduct is a reference to the provision by the Commission of detailed guidance in the planning and execution of such detection or investigation.

(4) The reference in this section to overseeing other agencies in the detection or investigation of officer misconduct is a reference to the provision by the Commission of a lower level of such guidance, relying rather on a system of guidelines prepared by it and progress reports and final reports furnished to it.

(5) In managing or overseeing other agencies for the purposes of this section, the Commission does not have a power of control or direction, and any such management or oversight is to be achieved by agreement. However, it is the duty of members of the NSW Police Force and Crime Commission officers to co-operate with the Commission in the exercise of its management and oversight functions and any other functions of the Commission.

(6) However, nothing in subsection (2), (3), (4) or (5):

(a) affects the capacity of the Commission to exercise any of the functions referred to in subsection (1), or

(b) provides a ground for any appeal or other legal or administrative challenge to the exercise by the Commission of any of those functions.

Sections 13A – 13C were repealed.

"Officer misconduct" is defined in the Act as follows:

> *officer misconduct* means police misconduct, corrupt conduct of an administrative officer or misconduct of a Crime Commission officer.

INVESTIGATIONS

In matters where the Commission determines to carry out 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 acquire information. For example, the Commission may:

- require public officials and public authorities to produce statements of information (s 25)
- require any person (whether or not a public official or public authority) to produce documents or other things (s 26)
- enter public premises (s 29)
- obtain search warrants (s 45)
- obtain warrants under the *Telecommunications (Interception and Access) Act 1979*
- obtain warrants under the *Surveillance Devices Act 2007*
- require persons to attend and give evidence before a hearing of the Commission, either in public or in private (s 38).

REPORTS TO PARLIAMENT

WHEN DOES THE COMMISSION SUBMIT A REPORT TO PARLIAMENT REGARDING AN INVESTIGATION?

In circumstances where the Commission has conducted a public hearing for the purposes of an investigation, the Commission must prepare a report to Parliament in respect of the matter to which the public hearing related (s 96(2)). The Commission may also prepare a report to Parliament in relation to any other matter that has been, or is, the subject of an investigation (s 96(1)). A report to Parliament 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 (s 96(3), (4) and (5)).

COMPONENTS OF A REPORT TO PARLIAMENT REGARDING AN INVESTIGATION

A report to Parliament in relation to an investigation will generally contain a number of components. Under s 97(1) of the Act the Commission is authorised to include statements as to any of its assessments, opinions and recommendations, and the reasons for any of its assessments, opinions and recommendations. The Commission must then, in respect of each "affected" person, make a statement as to whether or not consideration should or should not be given to the prosecution of persons (including police officers) for criminal or disciplinary offences and, in the case of police officers, certain other forms of disciplinary action (s 97(2)). An "affected" person is a person "against whom, in the Commission's opinion, substantial allegations have been made in the course of or in connection with the investigation concerned" (s 97(3)).

THE COMMISSION'S APPROACH TO THE ASSESSMENT OF INFORMATION AND EVIDENCE

In forming the assessments, opinions and recommendations referred to above, 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 (s 16(2)(a)). The Commission

may form opinions as to whether police misconduct or other misconduct, misconduct of a Crime Commission officer or corrupt conduct of an administrative officer may have occurred, is or may be occurring, is or may be about to occur, or is likely to occur (s 16(1)(a)). However it is important to bear in mind that the Commission is an investigative agency, it is not a court or tribunal in the sense that it may determine whether a person has committed a criminal or disciplinary offence.

Accordingly the Act deems permissible opinions concerning police misconduct or other misconduct, misconduct of a Crime Commission officer or corrupt conduct of an administrative officer not to be findings or opinions that the person is guilty of or has committed, or is committing or is about to commit a criminal offence (s 16(3)). That said, the Commission recognises that such an opinion may in some circumstances take on the appearance of a finding of a court or tribunal. The Commission's approach is, as far as possible, to avoid the expression of opinions that may be characterised as findings by a court.

The standard of proof applied by the Commission to the formation of an opinion as to whether a person has engaged in police misconduct or other misconduct, misconduct of a Crime Commission officer or corrupt conduct of an administrative officer is the balance of probabilities. Such an opinion will be reached having regard 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.

RECOMMENDATIONS AND OPINIONS THAT CONSIDERATION BE GIVEN TO THE PROSECUTION OF A PERSON FOR A CRIMINAL OR DISCIPLINARY OFFENCE

If, in the Commission's opinion, the available evidence is sufficient to establish a prima facie case in respect of a criminal or disciplinary offence then, except in one very limited circumstance discussed below, it is the Commission's approach to recommend that consideration should be given to the prosecution of a person for a specified criminal or disciplinary offence.[234] Such a recommendation will be made to the relevant prosecutorial authority, for example, the New South Wales Director of Public Prosecutions. The Commission will not have regard to considerations, such as whether there is a reasonable prospect of conviction, or public policy considerations when deciding whether to make such a recommendation. These, and other discretionary considerations, are appropriately matters for the relevant prosecutorial authority. That said, the Commission may express opinions as to the veracity of evidence received from individual witnesses.

The circumstances in which the Commission may, in the exercise of its discretion, decline to furnish or defer furnishing a brief of evidence to the relevant prosecutorial authority are:

- where it is considered that to do so is likely to be counterproductive to the Commission's pursuit of its principal statutory functions; or
- where the relevant person has already been considered for or has been prosecuted in relation to the same, or substantially the same, subject matter and evidence, and it would be unnecessary or duplicitous for the Commission to make a recommendation that consideration should be given to additional prosecutions.

[234] The power of the Commissioner of Police to refer a departmental charge against a police officer for hearing by the Police Tribunal was repealed on 8 March 1999. 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" (s 16(1)(b), 97(2)(b)) have no effective application to police officers. This is so even for police misconduct that occurred before this date. Those powers and obligations may however have application to other public officials.

STATEMENTS REGARDING *"AFFECTED PERSONS"*

Section 97(2) of the Act requires that the report must include, in respect of each "affected" person, a statement as to whether or not in all the circumstances the Commission is of the opinion that consideration should be given to the following:

(a) the prosecution of a person for a specified criminal offence

(b) the taking of action against the person for a specified disciplinary offence

(c) the taking of action (including the making of an order under s 181D of the *Police Act 1990*) against the person as a police officer on specified grounds, with a view to dismissing, dispensing with the services or otherwise terminating the services of the police officer

(d) the taking of reviewable action within the meaning of s 173 of the *Police Act 1990* against the person as a police officer.

OTHER TYPES OF RECOMMENDATIONS AND OPINIONS

If the Commission considers it appropriate in the circumstances, a report to Parliament may also include recommendations for the taking of other action. Such recommendations may, for example, relate to the need for law reform or for changes to policies and procedures affecting the way in which police, Crime Commission officers, or other persons carry out their respective duties and responsibilities.

APPENDIX 2 - LIST OF WITNESSES

Witness	Date of Evidence
Hoan Thien Pham	29 October 2012 30 October 2012 31 October 2012 5 November 2012
Chau Long Pham	29 October 2012 31 October 2012
Tan Dung Kha	30 October 2012*
Bich Tuyen Kha	31 October 2012+
Van Thanh Nguyen	31 October 2012
Hoang Thi Lieu	31 October 2012
Kim Yen Dang	5 November 2012

* Private hearing

+Both public and private hearing

Operation Binda
Report to Parliament | June 2013

ISBN 1 74003 172 5

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