REPORT TO PARLIAMENT

OPERATION FLORIDA

VOLUME 2



REPORT TO PARLIAMENT OPERATION FLORIDA
JUNE 2004

ISBN 1 74003 128 8 (set)
1 74003 129 6 (v. 1)
1 74003 130 X (v. 2)
© Police Integrity Commission 2004

TABLE OF CONTENTS

VOLUME 1

Executive Summary i
- Background to Florida i
- The Public Hearings i
- The Evidence ii
  - Northern Beaches Segment ii
  - Guns Segment vi
  - Let's Dance Segment viii
  - Letters of Assistance Segment ix
  - Newport Segment x
  - Magnum Segment xi
  - King Segment xii
  - O'Toole Segment xiv
- Recommendations in Relation to Procedural Matters xiv
  - The Execution of Search Warrants xv
  - Supervision and Management xv
    - Duty Officers xv
    - Command Management Framework xv
  - Letters of Assistance xvi
  - Handling and Storage of Exhibits xvi
  - The Post-Royal Commission Era xvi

Glossary xvii

1. Introduction 1
- Background 2
- This Report 4

2. Northern Beaches Segment 5
- Introduction 7
- The Police Witnesses 7
  - Shaun Andrew Davidson 7
  - David Marshall Hill 8
  - Matthew John Jasper 9
  - Mark William Messenger 9
  - David Phillip Patison 9
  - Raymond John Peattie 10
- The Searches 10
  - Search of L4's Premises, 12 April 2000 11
  - Search of M1's Premises, 3 May 2000 11
  - First Search of Benbow's Premises, 11 May 2000 12
  - Search of F2's Premises, 18 May 2000 13
  - Search of G2's Premises, 23 May 2000 15
  - Second Search of Benbow's Premises, 24 August 2000 16
  - Search of B4's Premises, 18 September 2000 17
  - Search of S1's Premises, 21 September 2000 18
  - Search of M3's Premises, 9 October 2000 20

Search of B6's Premises, 15 December 2000 21
Integrity Tests 22
Integrity Test, Search at Manly, 15 June 2000 22
Integrity Test, Search at Collaroy, 29 June 2000 24
Integrity Test, DVD Players 26
Integrity Test, Meeting at Jacka Park, Harbord 27
Integrity Test, Meeting at Manly Pool Car Park 28
Vincent Caccamo 29
Introduction to Benbow 33
Other Corrupt Police 33
Other Dealers 34
R1 34
Martin Green 40
Relationship between Patison and Green 40
Benbow's Arrest and His Introduction to Green 40
Proposed Payment to Patison to Discontinue the Goods in Custody Charge 42
A "Totally Off The Record" Conversation 43
Taxation Issues 44
Obtaining Instructions from Benbow as to Source of Cash 44
How Much Money Patison and Benbow would Each Receive 45
The Approach to Patison 45
Telephone Conversation and Conference, 5 December 2000 46
Formal Representations to Court & Legal Services, NSW Police 48
Assessment of Green's Credit 49
Evidence of Patison 49
Other Incidents of Corruption 50
Patison 50
H1 - Patison Duty Book Entry for 13 January 1987 50
S6 and W5 - Falsified Records of Interview 51
D6 – 15 August 1990 51
C3 - 2 August, 1990 51
Search - S5 - 24 March 1994 51
M10 - Payments - "Green Lighting" 52
V3 - 13 August 1994 52
Search – Concord / Strathfield – 28 March 1995 52
Selling Drugs 53
Payment for Bail 53
Search - M9 - 13 June 1993 53
Search - S4 - 7 December 1993 53
Load Up - K4 53
Patison's Transfer to Manly 54
Search - M8 / N4 - 22 November 1999 54
False Information to Obtain Search Warrants 54
Jasper 55
Search - M8 / N4 - 22 November 1999 55
G2 - Subsequent Search 55
Search - B9 - Wyuna Avenue, Harbord - 17 July 2000 56
Search - North Narrabeen - 16 August 2000 56
Search - French's Forest - 19 September 2000 56
G3 and G4 - Visit to Frenchs Forest 57
Applications for Search Warrants - False Information 57
N2 - Application for Search Warrant - 18 September 2000 57
G5 - Application for Search Warrant - 30 October 2000 57
False Statements and Statements of Facts 57
Peattie 58
S3 58
Mischievous Complaint / Phantom Telephone Call 58
False Sick Leave / Hurt on Duty Claim 59
Corrupt Conduct - 21 Division 60
Verballing and False Statements 60

District Drug Unit - Manly and Collaroy - 1989-1991 61
Complaints History 61
Manly / Davidson LAC Corruption Prevention Plan and Survey 61
Police Vehicle Petrol Cards 61
Search Warrants - Standard Operating Procedures 61
Assessment Centre - Police Promotional System 62
Messenger 62
Controlled Operation - 16 August 2000 62
Sharing Informant's Rewards 63
Related Matters 63
Conduct of Police Officers During Searches 63
Supervision 64
Management 71
General Observations 73
Affected Persons 74
Luke Michael Benbow 75
Vincent Caccamo 75
Shaun Andrew Davidson 76
Martin Geoffrey Green 77
David Marshall Hill 78
Matthew John Jasper 79
Mark William Messenger 80
David Phillip Patison 81
Raymond John Peattie 83

3. Guns Segment 85
Introduction 87
The Witnesses 90
Kim Dowding 90
Peter John Ehsman 91
F7 91
Glenn Wayne Kendall 91
James Justin King 92
M5 92
David Patrick Minehan 92
N1 92
Dennis John O'Toole (Miles) 93
Dennis Peter O'Toole (Doodles) 93
Ronald Bruce Smith 93
Greig Robert Vicary 93
Gary John Williams 94
The Dumping of Weapons 94
N1 94
F7 95
M5 97
Kim Dowding 98
Listening Device Conversation, 29 January 2001, M5 & Dowding 99
Listening Device Conversation, 13 February 2001, M5 & Dowding 100
Listening Device Conversation, 18 April 2000, M5, Dowding, F7 & N1 101
Listening Device Conversation, 2 March 2001, M5 & Dowding 102
Ronald Bruce Smith 103
Listening Device Conversation, 29 January 2001, M5 & Smith 104
Listening Device Conversation, 5 February 2001, M5 & Smith 105
Listening Device Conversation, 8 February 2001, M5 & Smith 105
Listening Device Conversation, 14 March 2001, M5 & Smith 105
James Justin King 106
Listening Device Conversation, 4 June 1999, M5 & King 107

Listening Device Conversation, 25 June 1999, M5 & King 107
Listening Device Conversation, 7 February 2001, M5, O'Toole & King 108
Dennis Peter O'Toole 108
Listening Device Conversation, 7 February 2001, M5, O'Toole & King 109
Listening Device Conversation, 18 May 2001, M5 & O'Toole 109
Assessment 110
"Wogs Out of Work" Operation - P2 111
P2 112
N1 113
M5 114
Kim Dowding 114
Listening Device Conversation, 19 February 1999, M5 & Dowding 114
Listening Device Conversation, 16 December 1999, M5, N1, King, Dowding 115
Listening Device Conversation, 7 February 2001, M5, N1, O'Toole, Dowding 115
Glenn Wayne Kendall 116
James Justin King 116
Gary John Williams 117
Dennis Peter O'Toole 117
Listening Device Conversation, 7 February 2001, M5, N1, O'Toole, Dowding 117
Graeme Ronald Jamieson 118
Assessment 119
"Wogs Out of Work" Operation - M11 120
M11 120
M5 121
Greig Robert Vicary 123
Dennis John O'Toole 124
Dennis Peter O'Toole 125
Listening Device Conversation, 15 February 2000, M5 & N1 125
Assessment 126
Hawkesbury River Escapee - Arrest and Charging of A2 126
M5 127
F7 128
Kim Dowding 129
Listening Device Conversation, 31 October 2000, M5, N1 & F7 129
Peter John Ehsman 129
James Justin King 131
Dennis Peter O'Toole 131
Additional Material 131
Listening Device Conversation, M5, N1 And F7, 31 October 2000 131
Assessment 131
Affected Persons 132
Kim Dowding 133
"Wogs Out of Work" Operation - P2 134
Hawkesbury River Escapee – Arrest and Charging of A2 135
Peter John Ehsman 136
F7 137
Glenn Wayne Kendall 138
James Justin King 139
M5 140
"Wogs Out of Work" Operation - M11 140
Hawkesbury River Escapee - Arrest and Charging of A2 141
N1 141
Dennis Peter O'Toole 142
"Wogs Out of Work" Operation - P2 144
"Wogs Out of Work" Operation - M11 144
Ronald Bruce Smith 144
Greig Robert Vicary 145

4. Let's Dance Segment 147
Introduction 148
The Witnesses 149
The Events of 4 February 1992 150
The Events of 5 and 6 February 1992 160
Arrest of A1 and Execution of Search Warrant – Police Account 161
Arrest of A1 and Execution of Search Warrant – Civilian Account 163
Events at Manly Police Station on 5 and 6 February 1992 164
The Listening Device Material 168
The Conversation on 15 February 2000 169
The Conversation on 18 April 2000 172
The Conversation on 31 October 2000 175
The Conversation on 16 May 2001 176
The Evidence of N1 and F7 181
N1 181
F7 184
Affected Persons 187
Miles Bradley Adams 189
Stephen Anthony Bridges 189
Vivienne Alexa Crawford 190
F7 191
Howard Robert Gumley 192
Michael Arthur Hagan 193
Wayne Hollis 193
Paul Hulme 194
Glenn Wayne Kendall 195
James Justin King 196
Robert John Monk 197
N1 198
Ian Bruce Nicholson 200
Dennis Peter O'Toole 200
Ronald Bruce Smith 202
Stephen Anthony St John 203

5. Letters of Assistance Segment 205
Introduction 206
The Witnesses 206
Michael Scott Kempnich 207
Guy John Wilding 207
The Allegations 207
The Arrest of P4 on 28 June 1991 208
P4 Sentenced for the Offence of Supply Prohibited Drug 211
The Assistance Documents provided to the Judge at P4's Sentence 213
P4's Evidence Concerning the Assistance Documents 215
The Arrest of P6 in Victoria 216
The Assistance Documents Provided to the Judge at P6's Sentence 217
P6's Evidence Concerning the Assistance Documents provided to her Sentencing Judge 218
Lysaught's Evidence Concerning the Assistance Documents 220
Wilding's Relationship with Lysaught 221
Wilding's and Kempnich's Evidence - Preparation of Assistance Documents 223
The Evidence Concerning the Arrest of A1 and P1 225

The Allegations Concerning Wilding and Kempnich and F3 226
Affected Persons 230
Michael Scott Kempnich 231
Guy John Wilding 232

6. Newport Segment 235
Introduction 236
The Allegations 236
The Witnesses 237
Wayne James Eade 237
David Marshall Hill 237
Ian Frederick Ison 238
Timothy Andrew Kerr-Thomson 238
M5 238
Stephen James McClelland 238
Maurice Gilbert Neild 238
Frank Ramaccia 239
Ronald Walsh 239
Background Facts 239
The Search at West Ryde 241
The Search at Newport 243
L17 243
M5 245
Walsh 246
Hill 246
Ramaccia 248
Neild 249
Gosford Drug Unit Officers 249
Assessment 250
The Payment of $50,000 251
Assessment 253
Assistance Provided to L17 – Perverting the Course of Justice 253
Assessment 257
Affected Persons 257
B11 259
Wayne James Eade 259
David Marshall Hill 261
Ian Frederick Ison 262
Timothy Andrew Kerr-Thomson 263
L17 265
M5 266
Stephen James McClelland 267
Maurice Gilbert Neild 269
Frank Ramaccia 270
Ronald Walsh 271

VOLUME 2

7. Magnum Segment 273
Introduction 275
The Witnesses 275
Phillip Sydney Bernasconi 276

Ian Grant Blake 276
Lee Kevin Brown 276
C12 277
John Stuart Davidson 277
Kim Dowding 277
F7 277
Roger Arthur Harborne 278
Robert James Irwin 278
James Justin King 278
M5 278
Craig Lee McDonald 279
N1 279
Philip George Wrice 280
Thomas William Yabsley 280
Background 280
Task Force Magnum 280
The Robbery of Danny's Seafood Restaurant, La Perouse, 16 February 1991 282
The Identification of C11 as One of the Offenders 282
Task Force Magnum Takes Over Investigation 283
Execution of the Search Warrant and Arrest of C11, 7 March 1991 285
C11 Taken to Burwood Police Station and Charged 288
C11 288
N1 289
Irwin 290
Blake 291
Davidson 291
Harborne 292
Yabsley 293
C12 294
Assessment 295
Stuart – The Alleged Creation of False Police Identification 296
Execution of the Search Warrant and Arrest of Stuart, 7 March 1991 297
Stuart Taken to Mona Vale Police Station and Charged 298
Assessment 301
The Committal Proceedings – C11 and Stuart 302
Identification Evidence of C11 Withdrawn 304
The Trial of N1, Davidson, Irwin and Blake 305
Alleged Threat to Yabsley 307
Yabsley 307
Brown 308
Davidson 309
Affected Persons 310
Phillip Sydney Bernasconi 312
Ian Grant Blake 313
Lee Kevin Brown 314
John Stuart Davidson 315
Kim Dowding 317
F7 318
Robert James Irwin 319
James Justin King 321
M5 322
N1 323
Philip George Wrice 325

8. King Segment 329
Introduction 331
The Police Witnesses 332
Brian Raymond Breedon 332
Clare Margaret Butt (Moore) 332
Anthony John Patrick Ducker 333
James Justin King 333
Roslyn Gwen McDougall 333
M5 333
Dennis Peter O'Toole 333
S8 333
Allen Gordon Shepherd 333
Ronald Bruce Smith 334
The Evidence 334
1993 DUI Incident 334
The Events of 24 September 1993 334
The Events of 25 September 1993 – Narrabeen and Mona Vale 335
The Events of 25 September 1993 – Mona Vale Police Station 337
The Events of 25 September 1993 – M5 Telephones King 339
The Events of 25 and 26 September 1993 –Ducker's Inquiry and Complaint 339
The Events of 27 September 1993 – S8 Telephones O'Toole 340
The Events of 27 September 1993 – M5 Meets O'Toole, King and Smith and Collects Ducker's Statement from Breedon 340
The Events of 27 September 1993 – M5 meets O'Toole and King and Creates False Documents 341
The Events of 27 September 1993 – O'Toole Telephones and Meets S8 342
The Events of 27 September 1993 – M5 Meets O'Toole, King and M13 343
S8 Makes a False Entry in his Police Notebook 343
S8's Instructions to Moore and McDougall about Tablets 344
Ducker is Threatened and Harassed 345
The Internal Affairs Investigation 345
The 1994 Local Court Case 348
M5, King and O'Toole Buy Drinks for M13 after the 1994 Local Court Case 350
Complaints to the Ombudsman about the King Matter 350
Ducker's HOD Application and the NSW Ombudsman's Response 351
King's Evidence to the Commission about the 1993 DUI Incident 351
Assessment of the Evidence about the 1993 DUI Incident 352
The 2000 PCA Incident 353
The Events of 13 April 2000 353
King's Approach to Peter Symonds 357
Conversation on 25 May 2000 357
Conversation on 2 November 2000 358
The Manly Local Court Proceedings on 12 February 2001 358
King's Evidence to the Commission about the 2000 PCA Incident 361
Assessment of the Evidence about the 2000 PCA Incident 362
Corrupt Payments to Registered Informants 362
King's Evidence about Corrupt Payments to Informants 364
Assessment of Evidence about Corrupt Payments to Informants 364
Laundering of Corruptly Obtained Money 365
King's Evidence about the Alleged Laundering of Corruptly Obtained Money 367
Assessment of Evidence about Laundering of Corruptly Obtained Money 368
Affected Persons 368
James Justin King 370
M5 372
M13 373

Roslyn Gwen McDougall 374
Clare Margaret Moore (Butt) 375
Dennis Peter O'Toole 375
S8 377

9. O'Toole Segment 379
Introduction 380
Overview of Dr Anderson's Diagnosis of O'Toole 381
Commission's Focus 382
First Period of Treatment: 1 August 2000 - 22 December 2000 383
Assessment 385
Second Period of Treatment: 9 November 2001 - 30 November 2001 385
Assessment 386
Third Period of Treatment: 20 August 2002 - 1 March 2003 387
Events Leading Up to Commencement of Third Period of Treatment 387
Medicolegal Context of Presentation for the Third Period of Treatment 389
Discrepancies Between Claimed Levels of Disability and Surveillance Evidence 391
Surveillance Evidence - 28 and 29 August 2002 391
Surveillance Evidence - 11 September 2002 394
Surveillance Evidence - 20 November 2002 395
Surveillance Evidence - 12 and 15 December 2002 395
Surveillance Evidence - 30 December 2002 397
Surveillance Evidence - 8 and 9 January 2003 399
No Alteration to Dr Anderson's Overall Opinion 401
The Dispensing of Medication to O'Toole, 1 August 2000 - 1 March 2003 402
Evidence in relation to Efexor-XR 406
Compliance with Prescribed Treatment Regime During Third Period of Treatment 409
Prozac 409
Efexor-XR 409
Assessment of Evidence in Relation to the Third Period of Treatment 411
Conclusions 411

10. Affected Persons 413
Affected Persons 416
Miles Bradley Adams 417
Let's Dance Segment 417
B11 418
Newport Segment 418
Luke Michael Benbow 418
Northern Beaches Segment 418
Phillip Sydney Bernasconi 419
Magnum Segment 419
Ian Grant Blake 420
Magnum Segment 420
Stephen Anthony Bridges 421
Let's Dance Segment 421
Lee Kevin Brown 422
Magnum Segment 422
Vincent Caccamo 423
Northern Beaches Segment 423
Vivienne Alexa Crawford 423
Let's Dance Segment 423

Shaun Andrew Davidson 424
Northern Beaches Segment 424
John Stuart Davidson 425
Magnum Segment 425
Kim Dowding 427
Guns Segment 427
Magnum Segment 429
Wayne James Eade 430
Newport Segment 430
Peter John Ehsman 431
Guns Segment 431
F7 432
Guns Segment 432
Let's Dance Segment 434
Magnum Segment 435
Martin Geoffrey Green 436
Northern Beaches Segment 436
Howard Robert Gumley 437
Let's Dance Segment 437
Michael Arthur Hagan 438
Let's Dance Segment 438
David Marshall Hill 439
Northern Beaches Segment 439
Newport Segment 440
Wayne Hollis 441
Let's Dance Segment 441
Paul Hulme 442
Let's Dance Segment 442
Robert James Irwin 443
Magnum Segment 443
Ian Frederick Ison 445
Newport Segment 445
Matthew John Jasper 446
Northern Beaches Segment 446
Michael Scott Kempnich 448
Letters of Assistance Segment 448
Glenn Wayne Kendall 449
Guns Segment 449
Let's Dance Segment 450
Timothy Andrew Kerr-Thomson 452
Newport Segment 452
James Justin King 453
Guns Segment 453
Let's Dance Segment 454
Magnum Segment 455
King Segment 456
L17 459
Newport Segment 459
M5 460
Guns Segment 460
Newport Segment 462

Magnum Segment 463
King Segment 464
M13 465
King Segment 465
Stephen James McClelland 465
Newport Segment 465
Roslyn Gwen McDougall 467
King Segment 467
Mark William Messenger 468
Northern Beaches Segment 468
Robert John Monk 469
Let's Dance Segment 469
Clare Margaret Moore (Butt) 471
King Segment 471
N1 471
Guns Segment 471
Let's Dance Segment 473
Magnum Segment 474
Maurice Gilbert Neild 476
Newport Segment 476
Ian Bruce Nicholson 477
Let's Dance Segment 477
Dennis Peter O'Toole 478
Guns Segment 478
Let's Dance Segment 480
King Segment 481
O'Toole Segment 482
David Phillip Patison 483
Northern Beaches Segment 483
Raymond John Peattie 485
Northern Beaches Segment 485
Frank Ramaccia 486
Newport Segment 486
S8 488
King Segment 488
Ronald Bruce Smith 488
Guns Segment 488
Let's Dance Segment 489
Stephen Anthony St John 490
Let's Dance Segment 490
Greig Robert Vicary 491
Guns Segment 491
Ronald Walsh 492
Newport Segment 492
Guy John Wilding 493
Letters of Assistance Segment 493
Philip George Wrice 495
Magnum Segment 495

11. Procedural Matters 499
Execution of Search Warrants 500
Supervision and Management 501
Review of Duty Officer Position 503
Command Management Framework 504
Letters of Assistance 505
Handling and Storage of Exhibits 507
The Post-Royal Commission Era 508

12. Appendices 511
Appendix 1 - Role and Functions of the Commission 512
Police Misconduct 512
Investigations 512
Reports to Parliament 513
Appendix 2 - Witness list 517

13. Index 523

7. MAGNUM SEGMENT

Introduction 275
The Witnesses 275
Phillip Sydney Bernasconi 276
Ian Grant Blake 276
Lee Kevin Brown 276
C12 277
John Stuart Davidson 277
Kim Dowding 277
F7 277
Roger Arthur Harborne 278
Robert James Irwin 278
James Justin King 278
M5 278
Craig Lee McDonald 279
N1 279
Philip George Wrice 280
Thomas William Yabsley 280
Background 280
Task Force Magnum 280
The Robbery of Danny's Seafood Restaurant, La Perouse, 16 February 1991 282
The Identification of C11 as One of the Offenders 282
Task Force Magnum Takes Over Investigation 283
Execution of the Search Warrant and Arrest of C11, 7 March 1991 285
C11 Taken to Burwood Police Station and Charged 288
C11 288
N1 289
Irwin 290
Blake 291
Davidson 291
Harborne 292
Yabsley 293
C12 294
Assessment 295
Stuart – The Alleged Creation of False Police Identification 296
Execution of the Search Warrant and Arrest of Stuart, 7 March 1991 297
Stuart Taken to Mona Vale Police Station and Charged 298
Assessment 301
The Committal Proceedings – C11 and Stuart 302
Identification Evidence of C11 Withdrawn 304
The Trial of N1, Davidson, Irwin and Blake 305
Alleged Threat to Yabsley 307
Yabsley 307
Brown 308
Davidson 309
Affected Persons 310
Phillip Sydney Bernasconi 312
Ian Grant Blake 313
Lee Kevin Brown 314
John Stuart Davidson 315
Kim Dowding 317
F7 318
Robert James Irwin 319

James Justin King 321
M5 322
N1 323
Philip George Wrice 325

INTRODUCTION

7.1 The Magnum segment of Operation Florida examined the conduct of police officers attached to a Task Force codenamed "Magnum", which was established in 1991. The aim of the Task Force was to investigate the growing number of armed robberies on armoured vehicles occurring at that time. The Task Force investigated a number of matters and made a number of arrests however the Commission's hearing only examined the investigation, arrest and prosecution of two people, C11 and William Stanley Stuart.

7.2 The evidence was heard over nine days, commencing on 9 September 2002 and concluding on 14 October 2002. The Scope and Purpose of the segment was to investigate:[1030]

> 1. The conduct of certain former and serving New South Wales police officers in the investigation of the armed robbery on 16 February 1991 of Danny's Seafood Restaurant at La Perouse and the prosecution arising therefrom.
>
> 2. The conduct of certain former and serving New South Wales police officers in proceedings brought against them in March 2000 for attempting to pervert the course of justice in the investigation and prosecution referred to in paragraph 1 …

7.3 On 8 October 2002 the Scope and Purpose was amended to include the investigation of:[1031]

> 3. The conduct of certain former and serving New South Wales police officers in relation to investigations and arrests carried out by Task Force Magnum and the consequent prosecutions.

THE WITNESSES

7.4 Fifteen witnesses gave evidence, including all the police who were the subject of allegations, with the exception of Kim Dowding. Most, but not all, of the police witnesses had been attached to Task Force Magnum. They were Phillip Sydney Bernasconi, Ian Grant Blake, John Stuart Davidson, F7, Robert James Irwin, James Justin King, M5, Craig Lee McDonald, N1 and Philip George Wrice. Of these only Wrice is a currently serving officer. Kim Dowding was involved in the arrest of Stuart but, due to ill health, did not give evidence.

7.5 Three other serving and or former police officers gave evidence. They were Roger Arthur Harborne and Thomas William Yabsley, who were on duty at Burwood Police Station on the day C11 was arrested, and C12, C11's brother, who was a NSW Police officer at the time of C11's arrest.

7.6 C11 also gave evidence. William Stanley Stuart died in 1995.

[1030] PIC Transcript, 9 September 2002, p. 5161
[1031] PIC Transcript, 8 October 2002, p. 5417

7.7 The remaining witness was Lee Kevin Brown. Brown is a serving NSW Police officer. He was not involved in the arrest of C11 or Stuart but was the subject of an allegation, made by Yabsley, that he, Brown, spoke to Yabsley in a way that was perceived by Yabsley as being threatening. The incident that gave rise to the allegation related to a conversation about Yabsley giving evidence for the prosecution in Davidson's trial in 2000.

7.8 A short profile of each police witness appears below.

PHILLIP SYDNEY BERNASCONI

7.9 Bernasconi joined NSW Police in 1967 and left in 1995. In 1991 he was a Detective Sergeant stationed at Mona Vale. Bernasconi was not a member of Task Force Magnum. He was on duty on the day of Stuart's arrest and conducted the adoption procedure in relation to the record of interview Wrice conducted with Stuart. Bernasconi gave evidence at Stuart's committal. Although he had not met Wrice before February 1991, he did know M5, King and Dowding.[1032]

IAN GRANT BLAKE

7.10 Blake joined NSW Police in 1982. In 1991 he was a relatively junior Detective Constable attached to the Armed Hold-Up Unit of Major Crime Squad South. He was asked by Irwin to assist in the search of C11's house.[1033] This was the only occasion on which he performed duties for Task Force Magnum. He gave evidence at C11's committal.

7.11 Blake was nominated for removal from NSW Police pursuant to section 181D of the *Police Act 1990* as a result of the NSW Police internal investigation into the investigation arrest and prosecution of C11. He was charged along with N1, Irwin and Davidson with conspiracy to pervert the course of justice and making a false statement but was found not guilty of the charges in April 2000. He resigned from NSW Police in July 2000 during the section 181D process.

LEE KEVIN BROWN

7.12 Brown is a serving NSW Police officer. At the time he gave evidence in 2002 he held the rank of Senior Constable. He joined NSW Police in 1995. Brown is a member of Davidson's extended family and resided with Davidson for a couple of years after he came to Sydney in 1995. He said he became aware that Davidson was facing charges through conversations with family members, with other police, and from media reports.[1034] His involvement with this matter relates to an alleged threat made to Yabsley in relation to the committal and trial of N1, Davidson, Blake and Irwin.

[1032] PIC Transcript, PS Bernasconi, 10 October 2002, pp. 5582-5583
[1033] PIC Transcript, IG Blake, 9 October 2002, pp. 5557-5558
[1034] PIC Transcript, LK Brown, 14 October 2002, pp. 5787-5788

C12

7.13 C12 is the brother of C11. In 1991 he was a serving member of NSW Police. He was not stationed at Burwood Police Station but came there on the morning of C11's arrest and spoke to C11 and other officers. He left NSW Police in 1994.

JOHN STUART DAVIDSON

7.14 Davidson joined NSW Police in 1971 and retired medically unfit in 1994. In 1991 he was the Commander of Task Force Magnum. He attended Burwood Police Station on the day C11 was arrested and performed the adoption of C11's record of interview. He made a statement and subsequently gave evidence at C11's committal. Following the NSW Police Internal Affairs investigation into C11's complaint about the matter, Davidson was charged, along with Blake, Irwin and N1, with conspiracy to pervert the course of justice and making a false statement. In April 2000 he was found not guilty on both charges.

KIM DOWDING

7.15 Dowding joined NSW Police in 1978. In 1991 he held the rank of Senior Constable and was a member of Major Crime Squad North at Chatswood and seconded to Task Force Magnum. He took part in the execution of the search warrant at Stuart's house. He gave evidence at Stuart's committal and trial. Dowding did not give evidence at the Commission's hearings due to ill health. He retired, medically unfit, from NSW Police in July 2003.

F7

7.16 F7 joined NSW Police in 1980 and left in 2002. In 1991 he held the rank of Detective Senior Constable and was attached to the Armed Hold-Up Unit of Major Crime Squad North, on secondment to Task Force Magnum. His work partner was Wrice.

7.17 With Wrice, F7 was involved in obtaining the identification evidence of C11. He was the applicant for the search warrant for Stuart's house and assisted in the execution of the warrant. F7, with Wrice, interviewed Stuart at Mona Vale Police Station. He gave evidence at Stuart's committal hearing.

7.18 F7 agreed to assist the Commission during the Let's Dance Segment of the investigation. He provided information about his involvement in the fabrication of evidence against Stuart. He admitted that some of the information contained in the statement he made for the brief against Stuart was false. Although not involved in the arrest and charging of C11, F7 also provided information of his knowledge of those events. F7 also gave general evidence about the practices adopted by Task Force Magnum.

ROGER ARTHUR HARBORNE

7.19 Harborne joined NSW Police in 1966 and retired in 2000. In 1991 he held the rank of Senior Sergeant and was Chief of Detectives at Burwood Police Station. He was not a member of Task Force Magnum. He was on duty on the day that C11 was arrested and charged. N1 approached Harborne and asked him to perform the adoption of the record of interview but Harborne declined because he knew C11 personally. Harborne gave evidence at the trial of Davidson, Irwin, N1, and Blake in 2000.

ROBERT JAMES IRWIN

7.20 Irwin joined NSW Police in 1972 and left in 1998. In 1991 he was a Detective Senior Constable attached to the Armed Hold-Up Unit of Major Crime Squad South. He was not a member of Task Force Magnum.

7.21 Irwin was a friend of M14, the proprietor of Danny's Seafood Restaurant and victim of the robbery. M14 called Irwin after the robbery and Irwin was the first police officer to arrive at the scene. He continued to be involved in the matter after Task Force Magnum took over the investigation and assisted in the execution of the search warrant at C11's house. Irwin assisted N1 in the record of interview of C11 at Burwood Police Station. He gave evidence at C11's committal hearing.

7.22 Irwin was charged, along with Davidson, N1 and Blake, as a result of the NSW Police Internal Affairs investigation into the matter. In addition to the charges of conspiracy to pervert the course of justice and making a false statement Irwin was charged with perjury. He was found not guilty of all charges in April 2000.

7.23 In 1999 Irwin was charged and found guilty of charges relating to giving false evidence and perverting the course of justice. Those charges were unrelated to this matter and arose out of another Police Integrity Commission investigation, codenamed Operation Jade. Irwin served a custodial sentence and was released from prison in 2002.

JAMES JUSTIN KING

7.24 King joined NSW Police in 1978 and was medically discharged in 2000. In 1991 he held the rank of Senior Constable and was a member of Major Crime Squad North at Chatswood, seconded to Task Force Magnum. He took part in the execution of the search warrant at Stuart's house. He gave evidence at Stuart's committal hearing and trial.

M5

7.25 M5 joined NSW Police in 1980 and was medically discharged in 2003. In 1991 he held the rank of Detective Senior Constable and was attached to the

Armed Hold-Up Unit of Major Crime Squad North, on secondment to Task Force Magnum. M5 was a member of the team led by Wrice, which executed the search warrant on Stuart's house and arrested him. M5 gave evidence at Stuart's committal and trial.

7.26 M5 provided information to the Commission about the fabrication of evidence, particularly in relation to Stuart. M5 admitted that parts of his statement were false. Although M5 was not involved in the arrest and charging of C11 he provided information of his knowledge of those events. He also gave general evidence about the practices of Task Force Magnum.

CRAIG LEE MCDONALD

7.27 McDonald joined NSW Police in 1974 and left in 1998. In 1991 he was a Detective Sergeant attached to the Armed Hold-Up Unit of Major Crime Squad South. He was not a member of Task Force Magnum.

7.28 McDonald, like Irwin, was a friend of M14, the proprietor of Danny's Seafood Restaurant and the victim of the robbery. McDonald became involved in the investigation when he attended the scene of the robbery with Irwin. He later was involved in showing M14 an album of photographs as part of the identification of C11. He did not have any further involvement in the investigation although he gave evidence at C11's committal hearing.

7.29 Arising out of the Police Integrity Commission's investigation Operation Jade, McDonald was charged with perverting the course of justice and giving false and misleading evidence to the Commission. He served a custodial sentence and was released on parole on 4 November 2000.

N1

7.30 N1 joined NSW Police in 1969 and was medically discharged in 1993. In 1991 he held the rank of Detective Sergeant and was attached to the Armed Hold-Up Unit of Major Crime Squad North, on secondment to Task Force Magnum. He was in charge of the team that executed the search warrant on C11's home, and arrested and charged C11. He, together with Irwin, conducted the record of interview with C11 at Burwood Police Station.

7.31 N1 was the informant in the prosecution of C11 but did not give evidence at the committal due to ill health. As a result of the NSW Police Internal Affairs investigation into the matter he was charged, along with Davidson, Irwin and Blake for conspiracy to pervert the course of justice and making a false statement. He was tried and found not guilty in April 2000.

7.32 In February 2002 N1 agreed to assist the Commission's investigation. He provided information about his involvement, and the involvement of the other members of the team, in the fabrication of evidence in relation to C11. He also gave general evidence about the practices of Task Force Magnum. He

admitted that information contained in his statement was false and that he had given false evidence in his trial in 2000.

PHILIP GEORGE WRICE

7.33 Wrice is a serving officer having joined NSW Police in 1975. In 1991 he held the rank of Detective Senior Constable and was attached to the Major Crime Squad North at Newcastle, seconded to Task Force Magnum. His work partner at the time was F7.

7.34 Wrice was instrumental in having Task Force Magnum take over the investigation of the robbery and was in charge of the investigation. He was involved in obtaining the identification evidence of C11. He led the team that executed the search warrant on Stuart's house. With F7 he conducted the record of interview of Stuart at Mona Vale Police Station. He gave evidence at the committal hearing in relation to both Stuart and C11. He also gave evidence at Stuart's trial.

7.35 In 1994, after new information was received, Wrice obtained further statements withdrawing the previous identification evidence. These statements were passed on to the ODPP and eventually led to the dismissal of the charges against C11.

THOMAS WILLIAM YABSLEY

7.36 Yabsley joined NSW Police in 1975 and was a serving officer at the time he gave evidence in September 2002. He retired in April 2003. In 1991 he was a Senior Constable attached to Burwood Police Station. Yabsley was not a member of Task Force Magnum.

7.37 On the day C11 was arrested Yabsley was the Custody Officer on duty in the charge room at Burwood Police Station. He was responsible for the processing of any charges that came through the charge room and for the general custody and welfare of prisoners in the cells complex. He processed the charging of C11.

7.38 Yabsley gave evidence at C11's committal. He also gave evidence for the prosecution at the committal and trial of Davidson, N1, Irwin and Blake.

BACKGROUND

TASK FORCE MAGNUM

7.39 In about December 1990, Davidson, filed a report with the officer in charge of the Special Operations Group NSW Police, seeking the establishment of a task force to deal with the escalation of robberies of armoured cars. His recommendation was accepted and by late January 1991, Task Force Magnum was operational. N1 recalled that the Task Force commenced

around Australia Day 1991.[1035] Davidson said that he did not choose the members and that the commanders of various regional squads selected the members of the new Task Force.[1036]

7.40 The Task Force comprised approximately 16 detectives and five or six surveillance police.[1037] The conduct investigated by the Commission in this segment only touches upon the actions of those detectives who were involved in the investigation, arrest and prosecution of C11 and William Stanley Stuart for the robbery of Danny's Seafood Restaurant on 16 February 1991.

7.41 The general aim of the Task Force was to deal with armed robbers, in particular, those prepared to rob armoured vehicles. At the initial meetings of the Task Force, approximately 25 persons suspected of being involved in such robberies were identified. Those people became the targets of the Task Force.[1038] According to Davidson most of the targets were *"addressed"* by the time the Task Force was disbanded.[1039]

7.42 F7, N1 and M5 all gave evidence that they believed they were selected for the Task Force because they were prepared to "load and verbal" persons they suspected had committed crimes.[1040] F7 stated that he had no doubt in his mind that the members of the Task Force were prepared to do whatever was necessary to charge the targets in the shortest possible time. He believed that any officer he was partnered with, and in fact any officer on the team, was prepared to load and verbal, or both. F7 said that it was for this reason Davidson was put in charge of the Task Force. F7 said there was no need to discuss such things because they were all prepared to do whatever had to be done to get a conviction.[1041]

7.43 N1 gave evidence to this effect as well. It was his belief that Task Force Magnum was one of two task forces established to stop the *"green-lighting"* of armed robbers by NSW Police. In that respect the Task Force was very effective. N1 stated that he had no doubt that Davidson was a police officer who was prepared to load and verbal suspects.[1042]

7.44 M5 also gave similar evidence. He agreed that Task Force Magnum was basically formed to lock up the targets *"... and it didn't matter how we did it as long as they went in"*. He was also of the opinion that verballing, at that time, was accepted practice and that it was *"common practice"*. He said the

[1035] PIC Transcript, N1, 11 September 2002, p. 5282
[1036] PIC Transcript, JS Davidson, 8 October 2002, pp. 5420-5422
[1037] PIC Transcript, JS Davidson, 8 October 2002, pp. 5422, 5805; F7, 10 September 2002, p. 5223
[1038] PIC Transcript, F7, 10 September 2002, p. 5224; N1, 11 September 2002, pp. 5283-5284; M5, 12 September 2002, pp. 5350-5351
[1039] PIC Transcript, JS Davidson, 8 October 2002, p. 5458; 14 October 2002, p. 5807
[1040] PIC Transcript, F7, 10 September 2002, p. 5242; N1, 11 September 2002, pp. 5319-5320; M5, 12 September 2002, p. 5362
[1041] PIC Transcript, F7, 10 September 2002, p. 5245
[1042] PIC Transcript, N1, 11 September 2002, pp. 5319-5320

methodology used by Task Force Magnum was the same that had been used by previous task forces to which he had been attached.[1043]

THE ROBBERY OF DANNY'S SEAFOOD RESTAURANT, LA PEROUSE, 16 FEBRUARY 1991

7.45 In the early hours of 16 February 1991, M14 the proprietor of Danny's Seafood Restaurant was with S9 and her son in their residence above the restaurant when three or four persons, posing as police officers and showing false police identification and what appeared to be a search warrant for drugs, gained entry to the residence. Once inside, the offenders handed M14 an Occupier's Notice and searched his bedroom where it is alleged they located bags containing approximately $15,000, the proceeds of several night's takings from the Restaurant. S9 noticed that the offenders had guns in holsters inside their jackets. M14's hands and feet were bound with masking tape and the offenders left with the cash. One of the offenders referred to another offender as "Sarge".

7.46 Shortly after the robbery, M14, who was a friend of Irwin and McDonald, contacted Irwin at home. At that time Irwin and McDonald both worked in the Armed Hold-Up Unit attached to Major Crime Squad South. McDonald said he had known M14 socially for a period of six to seven years and also knew S9. Irwin and McDonald attended the scene of the robbery, Irwin being the first to arrive. They were both off duty that morning and came from their respective homes. They did not have their police notebooks with them and McDonald could not recall whether he took any notes but they did obtain descriptions of the offenders. The descriptions were then circulated on the police network.[1044]

THE IDENTIFICATION OF C11 AS ONE OF THE OFFENDERS

7.47 Wrice was a member of Task Force Magnum. He was asked to be a member of the Task Force as a result of his contribution to the investigation of an armed robbery in East Gosford (the "TPD robbery") in about September 1990. His partner at the time was F7 who also became a member of Task Force Magnum. C14 was arrested in relation to the TPD robbery and was later charged and convicted. Stuart and Graham Henry were associates of C14 and although both were suspects in the TPD robbery, neither was ever charged in relation to it. As a result of that investigation, however, Wrice had done some research in relation to Stuart and his criminal activities.[1045]

7.48 The offenders in the TPD robbery had masqueraded as detectives. The TPD robbery involved a large amount of stolen goods and the unlawful detention

[1043] PIC Transcript, M5, 12 September 2002, pp. 5356-5357, 5359, 5361-5362
[1044] PIC Transcript, CL McDonald, 11 October 2002, pp. 5739-5740
[1045] PIC Transcript, PG Wrice, 10 October 2002, pp. 5635-5641

of people. As such the robbery itself, and its investigation lead by Wrice, was well known amongst the various Armed Hold-Up Units of NSW Police.[1046]

7.49 On the day following the robbery at Danny's Seafood Restaurant McDonald contacted Wrice at the Task Force Magnum office and told him about the robbery. Wrice presumed that McDonald knew about the TPD robbery and contacted him because the modus operandi of the criminals was the same in both robberies. Wrice and McDonald knew each other through having previously worked together. As a result of that contact Wrice attended the restaurant, probably with F7. He took with him a photograph album containing approximately 160 photographs of criminals. This was an album he had put together himself to assist with identification of offenders. In addition he took with him approximately 12 loose photographs that he had obtained from C14's house.[1047]

7.50 The loose photographs depicted C14, Stuart, and friends and associates of C14 attending a party he held at a hotel. Wrice said he had executed a search warrant on C14's house in connection with the TPD robbery. At that time he had arrested C14 in connection with the TPD robbery but only had suspicions as to whom else was involved. He located the photographs during the execution of the search warrant and took them in the hope that he might be able to identify some of the people in them as being involved in the robbery. At that time he did not know who C11 was or that he was one of the people in the photographs.[1048]

7.51 Wrice showed the photographs to S9 who identified C11, from one of the loose photographs, as being the offender referred to as "Sarge". At the time of the identification Wrice still did not know who C11 was.[1049]

7.52 On the day following the robbery M14 went to the Armed Hold-Up Squad office and was shown the photographs. McDonald, Wrice and F7 were present. M14 did not positively identify C11 but thought he was very similar to one of the offenders.[1050]

TASK FORCE MAGNUM TAKES OVER INVESTIGATION

7.53 In the early days after the robbery Irwin and McDonald worked together with Wrice. McDonald's view was that once Wrice became involved Task Force Magnum took over the investigation and he and Irwin assisted.[1051] Wrice said that he became the officer in charge at Task Force Magnum but that in the early stages of the investigation it was not necessarily a Task Force

[1046] PIC Transcript, PG Wrice, 10 October 2002, pp. 5645-5646
[1047] PIC Transcript, PG Wrice, 10 October 2002, pp. 5645-5649
[1048] PIC Transcript, PG Wrice, 11 October 2002, pp. 5724-5725
[1049] PIC Transcript, PG Wrice, 10 October 2002, pp. 5652-5654
[1050] PIC Transcript, CL McDonald, 11 October 2002, pp. 5740-5742
[1051] PIC Transcript, CL McDonald, 11 October 2002, p. 5742

Magnum investigation and that both McDonald and Irwin, and particularly McDonald, were also involved.[1052]

7.54 Shortly after the robbery Stuart's fingerprint was identified on an Occupier's Notice left at the scene by the offenders. F7 was of the opinion that, because Stuart was one of Task Force Magnum's targets, the finding of the fingerprint was a factor in Task Force Magnum taking over the investigation.[1053] Once Stuart's fingerprint had been identified and C11's identity established Wrice made arrangements for the telephone interception of both C11's and Stuart's telephones in the hope that a link could be found between the two. The telephone interception did not however establish any link between C11 and Stuart.[1054]

7.55 C11 gave evidence that he had known Stuart for a long period of time but after a falling out in 1985 in relation to his sister he did not socialise with Stuart at all.[1055] C11's brother, C12 said that he also disliked Stuart because of Stuart's involvement with their sister, and her arrest in relation to the importation of heroin. C12 agreed that prior to the incident with their sister he was on reasonably good terms with Stuart but that afterwards he had a total dislike of him. He also agreed that despite the animosity between C11 and Stuart they continued to drink at the same hotel although they avoided each other.[1056] Davidson knew about the disagreement between C11 and Stuart in relation to C11's sister. He denied however that during the investigation he knew C11 and Stuart did not associate with each other although they drank at the same hotel.[1057]

7.56 M14 did not positively identify C11 from the photographs so arrangements were made by McDonald and Wrice to take M14 to a leagues club where they knew C11 would be present. F7 said that he travelled to the club with Wrice and met M14, who was with McDonald and Irwin, there.[1058] At the leagues club M14 saw C11 and identified him as the offender "Sarge". In defence of the method of identification Wrice said, *"... we wanted to know whether he could or couldn't identify that person"*. He agreed however that the circumstances of this further identification were *"... less than ideal"*.[1059]

7.57 F7 said that on the basis of the identification of C11 by M14 and S9, and the identification of Stuart's fingerprint a decision was made to execute search warrants on the homes of C11 and Stuart. At that stage interviewing teams were formed and a case officer chosen for each offender. Wrice was the nominated officer for Stuart and N1 was nominated in relation to C11. F7 said that the case officer *"... would organise everything surrounding that arrest and that interview"*.[1060] Wrice denied that a decision had been made to

[1052] PIC Transcript, PG Wrice, 10 October 2002, p. 5657
[1053] PIC Transcript, F7, 10 September 2002, pp. 5224-5225
[1054] PIC Transcript, PG Wrice, 10 October 2002, pp. 5656-5657
[1055] PIC Transcript, C11, 9 September 2002, p. 5185
[1056] PIC Transcript, C12, 12 September 2002, pp. 5384-5385
[1057] PIC Transcript, JS Davidson, 8 October 2002, pp. 5454-5455
[1058] PIC Transcript, F7, 10 September 2002, p. 5249
[1059] PIC Transcript, PG Wrice, 10 October 2002, pp. 5658-5660
[1060] PIC Transcript, F7, 10 September 2002, p. 5225

arrest C11 and Stuart prior to the execution of the search warrants at their houses. In relation to C11 he said he arranged for him to be interviewed. Wrice could not recall exactly when he made up his mind to arrest Stuart.[1061]

7.58 A briefing was held on the day prior to the execution of the search warrants. M5's recollection was that there were two separate briefings, one attended by Wrice, M5, King, Dowding and F7, at which the arrest of Stuart was discussed. The other, in relation to C11 involved N1, Irwin, Blake and others. He said that Davidson addressed both briefings.[1062] Davidson himself could not recall attending the meeting or giving any specific instructions to the officers but did not dispute that the briefing occurred.[1063]

EXECUTION OF THE SEARCH WARRANT AND ARREST OF C11, 7 MARCH 1991

7.59 N1 was allocated to lead the team to execute the search warrant on C11's home and arrest C11. The team included Irwin and Blake although N1 was not sure if Blake attended the briefing.[1064] Blake also could not recall if he attended the briefing.[1065] At the briefing it was decided to take C11 to Burwood Police Station after his arrest. N1 said that one of the reasons for this decision was that Burwood was not C11's local police station and if he was to be verballed and loaded it was preferable that C11's family and or solicitor were not able to easily locate him.[1066]

7.60 According to N1 it was contemplated on 6 March 1991, the day before the execution of the search warrant, that C11 would be verballed and loaded but he was not sure if that was discussed at the briefing. N1 said Davidson had direct knowledge that C11 was to be verballed and loaded. When asked to explain this N1 said:[1067]

> … it's not as simple as that he had knowledge that I was going to load and verbal. It was more he knew that it would be done if it had to be done. Provision was made for it to be done if necessary.

7.61 After the briefing N1 and Davidson had a conversation about the arrest of C11. N1 said he had doubts as to C11's involvement in the robbery but that Davidson said to him, *"It's got to be done. If you don't do it, I'll do it"*. N1 said that Davidson was referring to the loading and verballing of C11. His explanation for his subsequent actions was that in this conversation Davidson *"... pressed a few buttons on my ego and I then agreed to do it"*. N1 explained that the issue for him was not the verballing and loading of C11 but rather that he did not think that C11 was involved in the robbery. He said if

[1061] PIC Transcript, PG Wrice, 10 October 2002, pp. 5663-5664
[1062] PIC Transcript, M5, 12 September 2002, pp. 5351-5352
[1063] PIC Transcript, JS Davidson, 8 October 2002, pp. 5431-5433
[1064] PIC Transcript, N1, 11 September 2002, pp. 5285-5286
[1065] PIC Transcript, IG Blake, 9 October 2002, p. 5558
[1066] PIC Transcript, N1, 11 September 2002, pp. 5286-5287
[1067] PIC Transcript, N1, 11 September 2002, pp. 5287-5289

he believed that a person was involved in a crime he was quite prepared to load and verbal that person if necessary.[1068]

7.62 Following the conversation with Davidson, N1 read through the brief of evidence and other information and worked out how the loading could be done if it had to be done. He decided, *"... the most plausible way would be to find occupier's notices similar to those used in the robbery"*. The Occupier's Notices in the stationary cupboard at his office were different to those found after the robbery. However the Notices at the police station where they met prior to the execution of the search warrants were similar to those found at the scene of the robbery so N1 took two of them and placed them into an envelope. He allocated to Irwin the job of "finding" the Occupier's Notices at C11's house.[1069]

7.63 Blake was not assigned a specific role for the search. N1 said he recalled asking Irwin if Blake could be trusted. He meant by this whether Blake could be trusted not to reveal any illegal activities that might take place during the execution of the search warrant. N1 said that the plan to load and verbal C11 was, at that stage, *"... a contingency plan"* to be used only if C11 didn't make any admissions.[1070]

7.64 C11 told the Commission that on the morning of 7 March 1991 a number of police officers, including N1, Irwin and Blake, came to his home. The officers conducted a search of his premises. During the search the police alleged that they found two blank Occupier's Notices beneath a filing cabinet in C11's bedroom. C11 was not present in the bedroom when the Notices were allegedly found. The Notices were not shown to C11 and he did not read them. C11 said that at that time he did not know what an Occupier's Notice was and the first time he actually saw the Occupier's Notice, allegedly found during the search, was when it was tendered in evidence at his committal hearing. When asked at the Commission whether the Notices were located beneath his filing cabinet C11 replied *"Definitely not"*.[1071]

7.65 When the search warrant was executed it quickly became apparent that C11 was not going to make any admissions. N1 said there was no plan to hide and then find the Occupier's Notices. They simply produced them during the search. They did not show them to C11 or allow him to handle them. This, according to N1, could have created more problems later. He said:[1072]

> Well, if – it was to reduce the allegations that could be made later. You know, handed it to him – "You handed it to him so he could have his fingerprints on it" and so forth, whereas that would have just compounded … It would have put a problem up that there was no need to have.

7.66 Irwin denied that N1 allocated to him the task of "finding" the Occupier's Notices. Despite the fact that Irwin had difficulty remembering the details of

[1068] PIC Transcript, N1, 11 September 2002, pp. 5289-5291
[1069] PIC Transcript, N1, 11 September 2002, pp. 5291-5292
[1070] PIC Transcript, N1, 11 September 2002, pp. 5292-5293
[1071] PIC Transcript, C11, 9 September 2002, pp. 5168-5169, 5176-5178
[1072] PIC Transcript, N1, 11 September 2002, pp. 5293-5294

finding the Occupier's Notices he maintained that he did find them. He conceded that he did not show them to C11 at the time he found them. He said that N1's version was not the truth but could offer no reason why N1 would implicate him in the loading of the Occupier's Notices on C11.[1073]

7.67 Blake said he travelled to C11's house with Irwin and N1. He drove the car. Prior to going to the house he spoke to N1 who gave him some instructions. When giving evidence to the Commission he could not recall the details of the instructions other than that they had an address to search for documents and other things in relation to an armed robbery. While at the house he did not search with N1 and Irwin. He was not told, prior to leaving the house, that the Occupier's Notices had been found. He drove the car back to the police station with N1 in the front passenger seat and Irwin and C11 in the back seat.[1074]

7.68 The police officers were at C11's house for approximately 30-40 minutes. C11 accompanied N1, Irwin and Blake to Burwood Police Station. He told the Commission that he thought he was going there to assist the police. There was general conversation between C11 and the officers during the journey to the police station. When asked whether he made any admissions to the police during the journey C11 replied *"None whatsoever"*. He also denied agreeing to participate in a record of interview.[1075]

7.69 N1 said that C11 agreed to accompany the police officers back to the police station and during the journey they made general conversation with C11 with the intention of using the information obtained from C11 in the verballed record of interview they were planning to create. This was to make the interview appear more genuine. N1 said that C11 did not, at any stage, make any admission of involvement in the robbery.[1076]

7.70 Irwin agreed that one of the reasons for going to C11's house that morning was to arrest C11. He also agreed that he did not tell C11 he was under arrest but denied that the reason for this was to give the police the opportunity to ask him questions about his family and other general details about his background. Irwin said he did not caution C11 before C11 got into the police vehicle and he did not recall any other officer cautioning C11. He told the Commission that, while on the way to Burwood Police Station, despite not cautioning C11, they proceeded to have a conversation with C11 during which C11 made admissions. Irwin said that N1 was lying when he said that they fabricated C11's admissions.[1077]

7.71 Blake recalled the conversation with C11 in the police car during the journey to Burwood Police Station. He thought that the Occupier's Notices and some photographs were shown to C11. He told the Commission that he couldn't recall the actual words of the conversation but said that C11 made admissions

[1073] PIC Transcript, RJ Irwin, 8 October 2002, pp. 5511-5525
[1074] PIC Transcript, IG Blake, 9 October 2002, pp. 5558-5560
[1075] PIC Transcript, C11, 9 September 2002, pp. 5169-5171, 5174
[1076] PIC Transcript, N1, 11 September 2002, pp. 5294-5295
[1077] PIC Transcript, RJ Irwin, 8 October 2002, pp. 5510-5511, 5535-5537

as to his involvement in the robbery. Although he was definite that he had heard C11 making admissions in the car, Blake did not record the details of the conversation, or C11's alleged admissions in his notebook, nor did he make a statement until nearly one year later. His explanation for this was that he *"... wasn't directly involved in the investigation"*.[1078]

C11 TAKEN TO BURWOOD POLICE STATION AND CHARGED

C11

7.72 C11 told the Commission that when they arrived at Burwood Police Station he was put into a room with Blake. He was there for an hour or so and during that time N1 and Irwin both came into the room on more than one occasion. At one such time N1 said to him *"Tell us what happened"* to which C11 replied *"I know nothing about it. I don't know what you're talking about"*. N1 then left the room. During the time C11 was in the room with Blake, N1 and Irwin came in and took a typewriter from the room. Later Davidson came in and asked C11 questions about a person called "*Abo Henry*". C11 did not know this person and told Davidson so. After Davidson had been in the room N1 came in again and told C11 he was charging him with armed robbery.[1079]

7.73 C11 was then taken to another room and charged and fingerprinted. He was searched and his personal effects were handed over to the custody officer, Yabsley. He was taken to the court and bail was refused so he was returned to the custody area. After returning from the court another officer, who C11 had not seen before, came to the custody area and gave Yabsley some papers to include in C11's personal effects. Yabsley told C11 that these papers included his record of interview.[1080] C11 immediately informed Yabsley that he had not participated in a record of interview. In evidence to the Commission C11 denied making any of the admissions recorded in the interview.[1081]

7.74 The record of interview contained personal details about C11 in relation to his family members and where he lived. C11 said that N1 and Irwin would have acquired this knowledge from the general conversation they had while travelling to the police station. At the end of the record of interview there is a hand written note by Davidson. C11 said that Davidson did not ask him any questions in relation to the record of interview or whether it was an accurate account.[1082]

7.75 At the time he gave evidence to the Commission C11 was aware of the handwritten notes made by Irwin in his notebook.[1083] The notebook entry records the details of the search of C11's premises, C11's alleged answers to

[1078] PIC Transcript, IG Blake, 9 October 2002, pp. 5560-5562
[1079] PIC Transcript, C11, 9 September 2002, pp. 5170-5172
[1080] PIC Exhibit 696B
[1081] PIC Transcript, C11, 9 September 2002, pp. 5172-5174; PIC Exhibit 697B
[1082] PIC Transcript, C11, 9 September 2002, pp. 5174-5176
[1083] PIC Exhibit 695B

questions during the search and that after arrival at Burwood Police Station a record of interview was conducted. The entry also records that C11 was given the record of interview and the notebook to read and that he read them and confirmed they were both true accounts. C11 told the Commission that on the day of his arrest he was not aware of either the notebook entry or the record of interview and was not given an opportunity to read them.[1084]

7.76 C11 was asked how it was that he came to be in the photograph from which M14 and S9 identified him. C11 said that at the time his usual practice was to go to a particular hotel on a Friday evening for a drink before commencing work. On the day the photograph was taken he went to the hotel as usual. C14, who was a person C11 knew but did not socialise with, was having a party there. As C11 walked into the hotel some good friends of his were standing ready to have their photograph taken and called to C11 to come and join them. C11 joined them, because he felt it would have been rude not to, and the photograph was taken. C11 said he, along with a lot of other people in the hotel that evening, was not attending the party.[1085]

N1

7.77 N1 said that on arrival at Burwood Police Station C11 was placed in a room with Blake. N1 spoke to Harborne who told N1 that he was a friend of C11 and that most of the other senior police officers at Burwood were in the same position. N1 had another conversation with C11 and when he made no admissions N1 left and went with Irwin to another room where they set about fabricating a record of interview. N1 said that although Irwin was present he only assisted in a minor way in the creation of the record of interview. A notebook entry was fabricated at the same time. N1 told the Commission that although Irwin wrote in his notebook he, N1, would have dictated what to write.[1086]

7.78 N1 contacted Davidson and asked him to come to the police station to perform the adoption of the record of interview. He did this because, after his conversation with Harborne, he knew that there was no one at Burwood he could ask. N1 was confident that he would have had no difficulty finding someone to perform the adoption if the officers stationed at Burwood had not known C11. He said at that time police would always support another police officer over a criminal and that he had never had a problem in getting a senior officer to authenticate a record of interview even when it was known that the record of interview was fabricated.[1087]

7.79 N1 said he rang Davidson and asked him to come to Burwood. When Davidson arrived N1 told him the situation including the fact that the record of interview was fabricated. Davidson had a short conversation with C11 and

[1084] PIC Transcript, C11, 9 September 2002, pp. 5175-5176
[1085] PIC Transcript, C11, 9 September 2002, pp. 5185-5186
[1086] PIC Transcript, N1, 11 September 2002, pp. 5295-5296, 5321
[1087] PIC Transcript, N1, 11 September 2002, pp. 5297-5298

then completed the necessary paperwork. He left the police station soon after completing the adoption process.[1088]

7.80 Contrary to the evidence given by C11 and Yabsley,[1089] N1 was confident that the record of interview was taken to the charge room before C11 was charged and not afterwards at 11.38am, as shown on the property docket.[1090] N1, who on his own admission was an experienced *"loader and verballer"* of accused persons, was adamant that he would not make the mistake of not placing a record of interview with C11 before he was charged.[1091]

7.81 C11's brother C12 was a police officer at the time C11 was arrested. C12 spoke to N1 on the morning of C11's arrest. N1 said that talking to C11's brother, a police officer, didn't make him overly concerned about what he had done to C11. However he conceded that the fact that he might have charged an innocent man did play on his conscience for a long time after the event. He said this was because:[1092]

> … I don't think I'd ever done that [verballed and loaded an innocent person] before. I mean, I'd verballed and loaded a lot of people.

Irwin

7.82 Irwin did not agree that when they arrived at Burwood Police Station C11 was put into a room with Blake. He said that his recollection was that he, N1 and C11 went into a room and he and N1 conducted a Record of Interview with C11. There was a typewriter in the room and N1 typed. Irwin said he *"Absolutely"* stood by his version of events even though the other two people involved people, C11 and N1, both said it didn't happen. Irwin said further that C11 made full admissions as to his involvement in the armed robbery and that what is recorded in the record of interview is what C11 said.[1093]

7.83 Irwin said he had a clear recollection of the record of interview being given to C11 to read. He recalled Davidson coming into the room to perform the adoption of the record of interview. Irwin's recollection was that C11 was given a copy of the interview immediately after the conclusion of the interview and a short time later he was taken to be charged. Irwin thought that he, Blake and N1 escorted C11 to the charge room.[1094]

7.84 Irwin told the Commission that he wrote the notes in his notebook[1095] with N1's assistance after they had finished the interview with C11. He agreed that what was recorded in the notebook was not a word for word account of what was said but denied it was a fabrication. He said he showed the notes to

[1088] PIC Transcript, N1, 11 September 2002, pp. 5299-5302, 5307
[1089] See paragraphs 7.73 & 7.98
[1090] PIC Exhibit 697B
[1091] PIC Transcript, N1, 11 September 2002, pp. 5307-5309, 5313-5315
[1092] PIC Transcript, N1, 11 September 2002, pp. 5315-5317
[1093] PIC Transcript, RJ Irwin, 8 October 2002, pp. 5538-5540
[1094] PIC Transcript, RJ Irwin, 8 October 2002, pp. 5545-5548
[1095] PIC Exhibit 695B

C11 and read them aloud to him. He could not give a reason as to why C11 was not prepared to sign the record in his notebook.[1096]

Blake

7.85 Blake said that on arrival at Burwood Police Station N1 and Irwin took C11 to an interview room. He did not know what they did while in the room because he was not in the room with them. He could not recall exactly what he did or how long it was before he commenced guarding C11. Blake said C11 was wrong when he said that he spent most of the time at Burwood Police Station, before he was charged, sitting in a room with Blake. Blake denied that he was chosen to take part in the operation that morning because he was someone who was prepared to go along with the verballing and loading of a suspect. Blake said he did not prevent C11's brother, C12, from seeing C11.[1097]

7.86 Blake said he did not make a statement at the time because no one asked him to do so. His statement was not made until 17 February 1992.[1098] He said he made the statement after being requested to do so, probably by Irwin. He could not provide a reason as to why Irwin requested the statement at that time. Blake said he used Irwin's statement to prepare his own but insisted that he did not make a direct copy. He said his statement was based on his own recollections in addition to Irwin's statement.[1099]

7.87 Blake said he did not go with C11 when he was charged and in fact did not go into the charge room at all. He denied that he went back to the detectives' area to retrieve the copy of C11's record of interview and said he did not know if anyone did that.[1100]

Davidson

7.88 Davidson's diary entry[1101] for 7 March 1991 records that he commenced duty at 6am and proceeded to Malabar. He then went to Burwood Police Station. He said he knew N1 would be there having arrested C11 but denied he knew that C11 was to be verballed. He denied that N1 telephoned him to ask him to come to Burwood and said he made the decision to go there to see how things were going and called in on his way from Malabar to Flemington.[1102]

7.89 Davidson said that on arrival at Burwood N1 spoke to him and told him C11 had made admissions in a record of interview. He denied that N1 told him the record of interview was fabricated and that he, Davidson, knew it was false. According to Davidson N1 also told Davidson of the difficulty in getting someone to adopt the record of interview. Davidson denied that it

[1096] PIC Transcript, RJ Irwin, 8 October 2002, pp. 5548-5550
[1097] PIC Transcript, IG Blake, 9 October 2002, pp. 5563-5565
[1098] PIC Exhibit 728B
[1099] PIC Transcript, IG Blake, 9 October 2002, pp. 5562-5566
[1100] PIC Transcript, IG Blake, 9 October 2002, pp. 5565-5566
[1101] PIC Exhibit 720B
[1102] PIC Transcript, JS Davidson, 8 October 2002, pp. 5438-5441, 5488

was for this reason he came to Burwood Police Station that day. He said that had N1 contacted him he would have come *"... but the fact was he didn't"*.[1103]

7.90 Davidson said he went to see C11 and asked him the relevant questions and recorded his answers on the pro forma adoption form.[1104] Davidson could not give a reason why C11 would not sign the record of interview. His evidence was that C11 told him he had entered into the record of interview of his own free will and had no complaints about the way in which he was treated or asked questions.[1105]

7.91 Davidson told the Commission that after the adoption process was completed he had further conversation with C11 about a person called Abo Henry. Davidson denied that he asked C11 about Henry and said that C11 initiated this conversation by asking if there was anything he could do to improve his position. Davidson's notebook[1106] records that he said to C11 that if C11 was prepared to tell him what he knew about Abo Henry he, Davidson, might be able to work something out with the ODPP. Abo Henry was a suspect for the robbery. C11 replied that he knew Henry but was not prepared to tell Davidson anything about him. Davidson took this to mean that C11 was frightened of Henry. Davidson confirmed N1's evidence that he left Burwood Police Station soon after he finished the adoption process.[1107]

Harborne

7.92 Harborne was on duty at Burwood on the day C11 was arrested. He knew C11 socially prior to that day. He said that on the morning of C11's arrest N1 approached him and asked him to witness C11's interview. N1 was aware that Harborne knew C11. Harborne told N1 that, because of his association with C11, he would not be able to witness the interview and that for the same reason there was probably no officer at Burwood who could witness the interview.[1108]

7.93 Harborne knew of Davidson prior to that day but had not worked with him. He saw Davidson at the station that morning although he could not remember the exact time. He said he had a brief conversation with Davidson about the fact that he could not perform the adoption of the record of interview with C11.[1109]

7.94 Harborne also saw C11 that morning. He said he, Harborne, approached the officer in charge of the station to get permission for C11 to stay in the detectives' room while awaiting his bail. Harborne said that C11 was very irate and upset about the events of that morning. Harborne arranged for

[1103] PIC Transcript, JS Davidson, 8 October 2002, pp. 5444-5449
[1104] PIC Exhibit 721B
[1105] PIC Transcript, JS Davidson, 8 October 2002, pp. 5449-5450
[1106] PIC Exhibit 722B
[1107] PIC Transcript, JS Davidson, 8 October 2002, pp. 5446-5448, 5452-5456
[1108] PIC Transcript, RA Harborne, 10 September 2002, pp. 5266-5268
[1109] PIC Transcript, RA Harborne, 10 September 2002, pp. 5268-5269

C11's brother, C12, to come and see C11. He said he didn't feel he was in a position to provide C11 with any advice himself.[1110]

7.95 Harborne did not see the record of interview nor did he speak to C11 about it. At the time of giving evidence at the Commission Harborne could not remember when he acquired knowledge about the record of interview and the conflicting evidence of when it came into the possession of C11. In an interview about the matter with Internal Affairs in 1997 Harborne is recorded as saying that on the day of C11's arrest Yabsley spoke to Harborne about what had occurred. Harborne conceded that his memory would have been better in 1997 than in 2002. He said that he did not think it was his role to cause any inquiries to be made about the record of interview although he did discuss the matter with his supervisor. He said he arranged for C11's brother to be there and felt comfortable with leaving the matter in C12's hands.[1111]

7.96 Harborne told the Commission that as time progressed he developed reservations about the record of interview and agreed that he was concerned that it was a *"verbal"*. These reservations were based on the fact that the record of interview had not been with C11 when he was charged.[1112]

7.97 Harborne recalled that his reaction to finding out that C11 had been charged with armed robbery was one of confusion. He said he would not have taken a person who he thought would commit armed robbery into his confidence or allow such a person to get close to him. He had difficulty accepting that C11 had taken part in the armed robbery because he felt this reflected poorly on his judgment of C11. Although he did not know C11 very well he said he did not think C11 was the sort of person who would commit an armed robbery and that he didn't think that anyone would admit to committing an armed robbery that he did not do.[1113]

Yabsley

7.98 Yabsley was on duty in the charge room of Burwood Police Station on the day C11 was arrested. He recalled C11 being brought to him for the purpose of being charged. The on-line charge record shows that C11 was charged at 9.45am on 7 March 1991.[1114] Yabsley told the Commission that once a person is charged any property they have with them is taken and recorded. Two property dockets were made in relation to C11. The first, made at 10.11am, does not include the record of interview. The second was made at 11.38am. In addition to the items listed on the first docket the second docket included the Occupier's Notice for C11's house, eight photocopied pages from Irwin's Notebook and the four-page record of interview between C11

[1110] PIC Transcript, RA Harborne, 10 September 2002, pp. 5269-5270
[1111] PIC Transcript, RA Harborne, 10 September 2002, pp. 5270-5273
[1112] PIC Transcript, RA Harborne, 10 September 2002, pp. 5275-5276
[1113] PIC Transcript, RA Harborne, 10 September 2002, pp. 5272, 5276
[1114] PIC Exhibit 700B

and N1.[1115] Yabsley said that a detective he did not know, but who was involved in the arrest of C11, handed the additional documents to him.[1116]

7.99 Yabsley said immediately after the documents were handed to him, and the detective told him what they were, C11 protested that he had not made a record of interview. Yabsley then showed C11 the record of interview and C11 continued to insist that he had not been interviewed. Yabsley thought he told C11 that he should raise the matter at a later stage.[1117]

7.100 Yabsley reported what C11 had told him about the record of interview to his supervisor, Sergeant Farmer. He could not remember Sergeant Farmer's response.[1118]

C12

7.101 On the morning of 7 March 1991 C12 was notified of his brother's arrest and came to Burwood Police Station to see him. C12 made notes of his attendance at Burwood Police Station in his official police notebook.[1119] C12 told the Commission he left NSW Police in 1994 but retained possession of the notebook because *"... I didn't want to let it out of my possession. ... to be honest, I didn't trust it with anyone else"*.[1120]

7.102 When he arrived at Burwood Police Station C12 spoke to N1 before speaking to his brother, C11. His notebook records that N1 told him that C11 had *"... big troubles* …" because *"... victims of armed hold-ups* …" had positively identified him. He then recorded that N1 would not allow him to speak to C11 until C11 had been charged and that when he spoke to C11 he *"Completely denied allegations"*.[1121]

7.103 C12 gave evidence about his involvement in this matter at a number of hearings and in particular at the trial of N1, Davidson, Irwin and Blake. At that trial he said that when he spoke to N1 at Burwood Police Station N1 told him that C11 had made admissions in relation to an armed robbery and assuming the designation of a police officer. C12 said that N1 also said words to the effect of *"Don't worry, we have got you covered"*.[1122]

7.104 After speaking to N1, C12 went to the charge room and saw C11. In his notebook C12 recorded that C12 was *"extremely distressed, crying, nervous, insisted innocence"*. After C11 was returned to the police station he was allowed to go into another room where he conferred with C12, his wife and solicitor. C12 recorded in his notebook that C11 told him he had not participated in a record of interview but had been placed in a locked room

[1115] PIC Exhibit 697B
[1116] PIC Transcript, TW Yabsley, 9 September 2002, pp. 5193-5197
[1117] PIC Transcript, TW Yabsley, 9 September 2002, pp. 5197-5198
[1118] PIC Transcript, TW Yabsley, 9 September 2002, p. 5199
[1119] PIC Exhibit 716B
[1120] PIC Transcript, C12, 12 September 2002, pp. 5377, 5388-5389
[1121] PIC Transcript, C12, 12 September 2002, pp. 5377-5378
[1122] PIC Transcript, C12, 12 September 2002, pp. 5378-5379

with a young police officer for approximately two hours. During that time they had general conversation but did not discuss the allegations. After approximately two hours N1 entered the room and informed C11 that he would be charged with armed hold-up and assumed identification. C12 said he first saw the record of interview after he had attended court with C11. He took a photocopy of the interview.[1123]

7.105 While at Burwood Police Station C12 conferred with Yabsley, Farmer and C11's solicitor about their concerns in relation to the record of interview. C12 could not remember the exact terms of the conversation. He could not remember if there was any discussion about making an official complaint. C12 said he did intend to report the matter to Internal Affairs but did not do so because he thought Yabsley or Farmer was going to pursue the matter.[1124]

7.106 After he left Burwood Police Station C12 went to the hotel where his brother regularly drank and spoke to some of C11's friends and associates. His intention in doing this was to try to gain information that might assist his brother however he was not successful in this.[1125]

7.107 C12 told the Commission that in the period between 1991 and 1994, when he resigned from NSW Police, he suffered harassment and was treated differently by other members of NSW Police, particularly in relation to a complaint and a number of departmental charges brought against him. In 1992 C12 left active duty and took long-term sick leave after having been diagnosed with post-traumatic stress syndrome, acute anxiety and depression.

ASSESSMENT

7.108 C11 has always said that he did not make any admissions of complicity in the robbery at La Perouse and that he did not take part in the record of interview. He has maintained this from the time the record of interview was brought into the charge room and at every opportunity since that time. Yabsley's evidence confirmed that C11 told him he did not participate in the record of interview. Yabsley has also maintained this version of events at every opportunity since that time.

7.109 N1, (and to a lesser extent F7 and M5, see below), have now given evidence that confirms C11's version. N1 said that he organised to load C11 with the Occupier's Notices and then fabricated his admissions and the record of interview. N1 said further that his statement, in relation to C11's admissions and the finding of the Occupier's Notices in his house, was false and that he lied in giving evidence at his trial in 2000. He also said that Irwin, Davidson and Blake lied at both C11's and Stuart's committal hearing and at their trial.

7.110 In evidence at the Commission, Irwin, Blake, and Davidson maintained the version of events they have previously given in their statements and evidence.

[1123] PIC Transcript, C12, 12 September 2002, pp. 5380-5381
[1124] PIC Transcript, C12, 12 September 2002, pp. 5382-5383
[1125] PIC Transcript, C12, 12 September 2002, pp. 5384-5387

They denied that C11 was verballed and loaded and that they had given false evidence in relation to this matter.

7.111 The Commission prefers the evidence of C11, Yabsley, and N1. In relation to the record of interview the participants were allegedly C11, N1 and Irwin. Only Irwin now maintains the story that the interview actually occurred and that C11 made the admissions contained within it.

STUART – THE ALLEGED CREATION OF FALSE POLICE IDENTIFICATION

7.112 M5 was present for the briefing that took place on 6 March 1991 in relation to the execution of the search warrant on Stuart. He said that Davidson addressed the briefing but could not remember what Davidson said. Wrice, King, Dowding, F7 and M5 attended the briefing. M5 said that the discussion included *"... basically that Stuart was going in ..."*. There was discussion about the fact that his fingerprint had been found and that false police identification had been used in the robbery. M5 said that Wrice, Dowding, King and F7 were all present when the decision was made to create a false police identification to plant on Stuart if necessary.[1126]

7.113 M5 said they met in the detectives office / meal room at Mona Vale Police Station early on the morning of 7 March 1991. He recalled that Dowding supplied a NSW Police hat badge but was not sure where the wallet came from. He said there was a blue tea towel in the room of a similar colour to the backing of a constable's badge so a piece of that cloth was cut out and placed in the wallet behind the badge. He was not sure but thought he was the person who cut out the piece of cloth. M5 could not remember who took the identification to Stuart's house but recalled that King and Dowding were allocated to "find" it. M5 thought, but could not be certain, that Wrice was in the room when the false identification was being created.[1127]

7.114 F7's evidence confirmed that of M5. He also recalled that King, Wrice, Dowding, M5 and himself were present when the decision was made to organise some items to load Stuart with, including the false police identification. He recalled that a hat badge was used and thought that he might have provided the wallet. He also recalled that a piece of coloured cloth found in the office was cut out and placed behind the badge. He didn't have a clear memory of exactly who was present when the false identification was being created. F7 agreed with M5 that the designated searching officers were King and Dowding although he thought that M5 was also designated as a searching officer.[1128]

7.115 Wrice denied having any knowledge about the creation of the false identification by the officers or an agreement to load Stuart. He said that despite the evidence of F7 and M5 on the subject, as far as he was aware King

[1126] PIC Transcript, M5, 12 September 2002, p. 5352
[1127] PIC Transcript, M5, 12 September 2002, p. 5353
[1128] PIC Transcript, F7, 10 September 2002, pp. 5225-5227; PIC Exhibit 705

and Dowding located the false police identification at Stuart's house during the execution of the search warrant.[1129]

7.116 King could not remember meeting at Mona Vale Police Station, on the morning of 7 March 1991, but agreed that he would have been there if it is recorded in his statement. He did not recall the manufacture of the false police identification at the police station. He said he knew nothing about cloth found at the police station being used as the backing behind the badge. He was positive he did not assist and said he did not see any other members of the team creating the false identification. He said that F7 and M5 were lying when they said members of the team had created the identification. He did not have a clear memory of the whole incident but denied it was possible that he had forgotten about the creation of the false identification.[1130]

EXECUTION OF THE SEARCH WARRANT AND ARREST OF STUART, 7 MARCH 1991

7.117 The officers arrived at Stuart's house and Wrice and F7 arrested Stuart and took him back to Mona Vale Police Station. M5, Dowding and King remained at Stuart's premises to conduct the search. Wrice denied that Stuart requested to speak to a solicitor when they arrested him.[1131]

7.118 F7 told the Commission that one of the reasons Mona Vale Police Station was chosen was that at that time it did not have an ERISP machine. This meant that they could conduct a *"notebook interview"*. He explained this to mean *"... an unsigned record of interview in a notebook – a fabricated interview in a notebook"*. F7 said that even before they arrived at Mona Vale Police Station it was contemplated that they were going to verbal Stuart. This was not something that was discussed between F7 and Wrice. F7 said:[1132]

> … it was just something that we did. It was just done. It wasn't something you discussed all the time, it was just part of the way of doing the job and it was just how it was done.

7.119 M5's statement[1133] records the details of the search. In it he recorded that after arrival at Stuart's premises he, King and Dowding searched for items that might inculpate Stuart in the robbery. M5 said that they believed that Stuart had been involved in the robbery and were only going to load him with the false police identification if nothing else incriminating was found. A wallet containing a large amount of money was found in Stuart's bedroom. M5 said that the police did not take any of the money.[1134]

7.120 M5's statement records that Dowding made a telephone call to Mona Vale Police Station from Stuart's residence. M5 could not recall the purpose of

[1129] PIC Transcript, PG Wrice, 10 October 2002, pp. 5668-5670
[1130] PIC Transcript, JJ King, 11 October 2002, pp. 5763-5765
[1131] PIC Transcript, PG Wrice, 10 October 2002, pp. 5670-5671
[1132] PIC Transcript, F7, 10 September 2002, pp. 5232-5233
[1133] PIC Exhibit 714B
[1134] PIC Transcript, M5, 12 September 2002, pp. 5353-5355

this telephone call.[1135] The statement goes on to record that King and Dowding found a number of items including the false police identification. M5 said that the other items referred to in the statement as being found were not planted on Stuart.[1136]

7.121 F7 said that there was no plan as to where the items to be loaded on Stuart were to be found. It was left up to the searching officers to find the items where they choose. Among the items genuinely found was a statutory declaration. The police officers did not expect to find this during the search. The statutory declaration was signed by Stuart and his solicitor and contained what F7 believed to be an explanation by Stuart for the presence of his fingerprint on the documents found at the scene of the robbery.[1137]

7.122 King said he had a vague recollection of being at Stuart's address and searching a vehicle with Dowding. King made two statements[1138] and he also recorded details of the search in his Duty Book.[1139] Each of these records contains a statement that a police wallet was found amongst other items. King denied that the statements in each of these records, in relation to the finding of the police identification, were false.[1140]

STUART TAKEN TO MONA VALE POLICE STATION AND CHARGED

7.123 F7 recalled going to Mona Vale Police Station with Stuart. He said that at no time did he and Wrice sit down in a room with Stuart and conduct an interview. Stuart was handcuffed to a desk. F7 was not sure if Stuart was in the presence of himself and Wrice while they were creating the record of interview. F7 said that it did not matter whether Stuart was there or not because he was not asked the questions nor did he answer them. Wrice dictated the questions and F7 wrote them down in his notebook.[1141] Subsequently F7 copied what was in his notebook into his statement.[1142] F7 said that any conversation recorded in his statement, that appeared to have taken place between Wrice, Stuart and himself, was false. At no time did Stuart, in F7's presence, make any admissions as to his involvement in the robbery. Stuart was not given an opportunity to read the notes or to have them read aloud to him despite the fact that both the statement and the notes suggest that this happened. F7 said he believed then, and still does, that Stuart was involved in the robbery.[1143]

7.124 F7 said that M5, Dowding or King arranged for Bernasconi, an officer from Mona Vale Police Station, to adopt the record of interview. F7's statement records that when the record of interview was finished he gave his notebook

[1135] The statement also records that King made a telephone call from Stuart's house. M5 was not questioned about that call but see paragraphs 7.129-7.130 for discussion of Wrice's response to questions about King's telephone call.
[1136] PIC Transcript, M5, 12 September 2002, pp. 5355-5356
[1137] PIC Transcript, F7, 10 September 2002, pp. 5228-5230, 5235
[1138] PIC Exhibits 741B, 742B
[1139] PIC Exhibit 740B
[1140] PIC Transcript, JJ King, 11 October 2002, pp. 5761-5763
[1141] PIC Exhibit 708B
[1142] PIC Exhibit 707B
[1143] PIC Transcript, F7, 10 September 2002, pp. 5233-5234

to Bernasconi who then entered the room where Stuart had been taken and performed the adoption. F7 said the adoption was not done as recorded but Bernasconi would just have written down the answers Wrice and F7 required.[1144]

7.125 M5 said that he knew Stuart and that Stuart would not have taken part in such an interview. He knew that Stuart would be verballed because *"... it was just accepted that that would happen"*. M5 said that after the arrest and charging of Stuart, F7 confirmed to him that they had verballed Stuart. M5 could not recall exactly when this occurred but said that it could have been on more than one occasion over a beer.[1145]

7.126 M5 assisted by approaching Bernasconi, who was known to him, and arranging for him to perform the adoption of the record of interview. M5 could not remember the exact words he spoke to Bernasconi but he *"... may have indicated to him that it would have been an unsigned interview ..."*. He said that the words "*unsigned interview*", while not being a code for a verbal, would have given Bernasconi an indication of the sort of interview he was being asked to adopt. M5 agreed that Bernasconi was prepared to perpetuate the lie created by F7 and Wrice but said he had no previous experience of such action by Bernasconi and was merely *"hoping"* that he would agree to adopt the interview.[1146]

7.127 Wrice denied that the record of interview was a verbal or that anyone spoke to Bernasconi to ask him to adopt a verballed interview. He also denied that the reason they went to Mona Vale Police Station was because it did not have ERISP machines at that time.

7.128 During evidence before the Commission Wrice was taken through his statement.[1147] He said it was a true record of the questions asked and Stuart's replies. Wrice agreed that he knew Stuart to be a hardened criminal and that one explanation for the statutory declaration, found during the search of Stuart's house, was that it was an attempt by Stuart to provide a reason for his fingerprint being found on the document left at the scene of the robbery. Despite this Wrice did not agree that these facts made it very unlikely that Stuart would admit to the robbery as suggested in the record of interview. Wrice said that F7 was lying when he said that he and Wrice fabricated the interview although he could not provide a reason why F7 might involve him in such a lie.[1148]

7.129 Wrice was questioned about the telephone call he received from King while he was interviewing Stuart at Mona Vale Police Station. King called Wrice from Stuart's house during the execution of the search warrant. At the time Stuart's telephone was subject to telephone interception so the call was recorded and put to King at the committal hearing. During the call King told

[1144] PIC Transcript, F7, 10 September 2002, pp. 5233, 5235-5236
[1145] PIC Transcript, M5, 12 September 2002, pp. 5356, 5359-5360
[1146] PIC Transcript, M5, 12 September 2002, pp. 5357-5359
[1147] PIC Exhibit 732B
[1148] PIC Transcript, PG Wrice, 10 October 2002, pp. 5671-5677

Wrice about the discovery of the police identification. Wrice was asked why he showed no excitement at hearing this news. His answer was *"I don't do backflips over things of that nature"*. He added that by that time he had commenced the interview and would have been focused on that.[1149]

7.130 Wrice was asked whether the purpose of the call was for King to warn Wrice that they had found the statutory declaration, so that Wrice could make mention of it in the fabricated interview. Wrice denied that this was the purpose of King's call. He did not have a good memory of the telephone call but denied that this was the reason for it.[1150]

7.131 Bernasconi denied that he was put on notice about the adoption of a record of interview when he saw the Task Force Magnum detectives at the office when he arrived for work on the morning of 7 March 1991. He said he knew someone was in custody because the person was being held in his office but he denied he was told there would be an unsigned record of interview to adopt. Bernasconi said that the first he was aware of the situation was when Wrice spoke to him about 8.30am.[1151]

7.132 Bernasconi told the Commission he had worked with M5 in 1985 but had lost contact with him between then and 1991. He said that on the morning of 7 March 1991 he saw M5 and said hello to him but did not have a specific conversation with him. He said he knew King and Dowding and could recall seeing them both at Mona Vale Police Station that morning. About the time Wrice spoke to Bernasconi King also spoke to him and told him that Stuart's wife was going to telephone a solicitor for him. Despite this Bernasconi did not make any arrangements or assist Stuart to see a solicitor.[1152]

7.133 Bernasconi knew that Stuart was a serious criminal, and that he had been charged in relation to the stabbing of a police prosecutor, Mal Spence. Although Mal Spence was not a personal friend of Bernasconi, he was a fellow police officer to whom Bernasconi was disposed in a friendly way. Bernasconi conceded that Wrice told him that Stuart was "… *going in for it*". Despite this Bernasconi denied that this background set the scene for him to do things beyond the bounds of normal police work and that he had any ill feeling towards Stuart.[1153]

7.134 It was put to Bernasconi that, at his committal, Stuart denied that the conversations between himself, Wrice and F7 took place and that in those circumstances it did not seem logical that Stuart would have agreed with Bernasconi that the record of interview was correct. Bernasconi did not agree and said that Stuart's answers during the adoption process, as recorded in his statement,[1154] were correct.[1155]

[1149] PIC Transcript, PG Wrice, 10 October 2002, pp. 5707-5710
[1150] PIC Transcript, PG Wrice, 10 October 2002, pp. 5710-5712
[1151] PIC Transcript, PS Bernasconi, 10 October 2002, pp. 5586-5587
[1152] PIC Transcript, PS Bernasconi, 10 October 2002, pp. 5587-5591
[1153] PIC Transcript, PS Bernasconi, 10 October 2002, pp. 5593-5594, 5602
[1154] PIC Exhibit 709B

7.135 Bernasconi did not complete a pro forma adoption form but instead signed and dated F7's notebook and made a separate statement. He said he looked for a copy of the pro forma that morning but was unable to locate any at the police station. He said this was not unusual and that the forms were not always available.[1156] Wrice said that he wasn't concerned that Bernasconi had not filled in the pro forma document and agreed with Bernasconi that they weren't always available at every police station. Wrice did not think that the way in which Bernasconi had performed the adoption was unusual or gave any cause for concern.[1157]

7.136 Bernasconi said that Mona Vale Police Station did not have an ERISP machine in 1991 but that he did not think that was the reason the station was chosen as a place to interview Stuart after his arrest. He said that Mona Vale was one of the closest police stations to Stuart's house and that none of the other police stations in the vicinity had ERISP machines at that time.[1158]

ASSESSMENT

7.137 Stuart claimed, at his committal and trial, that he was loaded and verballed and that he did not take part in a record of interview. He died in 1995.

7.138 F7 and M5, and to a lesser extent N1, now support Stuart's version of events. M5 and F7 gave evidence of the preparation of the false police identification at Mona Vale Police Station. They also said that King and Dowding were chosen to locate the police identification during the execution of the search warrant at Stuart's house.

7.139 F7's evidence that the record of interview was fabricated confirms Stuart's evidence at his committal and trial that he did not take part in the record of interview. Although M5 was not directly involved in the record of interview his evidence about his knowledge of Stuart and arranging for the adoption of the record of interview supports F7's evidence.

7.140 Wrice and King denied that they loaded Stuart with the false police identification and Wrice denied that the record of interview was a fabrication. Bernasconi denied that the adoption of the record of interview was other than as recorded in his statement of the adoption.

7.141 The Commission prefers the evidence of F7, M5 and N1 especially in the light of the comments at the committal hearing by the magistrate in relation to the records of interview of both C11 and Stuart (see below). The general comments about the way members of Task Force Magnum operated also support the view that Stuart was loaded and verballed.

[1155] PIC Transcript, PS Bernasconi, 10 October 2002, pp. 5599-5600
[1156] PIC Transcript, PS Bernasconi, 10 October 2002, pp. 5596-5597
[1157] PIC Transcript, PG Wrice, 10 October 2002, p. 5695
[1158] PIC Transcript, PS Bernasconi, 10 October 2002, pp. 5602, 5613-5614

THE COMMITTAL PROCEEDINGS – C11 AND STUART

7.142 C11 and Stuart were both charged with armed robbery, goods in custody and impersonating a police officer. They pleaded not guilty and committal proceedings commenced in February 1992 and were completed in September 1992.

7.143 C11 maintained that he was innocent and that he had not made any admissions as to involvement in the robbery. Alibi evidence was led from his wife and mother.

7.144 Yabsley gave evidence at C11's committal. This included evidence about the protests C11 made to the effect that he had not participated in a record of interview. Yabsley was cross-examined about his evidence in relation to receiving the record of interview and other documents some time after C11 was brought to the charge room but stood by his version of events.[1159]

7.145 Davidson, Irwin and Blake gave evidence in accordance with their statements.[1160] Davidson, Irwin and Blake all denied that C11's record of interview was a fabrication. N1 did not give evidence due to ill health. He made a statement for inclusion in the brief and when taken to that statement, while giving evidence at the Commission, admitted that it contained information that he knew was false.[1161]

7.146 At the committal hearing strong attacks were mounted on the identification of C11 by M14 and S9. McDonald gave evidence of his involvement in the identification and denied any impropriety.[1162] Wrice[1163] and F7 also gave evidence concerning the identification of C11 and both denied that it was improper.

7.147 Stuart gave evidence in relation to the presence of his fingerprint on the Occupier's Notice found at the scene of the robbery. He alleged that on Friday 15 February 1991, at 5.15pm while in the car park of a hotel he was approached by a person who handed him a piece of paper and said that it was a search warrant to search his car. Stuart opened the document and saw that it was a blank Occupier's Notice. When he questioned the person about it the person turned and walked back to his car saying he would return. He then drove off in his car. Stuart said that this incident disturbed him and he mentioned it to a friend who allowed Stuart to stay the night at his place. On the Monday following this alleged incident Stuart attended his solicitor's office and made a statutory declaration about the incident.[1164] This statutory declaration was found at his house during the execution of the search warrant.

[1159] PIC Transcript, TW Yabsley, 9 September 2002, pp. 5199-5202
[1160] PIC Exhibits 743AC, 745AC, 753AC
[1161] PIC Transcript, N1, 11 September 2002, p. 5304
[1162] PIC Exhibit 750AC
[1163] PIC Exhibit 749AC
[1164] PIC Exhibit 734B

7.148 At the committal Wrice gave evidence[1165] that he had interviewed Stuart at Mona Vale Police Station and that Stuart had made admissions as to his involvement in the robbery. Wrice also gave evidence that Stuart had made admissions of falsely making a statutory declaration to cover himself. F7 gave evidence in similar terms to that of Wrice. In addition F7 said that he had made notes of the interview with Stuart and Wrice in his notebook[1166] and that Stuart had declined to read the notes or make a statement. He said that he then read aloud the notes to Stuart and arranged for Bernasconi to perform the adoption of the interview.[1167]

7.149 When giving evidence to the Commission Wrice denied he perjured himself at the committal.[1168] Bernasconi also told the Commission that he recalled giving evidence at the committal and had told the truth in his evidence.[1169]

7.150 F7 admitted to the Commission that when he gave evidence at Stuart's committal he committed perjury in relation to the finding of the police identification and the conversation alleged to have taken place with Stuart at Mona Vale Police Station. F7 said there was no discussion among the Task Force members prior to the committal in relation to giving false evidence. This was because; *"You didn't speak about it* [giving false evidence] *like it was something out of the ordinary because it wasn't".*[1170]

7.151 At the completion of the committal the Magistrate committed both Stuart and C11 to trial although in the case of C11 he did so reluctantly due to the unsigned record of interview and concerns about the identification evidence. He made criticisms of the behaviour of police in relation to the execution of both the search warrants and the records of interview. In relation to the records of interview he said:[1171]

> … it is highly likely that these records of interview – bearing in mind that both are unsigned, both have been extracted in circumstances which are strongly disputed and questioned by Mr Stuart and [C11] … would be placed before a jury in any circumstances. There is no doubt in the court's mind when one looks at these records of interview and when one looks at the manner in which they've been taken, the format of them, that it is a matter where a jury would be given an extremely strong warning by any judge and it is such where a jury may well not elect to give a great deal of credit to those records of interview.

And in relation to the search warrants:[1172]

> … it is highly likely that the police have in respect to their involvement in both homes not acted in the manner in which they ask the court to accept they have acted.

In relation to C11 the magistrate concluded:[1173]

[1165] PIC Exhibit 749AC
[1166] PIC Exhibit 708B
[1167] PIC Exhibit 709B
[1168] PIC Transcript, PG Wrice, 10 October 2002, p. 5680
[1169] PIC Transcript, PS Bernasconi, 10 October 2002, p. 5592
[1170] PIC Transcript, F7, 10 September 2002, p. 5238
[1171] PIC Transcript, 9 September 2002, p. 5163
[1172] PIC Transcript, 9 September 2002, p. 5163
[1173] PIC Transcript, 9 September 2002, p. 5164

> … the court is of the view that in all probability a jury properly instructed would find it very difficult to convict [C11] on the evidence that has been presented based, of course, on that criticism the court has cast towards the police …

7.152 Wrice told the Commission that he was aware that the magistrate was critical of the evidence in the case although he thought the criticism related to C11 and not to Stuart. Wrice could not recall if he was present when the magistrate made his comments about the evidence. He was not overly concerned about the magistrate's comments because he had been criticised before. He said that although he had overall carriage of the matter through the committal hearing, he thought the criticisms related to C11 and he did not prepare the evidence in relation to C11. He added that despite the criticisms the magistrate committed both C11 and Stuart to trial.[1174]

IDENTIFICATION EVIDENCE OF C11 WITHDRAWN

7.153 In 1993 C14 was arrested on unrelated charges and agreed to assist NSW Police. He provided a statement[1175] naming the three persons, including Henry, who committed the armed robbery at Danny's Seafood Restaurant. He said that C11 was not involved. On receiving this information Davidson made arrangements for it to be passed on to the ODPP and to Wrice.[1176]

7.154 Davidson told the Commission that he had no authority over Wrice at the time he received the new information but he recommended that Wrice follow up the matter because of his previous involvement in the investigation. Davidson denied that he sent the report to the ODPP because he was worried about the implications for himself and others if the matter, particularly the C11 side of it, was allowed to continue. Davidson said he didn't necessarily believe C14's version but passed it on because he thought he should. He said that S9 and M14 changed their evidence about the identification of C11 because they were tired of the whole matter and wanted it to go away.[1177]

7.155 Wrice recalled talking to C14 in January 1994 and taking a statement from him.[1178] He said that prior to speaking to C14 Davidson had spoken to him. Davidson was not present however when Wrice took the statement from C14. Wrice admitted that, prior to speaking to C14, he did have some doubts about C11's involvement in the matter.[1179]

7.156 On receiving the information from C14, Wrice took further statements from S9 and M14.[1180] Both conceded that their identification of C11 as one of the offenders might have been incorrect. Wrice said that S9 had not expressed any doubts to him about her identification evidence at the committal or at any time prior to 1993. Other than getting new statements from S9 and M14,

---

[1174] PIC Transcript, 10 October 2002, pp. 5680-5682
[1175] PIC Exhibit 735B
[1176] PIC Transcript, JS Davidson, 8 October 2002, pp. 5448-5449
[1177] PIC Transcript, JS Davidson, 8 October 2002, pp. 5461-5466
[1178] PIC Exhibit 735B
[1179] PIC Transcript, PG Wrice, 10 October 2002, pp. 5660-5662
[1180] PIC Exhibits 736B (M14), 737B (S9)

Wrice did not make any further inquiries in relation to the matter. He said that by 1994 he had moved on to another area and did not have the time or the resources to make further inquiries. He said he passed the statements on to the ODPP.[1181]

7.157 On the basis of this new evidence the charges against C11 were no billed. Stuart stood trial and was acquitted. He died of an apparent drug overdose in September 1995.

THE TRIAL OF N1, DAVIDSON, IRWIN AND BLAKE

7.158 As a result of a complaint by C11, NSW Police conducted an internal investigation into the matter. The investigation concluded that C11 was in fact innocent of any involvement in the robbery and that N1, Davidson, Irwin and Blake had lied in putting forward evidence that C11 had made admissions as to his involvement, had participated in a record of interview, had adopted that interview in a conversation with Davidson, and had agreed that the notes in Irwin's police notebook constituted a correct representation of C11's interview with N1.

7.159 The internal investigation papers were forwarded to the ODPP and charges were laid against the four officers. All four were individually charged pursuant to section 319 of the *Crimes Act 1900* for conspiracy to pervert the course of justice in relation to C11. The officers were committed for trial. The trial was heard in the District Court at Sydney in 2000 and all four pleaded not guilty. A jury found them not guilty of all charges.

7.160 C11 gave evidence at both the committal and the trial of N1, Davidson, Irwin and Blake. He said that he did not make the admissions in the car on the way to Burwood Police Station and that he did not enter into a record of interview with N1 and Irwin.[1182]

7.161 N1 admitted, in evidence to the Commission, that he gave false evidence at his trial. He admitted that he told the court that the admissions allegedly made by C11 in the car and subsequently at Burwood Police Station did in fact occur. N1 told the Commission and that he had been lying on his oath when he gave that evidence. He also admitted he lied about the finding of the Occupier's Notices at C11's house.[1183]

7.162 N1 said that Irwin, Davidson and Blake also gave false evidence at their trial. He said that Irwin had lied on oath when he gave evidence about the finding of the Occupier's Notices and C11 making admissions. In addition N1 said that Davidson's evidence that he went to Burwood Police Station simply to see how the investigation was going was false and his evidence about performing the adoption of the record of interview with C11 was also false.

[1181] PIC Transcript, PG Wrice, 10 October 2002, pp. 5662-5666
[1182] PIC Transcript, N1, 11 September 2002, pp. 5309-5310
[1183] PIC Transcript, N1, 11 September 2002, p. 5310

Blake's statement[1184] where he referred to C11 making admissions in the car on the way to Burwood Police Station, and the evidence he gave at his trial in support of this statement was also false.[1185]

7.163 N1 said that he, Davidson and Irwin and possibly Blake met before their trial and agreed to keep to the story they had previously maintained in their statements and evidence at C11's and Stuart's committal and Stuart's trial. He said that during the trial he had a number of conversations with Davidson however once they had agreed to stick together and maintain their story there was not much further discussion in relation to their evidence.[1186]

7.164 During these conversations N1 admitted that they may have talked about witnesses for the prosecution, particularly the police witnesses, in derogatory terms but he denied that a decision was made to undermine the confidence or evidence of any of the witnesses. In particular N1 denied that he met with Yabsley or Harborne prior to his trial.[1187]

7.165 In evidence to the Commission Davidson agreed that prior to their trial he met with N1, Irwin and Blake on a number of occasions. He did not agree however that at those meetings they determined to stick together and maintain the evidence they had previously given. Davidson did say that he made a précis of the matter and provided each of the other officers with a copy. The aim of the précis was to assist in their defence.[1188]

7.166 Davidson denied that he had fabricated evidence in relation to C11. He said that N1 was lying when he told the Commission that C11 was verballed and loaded.[1189]

7.167 Davidson conceded that he visited Irwin, who was in gaol on unrelated matters, prior to the committal hearing commencing in August 1999. He denied that the purpose for the visit was to discuss their upcoming committal and said they discussed general matters and did not specifically talk about the charges they were facing. Irwin commenced his prison sentence in April 1999. Davidson's visit to him was on 23 May 1999. Davidson had attempted to visit Irwin on a prior occasion but had been unsuccessful because at the time there was no visiting allowed. He dismissed as ridiculous the suggestion that the reason for these visits was concern that Irwin's prison sentence may affect his ability to maintain their evidence in relation to C11.[1190]

7.168 Irwin denied that he gave false evidence at his trial. He also denied meeting with N1, Davidson and Blake prior to the trial commencing. He was in gaol at the time of the meeting. He did recall receiving Davidson's précis of the matter. He considered it to be Davidson's opinion of the legal argument and

[1184] PIC Exhibit 728B
[1185] PIC Transcript, N1, 11 September 2002, pp. 5310-5311, 5322
[1186] PIC Transcript, N1, 11 September 2002, pp. 5325-5327
[1187] PIC Transcript, N1, 11 September 2002, pp. 5327-5328
[1188] PIC Transcript, JS Davidson, 8 October 2002, pp. 5472-5473
[1189] PIC Transcript, JS Davidson, 8 October 2002, pp. 5475-5476
[1190] PIC Transcript, JS Davidson, 14 October 2002, pp. 5819-5824

he had a laugh at it and then disregarded it. The only time Irwin could remember seeing Davidson while he was in gaol was during the various court appearances. He could not recall Davidson visiting him at the gaol.[1191]

7.169 Blake recalled a meeting with N1 and Davidson at their solicitor's office. He said that Irwin was not present. He did not recall any other meetings and said he had not met with N1 since the trial except on the night of the verdict when they celebrated together. Blake denied that he perjured himself in giving evidence at his trial. After Task Force Magnum concluded Blake worked with Davidson on Task Force "Nis". He did not know if Davidson had chosen him to be a member of this Task Force or not. He denied that he was asked to become a member of this Task Force because he was known as someone who was prepared to verbal and load suspects.[1192]

7.170 Blake resigned from NSW Police in July 2000 after the trial had finished. Despite being found not guilty Blake was at that time being considered for dismissal from NSW Police under section 181D of the *Police Act 1990*.[1193]

7.171 Yabsley gave evidence for the prosecution at the committal and trial of N1, Davidson, Irwin and Blake. As he had at C11's committal he again gave evidence that the documents, including the record of interview, were not in C11's possession prior to him being charged. In evidence before the Commission Yabsley said he stood by his previous evidence *"... most definitely"*. When asked whether, having had time to reflect on events, he might have been mistaken in relation to this evidence Yabsley said:[1194]

> … But the evidence that I've given right from day one in this matter about that document arriving late into the charge room, I stand by that. I stand by the evidence that I've given in relation to C11 protesting quite loudly when that document arrived, of the fact that he had not made or had any part in the making of that document. They are very clear in my mind.

ALLEGED THREAT TO YABSLEY

YABSLEY

7.172 Yabsley gave evidence to the Commission about an incident that occurred approximately two weeks prior to the trial of N1, Davidson, Irwin and Blake. He said he was working at Earlwood Police Station when two or three detectives approached him. After being introduced to him one of the detectives said words to the effect that:[1195]

> We know who you are and we know all about you. We are not concerned about the outcome of the trial because you haven't got a brief.

7.173 Just prior to this incident occurring Yabsley had had a conversation with his Local Area Commander, Inspector Peter Noonan in which Noonan had

[1191] PIC Transcript, RJ Irwin, 8 October 2002, pp. 5496, 5506-5508
[1192] PIC Transcript, IG Blake, 9 October 2002, pp. 5570-5571, 5576
[1193] PIC Transcript, IG Blake, 9 October 2002, pp. 5572-5573
[1194] PIC Transcript, TW Yabsley, 9 September 2002, pp. 5203-5204
[1195] PIC Transcript, TW Yabsley, 9 September 2002, p. 5204

mentioned having concerns about Yabsley's security in relation to the trial. Noonan had spoken to Internal Affairs and was considering making an application for Yabsley to be placed on the witness protection programme. Following the incident at Earlwood Police Station, which Yabsley perceived to be a threat, Yabsley contacted Internal Affairs and received advice in relation to security. He was also given a telephone number he could contact at any time if he thought anything unusual had happened. Yabsley also contacted his doctor who prescribed a course of antidepressants. He said that he did not receive any other threat, either direct or indirect.[1196]

7.174 When Yabsley gave evidence to the Commission he was not confident of the identity of the detective who had threatened him however he thought he was related to Davidson. He has never seen the detective since that day.[1197] On the second day he gave evidence Yabsley said that he knew Davidson had both a son and a nephew in NSW Police. He said that at the time of the approach to him the nephew was stationed at Ashfield. His evidence was:[1198]

> … my memory of events is that perhaps the fellow from Ashfield, Detective Brown, was in attendance at the police station, but I'm not absolutely certain. I know that it was a relative, but I'm not certain which of the two it was on that day. … The son or the nephew.

7.175 The Commission located a file note made by the officer Yabsley spoke to in Internal Affairs prior to the trial.[1199] In the file note it is recorded that Yabsley said his conversation about giving evidence in the Davidson matter was with Brown.

BROWN

7.176 Brown is a member of Davidson's extended family. He told the Commission that he resided with Davidson when he, Brown, first came to Sydney but left Davidson's home around the end of 1996 or the beginning of 1997. At the time he gave evidence Brown was attached to Ashfield Police Station and had been since 1997. This included the period when the station was undergoing renovations and the exhibit room was temporarily moved to Earlwood Police Station. Brown told the Commission that he had not lived with Davidson while he was stationed at Ashfield. Brown agreed that Davidson was someone he looked up to and admired. He said that the fact that Davidson was a police officer was one of the reasons that encouraged him to join NSW Police.[1200]

7.177 Brown told the Commission that he became aware that charges had been laid against Davidson through conversations with family members and with other police, and also from media reports. He did not recall Davidson telling him about the charges but said it was possible that Davidson had spoken to him.

[1196] PIC Transcript, TW Yabsley, 9 September 2002, pp. 5204-5206
[1197] PIC Transcript, TW Yabsley, 9 September 2002, pp. 5205-5206
[1198] PIC Transcript, TW Yabsley, 10 September 2002, pp. 5219-5220
[1199] PIC Exhibit 861B
[1200] PIC Transcript, LK Brown, 14 October 2002, pp. 5786-5789

Brown said he did not ever speak with Davidson directly in a specific conversation about the matter.[1201]

7.178 Brown met Yabsley when he commenced work at Ashfield Police Station in 1997. Brown recalled speaking to Yabsley about the Davidson matter. He said the conversation took place at Earlwood Police Station. Brown's recollection of the conversation was not consistent with that of Yabsley. Brown denied the conversation arose because he saw Yabsley's subpoena. He said Yabsley initiated the conversation by asking him if he was related to Davidson. When Brown replied in the affirmative Yabsley proceeded to explain to him that he was a witness in the matter, that he had been working at Burwood Police Station and there was a discrepancy with the record of interview. Brown said he listened to him but did not want to get involved so didn't take the conversation any further. In his opinion it was a friendly conversation.[1202]

7.179 Brown denied he told Yabsley that Davidson would be *"getting off"* the matter and that Yabsley's evidence would be useless. He also denied that Yabsley had said that he had told the truth before and would tell the truth again. Brown told the Commission there was *"No way in the world"* anything in the conversation would cause Yabsley to ring Internal Affairs and make a complaint or to fear giving evidence against Davidson.[1203]

7.180 Brown said he had not told Davidson that he knew Yabsley and worked with him. He said he did not know that Yabsley was a witness for the prosecution in Davidson's matter until Yabsley told him. He said he did not tell Davidson about the conversation with Yabsley because the matter was of no interest to him. Brown denied that his loyalty to Davidson would cause him to *"... step outside my professionalism ..."*. Brown also denied that Davidson had ever asked him to talk to Yabsley.[1204]

DAVIDSON

7.181 Davidson agreed that Brown was a relative of his and had resided with him when Brown first came to Sydney. He said however that Brown was not living with him at the time he was charged. He could not specifically recall talking to Brown about the charges but said that he probably would have discussed the matter with him. Davidson said that he might have discussed with Brown his opinion about the state of the evidence against him, and the witnesses who were to give evidence against him, but he could not recall any such conversations.[1205]

7.182 Davidson denied that he had asked Brown to speak to Yabsley on his behalf. He also said that Brown had not spoken to him about the conversation with Yabsley. He said he was not aware, until the evidence was given to the

[1201] PIC Transcript, LK Brown, 14 October 2002, pp. 5787-5789
[1202] PIC Transcript, LK Brown, 14 October 2002, pp. 5791-5793
[1203] PIC Transcript, LK Brown, 14 October 2002, pp. 5794-5795
[1204] PIC Transcript, LK Brown, 14 October 2002, pp. 5796-5798
[1205] PIC Transcript, JS Davidson, 8 October 2002, pp. 5467-5469

Commission that Yabsley and Brown were stationed in the same area at that time. Davidson denied that he told Brown to say anything to Yabsley but said he may well have told Brown that he was not concerned about the trial and said that they didn't have a brief. Davidson said that was a sentiment that was *"... echoed by N1 to our solicitors from day one"*.[1206]

AFFECTED PERSONS

7.183 A person against whom, in the Commission's opinion, substantial allegations have been made in the course of, or in connection with, an investigation, is an "affected person" for the purposes of a Report to Parliament by the Commission.[1207]

7.184 Subsection 97(2) of the *Police Integrity Commission Act 1996* (the Act) requires the Commission to include in a Report to Parliament a statement in respect of each affected person as to whether or not in all the circumstances the Commission is of the opinion that consideration should be give 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,[1208]

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.

7.185 In addition the Commission may form opinions as to whether police misconduct has occurred: subsection 16(1)(a) of the Act.

7.186 The following substantial allegations arise from the evidence in this investigation:

- that Wrice, F7, M5, King and Dowding agreed to pervert the course of justice and did so by fabricating evidence, specifically the false police identification, against Stuart;
- that Wrice and F7 fabricated a record of interview allegedly conducted between Wrice and Stuart;

[1206] PIC Transcript, JS Davidson, 8 October 2002, pp. 5470-5472

[1207] Subsection 97(3), *Police Integrity Commission Act 1996*

[1208] 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 Commissioner to recommend or state whether consideration should be given to the prosecution of a person for a specified "disciplinary offence" (subsections 16(1)(b), 97(2)(b)) has no effective application to police officers. This is so even for police misconduct that occurred before this date.

- that Bernasconi together with Wrice, F7 and M5 fabricated the adoption of the record of interview alleged to have taken place between Wrice and Stuart;
- that N1 and Irwin agreed to pervert the course of justice and did so by fabricating evidence, specifically the loading of the blank Occupier's Notices, against C11;
- that N1, Irwin and Blake fabricated admissions alleged to have been made by C11;
- that N1 and Irwin fabricated a record of interview allegedly conducted between C11 and N1;
- that Davidson together with N1 and Irwin fabricated the adoption of the record of interview alleged to have taken place (as above) between N1 and C11;
- that each of the officers named above made false statements in relation to the arrest and interview of both C11 and Stuart and, with the exception of N1 who did not give evidence, perjured themselves when they gave evidence in accordance with those statements;
- that N1, Davidson, Blake and Irwin perjured themselves when they gave evidence at their trial in March 2000;
- that members of Task Force Magnum, including Davidson, Wrice, N1, M5, F7, King and Dowding were prepared to do anything necessary to obtain convictions, including "loading", "verballing" or both; and
- that Lee Brown spoke improperly to Yabsley such as to cause Yabsley to perceive he had been threatened.

7.187 In light of the above the following people are affected persons:

- Bernasconi, Phillip Sydney
- Blake, Ian Grant
- Brown, Lee Kevin
- Davidson, John Stuart
- Dowding, Kim
- F7
- Irwin, Robert James
- King, James Justin
- M5
- N1
- Wrice, Philip George

7.188 All of the abovementioned people, with the exception of Dowding, gave evidence after a declaration was made under section 41 of the Act. Therefore pursuant to section 40 of that Act their evidence is not admissible against them in subsequent criminal or civil proceedings except for proceedings for an offence against the Act or for contempt under that Act.

PHILLIP SYDNEY BERNASCONI

7.189 Bernasconi is an affected person because he is the subject of the substantial allegations that:

- he fabricated the adoption of the record of interview alleged to have taken place between Wrice and Stuart; and
- he made a false statement in relation to the adoption of Stuart's alleged record of interview and perjured himself when he gave evidence in accordance with that statement.

7.190 The Commission considers that Bernasconi engaged in police misconduct: subsection 16(1)(a) of the Act.

7.191 The admissible evidence against Bernasconi is that of M5 and F7. M5 said that he met with Bernasconi on the morning of Stuart's arrest and arranged for him to perform the adoption of the interview. He said that he either knew that Bernasconi would be prepared to fabricate the adoption, or hoped that he would. He had not had experience of Bernasconi adopting a fabricated record of interview prior to this occasion.[1209] F7's evidence supports that of M5 in that he said the adoption was arranged in advance and that Bernasconi fabricated the adoption.[1210] Bernasconi denied that he was involved in the conduct alleged by F7 and M5.

7.192 The Commission is of the opinion that the evidence supports the consideration being given to the prosecution of Bernasconi for perverting the course of justice pursuant to section 319 of the *Crimes Act 1900*.

7.193 However following the public hearings in this segment and prior to the completion of this Report, NSW Police sent a brief of evidence to the ODPP in relation to Bernasconi for consideration of possible criminal charges. The ODPP recommended that no charges be laid.

7.194 In the circumstances the Commission is of the opinion that further consideration **should not** be given to the prosecution of Bernasconi for any criminal offences.

7.195 Bernasconi is no longer a serving police officer. Accordingly the question of taking action pursuant to subsections 97(2)(c) and (d) of the Act does not arise.

[1209] PIC Transcript, M5, 12 September 2002, pp. 5357-5359
[1210] PIC Transcript, F7, 10 September 2002, pp. 5232-5233, 5235-5237

IAN GRANT BLAKE

7.196 Blake is an affected person because he is the subject of the substantial allegations that:

- he made a false statement in relation to the arrest, interview and admissions of C11 and perjured himself when he gave evidence in accordance with that statement; and
- he perjured himself when he gave evidence at his trial in March 2000.

7.197 The Commission considers that Blake engaged in police misconduct: subsection 16(1)(a) of the Act.

7.198 The admissible evidence against Blake is that of N1 and C11. N1 said that prior to the execution of the search warrant at C11's house he checked with Irwin that Blake could be trusted to go along with the illegal activities that were planned.[1211]

7.199 When they arrived with C11 at Burwood Police Station N1 said that C11 was left in a room with Blake while N1 and Irwin fabricated the record of interview.[1212] This evidence is confirmed by C11 who said, in the statement he wrote of the events of the 7 March 1991,[1213] that he was placed in a room with the young detective and did not take part in a record of interview.

7.200 It does not appear that Blake was involved in the actual fabrication of the record of interview but N1 gave evidence that Blake was aware of what was going on and that he knew his statement and the evidence he gave, at both C11's committal and his own trial, was false. The allegations against Blake also receive general support from the evidence of F7, M5 and N1 about the approach and methods of Task Force Magnum.[1214]

7.201 Blake denied that he was involved in the conduct as alleged by F7, M5 and N1.

7.202 The Commission is of the opinion that the evidence supports consideration being given to the prosecution of Blake for perjury pursuant to section 327 of the *Crimes Act 1900*. However, the decision of the High Court of Australia in *The Queen v Carroll*,[1215] delivered after the Commission's hearing, suggests that such a prosecution would not be available.

7.203 In any event following the public hearings in this segment and prior to the completion of this Report, NSW Police sent a brief of evidence in relation to Blake to the ODPP for consideration of possible criminal charges. The

---

[1211] PIC Transcript, N1, 11 September 2002, p. 5292
[1212] PIC Transcript, N1, 11 September 2002, pp. 5295-5296
[1213] PIC Exhibit 698B
[1214] PIC Transcript, F7, 10 September 2002, p. 5241-5242, 5243-5245; N1, 11 September 2002, p. 5320; M5, 12 September 2002, p. 5361-5362
[1215] *The Queen v Carroll* [2002] HCA 55 (5 December 2002)

ODPP recommended that the charge of perjury was not available and there was insufficient evidence to support any other charges.

7.204 In the circumstances the Commission is of the opinion that further consideration **should not** be given to the prosecution of Blake for any criminal offences.

7.205 Blake is no longer a serving police officer. Accordingly the question of taking action pursuant to subsections 97(2)(c) and (d) of the Act does not arise.

LEE KEVIN BROWN

7.206 Brown is an affected person because he is the subject of the substantial allegation that he threatened Yabsley.

7.207 Yabsley gave evidence of an approach to him by a detective prior to him giving evidence against Davidson. He said the detective spoke to him in a way he perceived to be a threat. As a result of the approach Yabsley contacted Internal Affairs to discuss his security and visited his local doctor who prescribed him a course of antidepressants. Although the file note[1216] made by the Internal Affairs officer notes that Yabsley said the conversation was with Brown, when he gave evidence at the Commission, Yabsley could not recall the name of the detective who approached him, although he thought he was related to Davidson.[1217] Yabsley later told the Commission that he thought Brown made the approach to him but he could not be certain.[1218]

7.208 While the available evidence, particularly the file note of Yabsley's contact with Internal Affairs, raises a suspicion that the approach to Yabsley was made by Brown, the Commission is of the opinion that consideration **should not** be given to the prosecution of Brown for any criminal offence.

7.209 Brown is a serving officer so it is necessary to consider the issues raised in subsections 97(2)(c) and (d) of the Act. In doing so the evidence he gave to the Commission may be considered. Brown admitted to having a conversation with Yabsley about Davidson but denied that his contribution to the conversation could have been perceived as a threat. Brown said that Yabsley, who knew him, instigated the conversation and that Yabsley told him that he was giving evidence in the Davidson matter. Brown said that the conversation was friendly and that he didn't say much because he didn't want to get involved. Brown's evidence was that he had known Yabsley since 1997 because they had worked together.[1219] In contrast Yabsley's evidence

[1216] PIC Exhibit 861B
[1217] PIC Transcript, TW Yabsley, 9 September 2002, pp. 5205-5206
[1218] PIC Transcript, TW Yabsley, 10 September 2002, p. 5220
[1219] PIC Transcript, LK Brown, 14 October 2002, pp. 5791-5793

was that he did not know the detective who approached him and had never seen him since that day.[1220]

7.210 Given the conflicting accounts of the conversation, Brown's denial that the conversation was other than friendly, and Yabsley's inability to identify the detective who approached him the Commission is of the opinion that consideration **should not** be given to the taking of action against Brown pursuant to subsections 97(2)(c) or (d) of the Act.

JOHN STUART DAVIDSON

7.211 Davidson is an affected person because he is the subject of the substantial allegations that:

- he, together with N1 and Irwin, fabricated the adoption of the record of interview alleged to have been held between N1 and C11;
- he made a false statement in relation to the arrest and interview of C11 and perjured himself when he gave evidence in accordance with that statement;
- he perjured himself when he gave evidence at his trial in March 2000; and
- members of Task Force Magnum, including Davidson were prepared to do anything necessary to obtain convictions, including "loading" and "verballing" or both.

7.212 The Commission considers that Davidson engaged in police misconduct: subsection 16(1)(a) of the Act.

7.213 Davidson was directly involved in the arrest and charging of C11 in that he performed the adoption of the record of interview. The admissible evidence against Davidson in this matter is that of N1, C11, F7, M5 and Yabsley. Their evidence is supported by that of C12.

7.214 C11 has always stated that he did not make any admissions of complicity in the robbery at La Perouse and that he was verballed and loaded. He told the officer in the charge room (Yabsley) that N1 and Irwin had not interviewed him.[1221] C11 noted his recollection of the events in a document dated 7 March 1991.[1222] In that document he stated that no interview was conducted.

7.215 Yabsley confirmed that C11 told him that he did not participate in a record of interview. He gave evidence that when C11 was brought to the charge room he registered C11's property. C11 did not have a copy of the record of interview with him at that time. Some time later a detective handed some more documents to Yabsley and requested they be added to C11's property.

[1220] PIC Transcript, TW Yabsley, 9 September 2002, p. 5206
[1221] PIC Transcript, C11, 9 September 2002, pp. 5173-5174
[1222] PIC Exhibit 698B

These documents contained the record of interview. Yabsley said that it was at this early stage that C11 stated that he had not taken part in any record of interview.[1223]

7.216 N1 gave evidence that Davidson had direct knowledge of the loading and verballing of C11. In fact he said that Davidson put pressure on him to load and verbal C11 by saying to him that if N1 didn't do it he, Davidson, would. N1 said further that once the record of interview was completed he called Davidson to come to Burwood Police Station to adopt the interview. This was because C11 was known to the police officers at Burwood so N1 could not ask any of them to adopt the interview. N1 also said that Davidson had lied when he gave evidence in relation to the adoption. In relation to their own trial N1 said an agreement was reached between himself, Davidson, Irwin and Blake to hold the line and maintain the lies that had been given at C11's committal hearing.[1224]

7.217 C12, C11's brother, who was a NSW police officer at the time these events took place, supported the allegation that C11 was verballed and loaded. C12 said that on the day he was arrested C11 protested his innocence and denied that he had participated in a record of interview. C12 also stated that he doubted the authenticity of the record of interview.[1225]

7.218 The allegations against Davidson receive general support from the evidence of F7, M5 and N1 about the approach and methods of Task Force Magnum.[1226]

7.219 Davidson denied that he was involved in the conduct as alleged by F7, M5, N1 and C11.

7.220 The Commission is of the opinion that the evidence supports consideration being given to the prosecution of Davidson for perjury pursuant to section 327 of the *Crimes Act 1900*. However, the decision of the High Court of Australia in *The Queen v Carroll*,[1227] delivered after the Commission hearing, suggests that such a prosecution would not be available.

7.221 In any event following the public hearings in this segment and prior to the completion of this Report, NSW Police sent a brief of evidence to the ODPP in relation to Davidson for consideration of possible criminal charges. The ODPP recommended that the charge of perjury was not available and there was insufficient evidence to support any other charges.

[1223] PIC Transcript, TW Yabsley, 9 September 2002, pp. 5196-5198
[1224] PIC Transcript, N1, 11 September 2002, pp. 5289-5290, 5297, 5299-5302, 5310-5311, 5325-5327
[1225] PIC Transcript, C12, 12 September 2002, pp. 5381-5383
[1226] PIC Transcript, F7, 10 September 2002, pp. 5241-5242, 5243-5245; N1, 11 September 2002, p. 5320; M5, 12 September 2002, pp. 5361-5362
[1227] *The Queen v Carroll* [2002] HCA 55 (5 December 2002)

7.222 In the circumstances the Commission is of the opinion that further consideration **should not** be given to the prosecution of Davidson for any criminal offences.

7.223 Davidson is no longer a serving police officer. Accordingly the question of taking action pursuant to subsections 97(2)(c) and (d) of the Act does not arise.

KIM DOWDING

7.224 Dowding is an affected person because he is the subject of the substantial allegations that:

- he, together with Wrice, F7, M5 and King agreed to pervert the course of justice and did so by fabricating evidence, specifically the false police identification, against Stuart;
- he made a false statement in relation to the arrest and interview of Stuart and perjured himself when he gave evidence in accordance with that statement; and
- members of Task Force Magnum, including Dowding were prepared to do anything necessary to obtain convictions, including "loading", "verballing" or both.

Dowding did not give evidence in this segment due to ill health however he was legally represented.

7.225 The Commission considers that Dowding engaged in police misconduct: subsection 16(1)(a) of the Act.

7.226 The admissible evidence against Dowding is that of F7 and M5. M5 gave evidence that Dowding supplied the badge used in the creation of the false police identification and that it was Dowding, along with King, who was assigned to "find" the items during the search of Stuart's residence.[1228] F7's evidence was that Dowding was one of the group of officers who organised to load Stuart with the false police identification and to verbal him.[1229]

7.227 The general evidence of N1 supports the evidence of both M5 and F7, that all the officers involved in the search had knowledge of the plans to load and verbal Stuart.[1230] The allegations also receive general support from the evidence of F7, M5 and N1 about the approach and methods of Task Force Magnum.[1231]

[1228] PIC Transcript, M5, 12 September 2002, pp. 5352-5353
[1229] PIC Transcript, F7, 10 September 2002, pp. 5225, 5226, 5228
[1230] PIC Transcript, N1, 11 September 2002, p. 5289
[1231] PIC Transcript, F7, 10 September 2002, pp. 5241-5242, 5243-5245; N1, 11 September 2002, p. 5320; M5, 12 September 2002, pp. 5361-5362

7.228 The Commission is of the opinion that the evidence supports consideration being given to the prosecution of Dowding for perverting the course of justice pursuant to section 319 of the *Crimes Act 1900*.

7.229 Following the public hearings in this segment and prior to the completion of this Report, NSW Police sent a brief of evidence to the ODPP in relation to Dowding for consideration of possible criminal charges. The ODPP recommended that no charges be laid.

7.230 In the circumstances the Commission is of the opinion that further consideration **should not** be given to the prosecution of Dowding for any criminal offences.

7.231 Dowding is no longer a serving police officer. Accordingly the question of taking action pursuant to subsections 97(2)(c) and (d) of the Act does not arise.

F7

7.232 F7 is an affected person because he is the subject of the substantial allegations that:

- he, together with Wrice, M5, King and Dowding agreed to pervert the course of justice and did so by fabricating evidence, specifically the false police identification, against Stuart;
- with Wrice he fabricated an interview allegedly held between Wrice and Stuart;
- he, together with Bernasconi, Wrice, and M5 fabricated the adoption of the interview alleged to have taken place between Wrice and Stuart;
- he made a false statement in relation to the arrest and interview of Stuart and perjured himself when he gave evidence in accordance with that statement; and
- members of Task Force Magnum, including F7 were prepared to do anything necessary to obtain convictions, including "loading" and "verballing" or both.

7.233 The Commission considers that F7 engaged in police misconduct: subsection 16(1)(a) of the Act.

7.234 F7's admissions of misconduct made in evidence cannot be used against him. The evidence of N1 and M5 is however admissible against him. N1 gave evidence that everyone involved in the investigation knew that Stuart was to be verballed and loaded with the false police identification.[1232]

[1232] PIC Transcript, N1, 11 September 2002, pp. 5288-5289

7.235 M5 said that F7 was present at the briefing at which the creation of the false police identification and the verballing of Stuart were discussed. He also said that he was aware that Wrice and F7 verballed Stuart, although he wasn't present at the relevant time, and that F7 later confirmed to him that he had verballed Stuart.[1233]

7.236 The general evidence of N1 and M5 about the approach and methods of Task Force Magnum also support the allegations against F7.[1234]

7.237 The Commission is of the opinion that the evidence supports consideration being given to the prosecution of prosecution of F7 for perverting the course of justice pursuant to section 319 of the *Crimes Act 1900*.

7.238 Following the public hearings in this segment and prior to the completion of this Report, NSW Police considered the admissible evidence against F7 with a view to preparing a brief of evidence against him. It was decided that there was insufficient admissible evidence to prepare a brief against F7.

7.239 In the circumstances the Commission is of the opinion that further consideration **should not** be given to the prosecution of F7 for any criminal offences.

7.240 F7 is no longer a serving police officer. Accordingly the question of taking action pursuant to subsections 97(2)(c) and (d) of the Act does not arise.

ROBERT JAMES IRWIN

7.241 Irwin is an affected person because he is the subject of the substantial allegations that:

- he, together with N1, agreed to pervert the course of justice and did so by fabricating evidence, specifically the loading of the blank Occupier's Notices, against C11;
- he fabricated admissions alleged to have been made by C11;
- he, together with N1 fabricated a record of interview allegedly held between C11 and N1;
- he, together with Davidson and N1 fabricated the adoption of the record of interview alleged to have been held between N1 and C11;
- he made a false statement in relation to the arrest and interview of C11 and perjured himself when he gave evidence in accordance with that statement; and
- he perjured himself when he gave evidence at his trial in March 2000.

[1233] PIC Transcript, M5, 12 September 2002, pp. 5351-5353, 5356-5357, 5359-5360
[1234] PIC Transcript, N1, 11 September 2002, p. 5320; PIC Transcript, M5, 12 September 2002, pp. 5361-5362

7.242 The Commission considers that Irwin engaged in police misconduct: subsection 16(1)(a) of the Act.

7.243 The admissible evidence against Irwin is that of N1 and C11. N1 gave evidence that he discussed his plans, and the alternatives, with Irwin and by the end of the day before the search warrant was to be executed, Irwin and N1 had agreed to find the Occupier's Notices at C11's house during the search. N1 also said that prior to conducting the search of C11's house he spoke to Irwin and told him what was to take place and that it was his, Irwin's, job to find the Occupier's Notices at C11's house. N1 said that he spoke to Irwin about Blake, specifically he asked if Blake could be trusted not to reveal the illegal activities that were planned to take place.[1235]

7.244 N1 gave evidence that once at Burwood Police station C11 was left in a room with Blake while he and Irwin went to another room to type the record of interview. N1 said that he typed the record of interview with assistance from Irwin and that the written entries Irwin made in his notebook would have been dictated by N1.[1236]

7.245 N1's evidence was that Irwin lied in his evidence in his trial. He said the evidence Irwin gave about finding the Occupier's Notices at C11's house was false.[1237]

7.246 The allegations against Irwin receive support from the evidence of C11 who said he did not participate in a record of interview and complained to the custody sergeant, Yabsley, as soon as he was aware of the record of interview.[1238] C11's record of the events of 7 March 1991[1239] accords with N1's version as given in evidence to the Commission.

7.247 The allegations against Irwin also receive general support from the evidence of F7, M5 and N1 about the approach and methods of Task Force Magnum.[1240]

7.248 Irwin denied that he was involved in the conduct as alleged by F7, M5 and N1.

7.249 The Commission is of the opinion that the evidence supports consideration being given to the prosecution of Irwin for perjury pursuant to section 327 of the *Crimes Act 1900*. However, the decision the High Court of Australia in *The Queen v Carroll*,[1241] delivered after the Commission's hearing, suggests that such a prosecution would not be available.

[1235] PIC Transcript, N1, 11 September 2002, pp. 5291-5292
[1236] PIC Transcript, N1, 11 September 2002, pp. 5296-5297, 5321
[1237] PIC Transcript, N1, 11 September 2002, pp. 5310, 5329-5330
[1238] PIC Transcript, C11, 9 September 2002, pp. 5173-5174
[1239] PIC Exhibit 698B
[1240] PIC Transcript, F7, 10 September 2002, pp. 5241-5242, 5243-5245; N1, 11 September 2002, p. 5320; M5, 12 September 2002, pp. 5361-5362
[1241] *The Queen v Carroll* [2002] HCA 55 (5 December 2002)

7.250 In any event following the public hearings in this segment and prior to the completion of this Report, NSW Police sent a brief of evidence to the ODPP in relation to Irwin for consideration of possible criminal charges. The ODPP recommended that the charge of perjury was not available and there was insufficient evidence to support any other charges.

7.251 In the circumstances the Commission is of the opinion that further consideration **should not** be given to the prosecution of Irwin for any criminal offences.

7.252 Irwin is no longer a serving police officer. Accordingly the question of taking action pursuant to subsections 97(2)(c) and (d) of the Act does not arise.

JAMES JUSTIN KING

7.253 King is an affected person because he is the subject of the substantial allegations that:

- he, together with Wrice, F7, M5, and Dowding agreed to pervert the course of justice and did so by fabricating evidence, specifically the false police identification, against Stuart;
- he made a false statement in relation to the arrest and interview of Stuart and perjured himself when he gave evidence in accordance with that statement; and
- members of Task Force Magnum, including King, were prepared to do anything necessary to obtain convictions, including "loading" and "verballing" or both.

7.254 The Commission considers that King engaged in police misconduct: subsection 16(1)(a) of the Act.

7.255 The admissible evidence against King consists of the evidence of F7 and M5. F7 said that King was present when the decision was made to load and verbal Stuart and the false police identification was created. In addition King, Dowding and M5 were designated as the searching officers who would "find" the items during the search of Stuart's house.[1242] M5's evidence accords with that of F7. M5 said that King was present when the false police identification was made and he was assigned to "find" the police identification during the search of Stuart's residence.[1243]

7.256 General support for the allegations against King is found in the evidence of N1 who said that he was aware of the creation of the false police identification, that Stuart was to be loaded with evidence and that all the members of the team were aware of the plan.[1244] The allegations also receive

[1242] PIC Transcript, F7, 10 September 2002, pp. 5225, 5226, 5228
[1243] PIC Transcript, M5, 12 September 2002, pp. 5652-5353
[1244] PIC Transcript, N1, 11 September 2002, pp. 5288-5289

general support from the evidence of F7, M5 and N1 about the approach and methods of Task Force Magnum.[1245]

7.257 King denied that he was involved in the conduct as alleged by F7, M5 and N1.

7.258 The Commission is of the opinion that the evidence supports consideration being given to the prosecution of King for perverting the course of justice pursuant to section 319 of the *Crimes Act 1900*.

7.259 Following the public hearings in this segment and prior to the completion of this Report, NSW Police sent a brief of evidence to the ODPP in relation to King for consideration of possible criminal charges. The ODPP recommended that no charges be laid.

7.260 In the circumstances the Commission is of the opinion that further consideration **should not** be given to the prosecution of King for any criminal offences.

7.261 King is no longer a serving police officer. Accordingly the question of taking action pursuant to subsections 97(2)(c) and (d) of the Act does not arise.

M5

7.262 M5 is an affected person because he is the subject of the substantial allegations that:

- he, together with Wrice, F7, King and Dowding agreed to pervert the course of justice and did so by fabricating evidence, specifically the false police identification, against Stuart;
- he, together with Bernasconi, Wrice, and F7 fabricated the adoption of the interview alleged to have taken place between Wrice and Stuart;
- he made a false statement in relation to the arrest and interview of Stuart and perjured himself when he gave evidence in accordance with that statement; and
- members of Task Force Magnum, including M5 were prepared to do anything necessary to obtain convictions, including "loading" and "verballing" or both.

7.263 The Commission considers that M5 engaged in police misconduct: subsection 16(1)(a) of the Act.

7.264 The admissible evidence against M5 consists of the evidence of F7 and N1. F7 said that M5 was present when the decision was made to load and verbal Stuart and the false police identification was created. In addition M5, King

[1245] PIC Transcript, F7, 10 September 2002, pp. 5241-5242, 5243-5245; N1, 11 September 2002, p. 5320; M5, 12 September 2002, pp. 5361-5362

and Dowding were designated as the searching officers who would "find" the items during the search of Stuart's house.[1246] In relation to the adoption of Stuart's record of interview F7 gave evidence that the adoption was arranged in advance by either M5, King or Dowding and that Bernasconi fabricated the adoption.[1247]

7.265 General support for the allegations against M5 is found in the evidence of N1 who said that he was aware of the creation of the false police identification, that Stuart was to be loaded with evidence and that all the members of the team were aware of the plan.[1248] The allegations also receive general support from the evidence of F7 and N1 about the approach and methods of Task Force Magnum.[1249] M5's own admissions of misconduct cannot be used against him.

7.266 The Attorney General has granted M5 has an indemnity from prosecution in relation to all matters in respect of which he has admitted criminal conduct. Therefore the Commission has not expressed an opinion about whether consideration should be given to the prosecution of M5 for any criminal offences.

7.267 M5 is no longer a serving police officer. Accordingly the question of taking action pursuant to subsections 97(2)(c) and (d) of the Act does not arise.

N1

7.268 N1 is an affected person because he is the subject of the substantial allegations that:

- he agreed, with Irwin, to pervert the course of justice and did so by fabricating evidence, specifically the loading of the blank Occupier's Notices, against C11;
- he fabricated admissions alleged to have been made by C11;
- he, with Irwin, fabricated a record of interview allegedly held between C11 and N1;
- he, with Davidson and Irwin, fabricated the adoption of the record of interview alleged to have been held between N1 and C11;
- he made a false statement in relation to the arrest and interview of C11;
- he perjured himself when he gave evidence at his trial in March 2000; and

[1246] PIC Transcript, F7, 10 September 2002, pp. 5225, 5226, 5228
[1247] PIC Transcript, F7, 10 September 2002, pp. 5232-5233, 5235-5237
[1248] PIC Transcript, N1, 11 September 2002, pp. 5288-5289
[1249] PIC Transcript, F7, 10 September 2002, pp. 5241-5242, 5243-5245; N1, 11 September 2002, p. 5320; M5, 12 September 2002, pp. 5361-5362

- members of Task Force Magnum, including N1, were prepared to do anything necessary to obtain convictions, including "loading" and "verballing" or both.

7.269 The Commission considers that N1 engaged in police misconduct: subsection 16(1)(a) of the Act.

7.270 The evidence of F7, M5, C11, C12 and Yabsley is admissible against him. N1's admissions of misconduct cannot be used against him.

7.271 F7 gave evidence that although he wasn't involved in the search of C11's home or his arrest he understood that N1 and the others on his team would do whatever was necessary to obtain enough evidence to charge C11. He said that N1 had talked about the events surrounding the arrest of C11, including looking for Occupier's Notices that matched the one left at the scene of the robbery, in the years after the event. F7's general evidence about the methods and aims of the Task Force Magnum also supports the allegations that C11 was loaded and verballed.[1250]

7.272 M5 gave evidence that N1 told him that he wasn't happy about having to load and verbal C11. He also gave general evidence about the methods and aims of Task Force Magnum that supports the allegations against N1.[1251]

7.273 C11 has always maintained that he did not take part in a record of interview and that he knew nothing about the Occupier's Notices found at his home. He has given that evidence at every opportunity including to Yabsley when the record of interview was first brought to the charge room at Burwood Police Station and added to his list of possessions.[1252] C11's record of events of 7 March 1991[1253] accords with N1's version as given in evidence to the Commission.

7.274 Yabsley's evidence in relation to when C11 told him that he had not participated in a record of interview accords with C11's evidence given since the events, and N1's evidence to the Commission. Yabsley gave evidence at the committal of C11 and Stuart, and at the committal and trial of N1, Irwin, Davidson and Blake to this effect.[1254]

7.275 C12 gave evidence that C11 has always denied all the allegations against him but that N1 had told him, C12, that C11 had made admissions. He said he was concerned about the authenticity of the record of interview and discussed it with Yabsley but didn't make an official complaint about it.[1255] C12's evidence accords with that of C11, Yabsley and the admissions now made by N1.

[1250] PIC Transcript, F7, 10 September 2002, pp. 5239-5245
[1251] PIC Transcript, M5, 12 September 2002, pp. 5360-5362
[1252] PIC Transcript, C11, 9 September 2002, pp. 5173-5174
[1253] PIC Exhibit 698B
[1254] PIC Transcript, TW Yabsley, 9 September 2002, pp. 5197-5198, 5202
[1255] PIC Transcript, C12, 12 September 2002, pp. 5378-5379, 5382-5383

7.276 The Commission is of the opinion that the evidence supports consideration being given to the prosecution of N1 for perjury pursuant to section 327 of the *Crimes Act 1900*. However, the decision of the High Court of Australia in *The Queen v Carroll*,[1256] delivered after the Commission hearing, suggests that such a prosecution would not be available.

7.277 In any event following the public hearings in this segment and prior to the completion of this Report, NSW Police considered the admissible evidence against N1 with a view to preparing a brief of evidence against N1. It was decided that there was insufficient admissible evidence to prepare a brief against N1.

7.278 In the circumstances the Commission is of the opinion that further consideration **should not** be given to the prosecution of N1 for any criminal offences.

7.279 N1 is no longer a serving police officer. Accordingly the question of taking action pursuant to subsections 97(2)(c) and (d) of the Act does not arise.

PHILIP GEORGE WRICE

7.280 Wrice is an affected person because he is the subject of the substantial allegations that:

- he, together with, F7, M5, King and Dowding agreed to pervert the course of justice and did so by fabricating evidence, specifically the false police identification, against Stuart;
- he, with F7, fabricated a record of interview allegedly held between Stuart and himself;
- he together with Bernasconi, F7, and M5 fabricated the adoption of the record of interview alleged to have taken place between Stuart and him;
- he made a false statement in relation to the arrest and interview of Stuart and perjured himself when he gave evidence in accordance with that statement; and
- members of Task Force Magnum, including, King, were prepared to do anything necessary to obtain convictions, including "loading" and "verballing" or both.

7.281 The Commission considers that Wrice engaged in police misconduct: subsection 16(1)(a) of the Act.

[1256] *The Queen v Carroll* [2002] HCA 55 (5 December 2002)

7.282 The admissible evidence against Wrice consists of the evidence of F7 who said that Wrice assisted in the creation of the false police identification.[1257] M5's evidence supports this allegation.[1258]

7.283 Stuart said, at his committal and trial, that the interview between himself and Wrice was fabricated. The evidence of F7[1259] confirms this allegation. M5 could not confirm that the interview was fabricated because he was not present at the relevant time however he said that F7 told him later that the interview was fabricated. M5 also said that he knew Stuart and that he would not have taken part in an interview. His evidence that he arranged for the adoption of the record of interview provides some weight to the allegation that the interview was a fabrication.[1260]

7.284 General support for the allegations is found in the evidence of N1 who said that he was aware of the creation of the false police identification and that Stuart was to be loaded with evidence.[1261] The allegations also receive general support from the evidence of F7, M5 and N1 about the approach and methods of Task Force Magnum.[1262]

7.285 Wrice denied that he was involved in the conduct as alleged by F7, M5 and N1.

7.286 The Commission is of the opinion that the evidence supports consideration being given to the prosecution of Wrice for perverting the course of justice pursuant to section 319 of the *Crimes Act 1900*.

7.287 Following the public hearings in this segment and prior to the completion of this Report, NSW Police sent a brief of evidence against Wrice to the ODPP for consideration of possible criminal charges. The ODPP recommended that no charges be laid.

7.288 In the circumstances the Commission is of the opinion that further consideration **should not** be given to the prosecution of Wrice for any criminal offences.

7.289 Wrice is a serving officer so it is necessary to consider the issues raised in subsections 97(2)(c) and (d) of the Act. In doing so the evidence he gave to the Commission may be considered. Wrice denied all allegations of impropriety in relation to the arrest and charging of C11 and Stuart. However as stated above the evidence of F7, and to a lesser extent that of M5 and N1, supports the allegation that Wrice at the very least knew of the creation of the false police identification if he did not take part in the creation of it. In addition their evidence supports the allegation that Wrice and F7 fabricated

[1257] PIC Transcript, F7, 10 September 2002, pp. 5225, 5227
[1258] PIC Transcript, M5, 12 September 2002, pp. 5352, 5353, 5359-5360
[1259] PIC Transcript, F7, 10 September 2002, pp. 5233-5234
[1260] PIC Transcript, M5, 12 September 2002, pp. 5357-5360
[1261] PIC Transcript, N1, 11 September 2002, pp. 5288-5289
[1262] PIC Transcript, F7, 10 September 2002, pp. 5241-5242, 5243-5245; N1, 11 September 2002, p. 5320; M5, 12 September 2002, pp. 5361-5362

the record of interview and that Wrice made a false statement and gave false evidence at the committal of C11 and Stuart and at the trial of Stuart. The Commission is of the opinion that the evidence supports consideration being be given to the taking of action against Wrice pursuant to subsections 97(2)(c) or (d) of the Act.

7.290 The Commission has been advised that after the ODPP advice was provided to NSW Police the matter was referred to Wrice's commander with a recommendation that consideration be given to the taking of reviewable action pursuant to section 173 of the *Police Act 1990*. The commander determined there was insufficient evidence to make an adverse finding and that therefore no action was to be taken against Wrice. His decision was based on the ODPP advice that there was no reasonable chance of conviction.

7.291 In the circumstances the Commission is of the opinion that further consideration **should not** be given to the taking of action against Wrice pursuant to subsections 97(2)(c) or (b) of the Act.

8. KING SEGMENT

Introduction 331
The Police Witnesses 332
Brian Raymond Breedon 332
Clare Margaret Butt (Moore) 332
Anthony John Patrick Ducker 333
James Justin King 333
Roslyn Gwen McDougall 333
M5 333
Dennis Peter O'Toole 333
S8 333
Allen Gordon Shepherd 333
Ronald Bruce Smith 334
The Evidence 334
1993 DUI Incident 334
The Events of 24 September 1993 334
The Events of 25 September 1993 – Narrabeen and Mona Vale 335
The Events of 25 September 1993 – Mona Vale Police Station 337
The Events of 25 September 1993 – M5 Telephones King 339
The Events of 25 and 26 September 1993 –Ducker's Inquiry and Complaint 339
The Events of 27 September 1993 – S8 Telephones O'Toole 340
The Events of 27 September 1993 – M5 Meets O'Toole, King and Smith and Collects Ducker's Statement from Breedon 340
The Events of 27 September 1993 – M5 meets O'Toole and King and Creates False Documents 341
The Events of 27 September 1993 – O'Toole Telephones and Meets S8 342
The Events of 27 September 1993 – M5 Meets O'Toole, King and M13 343
S8 Makes a False Entry in his Police Notebook 343
S8's Instructions to Moore and McDougall about Tablets 344
Ducker is Threatened and Harassed 345
The Internal Affairs Investigation 345
The 1994 Local Court Case 348
M5, King and O'Toole Buy Drinks for M13 after the 1994 Local Court Case 350
Complaints to the Ombudsman about the King Matter 350
Ducker's HOD Application and the NSW Ombudsman's Response 351
King's Evidence to the Commission about the 1993 DUI Incident 351
Assessment of the Evidence about the 1993 DUI Incident 352
The 2000 PCA Incident 353
The Events of 13 April 2000 353
King's Approach to Peter Symonds 357
Conversation on 25 May 2000 357
Conversation on 2 November 2000 358
The Manly Local Court Proceedings on 12 February 2001 358
King's Evidence to the Commission about the 2000 PCA Incident 361
Assessment of the Evidence about the 2000 PCA Incident 362
Corrupt Payments to Registered Informants 362
King's Evidence about Corrupt Payments to Informants 364
Assessment of Evidence about Corrupt Payments to Informants 364
Laundering of Corruptly Obtained Money 365
King's Evidence about the Alleged Laundering of Corruptly Obtained Money 367
Assessment of Evidence about Laundering of Corruptly Obtained Money 368
Affected Persons 368

James Justin King 370
M5 372
M13 373
Roslyn Gwen McDougall 374
Clare Margaret Moore (Butt) 375
Dennis Peter O'Toole 375
S8 377

INTRODUCTION

8.1 On 14 August 2002 the Commission commenced a segment of hearings into a number of incidents involving former NSW Police officer, James Justin King. The other officers involved in the incidents were attached, with King, to the former Major Crime Squad North (MCSN) at Chatswood. One of the incidents also required examination of the conduct of police officers attached to the Mona Vale Police Station.

8.2 The Scope and Purpose of the segment was to investigate:[1263]

- allegations that former members of the major crime squad north entered into corrupt arrangements with registered informants;
- allegations that former members of the major crime squad north and others conspired to pervert the course of justice in criminal proceedings brought against James Justin King in 1994; and
- allegations that former members of the major crime squad north entered into arrangements for the laundering of corruptly obtained moneys.

8.3 On 25 November 2002, the above Scope and Purpose of the hearing was expanded to include the investigation of a fourth allegation, namely:[1264]

- that James Justin King and others conspired to pervert the course of justice in criminal proceedings brought against James Justin King in 2000 and 2001.

8.4 There were a total of 12 hearings days in August 2002, November 2002. Thirteen witnesses gave evidence, some of them on more than one occasion.

8.5 The origin of this segment was information provided by the informant M5 that he had conspired with other police, including King, to pervert the course of justice in proceedings at the Downing Centre Local Court in 1994, against King for "Drive Under the Influence (of Intoxicating Liquor)" (DUI) in September 1993 at Mona Vale.

8.6 In addition to M5, M13, a civilian police informant, and S8, the station Sergeant in charge of Mona Vale Police Station at the relevant time, gave evidence of their part in this conspiracy. Other police and former police who gave evidence were Brian Raymond Breedon, Clare Margaret Butt (nee Moore), Anthony John Patrick Ducker, Roslyn Gwen McDougall, Allen Gordon Shepherd and Ronald Bruce Smith.

8.7 M5 gave evidence about another alleged conspiracy to pervert the course of justice in proceedings in Manly Local Court in 2001, against King for "(Drive with the) Prescribed Concentration of Alcohol (in Blood)" (PCA) in 2000 at Mona Vale. The evidence included a number of recorded conversations

[1263] PIC Transcript, 14 August 2002, p. 4531
[1264] PIC Transcript, 25 November 2002, p. 5837

between M5 and King about this matter. Civilian witnesses who gave evidence were Peter Dominic Carson, Thomas John May and Peter Symonds.

8.8 M5 and M13, a civilian, also gave evidence about an allegation that King and Dennis Peter O'Toole entered into a corrupt arrangement with M13, in M13's capacity as a registered informant, to falsely claim a reward payment.

8.9 M5 also gave evidence about an allegation that King entered into an arrangement with M5 for the laundering of corruptly obtained money. M5's evidence about these allegations included conversations with King and O'Toole that were recorded by listening device and telephone interception.

8.10 Substantial allegations were made against O'Toole in the course of the evidence. O'Toole did not, however, appear in answer to a summons to give evidence to the Commission in this segment. He was represented by Counsel, who indicated on a number of occasions that O'Toole was medically unfit and had not, or was unable to, provide instructions.[1265] The inability of O'Toole to appear in this segment and give evidence formed the basis of separate inquiries by the Commission. The nature of those inquiries, and the Commission's assessment and opinions in relation to them, are discussed in detail in Chapter 9.

THE POLICE WITNESSES

8.11 Nine serving or former police officers gave evidence in this segment. A short profile of each officer follows.

BRIAN RAYMOND BREEDON

8.12 Breedon joined NSW Police in 1967 and retired in 1997. In 1993 he held the rank of Sergeant and was attached to the Dee Why District Office as Assistant to the Staff Officer, Operations Intelligence. The District Office had control over an area that included North Sydney, Mosman and all the Northern Beaches police stations.

CLARE MARGARET BUTT (MOORE)

8.13 Clare Butt told the Commission that her maiden name was Moore.[1266] She gave evidence as Clare Moore and is referred to in this report as "Moore". She joined NSW Police in 1984 and was medically discharged in 1998. In 1993 she held the rank of Senior Constable.

[1265] PIC Transcript, pp. 4616, 4671, 4775, 4816, 5156-5157, 6068
[1266] PIC Transcript, CM Moore, 19 August 2002, p. 4862

ANTHONY JOHN PATRICK DUCKER

8.14 Ducker joined NSW Police in 1986 and was medically discharged in 1996. In 1993 he was attached to the highway patrol unit based at Frenchs Forest and held the rank of Constable First Class.

JAMES JUSTIN KING

8.15 King joined NSW Police in 1978 and was medically discharged in 2000. He was attached to the Armed Hold-Up Unit of MCSN from 1989 until 1997. In 1993 he held the rank of Senior Constable and he achieved the rank of Sergeant in 1996. King was a friend of M5 and socialised with him.

ROSLYN GWEN MCDOUGALL

8.16 McDougall is a currently serving member of NSW Police holding the rank of Senior Constable. She joined NSW Police in 1992 and in September 1993 was a Probationary Constable having only been out of the Police Academy for nine months.

M5

8.17 M5 joined NSW Police in 1980 and was medically discharged in 2003. In 1993 he was attached to the Armed Hold-Up Unit of MSCN and held the rank of Senior Constable. M5 provided the information that formed the starting point for this investigation.

DENNIS PETER O'TOOLE

8.18 O'Toole joined NSW Police in 1967. He left in 2000 when his contract was not renewed. In 1993 he was attached to MSCN and held the rank of Senior Sergeant.

S8

8.19 S8 joined NSW Police in 1965 and resigned in 1995. In 1993 he held the rank of Sergeant and was the general shift supervisor at Mona Vale Police Station. He was in charge of the police station for the shift when King was brought into the station on the morning of 25 September 1993. Between 1965 and 1993 S8 had an unblemished record of police service.[1267]

ALLEN GORDON SHEPHERD

8.20 Shepherd joined NSW Police in 1965 and retired in 1997. In 1992 he joined the Internal Affairs section and while attached to that section he conducted an investigation into King. In 1993 he held the rank of Detective Inspector.

[1267] PIC Transcript, S8, 16 August 2002, p. 4719

RONALD BRUCE SMITH

8.21 Smith joined NSW Police in 1964. In 1993 he was attached to MCSN and held the rank of Inspector. At different times while he was attached to MSCN he held the position of co-ordinator and commander. King and O'Toole were colleagues of his although they were both junior to him. Smith was medically discharged in 2003.

THE EVIDENCE

8.22 Four separate issues were dealt with in this segment. The majority of the evidence before the Commission related to two conspiracies to pervert the course of justice in prosecutions against King. The prosecutions were in 1994 and 2001. They arose out of two separate incidents involving King allegedly driving a motor vehicle while under the influence of an excessive amount of alcohol, the first on 25 September 1993 and the second on 13 April 2000. In both cases it was alleged that King conspired with others to pervert the course of justice.

8.23 The evidence in this chapter deals firstly with the 1993 DUI incident and secondly with the 2000 PCA incident. The allegation of corrupt arrangements with registered informants is then discussed followed by the allegation of laundering of corruptly obtained money. The evidence concerning these four separate matters is dealt with, as far as possible, in chronological order in relation to each allegation.

8.24 The Commission's assessment of the evidence takes into account the difficulties anyone might have in recalling events that occurred up to nine and a half years before the giving of the evidence. However, the significance of some of the events considered during the hearings suggests that the events might have stayed in the mind of key participants despite the lapse of time.

1993 DUI INCIDENT

8.25 M5 joined MCSN in 1987. His colleagues there included King, O'Toole and Smith, who was the overall supervisor of MCSN. O'Toole's nickname was "Doodles". M5 frequently socialised with King and, in the period leading up to September 1993, M5 observed King to be *"quite a heavy drinker"* who became heavily intoxicated on a number of occasions.[1268]

THE EVENTS OF 24 SEPTEMBER 1993

8.26 On 24 September 1993 M5 commenced work at 5am or 6am. At that time he lived at an address in the Northern Beaches region of Sydney. He drove an unmarked police vehicle, a Magna sedan, to King's address in the same area and picked up King. M5, King and a number of others went to the Central Coast to investigate a suspect for an armed robbery. The inquiries were

[1268] PIC Transcript, M5, 15 August 2002, pp. 4621-4624

finished by mid to late morning. M5 then drove with King to the MCSN offices at Chatswood. After finishing work in the early afternoon M5 and King travelled in the Magna to the Steyne Hotel at Manly where they socialised and drank until 2.30am or 3am on the morning of 25 September 1993. King was with M5 throughout this time.[1269]

THE EVENTS OF 25 SEPTEMBER 1993 – NARRABEEN AND MONA VALE

8.27 M5 and King left the Steyne Hotel together at about 2.30am or 3am. M5 drove the Magna to his home with King as a passenger. M5 said he was intoxicated during the drive. He gave evidence that King also appeared to be intoxicated at this time – *"probably a little bit more so than me"*. During the afternoon M5 had observed King to have *"a lot"* of drinks of full strength beer. Upon reaching his home, M5 told King that he'd "*had enough*" and was going to bed. He asked King whether he was all right to which King replied, *"Yes"*. M5 then observed King get into the driver's seat of the Magna and drive off. At this time M5 observed King to be *"obviously intoxicated"*. M5 did not observe King take any medication, or to be in possession of any medication, at any time while they were together on 24 or 25 September 1993. King did not appear to M5 to have any symptoms of a cold or flu and did not mention anything about having a cold, or the flu, to M5 during this time.[1270]

8.28 Ducker was a police officer serving in a highway patrol unit based at Frenchs Forest on 25 September 1993. He finished his shift at 3.30am that morning and commenced driving his parents' vehicle to his home in Mona Vale via Wakehurst Parkway. At about 3.45am, while exiting Wakehurst Parkway and proceeding north along Pittwater Road, Ducker observed a car being driven in a very erratic manner north along Pittwater Road. Ducker followed the vehicle north along Pittwater Road and Barrenjoey Road and continued to observe it being driven in a highly erratic manner. He telephoned 000 from a mobile phone and reported what he believed to be a suspected case of drink driving. He also reported the registration number of the vehicle as SNX 935. After observing vehicle SNX 935 nearly colliding with a bus, Ducker followed it left from Barrenjoey Road into Bassett Street. He blew his horn and flashed his high beam whereupon SNX 935 pulled over and stopped at a 35-degree angle to the kerb.[1271]

8.29 After Ducker stopped behind SNX 935 the driver of that vehicle hung his head out of the driver's window and looked at Ducker. Ducker yelled, *"Stop there"*. The driver then drove forward another five to ten feet. Ducker got out of his vehicle and approached SNX 935 on foot. He reached in and removed the keys from the ignition. He told the driver to sit and wait in the vehicle and again contacted 000 and requested the attendance of a police vehicle at the intersection of Bassett Street and Barrenjoey Road. Shortly

[1269] PIC Transcript, M5, 15 August 2002, pp. 4624-4626
[1270] PIC Transcript, M5, 15 August 2002, pp. 4626-4629
[1271] PIC Exhibit 610B

afterwards Constable Moore and a Probationary Constable known to Ducker as "Ros" arrived in a patrol car.[1272]

8.30 On 24 September 1993 Moore was working with the Mona Vale Patrol and was rostered on from 11pm until 7.30am the following day. Her patrol vehicle was a Holden Rodeo "*caged truck*". Her patrol partner was McDougall and her supervisor was S8.[1273]

8.31 At about 3.45am, while patrolling in the Warriewood area, Moore and McDougall responded to a message on the police radio. Moore drove to the scene where she saw two vehicles parked about 20 metres apart on the same side of the road. In the first vehicle she saw Ducker sitting in the driver's seat. The second vehicle, a Magna, was in front of Ducker's vehicle. King was standing behind the Magna and the headlights of Ducker's vehicle illuminated both King and the Magna. Ducker got out of his car and approached Moore. He informed her that he had followed King from Narrabeen and observed him to drive in a very erratic manner. He said that King had *"to be a PCA"*. He gave her a set of keys, which he had taken from the ignition, and told Moore he thought King was a police officer. Moore observed that there was a small disc on the key ring, which indicated that the Magna was a police vehicle.[1274]

8.32 Moore said that she approached King and observed symptoms - including bloodshot eyes, slurred speech and the smell of intoxicating liquor on his breath - from which she concluded that he was heavily intoxicated. She did not see any medication on him at that time and did not notice anything about his person that led to a belief that he was suffering from a cold or the flu. In reply to Moore's questions King indicated that he had not been driving, that he did not have his driver's licence, or any other identification, with him and that he could not remember how long it was since his last intoxicating drink.[1275]

8.33 Moore attempted three times to administer a roadside Alcometer breath test to King. Each time King failed to expel sufficient breath to enable the test to be completed. Moore informed King that he was under arrest for failure to submit to a roadside breath test and that he would be conveyed to Mona Vale Police Station. King responded by saying *"You are kidding ... You're joking ... I'm a policeman ..."* and produced a police identification badge from his pocket. Moore and McDougall conveyed King to Mona Vale Police Station in the patrol vehicle. Ducker did not accompany them.[1276]

8.34 Broadly speaking, Ducker's recollection of the events in Bassett Street after the arrival of Moore and McDougall is consistent with Moore's recollection, although Ducker recalled King being seated in the Magna when Moore first approached him. Ducker could smell a strong smell of intoxicating liquor on

[1272] PIC Exhibit 610B
[1273] PIC Transcript, CM Moore, 19 August 2002, pp. 4862-4863
[1274] PIC Transcript, CM Moore, 19 August 2002, pp. 4865-4866
[1275] PIC Transcript, CM Moore, 19 August 2002, pp. 4866-4868
[1276] PIC Transcript, CM Moore, 19 August 2002, pp. 4869-4870

King's breath and observed that his eyes were bloodshot and glazed, he was unsteady on his feet, he appeared to be falling asleep and his head continually fell forward onto his chest. Ducker recalled Moore attempting to get a breath sample from King on about four occasions. On each occasion King's head fell forward onto his chest. After Moore indicated that King was under arrest, Ducker recalled King saying that he was not driving then mumbling something and producing a police badge. Ducker recalled Moore saying *"Get in the back of the truck, my Supervisor can decide this"*.[1277]

8.35 McDougall had very poor recollection of the events of the night of 25 September 1993. She was unable to recall whether King was in the driver's seat or beside the car when she arrived at the scene and she could not recall seeing Ducker. King appeared to her to be *"heavily suffering the effects of intoxicating liquor"*. She recalled an attempted breath test but could not recall who made the attempt. She recalled King being reluctant to enter the patrol van and stating that he was a policeman. It was her opinion that King did not wish to be arrested.[1278]

THE EVENTS OF 25 SEPTEMBER 1993 – MONA VALE POLICE STATION

8.36 Moore told the Commission that upon arriving at Mona Vale Police Station Moore took King straight to the muster room. S8 was the supervisor and most senior officer at the station at the time. He told Moore *"I'll be taking over"*. Moore's understanding of the correct procedure in such a situation was for a breath test to be administered at the station, for Internal Affairs to be notified and that permission from Internal Affairs was required before any charge could be laid against a police officer. There was a breath analysis machine (BAS) in working order at the station at the time. Moore was qualified to use it.[1279] McDougall also recalled S8 taking control of the situation after King was conveyed to Mona Vale Police Station.[1280]

8.37 S8 was in charge of Mona Vale Police Station on a shift that commenced at 10.30pm on 24 September 1993 and finished at 7.00am on 25 September 1993. He told the Commission that Moore or McDougall informed him that King had been arrested and brought back to the police station. He went to the muster room and saw King seated at a table. S8 knew of King and recognised him. King was resting his head in his hands. S8 observed King's eyes to be watery and him to have a *"... swayness in his body movements"*. King's speech was incoherent and S8 smelt alcohol on King's breath. He formed the view that King was *"heavily under the influence of intoxicating liquor"*. S8 was informed that King had been stopped by an off duty police officer, Ducker, whilst driving in an erratic manner. At the time S8 understood that in a situation where a police officer had been arrested the correct procedure he should have followed was to contact the Duty Operations Inspector ("DOI") attached to the VKG communications branch, inform the DOI of the situation and comply with the DOI's directions. If correct procedure had

[1277] PIC Exhibit 610B
[1278] PIC Transcript, RG McDougall, 20 August 2002, pp. 4939-4940
[1279] PIC Transcript, CM Moore, 19 August 2002, pp. 4872-4874
[1280] PIC Transcript, RG McDougall, 20 August 2002, pp. 4943-4944

been followed S8 said that he would have been directed by the DOI to administer a breath test to King on the machine at the station. There was a breath test machine in working order in the muster room at the time and S8 was qualified to use it.[1281]

8.38 After entering the muster room and seeing King in an apparently intoxicated condition, S8 directed King to empty his pockets and produce some identification. He recalled King rummaging in his pockets and producing a wallet, a handkerchief and possibly some coins. King placed these items on the table. At this time S8 believed that Moore and McDougall were standing behind him, but he could not see them.[1282] S8 was definite that King did not produce a packet of tablets from his pockets that night but he could not be certain whether King had in his possession a blister pack or strip of tablets although he could not remember seeing anything like that. S8 was certain however that King did not produce any Orthoxicol tablets that night.[1283]

8.39 Moore told the Commission that when King emptied his pockets he produced the wallet with his police identification, his driver's licence and a single, rectangular shaped blister strip of tablets. She recalled the tablets lying on the table with the foil side facing up. She did not pick up the tablets to examine them and did not note what type of tablets they were or whether any tablets had been removed from the strip. She did not hear S8 ask King whether he had taken any of the tablets that evening. Moore recalled writing a note in her police notebook about the wallet with police identification, the driver's licence and the packet of tablets being produced by King. However, she no longer had possession of her notebook. She had not seen the notebook since the then Sergeant Mark Rudolph of the Professional Integrity Branch requested it in March 1994.[1284] The Commission's attempts to locate the notebook were unsuccessful.

8.40 McDougall's evidence was that she did not remember King producing any items at all and she did not remember seeing any items on the table in front of King at any time. She did not recall seeing any medication in King's possession or in the muster room that night. McDougall was also unable to produce her police notebook for that night. She was informed that it could not be located and she said she had no idea where she last saw the notebook.[1285]

8.41 After King produced the items in the muster room S8 decided to follow a course of action that he knew was not in accordance with correct procedure. He decided not to subject King to a breath test on the machine at the station and directed Moore and McDougall to drive King to his home and, on the way back, to fetch the Magna police vehicle King had been driving and return

[1281] PIC Transcript, S8, 15 August 2002, pp. 4674-4678
[1282] PIC Transcript, S8, 15 August 2002, pp. 4678-4679
[1283] PIC Transcript, S8, 15 August 2002, pp. 4683-8684
[1284] PIC Transcript, CM Moore, 19 August 2002, pp. 4874-4875, 4877-4878
[1285] PIC Transcript, RG McDougall, 20 August 2002, pp. 4947, 4955-4956

it to Mona Vale Police Station. In evidence, S8 gave the following reason for adopting this improper course of action.[1286]

> … after being told of the circumstances of why King had been stopped, I realised that there were no other witnesses other than police, that King had not been involved in a motor vehicle accident, there were no other property damage, there were no other witnesses, from what I can establish, at that particular time of the morning, and I felt as though if he was to be charged by means of being breathalysed, and coming under the notice of Internal Affairs, that his career would be in jeopardy. Accordingly, I took the option of making a decision of informing his superior officer and keeping it in-house.

8.42 According to S8 both Moore and McDougall were shocked about his decision not to breath test King and his directions to them to take King home and pick up the Magna. However they complied with his directions.[1287]

8.43 Moore told the Commission that S8 told her as they left the muster room together *"I'm not going to put him on the BAS…He's taken something…He's taken some cold tablets and I think they've had some effect on him"*. S8 then told her he would charge King with DUI and instructed her to drive him home and pick up the unmarked police vehicle and drive it back to Mona Vale Police Station. Moore said she was angry and surprised at S8's decision because she thought that DUI would be more difficult to prove in court than a charge based on a measured blood alcohol reading and that King should have been breath tested.[1288]

8.44 McDougall was also angry about S8's decision not to breath test King and at being directed by S8 to drive King home. She expressed her anger to Moore but accepted the direction because S8 was her superior.[1289]

THE EVENTS OF 25 SEPTEMBER 1993 – M5 TELEPHONES KING

8.45 M5 said that he telephoned King after waking up on Saturday 25 September 1993. He recalled making the call and that King was *"very vague"*. When he asked King whether he was all right and where the car was King replied, *"I don't know"*.[1290]

THE EVENTS OF 25 AND 26 SEPTEMBER 1993 –DUCKER'S INQUIRY AND COMPLAINT

8.46 Ducker said that he visited Mona Vale Police Station at about 11.30pm on 25 September 1993 to speak to Moore and S8 about the King matter and find out the result. Moore told him that *"... S8 had spoken to the policeman who was the driver of the car for about 10 minutes and she was then told to take him home"*. Ducker said he and Moore were not happy about this, that it was not

[1286] PIC Transcript, S8, 15 August 2002, pp. 4679-4682
[1287] PIC Transcript, S8, 15 August 2002, p. 4682
[1288] PIC Transcript, CM Moore, 19 August 2002, pp. 4881-4882
[1289] PIC Transcript, RG McDougall, 20 August 2002, pp. 4948-4952
[1290] PIC Transcript M5, 15 August 2002, pp. 4628-4629

the proper course of action and both felt *"great regret"* that it had been followed. He said his best recollection was that Moore *"was quite disgusted that he* [King] *was let off"*. At 6.30pm the following day, 26 September 1993, Ducker went to his supervisor at Frenchs Forest Police Station, Sergeant Allott, and told him what had happened and that he wasn't happy about it. He made a five page statement dated 26 September 1993 and signed it. Allott witnessed his signatures. Ducker left the original of the statement with Allott.[1291] Allott made a separate statement on 27 September 1993 that confirmed Ducker's account.[1292]

8.47 Ducker believed that Allott would forward the statement to the District Commander's office at Dee Why and thence to Internal Affairs North Region at Hornsby. Ducker was aware that Breedon worked at the District Office at Dee Why at the time.[1293]

8.48 Moore's account of her meeting with Ducker on the evening of 25 September 1993 is slightly different to Ducker's. She said she told Ducker that S8 had taken over the matter, had decided not to put King on the BAS because he had taken some cold tablets that had affected him, that he was going to breach him for DUI and that she and McDougall were to take King home and collect the police vehicle. She recalled that Ducker had told her that he was going to make a statement and she asked him to leave a copy of it in her pigeonhole, which he did.[1294]

THE EVENTS OF 27 SEPTEMBER 1993 – S8 TELEPHONES O'TOOLE

8.49 S8 commenced work at about 6.30am on Monday 27 September 1993. At about 8am he telephoned O'Toole, whom he knew to be King's supervisor at MCSN. He told O'Toole of the circumstances in which King had been stopped by an off-duty police officer and come under S8's notice. He also told O'Toole that *"... I let King go and for him to deal with it in-house"*. He said O'Toole thanked him and said he would *"... take care of it from here"*.[1295]

THE EVENTS OF 27 SEPTEMBER 1993 – M5 MEETS O'TOOLE, KING AND SMITH AND COLLECTS DUCKER'S STATEMENT FROM BREEDON

8.50 M5 arrived at work at MCSN at about 8am on 27 September 1993. Shortly afterwards O'Toole called him into Smith's office where King was also present. M5 recalled O'Toole said words to the effect of "*Get in here. Kingy's had a problem on the drink with the car. You were with him last night. You're in this too"*. O'Toole informed M5 that King had been pulled over, taken to a police station and let go. M5 was asked to meet another police officer at Dee Why to pick up a statement in relation to the incident. M5 went to a street near Dee Why Police Station and met Breedon, whom he

[1291] PIC Transcript, AJP Ducker, 19 August 2002, pp. 4829-4831; PIC Exhibit 610B
[1292] PIC Exhibit 639AC
[1293] PIC Transcript, AJP Ducker, 19 August 2002, pp. 4831-4832
[1294] PIC Transcript, CM Moore, 19 August 2002, pp. 4912-4913
[1295] PIC Transcript, S8, 15 August 1993, pp. 4685-4686

understood was a sergeant at Dee Why. M5 could not recall whether Breedon said anything. Breedon gave M5 a copy of Ducker's signed statement[1296] and M5 took it back to the Chatswood offices of MCSN and gave it to O'Toole.[1297]

8.51 There is a conflict between the evidence of M5 and Breedon about this meeting. Breedon told the Commission that Ducker's statement would have been forwarded to the Dee Why District Office from Frenchs Forest and that he did not have access to it. He denied meeting M5 in a street near or in Dee Why on 27 September 1993. He stated that he had not seen Ducker's statement prior to the Commission's hearings. He said however that it was not unusual for envelopes to be left with him for collection by other police officers. When asked whether he handed the statement to M5 Breedon said he could not deny that he handed M5 an envelope that he had been asked to hand over, but he denied knowingly handing over the statement to M5. He conceded therefore that it was possible that he may have handed an envelope containing Ducker's statement to M5 on 27 September 1993.[1298]

THE EVENTS OF 27 SEPTEMBER 1993 – M5 MEETS O'TOOLE AND KING AND CREATES FALSE DOCUMENTS

8.52 M5 said that on his return to the MCSN office at Chatswood, he gave the copy of Ducker's statement to O'Toole and had a further discussion with O'Toole and King about the incident. M5 could not recall whether Smith was present at this further discussion. M5 stated that his recollection was that O'Toole and King:[1299]

> … had come up with a scenario which would involve getting an informant of O'Toole's involved, who he could trust, and also introducing some medication – some Orthoxicol–3 into that scenario, along with the alcohol, sort of that – my understanding was that the Orthoxicol-3, together with some beer, would – may cause the or give the appearance of drunkenness or intoxication.

8.53 The plan involved fabricating a meeting at the Steyne Hotel with an informant to *"... cover the fact that we had the* [police] *car at that time of the morning for work purposes ..."*. M5 told the Commission that there was no meeting with an informant at the Steyne Hotel on the night of 24/25 September 1993 and that he did not see any Orthoxicol medication in King's possession that night.[1300]

8.54 To provide cover for the fabricated meeting with the informant, M5 created a file named "Operation Deceivers" which falsely recorded that O'Toole had received information earlier on 24 September 1993 about the prison escapee, Ian Saxon. M5, King and O'Toole had not been involved in investigating Saxon's escape. Nevertheless M5 also made a false entry in his duty book for

[1296] PIC Exhibit 610B
[1297] PIC Transcript, M5, 15 August 2002, pp. 4629-4632
[1298] PIC Transcript, BR Breedon, 20 August 2002, pp. 4984-4993
[1299] PIC Transcript, M5, 15 August 2002, p. 4633
[1300] PIC Transcript, M5, 15 August 2002, pp. 4632-4633

24 September 1993 which stated, after showing he went off duty at 2pm, that he was recalled to duty at midnight after being contacted by King and that he went to the Steyne hotel to see an informant in relation to the person Ian Saxon. He recorded that he went off duty at 3.10am.[1301]

8.55 Smith conceded that he had at least two meetings with O'Toole on 27 September 1993. This was consistent with his Duty Book entry for that date.[1302] He recalled becoming aware that there had been an incident involving the driving of a motor vehicle by King but he could not recall how he received that information. He could not recall having a meeting with either M5 or King. He did not recall someone saying to M5 in his presence *"Get in here, Kingy's had a problem on the drink with the car, you were with him last night, you're in this too"*.[1303]

THE EVENTS OF 27 SEPTEMBER 1993 – O'TOOLE TELEPHONES AND MEETS S8

8.56 S8 told the Commission he received a telephone call from O'Toole between 10am and 11am on 27 September 1993. He said O'Toole indicated that there was a problem in relation to King because Ducker was making inquiries as to what had happened about the matter. S8 said he panicked and thought his career was threatened because he had done the wrong thing in keeping the matter "in-house". He agreed to meet O'Toole later that day. The meeting between O'Toole and S8 occurred in a car park near the intersection of Wakehurst Parkway and Pittwater Road, Narrabeen at about 12noon or 12.30pm. During the meeting O'Toole told S8 not to panic and said.[1304]

> What I'm going to do is have King say that … he'd been taking Orthoxicol tablets, and for you to say that, "When I was asking King for his identification, as he was going through his pockets, a packet of Orthoxicol tablets would fall on the floor" …

8.57 O'Toole also instructed S8 to go to the pharmacy section of Mona Vale Hospital and make inquiries about what effects Orthoxicol tablets would have when mixed with alcohol. After the meeting S8 went to Mona Vale Hospital and discovered that a combination of Orthoxicol tablets and alcohol could make a person drowsy.[1305]

8.58 In relation to Moore and McDougall, O'Toole said to S8:[1306]

> You'll have to talk to both police officers with the view of making them put in their statement that they saw a packet of tablets dropping on the ground.

8.59 Later on 27 September 1993 S8 saw his supervisor Senior Sergeant Barry Cafe and lied to him about the reason he let King go. S8 gave Cafe false information about finding tablets in King's possession and about forming the

[1301] PIC Transcript, M5, 15 August 2002, pp 4633-4636; PIC Exhibit 611B
[1302] PIC Exhibit 632
[1303] PIC Transcript, RB Smith, 16 August 1993, pp. 4786-4796
[1304] PIC Transcript, S8, 15 August 2002, pp. 4686-4688
[1305] PIC Transcript, S8, 15 August 2002, pp. 4686-4689
[1306] PIC Transcript, S8, 15 August 2002, p. 4689

view that King appeared to be suffering an adverse reaction to a combination of alcohol and Orthoxicol. Cafe subsequently telephoned Internal Affairs in S8's presence.[1307]

THE EVENTS OF 27 SEPTEMBER 1993 – M5 MEETS O'TOOLE, KING AND M13

8.60 M5 gave evidence about a meeting on 27 September 1993 between himself, O'Toole, King and M13 at a coffee shop on the corner of Victoria Road and Archer Street, Chatswood. The meeting was organised by O'Toole. At the meeting O'Toole explained King's situation and instructed M13 to say that he had been at a meeting at the Steyne Hotel with M5 and King on the night of 24/25 September 1993, the purpose of which was for M13 to give King information about Ian Saxon. M13 agreed to do this.[1308]

8.61 M13 told the Commission that he first met O'Toole in 1976. Between 1976 and 1993 he saw O'Toole on about six occasions and provided him with information about criminal matters. M13 recalled being telephoned in 1993 by O'Toole, who told him that he needed someone to go to court for King in relation to a drink driving incident King had been involved in:[1309]

> … someone that would say that they had spoken to him in the early hours of the morning and that he was drinking light beer and was taking some flu tablets.

8.62 M13 later went to a meeting with O'Toole, King and M5. Initially M13 told the Commission that the meeting took place at the Willoughby Hotel. Later he said it was at a coffee shop in Chatswood. At the meeting it was suggested to M13 that he should say that he telephoned O'Toole with some information about Ian Saxon, a prison escapee and:[1310]

> … the story would go along the lines that I wanted to meet O'Toole, but he sent Jim King to the North Steyne and that I met Jim King there to give him the information and that I noticed he was drinking light beer and seemed sober, and was taking – during the time I was there he was taking these tablets.

8.63 The meeting at the hotel was supposed to have occurred at 2am. M13's evidence to the Commission was that he had never been to the Steyne Hotel in Manly, that he did not meet King at the Steyne Hotel on 24 September 1993 and that he did not see King drinking or taking medication that day.[1311]

S8 MAKES A FALSE ENTRY IN HIS POLICE NOTEBOOK

8.64 During the Commission hearing S8 was shown his notebook entry for 24 and 25 September 1993. He gave evidence that the first part of the entry, which recorded King's arrival at Mona Vale Police Station and S8's decision that

[1307] PIC Transcript, S8, 15 August 2002, pp. 4690-4691
[1308] PIC Transcript, M5, 15 August 2002, p. 4639
[1309] PIC Transcript, M13, 16 August 2002, pp. 4749-4750
[1310] PIC Transcript, M13, 16 August 2002, pp. 4751-4752
[1311] PIC Transcript, M13, 16 August 2002, pp. 4753-4755

King not be submitted to breath analysis but be conveyed home, was true. However, S8 said that the part of the entry that referred to the production, by King, of the Orthoxicol tablets and the admission by King that he had taken these tablets was false. S8 said he wrote the false entry because of the meeting he had had with O'Toole on the Monday, 27 September 1993.[1312]

S8'S INSTRUCTIONS TO MOORE AND MCDOUGALL ABOUT TABLETS

8.65 S8 said that within the same week he spoke to Moore and McDougall in the muster room at Mona Vale Police Station. He recalled speaking to them together and saying words to the effect that he was in serious trouble because, due to Ducker's inquiries, the King matter was being investigated by Internal Affairs. He said that they were to tell the truth in their statement but to indicate that they saw a packet of tablets falling out of King's trouser pocket when he was asked for his identification. S8 admitted that he knew that the latter part of this instruction, about seeing a packet of tablets falling out of King's pocket, was not true. S8 was unable to recall whether he used the word "Orthoxicol" during the conversation but said he may have. He said he apologised to Moore and McDougall for putting them in a predicament but understood that they agreed to the proposition he put to them.[1313]

8.66 There is a contradiction between this part of S8's evidence and the evidence of Moore and McDougall. Moore's evidence was that no such meeting between S8, McDougall and herself ever occurred. However she did say that, possibly within a week of King's arrest, she had a conversation with S8 in which he told her the brand of tablets she had seen in King's possession was Orthoxicol and that she formed the belief that the tablets she had seen were the Orthoxicol tablets.[1314]

8.67 McDougall categorically denied that the conversation with S8 ever occurred. However, she said that it was possible that she was told to include the brand name "Orthoxicol" in her statement of 21 October 1993 about the King matter.[1315]

8.68 Moore made a statement about the King matter on 27 October 1993.[1316] In it she said that on the morning of 25 September 1993 at Mona Vale Police Station *"... King produced from his pockets a wallet with his Police Identification, his driver's licence and a packet of 'Orthoxicol' sinus capsules"*. In her evidence before the Commission Moore conceded that this was not correct, because all she could recall seeing in the muster room was a packet of tablets. She did not know the brand and was told the brand name from S8 later. In evidence Moore denied that, at S8's suggestion, she put a lie in her statement about seeing "Orthoxicol" brand tablets.[1317]

[1312] PIC Transcript, S8, 15 August 2002, pp. 4695-4696; PIC Exhibit 625B
[1313] PIC Transcript, S8, 15 August 2002, pp. 4692-4693
[1314] PIC Transcript, CM Moore, 19 August 2002, pp. 4890-4894
[1315] PIC Transcript, RG McDougall, 20 August 2002, pp. 4961-4965; PIC Exhibit 645B
[1316] PIC Exhibit 643B
[1317] PIC Transcript, CM Moore, 19 August 2002, pp. 4893-4896

8.69 McDougall made her statement about the King matter on 21 October 1993.[1318] In it she stated that she left the muster room for a short time on the morning of 25 September 1993 *"... and when I returned I observed some 'Orthoxicol' Brand Tablets on the table beside the male* [King] *and* [S8]*".*[1319] McDougall's statement does not refer to any of the other objects that Moore and S8 recalled seeing King produce. When she gave evidence to the Commission McDougall could not recall King producing anything, or seeing any objects on the table in the muster room in front of King.[1320] Specifically, she was unable to recall seeing Orthoxicol tablets in front of King and conceded that it was possible she had included the reference to Orthoxicol tablets in her statement at the suggestion of someone else. She insisted that the reference to Orthoxicol in her statement was true *"Because it's a directive memorandum that I was asked to prepare for Internal Affairs and I would not have lied or put in anything that I thought was not true"*.[1321]

8.70 McDougall went on to say that if her sergeant had asked her to lie she would have reported it to somebody. When it was pointed out to McDougall that this was inconsistent with her failure to report the failure of S8 to subject King to a breath test McDougall denied being selective about what misconduct she would report formally. When asked why she hadn't lodged a formal complaint in relation to S8's favourable treatment of King, McDougall said *"I don't have a memory of it at the time, but if my immediate supervisor was aware of it, that's what I was supposed to do – supposed to report things to your, you know - your immediate supervisor. I believe that I had done that"*. Moore was McDougall's supervisor at the time.[1322]

DUCKER IS THREATENED AND HARASSED

8.71 Ducker told the Commission that within a week of making his statement of 26 September 1993 he received a telephone call at his parents' home where he lived. A male voice said, *"Leave King alone or you're dead"*. Ducker reported the incident to his supervisor, Sergeant Allott, and subsequently attended two meetings at the internal police security unit in North Sydney with the then Sergeant Mark Rudolph and another officer. Over the next eleven months until he gave evidence in the King court case Ducker experienced harassment from colleagues on a daily basis, such as being called *"Serpico"* and told *"King has a gun for you"*.[1323]

THE INTERNAL AFFAIRS INVESTIGATION

8.72 The Internal Affairs investigation into the King matter was conducted by the then Detective Inspector Shepherd, who was attached to the North Region Internal Affairs Unit in 1993 and 1994. Senior Sergeant Cafe, who at the

[1318] PIC Exhibit 645B
[1319] The same observation is included in McDougall's reply to the Directive Memorandum issued by Internal Affairs, dated 16 October 1993, PIC Exhibit 644B. McDougall's reply to Internal Affairs is also included in PIC Exhibit 657B.
[1320] PIC Transcript, RG McDougall, 20 August 2002, p. 4947
[1321] PIC Transcript, RG McDougall, 20 August 2002, pp. 4966-4967
[1322] PIC Transcript, RG McDougall, 20 August 2002, pp. 4962-4963
[1323] PIC Transcript, AJP Ducker, 19 August 2002, pp. 4833-4836

time was the commander of Mona Vale Police Station, referred the matter to Shepherd on 27 September 1993. In his evidence Shepherd said that he probably received Ducker's statement[1324] on 27 September 1993 when the King matter was first referred to him. Shepherd issued directive memoranda to various officers, but not until a later stage. The reason for the delay, according to Shepherd, *"would have been the amount of workload that was being done at the time"*.[1325]

8.73 Shepherd issued directive memoranda to relevant personnel and those personnel made statements in reply on the following dates:

- S8: Directive Memorandum dated 15 October 1993;[1326] Statement in reply to Directive Memorandum dated 16 October 1993;[1327]
- McDougall: Statement in reply to Directive Memorandum dated 16 October 1993;[1328]
- Moore: Directive Memorandum dated 8 October 1993 and served on 11 November 1993;[1329] Statement in reply to Directive Memorandum dated 11 November 1993;[1330]
- M5: Directive Memorandum dated 30 November 1993;[1331] Statement in reply to Directive Memorandum dated 30 November 1993;[1332]
- King: Directive Memorandum, undated;[1333] Statement in reply to Directive Memorandum dated 1 December 1993;[1334]
- O'Toole: Directive Memorandum undated;[1335] Undated Statement in reply to Directive Memorandum;[1336]
- S8: Further Directive Memorandum dated 23 December 1993;[1337] Further Statement in reply to Directive Memorandum dated 23 December 1993.[1338]

8.74 On 18 October 1993 Shepherd issued a situation report in which he recommended that charges be laid against King for driving under the influence of intoxicating liquor and failure to provide a breath sample.[1339]

8.75 During his investigation Shepherd only obtained the police notebook entries of two of the police involved, King and S8. He did not think it was important

[1324] PIC Exhibit 610B
[1325] PIC Transcript, AG Shepherd, 20 August 2002, pp. 4999-5002
[1326] PIC Exhibit 626B
[1327] PIC Exhibit 627B
[1328] PIC Exhibit 644B
[1329] PIC Exhibit 641B
[1330] PIC Exhibit 642B
[1331] PIC Exhibit 613B
[1332] PIC Exhibit 614B
[1333] PIC Exhibit 607
[1334] PIC Exhibit 608B
[1335] PIC Exhibit 50B
[1336] PIC Exhibit 651B
[1337] PIC Exhibit 652B
[1338] PIC Exhibit 653B
[1339] PIC Transcript. AG Shepherd, 20 August 2002, p. 5007; PIC Exhibit 649B

to obtain the notebook entries of Moore or McDougall *"because S8 had conveyance of the DUI offences and…he was obtaining statements from those witnesses"*. He did not interview M13 about the matter until 6 April 1994.[1340] Despite this, Shepherd gave evidence that he thought his investigation was thorough. His final report, dated 9 December 1993,[1341] found the complaint that King had driven a motor vehicle under the influence of intoxicating liquor sustained but recommended deferral of further action pending completion of the court matters against King. The complaints against King of unauthorised use of a police vehicle and failure to submit to a breath test were not sustained. The complaint against S8 that he had failed to make an occurrence pad entry and notify the Traffic Technical Unit that King had not undertaken a breath test was sustained, but no further action against S8 was recommended. On 28 December 1993 Shepherd recommended deferral of the matter until finalisation of the court charges.[1342]

8.76 The Commission was unable to obtain the notebooks of S8, Moore and McDougall issued at Mona Vale Police Station in 1993. NSW Police advised that the books had apparently been destroyed.[1343]

8.77 M5 said that the second, third and fourth paragraphs of his statement to Internal Affairs were false. These paragraphs contained details about M5 being contacted by O'Toole about information O'Toole had received concerning prison escapee Ian Saxon, and about meeting the informant with King at the Steyne Hotel on 25 September 1993. M5 said he used King's statement to Internal Affairs to prepare his own statement.[1344]

8.78 S8 said that his statement to Internal Affairs was false where it stated that he had seen King drop Orthoxicol tablets on the floor on 25 September 1993 at Mona Vale Police Station, that he had a conversation with King about the tablets, and that O'Toole had informed him that King was authorised to use a police car on the night of 24 and 25 September 1993 because he had a meeting with an informant at the Steyne Hotel.[1345]

8.79 On 23 October 1993 S8 made a police statement for the purpose of King's court proceedings.[1346] S8 said that this statement was false where he claimed to have seen King produce the Orthoxicol tablets and where he claimed that King responded positively when asked whether he had taken any tablets that night. He said it was also false where he claimed that King was so incapacitated by liquor or a drug that he could not answer questions, (because S8 did not put any questions to King), and where he claimed that he did not submit King to a breath test due to his state of intoxication, (because S8 did not have any intention of submitting King to a breath analysis).[1347]

[1340] PIC Exhibit 631B
[1341] PIC Exhibit 656B
[1342] PIC Transcript AG Shepherd, 20 August 2002, pp. 5017-5024; PIC Exhibit 655B
[1343] PIC Exhibit 647AC
[1344] PIC Transcript, M5, 15 August 2002, pp. 4641-4642
[1345] PIC Transcript, S8, 15 August 2002, pp. 4700-4701
[1346] PIC Exhibit 629B
[1347] PIC Transcript, S8, 16 August 2002, pp. 4709-4711

8.80 M13 told the Commission that when Shepherd interviewed him on 6 April 1994, he gave untrue answers to a number of questions. In these answers M13 falsely claimed:[1348]

- to have met King at the North Steyne Hotel at Manly on 25 September 1993 and provided him with information about a prison escapee;
- to have seen King drink three light beers;
- that King had symptoms, appeared to be sick and was taking tablets from a two-toned packet; and
- that King appeared to be sober when he left the Hotel.

8.81 Ducker gave evidence to the Commission that his statement of 26 September 1993 was true and correct.[1349]

THE 1994 LOCAL COURT CASE

8.82 On the first morning of King's court case at the Downing Centre Local Court in 1994 Shepherd was approached by the case officer from the Office of the Director of Public Prosecutions of NSW (ODPP) who was handling the matter. The case officer informed Shepherd that the DUI charge against King was to be withdrawn by the ODPP because of a report obtained by the prosecution from a pharmacologist, Dr. Judith Perl. The report stated that the Orthoxicol medication taken by King *"... would be affected by alcohol and would render him incapable of being able to form an opinion as to whether he was going to participate in a breath analysis or not"*. The hearing into the second charge of failure to undergo a breath test proceeded, but ultimately the charge was dismissed, largely due, according to Shepherd, to evidence given by Professor Starmer of the University of Sydney. Starmer gave evidence *"... to the effect that he was an expert in that type of medicine* [Orthoxicol]*"* and that the medicine would cause a person to show the symptoms King displayed that night. Shepherd was not present for the whole hearing and could not recall seeing King or O'Toole giving evidence. He recalled McDougall giving evidence. He recalled Moore attending court to give evidence, which surprised him because at the time Moore was under suspension (for an unrelated matter) and he did not expect to see her there.[1350]

8.83 M5 admitted giving false evidence on King's behalf in the Local Court proceedings. His false evidence was in relation to seeing King taking Orthoxicol, drinking four to five middies of light beer on 24 and 25 September 1993, and about King not appearing to be intoxicated when M5 last saw him that night.[1351]

8.84 S8 gave evidence for the prosecution in King's Local Court proceedings. S8 gave his evidence-in-chief by reading his police statement to the Court. S8

[1348] PIC Transcript, M13, 16 August 2002, pp. 4759-4762
[1349] PIC Transcript, AJP Ducker, 19 August 2002, p. 4828; PIC Exhibit 634AC
[1350] PIC Transcript, AG Shepherd, 20 August 2002, pp. 5024-5026
[1351] PIC Transcript, M5, 15 August 2002, p. 4648

said that he did this knowing that the statement was false in the respects already referred to above. He said he gave the false evidence because he was trying to help King and to cover up his own negligence.[1352]

8.85 M13 also admitted giving false evidence as a witness for the defence in King's Local Court proceedings. He said his evidence about events on 24 and 25 September 1993 was false in relation to:

- telephoning O'Toole to arrange a meeting;
- meeting King and M5 at the Steyne Hotel;
- providing information to them about Ian Saxon;
- observing King to only have a few drinks, to appear unwell, to take medication, to be in possession of medication and to be sober when he left the hotel.

He told the Commission he gave the false evidence as a favour but did not receive any monetary award for it.[1353]

8.86 Ducker gave evidence for the prosecution in King's Local Court proceedings. He read a version of his statement, edited by the prosecutor, as his evidence-in-chief and did not recall being cross-examined. Ducker became aware on the morning of the court case that the prosecution had decided to drop the driving under the influence charge. Later Ducker found out that the remaining charge against King was dismissed. Whilst on vacation after the court case Ducker received another threat on his mobile phone from a male who said *"We know where you are ... leave King alone or we will get you"*.[1354]

8.87 Moore also gave her evidence-in-chief in King's Local Court proceedings by reading her police statement onto the record. In evidence before the Commission she denied lying about King producing a packet of Orthoxicol tablets on 25 September 1993. She said she believed that to be the truth, even though she conceded to the Commission that she could not remember the brand name of the tablets and relied upon S8 telling her the brand name. She said she *"... fully trusted S8 in regards to him giving me that information"*. She did not know that King's defence depended very substantially upon Orthoxicol tablets being found in his possession until the day before the court case.[1355]

8.88 McDougall had no recollection of giving evidence in King's court case when she gave her evidence to the Commission. However, she made inquiries and located travel documents that indicated that she might have given evidence.

[1352] PIC Transcript, S8, 16 August 2002, pp. 4712-4713; see paragraph 8.79
[1353] PIC Transcript, M13, 16 August 2002, pp. 4768-4770
[1354] PIC Transcript, AJP Ducker, 19 August 2002, pp 4836-4842
[1355] PIC Transcript, CM Moore, 19 August 2002, pp. 4890-4897, 4901

She could not recall whether her statement was tendered in the King proceedings. She denied telling any untruths in those proceedings.[1356]

8.89 Attempts by officers of the Commission to obtain a full transcript of King's 1994 court case, or audiotape recordings of the proceedings, were unsuccessful. The Local Court cannot provide either a transcript or the audiotapes. However, a transcript of the presiding Magistrate's decision was prepared and sent to the Office of the NSW Ombudsman in 1995. The Magistrate who heard King's 1994 court case was Ms. G. M. McDonald. Although she dismissed the single charge against King that did proceed she made comments in her decision that were critical of the police involved. These comments are reproduced in a Report by the Office of the Ombudsman into complaints arising out of the proceedings as follows:[1357]

> Initially, let me say that I am quite shocked at what appears to be, on the evidence that I have seen so far, a fairly blatant travesty of justice. Certainly in all my years of involvement in the criminal justice system I have never come across a case where a person apprehended after such erratic driving, smelling of alcohol, exhibiting the classic symptoms of intoxication, failing to provide a sample of breath sufficient to enable a roadside breath test to be undertaken, who is then taken back to a police station and after a short chat with the sergeant in charge is driven home by the apprehending police, who then go and collect the car he had been driving from the side of the road.
>
> …
>
> This, I must say, is an appalling picture which, to me, appears highly suggestive of a member of a Police Force being given preferential treatment by a colleague. The sort of action which undermines the public confidence in the Police Force and which confirms, in fact, the worst fears of the community, that is, that members of the Police Force are not, or perhaps, believe they are not, answerable to the laws which the rest of us are required to obey, that they are, and place themselves, in effect, above the law.

M5, KING AND O'TOOLE BUY DRINKS FOR M13 AFTER THE 1994 LOCAL COURT CASE

8.90 M5 said that some time after King's 1994 court case O'Toole suggested to M5 and King that they owed M13 a drink. Subsequently M5, King and O'Toole met M13 for drinks at the Willoughby Hotel. M5 and King then took M13 to the Gary Owen Hotel in Rozelle for more drinks. This was done because M13 had done King a favour by giving evidence in King's court case.[1358] M13 confirmed M5's evidence about being taken for a drink.[1359]

COMPLAINTS TO THE OMBUDSMAN ABOUT THE KING MATTER

8.91 After King's 1994 court case the NSW Ombudsman's office investigated complaints about the matter. The investigation arose out of police internal

[1356] PIC Transcript, RG McDougall, 20 August 2002, p. 4967
[1357] PIC Exhibit 638AC, pp 10-11
[1358] PIC Transcript, M5, 15 August 2002, p. 4649
[1359] PIC Transcript, M13, 16 August 1993, pp. 4767-4768

complaints and complaints by the Solicitor for Public Prosecutions, Mr. S. E. O'Connor and the Magistrate Ms. G. M. McDonald against King, S8, Moore and McDougall in connection with the handling of the King matter. The Ombudsman found that the action taken by NSW Police of preferring two criminal charges against King and formally admonishing him was appropriate. Specifically the Ombudsman found that:[1360]

- the complaint against Moore and McDougall over their failure to notify Mona Vale Police Station of an impending breath analysis of King was not sustained;
- NSW Police had acted appropriately in admonishing S8 for his failure to make an occurrence pad entry as to the King incident, to send a copy to the Police Technical Unit, and for his failure to report the incident to Internal Affairs; and
- the complaint against S8 for failing to arrange a blood and urine sample from King was not sustained.

DUCKER'S HOD APPLICATION AND THE NSW OMBUDSMAN'S RESPONSE

8.92 Ducker made an application for a Hurt on Duty medical discharge from NSW Police on 18 August 1995.[1361] The application was based on a number of complaints, including the way the King matter was handled and the death threats and harassment Ducker received due to his involvement in it. This triggered a police internal complaint, dated 27 November 1995, to the Ombudsman's office. In its response, dated 5 December 1995, the Ombudsman said that issues of improper conduct by police had been dealt with in its earlier report on the King matter and found that there was no satisfactory evidence of any improper conduct by Shepherd. The Ombudsman left the harassment allegations to be canvassed in the process of NSW Police handling of the Hurt on Duty claim on the basis that evidence supporting the claims could be forwarded to the Ombudsman if it emerged.[1362]

KING'S EVIDENCE TO THE COMMISSION ABOUT THE 1993 DUI INCIDENT

8.93 During his evidence to the Commission King maintained that he did meet with M5 and M13 at the Steyne Hotel on the evening of 24 and 25 September 1993 and that he believed that he was taking Orthoxicol medication at the time.[1363] King stated that his defence to the charge arising out of his apprehension at Mona Vale on 25 September 1993 was *"... I drank alcohol at the Steyne Hotel that night. I can't recall how much I had at the moment, and I don't think I could recall then. But I was taking the Orthoxicol at the same time and obviously the two mixed together isn't a good combination"*.[1364] King denied that his evidence about meeting M13 at the Steyne Hotel on the

[1360] PIC Exhibit 638AC
[1361] PIC Exhibit 635AC
[1362] PIC Exhibit 637AC
[1363] PIC Transcript, JJ King, 14 August 2002, pp. 4564-4565, 4610-4611
[1364] PIC Transcript JJ King, 14 August 2002, pp. 4570-4571

evening of 24 and 25 September 1993 was a fiction.[1365] He maintained that the purpose of the meeting with M13 was to obtain information from him about the prison escapee Ian Saxon.[1366] King denied that he lied to the Downing Centre Local Court about meeting M13 at the Steyne Hotel.[1367]

ASSESSMENT OF THE EVIDENCE ABOUT THE 1993 DUI INCIDENT

8.94 M5's evidence was that there was a conspiracy to pervert the course of justice in relation to the criminal proceedings arising out of King's arrest on 25 September 1993 involving two aspects:

- the fabrication of evidence about M5 and King meeting the informant M13 at the Steyne Hotel; and
- the fabrication of evidence that King took and / or was seen to be in possession of Orthoxicol medication.

8.95 M13 supported M5's evidence in relation to both aspects of the conspiracy. M5's evidence about the second aspect of the conspiracy was also supported by S8. The evidence of M5, M13 and S8 implicates King and O'Toole in the conspiracy. Whilst the evidence of M5 contains a suggestion that Smith may have had some knowledge of the conspiracy, M5 was not certain about this and his evidence does not go so far as to implicate Smith in the conspiracy. M5's evidence about Breedon providing him with a copy of Ducker's statement also did not go so far as to implicate Breedon in the conspiracy. Both M5 and M13 gave the impression of being reliable witnesses who were doing their best to truthfully recall the events they described.

8.96 The evidence of S8 also implicates Moore and McDougall in the conspiracy insofar as S8 stated that:

- although he could not be certain that no strip of tablets was produced by King, he was confident that no Orthoxicol tablets were produced by King;
- sometime in the week after King's arrest he told Moore and McDougall that he was in serious trouble with Internal Affairs in relation to the incident and asked them to include in their statements that they saw a packet of tablets fall out of King's trousers when he was asked for his identification;
- at the time of the request S8 knew that the part of this instruction about seeing a packet of tablets falling out of King's pocket was not true;
- S8 was unable to recall whether he used the word "Orthoxicol" during the conversation but said he may have;
- S8 apologised to Moore and McDougall for putting them in a predicament, by asking them to include in their statements that they saw

[1365] PIC Transcript, JJ King, 14 August 2002, p. 4580
[1366] PIC Transcript, JJ King, 14 August 2002, pp. 4589-4592
[1367] PIC Transcript, JJ King, 14 August 2002, p. 4601

a packet of tablets fall out of King's trousers, but understood that they agreed to the proposition he put to them.

8.97 Both Moore and McDougall went along with S8's instruction to drive King home from Mona Vale Police Station when he had not been breath-tested, despite having misgivings about what each regarded to be a breach of appropriate procedure. There is some support for S8's evidence about Moore and McDougall in M5's testimony in that the terms of the conspiracy agreed with King and O'Toole included the fabrication of evidence about King having possession of, and taking, Orthoxicol tablets. Clearly the success of the conspiracy was assisted by all relevant police present at Mona Vale Police Station on the night in question – including Moore and McDougall – stating that they saw King in possession of Orthoxicol tablets. Moore and McDougall both referred to Orthoxicol in their internal affairs statements, as did S8. The material available to the Commission about the proceedings against King at the Downing Centre Local Court suggest that King's possession of Orthoxicol was an important part of his defence.

8.98 S8 gave the impression of being a witness who was doing his best to truthfully recall the events he described, although it would appear that he did not have a complete memory of the instructions he gave to Moore and McDougall about what they should put in their statements regarding King's medication. Consequently, the evidence against them, although establishing prima facie their involvement in the conspiracy, is not as strong as the evidence against King and O'Toole.

8.99 Shepherd's evidence established that King, O'Toole, M5, M13, S8, Moore and McDougall all made statements, which, when taken with the evidence of M5, M13 and S8, were in furtherance of the conspiracy.

8.100 Because the transcript or a tape recording of King's court proceedings at the Downing Centre Local Court is not available it is impossible to definitively establish what evidence the various members of the conspiracy gave in those proceedings. Therefore, there is insufficient evidence to establish a prima facie case that King, O'Toole, M5, M13, S8, Moore or McDougall gave false evidence in those proceedings.

THE 2000 PCA INCIDENT

THE EVENTS OF 13 APRIL 2000

8.101 M5 said that on the morning of 13 April 2000 King picked up M5 and O'Toole in his Holden Commodore station wagon and drove them to the Royal Motor Yacht Club at Newport on Sydney's Northern Beaches. He parked in the club car park and M5, King and O'Toole, together with some others travelled on a private boat to Gosford, where they attended a race meeting. During the day M5, King and O'Toole had a number of alcoholic drinks. The three returned by boat to the Yacht Club in the late afternoon and repaired to the back bar of that establishment where they consumed more

alcoholic drinks. M5 observed King and O'Toole leave the club together at some time between 7pm and 9pm, by which time both King and O'Toole appeared to be *"... fairly well under the influence of alcohol"*. At the time M5 formed the opinion that both King and O'Toole were unfit to drive a motor vehicle and was *"... actually concerned that they were going to drive"*. M5 did not actually observe King drive away from the club whilst intoxicated. However, M5 saw King and O'Toole go towards King's car. He believed that King and O'Toole were intending to go together to Bilgola Surf Lifesaving Club for a meeting. At the time O'Toole was the president of the Surf Club and King was president of the Junior Surf Club.[1368]

8.102 On that day M5 wore a listening device. A conversation between M5, King, O'Toole and two unidentified males, just before King and O'Toole left the Royal Motor Yacht Club, was recorded.[1369] King and O'Toole expressed their intention to drive in King's car to a meeting at the Bilgola Surf Life Saving Club. King said that he had to go via his home to collect a briefcase. M5 said that he did not wish to go to the meeting with King and O'Toole. M5 and the two unidentified males each stated that King and O'Toole were drunk. M5 said to King *"I'm not fuckin' gettin' anywhere in that car with you. You're fuckin' kiddin'"*. M5 then said to an unidentified male *"They're fuckin' drunk as skunks. They're gonna try and drive"*. Later, M5 said *"They'll fuckin' end up on the fuckin' Bilgola Bends ... they're just tryin' to decide whether they want to drive or not ... They fuckin' can't drive. Kingy can't drive. For fuck's sake, he can't drive. He can't possibly drive"*. One of the unidentified males later said to M5 *"Fuckin' both of them are as pissed as a fuckin ... these days if you have an accident or anything like that, they breathalyse you ..."*.

8.103 The minutes of the 9th General Committee Meeting of the Bilgola Surf Lifesaving Club for the 1999-2000 season record that the meeting was held at the clubhouse on 13 April 2000 and commenced at 8.20pm. O'Toole is recorded as attending. Apologies are recorded as having been conveyed by King.[1370] The 51st Annual Report for the Bilgola SLSC (1999-2000 season) records that O'Toole was the President of the Club and King was the Chairperson for the Club's Junior Activities that year.[1371]

8.104 On 13 April 2000 a car accident occurred at about 8pm on Crescent Road, Newport, outside the home of Peter Carson. Carson was at home with his family when he heard a crash outside his home. In a matter of seconds he went to a window at the front of his house and looked across to the front fence of his property. There he observed that a car had gone through the fence after it apparently missed a left-hand turn. The fence was knocked over and the car was hard up against a tree in Carson's front yard.[1372] Carson's description of the accident is consistent with the car travelling along Crescent Road away from Newport and towards Mona Vale at the time of the collision.

[1368] PIC Transcript, M5, 15 August 2002, pp. 4651-4652; 27 November 2002, pp. 6000-6004
[1369] PIC Exhibits 777 & 778
[1370] PIC Exhibit 781
[1371] PIC Exhibit 782, p. 2
[1372] PIC Transcript, PD Carson, 29 November 2002, pp. 6041-6042

8.105 Carson resides at 134 Crescent Road, Newport and lived at that address in April 2000. Crescent Street is one of only two through-routes by road across the narrow isthmus between Bungan Beach and the southeastern extremity of Pittwater. It provides an alternate route between Newport and Mona Vale that is quieter than the busier route along Barrenjoey Road. In April 2000 King lived in Mona Vale.

8.106 King later said (see paragraph 8.122) that he had been to the Newport Arms Hotel, which is geographically between the Yacht Club and his home, after leaving the Yacht Club and had met someone there who had offered to drive him home. That person had decamped immediately after the accident leaving King at the scene. The Newport Arms Hotel is, and was in April 2000, located on the southwestern corner of the intersection of Queens Parade and Kalinya Street, Newport. Crescent Road provides an alternate route, between the Newport Arms Hotel and King's residence in Mona Vale, to the busier Barrenjoey Road.

8.107 Carson told his wife to ring the police and immediately left his house, and walked along his driveway to the scene of the accident. This took about 30 seconds. There he saw a neighbour, John May, who lived in the house on the western corner of Crescent Road and Panima Place. He also saw King standing at the back of the car trying to steady himself. King appeared to be very drunk and said words to the effect of *"Fuck I'm in trouble"* and, *"I'm a cop"*. Shortly afterwards a police officer, Senior Constable Halliday, arrived.[1373]

8.108 On 27 April 2000, two weeks after the accident, Carson made a statement to Senior Constable Halliday, which was recorded in a police notebook.[1374] The statement was later typed, although Carson did not sign the typed version.[1375] In the statement Carson gave a version of the incident similar to that which he gave in evidence to the Commission. He estimated that it took approximately one minute from when he heard the crash until he arrived at the scene. The statement included the fact that he did not see any other person at the scene and stated that King did not mention that he had not been driving or claim that there had been another person driving.

8.109 Carson made a later statement that was recorded in the police notebook of Constable O'Brien. A typewritten version was also made of this statement but was not signed by Carson. This statement was much less detailed and said:[1376]

> At 8.40pm on the 13th of the 4th, 2000, I was in my lounge room watching television. I heard a crash, I came out to see what happened. I saw a male in the driver's seat. He came up to me and said, "I am sorry." He was the only person anywhere near the vehicle. It would have been an absolute maximum one minute by the time I arrived at my front fence. The vehicle

[1373] PIC Transcript, PD Carson, 29 November 2002, pp. 6042-6044
[1374] PIC Exhibit 783B
[1375] PIC Exhibit 784
[1376] PIC Exhibit 785

> has hit the middle section of my fence. There was damage to the front of the vehicle – Holden Acclaim and the rear right tyre.

8.110 When he gave evidence at the prosecution of King at Manly Local Court on 12 February 2001 Carson stated that, when he first looked, he saw someone sitting at the wheel of the car that had gone through his front fence.[1377] However, when he gave evidence to the Commission he was unable to recall seeing somebody sitting behind the wheel of the car at any point on the night of 13 April 2000.[1378]

8.111 John May also gave evidence to the Commission. He lives at 1 Panima Place, Newport and did so in 2000. His house is located on the western corner of the intersection of Panima Place and Crescent Road, Newport. May recalled an accident in 2000 when a car ran through the front fence of Carson's property. He could not recall the date of the accident, but his description of the circumstances of the accident makes it clear that it was the accident Carson said took place on 13 April 2000. May was entering his front door after having been out when he heard a collision. He immediately went over to the vehicle, a Holden, which was on the nature strip adjacent to Carson's property. It took May about 15 seconds to reach the vehicle. May saw King at the wheel of the vehicle. King was the sole occupant. The rear wheels of the vehicle were spinning on the grass as King was apparently trying to reverse it off the nature strip, but could not gain sufficient traction to do so. May opened the driver's side door and instructed King to stop accelerating and take the keys out of the ignition. May took the keys and threw them aside. He did not recall seeing King get out of the vehicle. May did not see anybody else around the vehicle when he arrived. King appeared to May to be *"Obviously heavily intoxicated. ... his head was rolling. He didn't speak to me. He just looked at me"*.[1379]

8.112 May waited until his neighbour, Carson, arrived and then left the scene. He was not at the scene of the collision when the police arrived. The police investigating the accident did not take a statement from him and he did not give evidence when the matter came before the court. May read about the Commission hearing into the King 2000 PCA matter in an article in the Manly Daily and contacted the Commission.[1380]

8.113 May did not know King at the time of the accident. His identification of the driver as King was based upon later social contact with King through the Bilgola Surf Lifesaving Club. May became involved in the Club about a year after the accident and got to know King socially. He recognised King as the driver of the vehicle but never mentioned the accident to King.[1381] When cross-examined by King's counsel May insisted that it was King he had seen at the wheel of the Holden, stating that *"He's an unmistakable sort of guy"*. However, he was unable to state whether King had a moustache at that time.

[1377] PIC Exhibit 773B, p. 49
[1378] PIC Transcript, PD Carson, 29 November 2002, pp. 6046-6047
[1379] PIC Transcript, TJ May, 29 November 2002, pp. 6052-6056
[1380] PIC Transcript, TJ May, 29 November 2002, pp. 6055-6056
[1381] PIC Transcript, TJ May, 29 November 2002, pp. 6055-6057

In his evidence to the Commission May was certain that he did not, on the night of the accident, see a man described as being *"... dark, darkish sort of hair down probably to his shoulders with a beard in his mid-30's"* in the car, outside the car, around the car or fleeing the scene of the accident. The impression May had when he first approached the Holden was that King was *"... attempting to reverse out"*.[1382]

KING'S APPROACH TO PETER SYMONDS

8.114 Peter Symonds told the Commission that he first met King two or three years prior to 2000, possibly through a mutual association with the Pittwater RSL Soccer Club. During 2000 he regularly went to the Newport Arms Hotel, but never more than once per week. He saw King at the Newport Arms Hotel on three or four occasions in 2000. He recalled that a couple of nights after King was arrested for drink driving King asked him whether he could remember seeing him at the Newport Arms. Symonds recalled asking King *"... who the boofhead, or whatever, was that he was with that night"*. Symonds could not recall the date or month that he saw King at the Hotel but recalled playing poker machines in the gaming area and seeing King walk past with another man. King said words to the effect of *"See you Symo, I've got to go"*. Symonds description of the man with King was *"... he had a beard and scruffy sort of hair and that was about it"*. When King made his inquiry two days later Symonds recalled describing the man to King as *"... that clown with the beard"* or words to that effect. Symonds subsequently gave evidence on King's behalf at Many Local Court in 2001.[1383]

CONVERSATION ON 25 MAY 2000

8.115 M5 gave evidence about a conversation he had with King on 25 May 2000.[1384] The conversation was recorded by a listening device worn by M5. At the time of the conversation M5 was aware that King had been arrested in April 2000 for drink driving. During the conversation King described how he proposed to fabricate a false alibi to avoid the charge by stating that he was not the driver of the vehicle and that the driver had fled the scene shortly after the accident. He also told M5 how he proposed to get an acquaintance named Symonds to give evidence supportive of this account.[1385] During the conversation King admitted that after being driven to O'Toole's place that night, he then drove the car. He said:[1386]

> … I was asleep in the fuckin' passenger's side, right, and I fuckin' woke up outside his [O'Toole's] place. I didn't even know what time it was. Fuck me dead! Couldn't get home from there. Hopped in the car, fuckin' drivin' up the road, I must have gone to sleep again. Ha, ha, ha.

[1382] PIC Transcript, TJ May, 29 November 2002, pp. 6059-6066
[1383] PIC Transcript, P Symonds, 26 November 2002, pp. 5979-5984
[1384] PIC Exhibits 616 & 617
[1385] PIC Transcript, M5, 15 August 2002, pp. 4650-4654; 27 November 2002 p. 6004
[1386] PIC Exhibits 616 & 617, p. 2

CONVERSATION ON 2 NOVEMBER 2000

8.116 M5 said that the person, Symonds, referred to in the conversation on 25 May 2000 had the nickname "Swamp Duck". Symonds was referred to by that nickname in a conversation that M5 had with King and O'Toole about the 13 April 2000 DUI incident. This conversation occurred on 2 November 2000 and was recorded by listening device.[1387] In the conversation reference is made to "Swamp Duck" being the *"mystery witness"* in King's matter. Reference is also made to the assistance given to King in the 1993 drink driving incident. M5 said that his comment *"Well it's no good us jumpin' in again"* was a reference to the fact that he and O'Toole had given evidence on King's behalf in relation to the 1993 DUI incident.[1388]

THE MANLY LOCAL COURT PROCEEDINGS ON 12 FEBRUARY 2001

8.117 King was charged with two offences after his arrest on 13 April 2000. The first was that he drove a motor vehicle, registered TWP-684, with the High Range Prescribed Content of Alcohol (PCA) in his blood. The blood alcohol reading particularised for this charge was 0.250, which was five times the legal limit of 0.050. The second charge was that King failed, when required to do so by Senior Constable Halliday, immediately to give information as to the name and home address of the driver of a motor vehicle who was alleged to have committed an offence under the motor traffic legislation, King being the person having custody of the vehicle.[1389]

8.118 At the hearing at Manly Local Court on 12 February 2001 the prosecution elected to proceed with the High Range PCA charge only. Senior Constable Halliday gave evidence that at about 8.35pm on Thursday 13 April 2000 he and Constable O'Brien attended the scene of a motor vehicle accident outside the premises at 134 Crescent Road, Newport. Upon arriving at the scene Halliday saw a silver Holden Commodore station wagon, registration number TWP-694, on the nature strip outside the premises. The front driver's side of the vehicle was resting against the green metal fence. There was damage to that part of the vehicle and to the fence. Halliday saw King, whom he recognised, standing on a median strip near the vehicle. Halliday's evidence was that King said he was the owner of the vehicle and that he was in the car at the time of the accident, but he denied being the driver of the vehicle and said that he did not know who was driving the vehicle. When pressed, King said again that he did not know who the driver of the vehicle was and that the driver had *"... pissed off"*. When Halliday again asked King who the driver was King replied *"Billy the Kid"*. During this conversation Halliday said that King winked at him three times. Halliday said *"Sergeant, I know who you are, don't give me little winks"*.[1390]

8.119 While Halliday was speaking to King, Constable O'Brien spoke to the owner of 134 Crescent Road, Carson. After being informed of that conversation by

[1387] PIC Exhibits 775 & 776
[1388] PIC Transcript, M5, 27 November 2002, pp. 6004-6005
[1389] PIC Exhibit 774B
[1390] PIC Exhibit 773B, pp. 5-8

O'Brien, Halliday told King that he believed he was the driver of the motor vehicle and informed him that he was required to submit to a breath test. Halliday attempted six times to obtain a breath sample from King, but each time King failed to provide a sufficient sample to obtain a reading. Halliday took King to Mona Vale Police Station where Constable McManus tested his breath on the breath analysis machine. The reading was 0.250 grams of alcohol per 100 millilitres of blood – five times the legal limit. King was charged with High Range PCA and issued with a notice of suspension and his licence was confiscated.[1391]

8.120 Constable McManus gave brief evidence to the Local Court during which his statement, dated 19 May 2000, and a certificate under section 33 of the *Road Transport (Safety and Traffic Management) Act 1999* were tendered.[1392] The certificate records King's blood alcohol reading.

8.121 Carson also gave evidence for the prosecution in the Manly Local Court proceedings against King. His evidence, in summary, was that he was at home at about 8.15pm on 13 April 2000 when he heard the crash. After asking his wife to telephone the police he rushed outside and noticed a car had gone through his front fence. He saw someone sitting at the wheel of the car. When he approached the car he said that a man, apparently drunk, was standing towards the back of the car. Carson said the man said words to the effect *"You don't understand"*. and *"I'm a copper"*. He said the police arrived very quickly.[1393] Carson also told the Court that about five seconds elapsed between when he heard the crash and when he went to the window of his house and saw the man in the driver's seat of the car that had crashed into his fence.[1394]

8.122 King gave sworn testimony in the Local Court proceedings. During his evidence he stated that he lived at Mona Vale. He stated that on 13 April 2000, after returning to the Royal Motor Yacht Club from the Gosford Races he went to the Newport Arms Hotel to collect a briefcase from a car he had left at the hotel. Upon arriving at the hotel King played the poker machines for a short time and struck up a conversation with a person he knew only as "David" who resided in the Mona Vale area. "David" offered to drive King home: *"... we left the hotel, went to the motor car. I gave him the keys. I don't know whether I gave him the keys inside the hotel or outside. Basically just got in the, in the passenger side and I went to sleep. The next thing I realised was there was a loud bang and came to rest and he was gone from the car. At that time the engine was still going ..."*.[1395]

[1391] PIC Exhibit 773B, pp. 8-11
[1392] PIC Exhibit 773B, pp. 44-47; Copies of the statement and certificate comprise part of PIC Exhibit 774B
[1393] PIC Exhibit 773B, pp. 48-49
[1394] PIC Exhibit 773B, p. 51
[1395] PIC Exhibit 773B, pp. 66-67

8.123 King denied that he was the driver of the car at the time of the collision. When asked *"Now were you the driver of the car on that occasion, when the car collided with the front fence*" King replied "*No I was not"*.[1396]

8.124 There was a conflict between King's evidence to the Court, that he had not told "David" his address before the collision, and the evidence about the location of the accident, which was clearly on a direct route between the Newport Arms Hotel and King's address in Mona Vale. When asked how it was that "David" knew his address without King telling him King said he didn't know. King then changed his evidence and said that he couldn't be positive that he had not told "David" his address. King said he was intoxicated and had no recollection of telling him.[1397]

8.125 King also gave evidence to Court that he fell asleep as soon as he got into the car with "David" at the Newport Arms Hotel and that his next recollection was waking up because of *"... the start of the realisation, crash"*. He said *"... I was just basically seeing stars in front of me. My eyes wake up and then he's gone. The door was open and he's gone"*. King said that he did not actually see "David" leaving the scene of the collision: *"No, no I didn't see him going from the vehicle. I just saw these stars in front of me, there was the shock. I looked, really, he's gone. So I didn't see him disappearing into the, into the darkness or anything"*. King said that he moved from the front passenger's seat over a centre console to the driver's seat and turned the ignition off. He then he got out of the car. He did not use the word "David" to describe the driver of the vehicle to police at the scene – instead using the words *"Billy the Kid"* – because he was intoxicated and did not recall the driver's name until the following day. He did not inform the police of this recollection *"Because what's, what's David, David's not gonna help 'em. They're, they'll do as much inquiry that I could do"*.[1398]

8.126 The Presiding Magistrate at Manly Local Court accepted Symonds' evidence that he had seen King walk out of the hotel with a "bearded gentleman" but said:[1399]

> That does not of course translate into that man getting into the vehicle and driving the vehicle away and having a collision.

8.127 The Magistrate made the following finding about King's evidence:[1400]

> Sadly I come to the view that Mr. King has just not told me the truth. I haven't got the slightest doubt in my mind that he was driving that vehicle and David simply didn't exist and the offender will be found guilty.

8.128 In his remarks on sentence the Magistrate said, in relation to King's evidence:[1401]

[1396] PIC Exhibit 773B, p. 70
[1397] PIC Exhibit 773B, pp. 87-89
[1398] PIC Exhibit 773B, pp. 76-79, 89
[1399] PIC Exhibit 773B, pp. 115-116
[1400] PIC Exhibit 773B, p. 117
[1401] PIC Exhibit 773B, pp. 118-119

> To believe your story, in my opinion, I don't wish to be offensive, you'd have to believe in the fairies and I don't.

8.129 King was fined $1,250.00 and disqualified from driving for the minimum period of 12 months from 13 April 2000.

KING'S EVIDENCE TO THE COMMISSION ABOUT THE 2000 PCA INCIDENT

8.130 In his evidence to the Commission King denied being the driver of the car at the time of the accident in Crescent Road in April 2000.[1402] He also denied perjuring himself in the Manly Local Court proceedings that arose out of the accident.[1403] King maintained these denials despite the evidence of his taped conversations with M5, including the conversation on 13 April 2000 itself. King's specific denials, during his evidence to the Commission, about being the driver of the car at the time of the accident on 13 April 2000 were as follows:

> Q: Yes. Was he ["David"] driving the car when you had the accident which led to you being arrested by the police for high-range PCA?
> A: That's correct.
>
> Q: You maintain that's true, do you?
> A: Yes, I do.[1404]
>
> Q: Now tell us then, … what happened after you and this person who you met at the Newport Arms left? What happened there?
> A: Well, I got in the car and he drove and I think I just drifted off to sleep. The next thing I knew, the car had crashed and he was out of the car and the car was still going, I think. I jumped across, turned the ignition off, and there was a fair bit of damage. I got out, basically I was wandering around. You know, I was a bit disoriented. A short time later – oh, a resident came out and then shortly after the police arrived.[1405]
>
> Q: On the night in question, 13 April 2000, were you concerned about driving while you were drunk?
> A: Well, I suppose I was because I got the other bloke to drive.[1406]
>
> Q: It wasn't the case that you didn't give that information to the police on 13 April 2000 because at that time you knew that you were the driver of the car?
> A: No – I knew I wasn't the driver of the car. I don't know what I was thinking at that particular time now.[1407]
>
> Q: Do you still tell this Commission that at the time you had the accident on 13 April 2000, you were not driving your car?
> A: That's right.[1408]

[1402] PIC Transcript, JJ King, 14 August 2002, p. 4614
[1403] PIC Transcript, JJ King, 14 August 2002, p. 4616
[1404] PIC Transcript, JJ King, 25 November 2002, p. 5888
[1405] PIC Transcript, JJ King, 25 November 2002, p. 5890
[1406] PIC Transcript, JJ King, 25 November 2002, p. 5907
[1407] PIC Transcript, JJ King, 26 November 2002, pp. 5924-5925
[1408] PIC Transcript, JJ King, 26 November 2002, pp. 5962-5963

ASSESSMENT OF THE EVIDENCE ABOUT THE 2000 PCA INCIDENT

8.131 M5, May and Carson all gave the impression of being reliable witnesses who were doing their best to tell the truth about the events they described. The tape recordings of King's conversations with M5 on 13 April 2000, 25 May 2000 (in particular) and 2 November 2000 provide considerable evidential support to the testimony of M5, May and Carson.

8.132 The evidence of M5, May and Carson, the tape recordings of King's conversations with M5, and the transcript of the Manly Local Court proceedings on 12 February 2001, establish a prima facie case that King knowingly gave false evidence in those proceedings about not being the driver of his vehicle at the time of the collision on 13 April 2000. This evidence also establishes a prima facie case that King knowingly gave false evidence to the Commission about not being the driver of his vehicle at the time of the collision on 13 April 2000.

CORRUPT PAYMENTS TO REGISTERED INFORMANTS

8.133 M13 said that he first met O'Toole in 1976 when O'Toole arrested him for a break and enter offence. O'Toole and his colleague allegedly assaulted M13 at North Sydney Police Station. M13 saw O'Toole from time to time on a number of occasions after that and provided him with information about criminal matters.[1409]

8.134 NSW Police records tendered to the Commission document the details of two applications for rewards to be paid to M13 in respect of information provided by him as a registered informant. The first was an application by King, dated 24 April 1996, that M13 be paid $2,000 in respect of information he provided which led to the apprehension and conviction of an offender in relation to a jewellery robbery.[1410] On 30 May 1996 approval was given for a reward payment of $1,600 to M13.[1411] According to a letter dated 19 June 1996 signed by Detective Senior Sergeant Mayger, Acting Co-ordinator of MCSN, the reward of $1,600 was paid to M13 that day.[1412] Mayger and King signed the Certification of Payment, in respect of the $1,600 payment to M13, on 19 June 1996.[1413]

8.135 M13 told the Commission that in 1996 he provided legitimate information to O'Toole about a jewellery robbery and as a result King produced a cheque for $1,600 to M13 as a reward payment, and arranged for the cheque to be cashed at a bank in Chatswood.[1414]

8.136 The second application was made by King on 10 October 1997 for a reward payment of $5,000 to M13. The application related to information allegedly

[1409] PIC Transcript, M13, 16 August 2002, pp. 4748-4749
[1410] PIC Exhibit 681B
[1411] PIC Exhibit 683B
[1412] PIC Exhibit 684B
[1413] PIC Exhibit 685B
[1414] PIC Transcript, M13, 16 August 2002, pp. 4770-4771

supplied by M13, as a registered informant, about the involvement of an offender in a robbery.[1415] O'Toole approved King's application for the reward.[1416] On 30 December 1997 a reward amount of $2,250 to M13 was approved and a cheque for that amount payable to "Commander Crime Agencies" was drawn the same day.[1417] O'Toole certified that he paid a bank cheque in the sum of $2,250 to M13 on 21 January 1998.[1418]

8.137 M13 said that in 1998 he had a meeting with O'Toole in a coffee shop across the road from the Sydney Police Centre in Surry Hills. At the meeting O'Toole handed M13 a cigarette packet containing $250 in fifty dollar notes.[1419] In evidence M13 confirmed the answers he had previously given the investigators that O'Toole had *"... put in a claim form, had me as an informant"* and that he received a payment *"That wasn't real as far as I'm concerned"*. M13 accepted that this was a *"corrupt activity"*.[1420]

8.138 M5 gave evidence about an incident involving O'Toole and M13 that corresponds with the event described above by M13. M5 recalled that the incident occurred "somewhere around" 1997. M5 said:[1421]

> … we [M5 and O'Toole] were both working at the Sydney Police Centre on that task force and Dennis had – Dennis O'Toole had gone out to meet M13. Anyway, later on that day I saw him again, I walked into his office about something else and I just said, "Oh, how did you go?", you know, "Everything all right?", or something, and he just held up his hands two and a half to me; nothing was said, it was just an indication with his hands … to me it was if he'd got some of the reward money and it was either 2,500 or 250. I didn't know and didn't want to know.

8.139 M5 gave evidence about a conversation he had with King on 5 February 1999, which was recorded by listening device.[1422] During this conversation M5 and King discussed a reward application King organised for information M13 supplied in relation to an armed robbery at Greenacre. M13 was described as *"Melt Down Man"* during the conversation. This was a nickname for M13 known to both M5 and King. They also discussed the incident referred to above where O'Toole indicated that he got *"two and a half"*. M5 said he understood this to mean that O'Toole had kept some of the reward money.[1423]

8.140 M5 had a conversation with O'Toole and King on 3 August 2000.[1424] This conversation was also recorded. During the conversation O'Toole said that M13 *"... was a fuckin' good informant in his day"*.[1425]

[1415] PIC Exhibit 688B
[1416] PIC Exhibit 689
[1417] PIC Exhibit 690B
[1418] PIC Exhibit 691B
[1419] In an earlier interview M13 had told investigators that the amount of money paid to him by O'Toole was $200. M13 said his recollection now, at the time of giving evidence, was that the amount was $250.
[1420] PIC Transcript, M13, 16 August 2002, pp. 4771-4775
[1421] PIC Transcript, M5, 15 August 2002, pp. 4665-4666
[1422] PIC Exhibits 620 & 621
[1423] PIC Transcript, M5, 15 August 2002, pp. 4664-4666
[1424] PIC Exhibits 779C & 780C
[1425] PIC Transcript, M5, 27 November 2002, pp. 6006-6007

8.141 M13 was also discussed in a recorded conversation between M5, King and O'Toole on 7 February 2001.[1426] M5 said that a fourth participant in the conversation might have been N1. M5 confirmed that M13 was the subject of this conversation, which took place at the Steyne Hotel in Manly. He said that he understood O'Toole's question *"Hasn't he done some business with you?"* to be a reference to *"... bodgy rewards, false reward money"*. The only instance he knew when O'Toole had done the same sort of "*business*" with M13 was the incident referred to in the recorded conversation of 5 February 1999 and discussed above. M5 said he understood O'Toole's query about the level of information that M13 should have about the briefs to mean *"if you were going to put or if you had put ... reward report in for him, have you supplied him with enough information re the job target, person charged or whatever, so that ... it would appear that he was the source of the information"*. M5 said he understood O'Toole's question *"If Jasper's rolled over, would you think that he'd have enough knowledge to the fact that you're using a bodgy gig?"* to be an expression of concern by O'Toole, given Jasper's arrest, about whether he might know enough about the false reward payment involving M13 to expose it.[1427]

KING'S EVIDENCE ABOUT CORRUPT PAYMENTS TO INFORMANTS

8.142 King denied that his application for a reward for M13, dated 10 October 1997,[1428] was a false application so that he and / or O'Toole could receive part of the reward payment. King said he thought he was on long-term sick report when the reward of $2,250 that resulted from this application was paid on 2 January 1998. King denied being aware, at the time of his recorded conversation with M5 on 3 August 2000,[1429] that M13 only received $250 of the $2250 reward payment and that O'Toole kept the balance of it.[1430]

ASSESSMENT OF EVIDENCE ABOUT CORRUPT PAYMENTS TO INFORMANTS

8.143 M13's evidence about the false reward claim involving King and O'Toole is supported, to an extent, by the evidence of M5, the taped conversations between King and M5 on 5 February 1999 and O'Toole and M5 on 7 February 2001 and the documentary evidence about the reward payment. This evidence establishes a prima facie case that King made a false or misleading statement with intent to obtain a financial advantage for himself and / or O'Toole when he made the application for the reward in October 1997 and that O'Toole obtained a financial benefit by deception, or by a false pretence, when he obtained the reward payment in late 1997 or early 1998.

[1426] PIC Exhibits 622 & 623
[1427] PIC Transcript, M5, 15 August 2002, pp. 4667-4670
[1428] PIC Exhibit 688B
[1429] PIC Exhibits 779C & 780C
[1430] PIC Transcript, JJ King, 22 August 2002, pp. 5139-5148

LAUNDERING OF CORRUPTLY OBTAINED MONEY

8.144 M5 gave evidence about King's involvement in the laundering of corruptly obtained money. He said he had corruptly obtained the money while working with the North Region Drug Squad. After obtaining the money, which was Australian currency, M5 sealed it in a jar and buried it near the front of his house. M5 explained King's involvement in the retrieval and laundering of the money as follows:[1431]

> It basically had come from a conversation whereby I had suggested that I – for financial reasons, I was looking at digging up my last tin, so to speak, was the terminology I used, because I believed that Jim King and I had had a brief discussion in relation to – whereby he knew of a method or knew of someone who ran a cash business that would be able to exchange that money for recent Australian currency.

8.145 The evidence against King in this matter was obtained primarily by M5 and included the use of a listening device worn by M5 and a video camera concealed in M5's house.

8.146 M5 stated that he initially had a conversation about retrieving the money with King at the Ivanhoe Hotel. That conversation was not recorded but on 25 June 1999 a conversation between King and M5 at M5's house was recorded.[1432] At the start of the conversation M5 reminded King of their conversation at the Ivanhoe Hotel and asked King if he could get the money changed for him. King asked how much money there was and M5 said there was *"... about four ..."*. In evidence M5 said that this was a reference to the amount being around $4000.[1433]

8.147 During the conversation M5 went under the house and retrieved the jar of money. Later in the conversation, after finding the jar of money M5 said *"I'll have a look at it in the sink"*. M5 said that the process of him taking the money out of the jar *"... in the kitchen sink and separating it because ... it was all wet, mouldy and deteriorating"* was recorded with the concealed video camera. M5 separated the notes so they could be dried out and taken by King and exchanged for other notes. During this conversation King mentioned *"... good old days"* and offered M5 advice on how best to dry the notes.[1434]

8.148 While attempting to separate and dry the notes M5 was interrupted by someone knocking on his front door. He left King in the kitchen and went to answer the door. The videotape of the kitchen shows King hastily placing all the notes in a cupboard under the sink when a person at the front door speaks to M5. When M5 returned to the kitchen he said *"Oh Jesus!"* and King responded *"It's all there in the cupboard ... I didn't know whether it was*

[1431] PIC Transcript, M5, 27 November 2002, pp. 5990-5991
[1432] PIC Exhibits 659 & 660
[1433] PIC Transcript, M5, 27 November 2002, pp. 5991-5992
[1434] PIC Exhibits 661 & 662; PIC Transcript, M5, 27 November 2002, pp. 5992-5993

your father". Later they counted the money and determined that the total was *"twenty-five fifty"*.[1435] In later conversations the total was said to be $2250.

8.149 On 2 July 1999 M5 spoke to King on the telephone and said *"I'm just trying to organise a day when you can pick up that paperwork"*. King replied *"... I might be able to, I'll have to come and, come and do it next week"*.[1436] M5 said that this was a reference to King collecting the money that had been retrieved by M5 from under his house for the purpose of King exchanging the money for new currency.[1437]

8.150 On 6 July 1999 King said to M5 during a telephone conversation *"... I'll have to get that paperwork from you"*.[1438] M5 said that this was also a reference to King collecting the money that had been retrieved by M5 from under his house for the purpose of King exchanging the money for new currency.[1439]

8.151 King collected the money from M5 on 9 July 1999. During his conversation with M5, which was recorded, he described how he would exchange the money through a friend with a cash business as follows: *"it's gonna go to a fuckin' ... a mate of his has got a fuckin', sort of cash business and what he's gotta do, is when he gets cash um from a job, right ... I get the, his cash and he'll put it through his fuckin' business ... and see, it's still legal tender ... and the, the banks accept it back, but if it's disintegrating ... they've got to send it to the Treasury for ... to say that it is still right to be reimbursed, and that's gotta go through an account ... it takes about bloody two weeks to come back ...he should have it done by next week"*. King said that the charge to M5 for the exchange would be forty per cent of the total of $2250.[1440]

8.152 On 12 July 1999 King told M5 during a telephone conversation that he had *"... re-typed that stuff"* and discussed when he could meet M5 and give him the *"paperwork"*.[1441] M5 understood this to be reference to the fact that King had exchanged the money and wanted to arrange a meeting to give the new currency to M5.[1442] During another telephone conversation with M5 on 14 July 1999 King told M5 he would drop the *"paperwork"* in.[1443]

8.153 According to M5, King delivered the exchanged currency to him on 18 July 1999. The conversation between M5 and King that day was recorded. King gave M5 $1,250 in cash and told M5 that he had kept $100 himself and that the person who had carried out the exchange had kept $900.[1444] When M5 complained about the cost of the transaction King said:[1445]

[1435] PIC Exhibits 663 & 664
[1436] PIC Exhibits 665 & 666
[1437] PIC Transcript, M5, 27 November 2002, p. 5994
[1438] PIC Exhibits 667 & 668
[1439] PIC Transcript, M5, 27 November 2002, p. 5994
[1440] PIC Exhibits 669 & 670
[1441] PIC Exhibits 671 & 672
[1442] PIC Transcript, M5, 27 November 2002, p. 5996
[1443] PIC Exhibits 673 & 674
[1444] PIC Transcript M5 27 November 2002, p. 5997
[1445] PIC Exhibits 675 & 676

> He said if you get any more, he'll do it for thirty per cent … Anyway, you know, like I agreed with him for the deal, so I couldn't fuckin' change it could I? … The good thing about it, some of those fuckin' notes weren't real good. … He fuckin' had a look at it and said, "Oh shit!" … Because what he's … I told you, if they're like that … see they've gotta go down to the Reserve Bank and all this sort of shit. And he was a bit fuckin' worried that fuckin', um, gettin' a "Please explain" from the … 'cause they work in conjunction with the Taxation Office.

8.154 M5 gave evidence about one further conversation he had with King about this transaction. The conversation took place at M5's house on 23 November 1999 during a visit by King and related to a cash sum of $1,616 M5 had found with some cheques in a diary King had accidentally left at the house after an earlier visit. King had collected the money for a soccer club he was involved with. During the conversation M5 claimed $800 of the cash as a "finder's fee" and referred to a check he had done in which he discovered that King had reported the money as stolen *"... around about the time you did the, the little bit of a money changeover for me"*. King said, in relation to that changeover, *"Mate ...I'll tell you who did it for me ...Joe the Wog ...If you wanna go and check with him, you can go and check with him ..."*. Later in the conversation M5 told King he wanted the $800 because he was *"... just gettin' you* [King] *back"* for the changeover. King replied *"I didn't dud you* [M5]*"*.[1446] King left $800 with M5 and took $816 of the cash and his diary and the cheques.[1447] A NSW Police COPS entry records that King reported as stolen from his vehicle, TWP 684, at Dee Why on 10 July 1999 currency to the value of $1,600 and *"1 x black folder with papers belonging to Manly Warringah Dolphins Soccer Club"* with a total value of $1,760.[1448] King never advised NSW Police that the allegedly stolen money had been found.

KING'S EVIDENCE ABOUT THE ALLEGED LAUNDERING OF CORRUPTLY OBTAINED MONEY

8.155 King said that he had a *"... vague recollection ..."* of being given some money that M5 produced from a jar he had dug up from his garden. King initially stated that he took the money, which comprised old notes, to a bank and exchanged it and gave it all back to M5. When pressed King said he was not sure whether he had kept some of the money himself or not. He stated that the bank he changed the money at was the Mona Vale branch of either the National Australia Bank or ANZ bank. King also said he recalled being told by M5 that he, M5, had found some cash belonging to King at his house. King did not recall giving M5 half of the cash but stated, *"I might have given him* [M5] *a finder's fee or something ..."*.[1449]

8.156 After being present while the videotape of his dealings with M5 about the money on 25 June 1999[1450] was played King stated to the Commission that he did not believe that the money was illicitly obtained and maintained that he

[1446] PIC Exhibits 677 & 678
[1447] PIC Transcript, M5, 27 November 2002, pp. 5998-6000
[1448] PIC Exhibit 679B
[1449] PIC Transcript, JJ King, 21 August 2002, pp. 5056-5064
[1450] PIC Exhibits 663 & 664

had returned all the money to M5, but could not be sure.[1451] The conversation of 9 July 1999 was then played to King.[1452] After hearing it King stated that where he had told M5 he was going to get the money exchanged through an acquaintance who ran a cash business *"... I was just talking a whole lot of hogwash"*. He said he couldn't *"... recall the exact conversation but I was just making it up"*. King maintained that *"... it was his* [M5's] *money and I took it to the bank"*.[1453]

8.157 After listening to the recording of his conversation with M5 about the money on 18 July 1999[1454] King agreed that it appeared that he had told M5 that the cost of the transaction to M5 was $1000 of the original $2250, with $100 going to King and $900 going to King's mate with the cash business. King told the Commission that his statements to M5 about the mate with the cash business being involved in the exchange were lies and that he had obtained $1000 from M5 on the basis of a lie.[1455] King also said that when he told M5, during the recorded conversation on 23 November 1999,[1456] that he had exchanged the money from M5's buried jar through an acquaintance called *"Joe the Wog"* he was lying to M5.[1457]

8.158 King was shown a COPS report that he identified as the report about the alleged theft of money belonging to the Manly Warringah Dolphins Soccer Club from his car on 9 July 1999.[1458] The amount of money reported stolen was $1,600 cash and a cheque for $140. He agreed that this was the same money M5 found at his house and which the two men discussed splitting 50/50 in the conversation recorded on 23 November 1999.[1459] King denied that giving half the money to M5 was an extravagant reward because *"... I'd paid for this on my Visa card and to get any of it back was a bonus"*. He said he did not report the finding of the money because *"... It might have been an oversight, it might have been the fact that there was no report and I didn't have to pay it back to anyone other than myself"*.[1460]

ASSESSMENT OF EVIDENCE ABOUT LAUNDERING OF CORRUPTLY OBTAINED MONEY

8.159 The evidence of M5, and the recorded conversations between M5 and King, establish a prima facie case that King engaged in money laundering in 1999.

AFFECTED PERSONS

8.160 A person against whom, in the Commission's opinion, substantial allegations have been made in the course of, or in connection with, an investigation, is an

[1451] PIC Transcript, JJ King, 21 August 2002, pp 5083-5084
[1452] PIC Exhibits 669 & 670
[1453] PIC Transcript, JJ King, 21 August 2002, pp. 5091-5092
[1454] PIC Exhibits 675 & 676
[1455] PIC Transcript, JJ King, 21 August 2002, pp. 5108-5110
[1456] PIC Exhibits 677 & 678
[1457] PIC Transcript, JJ King, 22 August 2002, p. 5127
[1458] PIC Exhibit 679B
[1459] PIC Exhibits 677 & 678
[1460] PIC Transcript, JJ King, 22 August 2002, pp. 5116-5126

"affected person" for the purposes of a Report to Parliament by the Commission.[1461]

8.161 Subsection 97(2) of the *Police Integrity Commission Act 1996* (the Act) requires the Commission to include in a Report to Parliament a statement in respect of each affected person as to whether or not in all the circumstances the Commission is of the opinion that consideration should be give 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,[1462]

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.

8.162 In addition the Commission may form opinions as to whether police misconduct has occurred: subsection 16(1)(a) of the Act.

8.163 The following substantial allegations were made in this segment of the investigation:

- that a number of police officers, and a civilian, conspired to pervert the course of justice by giving false evidence in proceedings, in the Local Court of New South Wales, arising out of King's arrest for DUI on 25 September 1993;
- that King gave false evidence in proceedings in Manly Local Court on 12 February 2001 and attempted to pervert the course of justice in proceedings arising out of his arrest for PCA on 13 April 2000;
- that O'Toole, aided and abetted by King, obtained a financial benefit by deception when he obtained an informant reward payment in late 1997 or early 1998 based on a false application for a reward payment made by King and approved by O'Toole in October 1997; and
- that King engaged in money laundering in 1999.

8.164 Based on these allegations the following persons are "affected persons" within the meaning of the Act:

- King, James Justin

[1461] Subsection 97(3), *Police Integrity Commission Act 1996*

[1462] 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 Commissioner to recommend or state whether consideration should be given to the prosecution of a person for a specified "disciplinary offence" (subsections 16(1)(b), 97(2)(b) of the Act) has no effective application to police officers. This is so even for police misconduct that occurred before this date.

- M5
- M13
- McDougall, Roslyn Gwen
- Moore, Clare Margaret
- O'Toole, Dennis Peter
- S8

8.165 All the abovementioned witnesses, with the exception of O'Toole who did not appear in answer to his summons,[1463] gave evidence after a declaration had been made under section 41 of the Act. Therefore pursuant to section 40 of the Act the evidence is not admissible against him or her in subsequent criminal or civil proceedings except for proceedings for an offence against the Act or for contempt under the Act.

JAMES JUSTIN KING

8.166 King is an affected person because he is the subject of the following substantial allegations:

- that a number of police officers, including King, and a civilian conspired to pervert the course of justice by giving false evidence in proceedings, in the Local Court of New South Wales, arising out of King's arrest for DUI on 25 September 1993;
- that he gave false evidence in proceedings in Manly Local Court on 12 February 2001 and attempted to pervert the course of justice in proceedings arising out of his arrest for PCA on 13 April 2000;
- that O'Toole, aided and abetted by King, obtained a financial benefit by deception when he obtained an informant reward payment in late 1997 or early 1998 based on a false application for a reward payment made by King and approved by O'Toole in October 1997; and
- that he engaged in money laundering in 1999.

8.167 The Commission considers that King engaged in police misconduct: subsection 16(1)(a) of the Act.

8.168 The admissible evidence against King in relation to the 1993 DUI incident comprises the evidence of M5, M13, S8, Ducker, Moore, McDougall, Shepherd and the statement King made to Internal Affairs dated 1 December 1993. The Commission is of the opinion that the evidence supports consideration being given to the prosecution of King for the criminal offence of Conspiracy to Do an Act Intending to Pervert the Course of Justice in breach of sections 319 and 342 of the *Crimes Act 1900*. The object of the conspiracy involved the giving of false evidence, in the Local Court criminal

[1463] See paragraph 8.10

proceedings arising out of King's arrest for DUI on 25 September 1993, about King taking and being in possession of Orthoxicol medication, and meeting the informant M13 at the Steyne Hotel, so that the charge(s) against King would be dismissed.

8.169 The admissible evidence against King in relation to the 2000 PCA incident comprises the evidence of M5, Carson, May, Symonds, the taped conversations between M5 and King on 13 April 2000, 25 May 2000, 2 November 2000, the minutes and Annual Report of the Bilgola Surf Lifesaving Club and the transcript of the criminal proceedings against King at Manly Local Court on 12 February 2001. That evidence supports the Commission expressing the opinion that consideration **should** be given to the prosecution of King for the criminal offences of:

- Attempting to Do an Act Intending to Pervert the Course of Justice in breach of sections 319 and 344A of the *Crimes Act 1900*;
- Perjury in the Manly Local Court proceedings in breach of section 327 of the *Crimes Act 1900*; and
- Giving False or Misleading Evidence at a Hearing Before the Commission in breach of section 107 of the *Police Integrity Commission Act 1996*.

8.170 The admissible evidence against King in relation to the allegation of corrupt payments to registered informants comprises the evidence of M13, M5, the recorded conversations between King and M5 on 5 February 1999, the recorded conversation between M5, King and O'Toole on 3 August 2000 and 7 February 2001 and the application and approval documents for the reward.[1464] The Commission is of the opinion that the evidence supports consideration being given to the prosecution of King for the criminal offence of Making a False or Misleading Statement with Intent to Obtain Money in breach of section 178BB of the *Crimes Act 1900*. The false or misleading statement was contained in the application for a reward payment by King dated 10 October 1997.

8.171 The admissible evidence against King in relation to the allegation of money laundering comprises the evidence of M5, the taped conversations between M5 and King[1465] and the videotape of King and M5.[1466] The Commission is of the opinion that the evidence supports consideration being given to the prosecution of King for the criminal offence of Money Laundering in breach of section 73 of the *Confiscation of Proceeds of Crime Act 1989*. The money laundering allegation relates to the cash M5 identified as the proceeds of corrupt activity whilst a police officer that King took and exchanged for different cash.

[1464] Identified in paragraph 8.134
[1465] Referred to in paragraphs 8.145–8.154
[1466] Referred to in paragraphs 8.147-8.148

8.172 Following the public hearings in this segment and prior to the completion of this Report, NSW Police gave consideration to the preparation of a brief of evidence against King in relation to the three following matters:

- 1993 DUI – a brief of evidence was sent to the ODPP however the ODPP recommended that no criminal charges be laid against any of the participants.
- Payment of registered informants - NSW Police investigated this matter and found there is insufficient evidence to consider criminal charges against King, or any other person.
- Money laundering – NSW Police sent a detailed report to the ODPP requesting a review of the evidence to ascertain if there was sufficient evidence to prosecute King. The ODPP recommended that no charges be laid against King.

8.173 In the circumstances the Commission is of the opinion that further consideration **should not** be given to the prosecution of King for any criminal offences in relation to the above three matters.

8.174 The Commission will seek the advice of the ODPP in relation to the 2000 PCA.

8.175 As King is no longer a serving police officer the question of taking action pursuant to subsections 97(2)(c) and (d) of the Act does not arise.

M5

8.176 M5 is an affected person because he the subject of the following substantial allegation:

- that a number of police officers, including M5, and a civilian, conspired to pervert the course of justice by giving false evidence in proceedings, in the Local Court of New South Wales, arising out of King's arrest for DUI on 25 September 1993.

8.177 The Commission considers that M5 engaged in police misconduct: subsection 16(1)(a) of the Act.

8.178 The admissible evidence against M5 in relation to the 1993 DUI incident comprises the evidence of M13 and S8. M13's evidence implicates M5 in both aspects of the conspiracy to pervert the course of justice: the fabrication of evidence in relation to the meeting between M5, King and M13 at the Steyne Hotel; and the fabrication of evidence that King took, or was seen to be in possession of, Orthoxicol medication. S8's evidence implicates M5 in the second part of the conspiracy. The object of the conspiracy involved the giving of false evidence, in the Local Court criminal proceedings arising out of King's arrest for DUI on 25 September 1993, about King taking and being in possession of Orthoxicol medication, and meeting the informant M13 at the Steyne Hotel, so that the charge(s) against King would be dismissed.

8.179 M5's involvement in the money laundering operation came about as a result of the assistance he provided to the investigation and therefore he did not have the necessary mens rea to commit any criminal offences.

8.180 The Attorney General has granted M5 has an indemnity from prosecution in relation to all matters in respect of which he has admitted criminal conduct. Therefore the Commission has not expressed an opinion about whether consideration should be given to the prosecution of M5 for any criminal offences.

8.181 M5 is no longer a serving police officer. Accordingly the question of taking action pursuant to subsections 97(2)(c) and (d) of the Act does not arise.

M13

8.182 M13 is an affected person because he is the subject of the substantial allegation that together with a number of police officers he conspired to pervert the course of justice by giving false evidence in proceedings, in the Local Court of New South Wales, arising out of King's arrest for drink driving on 25 September 1993.

8.183 M13 is a civilian. In terms of subsection 97(2) of the Act the only relevant matter is whether or not the Commission is of the opinion that consideration should be given to the prosecution of M13 for specified criminal offences.

8.184 The admissible evidence against M13 in relation to the 1993 DUI incident comprises the evidence of M5, S8, Ducker, Moore, McDougall, Shepherd and the interview of M13 by Shepherd on 6 April 1994. The Commission is of the opinion that the evidence supports consideration being given to the prosecution of M13 for the criminal offence of Conspiracy to Do an Act Intending to Pervert the Course of Justice in breach of sections 319 and 342 of the *Crimes Act 1900*. The object of the conspiracy involved the giving of false evidence, in the Local Court criminal proceedings arising out of King's arrest for DUI on 25 September 1993, about King taking and being in possession of Orthoxicol medication, and meeting the informant M13 at the Steyne Hotel, so that the charge(s) against King would be dismissed.

8.185 Following the public hearings in this segment and prior to the completion of this Report, NSW Police sent a brief of evidence against M13 to the ODPP. The ODPP recommended that no charges be laid against M13.

8.186 In the circumstances the Commission is of the opinion that further consideration **should not** be given to the prosecution of M13 for any criminal offences.

ROSLYN GWEN MCDOUGALL

8.187 McDougall is an affected person because she is the subject of the substantial allegation that a number of police officers, and a civilian, conspired to pervert the course of justice by giving false evidence in proceedings in the Local Court of New South Wales arising out of King's arrest for DUI on 25 September 1993. McDougall was one of those officers.

8.188 The Commission considers that McDougall engaged in police misconduct: subsection 16(1)(a) of the Act.

8.189 The admissible evidence against McDougall in relation to the 1993 DUI incident comprises the evidence of M5, M13, S8, Ducker, Moore, Shepherd, her police statement dated 21 October 1993 and her statement to Internal Affairs dated 16 October 1993. The Commission is of the opinion that the evidence supports consideration being given to the prosecution of McDougall for the criminal offence of Conspiracy to Do an Act Intending to Pervert the Course of Justice in breach of sections 319 and 342 of the *Crimes Act 1900*. The object of the conspiracy involved the giving of false evidence in the Local Court criminal proceedings arising out of King's arrest for drink driving on 25 September 1993, so that the charge(s) against King would be dismissed.

8.190 Following the public hearings in this segment and prior to the completion of this Report, NSW Police sent a brief of evidence against McDougall to the ODPP. The ODPP recommended that no charges be laid against McDougall.

8.191 In the circumstances the Commission is of the opinion that further consideration **should not** be given to the prosecution of McDougall for any criminal offences.

8.192 As McDougall is a serving officer it is necessary to consider the issues raised in subsections 97(2)(c) and (d) of the Act. In doing so the evidence she gave to the Commission may be considered. On the evidence of S8 and her police statement and Internal Affairs statement McDougall participated in a conspiracy to pervert the course of justice in King's Local Court proceedings arising out of the 1993 DUI incident. The evidence before the Commission adversely reflects on McDougall's competence, integrity, performance and conduct as a police officer. The Commission is of the opinion that the evidence supports consideration being given to the taking of action against McDougall pursuant to subsections 97(2)(c) or (d) of the Act.

8.193 Following the public hearings in this segment and prior to the completion of this Report, NSW Police gave consideration to whether action should be taken against McDougall. After receiving the recommendation by the ODPP that no criminal charges be laid against her (see paragraph 8.190) NSW Police determined that no further action was required and accordingly no adverse finding was made. McDougall was notified of this decision.

8.194 In the circumstances the Commission is of the opinion that further consideration **should not** be given to the taking of action against McDougall pursuant to subsections 97(2)(c) or (d) of the Act.

CLARE MARGARET MOORE (BUTT)

8.195 Moore is an affected person because she is the subject of the substantial allegation that a number of police officers, and a civilian, conspired to pervert the course of justice by giving false evidence in proceedings in the Local Court of New South Wales arising out of King's arrest for DUI on 25 September 1993. Moore was one of those officers.

8.196 The Commission considers that Moore engaged in police misconduct: subsection 16(1)(a) of the Act.

8.197 The admissible evidence against Moore in relation to the 1993 DUI incident comprises the evidence of M5, M13, S8, Ducker, McDougall, Shepherd, her police statement dated 27 October 1993 and her statement to Internal Affairs dated 11 November 1993. The Commission is of the opinion that the evidence supports consideration being given to the prosecution of Moore for the criminal offence of Conspiracy to Do an Act Intending to Pervert the Course of Justice in breach of sections 319 and 342 of the *Crimes Act 1900*. The object of the conspiracy involved the giving of false evidence in the Local Court criminal proceedings arising out of King's arrest for drink driving on 25 September 1993, so that the charge(s) against King would be dismissed.

8.198 Following the public hearings in this segment and prior to the completion of this Report, NSW Police sent a brief of evidence against Moore to the ODPP. The ODPP recommended that no charges be laid against Moore.

8.199 In the circumstances the Commission is of the opinion that further consideration **should not** be given to the prosecution of Moore for any criminal offences.

8.200 As Moore is no longer a serving police officer the question of taking action pursuant to subsections 97(2)(c) and (d) of the Act does not arise.

DENNIS PETER O'TOOLE

8.201 O'Toole is an affected person because he is the subject of the substantial allegations:

- that a number of police officers, and a civilian, conspired to pervert the course of justice by giving false evidence in proceedings, in the Local Court of New South Wales, arising out of King's arrest for DUI on 25 September 1993; and

- that O'Toole, aided and abetted by King, obtained a financial benefit by deception when he obtained an informant reward payment in late 1997 or early 1998 based on a false application for a reward payment for an informant made by King and approved by O'Toole in October 1997.

8.202 Although he was summonsed,[1467] O'Toole did not give evidence in the Commission's hearings in this segment of Operation Florida.

8.203 The Commission considers that O'Toole engaged in police misconduct: subsection 16(1)(a) of the Act.

8.204 The admissible evidence against O'Toole in relation to the 1993 DUI incident comprises the evidence of M5, M13, S8, Ducker, Moore, McDougall, Shepherd and the undated statement O'Toole made to Internal Affairs. The Commission is of the opinion that the evidence supports consideration being given to the prosecution of O'Toole for the criminal offence of Conspiracy to Do an Act Intending to Pervert the Course of Justice in breach of sections 319 and 342 of the *Crimes Act 1900*. The object of the conspiracy involved the giving of false evidence in the Local Court criminal proceedings arising out of King's arrest for DUI on 25 September 1993, about King taking and being in possession of Orthoxicol medication, and meeting the informant M13 at the Steyne Hotel, so that the charge(s) against King would be dismissed.

8.205 The admissible evidence against O'Toole in relation to the allegation of corrupt payments to a registered informant comprises the evidence of M13, M5, the recorded conversations between M5, King and O'Toole on 3 August 2000 and 7 February 2001 and the application and approval documents for the reward.[1468] The Commission is of the opinion that the evidence supports consideration being given to the prosecution of O'Toole for the criminal offence of Obtaining Money by Deception in breach of section 178BA of the *Crimes Act 1900*. The deception comprised O'Toole's knowing approval of King's false application for a reward payment by King dated 10 October 1997 and his obtaining the reward payment on 30 December 1997, which he subsequently certified had been paid to M13.

8.206 Following the public hearings in this segment and prior to the completion of this Report, NSW Police gave consideration to the preparation of a brief of evidence against O'Toole in relation to the following matters:

- 1993 DUI – a brief of evidence was sent to the ODPP however the ODPP recommended that no criminal charges be laid against any of the participants.
- Payment of registered informants - NSW Police investigated this matter and found there is insufficient evidence to consider criminal charges against O'Toole, or any other person.

[1467] See paragraph 8.10
[1468] Identified in paragraph 8.134

8.207 In the circumstances the Commission is of the opinion that further consideration **should not** be given to the prosecution of O'Toole for any criminal offences.

8.208 As O'Toole is no longer a serving police officer the question of taking action pursuant to subsections 97(2)(c) and (d) of the Act does not arise.

S8

8.209 S8 is an affected person because he is the subject of the substantial allegation that a number of police officers, and a civilian, conspired to pervert the course of justice by giving false evidence in proceedings in the Local Court of New South Wales arising out of King's arrest for DUI on 25 September 1993. S8 was one of those officers.

8.210 The Commission considers that S8 engaged in police misconduct: subsection 16(1)(a) of the Act.

8.211 The only evidence about S8's involvement in a conspiracy to pervert the course of justice arising out of the 1993 DUI incident came from S8 himself. That evidence cannot be used against him. In relation to subsection 97(2)(a) of the Act, there is therefore no admissible evidence against S8 implicating him in any criminal activity in relation to the 1993 DUI incident. The Commission is of the opinion therefore that consideration **should not** be given to the prosecution of S8 for any criminal offence.

8.212 As S8 is no longer a serving police officer the question of taking action pursuant to subsections 97(2)(c) and (d) of the Act does not arise.

9. O'TOOLE SEGMENT

Introduction 380
Overview of Dr Anderson's Diagnosis of O'Toole 381
Commission's Focus 382
First Period of Treatment: 1 August 2000 - 22 December 2000 383
Assessment 385
Second Period of Treatment: 9 November 2001 - 30 November 2001 385
Assessment 386
Third Period of Treatment: 20 August 2002 - 1 March 2003 387
Events Leading Up to Commencement of Third Period of Treatment 387
Medicolegal Context of Presentation for the Third Period of Treatment 389
Discrepancies Between Claimed Levels of Disability and Surveillance Evidence 391
Surveillance Evidence - 28 and 29 August 2002 391
Surveillance Evidence - 11 September 2002 394
Surveillance Evidence - 20 November 2002 395
Surveillance Evidence - 12 and 15 December 2002 395
Surveillance Evidence - 30 December 2002 397
Surveillance Evidence - 8 and 9 January 2003 399
No Alteration to Dr Anderson's Overall Opinion 401
The Dispensing of Medication to O'Toole, 1 August 2000 - 1 March 2003 402
Evidence in relation to Efexor-XR 406
Compliance with Prescribed Treatment Regime During Third Period of Treatment 409
Prozac 409
Efexor-XR 409
Assessment of Evidence in Relation to the Third Period of Treatment 411
Conclusions 411

INTRODUCTION

9.1 As reported in the previous chapter of this Report, on 14 August 2002 the Commission commenced a segment of hearings into allegations against former members of Major Crime Squad North (MCSN) and particularly James Justin King. Dennis Peter O'Toole was named as a key participant in three of the four matters involving King.

9.2 The four matters were:

- that members of NSW Police, including King and O'Toole, conspired to pervert the course of justice in proceedings at the Downing Centre Local Court in 1994 arising out of King's arrest for "Drive Under the Influence (of Intoxicating Liquor)" (DUI) in 1993 at Mona Vale;
- that King and others conspired to pervert the course of justice in proceedings in Manly Local Court in 2001 arising out of King's arrest for "(Drive with the) Prescribed Concentration of Alcohol (in Blood)" (PCA) in 2000 at Mona Vale;
- that King and O'Toole entered into a corrupt arrangement with M13, in M13's capacity as a registered informant, to falsely claim a reward payment; and
- that King engaged in money laundering. (This allegation did not involve O'Toole).

9.3 All of the individuals implicated in the above matters were summonsed and gave evidence to the Commission, except O'Toole. O'Toole was represented at those hearings by Counsel, who indicated on a number of occasions that O'Toole was medically unfit and had not, or was not able to, provide instructions.[1469]

9.4 O'Toole had previously given evidence in two other segments of the Operation Florida hearings. On 5 December 2001 and 2 May 2002 he gave evidence in the Let's Dance segment. On 13 and 17 June 2002 he gave evidence in the Guns segment. (See Chapters 3 and 4 of this Report).

9.5 On 12 August 2002 a summons was issued to O'Toole to attend before the Commission in the King segment. On 20 August 2002, O'Toole's Counsel tendered a medical certificate of Dr Shepherd of Southport Medical Centre in Queensland dated 20 August 2002 which stated that O'Toole had consulted him on 19 August 2002, with a history of chronic depression for which he had been treated psychiatrically and that he was displaying an exacerbation of the symptoms of his depressive illness, brought on by the recent loss of his

[1469] PIC Transcript, pp. 4616, 4671, 4775, 4816, 5156-5157, 6068; PIC Transcript, Private Hearing AKW, 20 August 2002, pp. 1-8

mother.[1470] The circumstances surrounding the issue of this medical certificate are explored in more detail below.

9.6 In a series of subsequent medical certificates provided to the Commission dated 27 August 2002, 26 September 2002, 15 November 2002 and 20 December 2002 Dr Peter Anderson, a consultant psychiatrist practising on the Northern Beaches of Sydney, expressed the opinion that because of a Major Depressive Disorder, O'Toole was unfit to instruct legal counsel, to deal with any legal matters, or give evidence before an inquiry.[1471]

9.7 Despite these medical opinions the Commission undertook to examine for itself the circumstances surrounding O'Toole's non-appearance in answer to the summons. The steps taken by the Commission included:

- conducting surveillance of O'Toole from late August 2002 to mid-January 2003;
- obtaining medical files of O'Toole's treatment by Dr Anderson;
- questioning O'Toole's wife, Joan Lesley O'Toole (Mrs O'Toole) in a private hearing on 27 February 2003 and 7 August 2003;
- obtaining records from the Health Insurance Commission (the HIC) and sixteen pharmacies in the Northern Beaches region of Sydney for the period 1 August 2000 to 1 March 2003, of medications dispensed on prescriptions in the name of Dennis Peter O'Toole; and
- questioning Dr Anderson in a private hearing on 13 and 27 August 2003.

OVERVIEW OF DR ANDERSON'S DIAGNOSIS OF O'TOOLE

9.8 Dr Anderson's treatment of O'Toole fell into three periods:

1. 1 August 2000 – 22 December 2000;
2. 9 November 2001 – 30 November 2001; and
3. 20 August 2002 – 1 March 2003.

9.9 Dr Anderson continued to treat O'Toole after 1 March 2003 and was still treating him as at 27 August 2003. However, the Commission's principal focus in relation to O'Toole's non-appearance was on events prior to 1 March 2003.

9.10 Dr Anderson first diagnosed O'Toole as suffering from a "Major Depressive Disorder" on 4 September 2000.[1472] On 13 November 2001 he diagnosed a *"recurrence of Major Depressive Disorder"*.[1473] In his medical certificate dated 27 August 2002 Dr Anderson stated that he saw O'Toole on 23 and 27

[1470] PIC Exhibit 871C; PIC Transcript, Private Hearing AKW, 20 August 2002, p. 6
[1471] PIC Exhibits 758C, 877C and 889C
[1472] PIC Exhibit 882C, 4 September 2000, p. 2
[1473] PIC Exhibit 882C, 13 November 2001, p. 2

August 2002 *"when he continued to suffer from a Major Depressive Disorder"*.[1474] Dr Anderson stated in evidence to the Commission, on 13 August 2003 and 27 August 2003, that he continued to hold the opinion that O'Toole was unfit to give evidence before the Commission because he continued to suffer from a Major Depressive Disorder.[1475]

COMMISSION'S FOCUS

9.11 The Commission was concerned to test the bona fides of O'Toole's alleged unfitness to give evidence, particularly as he had already given evidence to the Commission in 2001 and 2002 without apparent difficulty, notwithstanding that he had commenced treatment under Dr Anderson for "Major Depressive Disorder" in September 2000. The Commission was particularly concerned to examine:

- the significance of the events in O'Toole's life affecting his presentation to Dr Anderson in each of the three phases of treatment, particularly the third phase, when O'Toole failed to attend the Commission to give evidence;
- the extent to which there were discrepancies between, on the one hand, O'Toole's reported symptoms and claimed levels of stress or disability and, on the other hand, objective evidence from physical and electronic surveillance conducted on O'Toole between August 2002 and January 2003; and
- whether evidence obtained by the Commission concerning the dispensing (or lack of dispensing) of prescribed antidepressant medication to O'Toole demonstrated a lack of compliance with the treatment regime prescribed by Dr Anderson and untruthfulness on the part of O'Toole in his consultations with Dr Anderson.

9.12 The key issue for the Commission was whether the evidence gathered supported the conclusion that O'Toole, from mid August 2002, exaggerated, and / or feigned symptoms in his consultations with Dr Anderson for the purpose of avoiding any further appearances at the Commission to answer serious allegations of corrupt conduct.

9.13 When giving evidence about his diagnosis of O'Toole's mental condition, Dr Anderson referred to the standard diagnostic text used by psychiatrists[1476] – the "Diagnostic And Statistical Manual of Mental Disorders, Fourth Edition" (DSM-IV-TR).[1477] DSM-IV-TR describes the essential features of Malingering as:[1478]

> … the intentional production of false or grossly exaggerated physical or psychological symptoms, motivated by external incentives such as avoiding

[1474] PIC Exhibit 877C
[1475] PIC Exhibit 868C – PIC Transcript, PW Anderson, 13 August 2003, p. 7; PIC Exhibit 869C – PIC Transcript, PW Anderson, 27 August 2003, p. 127
[1476] PIC Exhibit 868C – PIC Transcript, PW Anderson, 13 August 2003, p. 7
[1477] Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Text Revision, American Psychiatric Association, Washington DC, 2000 ("DSM IV TR")
[1478] PIC Exhibit 905C, DSM-IV-TR, p. 739

> military duty, avoiding work, obtaining financial compensation, evading criminal prosecution, or obtaining drugs.

9.14 DSM-IV-TR also states that:[1479]

> Malingering should be strongly suspected if any combination of the following is noted:
>
> 1. Medicolegal context of presentation (e.g., the person is referred by an attorney to the clinician for examination)
> 2. Marked discrepancy between the person's claimed stress or disability and the objective findings
> 3. Lack of cooperation during the diagnostic evaluation and in complying with the prescribed treatment regimen
> 4. The presence of an Antisocial Personality Disorder

9.15 Dr Anderson was asked about the above definition. He told the Commission that in his opinion O'Toole did not have an antisocial personality.[1480] However, the extent to which any of the first three factors referred to above were present during each of the periods of Dr Anderson's treatment of O'Toole was considered by the Commission to be worthy of closer examination.

FIRST PERIOD OF TREATMENT: 1 AUGUST 2000 - 22 DECEMBER 2000

9.16 O'Toole was initially referred to Dr Anderson on 1 August 2000 by his General Practitioner, Dr Ross Goldberg, *"... for an opinion and management re psychiatric and psychological effects of Police Department unfair treatment re traffic incident in November 1998. He has been unable to work since June 30"*.[1481]

9.17 The consultation notes indicate that O'Toole told Dr Anderson during consultations on 11 August 2000, 15 August 2000 and 1 September 2000 that he had been taking Prozac and that the Prozac had been beneficial.[1482] On 18 August 2000 Dr Anderson increased O'Toole's dosage of Prozac from a 20mg tablet daily to two 20mg tablets daily.[1483] On 1 September 2000 Dr Anderson noted that O'Toole *"... does not expect symptoms to dissipate until police matters resolved and new life started"*.[1484]

9.18 Dr Anderson wrote a report dated 4 September 2000 in response to a request from Oates & Smith Solicitors,[1485] who were acting for O'Toole in relation to an application for medical discharge from NSW Police. In the report Dr

[1479] PIC Exhibit 905C, DSM-IV-TR, p. 739
[1480] PIC Exhibit 869C – PIC Transcript, PW Anderson, 27 August 2003, p. 123
[1481] PIC Exhibit 882C – Letter from Dr Goldberg to Dr Anderson dated 1 August 2000
[1482] PIC Exhibit 882C – Dr Anderson's notes of consultations with O'Toole dated 11 and 15 August 2000 and 1 September 2000
[1483] PIC Exhibit 882C – Dr Anderson's handwritten note dated 18 August 2000
[1484] PIC Exhibit 882C – Dr Anderson's notes of consultation with O'Toole dated 1 September 2000
[1485] PIC Exhibit 882C – Letter from Oates & Smith to Dr Anderson dated 4 September 2000

Anderson set out details of the abovementioned 1998 traffic incident. The account given to the doctor by O'Toole was that he had been detected speeding by a traffic camera while following a suspected drug offender driving another vehicle. When he caught up with the offender's vehicle he realised that the person driving the car was not the alleged offender. O'Toole noted the licence plate of the vehicle but this was later determined by internal police investigations to have been incorrect. O'Toole had applied for the position of Superintendent in Crime Agencies, but was later informed that his application for the promotion was unsuccessful. On 30 June 2000 he was informed that his current contract with NSW Police, which expired on 31 December 2000, would not be renewed.[1486]

9.19 Dr Anderson's diagnosis, in his report of 4 September 2000, was *"... major depressive disorder"*. He expressed the view that *"... medical discharge is indicated"* and noted in relation to O'Toole that:[1487]

> His own expectation is that his symptoms will not dissipate until he has somehow moved on and left behind the matters to do with his Police Service. He cannot imagine resuming duties with the Police Service.

9.20 On 20 December 2000 Dr Anderson signed a "State Super Certificate of Incapacity" for O'Toole in which he certified as follows:[1488]

> I certify that the member named here [O'Toole] is suffering from a medical condition which, in my opinion, is likely to result in their being unable ever to be employed in capacity for which they are reasonably qualified by education, training or experience.
>
> I also certify that, in my opinion, the person has suffered from the condition for a period of 2 years.

9.21 The last consultation between Dr Anderson and O'Toole in the first period of treatment took place on 22 December 2000. Dr Anderson's notes of that consultation record his opinion that O'Toole's condition had stabilised by that time, despite O'Toole receiving bad news about his employment with NSW Police.[1489] Dr Anderson's opinion was that O'Toole's condition had improved between his initial presentation and 22 December 2000. He told the Commission:[1490]

> I believe I was of the view that his mental state was not serious enough to require any immediate treatment and that I thought as some of the precipitating events had been very immediate in time, and there was a state of shock, that he might be all right without treatment and I left it to him to make that decision and to come back as required.

9.22 In her evidence Mrs O'Toole told the Commission that O'Toole was *"... just a broken man"* after being informed, on 30 June 2000, that his contract with NSW Police would not be renewed. However she first noticed signs of

---

[1486] PIC Exhibit 882C – Report of Dr Anderson dated 4 September 2000
[1487] PIC Exhibit 882C – Report of Dr Anderson dated 4 September 2000
[1488] PIC Exhibit 882C – Certificate of Incapacity dated 20 December 2000
[1489] PIC Exhibit 882C – Dr Anderson's notes of consultation with O'Toole on 22 December 2000; PIC Exhibit 868C – PIC Transcript, PW Anderson, 13 August 2003, p. 18
[1490] PIC Exhibit 868C – PIC Transcript, PW Anderson, 13 August 2003, p. 20

depression in O'Toole before then when O'Toole was transferred out of Crime Agencies after the 1998 traffic incident.[1491]

ASSESSMENT

9.23 The evidence establishes that there was a medicolegal context when O'Toole was first referred to Dr Anderson in mid 2000 however, there is no evidence to establish a marked discrepancy between O'Toole's claimed level of stress or disability during the first period of treatment and any objective findings.

9.24 There is some doubt about the extent to which O'Toole complied with his treatment regime during the first period of treatment particularly in relation to whether he took the prescribed doses of Prozac and Allegron. However, there is insufficient evidence to establish that during the first period of treatment there was any lack of compliance by O'Toole.

SECOND PERIOD OF TREATMENT: 9 NOVEMBER 2001 - 30 NOVEMBER 2001

9.25 On 9 November 2001 O'Toole was referred, for a second time, to Dr Anderson by Dr Goldberg:[1492]

> … for an opinion and management re severe distress over imminent appearance at Police Integrity Commission Re commencing him on Prozac today and temaze re insomnia.

Again this second presentation to Dr Anderson included a medicolegal context.

9.26 Dr Anderson's undated notes handwritten on the back of the letter of referral from Dr Goldberg include a reference to the Commission and the suggestion that O'Toole was going "*... to be adversely mentioned this week*".[1493]

9.27 In a letter to Dr Goldberg dated 13 November 2001 Dr Anderson wrote that after O'Toole's initial period of treatment in 2000 and his discharge from NSW Police things went well for O'Toole for some time. However O'Toole has now received a *"... sudden bomb shell"*, being that he has been advised by the Commission that he has to give evidence. Anderson said *"This he feels pertains to investigations carried out by officers under his command in the late 1980's. He fears publicity to and humiliation to self and family"*. The letter goes on to state that O'Toole was experiencing a return of the symptoms of acute depression and a diagnosis of *"... recurrence of Major Depressive Disorder"* was made.[1494]

9.28 When he gave evidence to the Commission on 13 August 2003 Dr Anderson was unable to recall whether the term *"sudden bomb shell"* was his or

[1491] PIC Exhibit 866C – PIC Transcript, JL O'Toole, 27 February 2003, pp 28-30
[1492] PIC Exhibit 882C – Letter from Dr Goldberg to Dr Anderson dated 9 November 2001
[1493] PIC Exhibit 882C – Dr Anderson's undated notes of consultation with O'Toole
[1494] PIC Exhibit 882C – Letter from Dr Anderson to Dr Goldberg dated 13 November 2001

O'Toole's, but he confirmed that the words summarised the effect of what he was told by O'Toole. He also confirmed that O'Toole had told him that he was taking Prozac 20mg each morning. The medication Dr Anderson prescribed for O'Toole was a combined treatment of the antidepressants Avanza and Prozac. The Prozac was to be taken as a 20mg dose each morning. The Avanza was to be taken as a 15mg or 30mg dose each night.[1495]

9.29 Dr Anderson saw O'Toole again on 30 November 2001. His notes of the consultation record *"Medication agrees"*, and included that O'Toole was apprehensive about the Commission and had not been provided any information. The note also included *"... a rumour that he rolled over – no support or trust"* and concluded by stating *"review at time of patient's choice"*.[1496]

9.30 It is notable that O'Toole first gave evidence to the Commission, without apparent difficulty on 6 December 2001, less than one month after he had been diagnosed by Dr Anderson as suffering a recurrence of a Major Depressive Disorder,[1497] and one week after the consultation with Dr Anderson referred to in the previous paragraph in which O'Toole expressed his *"apprehension re PIC"*.

ASSESSMENT

9.31 The evidence establishes that there was a medicolegal context when O'Toole was referred to Dr Anderson in November 2001. That medicolegal context related directly to O'Toole's imminent appearance at the Commission's Operation Florida hearing. It is noteworthy that O'Toole's presentation to Dr Anderson in November 2001 was the second presentation by O'Toole to Dr Anderson in a medicolegal context in sixteen months. It is also noteworthy that despite O'Toole's claimed level of distress and the symptoms he claimed to be suffering in November 2001 he was able to give evidence to the Commission on 5 December 2001 without any apparent difficulty. O'Toole also gave evidence at the Commission's inquiry on 2 May 2002 and 13 and 17 June 2002 without prior consultations with Dr Anderson.

9.32 The evidence is, however, insufficient to establish a marked discrepancy between O'Toole's claimed level of stress or disability during the second period of treatment and any objective findings. Some doubts also exist about the extent to which O'Toole complied with his treatment regime during the second period of treatment, particularly in relation to whether he took the prescribed doses of Prozac (see below). However, the evidence is insufficient to establish that during the second period of treatment there was any lack of compliance by O'Toole.

[1495] PIC Exhibit 868C – PIC Transcript, PW Anderson, 13 August 2003, pp. 21-23
[1496] PIC Exhibit 882C – Handwritten notes of Dr Anderson dated 30 November 2001
[1497] PIC Exhibit 882C – Medical report of Dr Anderson dated 13 November 2001, p. 2

THIRD PERIOD OF TREATMENT: 20 AUGUST 2002 - 1 MARCH 2003

EVENTS LEADING UP TO COMMENCEMENT OF THIRD PERIOD OF TREATMENT

9.33 On 12 August 2002 a summons addressed to O'Toole to appear before the Commission to give evidence was issued. The Commission was unable to locate O'Toole so faxed a copy of the summons to O'Toole's Counsel. The public hearings in the King segment of the Operation Florida inquiry commenced on 14 August 2002. On that day O'Toole's Counsel told the Commission that she had been unable to contact O'Toole in the period since she had accepted the summons on his behalf.[1498]

9.34 O'Toole's mother died in Queensland on 11 August 2002 and her funeral took place on 15 August 2002 at Tweed Heads. At the Commission hearing on 15 August 2002 O'Toole's Counsel informed the Commission that she had still been unable to contact her client.[1499]

9.35 On 16 August 2002 O'Toole's Counsel informed the Commission that she had been unable to receive any instructions from O'Toole. She said that she had attempted to contact O'Toole through his Sydney addresses and telephone numbers but had been unsuccessful. She was aware that a message had been left with the funeral directors in Queensland but did not know whether O'Toole had received the message.[1500]

9.36 On 19 August 2002 O'Toole's Counsel informed the Commission that:[1501]

> My situation has not altered from last week, except that the situation has advanced to the extent that I was contacted this morning by a brother of Mr O'Toole, who has indicated that he has been highly medicated since his mother's funeral last week. I am expecting a call some time today, but as yet I'm not fully instructed sufficiently to ask questions of the witness.

9.37 O'Toole consulted a general practitioner, Dr Shepherd, at Southport Medical Centre in Queensland on 19 August 2002. In a medical report dated 20 August 2002, and submitted to the Commission the same day, Dr Shepherd reported that O'Toole had consulted him on 19 August 2002, with a history of chronic depression for which he had been treated psychiatrically and that he was displaying an exacerbation of the symptoms of his depressive illness, brought on by the recent loss of his mother.[1502]

9.38 On 20 August 2002 a private hearing was convened to allow O'Toole's Counsel to make an application on behalf of O'Toole. O'Toole's Counsel tendered the medical report of Dr Shepherd and made submissions in relation

[1498] PIC Transcript, Operation Florida, 14 August 2002, p. 4616
[1499] PIC Transcript, Operation Florida, 15 August 2002, p. 4671
[1500] PIC Transcript, Operation Florida, 16 August 2002, pp. 4742-4743
[1501] PIC Transcript, Operation Florida 19 August 2002, p. 4816
[1502] PIC Exhibit 871C; PIC Transcript, Private Hearing AKW, 20 August 2002, p. 6

to the status of O'Toole's health, as she understood it. She conveyed to the Commission that she had been informed by O'Toole's brother, Lawrence O'Toole, that O'Toole was in a state of very marginal mental health requiring supervision by family members and with the possibility of admission to psychiatric care in a hospital being imminent. In response to a request from the Assistant Commissioner that she obtain instructions on the telephone from O'Toole about which witnesses would not be required for cross-examination O'Toole's Counsel said that she had been informed that O'Toole's health was such that he was unable to provide any such instructions.[1503]

9.39 Mrs O'Toole was subsequently questioned about the events of late August 2002 concerning her husband. When she first gave evidence to the Commission in February 2003, Mrs O'Toole stated that her husband arrived in Queensland before his mother's death, that he was in Queensland for about four weeks, that she did not supervise the taking, by O'Toole, of any medication at the time, and that his breakdown occurred the day after she returned to Sydney on 17 August 2002. Mrs O'Toole said her husband returned to Sydney two days after she did and her son and her brother-in-law, Lawrence O'Toole, stayed with O'Toole in Queensland after she left.[1504] She also gave evidence that despite being in a state of *"... complete break-down"* at the time, O'Toole did not express any suicidal ideas to her and that she only found out that he was suicidal from Dr Anderson some time after O'Toole returned to Sydney in August 2002.[1505]

9.40 In her evidence on 7 August 2003 Mrs O'Toole said that she became aware that O'Toole had a break down in Queensland *before* her return to Sydney on Saturday 17 August 2002. She said:[1506]

> Well, he broke down while I was there and I was not going to come back, but I did. And then he was really bad … I think it was Monday … When my son took him to the psychiatrist.

Mrs O'Toole said she was sure that O'Toole was concerned about having to come back to the Commission to give further evidence although he did not express that concern directly to her.[1507]

9.41 In response to a Notice to Provide a Statement of Information issued by the Commission to Mrs O'Toole on 28 August 2003, Mrs O'Toole stated that she returned to Sydney from Queensland on Saturday 17 August 2002, that O'Toole *"... had the major breakdown on the Monday after I left Queensland ... That is the 19th August when he was with his son"*, and that O'Toole's son accompanied O'Toole back to Sydney from Queensland on Wednesday 21 August 2003.[1508]

9.42 In the Commission's opinion, the contradictions in this evidence raises some doubts about the reliability of Mrs O'Toole's recollection, particularly in

[1503] PIC Transcript, Private Hearing AKW, 20 August 2002, pp. 2-3, 6
[1504] PIC Exhibit 866C – PIC Transcript, JL O'Toole, 27 February 2002, pp. 22-23
[1505] PIC Exhibit 866C – PIC Transcript, JL O'Toole, 27 February 2002, pp. 30-31
[1506] PIC Exhibit 867C – PIC Transcript, JL O'Toole, 7 August 2003, p. 67
[1507] PIC Exhibit 867C – PIC Transcript, JL O'Toole, 7 August 2003, p. 69
[1508] PIC Exhibit 878C

relation to the critical weeks in August 2002 when O'Toole was under summons to give evidence at the Commission.

MEDICOLEGAL CONTEXT OF PRESENTATION FOR THE THIRD PERIOD OF TREATMENT

9.43 Dr Anderson's records include a handwritten note of a telephone conversation he had with Mrs O'Toole on 20 August 2002, which states:[1509]

> … telephone call, wife, lost mother last week. PIC contacted at funeral in Queensland – collapse. [*Reference to PIC not factually correct.*] PIC not happy with … solicitor, may want proof of his … going to psychiatrist on the Gold Coast today – will see me when well enough to return home.

On the same day Dr Anderson made handwritten notes of a telephone conversation he had with O'Toole's Counsel in which he recorded the words *"PIC requires psych report"*.[1510]

9.44 O'Toole saw Dr Lotz, a psychiatrist practising on the Gold Coast in Queensland, on 20 August 2002. Dr Lotz recorded the reasons for O'Toole's presentation as being the death of his mother, the pressure of investigation from *"NSW Police Force (Integrity Commission)"*, and his inability to cope with his duties as the executor of his mother's will. He recorded that O'Toole was currently under close family monitoring and ordered an increase in O'Toole's dosage of Avanza from 45mg to 60mg per day.[1511] On the same day Dr Lotz issued O'Toole with a medical certificate, which stated that O'Toole was suffering from an *"... acute relapse of anxiety and depression"*. The certificate also said that O'Toole was not able to deal with legal matters or instruct counsel but that once he had returned to his usual psychiatrist and this episode had been stabilised he *"... can attend to the legal proceedings appropriately"*.[1512]

9.45 On 22 August 2002 Dr Lotz forwarded his consultation notes and medical certificate to Dr Anderson under cover of a fax, which stated that he had seen O'Toole as *"an urgent stop-gap"* and that O'Toole was acutely suicidal. The fax also included the words *"Wrote letter to Integrity Commission to back off pro temp* ... [increase] *Avanza 45 – 60 mg"*.[1513]

9.46 Dr Anderson first saw O'Toole, after his return to Sydney, on 23 August 2002. The consultation notes for that day include details of O'Toole's "breakdown" and reference to O'Toole suffering symptoms of depression. The notes of that consultation record Dr Anderson's approval of the Avanza

[1509] PIC Exhibit 882C – Dr Anderson's handwritten notes of telephone conversation with Mrs O'Toole dated 20 August 2002; PIC Exhibit 868C – PIC Transcript, PW Anderson, 13 August 2003, p. 29
[1510] PIC Exhibit 882C – Dr Anderson's handwritten notes of telephone conversation with O'Toole's Counsel dated 20 August 2002
[1511] PIC Exhibit 882C – Dr Lotz' handwritten notes of consultation with O'Toole on 20 August 2002
[1512] PIC Exhibit 882C – Medical certificate of Dr Lotz re O'Toole dated 20 August 2002
[1513] PIC Exhibit 882C – Fax from Dr Lotz to Dr Anderson dated 22 August 2002

dosage at 60mg per day and state, *"I discussed with wife concerning suicidal ideas"*.[1514]

9.47 When he next saw O'Toole, on 27 August 2002, Dr Anderson recorded the following statement by O'Toole in his notes:[1515]

> Need for long-term relief from the pressure of the PIC, eg, so I can see I've got a month to recover.

9.48 When asked about the above notes, Dr Anderson gave the following evidence:[1516]

> Q: Did that, at that time, ring any alarm bells in your head that there might be a connection between O'Toole's long-term presentation to you and the on-going matter of the PIC that he describes in that context that he was involved in?
> A: Well, I've recorded it because I thought it important because what's recorded is, perhaps, the highlights of a consultation rather than an attempt to record the entirety. I wouldn't describe it as alarm bells ringing. I would say that I thought this could be a factor. I thought it certainly was a factor in precipitating his condition and it could be a factor in maintaining his condition.
>
> Q: Well, did it occur to you at the time that there might be the connection in this sense, that Mr O'Toole might continue to present to you this way until the PIC matter was out of the way?
> A: Well, I did not think of it in those terms on 27 August 2002. It's a thought that has occurred to me …
>
> Q: Yes.
> A: … later on as the matter was extended.
>
> Q: That's occurred to you later on, and for how long has that thought occurred to you?
> A: I couldn't be certain, exactly, but for some months.
>
> Q: And what exactly do you mean by that, that thought – could you just amplify what you mean by it?
> A: I've thought that the pressure of the likely hearing at the Police Integrity Commission might be a factor maintaining his level of stress which might be a factor maintaining a depressive illness. I've also thought, as I always do if there's a medico-legal aspect to the case, that there's always the possibility of embellishment or untruth, or partial truth.
>
> Q: And how long have you thought …
> A: I've made my own judgment calls based on the evidence I have.

9.49 It is clear that there was a medicolegal context when O'Toole was referred to Dr Anderson at the commencement of the third period of treatment in August 2002. A notable feature of this presentation was that it was the third medicolegal context of presentation to Dr Anderson in two years. Dr Anderson gave evidence that he treated medicolegal matters with a higher

[1514] PIC Exhibit 882C – Dr Anderson's handwritten notes of consultation with O'Toole on 23 August 2002; PIC Exhibit 868C – PIC Transcript, PW Anderson, 13 August 2003, pp. 31-32
[1515] PIC Exhibit 882C – Dr Anderson's handwritten notes of consultation with O'Toole on 27 August 2002; PIC Exhibit 868C – PIC Transcript, Dr Anderson 13 August 2003, p. 33
[1516] PIC Exhibit 869C – PIC Transcript, PW Anderson, 27 August 2003, pp, 103-104

level of suspicion than if dealing with matters just involving treatment because:[1517]

> … there is a higher rate of discrepancy between symptoms and signs than if dealing with purely treatment matters. To enlarge on that, if seeing a patient purely for the purpose of medico-legal assessment, the level of suspicion is rightly high as to truthfulness or consistency. If dealing with a patient for purely treatment purposes, a high level of suspicion is quite likely to be unhealthy for the purpose of treatment. Sometimes in the real world the doctor is called upon to do both things simultaneously, which is a task which has to incorporate skills of medico-legal assessment … at such a time, a healthy level of scepticism should be maintained, but not at an unhealthy level.

9.50 The relevance of the medicolegal context to any overall opinions about O'Toole's conduct during the third period of treatment is considered below.

DISCREPANCIES BETWEEN CLAIMED LEVELS OF DISABILITY AND SURVEILLANCE EVIDENCE

Surveillance Evidence - 28 and 29 August 2002

9.51 Dr Anderson's notes of his consultation with O'Toole on 27 August 2002 record his summary of what he was told by Mrs O'Toole on that date:[1518]

> Wife: Bed in the morning crying. I try to take him out in the afternoon. Sometimes … for example, football … walk.

9.52 In his letter to Dr Goldberg dated 27 August 2002 Dr Anderson clearly stated his view that hospitalisation of O'Toole might be imminent:[1519]

> Discussion was entered with Dennis and with his wife regarding his being suicidal and the question of hospitalisation. At this stage he will remain at home where he chooses to be with the support of wife and son. He is not fit to give evidence. I have asked him to continue the elevated dose of Avanza and to use the Valium on an as required basis, and see me regularly with the possibility of hospitalisation to be kept in mind.

9.53 In his medical certificate dated 27 August 2002 Dr Anderson stated that O'Toole continued to suffer from a relapse of a Major Depressive Disorder, was *"... acutely suicidal"*, and required *"... elevated doses of psychotropic medication"*. He also stated that O'Toole was unfit to instruct legal counsel, to deal with any legal matters or to give evidence before any inquiry and that there was no likelihood that he would be fit within one month.[1520]

9.54 Dr Anderson gave evidence to the Commission that his level of concern about O'Toole at that time was such that:[1521]

> In the background, my thoughts were that he should be in hospital.

[1517] PIC Exhibit 869C – PIC Transcript, PW Anderson, 27 August 2003, pp. 87-88
[1518] PIC Exhibit 882C – Dr Anderson's handwritten notes of consultation with O'Toole on 27 August 2002; PIC Exhibit 868C – PIC Transcript, PW Anderson 13 August 2003, pp 33 – 34
[1519] PIC Exhibit 882C – Dr Anderson's letter to Dr Goldberg dated 27 August 2002
[1520] PIC Exhibit 877C
[1521] PIC Exhibit 869C – PIC Transcript, PW Anderson, 27 August 2003, p. 53

9.55 Mrs O'Toole's evidence about the degree of supervision given by the family to O'Toole after his return from Queensland in August 2002 was contradictory. When first questioned about whether O'Toole had spent time alone since returning from his mother's funeral Mrs O'Toole said, *"He has to be alone. We're all working"*.[1522]

9.56 During her second day of evidence, however, Mrs O'Toole said that for a period of two or three weeks after O'Toole's return from Queensland either she or her son were always in the house with O'Toole.[1523] Later in her testimony Mrs O'Toole moved from that position, stating that O'Toole was not under constant 24-hour supervision during that two to three week period. She then gave the following evidence:[1524]

> Q: What type of supervision was he [O'Toole] under at that time?
> A: [Our son] or I would be coming and going, but we would try to only leave short times in between.
>
> Q: Did he stay at home the whole time during that period?
> A: Occasionally we'd go out for a walk, yes.
>
> Q: Did he ever go out alone himself, during that period?
> A: I don't know. I doubt if it would be alone, unless it was just down to the shops to get something that I just asked him to get.
>
> …
>
> Q: … was he living the life of a reasonably happy, retired person at that time?
> A: No.
>
> Q: Did he go to the beach on his own at that time?
> A: Are you talking about immediately after Queensland?
>
> Q: These questions, I should be clear, are confined to that two – or three-week period after he returned from Queensland.
> A: I doubt very much if he went anywhere on his own.

9.57 Commission investigators conducted surveillance of O'Toole on 28 August 2002. Visual observations that morning indicated that O'Toole spent approximately four hours on his own, apart from a brief conversation with the Club President of the Bilgola Surf Lifesaving Club (Bilgola SLSC). During this time O'Toole drove himself to Bilgola Beach, where he spent almost two and a half hours engaged in leisure activities before driving himself home.[1525]

9.58 Three videotaped recordings of O'Toole at Bilgola Beach on 28 August 2002 were tendered in evidence. The first, filmed shortly after 10am, records O'Toole sitting, in a relaxed manner, alone on a seat near the tidal pool sunbathing, reading a newspaper and smoking a cigarette.[1526] The second, filmed at about 11.50am, records O'Toole alone at Bilgola Beach.[1527] The third, filmed at about 12.10pm, records O'Toole driving a car alone in the

[1522] PIC Exhibit 866C – PIC Transcript, JL O'Toole, 27 February 2003, p. 24
[1523] PIC Exhibit 867C – PIC Transcript, JL O'Toole, 7 August 2003, pp. 51-53
[1524] PIC Exhibit 867C – PIC Transcript, JL O'Toole, 7 August 2003, pp. 72-74
[1525] PIC Exhibit 869C – PIC Transcript, PW Anderson, 27 August 2003, pp. 100-102
[1526] PIC Exhibit 873C
[1527] PIC Exhibit 874C

Bilgola Beach car park.[1528] Insofar as it is possible to draw conclusions from O'Toole's demeanour and behaviour as recorded on the videotapes, he appears to have been relaxed and untroubled during this solitary trip to Bilgola Beach on 28 August 2002.

9.59 O'Toole was also observed by Commission investigators on 29 August 2002. The investigators saw Mrs O'Toole leave the family home at about 8.43am. O'Toole was then observed to leave the family home alone at 10.45am. He drove to Bilgola Beach where he spoke to the caretaker of the Bilgola SLSC. The two men then attended to an apparent electrical problem with O'Toole's vehicle. O'Toole then drove from Bilgola to Mona Vale, where he met Mrs O'Toole in a car park. The two drove separate vehicles to an auto-electrician's workshop in Mona Vale. They left the vehicle O'Toole had been driving there and travelled in the other vehicle back to the family home in Newport. Mrs O'Toole again drove away from the home at 12.41pm. Later that afternoon O'Toole walked alone from his home in Newport to the auto-electrician in Mona Vale and collected the vehicle. He drove back to his home, via some shops, arriving there at approximately 5.11pm.[1529]

9.60 O'Toole was videotaped during his walk from his home to the auto-electrician. The videotape shows O'Toole walking alone briskly along a footpath at about 4.26pm.[1530]

9.61 Mrs O'Toole claimed not to be surprised by the surveillance evidence of 28 and 29 August 2002. When asked whether she was surprised that O'Toole was observed to spend in excess of two hours alone at Bilgola Beach on 28 August 2002 she replied:[1531]

> He's obviously settled into his medication and he was going out on his own a little bit … You would have to ask his doctor if that is normal. I don't know if it is normal.

9.62 She denied that the picture of O'Toole that emerged from the surveillance evidence on 28 and 29 August 2002 was contrary to the picture of O'Toole that is described in the medical records for the same period. She also denied that it was possible, having regard to the surveillance evidence, that O'Toole was feigning symptoms to avoid giving evidence at the Commission.[1532]

9.63 In her response to the Notice to Produce a Statement of Information issued to her by the Commission on 28 August 2003, Mrs O'Toole claimed to have forgotten, at the time she gave evidence to the Commission on 7 August 2003, the fact that their son travelled to Queensland for a period of time in late August 2002. Mrs O'Toole indicated in the response that their son flew to Queensland on 24 August 2002 and returned to Sydney from Queensland on 31 August 2002.[1533] Qantas and Virgin Blue confirmed the information

[1528] PIC Exhibit 875C
[1529] PIC Exhibit 869C – PIC Transcript, PW Anderson, 27 August 2003, pp. 111-112
[1530] PIC Exhibit 876C
[1531] PIC Exhibit 867C – PIC Transcript, JL O'Toole, 7 August 2003, p. 77
[1532] PIC Exhibit 867C – PIC Transcript, JL O'Toole, 7 August 2003, p. 80
[1533] PIC Exhibit 878C

provided by Mrs O'Toole in relation to their son's travel arrangements.[1534] The evidence of the son's return to Queensland further contradicts the evidence Mrs O'Toole gave about the degree of supervision of O'Toole by family members in late August 2002 referred to in paragraph 9.56 above.

9.64 Dr Anderson expressed surprise that O'Toole was alone at Bilgola Beach on 28 August 2002.[1535] But he denied that there was any discrepancy between O'Toole's condition as described in the medical records in late August 2002 and the observations made of O'Toole during the surveillance on 28 and 29 August 2002.[1536]

9.65 The views of Mrs O'Toole and Dr Anderson are difficult to reconcile with the Commission's observations, obtained through surveillance, of O'Toole's apparent level of normal and independent activity. There appears to be a clear discrepancy between O'Toole's claimed level of stress and disability as recorded by Dr Anderson in late August 2002 (acutely suicidal, in need of supervision, possibility of hospitalisation to be kept in mind) and the surveillance evidence of 28 and 29 August 2002. It seems highly implausible to the Commission that anyone regarded by his psychiatrist as highly suicidal would be left alone for hours by members of his family who were aware of his condition.

Surveillance Evidence - 11 September 2002

9.66 On 11 September 2002 Commission investigators observed O'Toole to leave his home in Newport alone, drive alone to a smash repair workshop in North Narrabeen, leave the car there and walk alone the considerable distance from North Narrabeen back to his home in Newport, where he arrived at 10.38am.[1537] O'Toole was videotaped during the walk back to Newport.[1538]

9.67 Dr Anderson's medical records contain the details of a telephone conversation he had with Mrs O'Toole about O'Toole on 12 September 2002. The notes record that Mrs O'Toole told Dr Anderson that O'Toole had had two *"bad evenings"*, that he was *"dry retching in the morning"* and *"staying in bed by day"*.[1539]

9.68 Dr Anderson conceded that the surveillance evidence of O'Toole's movements on 11 September 2002 was:[1540]

> ... not consistent with his wife's account on the 12th that he's staying in bed by day, or at least it's not totally consistent. With the benefit of the video, one might ask his wife what was meant by "staying in bed by day".

[1534] PIC Exhibits 879C, 880C
[1535] PIC Exhibit 869C – PIC Transcript, PW Anderson, 27 August 2003, p. 108
[1536] PIC Exhibit 869C – PIC Transcript, PW Anderson, 27 August 2003, pp. 113-114
[1537] PIC Exhibit 869C – PIC Transcript, PW Anderson, 27 August 2003, p. 115
[1538] PIC Exhibit 890C
[1539] PIC Exhibit 889C – Dr Anderson's handwritten notes of telephone conversation with Mrs O'Toole on 12 September 2002
[1540] PIC Exhibit 869C – PIC Transcript, PW Anderson, 27 August 2003, p. 115

9.69 There appears to be a significant discrepancy between O'Toole's claimed level of disability as recorded by Dr Anderson on 12 September 2002 (staying in bed by day) and his activities just one day prior as revealed by the surveillance evidence.

Surveillance Evidence - 20 November 2002

9.70 Dr Anderson's notes of his consultation with O'Toole on 14 November 2002 record, in part, the following:[1541]

> Complains of severely depressed since a public appearance on Saturday at surf carnival. Pride on the day. Continuous tears uncontrolled with wife. At interview: hopeless, tearful … Severe depression …

9.71 At the consultation on 14 November 2002 Dr Anderson decided to change O'Toole's medication from Prozac to Efexor-XR the following week. At the next consultation on 22 November 2002 Dr Anderson recorded O'Toole as having experienced a *"rough week"*. Dr Anderson commenced O'Toole on Efexor-XR that day.[1542]

9.72 Two days before the consultation on 22 November 2002 Commission investigators videotaped O'Toole at Bilgola Beach.[1543] In the videotape O'Toole is wearing a bathing costume and shows no signs of discomfort or being withdrawn and ill at ease.

9.73 Dr Anderson denied that there was any inconsistency between his notes about O'Toole on 14 and 22 November 2002 and O'Toole's presentation in the videotape of 20 November 2002. Dr Anderson noted that he had advised O'Toole to swim and said he believed swimming was good for O'Toole. He said:[1544]

> The video on the 20th shows him walking along in a swimming costume at the pool looking normal, but there's very little that can be drawn from it apart from that … I'm not surprised by the demeanour.

9.74 Whilst the surveillance evidence related to only a small portion of the week in question, O'Toole's demeanour on the surveillance video did not seem to be that of a man who was "severely depressed", "hopeless" and "tearful".

Surveillance Evidence - 12 and 15 December 2002

9.75 Recordings were made by the Commission of a number of telephone conversations between O'Toole and others. In one of these, at 11.34am on 12 December 2002, O'Toole provided Mrs O'Toole with the Gold Coast address of his brother, Lawrence O'Toole. This information was apparently provided

---

[1541] PIC Exhibit 889C – Dr Anderson's handwritten notes of consultation with O'Toole on 14 November 2002; PIC Exhibit 869C – PIC Transcript, PW Anderson; 27 August 2002, pp. 66-67

[1542] PIC Exhibit 889C – Dr Anderson's handwritten notes of consultation with O'Toole on 22 November 2002; PIC Exhibit 869C – PIC Transcript, PW Anderson, 27 August 2002, p. 73

[1543] PIC Exhibit 891C

[1544] PIC Exhibit 869C – PIC Transcript, PW Anderson, 27 August 2002, pp. 116-117

in connection with the probate of the estate of O'Toole's mother. Mrs O'Toole worked for the legal firm that obtained probate.[1545]

9.76 In a second telephone conversation on 12 December 2002 commencing at about 8.14pm O'Toole and his brother extensively discussed details of their mother's will and estate. During this conversation O'Toole demonstrated an ability to concentrate well, a sound memory and an ability to discuss the details of his mother's estate without being inhibited by emotion or depression. O'Toole also demonstrated an awareness of steps being taken in the probate matter by the solicitor.[1546]

9.77 After listening to a recording of the telephone call Dr Anderson said that O'Toole concentrated on the discussion with his brother *"... quite well"* and that *"He sounds emotionally okay on the telephone and he concentrates satisfactorily on the telephone at this time"*.[1547] Dr Anderson also said of this telephone call:[1548]

> Well, firstly, I do agree that in the telephone intercept talking to his brother he's dealing with a legal matter concerning the mother's will and he is concentrating well at that time and remembering well at that time.

9.78 On 15 December 2002 O'Toole spoke to the President of Bilgola SLSC on the telephone at about 8.13am.[1549] The President indicated that he was having difficulty setting up the loudspeaker system at Bilgola SLSC. Without any apparent hesitation, O'Toole said he would go to the club and set the loudspeaker system up. At 8.27am O'Toole left his home and drove to Bilgola Beach, arriving there at approximately 8.33am. He was videotaped at various stages during the morning engaged in activities at the club, including setting up the loudspeaker system, talking to people and observing the surf-carnival taking place that day.[1550]

9.79 On 20 December 2002 O'Toole saw Dr Anderson. The consultation notes state the following:[1551]

> Not too good. Low all week. – Surveillance (intimidatory). Complaint to barrister. Surveillance ceased. Trapped in own house. My letter suggested by barrister. Not caring re Christmas. Christmas Day at surf club. Can get lost in crowd. Despondent re PIC. One morning of painting this week. 29th December – Mum's 90th birthday – to fly on a day trip to the Gold Coast – endorsed by me. Complains of poor concentration. Management: in status quo.

9.80 On the same day Dr Anderson wrote a medical certificate for O'Toole that stated as follows:[1552]

[1545] PIC Exhibits 892C & 893C
[1546] PIC Exhibits 894C & 895C
[1547] PIC Exhibit 869C – PIC Transcript, PW Anderson, 27 August 2003, p. 118
[1548] PIC Exhibit 869C – PIC Transcript, PW Anderson, 27 August 2003, p. 120
[1549] PIC Exhibits 896C & 897C
[1550] PIC Exhibit 898C; PIC Exhibit 869C – PIC Transcript, PW Anderson, 27 August 2003, p. 119
[1551] PIC Exhibit 889C – Dr Anderson's handwritten notes of consultation with O'Toole on 20 December 2002; PIC Exhibit 869C – PIC Transcript, PW Anderson, 27 August 2003, pp. 77-78
[1552] PIC Exhibit 889C – Medical certificate of Dr Anderson re O'Toole dated 20 December 2002

> … There has been some improvement with treatment. This has been variable and not sustained. Overall he continues to be severely depressed with poor concentration, still with suicidal ideas.
>
> He is presently unfit to instruct legal council [sic], deal with any legal matters, or give evidence before an inquiry on any basis. There is no likelihood at this stage that he would be fit to do any of those things within one month from today. …

9.81 After listening to, and observing, the surveillance evidence from 12 and 15 December 2002, Dr Anderson stated that the effect of the material was to put *"doubt"* in his mind about whether O'Toole had been truthful in the consultation on 20 December 2002 when stating how he felt. He also said:[1553]

> He [O'Toole] presents well on the telephone intercept and that videotape, I agree, and there is – there is an apparent inconsistency with the certificate of the 20th. What I would say about that is that he may be better at times than others.

9.82 Again, it must be conceded that the surveillance evidence did not record all of O'Toole's activities in the week preceding 20 December 2002, however there appears to be a clear discrepancy between O'Toole's claimed level of stress and disability as recorded by Dr Anderson on 20 December 2002 and the surveillance evidence of 12 and 15 December 2002.

Surveillance Evidence - 30 December 2002

9.83 On 30 December 2002 three different men telephoned O'Toole. Each of the men asked him for information and / or assistance about detailed aspects of the affairs of the Bilgola Beach SLSC. The calls make it clear that, despite no longer being the club president, O'Toole was vitally involved in the affairs of the club and was regarded by others involved in the club as a key source of information about the running of the club on a day to day basis.

9.84 The first of these conversations was between O'Toole and a male person at about 8.42am.[1554] The male asked O'Toole about preserving supplies of alcohol, including beer kegs, over the New Year period in order to have sufficient for a post New Year wedding function at the club. In relation to the tapping of beer kegs at the club the male said to O'Toole *"... you're one more likely to put it on probably than anyone else"*. O'Toole and the male then had a detailed discussion about a licence application being prepared for the club and the male asked O'Toole to visit him at his home and assist in the preparation of the application. O'Toole agreed to do so.

9.85 The second conversation on 30 December 2002 was with the President of Bilgola SLSC at approximately 11.05am.[1555] During the conversation O'Toole had no difficulty providing the President with detailed information, recalled from memory, about a diverse range of the club's activities including

[1553] PIC Exhibit 869C – PIC Transcript, PW Anderson 27 August 2003, p. 120
[1554] PIC Exhibits 899C & 900C
[1555] PIC Exhibits 901C & 902C

registering new members on the club's computer, organising crews for surf carnivals, club tryouts and commercial sponsorships, fees payable on membership transfers from one club to another and the availability of competition caps for club members.

9.86 The third conversation on 30 December 2002 was with another male person at about 1.24pm.[1556] He advised O'Toole that a surf race was taking place that day and also asked O'Toole if he had another team to replace *"Jim-Jim's team"*, who were *"... not around"*. Without hesitation O'Toole said, *"I'll organise it"*.

9.87 Dr Anderson gave the following evidence about the three telephone conversations on 30 December 2002:[1557]

> Q: Just listening to those, do you agree that on that day, a snapshot of half a day, approximately, we see that Mr O'Toole at that point is vitally interested and involved in the affairs of the Bilgola Beach Surf Life Saving Club?
> A: Yeah, … the overall impression that I got was that he was concentrating well. He was perhaps the person who knew how things were done and those who didn't were asking him from his memory store, and he was retrieving it and telling them how things were done.
>
> Q: Without any difficulty?
> A: Apparently with no difficulty.
>
> Q: But he was still involved in the sense of agreeing to organise things, and so on, as we see from the very last one?
> A: Yes, he did seem to get involved.
>
> Q: He's got caps to provide to competition racers?
> A: Yes, I noted that.
>
> Q: Three different people from the club ring him on the same day and ask him about diverse aspects of the activities of the club and he responds fully and adequately, doesn't he?
> A: Yes, he did.
>
> Q: Showing no signs of depressed mood?
> A: Yes, he showed no signs of depressed mood.
>
> Q: Showing no signs of lack of interest or no longer taking pleasure in being involved in the club?
> A: He appeared to be interested in what was said, yes.
>
> Q: And being clearly able to think, concentrate and be decisive, wouldn't you agree?
> A: I thought so, yes.
>
> Q: Does that surprise you and make you change your view of your diagnosis of him at that time or at present?
> A: It puts doubt in my mind.

[1556] PIC Exhibits 903C & 904C
[1557] PIC Exhibit 869C – PIC Transcript, PW Anderson, 27 August 2003, pp. 121-122

Surveillance Evidence - 8 and 9 January 2003

9.88 During his consultation with O'Toole on 7 January 2003 Dr Anderson noted the following under the heading "*MSE*" (Mental state examination):[1558]

> … depressed. No levity. Monotonal. Low self-esteem persists.

9.89 On 8 January 2003 O'Toole had a lengthy telephone conversation with his brother Lawrence O'Toole at about 9.30pm. The conversation was recorded.[1559] During the conversation O'Toole and Lawrence O'Toole discussed a friend ill with cancer, their mother's estate, including her home unit and motor vehicle, and general social matters. After listening to the recording of this call Dr Anderson said that there was *"... some variation in tone"* in O'Toole's voice during the conversation. Dr Anderson also said of O'Toole *"I don't think he made any error of concentration in that conversation"*. Dr Anderson said O'Toole was more responsive in the telephone call than he was in the consultation on 7 January 2003.[1560] Dr Anderson also gave the following evidence about the 8 January 2003 conversation:[1561]

> Q: Well, do you think he sounds depressed in that call?
> A: If I try to just dissociate myself from what I know about him otherwise and just focus on that call by itself, I would not be able to say he sounded severely depressed. I would just say he might be mildly depressed at the time. But I do ask myself what can you judge by listening to a telephone call?
>
> Q: Does he sound as though he can concentrate on what is being said to him and respond adequately?
> A: I think he's understood all the questions that his brother asks and he's been able to answer all his brother's questions and put questions of his own to his brother in a situation that is within family congenial, happy.
>
> Q: Does he sound interested in the topics that are being discussed?
> A: I thought he sounded very interested in the matter about the mother's estate.
>
> Q: Yes.
> A: I thought he sounded quite disinterested in the holiday matters.
>
> Q: Would you agree with this: when talking about the mother's estate matters, he doesn't sound distressed about them or as though considering those matters as a topic which might overwhelm him; would you agree with that?
> A: I thought he was anxious to know the answer to the question, but he was in no way overwhelmed in that fairly superficial conversation.

9.90 On 9 January 2003 a telephone conversation between O'Toole and a female friend of Mrs O'Toole was recorded.[1562] The female telephoned O'Toole's home from New Zealand. It is apparent from the recording of the conversation that O'Toole knew the female. During the conversation

[1558] PIC Exhibit 889C – Dr Anderson's handwritten notes of consultation with O'Toole on 7 January 2003; PIC Exhibit 869C – PIC Transcript, PW Anderson, 27 August 2003, p. 79
[1559] PIC Exhibits 885C & 886C
[1560] PIC Exhibit 869C – PIC Transcript, PW Anderson, 27 August 2003, pp. 81-83
[1561] PIC Exhibit 869C – PIC Transcript, PW Anderson, 27 August 2003, p. 84
[1562] PIC Exhibits 887C & 888C

O'Toole and the female discussed the progress of the America's Cup yacht race, in which the female was apparently involved. They also discussed Mrs O'Toole's impending trip to New Zealand and O'Toole indicated that he would not be accompanying her. O'Toole's tone during the conversation is notably upbeat and jovial. In evidence Dr Anderson agreed that during the conversation O'Toole:[1563]

- sounded responsive in a happy way,
- laughed,
- was animated,
- demonstrated a great deal of levity,
- had no difficulty concentrating,
- contributed fully to the conversation,
- did not express concern about Mrs O'Toole's proposed trip to New Zealand, and
- demonstrated an animated reaction to the topic of the America's Cup.

9.91 Dr Anderson's notes of his consultation with O'Toole on 14 January 2003 record, in part, the following:[1564]

> In status quo. Self-criticism ++ re the atmosphere in the house. Not going to NZ with Lesley (letting her down). Not telling son of this decision or guiding him re completing plumbing at TAFE. Thoughts of mother's terminal illness. Still periods of suicidal thinking (and thoughts of family). Still poor concentration – not reading. Medical certificate: unfit to travel to NZ.

9.92 Dr Anderson gave the following evidence about whether there was a discrepancy between the telephone conversation between O'Toole and the female on 9 January 2003 and O'Toole's presentation to Dr Anderson on 7 and 14 January 2003:[1565]

> Q: Does that really strike you, listening to that now, as demonstrating a marked discrepancy between what you hear of Mr O'Toole in that conversation and how he presented to you twice within a week before and after that – just before and just after that conversation?
>
> A: Yes. Yes, it is a marked discrepancy … I give some weight to how he sounds on the telephone intercept. He sounds all right on the telephone intercept. Trying to see this from the point of view of a typical case of depression, it is sometimes the case that depression is unremitting. It is not always the case that it is unremitting in the sense of good times during the day or good days interspersed with bad. On some occasions he has said to me that it is up and down, or there are good times. Trying to take all those factors into account, I – you know, I have cause to reassess the view that he's being truthful with me, but I do adhere to it … that I have a good level of confidence in the truthfulness of what he says to me.

[1563] PIC Exhibit 869C – PIC Transcript, PW Anderson, 27 August 2003, pp. 85-86
[1564] PIC Exhibit 889C – Dr Anderson's handwritten notes of consultation with O'Toole on 14 January 2003; PIC Exhibit 869C – PIC Transcript, PW Anderson, 27 August 2003, pp. 79-80
[1565] PIC Exhibit 869C – PIC Transcript, PW Anderson, 27 August 2003, pp. 86-87

NO ALTERATION TO DR ANDERSON'S OVERALL OPINION

9.93 Dr Anderson said that, as a result of the surveillance material he was shown, he had some cause to doubt whether O'Toole had been entirely truthful with him.[1566] However, he maintained his view that O'Toole continued to suffer from a psychiatric illness and was a suicide risk who was unfit to give evidence to the Commission, follow proceedings in the Commission or provide instructions to legal advisers for the purposes of participating in a Commission hearing. Dr Anderson said that in his opinion O'Toole suffered a severe depressive disorder and the fact that he may have *"good days"* is not inconsistent with this diagnosis.[1567]

9.94 The following statement by Dr Anderson when giving evidence to the Commission is acknowledged:[1568]

> I'm not absolutely certain I can remember what has or hasn't been said in the course of the day, but I think I've provided conscientious, capable treatment in circumstances that are made somewhat more difficult than usual by the medico-legal aspect to the case, it being a lot easier if the doctor can divorce themselves from the medico-legal side of the case and concentrate purely on the treatment.

9.95 Dr Anderson did seek a second opinion about O'Toole from a colleague, Dr Pickles, in February 2003. Dr Pickles reached the same conclusions as Dr Anderson about O'Toole's diagnosis and ability to appear before the Commission.[1569] However, at the time they were treating O'Toole, between August 2002 and March 2003, neither Dr Anderson nor Dr Pickles were aware of the surveillance evidence of O'Toole adduced in the Commission hearings during evidence of Mrs O'Toole and Dr Anderson. They were also unaware of O'Toole's significant failure to comply with a treatment regime of Efexor-XR prescribed by Dr Anderson and discussed below. On 14 February 2003 Dr Pickles regarded O'Toole's then current daily dose of 300mg of Efexor-XR as very significant to the issue of whether he was, at that stage, fit to give evidence to the Commission. In her report of that date under the heading *"Opinion"* she wrote:[1570]

> Mr O'Toole is still not fit to appear before the Police Integrity Commission. The antidepressant treatment you were giving is in very high dosage but is reasonable for the severity of his state.

9.96 After the date Dr Anderson gave evidence to the Commission further information was received in relation to the dispensing of Efexor-XR to O'Toole. The new evidence confirmed that no Efexor-XR was dispensed to O'Toole between 6 December 2002 and 27 February 2003.[1571] Dr Anderson

---

[1566] PIC Exhibit 869C – PIC Transcript, PW Anderson, 27 August 2003, p. 126
[1567] PIC Exhibit 869C – PIC Transcript, PW Anderson, 27 August 2003, pp. 127-128
[1568] PIC Exhibit 869C – PIC Transcript, PW Anderson, 27 August 2003, p. 134
[1569] PIC Exhibit 889C – Medical report by Dr Pickles re O'Toole dated 14 February 2003
[1570] PIC Exhibit 889C – Medical report by Dr Pickles re O'Toole dated 14 February 2003
[1571] See paragraphs 9.114 and 9.122

was given an opportunity to comment on that evidence through his lawyer. The response was as follows:[1572]

> I am instructed by Dr Anderson after reviewing the material provided that it is his opinion that Mr O'Toole is mentally ill and not fit to participate in the PIC proceedings at this time.

THE DISPENSING OF MEDICATION TO O'TOOLE, 1 AUGUST 2000 - 1 MARCH 2003

9.97 The medical records provided by Dr Anderson to the Commission in relation to O'Toole show that O'Toole was prescribed the following antidepressant medications at various times during the period 1 August 2000 to 1 March 2003: Allegron; Avanza; Efexor-XR; and Prozac.

9.98 On 27 February 2003, the first occasion Mrs O'Toole gave evidence to the Commission, she was asked whether, in the previous two years, she had visited a pharmacy for the purpose of having a prescription issued to O'Toole dispensed. She replied by saying that she had visited pharmacies to get prescriptions made out to O'Toole dispensed. She said further that she had done this both alone and in company with O'Toole. She didn't think that O'Toole had ever gone by himself to a pharmacy to get a prescription dispensed but said he may have done so.[1573]

9.99 Mrs O'Toole also gave evidence on 27 February 2003 about which pharmacies she went to in order to have prescriptions for herself or O'Toole dispensed. All of the pharmacies nominated by her were in the Northern Beaches region of Sydney, ranging from Avalon in the north to Narrabeen in the south. Other suburbs mentioned within this area were Newport, Mona Vale and Warriewood. Of these the pharmacy most frequently used by Mrs O'Toole was Lawler & Plunkett in Newport. Mrs O'Toole nominated that pharmacy as the one she used about fifty per cent of the time.[1574]

9.100 Mrs O'Toole appeared before the Commission for the second time on 7 August 2003. On that occasion her evidence about whether she had visited a pharmacy for the purpose of getting a prescription issued to O'Toole dispensed was slightly different to the evidence she gave on 27 February 2003. She said that she took no role in supervising O'Toole's taking of medication although she did obtain it for him. She also said that, in the period between August 2000 and early 2003, O'Toole sometimes went to a pharmacy by himself to obtain his prescription medication and that during that period she and O'Toole had, at times, obtained O'Toole's prescription medication while visiting Queensland.[1575]

9.101 Mrs O'Toole stated that O'Toole's mother had lived in Queensland until her death in August 2002, that O'Toole's brother lived there and that their son

[1572] Barcode 6360520 – Letter from Dr Anderson's legal representative on behalf of Dr Anderson, 13 November 2003
[1573] PIC Exhibit 866C – PIC Transcript, JL O'Toole, 27 February 2003, pp. 17-18
[1574] PIC Exhibit 866C – PIC Transcript, JL O'Toole, 27 February 2003, pp. 15-17
[1575] PIC Exhibit 867C – PIC Transcript, JL O'Toole, 7 August 2003, pp. 46-48

sometimes travelled there for rowing. She recalled a dozen trips to Queensland in the preceding three years and stated that the most recent trips were in August 2002, March 2003 and May 2003.[1576]

9.102 After the first day of Mrs O'Toole's evidence the Commission issued notices under section 26 of the *Police Integrity Commission Act 1996* to sixteen pharmacies in the Northern Beaches area, including all the pharmacies nominated by Mrs O'Toole. The notices were issued to every pharmacy operating at that time in the region from Narrabeen to Palm Beach.

9.103 The pharmacies were required to provide details of all medications dispensed, between 1 August 2000 and 1 March 2003, on prescriptions issued in the name of Dennis Peter O'Toole. The results of this survey of the sixteen Northern Beaches pharmacies confirmed that the vast majority of O'Toole's prescriptions were dispensed at the Lawler & Plunkett Chemist at 343 Barrenjoey Road, Newport. Only two other pharmacies provided positive returns. These were Newport Pharmacy at 347 Barrenjoey Road, Newport and Hertforts Chemist at 60 Old Barrenjoey Road, Avalon Beach. The other thirteen pharmacies provided nil returns, i.e., they dispensed no prescriptions in O'Toole's name during the survey period.[1577]

9.104 The pharmacies surveyed were:

- Lawler & Plunkett, 343 Barrenjoey Road, Newport;
- Maher's Pharmacy, 8A Kalinya Street, Newport;
- Newport Pharmacy, 347 Barrenjoey Road, Newport Beach;
- Regan's Pharmacy, 40 Avalon Parade, Avalon Beach;
- Flints Pharmacy, 20 Avalon Parade, Avalon Beach;
- Shilkins Pharmacy - The Fragrant Pharmacy, 4/74 Old Barrenjoey Road, Avalon;
- Herforts Chemist, 60 Old Barrenjoey Road, Avalon Beach;
- Northern Beaches Soul Pattison Chemist, Shop 9, 10 Bungan Court, Mona Vale;
- Plunkett's Pharmacy, 17 Bungan Street, Mona Vale;
- Waratah Pharmacy, 11 Waratah Street, Mona Vale;
- Pittwater Pharmacist Advice, 1771 Pittwater Road, Mona Vale;
- Mona Vale Pharmacy, Barrenjoey Road, corner Pittwater Road, Mona Vale;
- Soul Pattinson, Shop 37, Warriewood Square, Warriewood;
- Warriewood Medical Centre Pharmacy, 3 Vuko Place, Warriewood;

[1576] PIC Exhibit 867C – PIC Transcript, JL O'Toole, 7 August 2003, pp. 48-49
[1577] PIC Exhibit 870C

- Narrabeen Pharmacy, 67 – 69 Waterloo Street, Narrabeen;
- Elanora Pharmacy, 67 Kalang Street, Elanora Heights.

9.105 The results of the survey of the sixteen pharmacies show that, during the period 1 August 2000 to 1 March 2003 the medications dispensed on prescriptions issued to O'Toole included: Avanza; Efexor-XR 150mg, Serepax and Valium.

9.106 In relation to the medications Avanza and Efexor-XR the records provided by the pharmacies show that the amount dispensed was not sufficient to allow O'Toole to take each medication in the amount prescribed. Serepax was dispensed once and Valium was dispensed twice during the relevant period but as those medications are not antidepressants they are not considered relevant to an examination of the antidepressant medication dispensed to O'Toole in the relevant period.

9.107 The results revealed that no Allegron or Prozac was dispensed to O'Toole from any of the sixteen pharmacies during the survey period.

9.108 It is possible that O'Toole was given some free samples of Prozac by Dr Anderson. Dr Anderson said in his evidence about his record-keeping procedures that he endeavoured to make a note in his records when he gave a patient a sample of a prescription medication. When asked whether it was possible that he had given O'Toole a sample of Prozac and omitted to record that fact Anderson replied *"Mmm it's possible, but unlikely"*.[1578] There are no references in Dr Anderson's medical records to him giving O'Toole a sample packet of Prozac.

9.109 During Dr Anderson's evidence he was informed that the Commission had made inquiries of the Health Insurance Commission (HIC). Pharmacies are required by law to advise the HIC of all their dispensing of prescription medications. The HIC records provided to the Commission contained no record of Prozac being dispensed to O'Toole in the period 1 August 2000 to 1 March 2003.[1579] This provides some confirmation of the pharmacy survey results although it is not conclusive. Some doubt exists about the accuracy of the HIC records provided to the Commission because some of the items dispensed to O'Toole and recorded in the results of the Northern Beaches pharmacy survey did not appear in the HIC records provided to the Commission. Accordingly, no conclusions can be based on the HIC records.

9.110 In his evidence on 13 August 2003 Dr Anderson described the "nil return" for Prozac in the Commission's pharmacy survey as *"... wrong – false, incorrect"* because he had *"...been shown the medicine dispensed with the appropriate date, the Prozac dispensed with the name of the chemist shop"*. Dr Anderson produced to the Commission a packet of Prozac tablets

[1578] PIC Exhibit 868C – PIC Transcript, PW Anderson, 13 August 2003, p. 28
[1579] PIC Exhibit 868C – PIC Transcript, PW Anderson, 13 August 2003, p. 35

dispensed to O'Toole at the Lawler & Plunkett Chemist on 18 July 2000.[1580] The Prozac packet contained one blister strip which, in turn, contained one tablet. In fact this dispensing did not contradict the results of the Northern Beaches pharmacy survey because that particular packet of Prozac was dispensed on 18 July 2000, before the commencement of the Commission's survey period on 1 August 2000. Dr Anderson, who only commenced his treatment of O'Toole after 1 August 2000, did not prescribe the Prozac dispensed on 18 July 2000.

9.111 When it was suggested to Mrs O'Toole that the survey evidence, on one view, led to the conclusion that no prescription for Prozac in O'Toole's name had been filled at a pharmacy in the Northern Beaches region between August 2000 and March 2003, and that no prescription for Valium in O'Toole's name had been filled at a pharmacy in the Northern Beaches region between 1 August 2000 and 12 November 2002 Mrs O'Toole stated that O'Toole was still working with NSW Police in the Hornsby area during that time and may have obtained the medication from a pharmacy in that area. However, she later agreed that he would not have been a frequent visitor to the Hornsby area after his employment with NSW Police ended in late 2000. She also stated that O'Toole did not get any other employment after leaving NSW Police in late 2000.[1581] In fact O'Toole ceased active duty with NSW Police on 29 June 2000.

9.112 O'Toole was informed on 30 June 2000 that his contract with NSW Police, which expired on 31 December 2000, would not be renewed. NSW Police confirmed that O'Toole took sick leave from 29 June 2000 and did not return to work. NSW Police also advised that O'Toole was located at Hornsby Police Station from approximately August 1999 until April 2000 when he moved to Chatswood. He took sick leave from 29 June 2000 and did not return to work.[1582]

9.113 The evidence is capable of establishing that the only antidepressant medications dispensed to O'Toole, or to Mrs O'Toole on his behalf, between 1 August 2000 and 1 March 2003 from the sixteen Northern Beaches pharmacies surveyed is the medication listed on records provided to the Commission by the sixteen pharmacies. Except in relation to Efexor-XR, which is discussed below, the evidence is not capable of establishing that antidepressant medications were not dispensed to O'Toole during the survey period at pharmacies other than the sixteen Northern Beaches pharmacies.

9.114 The evidence is however capable of establishing that the only Efexor-XR that was dispensed to O'Toole, or to Mrs O'Toole on his behalf, is the Efexor-XR dispensed on three occasions during the survey period, i.e., 6 December 2002, 27 February 2003 and 28 February 2003. This can be established because the records obtained by the Commission from the pharmacies in relation to each

[1580] PIC Exhibit 869C – PIC Transcript, PW Anderson, 27 August 2003, pp. 70-72; PIC Exhibit 884C
[1581] PIC Exhibit 867C – PIC Transcript, JL O'Toole, 7 August 2003, pp. 54-58
[1582] Barcode 6381209 – Letter from NSW Police advising of O'Toole's location during 2000; see also PIC Exhibit 882C – Letter from Dr Goldberg to Dr Anderson, 1 August 2000 and Psychiatric Report of Dr Anderson, 4 September 2000.

dispensing show the date of the original prescription, the number of repeat prescriptions authorised, and the number of times the prescription has been filled.

Evidence in relation to Efexor-XR

9.115 Dr Anderson decided on 14 November 2002 to substitute O'Toole's Prozac with Efexor-XR. On that date he asked O'Toole to stop taking Prozac so that he could commence Efexor-XR 75mg the following week.[1583] On 22 November 2002 Dr Anderson gave O'Toole one week's supply, being seven, 75mg Efexor-XR capsules, so that O'Toole could commence taking a 75mg dose each morning.[1584]

9.116 On 28 November 2002 Dr Anderson increased O'Toole's dose of Efexor-XR to one 150mg capsule each morning and issued a prescription for Efexor-XR 150mg capsules to O'Toole. The prescription was for a packet of 28 x 150mg capsules with five repeats. Therefore the total number of Efexor-XR capsules that could be dispensed using this prescription was 168 (being six x 28 capsules).[1585] The prescription was not dispensed until 6 December 2002. The first repeat was not dispensed until 27 February 2002. Subsequent repeats were dispensed on 9 April 2003, 28 May 2003 and 23 July 2003.[1586]

9.117 On 28 January 2003 Dr Anderson increased O'Toole's daily dose of Efexor-XR to 225mg for one week with an increase to 300mg per day thereafter. His usual practice, if giving sample packets of prescription medications to patients, was to record that fact in his consultation notes (as he did in his notes of O'Toole's consultation on 22 November 2002).[1587] There is no record in any of Dr Anderson's consultation notes of a sample packet of Efexor-XR capsules being provided to O'Toole, apart from the record in the 22 November 2002 consultation notes referred to above. Efexor-XR 150mg is dispensed in capsule form. Dr Anderson was asked about the advice contained in the June 2003 MIMS Annual[1588] that the capsules should not be divided or crushed. Dr Anderson confirmed that it would be difficult to get a 75mg dose by splitting a 150mg capsule.[1589]

9.118 From 4 February 2003 Dr Anderson increased O'Toole's dosage of Efexor-XR to 300mg per day, i.e., two 150mg capsules to be taken each day, separated by a few hours.[1590] This regime continued at least until 27 February

[1583] PIC Exhibit 889C – Letter from Dr Anderson to Dr Goldberg dated 14 November 2002; Dr Anderson's notes of consultation with O'Toole dated 14 November 2002.
[1584] PIC Exhibit 889C – Dr Anderson's notes of consultation with O'Toole dated 22 November 2002; PIC Exhibit 869C – PIC Transcript, PW Anderson, 27 August 2003, p. 74
[1585] PIC Exhibit 889C – Dr Anderson's notes of consultation with O'Toole dated 28 November 2002; PIC Exhibit 869C – PIC Transcript, PW Anderson, 27 August 2003, pp. 74-75
[1586] PIC Exhibits 908C, 910C
[1587] PIC Exhibit 889C – Dr Anderson's notes of consultation with O'Toole dated 28 January 2003; PIC Exhibit 869C – PIC Transcript, PW Anderson, 27 August 2003, pp. 89-90
[1588] June 2003 MIMS Annual, Australian Edition, 27th Edition, MediMedia Australia Pty Ltd, Tien Wah Press (Pte) Ltd, Singapore
[1589] PIC Exhibit 869C – PIC Transcript, PW Anderson, 27 August 2003, pp. 94 & 140-141 – Extract from June 2003 MIMS Annual re dosage of Efexor-XR, p. 3-335
[1590] PIC Exhibit 889C – Dr Anderson's notes of consultation with O'Toole dated 4 February 2003; PIC Exhibit 869C – PIC Transcript, PW Anderson, 27 August 2003, p. 92

2002 (the day Mrs O'Toole gave evidence at the Commission), when Dr Anderson's notes record a telephone request for a prescription of Efexor-XR 75mg with five repeats.[1591] This prescription was dispensed at Lawler & Plunkett on the following day, 28 February 2003.

9.119 The first repeat of the original prescription for Efexor-XR 150mg capsules written on 28 November 2002 was dispensed on the first day that Mrs O'Toole gave evidence to the Commission, 27 February 2003.[1592] The prescription for the Efexor-XR 75mg capsules was dispensed the following day, 28 February 2003. Mrs O'Toole said that she did not remember whether she went to the chemist on 27 February 2003 to have those prescriptions dispensed, but conceded that it must have been herself or O'Toole.[1593]

9.120 In order to comply fully with Dr Anderson's prescribed treatment regime in relation to Efexor-XR, during the period 22 November 2002 to 26 February 2003, O'Toole required many more Efexor-XR capsules than were actually dispensed to him. To comply with the treatment regime during this period O'Toole required 14 Efexor-XR 75mg capsules, yet only seven were dispensed to him (on 22 November 2003 by Dr Anderson), and he required 112 Efexor-XR 150mg capsules, yet only 28 were dispensed to him (on 6 December 2002 at Lawler & Plunkett). The number of Efexor-XR capsules required by O'Toole was calculated assuming that O'Toole adopted the changes to the amount of Efexor-XR on the day after the consultation in which the change was prescribed.

9.121 The calculations are as follows:

- Between 22 November 2002 and 28 November 2002 O'Toole was prescribed a daily dose of 75mg of Efexor-XR. To comply with this prescription he needed seven x 75mg capsules. Dr Anderson provided O'Toole with a sample pack of seven x 75mg capsules of Efexor-XR during the consultation on 22 November 2002.
- Between 29 November 2002 and 28 January 2003, a period of 61 days, O'Toole was prescribed a daily dose of 150mg of Efexor-XR. To comply with this prescription he needed 61 x 150mg capsules. On 6 December 2002 Lawler & Plunkett Chemist, Newport dispensed one prescription of Efexor-XR 150mg capsules providing O'Toole with 28 x 150mg capsules.
- Between 29 January 2003 and 4 February 2003, a period of 7 days, O'Toole was prescribed a daily dose of 225mg of Efexor-XR. To comply with this prescription he needed seven x 75mg capsules and seven x 150mg capsules. No Efexor was dispensed to O'Toole during this period.

[1591] PIC Exhibit 889C – Dr Anderson's notes of telephone call dated 27 February 2003; PIC Exhibit 869C – PIC Transcript, PW Anderson, 27 August 2003, p. 93
[1592] PIC Exhibit 910C
[1593] PIC Exhibit 867C – PIC Transcript, JL O'Toole, 7 August 2003, pp. 64-65

- Between 5 February 2003 and 26 February 2003, a period of 22 days, O'Toole was prescribed a daily dose of 300mg of Efexor-XR. To comply with this prescription he needed 44 x 150mg capsules. No Efexor was dispensed to O'Toole during this period.
- The total number of Efexor-XR capsules required by O'Toole during the period 22 November 2002 to 26 February 2003 is reached by adding together the above amounts. The total number required was therefore 14 x 75mg capsules and 112 x 150mg capsules. During the period O'Toole had seven x 75mg capsules and 28 x 150mg capsules dispensed to him.

9.122 The Commission can be confident, about the total number of Efexor-XR capsules dispensed to O'Toole, because Lawler & Plunkett records show that the prescription of Efexor-XR dispensed to O'Toole on 27 February 2003 was the first repeat of the prescription written by Dr Anderson on 28 November 2002 and initially dispensed on 6 December 2002. O'Toole did not have a prescription for 75mg capsules of Efexor-XR until Dr Anderson wrote one at O'Toole's request on 27 February 2003.

9.123 Throughout this period there is no record in Dr Anderson's consultation notes of O'Toole informing him that he was not taking the Efexor-XR in the doses prescribed. On the contrary, O'Toole made statements to Dr Anderson that indicated he was taking the Efexor-XR at the prescribed dosage levels.

9.124 On 21 January 2003 Dr Anderson recorded the entry *"Subj unsure re Efexor – no effect noted"*.[1594] Dr Anderson's evidence was that this meant, *"The patient said he was unsure whether the drug was having any effect"*.[1595]

9.125 On 4 February 2003 Dr Anderson's consultation notes record *"Increased Efexor ... sl dizzy at first, now settled"*.[1596] Dr Anderson stated that this meant that O'Toole told him that he had taken Efexor-XR and that it had caused him to experience dizziness.[1597]

9.126 On 18 February 2003, at a time when his dose of Efexor-XR had been increased to 300mg per day, O'Toole informed Dr Anderson that he thought the Efexor-XR *"... might be better at* [the] *higher dose"*.[1598]

9.127 The Commission's conclusions about the evidence in relation to the medication Efexor-XR are set out below at paragraph 9.131.

[1594] PIC Exhibit 889C – Dr Anderson's handwritten notes of consultation with O'Toole on 21 January 2003
[1595] PIC Exhibit 869C – PIC Transcript, PW Anderson, 27 August 2003, p. 89
[1596] PIC Exhibit 889C – Dr Anderson's handwritten notes of consultation with O'Toole on 4 February 2003
[1597] PIC Exhibit 869C – PIC Transcript, PW Anderson, 27 August 2003, pp. 91-92
[1598] PIC Exhibit 889C – Dr Anderson's handwritten notes of consultation with O'Toole on 18 February 2003; PIC Exhibit 869C – PIC Transcript Dr Anderson 27 August 2003, p. 93

COMPLIANCE WITH PRESCRIBED TREATMENT REGIME DURING THIRD PERIOD OF TREATMENT

Prozac

9.128 On 14 November 2002 Dr Anderson's consultation notes record that O'Toole reported to him that he had not taken Prozac for three days.[1599] Dr Anderson did not express concern about this when giving evidence. On the contrary he said that he found the voluntary reporting by a patient of taking less than the prescribed amount of medication was reassuring.[1600]

9.129 Whilst it is remarkable that no Prozac was dispensed to O'Toole from any of the sixteen Northern Beaches pharmacies during the survey period, the evidence is not capable of discounting the possibility that Prozac may have been dispensed elsewhere to O'Toole during that period. Consequently no adverse findings can be made in relation to the non-dispensing of Prozac to O'Toole from the Northern Beaches pharmacies during the survey period.

9.130 Some doubts must arise, however, given the opportunity provided to Mrs O'Toole to nominate the pharmacies where the prescriptions may have been dispensed and the nil return obtained by the Commission from the sixteen pharmacies surveyed, as well as the HIC.

Efexor-XR

9.131 The evidence referred to in paragraphs 9.97 to 9.126 supports the following conclusions:

- The only Efexor-XR supplied to or dispensed to O'Toole between 22 November 2002 and 26 February 2003 was 7 x 75mg capsules on 22 November 2002 and 28 x 150mg capsules on 6 December 2002;
- The amount of Efexor-XR that was supplied to or dispensed to O'Toole during the period 22 November 2002 to 26 February 2003 was insufficient to enable him to take the dosage of Efexor-XR prescribed by Dr Anderson during that period;
- O'Toole did not comply with the Efexor-XR treatment prescribed by Dr Anderson during the period 22 November 2002 to 26 February 2003 and the level of his non-compliance was significant;
- O'Toole did not inform Dr Anderson that he was not complying with the Efexor-XR treatment prescribed by Dr Anderson during the period 22 November 2002 to 26 February 2003;
- O'Toole misled Dr Anderson during the period 22 November 2002 to 26 February 2003 about the amount of Efexor-XR he was taking; and

[1599] PIC Exhibit 889C – Dr Anderson's handwritten notes of consultation with O'Toole on 14 November 2002
[1600] PIC Exhibit 869C – PIC Transcript, PW Anderson, 27 August 2003, pp. 67-68; See also paragraph 9.115 for discussion about the consultation on 14 November 2002

- Mrs O'Toole and / or O'Toole obtained the Efexor-XR from Lawler & Plunkett on 27 February 2003 and 28 February 2003 immediately following the questioning of Mrs O'Toole in the Commission hearing on 27 February 2003 about the extent to which O'Toole had been taking antidepressant medication.

9.132 Dr Anderson said that if he could be satisfied that O'Toole did not take the Efexor-XR after it was prescribed on 22 and 28 November 2002 *"... it would concern me on the grounds of cooperation and truthfulness"*.[1601] He also said that the evidence about O'Toole's apparent failure to comply with the Efexor-XR treatment caused him concern.[1602] Dr Anderson said that his confidence in the veracity and truthfulness of O'Toole would be undermined *"... if it were the case that a script had been filled in response to a PIC hearing ..."*.[1603] He also said that if the list of prescription medications dispensed in O'Toole's name by the Northern Beaches pharmacies between 1 August 2000 and 1 March 2003 could be established to list the only times prescriptions were dispensed for O'Toole then that would put a *"question mark"* in his mind about the honesty of O'Toole, and diminish the level of his confidence in O'Toole's truthfulness.[1604]

9.133 Dr Anderson said however that he had not been persuaded that there was a significant level of non-compliance by O'Toole in the treatment prescribed.[1605] It should be noted that the evidence about the Efexor-XR 150mg prescription dispensed on 27 February 2003 being only the first repeat of the prescription issued on 28 November 2002 was not available to the Commission at the time Dr Anderson gave his evidence and was, therefore, not put to him during his examination.

9.134 Dr Anderson was subsequently requested by the Commission to consider whether the evidence about the dispensing of Efexor-XR changed his opinion about the truthfulness of O'Toole. Dr Anderson's response, contained in a letter from his lawyer, was that the new evidence had not altered his opinion that O'Toole suffered from a mental illness and was not fit to participate in Commission proceedings. The response continued:[1606]

> Dr Anderson states you will recall when he gave evidence that from general experience he had come to understand that material from patients was a mixture of the truth or partial truth, screen truth, together with falsehood on occasions. Further that compliance or non compliance with a treatment regime is not something which causes him to revise a diagnosed [sic]. Mental illness itself will sometimes give rise to difficult or partial compliance with the true regime.

[1601] PIC Exhibit 869C – PIC Transcript, PW Anderson, 27 August 2003, p. 75
[1602] PIC Exhibit 869C – PIC Transcript, PW Anderson, 27 August 2003, p. 95
[1603] PIC Exhibit 869C – PIC Transcript, PW Anderson, 27 August 2003, p. 96
[1604] PIC Exhibit 869C – PIC Transcript, PW Anderson, 27 August 2003, pp. 110, 132
[1605] PIC Exhibit 869C – PIC Transcript, PW Anderson, 27 August 2003, p. 123
[1606] Barcode 6360520 – Letter from Dr Anderson's legal representative on behalf of Dr Anderson, 13 November 2003

ASSESSMENT OF EVIDENCE IN RELATION TO THE THIRD PERIOD OF TREATMENT

9.135 The Commission's assessment in relation to the third period of treatment is that:

- There was a medicolegal context to O'Toole's presentation to Dr Anderson in August 2002;
- The surveillance evidence, when compared to Dr Anderson's medical records, shows a marked discrepancy between O'Toole's claimed level of stress or disability and the actual level of his stress or disability on a number of occasions between August 2002 and January 2003;
- During the period 22 November 2002 to 26 February 2003 there was a significant failure by O'Toole to cooperate with, and comply with, an important aspect of his treatment, which required him to take prescribed doses of Efexor-XR;
- O'Toole was untruthful to Dr Anderson about the extent of his compliance with the Efexor-XR treatment; and
- Some doubts must exist about the motivation of Mrs O'Toole and / or O'Toole obtaining the Efexor-XR from Lawler & Plunkett on 27 February 2003 and 28 February 2003, immediately following the questioning of Mrs O'Toole at the Commission on 27 February 2003 about the extent to which O'Toole had been taking antidepressant medication.

9.136 O'Toole did not give evidence in relation to the above matters. Following his non-appearance at the public hearings in August 2002 and November 2002 contact was made with his Counsel in December 2002, and July and August 2003. On each occasion O'Toole's Counsel was asked whether O'Toole was fit to attend the Commission. On each occasion O'Toole's Counsel replied in the negative.

CONCLUSIONS

9.137 The Commission wishes to make plain that, in testing the basis for O'Toole's claimed incapacity to attend and give evidence, the Commission was not conducting an investigation into Dr Anderson or Mrs O'Toole. Dr Anderson rendered a medical opinion, based on his consultations with O'Toole, as to his unfitness to appear before the Commission. Mrs O'Toole provided information to Dr Anderson as to O'Toole's condition at relevant times, and was in a position to give evidence to the Commission about O'Toole's conduct and state of mind at relevant times. The evidence of both witnesses was relevant to the Commission's desire to satisfy itself as to whether O'Toole was in fact unfit to answer the requirements of the summons.

9.138 For the reasons set out above, despite the medical opinion advanced on his behalf, the Commission does not accept that O'Toole had a bona fide medical

condition sufficient to justify his non-appearance before the Commission's hearing to give evidence. In the Commission's opinion the objective circumstances suggest that O'Toole, during the third period of this treatment, manufactured or exaggerated physical and psychiatric symptoms to Dr Anderson in order to avoid giving further evidence at the Commission in the King segment in August 2002 and thereafter.

9.139 The evidence against O'Toole in the Guns segment, the Let's Dance segment and the King segment was compelling, and cast great doubt on his credit and integrity. Although he denied all allegations of wrongdoing, in each segment the Commission has formed the view that O'Toole engaged in police misconduct.

9.140 In the Commission's opinion O'Toole's failure to appear and give evidence in the King segment, and the course of action adopted to achieve that end, merely compounded the damage already done to his credit and integrity.

9.141 In submissions received by the Commission following the private hearings in this matter it was said, amongst other things, that the Commission was biased in its inquiries into the circumstances surrounding O'Toole's non-appearance at the Operation Florida hearings in late 2002, and had a clear interest in making certain findings.

9.142 The Commission does have a "clear interest" in ensuring that its inquiries are not frustrated by the refusal of a person, without reasonable excuse, to attend before the Commission in answer to a summons. There is no proper basis to suggest that the Commission cannot look behind a medical opinion so as to test the veracity of the facts and circumstances upon which it is based, and ultimately decide that the opinion should not be accepted as a legitimate reason for a person's non-attendance. Such a proposition, if true, would render the Commission's summons power open to easy avoidance. The Commission will not let that happen and will do all that is within its power to preserve the integrity of its functions in the public interest.

9.143 A person summonsed to attend before the Commission must not, without reasonable excuse, fail to attend. In the light of the conclusions, set out above, the Commission is of the opinion that consideration **should** be given the prosecution of O'Toole for the offence of failing to attend before the Commission in accordance with a summons, pursuant to subsection 106(1)(a) of the Act.

10. AFFECTED PERSONS

Affected Persons 416
Miles Bradley Adams 417
Let's Dance Segment 417
B11 418
Newport Segment 418
Luke Michael Benbow 418
Northern Beaches Segment 418
Phillip Sydney Bernasconi 419
Magnum Segment 419
Ian Grant Blake 420
Magnum Segment 420
Stephen Anthony Bridges 421
Let's Dance Segment 421
Lee Kevin Brown 422
Magnum Segment 422
Vincent Caccamo 423
Northern Beaches Segment 423
Vivienne Alexa Crawford 423
Let's Dance Segment 423
Shaun Andrew Davidson 424
Northern Beaches Segment 424
John Stuart Davidson 425
Magnum Segment 425
Kim Dowding 427
Guns Segment 427
Magnum Segment 429
Wayne James Eade 430
Newport Segment 430
Peter John Ehsman 431
Guns Segment 431
F7 432
Guns Segment 432
Let's Dance Segment 434
Magnum Segment 435
Martin Geoffrey Green 436
Northern Beaches Segment 436
Howard Robert Gumley 437
Let's Dance Segment 437
Michael Arthur Hagan 438
Let's Dance Segment 438
David Marshall Hill 439
Northern Beaches Segment 439
Newport Segment 440
Wayne Hollis 441
Let's Dance Segment 441
Paul Hulme 442

Let's Dance Segment 442
Robert James Irwin 443
Magnum Segment 443
Ian Frederick Ison 445
Newport Segment 445
Matthew John Jasper 446
Northern Beaches Segment 446
Michael Scott Kempnich 448
Letters of Assistance Segment 448
Glenn Wayne Kendall 449
Guns Segment 449
Let's Dance Segment 450
Timothy Andrew Kerr-Thomson 452
Newport Segment 452
James Justin King 453
Guns Segment 453
Let's Dance Segment 454
Magnum Segment 455
King Segment 456
L17 459
Newport Segment 459
M5 460
Guns Segment 460
Newport Segment 462
Magnum Segment 463
King Segment 464
M13 465
King Segment 465
Stephen James McClelland 465
Newport Segment 465
Roslyn Gwen McDougall 467
King Segment 467
Mark William Messenger 468
Northern Beaches Segment 468
Robert John Monk 469
Let's Dance Segment 469
Clare Margaret Moore (Butt) 471
King Segment 471
N1 471
Guns Segment 471
Let's Dance Segment 473
Magnum Segment 474
Maurice Gilbert Nield 476
Newport Segment 476
Ian Bruce Nicholson 477
Let's Dance Segment 477
Dennis Peter O'Toole 478
Guns Segment 478
Let's Dance Segment 480
King Segment 481
O'Toole Segment 482

David Phillip Patison 483
Northern Beaches Segment 483
Raymond John Peattie 485
Northern Beaches Segment 485
Frank Ramaccia 486
Newport Segment 486
S8 488
King Segment 488
Ronald Bruce Smith 488
Guns Segment 488
Let's Dance Segment 489
Stephen Anthony St John 490
Let's Dance Segment 490
Greig Robert Vicary 491
Guns Segment 491
Ronald Walsh 492
Newport Segment 492
Guy John Wilding 493
Letters of Assistance Segment 493
Philip George Wrice 495
Magnum Segment 495

AFFECTED PERSONS

10.1 A person against whom, in the Commission's opinion, substantial allegations have been made in the course of, or in connection with, an investigation, is an "affected person" for the purposes of a Report to Parliament by the Commission.[1607]

10.2 Subsection 97(2) of the *Police Integrity Commission Act 1996* (the Act) requires the Commission to include in a Report to Parliament a statement in respect of each affected person 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,[1608]

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.

10.3 In addition the Commission may form opinions as to whether police misconduct has occurred: subsection 16(1)(a) of the Act. These opinions help to inform whether any recommendations should be made or opinions expressed as to whether consideration should or should not be given to the prosecution of persons (including police officers) for criminal or disciplinary offences.

10.4 The expressions "police misconduct" and "serious police misconduct" are not specifically defined by the Act. They nevertheless include the following types of conduct (see subsection 5(2) of the Act):

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,

[1607] Subsection 97(3), *Police Integrity Commission Act 1996*

[1608] 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 Commissioner to recommend or state whether consideration should be given to the prosecution of a person for a specified "disciplinary offence" (subsections 16(1)(b), 97(2)(b) of the Act) has no effective application to police officers. This is so even for police misconduct that occurred before this date.

d) any other matters about which a complaint can be made under the *Police Act 1990*.

10.5 It follows that "police misconduct" may encompass not only serious criminal activity such as perverting the course of justice but also minor disciplinary breaches by police, the sanction for which may, for example, be nothing more than additional training and development.

10.6 Each affected person gave his or her evidence after a declaration had been made under section 41 of the Act. Therefore pursuant to section 40 of the Act the evidence is not admissible against him or her in subsequent criminal or civil proceedings except for proceedings for an offence against the Act or for contempt under the Act.

10.7 The affected persons are named, in alphabetical order, below:

MILES BRADLEY ADAMS

LET'S DANCE SEGMENT

10.8 Adams is an affected person because he is the subject of the substantial allegation that all police officers from both Manly Detectives and Major Crime Squad North (MCSN) who were involved in the arrest of A1 and P1 entered into an agreement to share money corruptly taken during Operation Let's Dance. Adams located the money in the hotel room, took part in the search of P1's premises and assisted in the electronically recorded interview with P1 on the night of 4 February 1992. He appears to have had no other involvement in the matter.

10.9 There is no direct evidence that Adams received any of the money seized during the course of the Operation. There is no evidence that he was shown into the room at the Manly Pacific Hotel before the execution of the search warrant, that he was present at Manly Police Station on 5 February 1992 or during the early hours of 6 February 1992, or that he had any involvement in the matter on that day. No evidence was given by N1, F7 or M7 that raises any concerns about his role in the matter. There is no admissible evidence in relation to Adams that he committed any criminal offence. The Commission is of the opinion therefore that consideration **should not** be given to the prosecution of Adams for any criminal offence.

10.10 Adams was a serving officer when he gave evidence however he left NSW Police on 13 March 2003. Accordingly the question of taking action pursuant to subsections 97(2)(c) and (d) of the Act does not arise.

B11

NEWPORT SEGMENT

10.11 B11 is the solicitor who acted for L17 during her committal hearing. He is an affected person because of the serious allegation that he entered into an agreement with McClelland to pay police $50,000 on behalf of L17 for their assistance with the charges she faced. B11 did not give evidence in the Commission hearing. He was, however, legally represented.

10.12 B11 is a civilian. In terms of subsection 97(2) of the Act the only relevant matter is whether or not the Commission is of the opinion that consideration should be given to the prosecution of B11 for specified criminal offences.

10.13 M5 gave evidence that Hill told him McClelland had organised with B11 for the payment of the $50,000, on behalf of L17. L17 said that she had no knowledge of money allegedly paid on her behalf however S7's evidence was that he was told by L17 that she had paid the police. McClelland denied that he participated in any arrangement with B11 in relation to the payment. Hill also denied telling M5 that McClelland had organised the payment of $50,000 on behalf of L17.

10.14 The evidence of M5 is hearsay and in the absence of any corroboration that B11 was a participant in the payment of the $50,000 there is no prima facie evidence to suggest that B11 committed any offence and consequently the Commission is of the opinion that consideration **should not** be given to the prosecution of B11 for any criminal offences.

LUKE MICHAEL BENBOW

NORTHERN BEACHES SEGMENT

10.15 Benbow is an affected person because he is the subject of the substantial allegation that he supplied prohibited drugs.

10.16 Benbow is a civilian. In terms of subsection 97(2) of the Act the only relevant matter is whether or not the Commission is of the opinion that consideration should be given to the prosecution of Benbow for specified criminal offences.

10.17 Following the Commission's hearing Benbow pleaded guilty to two counts of supplying cannabis pursuant to subsection 25(1) of the *Drug Misuse and Trafficking Act 1985.* A further charge of supply cannabis pursuant to subsection 25(1) of the *Drug Misuse and Trafficking Act 1985* and two counts of goods in custody were taken into account on sentencing. He was sentenced on 21 March 2002 and received a two year suspended sentence.

10.18 The Commission is of the opinion that consideration **should not** be given to the prosecution of Benbow for any further criminal offences arising from Operation Florida.

PHILLIP SYDNEY BERNASCONI

MAGNUM SEGMENT

10.19 Bernasconi is an affected person because he is the subject of the substantial allegations that:

- he fabricated the adoption of the record of interview alleged to have taken place between Wrice and Stuart; and
- he made a false statement in relation to the adoption of Stuart's alleged record of interview and perjured himself when he gave evidence in accordance with that statement.

10.20 The Commission considers that Bernasconi engaged in police misconduct: subsection 16(1)(a) of the Act.

10.21 The admissible evidence against Bernasconi is that of M5 and F7. M5 said that he met with Bernasconi on the morning of Stuart's arrest and arranged for him to perform the adoption of the interview. He said that he either knew that Bernasconi would be prepared to fabricate the adoption, or hoped that he would. He had not had experience of Bernasconi adopting a fabricated record of interview prior to this occasion.[1609] F7's evidence supports that of M5 in that he said the adoption was arranged in advance and that Bernasconi fabricated the adoption.[1610] Bernasconi denied that he was involved in the conduct alleged by F7 and M5.

10.22 The Commission is of the opinion that the evidence supports the consideration being given to the prosecution of Bernasconi for perverting the course of justice pursuant to section 319 of the *Crimes Act 1900*.

10.23 However following the public hearings in this segment and prior to the completion of this Report, NSW Police sent a brief of evidence to the ODPP in relation to Bernasconi for consideration of possible criminal charges. The ODPP recommended that no charges be laid.

10.24 In the circumstances the Commission is of the opinion that further consideration **should not** be given to the prosecution of Bernasconi for any criminal offences.

10.25 Bernasconi is no longer a serving police officer. Accordingly the question of taking action pursuant to subsections 97(2)(c) and (d) of the Act does not arise.

[1609] PIC Transcript, M5, 12 September 2002, pp. 5357-5359
[1610] PIC Transcript, F7, 10 September 2002, pp. 5232-5233, 5235-5237

IAN GRANT BLAKE

MAGNUM SEGMENT

10.26 Blake is an affected person because he is the subject of the substantial allegations that:

- he made a false statement in relation to the arrest, interview and admissions of C11 and perjured himself when he gave evidence in accordance with that statement; and
- he perjured himself when he gave evidence at his trial in March 2000.

10.27 The Commission considers that Blake engaged in police misconduct: subsection 16(1)(a) of the Act.

10.28 The admissible evidence against Blake is that of N1 and C11. N1 said that prior to the execution of the search warrant at C11's house he checked with Irwin that Blake could be trusted to go along with the illegal activities that were planned.[1611]

10.29 When they arrived with C11 at Burwood Police Station N1 said that C11 was left in a room with Blake while N1 and Irwin fabricated the record of interview.[1612] This evidence is confirmed by C11 who said, in the statement he wrote of the events of the 7 March 1991,[1613] that he was placed in a room with the young detective and did not take part in a record of interview.

10.30 It does not appear that Blake was involved in the actual fabrication of the record of interview but N1 gave evidence that Blake was aware of what was going on and that he knew his statement and the evidence he gave, at both C11's committal and his own trial, was false. The allegations against Blake also receive general support from the evidence of F7, M5 and N1 about the approach and methods of Task Force Magnum.[1614]

10.31 Blake denied that he was involved in the conduct as alleged by F7, M5 and N1.

10.32 The Commission is of the opinion that the evidence supports consideration being given to the prosecution of Blake for perjury pursuant to section 327 of the *Crimes Act 1900*. However, the decision of the High Court of Australia in *The Queen v Carroll*,[1615] delivered after the Commission's hearing, suggests that such a prosecution would not be available.

[1611] PIC Transcript, N1, 11 September 2002, p. 5292
[1612] PIC Transcript, N1, 11 September 2002, pp. 5295-5296
[1613] PIC Exhibit 698B
[1614] PIC Transcript, F7, 10 September 2002, p. 5241-5242, 5243-5245; PIC Transcript, N1, 11 September 2002, p. 5320; PIC Transcript, M5, 12 September 2002, p. 5361-5362
[1615] *The Queen v Carroll* [2002] HCA 55 (5 December 2002)

10.33 In any event following the public hearings in this segment and prior to the completion of this Report, NSW Police sent a brief of evidence in relation to Blake to the ODPP for consideration of possible criminal charges. The ODPP recommended that the charge of perjury was not available and there was insufficient evidence to support any other charges.

10.34 In the circumstances the Commission is of the opinion that further consideration **should not** be given to the prosecution of Blake for any criminal offences.

10.35 Blake is no longer a serving police officer. Accordingly the question of taking action pursuant to subsections 97(2)(c) and (d) of the Act does not arise.

STEPHEN ANTHONY BRIDGES

LET'S DANCE SEGMENT

10.36 Bridges is an affected person because he is the subject of the substantial allegation that all police officers from both Manly Detectives and MCSN who were involved in the arrest of A1 and P1 entered into an agreement to share money corruptly taken during Operation Let's Dance.

10.37 There is no evidence that Bridges took, or received, money corruptly taken during Operation Let's Dance, or that he had any knowledge that any money was corruptly taken by police during the course of the Operation. There is no evidence he had any involvement in the Operation on 5 February 1992 or indeed after the search warrant was executed on P1's premises on the afternoon of 4 February 1992. No evidence was given by N1, F7 or M7 that raised any concerns about his role in the matter. The Commission is of the opinion therefore that consideration **should not** be given to the prosecution of Bridges for any criminal offence.

10.38 Bridges is a serving officer so it is necessary to consider the issues raised in subsections 97(2)(c) and (d) of the Act. In doing so the evidence he gave to the Commission may be considered. While it might be thought he would have had a better recollection of the events of 4 February 1992, he was a relatively junior officer at the time, was not in charge of the investigation, had a limited role to play in it, and on the evidence, took no role in it on 5 February 1992. Therefore the Commission is of the opinion that consideration **should not** be given to the taking of action against Bridges under subsections 97(2)(c) or (d) of the Act.

LEE KEVIN BROWN

MAGNUM SEGMENT

10.39 Brown is an affected person because he is the subject of the substantial allegation that he threatened Yabsley.

10.40 Yabsley gave evidence of an approach to him by a detective prior to him giving evidence against Davidson. He said the detective spoke to him in a way he perceived to be a threat. As a result of the approach Yabsley contacted Internal Affairs to discuss his security and visited his local doctor who prescribed him a course of antidepressants. Although the file note[1616] made by the Internal Affairs officer notes that Yabsley said the conversation was with Brown, when he gave evidence at the Commission, Yabsley could not recall the name of the detective who approached him, although he thought he was related to Davidson.[1617] Yabsley later told the Commission that he thought Brown made the approach to him but he could not be certain.[1618]

10.41 While the available evidence, particularly the file note of Yabsley's contact with Internal Affairs, raises a suspicion that the approach to Yabsley was made by Brown, the Commission is of the opinion that consideration **should not** be given to the prosecution of Brown for any criminal offence.

10.42 Brown is a serving officer so it is necessary to consider the issues raised in subsections 97(2)(c) and (d) of the Act. In doing so the evidence he gave to the Commission may be considered. Brown admitted to having a conversation with Yabsley about Davidson but denied that his contribution to the conversation could have been perceived as a threat. Brown said that Yabsley, who knew him, instigated the conversation and that Yabsley told him that he was giving evidence in the Davidson matter. Brown said that the conversation was friendly and that he didn't say much because he didn't want to get involved. Brown's evidence was that he had known Yabsley since 1997 because they had worked together.[1619] In contrast Yabsley's evidence was that he did not know the detective who approached him and had never seen him since that day.[1620]

10.43 Given the conflicting accounts of the conversation, Brown's denial that the conversation was other than friendly, and Yabsley's inability to identify the detective who approached him the Commission is of the opinion that consideration **should not** be given to the taking of action against Brown pursuant to subsections 97(2)(c) or (d) of the Act.

[1616] PIC Exhibit 861B
[1617] PIC Transcript, TW Yabsley, 9 September 2002, pp. 5205-5206
[1618] PIC Transcript, TW Yabsley, 10 September 2002, p. 5220
[1619] PIC Transcript, LK Brown, 14 October 2002, pp. 5791-5793
[1620] PIC Transcript, TW Yabsley, 9 September 2002, p. 5206

VINCENT CACCAMO

NORTHERN BEACHES SEGMENT

10.44 Caccamo is an affected person because he is the subject of the substantial allegation that he supplied prohibited drugs.

10.45 Caccamo is a civilian. In terms of subsection 97(2) of the Act the only relevant matter is whether or not the Commission is of the opinion that consideration should be given to the prosecution of Caccamo for specified criminal offences.

10.46 Following the Commission's hearing Caccamo was charged with a number of drug related offences and eventually pleaded guilty to two counts of supplying heroin pursuant to subsection 25(2) of the *Drug Misuse and Trafficking Act 1985* and one charge of supplying cannabis pursuant to subsection 25(1) of the *Drug Misuse and Trafficking Act 1985.* Three further charges were taken into account on sentencing: two charges of supplying heroin pursuant to subsection 25(1) of the *Drug Misuse and Trafficking Act 1985* and a charge of receiving stolen property pursuant to section 188 of the *Crimes Act 1900.* He was sentenced on 30 May 2002 to eight years imprisonment with a non-parole period of five years. Caccamo received a significant discount on his sentence for the assistance he provided. The Judge indicated that but for his assistance he would have received 15 years imprisonment.

10.47 The Commission is of the opinion that consideration **should not** be given to the prosecution of Caccamo for any further criminal offences arising from Operation Florida.

VIVIENNE ALEXA CRAWFORD

LET'S DANCE SEGMENT

10.48 Crawford is an affected person because she is the subject of the substantial allegation that a payment of corruptly obtained money was made to her following Operation Let's Dance. The only directly admissible evidence against her is the evidence of F7 that on the morning after the Operation, some money that had been corruptly obtained was placed in her duty book. F7 also said that he observed her reaction when she found the money and noted it to be one of surprise. The evidence is that she played no role whatsoever in the Operation. There is no evidence she was ever told, or ever had any knowledge of, the source of the money. It is the opinion of the Commission that consideration **should not** be given to the prosecution of Crawford for any criminal offence arising out of the evidence before the Commission.

10.49 Crawford is a serving officer so it is necessary to consider the issues raised in subsections 97(2)(c) and (d) of the Act. In doing so the evidence she gave to the Commission may be considered. While it might be thought that this was a matter that an officer would never forget, if it happened, bearing in mind the length of time that has passed, the fact that Crawford was not involved at all in Operation Let's Dance and was not in the Armed Hold-Up Unit or the Organised Crime Unit, it is at least understandable that she might genuinely not recall that the incident occurred. Her position concerning recollection is considerably different from others who were involved in the Operation. When giving her evidence before the Commission Crawford had the demeanour of someone endeavouring to give truthful evidence. She gave frank evidence about the nature of the working environment she found herself in during the time she was at MCSN. In light of her sworn denial, and the matters mentioned earlier, the Commission is of the opinion that consideration **should not** be given to the taking of action against Crawford under subsections 97(2)(c) and (d) of the Act.

SHAUN ANDREW DAVIDSON

NORTHERN BEACHES SEGMENT

10.50 Davidson is an affected person because he is the subject of a number of substantial allegations, namely that he:

- received bribes;
- was an accessory after the fact knowing Patison had committed the serious indictable offence of stealing cash;
- received stolen property i.e. cash; and
- committed certain actions and omissions with the intention of perverting the course of justice.

10.51 The Commission considers that Davidson engaged in police misconduct: subsection 16(1)(a) of the Act.

10.52 On 15 January 2002 Davidson was charged with four counts of accepting bribes pursuant to subsection 200(1) of the *Police Act 1990*. He pleaded guilty on all counts and on 16 August 2002 was sentenced to 18 months imprisonment concurrent on each, with a non-parole period of 12 months. He appealed to the District Court, which confirmed the sentence on 3 October 2002, but reduced the non-parole period to nine months. Issues of assistance to authorities were taken into account on sentence.

10.53 The Commission is of the opinion that consideration **should not** be given to the prosecution of Davidson for any further criminal offences arising from Operation Florida.

10.54 Davidson was suspended with pay from NSW Police on 8 October 2001 and without pay from 20 December 2001. He resigned on 14 January 2002. Accordingly the question of taking action pursuant to subsections 97(2)(c) and (d) of the Act does not arise.

10.55 In May 2002 the Commission commenced proceedings in the Supreme Court of New South Wales under the *Criminal Assets Recovery Act 1990* against Davidson. On 27 May 2002 the Supreme Court ordered that Davidson pay the Treasurer the sum of $1,100. The money was paid on 30 May 2002.

JOHN STUART DAVIDSON

MAGNUM SEGMENT

10.56 Davidson is an affected person because he is the subject of the substantial allegations that:

- he, together with N1 and Irwin, fabricated the adoption of the record of interview alleged to have been held between N1 and C11;
- he made a false statement in relation to the arrest and interview of C11 and perjured himself when he gave evidence in accordance with that statement;
- he perjured himself when he gave evidence at his trial in March 2000; and
- members of Task Force Magnum, including Davidson were prepared to do anything necessary to obtain convictions, including "loading" and "verballing" or both.

10.57 The Commission considers that Davidson engaged in police misconduct: subsection 16(1)(a) of the Act.

10.58 Davidson was directly involved in the arrest and charging of C11 in that he performed the adoption of the record of interview. The admissible evidence against Davidson in this matter is that of N1, C11, F7, M5 and Yabsley. Their evidence is supported by that of C12.

10.59 C11 has always stated that he did not make any admissions of complicity in the robbery at La Perouse and that he was verballed and loaded. He told the officer in the charge room (Yabsley) that N1 and Irwin had not interviewed him.[1621] C11 noted his recollection of the events in a document dated 7 March 1991.[1622] In that document he stated that no interview was conducted.

10.60 Yabsley confirmed that C11 told him that he did not participate in a record of interview. He gave evidence that when C11 was brought to the charge

[1621] PIC Transcript, C11, 9 September 2002, pp. 5173-5174
[1622] PIC Exhibit 698B

room he registered C11's property. C11 did not have a copy of the record of interview with him at that time. Some time later a detective handed some more documents to Yabsley and requested they be added to C11's property. These documents contained the record of interview. Yabsley said that it was at this early stage that C11 stated that he had not taken part in any record of interview.[1623]

10.61 N1 gave evidence that Davidson had direct knowledge of the loading and verballing of C11. In fact he said that Davidson put pressure on him to load and verbal C11 by saying to him that if N1 didn't do it he, Davidson, would. N1 said further that once the record of interview was completed he called Davidson to come to Burwood Police Station to adopt the interview. This was because C11 was known to the police officers at Burwood so N1 could not ask any of them to adopt the interview. N1 also said that Davidson had lied when he gave evidence in relation to the adoption. In relation to their own trial N1 said an agreement was reached between himself, Davidson, Irwin and Blake to hold the line and maintain the lies that had been given at C11's committal hearing.[1624]

10.62 C12, C11's brother, who was a NSW police officer at the time these events took place, supported the allegation that C11 was verballed and loaded. C12 said that on the day he was arrested C11 protested his innocence and denied that he had participated in a record of interview. C12 also stated that he doubted the authenticity of the record of interview.[1625]

10.63 The allegations against Davidson receive general support from the evidence of F7, M5 and N1 about the approach and methods of Task Force Magnum.[1626]

10.64 Davidson denied that he was involved in the conduct as alleged by F7, M5, N1 and C11.

10.65 The Commission is of the opinion that the evidence supports consideration being given to the prosecution of Davidson for perjury pursuant to section 327 of the *Crimes Act 1900*. However, the decision of the High Court of Australia in *The Queen v Carroll*,[1627] delivered after the Commission hearing, suggests that such a prosecution would not be available.

10.66 In any event following the public hearings in this segment and prior to the completion of this Report, NSW Police sent a brief of evidence to the ODPP in relation to Davidson for consideration of possible criminal charges. The ODPP recommended that the charge of perjury was not available and there was insufficient evidence to support any other charges.

[1623] PIC Transcript, TW Yabsley, 9 September 2002, pp. 5196-5198
[1624] PIC Transcript, N1, 11 September 2002, pp. 5289-5290, 5297, 5299-5302, 5310-5311, 5325-5327
[1625] PIC Transcript, C12, 12 September 2002, pp. 5381-5383
[1626] PIC Transcript, F7, 10 September 2002, pp. 5241-5242, 5243-5245; PIC Transcript, N1, 11 September 2002, p. 5320; PIC Transcript, M5, 12 September 2002, pp. 5361-5362
[1627] *The Queen v Carroll* [2002] HCA 55 (5 December 2002)

10.67 In the circumstances the Commission is of the opinion that further consideration **should not** be given to the prosecution of Davidson for any criminal offences.

10.68 Davidson is no longer a serving police officer. Accordingly the question of taking action pursuant to subsections 97(2)(c) and (d) of the Act does not arise.

KIM DOWDING

GUNS SEGMENT

10.69 Dowding is an affected person because he is the subject of the substantial allegations that:

- he was aware of and / or participated in the collection and retention of a stash of weapons at the offices of MCSN at Chatswood, ("the stash");
- he participated in the use of weapons and other items to load and / or verbal alleged offenders, ("the loads"); and
- he, together with M5 dumped the stash of weapons into the Hawkesbury River, ("the dump").

10.70 The Commission considers that Dowding engaged in police misconduct: subsection 16(1)(a) of the Act.

10.71 The admissible evidence against Dowding is primarily that of M5, F7, N1 and the recorded listening device conversations in which he was a participant. In relation to the specific instances of loads and verbals, there is also the additional evidence of the civilian, P2.

10.72 In relation to the dump the Commission prefers the evidence of M5 together with the listening device material and handwritten note to the version given by Dowding. Dowding's concession that the dump was merely an exercise in disposing of what may have been "demonstration weapons" is untenable. There is abundant evidentiary material that supports the existence of the stash and it being the subject of the dump.

10.73 Similarly the admissible evidence also supports the view that Dowding was aware of the existence of the stash and the practice of retaining firearms for the purposes of loads. The Commission does not accept Dowding's version of the load of P2. The admissible evidence of P2, N1, M5 and the recorded conversations in which Dowding participated are cogently persuasive of far greater and damning participation than he was prepared to concede before the Commission. In addition Dowding's (and Ehsman's) version of the load of A2 is not accepted. The admissible evidence of F7 and M5 is preferred.

10.74 In relation to the stash and the dump the relevant offences are Possess Prohibited Weapons (*Prohibited Weapons Act 1989*) and Possess Prohibited

Firearms (*Firearms Act 1989*). The Commission is of the opinion that consideration **should not** be given to the prosecution of Dowding for these offences because they are statute barred.

10.75 The Commission is of the opinion, however, that the evidence supports consideration being given to the prosecution of Dowding for the following criminal offences:

"Wogs Out of Work" Operation - P2

- Conspiracy to commit an act intending to pervert the course of justice (sections 319 and 342, *Crimes Act 1900*)
- Commit certain actions and / or omissions with the intention to pervert the course of justice (section 319, *Crimes Act 1900*)
- Fabricate / knowingly make use of false evidence (section 317, *Crimes Act 1900*)
- Perjury with intent to procure conviction (section 328, *Crimes Act 1900*)
- Make false instrument (subsection 300(1), *Crimes Act 1900*)
- Use false instrument (subsection 300(2), *Crimes Act 1900*)

Hawkesbury River Escapee – Arrest and Charging of A2

- Conspiracy to commit an act intending to pervert the course of justice (sections 319 and 342, *Crimes Act 1900*)
- Commit certain actions and / or omissions with the intention to pervert the course of justice (section 319, *Crimes Act 1900*)
- Fabricate / knowingly make use of false evidence (section 317, *Crimes Act 1900*)
- Perjury with intent to procure conviction (section 328, *Crimes Act 1900*)
- Make false instrument (subsection 300(1), *Crimes Act 1900*)
- Use false instrument (subsection 300(2), *Crimes Act 1900*)

10.76 Following the public hearings in this segment and prior to the completion of this Report, NSW Police gave consideration to the question of criminal prosecution. NSW Police advised the Commission that there is insufficient evidence to proceed. The Commission notes that P2, who gave evidence on 14 June 2002, passed away in September 2003.

10.77 NSW Police also gave consideration to the preparation of a brief of evidence against Dowding in relation to the Hawkesbury River Escapee incident. A decision was made to take no further action. The reasons for this decision included the age of the matter, the lack of corroborating evidence, the facts

that the victim is deceased and Dowding is no longer a serving officer, and the discrepancies in the versions of the incident given by the participants.

10.78 In the circumstances the Commission is of the opinion that further consideration **should not** be given to the prosecution of Dowding for any criminal offences.

10.79 Dowding was a serving officer at the time he gave evidence. Following the public hearings in this segment and prior to the completion of this Report, NSW Police investigated this matter. A recommendation was made that consideration be given to taking action against Dowding pursuant to section 181D of the *Police Act 1990*. However prior to this process commencing Dowding was granted medical discharge. He left NSW Police in July 2003. Accordingly the question of taking action pursuant to subsections 97(2)(c) and (d) of the Act does not arise.

MAGNUM SEGMENT

10.80 Dowding is an affected person because he is the subject of the substantial allegations that:

- he, together with Wrice, F7, M5 and King agreed to pervert the course of justice and did so by fabricating evidence, specifically the false police identification, against Stuart;
- he made a false statement in relation to the arrest and interview of Stuart and perjured himself when he gave evidence in accordance with that statement; and
- members of Task Force Magnum, including Dowding were prepared to do anything necessary to obtain convictions, including "loading", "verballing" or both.

Dowding did not give evidence in this segment due to ill health however he was legally represented.

10.81 The Commission considers that Dowding engaged in police misconduct: subsection 16(1)(a) of the Act.

10.82 The admissible evidence against Dowding is that of F7 and M5. M5 gave evidence that Dowding supplied the badge used in the creation of the false police identification and that it was Dowding, along with King, who was assigned to "find" the items during the search of Stuart's residence.[1628] F7's evidence was that Dowding was one of the group of officers who organised to load Stuart with the false police identification and to verbal him.[1629]

10.83 The general evidence of N1 supports the evidence of both M5 and F7, that all the officers involved in the search had knowledge of the plans to load and

[1628] PIC Transcript, M5, 12 September 2002, pp. 5352-5353
[1629] PIC Transcript, F7, 10 September 2002, pp. 5225, 5226, 5228

verbal Stuart.[1630] The allegations also receive general support from the evidence of F7, M5 and N1 about the approach and methods of Task Force Magnum.[1631]

10.84 The Commission is of the opinion that the evidence supports consideration being given to the prosecution of Dowding for perverting the course of justice pursuant to section 319 of the *Crimes Act 1900*.

10.85 Following the public hearings in this segment and prior to the completion of this Report, NSW Police sent a brief of evidence to the ODPP in relation to Dowding for consideration of possible criminal charges. The ODPP recommended that no charges be laid.

10.86 In the circumstances the Commission is of the opinion that further consideration **should not** be given to the prosecution of Dowding for any criminal offences.

10.87 Dowding is no longer a serving police officer (see paragraph 10.79). Accordingly the question of taking action pursuant to subsections 97(2)(c) and (d) of the Act does not arise.

WAYNE JAMES EADE

NEWPORT SEGMENT

10.88 Eade is an affected person because he is the subject of the substantial allegations that police from both the North Sydney Drug Unit (NSDU) and Gosford Drug Unit (GDU) of Major Crime Squad North:

- entered into a corrupt agreement to share money, being $10,000, stolen from L17 during the execution of a search warrant on 21 February 1992, at premises occupied by L17;
- entered into a corrupt agreement to share $50,000, paid by L17 to police, for assistance provided to her in respect of the matters with which she was charged;
- stole a gold ingot from L17; and
- corruptly assisted L17 in relation to the charges brought against her and thereby perverted the course of justice.

10.89 The admissible evidence against Eade consists of the evidence of M5, L17 and the duty book entries that establish that Eade was one of the officers involved in the execution of the search warrants at both the West Ryde and the Newport premises.

[1630] PIC Transcript, N1, 11 September 2002, p. 5289
[1631] PIC Transcript, F7, 10 September 2002, pp. 5241-5242, 5243-5245; PIC Transcript, N1, 11 September 2002, p. 5320; PIC Transcript, M5, 12 September 2002, pp. 5361-5362

10.90 The Commission is of the opinion that there is insufficient evidence to confirm the allegations in relation to the stealing of the gold ingot and the sharing of the money stolen from the Newport premises. Although L17 gave evidence that the money and the gold ingot were stolen she was not able to say who stole the money and the ingot. M5 gave evidence that the ingot and $10,000 were stolen but he did not know who stole the ingot and the money, did not see the ingot or the money either before or after they were stolen, and, although he received $1,000 from Hill on the day after the ingot and money were alleged to have been stolen, M5 could not confirm that the money he received was his one tenth of the $10,000. All of the other involved officers denied stealing the ingot and the $10,000 and receiving a tenth share of it. Therefore the Commission is of the opinion that consideration **should not** be given to the prosecution of Eade for any criminal offence in relation to the stealing of the gold ingot and $10,000 or the receipt of a tenth share of it.

10.91 M5's evidence in relation to the payment of $50,000 is hearsay and there is no positive link between L17 and the alleged payment of $5,000 to M5. Although S7 gave evidence that L17 told him she was paying police he was not able to indicate an amount. L17 denied paying the police, or making any arrangement for money to be paid to the police to assist her. She denied knowledge of any payment on her behalf and denied telling S7 that she was paying police. N1's knowledge of the payment came from M5 so it is not corroborative of M5's allegation. In the absence of any corroboration, M5's allegation cannot be relied upon. Therefore the Commission is of the opinion that consideration **should not** be given to the prosecution of Eade for any offence in relation to the alleged receipt of a tenth of $50,000.

10.92 There is no evidence to suggest that Eade was involved in the fabrication of the record of interview with L17. In addition he did not give evidence at the trial of L17. There is therefore no evidence to suggest the involvement of Eade in the assistance provided to L17 by police. The Commission is of the opinion that consideration **should not** be given to the prosecution of Eade for the offence of perverting the course of justice.

10.93 Eade is no longer a serving police officer. Accordingly the question of taking action pursuant to subsections 97(2)(c) and (d) of the Act does not arise.

PETER JOHN EHSMAN

GUNS SEGMENT

10.94 Ehsman is an affected person because he is the subject of the substantial allegation that he participated in the load and related verbal of an offender, A2.

10.95 The Commission considers that Ehsman engaged in police misconduct: subsection 16(1)(a) of the Act.

10.96 The admissible evidence against Ehsman is that of M5 and F7. This related to a specific allegation of a load and related verbal upon A2. Where the evidence of Ehsman (and Dowding) is in conflict with that of F7 and M5, the latter is preferred.

10.97 In relation to the arrest and charging of A2 the Commission is of the opinion that the evidence supports consideration being given to the prosecution of Ehsman for the following criminal offences:

- Conspiracy to commit an act intending to pervert the course of justice (sections 319 and 342, *Crimes Act 1900*)
- Commit certain actions and / or omissions with the intention to pervert the course of justice (section 319, *Crimes Act 1900*)
- Fabricate / knowingly make use of false evidence (section 317, *Crimes Act 1900*)
- Perjury with intent to procure conviction (section 328, *Crimes Act 1900*)
- Make false instrument (subsection 300(1), *Crimes Act 1900*)
- Use false instrument (subsection 300(2), *Crimes Act 1900*)

10.98 Following the public hearings in this segment and prior to the completion of this Report, NSW Police gave consideration to the preparation of a brief of evidence against Ehsman in relation to the Hawkesbury River Escapee incident. A decision was made to take no further action. The reasons for this decision included the age of the matter, the lack of corroborating evidence, the facts that the victim is deceased and Ehsman is no longer a serving officer, and the discrepancies in the versions of the incident given by the participants.

10.99 In the circumstances the Commission is of the opinion that further consideration **should not** be given to the prosecution of Ehsman for any criminal offences.

10.100 Ehsman is no longer a serving police officer. Accordingly the question of taking action pursuant to subsections 97(2)(c) and (d) of the Act does not arise.

F7

GUNS SEGMENT

10.101 F7 is an affected person because he is the subject of the substantial allegations that:

- he participated in the collection and retention of a stash of weapons at the offices of MCSN at Chatswood, ("the stash");

- he participated in the use of weapons and other items to load and / or verbal alleged offenders, ("the loads"); and
- he was aware of the dumping of a stash of weapons into the Hawkesbury River by former and current officers of NSW Police, ("the dump").

10.102 The Commission considers that F7 engaged in police misconduct: subsection 16(1)(a) of the Act.

10.103 In relation to the dump and the stash of weapons at the offices of MCSN, the admissible evidence against F7 is that of M5 and N1. In relation to the loading of A2 the admissible evidence against F7 is that of M5. The recorded listening device conversations in which F7 participates are also admissible against him. The admissions F7 made are not admissible against him.

10.104 In relation to the stash and the dump the relevant offences are Possess Prohibited Weapons (*Prohibited Weapons Act 1989*) and Possess Prohibited Firearms (*Firearms Act 1989*). The Commission is of the opinion that consideration **should not** be given to the prosecution of F7 for these offences because they are statute barred.

10.105 In relation to the arrest and charging of A2 the Commission is of the opinion that the evidence supports consideration being given to the prosecution of F7 for the following criminal offences:

- Conspiracy to commit an act intending to pervert the course of justice (sections 319 and 342, *Crimes Act 1900*)
- Commit certain actions and / or omissions with the intention to pervert the course of justice (section 319, *Crimes Act 1900*)
- Fabricate / knowingly make use of false evidence (section 317, *Crimes Act 1900*)
- Perjury with intent to procure conviction (section 328, *Crimes Act 1900*)
- Make false instrument (subsection 300(1), *Crimes Act 1900*)
- Use false instrument (subsection 300(2), *Crimes Act 1900*)

10.106 Following the public hearings in this segment and prior to the completion of this Report, NSW Police gave consideration to the preparation of a brief of evidence against F7 in relation to the Hawkesbury River Escapee incident. A decision was made to take no further action. The reasons for this decision included the age of the matter, the lack of corroborating evidence, the facts that the victim is deceased and F7 is no longer a serving officer, and the discrepancies in the versions of the incident given by the participants.

10.107 In the circumstances the Commission is of the opinion that further consideration **should not** be given to the prosecution of F7 for any criminal offences.

10.108 F7 is no longer a serving police officer. Accordingly the question of taking action pursuant to subsections 97(2)(c) and (d) of the Act does not arise.

LET'S DANCE SEGMENT

10.109 F7 is an affected person because he is the subject of the substantial allegations that all police officers from both Manly Detectives and MCSN who were involved in the arrest of A1 and P1 entered into an agreement to share money corruptly taken during Operation Let's Dance, that payments were also made to other nominated officers who were not involved in the Operation, and that false documentation was deliberately prepared for use in the prosecution of A1 and P1.

10.110 The Commission considers that F7 engaged in police misconduct: subsection 16(1)(a) of the Act.

10.111 F7's admissions given in evidence cannot be used against him. The admissible evidence against F7 is the evidence of A1, P1, K2, C2, and N1, F7's admissions contained in the recorded conversations in which he took part, and his duty book entries showing his involvement in the Operation on 4 and 5 February 1992. The evidence is that part of the money found in K2's bag on 5 February 1992 was stolen and that F7 was a party to a joint criminal enterprise that had as its objective the stealing of that money from K2. The admissible evidence against F7 also gives rise to an inference that he was not only party to a conspiracy to pervert the course of justice, (being the preparation of documentation concerning the arrest of A1 and P1 which deliberately understated the amount of cash found at the time of their arrest) but did in fact prepare such documentation with knowledge that it was false. The Commission is of the opinion that the evidence supports consideration being given to the prosecution of F7 for the following criminal offences:

- Steal Money from the Person of K2 under section 94 of the *Crimes Act 1900* on the basis that F7 was party to a joint criminal enterprise which had as its objective the stealing of money from K2;
- Larceny under section 117 of the *Crimes Act 1900* of the money from K2 on the same basis; and
- Conspiracy to Do an Act Intending to Pervert the Course of Justice in breach of sections 319 and 342 of the *Crimes Act 1900*. The conspiracy had as its object the preparation of documentation for use in the prosecution of A1 and P1 that deliberately understated the amount of money that was seized during the course of their respective arrests.

10.112 Following the public hearings in this segment and prior to the completion of this Report, NSW Police forwarded a submission to the ODPP seeking

advice as to the sufficiency of evidence to commence criminal proceedings against F7. The ODPP recommended that no criminal proceedings be commenced.

10.113 In the circumstances the Commission is of the opinion that further consideration **should not** be given to the prosecution of F7 for any criminal offences.

10.114 F7 is no longer a serving police officer. Accordingly the question of taking action pursuant to subsections 97(2)(c) and (d) of the Act does not arise.

MAGNUM SEGMENT

10.115 F7 is an affected person because he is the subject of the substantial allegations that:

- he, together with Wrice, M5, King and Dowding agreed to pervert the course of justice and did so by fabricating evidence, specifically the false police identification, against Stuart;
- with Wrice he fabricated an interview allegedly held between Wrice and Stuart;
- he, together with Bernasconi, Wrice, and M5 fabricated the adoption of the interview alleged to have taken place between Wrice and Stuart;
- he made a false statement in relation to the arrest and interview of Stuart and perjured himself when he gave evidence in accordance with that statement; and
- members of Task Force Magnum, including F7 were prepared to do anything necessary to obtain convictions, including "loading" and "verballing" or both.

10.116 The Commission considers that F7 engaged in police misconduct: subsection 16(1)(a) of the Act.

10.117 F7's admissions of misconduct made in evidence cannot be used against him. The evidence of N1 and M5 is however admissible against him. N1 gave evidence that everyone involved in the investigation knew that Stuart was to be verballed and loaded with the false police identification.[1632]

10.118 M5 said that F7 was present at the briefing at which the creation of the false police identification and the verballing of Stuart were discussed. He also said that he was aware that Wrice and F7 verballed Stuart, although he wasn't present at the relevant time, and that F7 later confirmed to him that he had verballed Stuart.[1633]

[1632] PIC Transcript, N1, 11 September 2002, pp. 5288-5289
[1633] PIC Transcript, M5, 12 September 2002, pp. 5351-5353, 5356-5357, 5359-5360

10.119 The general evidence of N1 and M5 about the approach and methods of Task Force Magnum also support the allegations against F7.[1634]

10.120 The Commission is of the opinion that the evidence supports consideration being given to the prosecution of prosecution of F7 for perverting the course of justice pursuant to section 319 of the *Crimes Act 1900*.

10.121 Following the public hearings in this segment and prior to the completion of this Report, NSW Police considered the admissible evidence against F7 with a view to preparing a brief of evidence against him. It was decided that there was insufficient admissible evidence to prepare a brief against F7.

10.122 In the circumstances the Commission is of the opinion that further consideration **should not** be given to the prosecution of F7 for any criminal offences.

10.123 F7 is no longer a serving police officer. Accordingly the question of taking action pursuant to subsections 97(2)(c) and (d) of the Act does not arise.

MARTIN GEOFFREY GREEN

NORTHERN BEACHES SEGMENT

10.124 Green is an affected person because he is the subject of allegations of improper conduct as a solicitor in relation to his dealings with police and Benbow.

10.125 Green is a civilian. In terms of subsection 97(2) of the Act the only relevant matter is whether or not the Commission is of the opinion that consideration should be given to the prosecution of Green for specified criminal offences.

10.126 In the conference with Benbow on 14 November 2000 Green indicated a willingness to be involved in an agreement with Benbow to defraud the Commissioner of Taxation of revenue. There is in fact, in that conversation, an agreement reached between Benbow and Green to defraud the Commissioner of Taxation on the two bases discussed earlier in this Report. But for the fact that Benbow was at that point in time a registered informant acting under the instructions of the NSW Crime Commission, and, therefore, did not have the appropriate mens rea to enter into any such agreement with Green, consideration would need to have been given to the prosecution of Green for the offence of Conspiracy to Defraud the Commonwealth under section 86 of the *Crimes Act 1914 (Cth)*. In the circumstances, however, the Commission is of the opinion that there is insufficient evidence for the Commission to form an opinion that consideration should be given to prosecuting Green for such an offence.

[1634] PIC Transcript, N1, 11 September 2002, p. 5320; PIC Transcript, M5, 12 September 2002, pp. 5361-5362

10.127 Section 319 of the *Crimes Act 1900* provides as follows:

> A person who does any act, or makes any omission, intending in any way to pervert the course of justice, is liable to imprisonment for 14 years.

10.128 Pursuant to section 312 of the *Crimes Act 1900* the reference to perverting the course of justice is a reference to obstructing, preventing, perverting or defeating the course of justice or the administration of the law.

10.129 An act that has the tendency to deflect the police from prosecuting a criminal offence or instituting disciplinary proceedings before a judicial tribunal or from adducing evidence of the true facts is an act tending to pervert the course of justice and it is unnecessary that the prosecution prove that a particular offence has been committed or even that a charge has been laid; *R v Rogerson* (1992) 174 CLR 268. See also *R v Charles* (1998) NSWCCA unreported 23 March 1998 at pp 5, 14-15; and *Karageorge* (1998) 103 A Crim R 157 at pp. 159-160; 169-174 and 183-184.

10.130 Green was charged on 8 May 2002 and faced trial for the following three matters – count 1) Incitement of Benbow to bribe Patison and counts 2) and 3) Act with intent to pervert the course of justice. His trial commenced on Monday 7 April 2003. Green pleaded not guilty on each count. On 17 April 2003 a jury in the District Court at Sydney returned a verdict of "Not Guilty" on each count on the indictment.

10.131 The Law Society of New South Wales cancelled Green's practising certificate as a solicitor on 17 January 2002. On 6 February 2002 the Supreme Court of New South Wales refused an application for a stay of the cancellation pending an appeal. The appeal was later dismissed. The Law Society has advised the Commission that Green does not hold a current practising certificate.

10.132 The Commission is of the opinion that consideration **should not** be given to the prosecution of Green for any further criminal offences arising from Operation Florida.

HOWARD ROBERT GUMLEY

LET'S DANCE SEGMENT

10.133 Gumley is an affected person because he is the subject of the substantial allegation that all police officers from both Manly Detectives and MCSN who were involved in the arrest of A1 and P1 entered into an agreement to share money corruptly taken during Operation Let's Dance. The evidence that is directly admissible against him is that of N1 and F7, A1, K2, C2 and his duty book entries showing his involvement in the Operation on both days, and in particular that he and Nicholson were the first officers from MCSN to join the officers from Manly in the Operation on 4 February 1992.

10.134 There is no direct evidence from either N1 or F7 that they paid any of the corruptly taken money to Gumley, or ever discussed with him the payment of such money. They gave evidence that they understood that Gumley was someone who was to be paid money but their evidence does not support an inference that he actually was paid any money. There is also no direct evidence that he ever received any such money. There is no evidence he found any of the money, conveyed it to Manly Police Station or took part in its counting or securing. He did not provide a statement for the brief of evidence in relation to the arrest of A1 and P1. Although he was at Manly Police Station on the evening of 5 February 1992 and early in the morning of 6 February 1992, he was a relatively junior officer in terms of the investigation.

10.135 The evidence available to the Commission raises a suspicion that Gumley knew about the corrupt conduct that occurred, in particular on the evening of 5 February 1992, and that he might have been involved in it, in that he may have received part of the money corruptly taken. However the admissible evidence in respect of Gumley is such that the Commission is of the opinion that consideration **should not** be given to the prosecution of Gumley for any criminal offence.

10.136 As Gumley is a serving officer it is necessary to consider the issues raised in subsections 97(2)(c) and (d) of the Act. In doing so the evidence Gumley gave to the Commission may be considered. On the evidence he had a significant, although junior role, in the matter. Given the events that occurred at A1's premises and at Manly Police Station, and the notorious nature of the involvement of MCSN officers in the Operation, Gumley's lack of recollection of the events on 4 and 5 February 1992 is hard to accept. However Gumley was a junior officer at the time. He provided evidence to the Commission that due to his involvement, in 1985, as a witness for the prosecution in a matter in which NSW police officers were prosecuted he was considered by corrupt police officers as a person not to be trusted.[1635] This together with Gumley's absolute denial of involvement in the corrupt activities supports the Commission forming the opinion that consideration **should not** be given to the taking of action against Gumley pursuant to subsections 97(2)(c) or (d) of the Act.

MICHAEL ARTHUR HAGAN

LET'S DANCE SEGMENT

10.137 Hagan is an affected person because he is the subject of the substantial allegation that all police officers from both Manly Detectives and MCSN who were involved in the arrest of A1 and P1 entered into an agreement to share money corruptly taken during Operation Let's Dance.

[1635] PIC Exhibits 813, 814

10.138 There is no evidence that Hagan took or received money corruptly taken during the course of the Operation or that he knew of the fact that police under his command took or received any such money. Hagan had the most cursory of supervisory roles in relation to the Operation because although he was in charge of MCSN, the supervisory responsibility for the Operation at MCSN was with O'Toole and Smith. There is no evidence he was aware of any corrupt arrangement arrived at between Manly Detectives and officers of MCSN in relation to the sharing of money taken during the Operation. Therefore the Commission is of the opinion that consideration **should not** be given to the prosecution of Hagan for any criminal offence.

10.139 Hagan is no longer a serving police officer. Accordingly the question of taking action pursuant to subsections 97(2)(c) and (d) of the Act does not arise.

DAVID MARSHALL HILL

NORTHERN BEACHES SEGMENT

10.140 Hill is an affected person because he is the subject of a number of substantial allegations, namely that he:

- received a bribe;
- was an accessory after the fact knowing that Patison had committed the serious indictable offence of stealing $6,000 cash; and
- received stolen property, i.e. cash.

10.141 The Commission considers that Hill engaged in police misconduct: subsection 16(1)(a) of the Act.

10.142 On 17 January 2002 Hill was charged with receiving a corrupt reward pursuant to section 249B of the *Crimes Act 1900*. He pleaded not guilty but was convicted and on 3 April 2003 was sentenced to eight months imprisonment with a non-parole period of six months.

10.143 The Commission is of the opinion that consideration **should not** be given to the prosecution of Hill for any further criminal offences arising from Operation Florida.

10.144 Hill was suspended with pay from NSW Police on 8 October 2001 and without pay on 20 December 2001. He was nominated for action pursuant to section 181D of the *Police Act 1990* on 6 December 2001. He resigned on 25 March 2002 after being required to show cause why he should not be subject to section 181D action by the Commissioner of Police. Accordingly the question of taking action pursuant to subsections 97(2)(c) and (d) of the Act does not arise.

NEWPORT SEGMENT

10.145 Hill is an affected person because he is the subject of the substantial allegations that police from both the NSDU and GDU of Major Crime Squad North:

- entered into a corrupt agreement to share money, being $10,000, stolen from L17 during the execution of a search warrant on 21 February 1992, at premises occupied by L17;
- entered into a corrupt agreement to share $50,000, paid by L17 to police, for assistance provided to her in respect of the matters with which she was charged;
- stole a gold ingot from L17; and
- corruptly assisted L17 in relation to the charges brought against her and thereby perverted the course of justice.

10.146 The Commission considers that Hill engaged in police misconduct: subsection 16(1)(a) of the Act.

10.147 The admissible evidence against Hill consists of the evidence of M5, L17 and the recorded conversations. Those conversations indicate that Hill was aware of the theft of the gold ingot from the Newport premises. In one of the conversations Hill also said *"It's always been in equal parts"* although he denied that this referred to the sharing of money taken from suspects.

10.148 The Commission is of the opinion that there is insufficient evidence to confirm the allegations in relation to the stealing of the gold ingot and the sharing of the money stolen from the Newport premises. Although L17 gave evidence that the money and the gold ingot were stolen she was not able to say who stole the money and the ingot. M5 gave evidence that the ingot and $10,000 were stolen but he did not know who stole the ingot and the money, did not see the ingot or the money either before or after they were stolen, and, although he received $1,000 from Hill on the day after the ingot and money were alleged to have been stolen, M5 could not confirm that the money he received was his one tenth of the $10,000. All of the other involved officers denied stealing the ingot and the $10,000 and receiving a tenth share of it. Therefore the Commission is of the opinion that consideration **should not** be given to the prosecution of Hill for any criminal offence in relation to the stealing of the gold ingot and $10,000 or the receipt of a tenth share of it.

10.149 M5's evidence in relation to the payment of $50,000 is hearsay and there is no positive link between L17 and the alleged payment of $5,000 to M5. Although S7 gave evidence that L17 told him she was paying police he was not able to indicate an amount. L17 denied paying the police, or making any arrangement for money to be paid to the police to assist her. She denied knowledge of any payment on her behalf and denied telling S7 that she was paying police. N1's knowledge of the payment came from M5 so it is not

corroborative of M5's allegation. In the absence of any corroboration, M5's allegation cannot be relied upon. Therefore the Commission is of the opinion that consideration **should not** be given to the prosecution of Hill for any offence in relation to the alleged receipt of a tenth of $50,000.

10.150 The listening device evidence also provided corroboration of M5's evidence regarding Hill's involvement in the assistance provided to L17. M5 said that he and Hill fabricated the record of interview between themselves and L17. His evidence was also to the effect that the statements prepared by both himself and Hill for the prosecution, in that they adhered to the fabricated record of interview, were false and that they both therefore gave perjured evidence at the trial of L17. The Commission is of the opinion that the evidence supports consideration being given to the prosecution of Hill for perverting the course of justice pursuant to section 319 of the *Crimes Act 1900*.

10.151 Following the public hearings in this segment and prior to the completion of this Report, NSW Police gave consideration to the preparation of a brief of evidence against Hill. A decision was made to take no further action. The reasons for this decision were that there was insufficient evidence and a lack of corroborative evidence. In addition the duty book entries were inconsistent and L17 declined to assist.

10.152 In the circumstances the Commission is of the opinion that further consideration **should not** be given to the prosecution of Hill for any criminal offences.

10.153 Hill is no longer a serving police officer. Accordingly the question of taking action pursuant to subsections 97(2)(c) and (d) of the Act does not arise.

WAYNE HOLLIS

LET'S DANCE SEGMENT

10.154 Hollis is an affected person because he is the subject of the substantial allegation that all police officers from both Manly Detectives and MCSN who were involved in the arrest of A1 and P1 entered into an agreement to share money corruptly taken during Operation Let's Dance.

10.155 While Hollis is commended for voluntarily making himself available as a witness in this matter, the Commission does not accept the account he gave of his conduct, and the events of 4 February 1992, as being a reliable account. There is however no evidence he took or received any money corruptly taken during the course of the Operation or that he had any involvement in the Operation on 5 February 1992. There is no evidence he was aware of any corrupt arrangement entered into between Manly Detectives and MCSN in relation to the sharing of money taken during the course of the Operation. Therefore the Commission is of the opinion that

consideration **should not** be given to the prosecution of Hollis for any criminal offence arising out of the matters the subject of this segment of the hearing.

10.156 Hollis is no longer a serving police officer. Accordingly the question of taking action pursuant to subsections 97(2)(c) and (d) of the Act does not arise.

PAUL HULME

LET'S DANCE SEGMENT

10.157 Hulme is an affected person because he is the subject of the substantial allegations that all police officers from both Manly Detectives and MCSN who were involved in the arrest of A1 and P1 entered into an agreement to share money corruptly taken during Operation Let's Dance, and that false documentation was deliberately prepared for use in the prosecution of A1 and P1.

10.158 The Commission considers that Hulme engaged in police misconduct: subsection 16(1)(a) of the Act.

10.159 The admissible evidence against Hulme is the evidence of N1 and F7 together with the evidence of M7. The recorded conversations would not be admissible in criminal proceedings against him because he is not a party to them. The evidence of N1 and F7 suggests Hulme was central to the arrangement arrived at between officers from Manly Detectives and MCSN by which money was corruptly taken from P1 and A1 and shared. The evidence of M7 that when he first phoned Hulme on 4 February 1992 he referred to the fact that he had located a bag with money in it in the hotel room supports the evidence of N1 and F7 about Hulme's early knowledge of the money and his involvement in the corrupt arrangement. In addition M7's evidence of a conversation with Hulme in which Hulme impliedly suggested that money had been corruptly taken, and the further conversation in which Hulme stated that Manly Detectives wanted to take M7 out to lunch as a consequence of the referral of the matter to them, adds weight to the evidence against Hulme.

10.160 In relation to the second allegation it is acknowledged that Hulme did not himself prepare any documentation for use in the prosecution of A1 and P1. However by reason of his position as Chief of Manly Detectives, his role in the Operation over both days, and the evidence of N1 that it was with Hulme that the arrangement was made concerning the sharing of the money taken during both arrests, there is some evidence available to establish that Hulme knew about the preparation of such false documentation.

10.161 While the evidence raises a strong suspicion that Hulme was involved in the corrupt conduct that took place during this Operation, if not one of the

instigators of it, the admissible evidence is such that the Commission is of the opinion that consideration **should not** be given to the prosecution of Hulme any criminal offence in relation to this matter.

10.162 At the time he gave evidence Hulme was a serving officer however he was medically discharged from NSW Police on 2 January 2004. Accordingly the question of taking action pursuant to subsections 97(2)(c) and (d) of the Act does not arise.

ROBERT JAMES IRWIN

MAGNUM SEGMENT

10.163 Irwin is an affected person because he is the subject of the substantial allegations that:

- he, together with N1, agreed to pervert the course of justice and did so by fabricating evidence, specifically the loading of the blank Occupier's Notices, against C11;
- he fabricated admissions alleged to have been made by C11;
- he, together with N1 fabricated a record of interview allegedly held between C11 and N1;
- he, together with Davidson and N1 fabricated the adoption of the record of interview alleged to have been held between N1 and C11;
- he made a false statement in relation to the arrest and interview of C11 and perjured himself when he gave evidence in accordance with that statement; and
- he perjured himself when he gave evidence at his trial in March 2000.

10.164 The Commission considers that Irwin engaged in police misconduct: subsection 16(1)(a) of the Act.

10.165 The admissible evidence against Irwin is that of N1 and C11. N1 gave evidence that he discussed his plans, and the alternatives, with Irwin and by the end of the day before the search warrant was to be executed, Irwin and N1 had agreed to find the Occupier's Notices at C11's house during the search. N1 also said that prior to conducting the search of C11's house he spoke to Irwin and told him what was to take place and that it was his, Irwin's, job to find the Occupier's Notices at C11's house. N1 said that he spoke to Irwin about Blake, specifically he asked if Blake could be trusted not to reveal the illegal activities that were planned to take place.[1636]

10.166 N1 gave evidence that once at Burwood Police station C11 was left in a room with Blake while he and Irwin went to another room to type the record

[1636] PIC Transcript, N1, 11 September 2002, pp. 5291-5292

of interview. N1 said that he typed the record of interview with assistance from Irwin and that the written entries Irwin made in his notebook would have been dictated by N1.[1637]

10.167 N1's evidence was that Irwin lied in his evidence in his trial. He said the evidence Irwin gave about finding the Occupier's Notices at C11's house was false.[1638]

10.168 The allegations against Irwin receive support from the evidence of C11 who said he did not participate in a record of interview and complained to the custody sergeant, Yabsley, as soon as he was aware of the record of interview.[1639] C11's record of the events of 7 March 1991[1640] accords with N1's version as given in evidence to the Commission.

10.169 The allegations against Irwin also receive general support from the evidence of F7, M5 and N1 about the approach and methods of Task Force Magnum.[1641]

10.170 Irwin denied that he was involved in the conduct as alleged by F7, M5 and N1.

10.171 The Commission is of the opinion that the evidence supports consideration being given to the prosecution of Irwin for perjury pursuant to section 327 of the *Crimes Act 1900*. However, the decision the High Court of Australia in *The Queen v Carroll*,[1642] delivered after the Commission's hearing, suggests that such a prosecution would not be available.

10.172 In any event following the public hearings in this segment and prior to the completion of this Report, NSW Police sent a brief of evidence to the ODPP in relation to Irwin for consideration of possible criminal charges. The ODPP recommended that the charge of perjury was not available and there was insufficient evidence to support any other charges.

10.173 In the circumstances the Commission is of the opinion that further consideration **should not** be given to the prosecution of Irwin for any criminal offences.

10.174 Irwin is no longer a serving police officer. Accordingly the question of taking action pursuant to subsections 97(2)(c) and (d) of the Act does not arise.

[1637] PIC Transcript, N1, 11 September 2002, pp. 5296-5297, 5321
[1638] PIC Transcript, N1, 11 September 2002, pp. 5310, 5329-5330
[1639] PIC Transcript, C11, 9 September 2002, pp. 5173-5174
[1640] PIC Exhibit 698B
[1641] PIC Transcript, F7, 10 September 2002, pp. 5241-5242, 5243-5245; PIC Transcript, N1, 11 September 2002, p. 5320; PIC Transcript, M5, 12 September 2002, pp. 5361-5362
[1642] *The Queen v Carroll* [2002] HCA 55 (5 December 2002)

IAN FREDERICK ISON

NEWPORT SEGMENT

10.175 Ison is an affected person because he is the subject of the substantial allegations that police from both the NSDU and GDU of Major Crime Squad North:

- entered into a corrupt agreement to share money, being $10,000, stolen from L17 during the execution of a search warrant on 21 February 1992, at premises occupied by L17;
- entered into a corrupt agreement to share $50,000, paid by L17 to police, for assistance provided to her in respect of the matters with which she was charged;
- stole a gold ingot from L17; and
- corruptly assisted L17 in relation to the charges brought against her and thereby perverted the course of justice.

10.176 The admissible evidence against Ison consists of the evidence of M5, L17 and the duty book entries that establish that Ison was involved in the execution of the search warrants at both the West Ryde and the Newport premises. It is also relevant that Ison was the officer who sought and obtained the search warrants.

10.177 The Commission is of the opinion that there is insufficient evidence to confirm the allegations in relation to the stealing of the gold ingot and the sharing of the money stolen from the Newport premises. Although L17 gave evidence that the money and the gold ingot were stolen she was not able to say who stole the money and the ingot. M5 gave evidence that the ingot and $10,000 were stolen but he did not know who stole the ingot and the money, did not see the ingot or the money either before or after they were stolen, and, although he received $1,000 from Hill on the day after the ingot and money were alleged to have been stolen, M5 could not confirm that the money he received was his one tenth of the $10,000. All of the other involved officers denied stealing the ingot and the $10,000 and receiving a tenth share of it. Therefore the Commission is of the opinion that consideration **should not** be given to the prosecution of Ison for any criminal offence in relation to the stealing of the gold ingot and $10,000 or the receipt of a tenth share of it.

10.178 M5's evidence in relation to the payment of $50,000 is hearsay and there is no positive link between L17 and the alleged payment of $5,000 to M5. Although S7 gave evidence that L17 told him she was paying police he was not able to indicate an amount. L17 denied paying the police, or making any arrangement for money to be paid to the police to assist her. She denied knowledge of any payment on her behalf and denied telling S7 that she was paying police. N1's knowledge of the payment came from M5 so it is not corroborative of M5's allegation. In the absence of any corroboration, M5's

allegation cannot be relied upon. Therefore the Commission is of the opinion that consideration **should not** be given to the prosecution of Ison for any offence in relation to the alleged receipt of a tenth of $50,000.

10.179 There is no evidence to suggest that Ison was involved in the fabrication of the record of interview with L17. In addition he did not give evidence at the trial of L17. There is therefore no evidence to suggest the involvement of Ison in the assistance provided to L17 by police. The Commission is of the opinion that consideration **should not** be given to the prosecution of Ison for the offence of perverting the course of justice.

10.180 Ison is no longer a serving police officer. Accordingly the question of taking action pursuant to subsections 97(2)(c) and (d) of the Act does not arise.

MATTHEW JOHN JASPER

NORTHERN BEACHES SEGMENT

10.181 Jasper is an affected person because he is the subject of a number of substantial allegations, namely that he:

- received stolen property, both cash and goods;
- was an accessory before and after the fact knowing that serious indictable offences had been committed;
- committed certain actions and omissions with the intention to pervert the course of justice;
- solicited and received bribes;
- with Patison conspired to supply prohibited drugs;
- neglected his duty as a police officer;
- corruptly solicited and received cash;
- stole cash and property including during the execution of search warrants;
- hindered the investigation of and discovery of evidence concerning the serious indictable offences of supply prohibited drugs and break enter and steal;
- concealed the commission of the serious indictable offences of supply prohibited drugs and break enter and steal;
- solicited / accepted a benefit for himself and others so as to conceal the commission of the serious indictable offences of supply prohibited drug and break enter and steal;
- concealed evidence with intent to mislead a judicial tribunal;

- made a false official instrument (the search warrants containing false information);
- made a false instrument, i.e. police property receipt; and
- conspired with R1 to commit the serious indictable offence of break enter and steal.

10.182 The Commission considers that Jasper engaged in police misconduct: subsection 16(1)(a) of the Act.

10.183 Jasper was charged on 15 January 2002. He pleaded guilty to the following 13 counts on an indictment:

- five counts of perverting the course of justice pursuant to section 319 of the *Crimes Act 1900*;
- four counts of receiving / giving corrupt rewards pursuant to section 249B of the *Crimes Act 1900*;
- three counts of receive bribe pursuant to subsection 200(1) of the *Police Act 1990*; and
- one count of accessory before the fact to a break, enter and steal.

A further 13 offences were taken into account on sentence.

10.184 Jasper was sentenced in the Supreme Court of New South Wales on 11 April 2003 and received a sentence of seven years imprisonment with a non-parole period of five years. Assistance to authorities was taken into account on sentence. An appeal on the basis of inadequacy of sentence is pending in the New South Wales Court of Criminal Appeal.

10.185 Jasper was tried separately in relation to one charge of permitting the supply of a prohibited drug (heroin) pursuant to subsection 25(1) of the *Drug Misuse and Trafficking Act 1985*. He pleaded guilty and on 11 March 2004 was sentenced in the Supreme Court of New South Wales to five years imprisonment with a non-parole period of three years. The sentence will be served concurrently with his earlier sentence so will not increase Jasper's overall time in gaol.

10.186 The Commission is of the opinion that consideration **should not** be given to the prosecution of Jasper for any further criminal offences arising from Operation Florida.

10.187 Jasper was suspended from NSW Police on 8 October 2001 and resigned on 23 October 2001. Accordingly the question of taking action pursuant to subsections 97(2)(c) and (d) of the Act does not arise.

10.188 In October 2001 the Commission commenced proceedings in the Supreme Court of New South Wales under the *Criminal Assets Recovery Act 1990*

against Jasper. On 15 April 2002 the Supreme Court ordered that Jasper pay the Treasurer the sum of $39,517. The money was paid on 10 August 2002.

MICHAEL SCOTT KEMPNICH

LETTERS OF ASSISTANCE SEGMENT

10.189 Kempnich is an affected person because he is the subject of the following substantial allegations, namely that:

- in relation to the preparation of assistance documentation concerning P4, he did an act intending to pervert the course of justice;
- in relation to the preparation of assistance documentation concerning P6, he conspired to do an act intending to pervert the course of justice; and
- he stole money from P4's premises during a search on 28 June 1992.

10.190 The Commission considers that Kempnich engaged in police misconduct: subsection 16(1)(a) of the Act.

10.191 The Commission is of the opinion that the evidence is capable of supporting the conclusion that the document detailing the supposed assistance by P4 was signed by both Wilding and Kempnich with the intention to mislead the sentencing judge so that a lesser sentence would be imposed.

10.192 Although Kempnich did not sign P6's assistance documentation the Commission is of the belief that the evidence from P4 links Kempnich to the creation of the documents and to being a party to an agreement with P4 and Wilding which had as its object the creation of the document with the intention to mislead the sentencing judge so that a lesser sentence would be imposed.

10.193 P6's sentencing proceedings were held in Victoria. The New South Wales Court of Criminal Appeal decision in *Regina v Lowe*[1643] considered the scope of Part 7 of the *Crimes Act 1900*, (Public Justice Offences) and found that *"... The overwhelming implication from Part 7 as a whole is that it exists to protect the administration of justice in and of New South Wales"*. The court also considered the effect of section 12 of the *Interpretation Act 1987* and section 3A of the *Crimes Act 1900* and concluded that the matter or thing referred to in an Act must be *"in and of New South Wales"* thus requiring that the course of justice referred to in the relevant sections of Part 7 must be the course of justice in and of New South Wales. Thus in relation to Kempnich's actions and the letter of assistance for P6 the relevant offence for consideration is the Victorian offence rather than an offence under Part 7 of the *Crimes Act 1900*.

[1643] *Regina v Lowe* [2003] NSWCCA 150

10.194 The Commission is of the opinion that the evidence supports the allegation that police took money fraudulently and with no consent or claim of right from P4's premises with a clear intention to permanently deprive P4 of it.

10.195 The Commission is of the opinion that the evidence supports consideration being given to the prosecution of Kempnich for the offences of:

- doing an act intending to pervert the course of justice; section 319, *Crimes Act 1900;*
- conspiring to do an act intending to pervert the course of justice at Common Law (Victoria), and
- larceny at Common Law.

10.196 NSW Police sought advice, prior to the completion of this Report, from the ODPP regarding possible criminal proceedings against Kempnich. The ODPP advised that no proceedings should be commenced.

10.197 In the circumstances the Commission is of the opinion that further consideration **should not** be given to the prosecution of Kempnich for any criminal offences.

10.198 Due to the unsatisfactory nature of the evidence concerning the allegation made by P4 concerning Wilding and Kempnich and the alleged dealing with F3, the Commission is of the opinion that consideration **should not** be given to the prosecution of Kempnich for any criminal offence relating to this matter.

10.199 Kempnich is no longer a serving police officer. Accordingly the question of taking action pursuant to subsections 97(2)(c) and (d) of the Act does not arise.

GLENN WAYNE KENDALL

GUNS SEGMENT

10.200 Kendall is an affected person because he is the subject of the substantial allegation that:

- he participated in the loading and verballing of P2 following his arrest in August 1990.

10.201 The Commission considers that Kendall engaged in police misconduct: subsection 16(1)(a) of the Act.

10.202 Kendall had limited recollection of the circumstances surrounding P2's arrest and charging but denied any knowledge of, or involvement in, any wrongdoing in relation to it. P2's evidence in relation to the load and the falsification of his record of interview is supported by the evidence of M5

and N1 who corroborated the load and gave evidence in relation to the premeditated strategy of the AHU of tossing the firearms into the river. The Commission prefers this version of events to the evidence of Kendall.

10.203 In relation to the "Wogs Out of Work" Operation - P2, the Commission is of the opinion that the evidence supports consideration being given to the prosecution of Kendall for the following offences:

- Conspiracy to commit an act intending to pervert the course of justice (sections 319 and 342, *Crimes Act 1900*)
- Commit certain actions and / or omissions with the intention to pervert the course of justice (section 319, *Crimes Act 1900*)
- Fabricate / knowingly make use of false evidence (section 317, *Crimes Act 1900*)
- Perjury with intent to procure conviction (section 328, *Crimes Act 1900*)
- Make false instrument (subsection 300(1), *Crimes Act 1900*)
- Use false instrument (subsection 300(2), *Crimes Act 1900*)

10.204 Following completion of the Commission's hearings in this segment, P2 passed away (in September 2003). P2 was not examined on Kendall's behalf at the time he (P2) gave evidence at the Commission. There is now no opportunity for Kendall to cross-examine P2. NSW Police has given consideration to the question of criminal prosecution against Kendall and formed the view that there is insufficient evidence for a prosecution to succeed.

10.205 In the circumstances the Commission is of the opinion that further consideration **should not** be given to the prosecution of Kendall for any criminal offences.

10.206 At the time he gave evidence Kendall was a serving officer however he was medically discharged from NSW Police on 7 May 2004. Accordingly the question of taking action pursuant to subsections 97(2)(c) and (d) of the Act does not arise.

LET'S DANCE SEGMENT

10.207 Kendall is an affected person because he is the subject of the substantial allegation that all police officers from both Manly Detectives and MCSN who were involved in the arrest of A1 and P1 entered into an agreement to share money corruptly taken during Operation Let's Dance.

10.208 The Commission considers that Kendall engaged in police misconduct: subsection 16(1)(a) of the Act.

10.209 The evidence directly admissible against Kendall includes the evidence of N1 and F7, the entry in Kendall's duty book for 5 February 1992 which details his role in being called back to duty and collecting N1 early that evening, his presence at the search of A1's premises, and his role in the counting and securing of the money seized at A1's premises.

10.210 F7's evidence about the role Kendall played in the Operation was equivocal when he was interviewed prior to giving evidence (see paragraph 4.125).[1644] In evidence F7 said that he thought Kendall arrived at the park under the Roseville Bridge after him and N1, and that Kendall had a conversation with N1. F7 said he did not get out of the van or speak to Kendall. He did not think Kendall stayed there very long and did not have a recollection of N1 giving Kendall anything.[1645]

10.211 N1's evidence differed from F7's in some aspects. N1 said that he travelled to the park under the Roseville Bridge and once there divided the money. He said that Kendall was with him although he could not remember travelling to the park with Kendall and could not remember any of the conversation he had with Kendall while there. He said Kendall took a portion of the money to be divided as he saw fit. N1 could not remember F7 being in the van with him when he divided the money.[1646] N1 also gave evidence of there being *"bad blood"* between himself and Kendall.[1647]

10.212 Kendall did not deny that the entry in his duty book for 5 February 1992 was correct or that he took part in the search of A1's premises. However he had little independent memory of the events and could not recall being involved in or seeing the count of money at Manly Police Station. N1's evidence confirmed the entry in Kendall's duty book that he was present at the police station when the money was counted however neither N1's evidence nor the duty book entry implicates Kendall in any illegal conduct.

10.213 The Commission is therefore of the opinion that the available evidence is such that consideration **should not** be given to the prosecution of Kendall for any criminal offence arising out of this matter.

10.214 At the time he gave evidence Kendall was a serving officer however he was medically discharged from NSW Police on 7 May 2004. Accordingly the question of taking action pursuant to subsections 97(2)(c) and (d) of the Act does not arise.

[1644] PIC Exhibit 412C
[1645] PIC Transcript, F7, 8 May 2002, pp. 2898-2899
[1646] PIC Transcript, N1, 30 April 2002, pp. 2648-2649, 2661, 2696
[1647] PIC Transcript, N1, 30 April 2002, p. 2691

TIMOTHY ANDREW KERR-THOMSON

NEWPORT SEGMENT

10.215 Kerr-Thomson is an affected person because he is the subject of the substantial allegations that police from both the NSDU and GDU of Major Crime Squad North:

- entered into a corrupt agreement to share money, being $10,000, stolen from L17 during the execution of a search warrant on 21 February 1992, at premises occupied by L17;
- entered into a corrupt agreement to share $50,000, paid by L17 to police, for assistance provided to her in respect of the matters with which she was charged;
- stole a gold ingot from L17; and
- corruptly assisted L17 in relation to the charges brought against her and thereby perverted the course of justice.

10.216 The admissible evidence against Kerr-Thomson consists of the evidence of M5, L17 and the duty book entries that establish that Kerr-Thomson was one of the officers involved in the execution of the search warrants at both the West Ryde and the Newport premises.

10.217 The Commission is of the opinion that there is insufficient evidence to confirm the allegations in relation to the stealing of the gold ingot and the sharing of the money stolen from the Newport premises. Although L17 gave evidence that the money and the gold ingot were stolen she was not able to say who stole the money and the ingot. M5 gave evidence that the ingot and $10,000 were stolen but he did not know who stole the ingot and the money, did not see the ingot or the money either before or after they were stolen, and, although he received $1,000 from Hill on the day after the ingot and money were alleged to have been stolen, M5 could not confirm that the money he received was his one tenth of the $10,000. All of the other involved officers denied stealing the ingot and the $10,000 and receiving a tenth share of it. Therefore the Commission is of the opinion that consideration **should not** be given to the prosecution of Kerr-Thomson for any criminal offence in relation to the stealing of the gold ingot and $10,000 or the receipt of a tenth share of it.

10.218 M5's evidence in relation to the payment of $50,000 is hearsay and there is no positive link between L17 and the alleged payment of $5,000 to M5. Although S7 gave evidence that L17 told him she was paying police he was not able to indicate an amount. L17 denied paying the police, or making any arrangement for money to be paid to the police to assist her. She denied knowledge of any payment on her behalf and denied telling S7 that she was paying police. N1's knowledge of the payment came from M5 so it is not corroborative of M5's allegation. In the absence of any corroboration, M5's allegation cannot be relied upon. Therefore the Commission is of the

opinion that consideration **should not** be given to the prosecution of Kerr-Thomson for any offence in relation to the alleged receipt of a tenth of $50,000.

10.219 There is no evidence to suggest that Kerr-Thomson was involved in the fabrication of the record of interview with L17. In addition he did not give evidence at the trial of L17. There is therefore no evidence to suggest the involvement of Kerr-Thomson in the assistance provided to L17 by police. The Commission is of the opinion that consideration **should not** be given to the prosecution of Kerr-Thomson for the offence of perverting the course of justice.

10.220 Kerr-Thomson is a serving officer so it is necessary to consider the issues raised in subsections 97(2)(c) and (d) of the Act. In doing so the evidence he gave to the Commission may be considered. Kerr-Thomson had little recollection of these events but denied involvement in any wrongdoing. As stated above there is insufficient evidence to corroborate the allegations in relation to the stealing of $10,000 and $50,000. In addition there is no evidence that Kerr-Thomson was involved in the fabrication of the record of interview with L17 and he did not give evidence at her trial. The Commission is of the opinion that consideration **should not** be given to the taking of action against Kerr-Thomson pursuant to subsection 97(2)(c) or (d) of the Act.

JAMES JUSTIN KING

GUNS SEGMENT

10.221 King is an affected person because he is the subject of the substantial allegations that:

- he participated in the collection and retention of a stash of weapons at the offices of MCSN at Chatswood, ("the stash");
- he participated in the use of weapons and other items to load and / or verbal alleged offenders, ("the loads"); and
- he was aware of the dumping of a stash of weapons into the Hawkesbury River by former and current officers of NSW Police, ("the dump").

10.222 The Commission considers that King engaged in police misconduct: subsection 16(1)(a) of the Act.

10.223 The admissible evidence against King is primarily that of M5, N1 and F7 together with the covertly recorded conversations in which he was a participant.

10.224 In relation to the dump and the stash the evidence of M5, N1 and F7 together with the recorded conversations is preferred to the version given by King.

There is abundant evidentiary material that supports the existence of the stash of illegitimate weapons and that they constituted the dump. The admissible evidence also supports the conclusion that King was aware of the existence of the stash at the MCSN office. The Commission does not accept King's explanations in light of the admissible evidence.

10.225 The Commission is of the opinion, however, that despite considerable suspicion attaching to King's degree of knowledge and participation in the use, and retention, of the stash there is insufficient admissible evidence for consideration to be given to the prosecution of King for any related criminal offence. There is also insufficient evidence to substantiate King participating in or having specific knowledge of loads or verbals. On the admissible evidence, therefore, the Commission is of the opinion that consideration **should not** be given for the prosecution of King for any criminal offence.

10.226 King is no longer a serving police officer. Accordingly the question of taking action pursuant to subsections 97(2)(c) and (d) of the Act does not arise.

LET'S DANCE SEGMENT

10.227 King is an affected person because he is the subject of the substantial allegations that all police officers from both Manly Detectives and MCSN who were involved in the arrest of A1 and P1 entered into an agreement to share money corruptly taken during Operation Let's Dance, and that false documentation was deliberately prepared for use in the prosecution of A1 and P1.

10.228 The Commission considers that King engaged in police misconduct: subsection 16(1)(a) of the Act.

10.229 The admissible evidence against King consists of the evidence of P1, A1, K2, C2 and M7, the entries in King's duty book for 4 and 5 February 1992, King's statement made in the matter on 10 February 1992, the statement of facts he prepared in relation to the arrest of A1, and the evidence of N1 and F7. The evidence of A1, P1, K2, C2 and M7, although not mentioning King specifically, would be admissible against him if a prosecution was brought on the basis that he was party to a relevant joint criminal enterprise or conspiracy. The Commission is of the opinion that the evidence supports consideration being given to the prosecution of King for the following criminal offences:

- Steal Money from the Person of K2 under section 94 of the *Crimes Act 1900* on the basis that King was party to a joint criminal enterprise which had as its objective the stealing of money from K2;
- Larceny under section 117 of the *Crimes Act 1900* of the money from K2 on the same basis; and

- Conspiracy to Do an Act Intending to Pervert the Course of Justice in breach of sections 319 and 342 of the *Crimes Act 1900*. The conspiracy had as its object the preparation of documentation for use in the prosecution of A1 and P1 that deliberately understated the amount of money that was seized during the course of their respective arrests. In King's case, he prepared such documentation. The available evidence from F7 and N1 clearly supports the allegation he did so with knowledge that it was false.

10.230 Following the public hearings in this segment and prior to the completion of this Report, NSW Police gave consideration to the preparation of a brief of evidence against King. However after N1 and F7 indicated that they were not prepared give evidence in criminal proceedings against King it was determined that there was insufficient evidence to prepare a brief against him.

10.231 In the circumstances the Commission is of the opinion that further consideration **should not** be given to the prosecution of King for any criminal offences.

10.232 King is no longer a serving police officer. Accordingly the question of taking action pursuant to subsections 97(2)(c) and (d) of the Act does not arise.

MAGNUM SEGMENT

10.233 King is an affected person because he is the subject of the substantial allegations that:

- he, together with Wrice, F7, M5, and Dowding agreed to pervert the course of justice and did so by fabricating evidence, specifically the false police identification, against Stuart;
- he made a false statement in relation to the arrest and interview of Stuart and perjured himself when he gave evidence in accordance with that statement; and
- members of Task Force Magnum, including King, were prepared to do anything necessary to obtain convictions, including "loading" and "verballing" or both.

10.234 The Commission considers that King engaged in police misconduct: subsection 16(1)(a) of the Act.

10.235 The admissible evidence against King consists of the evidence of F7 and M5. F7 said that King was present when the decision was made to load and verbal Stuart and the false police identification was created. In addition King, Dowding and M5 were designated as the searching officers who would

"find" the items during the search of Stuart's house.[1648] M5's evidence accords with that of F7. M5 said that King was present when the false police identification was made and he was assigned to "find" the police identification during the search of Stuart's residence.[1649]

10.236 General support for the allegations against King is found in the evidence of N1 who said that he was aware of the creation of the false police identification, that Stuart was to be loaded with evidence and that all the members of the team were aware of the plan.[1650] The allegations also receive general support from the evidence of F7, M5 and N1 about the approach and methods of Task Force Magnum.[1651]

10.237 King denied that he was involved in the conduct as alleged by F7, M5 and N1.

10.238 The Commission is of the opinion that the evidence supports consideration being given to the prosecution of King for perverting the course of justice pursuant to section 319 of the *Crimes Act 1900*.

10.239 Following the public hearings in this segment and prior to the completion of this Report, NSW Police sent a brief of evidence to the ODPP in relation to King for consideration of possible criminal charges. The ODPP recommended that no charges be laid.

10.240 In the circumstances the Commission is of the opinion that further consideration **should not** be given to the prosecution of King for any criminal offences.

10.241 King is no longer a serving police officer. Accordingly the question of taking action pursuant to subsections 97(2)(c) and (d) of the Act does not arise.

KING SEGMENT

10.242 King is an affected person because he is the subject of the following substantial allegations:

- that a number of police officers, including King, and a civilian conspired to pervert the course of justice by giving false evidence in proceedings, in the Local Court of New South Wales, arising out of King's arrest for DUI on 25 September 1993;
- that he gave false evidence in proceedings in Manly Local Court on 12 February 2001 and attempted to pervert the course of justice in proceedings arising out of his arrest for PCA on 13 April 2000;

[1648] PIC Transcript, F7, 10 September 2002, pp. 5225, 5226, 5228
[1649] PIC Transcript, M5, 12 September 2002, pp. 5652-5353
[1650] PIC Transcript, N1, 11 September 2002, pp. 5288-5289
[1651] PIC Transcript, F7, 10 September 2002, pp. 5241-5242, 5243-5245; PIC Transcript, N1, 11 September 2002, p. 5320; PIC Transcript, M5, 12 September 2002, pp. 5361-5362

- that O'Toole, aided and abetted by King, obtained a financial benefit by deception when he obtained an informant reward payment in late 1997 or early 1998 based on a false application for a reward payment made by King and approved by O'Toole in October 1997; and
- that he engaged in money laundering in 1999.

10.243 The Commission considers that King engaged in police misconduct: subsection 16(1)(a) of the Act.

10.244 The admissible evidence against King in relation to the 1993 DUI incident comprises the evidence of M5, M13, S8, Ducker, Moore, McDougall, Shepherd and the statement King made to Internal Affairs dated 1 December 1993. The Commission is of the opinion that the evidence supports consideration being given to the prosecution of King for the criminal offence of Conspiracy to Do an Act Intending to Pervert the Course of Justice in breach of sections 319 and 342 of the *Crimes Act 1900*. The object of the conspiracy involved the giving of false evidence, in the Local Court criminal proceedings arising out of King's arrest for DUI on 25 September 1993, about King taking and being in possession of Orthoxicol medication, and meeting the informant M13 at the Steyne Hotel, so that the charge(s) against King would be dismissed.

10.245 The admissible evidence against King in relation to the 2000 PCA incident comprises the evidence of M5, Carson, May, Symonds, the taped conversations between M5 and King on 13 April 2000, 25 May 2000, 2 November 2000, the minutes and Annual Report of the Bilgola Surf Lifesaving Club and the transcript of the criminal proceedings against King at Manly Local Court on 12 February 2001. That evidence supports the Commission expressing the opinion that consideration **should** be given to the prosecution of King for the criminal offences of:

- Attempting to Do an Act Intending to Pervert the Course of Justice in breach of sections 319 and 344A of the *Crimes Act 1900*;
- Perjury in the Manly Local Court proceedings in breach of section 327 of the *Crimes Act 1900*; and
- Giving False or Misleading Evidence at a Hearing Before the Commission in breach of section 107 of the *Police Integrity Commission Act 1996*.

10.246 The admissible evidence against King in relation to the allegation of corrupt payments to registered informants comprises the evidence of M13, M5, the recorded conversations between King and M5 on 5 February 1999, the recorded conversation between M5, King and O'Toole on 3 August 2000 and 7 February 2001 and the application and approval documents for the reward.[1652] The Commission is of the opinion that the evidence supports consideration being given to the prosecution of King for the criminal offence

[1652] Identified in paragraph 8.134

of Making a False or Misleading Statement with Intent to Obtain Money in breach of section 178BB of the *Crimes Act 1900*. The false or misleading statement was contained in the application for a reward payment by King dated 10 October 1997.

10.247 The admissible evidence against King in relation to the allegation of money laundering comprises the evidence of M5, the taped conversations between M5 and King[1653] and the videotape of King and M5.[1654] The Commission is of the opinion that the evidence supports consideration being given to the prosecution of King for the criminal offence of Money Laundering in breach of section 73 of the *Confiscation of Proceeds of Crime Act 1989*. The money laundering allegation relates to the cash M5 identified as the proceeds of corrupt activity whilst a police officer that King took and exchanged for different cash.

10.248 Following the public hearings in this segment and prior to the completion of this Report, NSW Police gave consideration to the preparation of a brief of evidence against King in relation to the three following matters:

- 1993 DUI – a brief of evidence was sent to the ODPP however the ODPP recommended that no criminal charges be laid against any of the participants.
- Payment of registered informants - NSW Police investigated this matter and found there is insufficient evidence to consider criminal charges against King, or any other person.
- Money laundering – NSW Police sent a detailed report to the ODPP requesting a review of the evidence to ascertain if there was sufficient evidence to prosecute King. The ODPP recommended that no charges be laid against King.

10.249 In the circumstances the Commission is of the opinion that further consideration **should not** be given to the prosecution of King for any criminal offences in relation to the above three matters.

10.250 The Commission will seek the advice of the ODPP in relation to the 2000 PCA.

10.251 As King is no longer a serving police officer the question of taking action pursuant to subsections 97(2)(c) and (d) of the Act does not arise.

[1653] Referred to in paragraphs 8.145–8.154
[1654] Referred to in paragraphs 8.147-8.148

L17

NEWPORT SEGMENT

10.252 L17 is an affected person because it is alleged that she gave false evidence in a material particular to the Commission.

10.253 L17 is a civilian. In terms of subsection 97(2) of the Act the only relevant matter is whether or not the Commission is of the opinion that consideration should be given to the prosecution of L17 for specified criminal offences.

10.254 On 11 July 2002, L17 gave evidence under objection after a declaration pursuant to section 41 of the Act had been made. She was cautioned that her evidence may be admissible against her in any criminal proceedings for perjury should any evidence she gave be false or misleading in a material particular. The Commission is of the opinion that that there is evidence given by L17 that warrants consideration in this regard.

10.255 L17 told the Commission that the name of the person who gave her four kilograms of cannabis resin was the person identified on Exhibit 572C.[1655] This person was codenamed H5 in the Commission's hearing. L17 also stated that she contacted B11 on the recommendation of a person she knew only by his first name. The name she gave is a common male name and the same as the first name of S7.[1656] L17 denied that she was looking after the drugs for the person who recommended she contact B11. Her evidence was that he was possibly involved in drugs but she did not know that definitely and she did not know whether he had been arrested at around the same time as herself.[1657] Later, L17 stated that she knew that this man had been convicted and sentenced previously to imprisonment for drug offences.[1658] When shown Exhibit 573C containing S7's surname, L17 stated that she did not know any male by that name.[1659]

10.256 A number of documents from L17's solicitor, during her trial, were tendered in evidence. An undated ten-page hand written statement refers to the person who gave her the drugs to mind as "X".[1660] Her solicitor's conference note, dated 4 May 1994, refers to "X" for the first three and a half pages. At the end of the note regarding X's involvement, the solicitor has noted "X = [S7]".[1661] In a typed statement dated 8 June 1994, L17 refers to the person "X" as H5.[1662]

[1655] PIC Transcript, L17, 11July 2002, p. 4219
[1656] PIC Transcript, L17, 11July 2002, pp. 4215-4216, PIC Exhibit 571C
[1657] PIC Transcript, L17, 11July 2002, pp. 4216-4217
[1658] PIC Transcript, L17, 11July 2002, pp. 4226-4227
[1659] PIC Transcript, L17, 11July 2002, pp. 4234-4235
[1660] PIC Exhibit 798B
[1661] PIC Exhibit 797B
[1662] PIC Exhibit 796B

10.257 On 22 August 2002, L17 gave evidence to the Commission in a private hearing.[1663] L17 was reminded of her answers given in relation to S7's surname. L17 then agreed that she did not know the person with the code name "S7" and he definitely was not the person she met at the airport.[1664] Contrary to what appears in her solicitor's conference note[1665] L17 stated that she had not, to her knowledge, provided S7's name to anyone in relation to the charge that had been brought against her and she could not explain how it was that her solicitor had written "X = [S7]".[1666]

10.258 Again, in contradiction to earlier evidence, L17 agreed that she knew that S7 was someone who dealt in drugs and that the relationship they had was a type of business relationship, in drug dealing. S7 was someone who had met L17's husband in gaol. H5 may also have met L17's husband in gaol.[1667]

10.259 These matters suggest that L17 gave false or misleading evidence, in a material particular, to the Commission. Specifically, L17 gave evidence of that character in relation to: (1) her knowledge of S7; and (2) the association that she had with S7. The Commission is of the opinion that consideration **should** be given to the prosecution of L17 for giving false or misleading evidence to the Commission pursuant to section 107 of the Act.

M5

GUNS SEGMENT

10.260 M5 is an affected person because he is the subject of the substantial allegations that:

- he participated in the collection and retention of a stash of weapons at the offices of MCSN at Chatswood, ("the stash");
- he participated in the use of weapons and other items to load and / or verbal alleged offenders, ("the loads"); and
- he, together with Dowding dumped the stash of weapons into the Hawkesbury River, ("the dump").

10.261 The Commission considers that M5 engaged in police misconduct: subsection 16(1)(a) of the Act.

10.262 In relation to the dump and the stash, the admissible evidence against M5 is that of N1 and F7. In relation to the alleged loading and verballing of M11 the evidence of M11, and the duty book and notebook entries are admissible against M5. The evidence of N1 also supports the evidence of M11. In relation to the alleged loading and verballing of A2 the evidence of F7 is

[1663] PIC Exhibit 793B
[1664] PIC Exhibit 793B, PIC Transcript, L17, 22 August 2002, pp. 4-5
[1665] PIC Exhibit 797B
[1666] PIC Exhibit 793B, PIC Transcript, L17, 22 August 2002, p. 14
[1667] PIC Exhibit 793B, PIC Transcript, L17, 22 August 2002, pp. 17-19

admissible against M5. The admissions M5 made are not admissible against him. M5 did not participate in the loading and verballing of P2.

10.263 In relation to the stash and the dump the relevant offences are Possess Prohibited Weapons (*Prohibited Weapons Act 1989*) and Possess Prohibited Firearms (*Firearms Act 1989*). These offences are statute barred.

10.264 In relation to M5's involvement in the "Wogs Out of Work" and the Hawkesbury River Escapee Operations the relevant criminal offences are as follows:

"Wogs Out of Work" Operation - M11

- Conspiracy to commit an act intending to pervert the course of justice (sections 319 and 342, *Crimes Act 1900*)
- Commit certain actions and / or omissions with the intention to pervert the course of justice (section 319, *Crimes Act 1900*)
- Fabricate / knowingly make use of false evidence (section 317, *Crimes Act 1900*)
- Perjury with intent to procure conviction (section 328, *Crimes Act 1900*)
- Make false instrument (subsection 300(1), *Crimes Act 1900*)
- Use false instrument (subsection 300(2), *Crimes Act 1900*)

Hawkesbury River Escapee - Arrest and Charging of A2

- Conspiracy to commit an act intending to pervert the course of justice (sections 319 and 342, *Crimes Act 1900*)
- Commit certain actions and / or omissions with the intention to pervert the course of justice (section 319, *Crimes Act 1900*)
- Fabricate / knowingly make use of false evidence (section 317, *Crimes Act 1900*)
- Perjury with intent to procure conviction (section 328, *Crimes Act 1900*)
- Make false instrument (subsection 300(1), *Crimes Act 1900*)
- Use false instrument (subsection 300(2), *Crimes Act 1900*)

10.265 The Attorney General has granted M5 has an indemnity from prosecution in relation to all matters in respect of which he has admitted criminal conduct. Therefore the Commission has not expressed an opinion about whether consideration should be given to the prosecution of M5 for any of the above criminal offences.

10.266 M5 is no longer a serving police officer. Accordingly the question of taking action pursuant to subsections 97(2)(c) and (d) of the Act does not arise.

NEWPORT SEGMENT

10.267 M5 is an affected person because he is the subject of the substantial allegations that police from both the NSDU and GDU of Major Crime Squad North:

- entered into a corrupt agreement to share money, being $10,000, stolen from L17 during the execution of a search warrant on 21 February 1992, at premises occupied by L17;
- entered into a corrupt agreement to share $50,000, paid by L17 to police, for assistance provided to her in respect of the matters with which she was charged;
- stole a gold ingot from L17; and
- corruptly assisted L17 in relation to the charges brought against her and thereby perverted the course of justice.

10.268 The Commission considers that M5 engaged in police misconduct: subsection 16(1)(a) of the Act.

10.269 The admissible evidence against M5 consists of the evidence of L17 and the duty book entries establishing that he was one of the police involved in the execution of the search warrants at both the West Ryde and the Newport premises. M5's own admissions are not admissible against him.

10.270 In relation to the stealing of the gold ingot and the sharing of the money stolen from the Newport premises the only admissible evidence against M5 is that of L17. Although she gave evidence that the money and the gold ingot were stolen she was not able to say who stole the money and the ingot. Therefore the Commission is of the opinion that there is insufficient admissible evidence to support consideration of the prosecution of M5 for any criminal offence in relation to the stealing of the gold ingot and $10,000 or the receipt of a tenth share of it.

10.271 L17 denied paying the police $50,000, or making any arrangement for money to be paid to the police to assist her. She denied knowledge of any payment on her behalf and denied telling S7 that she was paying police. Although S7 said that L17 told him she was paying police he was not able to indicate an amount. N1's knowledge of the payment came from M5 so it is not corroborative of M5's allegation. In the absence of any corroboration, M5's allegation cannot be relied upon. Therefore the Commission is of the opinion that there is insufficient admissible evidence to support consideration of the prosecution of M5 for any criminal offence in relation to the alleged receipt of a tenth of $50,000.

10.272 The only evidence about M5's involvement in the assistance provided to L17 in relation to the charges brought against her came from M5 himself. That evidence cannot be used against him. Therefore there is no admissible evidence against M5, in relation to this allegation.

10.273 The Attorney General has granted M5 has an indemnity from prosecution in relation to all matters in respect of which he has admitted criminal conduct. Therefore the Commission has not expressed an opinion about whether consideration should be given to the prosecution of M5 for any criminal offences.

10.274 M5 is no longer a serving police officer. Accordingly the question of taking action pursuant to subsections 97(2)(c) and (d) of the Act does not arise.

MAGNUM SEGMENT

10.275 M5 is an affected person because he is the subject of the substantial allegations that:

- he, together with Wrice, F7, King and Dowding agreed to pervert the course of justice and did so by fabricating evidence, specifically the false police identification, against Stuart;
- he, together with Bernasconi, Wrice, and F7 fabricated the adoption of the interview alleged to have taken place between Wrice and Stuart;
- he made a false statement in relation to the arrest and interview of Stuart and perjured himself when he gave evidence in accordance with that statement; and
- members of Task Force Magnum, including M5 were prepared to do anything necessary to obtain convictions, including "loading" and "verballing" or both.

10.276 The Commission considers that M5 engaged in police misconduct: subsection 16(1)(a) of the Act.

10.277 The admissible evidence against M5 consists of the evidence of F7 and N1. F7 said that M5 was present when the decision was made to load and verbal Stuart and the false police identification was created. In addition M5, King and Dowding were designated as the searching officers who would "find" the items during the search of Stuart's house.[1668] In relation to the adoption of Stuart's record of interview F7 gave evidence that the adoption was arranged in advance by either M5, King or Dowding and that Bernasconi fabricated the adoption.[1669]

10.278 General support for the allegations against M5 is found in the evidence of N1 who said that he was aware of the creation of the false police

[1668] PIC Transcript, F7, 10 September 2002, pp. 5225, 5226, 5228
[1669] PIC Transcript, F7, 10 September 2002, pp. 5232-5233, 5235-5237

identification, that Stuart was to be loaded with evidence and that all the members of the team were aware of the plan.[1670] The allegations also receive general support from the evidence of F7 and N1 about the approach and methods of Task Force Magnum.[1671] M5's own admissions of misconduct cannot be used against him.

10.279 The Attorney General has granted M5 has an indemnity from prosecution in relation to all matters in respect of which he has admitted criminal conduct. Therefore the Commission has not expressed an opinion about whether consideration should be given to the prosecution of M5 for any criminal offences.

10.280 M5 is no longer a serving police officer. Accordingly the question of taking action pursuant to subsections 97(2)(c) and (d) of the Act does not arise.

KING SEGMENT

10.281 M5 is an affected person because he the subject of the following substantial allegation:

- that a number of police officers, including M5, and a civilian, conspired to pervert the course of justice by giving false evidence in proceedings, in the Local Court of New South Wales, arising out of King's arrest for DUI on 25 September 1993.

10.282 The Commission considers that M5 engaged in police misconduct: subsection 16(1)(a) of the Act.

10.283 The admissible evidence against M5 in relation to the 1993 DUI incident comprises the evidence of M13 and S8. M13's evidence implicates M5 in both aspects of the conspiracy to pervert the course of justice: the fabrication of evidence in relation to the meeting between M5, King and M13 at the Steyne Hotel; and the fabrication of evidence that King took, or was seen to be in possession of, Orthoxicol medication. S8's evidence implicates M5 in the second part of the conspiracy. The object of the conspiracy involved the giving of false evidence, in the Local Court criminal proceedings arising out of King's arrest for DUI on 25 September 1993, about King taking and being in possession of Orthoxicol medication, and meeting the informant M13 at the Steyne Hotel, so that the charge(s) against King would be dismissed.

10.284 M5's involvement in the money laundering operation came about as a result of the assistance he provided to the investigation and therefore he did not have the necessary mens rea to commit any criminal offences.

10.285 The Attorney General has granted M5 has an indemnity from prosecution in relation to all matters in respect of which he has admitted criminal conduct.

[1670] PIC Transcript, N1, 11 September 2002, pp. 5288-5289

[1671] PIC Transcript, F7, 10 September 2002, pp. 5241-5242, 5243-5245; N1, 11 September 2002, p. 5320; M5, 12 September 2002, pp. 5361-5362

Therefore the Commission has not expressed an opinion about whether consideration should be given to the prosecution of M5 for any of the above criminal offences.

10.286 M5 is no longer a serving police officer. Accordingly the question of taking action pursuant to subsections 97(2)(c) and (d) of the Act does not arise.

M13

KING SEGMENT

10.287 M13 is an affected person because he is the subject of the substantial allegation that together with a number of police officers he conspired to pervert the course of justice by giving false evidence in proceedings, in the Local Court of New South Wales, arising out of King's arrest for drink driving on 25 September 1993.

10.288 M13 is a civilian. In terms of subsection 97(2) of the Act the only relevant matter is whether or not the Commission is of the opinion that consideration should be given to the prosecution of M13 for specified criminal offences.

10.289 The admissible evidence against M13 in relation to the 1993 DUI incident comprises the evidence of M5, S8, Ducker, Moore, McDougall, Shepherd and the interview of M13 by Shepherd on 6 April 1994. The Commission is of the opinion that the evidence supports consideration being given to the prosecution of M13 for the criminal offence of Conspiracy to Do an Act Intending to Pervert the Course of Justice in breach of sections 319 and 342 of the *Crimes Act 1900*. The object of the conspiracy involved the giving of false evidence in the Local Court criminal proceedings arising out of King's arrest for drink driving on 25 September 1993, about King taking and being in possession of Orthoxicol medication, and meeting the informant M13 at the Steyne Hotel, so that the charge(s) against King would be dismissed.

10.290 Following the public hearings in this segment and prior to the completion of this Report, NSW Police sent a brief of evidence against M13 to the ODPP. The ODPP recommended that no charges be laid against M13.

10.291 In the circumstances the Commission is of the opinion that further consideration **should not** be given to the prosecution of M13 for any criminal offences.

STEPHEN JAMES MCCLELLAND

NEWPORT SEGMENT

10.292 McClelland is an affected person because he is the subject of the substantial allegations that police from both the NSDU and GDU of Major Crime Squad North:

- entered into a corrupt agreement to share money, being $10,000, stolen from L17 during the execution of a search warrant on 21 February 1992, at premises occupied by L17;
- entered into a corrupt agreement to share $50,000, paid by L17 to police, for assistance provided to her in respect of the matters with which she was charged;
- stole a gold ingot from L17; and
- corruptly assisted L17 in relation to the charges brought against her and thereby perverted the course of justice.

10.293 The admissible evidence against McClelland consists of the evidence of M5, L17 and the duty book entries that establish that McClelland was one of the officers involved in the execution of the search warrants at both the West Ryde and the Newport premises.

10.294 The Commission is of the opinion that there is insufficient evidence to confirm the allegations in relation to the stealing of the gold ingot and the sharing of the money stolen from the Newport premises. Although L17 gave evidence that the money and the gold ingot were stolen she was not able to say who stole the money and the ingot. M5 gave evidence that the ingot and $10,000 were stolen but he did not know who stole the ingot and the money, did not see the ingot or the money either before or after they were stolen, and, although he received $1,000 from Hill on the day after the ingot and money were alleged to have been stolen, M5 could not confirm that the money he received was his one tenth of the $10,000. All of the other involved officers denied stealing the ingot and the $10,000 and receiving a tenth share of it. Therefore the Commission is of the opinion that consideration **should not** be given to the prosecution of McClelland for any criminal offence in relation to the stealing of the gold ingot and $10,000 or the receipt of a tenth share of it.

10.295 M5's evidence in relation to the payment of $50,000 is hearsay and there is no positive link between L17 and the alleged payment of $5,000 to M5. Although S7 gave evidence that L17 told him she was paying police he was not able to indicate an amount. L17 denied paying the police, or making any arrangement for money to be paid to the police to assist her. She denied knowledge of any payment on her behalf and denied telling S7 that she was paying police. N1's knowledge of the payment came from M5 so it is not corroborative of M5's allegation. In the absence of any corroboration, M5's allegation cannot be relied upon. Therefore the Commission is of the opinion that consideration **should not** be given to the prosecution of McClelland for any offence in relation to the alleged receipt of a tenth of $50,000.

10.296 There is no evidence to suggest that McClelland was involved in the fabrication of the record of interview with L17. In addition he did not give evidence at the trial of L17. There is therefore no evidence to suggest the involvement of McClelland in the assistance provided to L17 by police.

Therefore the Commission is of the opinion that consideration **should not** be given to the prosecution of McClelland for the offence of perverting the course of justice.

10.297 McClelland is no longer a serving police officer. Accordingly the question of taking action pursuant to subsections 97(2)(c) and (d) of the Act does not arise.

ROSLYN GWEN MCDOUGALL

KING SEGMENT

10.298 McDougall is an affected person because she is the subject of the substantial allegation that a number of police officers, and a civilian, conspired to pervert the course of justice by giving false evidence in proceedings in the Local Court of New South Wales arising out of King's arrest for DUI on 25 September 1993. McDougall was one of those officers.

10.299 The Commission considers that McDougall engaged in police misconduct: subsection 16(1)(a) of the Act.

10.300 The admissible evidence against McDougall in relation to the 1993 DUI incident comprises the evidence of M5, M13, S8, Ducker, Moore, Shepherd, her police statement dated 21 October 1993 and her statement to Internal Affairs dated 16 October 1993. The Commission is of the opinion that the evidence supports consideration being given to the prosecution of McDougall for the criminal offence of Conspiracy to Do an Act Intending to Pervert the Course of Justice in breach of sections 319 and 342 of the *Crimes Act 1900*. The object of the conspiracy involved the giving of false evidence in the Local Court criminal proceedings arising out of King's arrest for drink driving on 25 September 1993, so that the charge(s) against King would be dismissed.

10.301 Following the public hearings in this segment and prior to the completion of this Report, NSW Police sent a brief of evidence against McDougall to the ODPP. The ODPP recommended that no charges be laid against McDougall.

10.302 In the circumstances the Commission is of the opinion that further consideration **should not** be given to the prosecution of McDougall for any criminal offences.

10.303 As McDougall is a serving officer it is necessary to consider the issues raised in subsections 97(2)(c) and (d) of the Act. In doing so the evidence she gave to the Commission may be considered. On the evidence of S8 and her police statement and Internal Affairs statement McDougall participated in a conspiracy to pervert the course of justice in King's Local Court proceedings arising out of the 1993 DUI incident. The evidence before the Commission

adversely reflects on McDougall's competence, integrity, performance and conduct as a police officer. The Commission is of the opinion that the evidence supports consideration being given to the taking of action against McDougall pursuant to subsections 97(2)(c) or (d) of the Act.

10.304 Following the public hearings in this segment and prior to the completion of this Report, NSW Police gave consideration to whether action should be taken against McDougall. After receiving the recommendation by the ODPP that no criminal charges be laid against her (see paragraph 10.301) NSW Police determined that no further action was required and accordingly no adverse finding was made. McDougall was notified of this decision.

10.305 In the circumstances the Commission is of the opinion that further consideration **should not** be given to the taking of action against McDougall pursuant to subsections 97(2)(c) or (d) of the Act.

MARK WILLIAM MESSENGER

NORTHERN BEACHES SEGMENT

10.306 Messenger is an affected person because he is the subject of a number of substantial allegations, namely that he:

- corruptly received cash;
- received stolen property;
- was an accessory after the fact knowing that M5 had committed serious indictable offences;
- solicited and received bribes;
- neglected his duty as a police officer;
- tampered with evidence with the intention to mislead a judicial tribunal;
- made a false official instrument;
- committed certain actions with the intention of perverting the course of justice;
- obtained unauthorised access to data held in a computer; and
- stole cash.

10.307 The Commission considers that Messenger engaged in police misconduct: subsection 16(1)(a) of the Act.

10.308 Messenger was charged on 22 February 2002 with four counts of receiving corrupt rewards pursuant to section 249B of the *Crimes Act 1990*, and one count of giving false or misleading evidence pursuant to section 107 of the Act. He pleaded guilty and was sentenced on 25 October 2002 to a total of

five years and two months imprisonment with a non-parole period of three years and two months.

10.309 The Commission is of the opinion that consideration **should not** be given to the prosecution of Messenger for any further criminal offences arising from Operation Florida.

10.310 Messenger was suspended with pay from NSW Police on 8 October 2001, suspended without pay on 20 December 2001, and resigned on 18 September 2002. Accordingly the question of taking action pursuant to subsections 97(2)(c) and (d) of the Act does not arise.

10.311 In August 2002 the Commission commenced proceedings in the Supreme Court of New South Wales under the *Criminal Assets Recovery Act 1990* against Messenger. On 19 August 2002 the Supreme Court ordered that Messenger pay the Treasurer the sum of $1,500. The money was paid on 20 August 2002.

ROBERT JOHN MONK

LET'S DANCE SEGMENT

10.312 Monk is an affected person because he is the subject of the substantial allegations that all police officers from both Manly Detectives and MCSN who were involved in the arrest of A1 and P1 entered into an agreement to share money corruptly taken during Operation Let's Dance, and that false documentation was deliberately prepared for use in the prosecution of A1 and P1.

10.313 The Commission considers that Monk engaged in police misconduct: subsection 16(1)(a) of the Act.

10.314 The admissible evidence against Monk consists of the evidence of A1 and P1, which supports a finding that there was more money in the bag seized by police on 4 February 1992 than revealed in the police documentation. The evidence of M7 is also admissible against Monk in relation to Monk entering the room when he first went to the Manly Pacific Hotel prior to obtaining a warrant and Monk's dealings with M7 in relation to the preparation of M7's statement. M7's evidence of a "thank you" lunch some time after the arrest of A1 and P1 adds some weight to his other evidence. It is acknowledged however that the evidence of A1 and P1 and the evidence of M7 was at times equivocal and open to interpretation.

10.315 Neither N1 nor F7 gave direct evidence of the payment of money to Monk or of any conversation had with him in which he acknowledged that he or others had corruptly taken or received money as a result of the arrest of A1 or P1. The only evidence of F7 admissible against Monk is that when F7 and King first went to Manly Police Station on 4 February 1992 they met

with both Hulme and Monk and were told of the fact that money had been found at the Manly Pacific Hotel, well before Monk applied for a search warrant. This evidence assumes significance in considering the position of Monk, as it confirms the effect of M7's evidence that Monk, from a very early point in the day, was aware of the money in the room and did not reveal that fact to the issuing justice when he applied for the search warrant.

10.316 Other significant evidence against Monk includes his overall involvement in the arrest of P1, as the principal detective at Manly in charge of his arrest, and the preparation of his statement for use in the prosecution of P1. The evidence contained on the listening device material is not admissible against Monk in criminal proceedings because he is not a party to the conversations.

10.317 While the evidence available to the Commission raises a strong suspicion that Monk was involved in the corrupt conduct that occurred, in particular in relation to the events of 4 February 1992, and that he received part of the money corruptly taken, the admissible evidence in respect of Monk is such that the Commission is of the opinion that consideration **should not** be given to the prosecution of Monk for any criminal offence.

10.318 Monk is a serving officer so it is necessary to consider the issues raised in subsections 97(2)(c) and (d) of the Act. In doing so the evidence he gave to the Commission may be considered. Monk's asserted lack of recollection as to the events surrounding the conduct of Operation Let's Dance and the specific conduct of other officers during the Operation is difficult to accept as genuine. This Operation, even without the corrupt conduct by the police and despite the length of time since the actual events, was from the point of view of Manly Detectives, a very significant Operation. The admissible evidence against Monk as set out above, although not strong enough to support criminal charges, reflects adversely on Monk's competence, integrity, performance and conduct as a police officer and the Commission is of the opinion that it supports consideration being given to the taking of action against him pursuant to subsections 97(2)(c) or (d) of the Act.

10.319 NSW Police suspended Monk from duty with pay on 13 August 2002 pending a decision by the NSW Police Internal Review Panel as to the most appropriate course of action to be taken against him. The types of action under consideration ranged from removal from NSW Police, to transfer to different duties, or no formal action.

10.320 On 24 January 2003 Deputy Commissioner (Operations), Mr Madden, agreed that Monk should be allowed to return to duty. He returned to duty on 10 March 2003 and relocated to a different local area command. NSW Police recommended he be subject to reviewable or non-reviewable action pursuant to section 173 of the *Police Act 1990*. A decision was made by his Commander to take non-reviewable action against him, pursuant to subsection 173(1) of the *Police Act 1990*.

10.321 In the circumstances the Commission is of the opinion that further consideration **should not** be given to the taking of action against Monk pursuant to subsections 97(2)(c) or (d) of the Act.

CLARE MARGARET MOORE (BUTT)

KING SEGMENT

10.322 Moore is an affected person because she is the subject of the substantial allegation that a number of police officers, and a civilian, conspired to pervert the course of justice by giving false evidence in proceedings in the Local Court of New South Wales arising out of King's arrest for DUI on 25 September 1993. Moore was one of those officers.

10.323 The Commission considers that Moore engaged in police misconduct: subsection 16(1)(a) of the Act.

10.324 The admissible evidence against Moore in relation to the 1993 DUI incident comprises the evidence of M5, M13, S8, Ducker, McDougall, Shepherd, her police statement dated 27 October 1993 and her statement to Internal Affairs dated 11 November 1993. The Commission is of the opinion that the evidence supports consideration being given to the prosecution of Moore for the criminal offence of Conspiracy to Do an Act Intending to Pervert the Course of Justice in breach of sections 319 and 342 of the *Crimes Act 1900*. The object of the conspiracy involved the giving of false evidence in the Local Court criminal proceedings arising out of King's arrest for drink driving on 25 September 1993, so that the charge(s) against King would be dismissed.

10.325 Following the public hearings in this segment and prior to the completion of this Report, NSW Police sent a brief of evidence against Moore to the ODPP. The ODPP recommended that no charges be laid against Moore.

10.326 In the circumstances the Commission is of the opinion that further consideration **should not** be given to the prosecution of Moore for any criminal offences.

10.327 As Moore is no longer a serving police officer the question of taking action pursuant to subsections 97(2)(c) and (d) of the Act does not arise.

N1

GUNS SEGMENT

10.328 N1 is an affected person because he is the subject of the substantial allegations that:

- he participated in the collection and retention of a stash of weapons at the offices of MCSN at Chatswood, ("the stash");
- he participated in the use of weapons and other items to load and / or verbal alleged offenders, ("the loads"); and
- he was aware of the dumping of a stash of weapons into the Hawkesbury River by former and current officers of NSW Police, ("the dump").

10.329 The Commission considers that N1 engaged in police misconduct: subsection 16(1)(a) of the Act.

10.330 In relation to the dump and the stash, the admissible evidence against N1 is that of M5 and F7. From his own evidence and the recorded conversations in which N1 participated it is clear that although N1 did not directly participate in the loading and verballing of M11 and P2 he was aware of those events. He was not involved in the A2 arrest. The admissions N1 made are not admissible against him.

10.331 In relation to the stash and the dump the relevant offences are Possess Prohibited Weapons (*Prohibited Weapons Act 1989*) and Possess Prohibited Firearms (*Firearms Act 1989*). The Commission is of the opinion that consideration **should not** be given to the prosecution of N1 for these offences because they are statute barred.

10.332 In relation to the "Wogs 'Out of Work" Operation - P2 and M11, the Commission is of the opinion that the evidence supports consideration being given to the prosecution of N1 for the following criminal offences:

- Conceal serious indictable offence (section 316, *Crimes Act 1900*)
- Pervert the course of justice (section 319, *Crimes Act 1900*)

10.333 Following the public hearings in this segment and prior to the completion of this Report, NSW Police investigated N1's involvement in this matter. A decision was made to take no further action because none of the victims was prepared to provide a statement or give evidence in court. Without this evidence a prosecution would not succeed.

10.334 In the circumstances the Commission is of the opinion that further consideration **should not** be given to the prosecution of N1 for any criminal offences.

10.335 N1 is no longer a serving police officer. Accordingly the question of taking action pursuant to subsections 97(2)(c) and (d) of the Act does not arise.

LET'S DANCE SEGMENT

10.336 N1 is an affected person because he is the subject of the substantial allegations that all police officers from both Manly Detectives and MCSN who were involved in the arrest of A1 and P1 entered into an agreement to share money corruptly taken during Operation Let's Dance and that false documentation was deliberately prepared for use in the prosecution of A1 and P1. The admissible evidence against N1 consists of the evidence of A1, P1, K2 and C2 which suggests that there was more money seized from A1's premises than revealed by the police, the duty book entries of N1 and his involvement in the Operation on 5 February 1992 and the admissions made by him in the recorded conversations contained on the listening device material. The admissions he made in evidence at the Commission are not admissible against him.

10.337 The Commission considers that N1 engaged in police misconduct: subsection 16(1)(a) of the Act.

10.338 There is evidence, including the listening device material, that in respect of the money taken from K2, there was an agreement or understanding between a number of the officers who attended A1's premises on 5 February 1992, that money would be stolen from K2, that N1 was a party to that agreement or understanding, and was present when the money was stolen. The evidence also suggests that there was a conspiracy amongst some of the police involved in the arrest of P1 and A1 to do an act with intent to pervert the course of justice. The inference is available that a number of the police involved agreed that documents that would be produced in the prosecution of P1 and A1 would understate the amount of money found by the police upon the arrest of those persons. Although he did not himself provide or prepare a document to be used in the prosecution of A1 or P1, N1's activities on the night of 5 February 1992, his duty book entries, and the statement of facts prepared in relation to the arrest of A1, suggest that N1 at least knew of the arrangement or was party to it. The Commission is of the opinion that the evidence supports consideration being given to the prosecution of N1 for the following criminal offences:

- Steal Money from the Person of K2 under section 94 of the *Crimes Act 1900* on the basis that N1 was party to a joint criminal enterprise which had as its objective the stealing of money from K2;
- Larceny under section 117 of the *Crimes Act 1900* of the money from K2 on the same basis; and
- Conspiracy to Do an Act Intending to Pervert the Course of Justice in breach of sections 319 and 342 of the *Crimes Act 1900*. The conspiracy had as its object the preparation of documentation for use in the prosecution of A1 and P1 that deliberately understated the amount of money that was seized during the course of their respective arrests.

10.339 Following the public hearings in this segment and prior to the completion of this Report, NSW Police forwarded a submission to the ODPP seeking

advice as to the sufficiency of evidence to commence criminal proceedings against N1. The ODPP recommended that no criminal proceedings be commenced.

10.340 In the circumstances the Commission is of the opinion that further consideration **should not** be given to the prosecution of N1 for any criminal offences.

10.341 N1 is no longer a serving police officer. Accordingly the question of taking action pursuant to subsections 97(2)(c) and (d) of the Act does not arise.

MAGNUM SEGMENT

10.342 N1 is an affected person because he is the subject of the substantial allegations that:

- he agreed, with Irwin, to pervert the course of justice and did so by fabricating evidence, specifically the loading of the blank Occupier's Notices, against C11;
- he fabricated admissions alleged to have been made by C11;
- he, with Irwin, fabricated a record of interview allegedly held between C11 and N1;
- he, with Davidson and Irwin, fabricated the adoption of the record of interview alleged to have been held between N1 and C11;
- he made a false statement in relation to the arrest and interview of C11;
- he perjured himself when he gave evidence at his trial in March 2000; and
- members of Task Force Magnum, including N1, were prepared to do anything necessary to obtain convictions, including "loading" and "verballing" or both.

10.343 The Commission considers that N1 engaged in police misconduct: subsection 16(1)(a) of the Act.

10.344 The evidence of F7, M5, C11, C12 and Yabsley is admissible against him. N1's admissions of misconduct cannot be used against him.

10.345 F7 gave evidence that although he wasn't involved in the search of C11's home or his arrest he understood that N1 and the others on his team would do whatever was necessary to obtain enough evidence to charge C11. He said that N1 had talked about the events surrounding the arrest of C11, including looking for Occupier's Notices that matched the one left at the scene of the robbery, in the years after the event. F7's general evidence

about the methods and aims of the Task Force Magnum also supports the allegations that C11 was loaded and verballed.[1672]

10.346 M5 gave evidence that N1 told him that he wasn't happy about having to load and verbal C11. He also gave general evidence about the methods and aims of Task Force Magnum that supports the allegations against N1.[1673]

10.347 C11 has always maintained that he did not take part in a record of interview and that he knew nothing about the Occupier's Notices found at his home. He has given that evidence at every opportunity including to Yabsley when the record of interview was first brought to the charge room at Burwood Police Station and added to his list of possessions.[1674] C11's record of events of 7 March 1991[1675] accords with N1's version as given in evidence to the Commission.

10.348 Yabsley's evidence in relation to when C11 told him that he had not participated in a record of interview accords with C11's evidence given since the events, and N1's evidence to the Commission. Yabsley gave evidence at the committal of C11 and Stuart, and at the committal and trial of N1, Irwin, Davidson and Blake to this effect.[1676]

10.349 C12 gave evidence that C11 has always denied all the allegations against him but that N1 had told him, C12, that C11 had made admissions. He said he was concerned about the authenticity of the record of interview and discussed it with Yabsley but didn't make an official complaint about it.[1677] C12's evidence accords with that of C11, Yabsley and the admissions now made by N1.

10.350 The Commission is of the opinion that the evidence supports consideration being given to the prosecution of N1 for perjury pursuant to section 327 of the *Crimes Act 1900*. However, the decision of the High Court of Australia in *The Queen v Carroll*,[1678] delivered after the Commission hearing, suggests that such a prosecution would not be available.

10.351 In any event following the public hearings in this segment and prior to the completion of this Report, NSW Police considered the admissible evidence against N1 with a view to preparing a brief of evidence against N1. It was decided that there was insufficient admissible evidence to prepare a brief against N1.

10.352 In the circumstances the Commission is of the opinion that further consideration **should not** be given to the prosecution of N1 for any criminal offences.

[1672] PIC Transcript, F7, 10 September 2002, pp. 5239-5245
[1673] PIC Transcript, M5, 12 September 2002, pp. 5360-5362
[1674] PIC Transcript, C11, 9 September 2002, pp. 5173-5174
[1675] PIC Exhibit 698B
[1676] PIC Transcript, TW Yabsley, 9 September 2002, pp. 5197-5198, 5202
[1677] PIC Transcript, C12, 12 September 2002, pp. 5378-5379, 5382-5383
[1678] *The Queen v Carroll* [2002] HCA 55 (5 December 2002)

10.353 N1 is no longer a serving police officer. Accordingly the question of taking action pursuant to subsections 97(2)(c) and (d) of the Act does not arise.

MAURICE GILBERT NIELD

NEWPORT SEGMENT

10.354 Nield is an affected person because he is the subject of the substantial allegations that police from both the NSDU and GDU of Major Crime Squad North:

- entered into a corrupt agreement to share money, being $10,000, stolen from L17 during the execution of a search warrant on 21 February 1992, at premises occupied by L17;
- entered into a corrupt agreement to share $50,000, paid by L17 to police, for assistance provided to her in respect of the matters with which she was charged;
- stole a gold ingot from L17; and
- corruptly assisted L17 in relation to the charges brought against her and thereby perverted the course of justice.

10.355 The admissible evidence against Nield consists of the evidence of M5, L17 and the duty book entries that establish that Nield was one of the officers involved in the execution of the search warrants at both the West Ryde and the Newport premises.

10.356 The Commission is of the opinion that there is insufficient evidence to confirm the allegations in relation to the stealing of the gold ingot and the sharing of the money stolen from the Newport premises. Although L17 gave evidence that the money and the gold ingot were stolen she was not able to say who stole the money and the ingot. M5 gave evidence that the ingot and $10,000 were stolen but he did not know who stole the ingot and the money, did not see the ingot or the money either before or after they were stolen, and, although he received $1,000 from Hill on the day after the ingot and money were alleged to have been stolen, M5 could not confirm that the money he received was his one tenth of the $10,000. All of the other involved officers denied stealing the ingot and the $10,000 and receiving a tenth share of it. Therefore the Commission is of the opinion that consideration **should not** be given to the prosecution of Nield for any criminal offence in relation to the stealing of the gold ingot and $10,000 or the receipt of a tenth share of it.

10.357 M5's evidence in relation to the payment of $50,000 is hearsay and there is no positive link between L17 and the alleged payment of $5,000 to M5. Although S7 gave evidence that L17 told him she was paying police he was not able to indicate an amount. L17 denied paying the police, or making any arrangement for money to be paid to the police to assist her. She denied knowledge of any payment on her behalf and denied telling S7 that she was

paying police. N1's knowledge of the payment came from M5 so it is not corroborative of M5's allegation. In the absence of any corroboration, M5's allegation cannot be relied upon. Therefore the Commission is of the opinion that consideration **should not** be given to the prosecution of Nield for any offence in relation to the alleged receipt of a tenth of $50,000.

10.358 There is no evidence to suggest that Nield was involved in the fabrication of the record of interview with L17. In addition he did not give evidence at the trial of L17. There is therefore no evidence to suggest the involvement of Nield in the assistance provided to L17 by police. The Commission is of the opinion that consideration **should not** be given to the prosecution of Nield for the offence of perverting the course of justice.

10.359 Nield is no longer a serving police officer. Accordingly the question of taking action pursuant to subsections 97(2)(c) and (d) of the Act does not arise.

IAN BRUCE NICHOLSON

LET'S DANCE SEGMENT

10.360 Nicholson is an affected person because he is the subject of the substantial allegations that all police officers from both Manly Detectives and MCSN who were involved in the arrest of A1 and P1 entered into an agreement to share money corruptly taken during Operation Let's Dance, and that false documentation was deliberately prepared for use in the prosecution of A1 and P1. The evidence directly admissible against Nicholson is that of A1, K2, C2, his duty book entries and his statement made on 2 March 1992, and the evidence of N1 and F7.

10.361 The duty book entries of Nicholson and Smith reveal that Nicholson was the senior officer first sent from MCSN by Smith to assist Manly Detectives on 4 February 1992, after Smith had received the telephone call from Hulme. Nicholson played a significant part in the Operation on 4 and 5 February 1992. He was the first police officer to locate K2's bag with the money in it and to bring it to King and F7's attention. Nicholson was present at Manly Police Station late on the evening of 5 February 1992 and in the early morning of 6 February 1992.

10.362 There is no direct evidence that Nicholson took money from that seized by police on 4 and 5 February 1992 or that he was paid money by either N1 or F7, or that the arrangement arrived at between N1 and Hulme was ever discussed with him. N1's and F7's evidence was that they understood all those involved in the Operation were to receive money and Nicholson was someone they understood received money. However they did not give evidence that he actually received any money. Although the admissible evidence establishes that he was the most senior officer from MCSN who first attended at Manly Police Station, there is no suggestion that at any time

he was the officer giving instructions to officers of MCSN in relation to their conduct, with the possible exception of Gumley.

10.363 The available evidence gives rise to a suspicion that Nicholson must have been aware of the corrupt conduct that occurred and may well have been party to it. On the admissible evidence, however, the Commission is of the opinion that consideration **should not** be given for the prosecution of Nicholson for any criminal offence.

10.364 Nicholson is no longer a serving police officer. Accordingly the question of taking action pursuant to subsections 97(2)(c) and (d) of the Act does not arise.

DENNIS PETER O'TOOLE

GUNS SEGMENT

10.365 O'Toole is an affected person because he is the subject of substantial allegations that:

- he was aware of and / or participated in the collection and retention of a stash of weapons at the offices of MCSN at Chatswood, ("the stash");
- he participated in the use of weapons and other items to load and / or verbal alleged offenders, ("the loads"); and
- he was aware of the dumping of a stash of weapons into the Hawkesbury River by former and current officers of NSW Police, ("the dump").

10.366 The Commission considers that O'Toole engaged in police misconduct: subsection 16(1)(a) of the Act.

10.367 The admissible evidence against O'Toole is primarily that of M5, N1, and F7 together with the covertly recorded listening device conversations in which he was a participant.

10.368 In relation to the dump and the stash, the evidence of M5, N1 and F7 and recorded conversations where O'Toole reassures M5 that the located guns may not be traced reflects far greater knowledge and participation by O'Toole than he was prepared to concede before this Commission. His expressed concerns, in two recorded conversations reflecting his disquiet about other persons being present whilst speaking with M5, and his subsequent request to M5 to seek further information about an earlier Commission inquiry relating to the guns from Ehsman, are also indicative of a more suspect purpose and knowledge.

10.369 There is abundant evidentiary material that supports the existence of the stash of illegitimate weapons and that they constituted the dump. There is also evidence to support the conclusion that O'Toole was aware of the stash

at MCSN office and that O'Toole was aware of the practice of retaining firearms for the specific purposes of loads and more specifically, that he acquiesced and participated in that practice.

10.370 The Commission does not accept O'Toole's version in relation to the load of P2. The admissible evidence of P2, N1, M5, the recorded conversations in which O'Toole participated, and the evidence of Jamieson from the Police Diving Squad suggest a far greater knowledge and participation than he was prepared to concede before the Commission. Whilst Jamieson's evidence as to the direct approach by O'Toole may have been, in other circumstances, equivocal, the evidence of N1 and M5 together with that of P2, casts a far more suspicious light upon O'Toole's eagerness for the search to continue.

10.371 In relation to the load of M11, only the direct evidence of M5 implicates O'Toole. His evidence is that after telling O'Toole that he did not consider M11 to be substantially involved in the alleged offences, O'Toole told him to load M11 by saying *"You're going to have to give him a gun"*. This assertion is consistent with an apparently corrupt supervisory role adopted by O'Toole. If M5's evidence is accepted then it is clear that O'Toole had knowledge of the subsequent load and related verbal.

10.372 With respect to the load relating to A2, there is insufficient admissible evidence to implicate O'Toole in any criminal offence.

10.373 In relation to the stash and the dump the relevant offences are Possess Prohibited Weapons (*Prohibited Weapons Act 1989*) and Possess Prohibited Firearms (*Firearms Act 1989*). The Commission is of the opinion that consideration **should not** be given to the prosecution of O'Toole for these offences because they are statute barred.

10.374 The Commission is of the opinion that the evidence supports consideration being given to the prosecution of O'Toole for the following criminal offences:

"Wogs Out of Work" Operation - P2

- Conspiracy to commit an act intending to pervert the course of justice (section 319 and section 342, *Crimes Act 1900*)
- Commit certain actions and / or omissions with the intention to pervert the course of justice (section 319, *Crimes Act 1900*)
- Fabricate / knowingly make use of false evidence (section 317*, Crimes Act 1900*)

"Wogs Out of Work" Operation - M11

- Conspiracy to commit an act intending to pervert the course of justice (section 319 and section 342, *Crimes Act 1900*)

- Commit certain actions and / or omissions with the intention to pervert the course of justice (section 319, *Crimes Act 1900*)

10.375 Following the public hearings in this segment and prior to the completion of this Report, NSW Police investigated O'Toole's involvement in this matter. A decision was made to take no further action because none of the victims was prepared to provide a statement or give evidence in court. Without this evidence a prosecution would not succeed.

10.376 In the circumstances the Commission is of the opinion that further consideration **should not** be given to the prosecution of O'Toole for any criminal offences.

10.377 O'Toole is no longer a serving police officer. Accordingly the question of taking action pursuant to subsections 97(2)(c) and (d) of the Act does not arise.

LET'S DANCE SEGMENT

10.378 O'Toole is an affected person because he is the subject of the substantial allegations that all police officers from both Manly Detectives and MCSN who were involved in the arrest of A1 and P1 entered into an agreement to share money corruptly taken during Operation Let's Dance, and that false documentation was deliberately prepared for use in the prosecution of A1 and P1.

10.379 The Commission considers that O'Toole engaged in police misconduct: subsection 16(1)(a) of the Act.

10.380 The admissible evidence against O'Toole consists of the evidence of A1, P1, K2, C2 and M7, his entries in his duty book indicating his involvement in the Operation, and in particular his attendance at Manly Police Station on 4 February 1992, his contact with Hulme and King over both days and the evidence of N1 and F7. The recorded conversations are not admissible against O'Toole because he was not a party to the conversations. While the evidence of A1, P1, K2, C2 and M7 did not directly mention O'Toole it would be admissible against him if there was a prosecution which alleged a relevant joint criminal enterprise or conspiracy.

10.381 The Commission is of the opinion that the evidence supports consideration being given to the prosecution of O'Toole for the offences of:

- Steal Money from the Person of K2 pursuant to section 94 of the *Crimes Act 1900* on the basis that O'Toole was an accessory before the fact;
- Larceny under section 117 of the *Crimes Act 1900* on the same basis; and

- Conspiracy to Do an Act Intending to Pervert the Course of Justice under sections 319 and 342 of the *Crimes Act 1900*, the act being the deliberate preparation of false documentation to be used in the prosecution of A1 and P1. Although there is no evidence O'Toole prepared any such document, there is sufficient evidence concerning his role in the Operation to support a conclusion that he was a party to that conspiracy.

10.382 Following the public hearings in this segment and prior to the completion of this Report, NSW Police gave consideration to the preparation of a brief of evidence against O'Toole. It was determined however that there was insufficient evidence to prepare a brief against him.

10.383 In the circumstances the Commission is of the opinion that further consideration **should not** be given to the prosecution of O'Toole for any criminal offences.

10.384 O'Toole is no longer a serving police officer. Accordingly the question of taking action pursuant to subsections 97(2)(c) and (d) of the Act does not arise.

KING SEGMENT

10.385 O'Toole is an affected person because he is the subject of the substantial allegations:

- that a number of police officers, and a civilian, conspired to pervert the course of justice by giving false evidence in proceedings, in the Local Court of New South Wales, arising out of King's arrest for DUI on 25 September 1993; and
- that O'Toole, aided and abetted by King, obtained a financial benefit by deception when he obtained an informant reward payment in late 1997 or early 1998 based on a false application for a reward payment for an informant made by King and approved by O'Toole in October 1997.

10.386 Although he was summonsed,[1679] O'Toole did not give evidence in the Commission's hearings in this segment of Operation Florida.

10.387 The Commission considers that O'Toole engaged in police misconduct: subsection 16(1)(a) of the Act.

10.388 The admissible evidence against O'Toole in relation to the 1993 DUI incident comprises the evidence of M5, M13, S8, Ducker, Moore, McDougall, Shepherd and the undated statement O'Toole made to Internal Affairs. The Commission is of the opinion that the evidence supports consideration being given to the prosecution of O'Toole for the criminal offence of Conspiracy to Do an Act Intending to Pervert the Course of

[1679] See paragraph 8.10

Justice in breach of sections 319 and 342 of the *Crimes Act 1900*. The object of the conspiracy involved the giving of false evidence in the Local Court criminal proceedings arising out of King's arrest for DUI on 25 September 1993, about King taking and being in possession of Orthoxicol medication, and meeting the informant M13 at the Steyne Hotel, so that the charge(s) against King would be dismissed.

10.389 The admissible evidence against O'Toole in relation to the allegation of corrupt payments to a registered informant comprises the evidence of M13, M5, the recorded conversations between M5, King and O'Toole on 3 August 2000 and 7 February 2001 and the application and approval documents for the reward.[1680] The Commission is of the opinion that the evidence supports consideration being given to the prosecution of O'Toole for the criminal offence of Obtaining Money by Deception in breach of section 178BA of the *Crimes Act 1900*. The deception comprised O'Toole's knowing approval of King's false application for a reward payment by King dated 10 October 1997 and his obtaining the reward payment on 30 December 1997, which he subsequently certified had been paid to M13.

10.390 Following the public hearings in this segment and prior to the completion of this Report, NSW Police gave consideration to the preparation of a brief of evidence against O'Toole in relation to the following matters:

- 1993 DUI – a brief of evidence was sent to the ODPP however the ODPP recommended that no criminal charges be laid against any of the participants.
- Payment of registered informants - NSW Police investigated this matter and found there is insufficient evidence to consider criminal charges against O'Toole, or any other person.

10.391 In the circumstances the Commission is of the opinion that further consideration **should not** be given to the prosecution of O'Toole for any criminal offences.

10.392 As O'Toole is no longer a serving police officer the question of taking action pursuant to subsections 97(2)(c) and (d) of the Act does not arise.

O'TOOLE SEGMENT

10.393 Despite the medical opinion advanced on his behalf, the Commission does not accept that O'Toole had a bona fide medical condition sufficient to justify his non-appearance before the Commission's hearing to give evidence. In the Commission's opinion the objective circumstances suggest that O'Toole, during the third period of this treatment, manufactured or exaggerated physical and psychiatric symptoms to Dr Anderson in order to avoid giving further evidence at the Commission in the King segment in August 2002 and thereafter.

[1680] Identified in paragraph 8.134

10.394 The evidence against O'Toole in the Guns segment, the Let's Dance segment and the King segment was compelling, and cast great doubt on his credit and integrity. Although he denied all allegations of wrongdoing, in each segment the Commission has formed the view that O'Toole engaged in police misconduct.

10.395 In the Commission's opinion O'Toole's failure to appear and give evidence in the King segment, and the course of action adopted to achieve that end, merely compounded the damage already done to his credit and integrity.

10.396 In submissions received by the Commission following the private hearings in this matter it was said, amongst other things, that the Commission was biased in its inquiries into the circumstances surrounding O'Toole's non-appearance at the Operation Florida hearings in late 2002, and had a clear interest in making certain findings.

10.397 The Commission does have a "clear interest" in ensuring that its inquiries are not frustrated by the refusal of a person, without reasonable excuse, to attend before the Commission in answer to a summons. There is no proper basis to suggest that the Commission cannot look behind a medical opinion so as to test the veracity of the facts and circumstances upon which it is based, and ultimately decide that the opinion should not be accepted as a legitimate reason for a person's non-attendance. Such a proposition, if true, would render the Commission's summons power open to easy avoidance. The Commission will not let that happen and will do all that is within its power to preserve the integrity of its functions in the public interest.

10.398 A person summonsed to attend before the Commission must not, without reasonable excuse, fail to attend. In the light of the conclusions, set out above, the Commission is of the opinion that consideration **should** be given the prosecution of O'Toole for the offence of failing to attend before the Commission in accordance with summons, pursuant to subsection 106(1)(a) of the Act.

DAVID PHILLIP PATISON

NORTHERN BEACHES SEGMENT

10.399 Patison is an affected person because he is the subject of a number of substantial allegations, namely that he:

- stole cash during the execution of search warrants;
- corruptly received / solicited cash from suspected drug dealers and others;
- hindered the investigation, and the discovery, of evidence concerning the commission of the serious indictable offences of supply prohibited drug and break enter and steal;

- solicited / accepted a benefit for himself and others so as to conceal the commission of the serious indictable offence of supply prohibited drug;
- concealed evidence with intent to mislead a judicial tribunal;
- was an accessory before and after the fact knowing that the serious indictable offences of supply prohibited drug, break enter and steal and steal cash had been committed;
- committed certain actions and omissions with the intention to pervert the course of justice;
- solicited, received and offered bribes;
- conspired to pervert the course of justice to obtain a refund of cash seized by police;
- with Jasper, conspired to supply a prohibited drug;
- demanded cash with menaces and intent to steal;
- received stolen property and cash;
- made a false official instrument (the search warrants containing false information); and
- conspired to commit the serious indictable offence of break enter and steal.

10.400 The Commission considers that Patison engaged in police misconduct: subsection 16(1)(a) of the Act.

10.401 Patison was charged on 15 January 2002. He pleaded guilty to ten offences on an indictment:

- three counts of perverting the course of justice pursuant to section 319 of the *Crimes Act 1900*;
- two counts of receiving corrupt rewards pursuant to section 249B of the *Crimes Act 1900*;
- one count of permitting the supply of a prohibited drug (heroin) pursuant to subsection 25(1) of the *Drug Misuse and Trafficking Act 1985*;
- three counts of receive bribe pursuant to subsection 200(1) of the *Police Act 1990*; and
- one count of knowingly take part in the supply of a prohibited drug (cannabis) pursuant to subsection 25(1) of the *Drug Misuse and Trafficking Act 1985*.

A further 12 corruption based offences were taken into account on sentence.

10.402 Patison was sentenced in the Supreme Court of New South Wales on 2 December 2002 to seven years imprisonment with a non-parole period of

five years. Assistance to authorities was taken into account on sentence. An appeal by the ODPP against the inadequacy of sentence was dismissed by the Court of Criminal Appeal.

10.403 The Commission is of the opinion that consideration **should not** be given to the prosecution of Patison for any further criminal offences arising from Operation Florida.

10.404 Patison was suspended from NSW Police on 8 October 2001 and resigned on 8 February 2002. Accordingly the question of taking action pursuant to subsections 97(2)(c) and (d) of the Act does not arise.

10.405 In October 2001 the Commission commenced proceedings in the Supreme Court of New South Wales under the *Criminal Assets Recovery Act 1990* against Patison. On 6 May 2002 the Supreme Court ordered that Patison pay the Treasurer the sum of $58,675. The money was paid on 1 August 2002.

RAYMOND JOHN PEATTIE

NORTHERN BEACHES SEGMENT

10.406 Peattie is an affected person because he is the subject of a number of substantial allegations, namely that he:

- received stolen property;
- committed certain actions and or omissions with the intention to pervert the course of justice;
- solicited and received bribes;
- stole cash;
- corruptly solicited and received cash;
- hindered the investigation and discovery of evidence concerning the serious indictable offence of supply prohibited drug;
- concealed the commission of the serious indictable offence of supply prohibited drug;
- solicited / accepted a benefit for himself and others so as to conceal the commission of the serious indictable offence of supply prohibited drug; and
- concealed evidence with intent to mislead a judicial tribunal.

10.407 The Commission considers that Peattie engaged in police misconduct: subsection 16(1)(a) of the Act.

10.408 Peattie was charged on 29 October 2001 with four counts of accepting bribes pursuant to subsection 200(1) of the *Police Act 1990*. He pleaded guilty and on 3 May 2002 was sentenced to three years and two months imprisonment with a non-parole period of one year. Significant issues of assistance and contrition were taken into account on sentence.

10.409 The Commission is of the opinion that consideration **should not** be given to the prosecution of Peattie for any further criminal offences arising from Operation Florida.

10.410 Peattie was suspended from NSW Police on 8 October 2001 and resigned on 31 October 2001. Accordingly the question of taking action pursuant to subsections 97(2)(c) and (d) of the Act does not arise.

10.411 In May 2002 the Commission commenced proceedings in the Supreme Court of New South Wales under the *Criminal Assets Recovery Act 1990* against Peattie. On 27 May 2002 the Supreme Court ordered that Peattie pay the Treasurer the sum of $2,500. The money was paid on 8 April 2003.

FRANK RAMACCIA

NEWPORT SEGMENT

10.412 Ramaccia is an affected person because he is the subject of the substantial allegations that police from both the NSDU and GDU of Major Crime Squad North:

- entered into a corrupt agreement to share money, being $10,000, stolen from L17 during the execution of a search warrant on 21 February 1992, at premises occupied by L17;
- entered into a corrupt agreement to share $50,000, paid by L17 to police, for assistance provided to her in respect of the matters with which she was charged;
- stole a gold ingot from L17; and
- corruptly assisted L17 in relation to the charges brought against her and thereby perverted the course of justice.

10.413 The admissible evidence against Ramaccia consists of the evidence of M5, L17 and the duty book entries that establish that Ramaccia was one of the officers involved in the execution of the search warrants at both the West Ryde and the Newport premises.

10.414 The Commission is of the opinion that there is insufficient evidence to confirm the allegations in relation to the stealing of the gold ingot and the sharing of the money stolen from the Newport premises. Although L17 gave evidence that the money and the gold ingot were stolen she was not able to say who stole the money and the ingot. M5 gave evidence that the ingot and

$10,000 were stolen but he did not know who stole the ingot and the money, did not see the ingot or the money either before or after they were stolen, and, although he received $1,000 from Hill on the day after the ingot and money were alleged to have been stolen, M5 could not confirm that the money he received was his one tenth of the $10,000. All of the other involved officers denied stealing the ingot and the $10,000 and receiving a tenth share of it. Therefore the Commission is of the opinion that consideration **should not** be given to the prosecution of Ramaccia for any criminal offence in relation to the stealing of the gold ingot and $10,000 or the receipt of a tenth share of it.

10.415 M5's evidence in relation to the payment of $50,000 is hearsay and there is no positive link between L17 and the alleged payment of $5,000 to M5. Although S7 gave evidence that L17 told him she was paying police he was not able to indicate an amount. L17 denied paying the police, or making any arrangement for money to be paid to the police to assist her. She denied knowledge of any payment on her behalf and denied telling S7 that she was paying police. N1's knowledge of the payment came from M5 so it is not corroborative of M5's allegation. In the absence of any corroboration, M5's allegation cannot be relied upon. Therefore the Commission is of the opinion that consideration **should not** be given to the prosecution of Ramaccia for any offence in relation to the alleged receipt of a tenth of $50,000.

10.416 There is no evidence to suggest that Ramaccia was involved in the fabrication of the record of interview with L17. In addition he did not give evidence at the trial of L17. Except for the inconsistency between his duty book and his statement there is no admissible evidence to suggest the involvement of Ramaccia in the offence of perverting the course of justice. The Commission is of the opinion that consideration **should not** be given to the prosecution of Ramaccia for the offence of perverting the course of justice.

10.417 Ramaccia is a serving officer so it is necessary to consider the issues raised in subsections 97(2)(c) and (d) of the Act. In doing so the evidence he gave to the Commission may be considered. Ramaccia had little recollection of these events and denied any involvement in corruption. As stated above there is insufficient evidence to corroborate the allegations in relation to the stealing of $10,000 and $50,000. In addition there is no evidence that Ramaccia was involved in the fabrication of the record of interview with L17 and he did not give evidence at her trial. The Commission is of the opinion that consideration **should not** be given to the taking of action against Ramaccia pursuant to subsections 97(2)(c) or (d) of the Act.

S8

KING SEGMENT

10.418 S8 is an affected person because he is the subject of the substantial allegation that a number of police officers, and a civilian, conspired to pervert the course of justice by giving false evidence in proceedings in the Local Court of New South Wales arising out of King's arrest for DUI on 25 September 1993. S8 was one of those officers.

10.419 The Commission considers that S8 engaged in police misconduct: subsection 16(1)(a) of the Act.

10.420 The only evidence about S8's involvement in a conspiracy to pervert the course of justice arising out of the 1993 DUI incident came from S8 himself. That evidence cannot be used against him. In relation to subsection 97(2)(a) of the Act, there is therefore no admissible evidence against S8 implicating him in any criminal activity in relation to the 1993 DUI incident. The Commission is of the opinion therefore that consideration **should not** be given to the prosecution of S8 for any criminal offence.

10.421 As S8 is no longer a serving police officer the question of taking action pursuant to subsections 97(2)(c) and (d) of the Act does not arise.

RONALD BRUCE SMITH

GUNS SEGMENT

10.422 Smith is an affected person because he is the subject of the substantial allegations that:

- he was aware of and / or participated in the collection and retention of a stash of weapons at the offices of MCSN at Chatswood, ("the stash");
- he participated in the use of weapons and other items to load and / or verbal alleged offenders, ("the loads"); and
- he was aware of the dumping of a stash of weapons into the Hawkesbury River by former and current officers of NSW Police, ("the dump").

10.423 The Commission considers that Smith engaged in police misconduct: subsection 16(1)(a) of the Act.

10.424 The admissible evidence against Smith is that of M5, F7, N1 and the covertly recorded listening device conversations in which he was a participant.

10.425 In relation to the dump the Commission prefers the evidence of M5 together with the recorded conversations to the version given by Smith. Smith's eventual concession that the dump may have involved the disposal of "old exhibits" is untenable. There is abundant evidentiary material that supports the existence of the stash of illegitimate weapons and that they constituted the dump. Similarly the admissible evidence supports the conclusion that Smith was aware of the existence of the stash at MCSN office. The Commission does not accept Smith's explanation as to "the sweep" and its innocuous consequences. The evidence of M5, N1 and F7 and the relevant recorded conversations reflect far greater, and more damning, participation by Smith than he was prepared to concede before this Commission.

10.426 The Commission is of the opinion that despite considerable suspicion attaching to Smith's degree of knowledge and participation in the dump and retention of the stash, there is insufficient admissible evidence for consideration to be given to the prosecution of Smith for any criminal offence. There is also insufficient evidence to substantiate Smith participating in or having specific knowledge of any loads or verbals. This is despite the evidence reflecting a number of clear examples of corrupt and criminal conduct by several officers of the AHU and despite Smith being unable to offer any explanation as to how these practices could have occurred at MCSN without this knowledge. The Commission is of the opinion therefore that consideration **should not** be given to the prosecution of Smith for any criminal offences.

10.427 Smith was a serving officer when he gave evidence. He was suspended from duty on 13 August 2002. Following the public hearings in this segment and prior to the completion of this Report, NSW Police recommended that consideration be given to taking action against Smith pursuant to section 181D of the *Police Act 1990*. However prior to this process commencing Smith was medically discharged. He was not reinstated to duty prior to his medical discharge. His last day of service was 5 September 2003. Accordingly the question of taking action pursuant to subsections 97(2)(c) and (d) of the Act does not arise.

LET'S DANCE SEGMENT

10.428 Smith is an affected person because he is the subject of the substantial allegation that all police officers from both Manly Detectives and MCSN who were involved in the arrest of A1 and P1 entered into an agreement to share money corruptly taken during Operation Let's Dance.

10.429 The Commission considers that Smith engaged in police misconduct: subsection 16(1)(a) of the Act.

10.430 The admissible evidence against Smith consists of the evidence of A1, P1, K2, C2 and M7, Smith's duty book entries for 4 and 5 February 1992, and the evidence of N1 and F7. While the evidence of A1, P1, K2, C2 and M7 did not directly mention Smith, where a prosecution was brought on the

basis that he was a party to a relevant joint criminal enterprise or a conspiracy the evidence might be admissible against him. The recorded listening device conversations are not admissible against him because he was not a party to the conversations.

10.431 While the entry in Smith's duty book concerning his initial contact from Hulme is particularly suspicious with the reference to armed hold up suspects, the evidence concerning his involvement is not sufficient to justify the laying of a charge in relation to the stealing of the money from P1. Given Smith's limited involvement in the matter on 5 February 1992 and the lack of admissible evidence the Commission is of the opinion that consideration **should not** be given to the prosecution of Smith for the offence of conspiracy to pervert the course of justice.

10.432 The Commission is of the opinion that the evidence of F7 concerning the payment to Smith of $2,000 supports consideration being given to the prosecution of Smith for the offence of Receiving under section 188 of the *Crimes Act 1900.* The money paid to Smith by F7 was stolen from K2. That stealing was an offence under section 94 of the *Crimes Act 1900*, and therefore amounted to a serious indictable offence under section 4 of the *Crimes Act 1900* as required by section 188.

10.433 Following the public hearings in this segment and prior to the completion of this Report, NSW Police gave consideration to the preparation of a brief of evidence against Smith. It was decided that there was insufficient evidence to prepare a brief against Smith for any criminal offences.

10.434 In the circumstances the Commission is of the opinion that further consideration **should not** be given to the prosecution of Smith of any criminal offences.

10.435 Smith was a serving officer when he gave evidence. He was suspended with pay on 13 August 2002. Following the public hearings in this segment and prior to the completion of this Report, NSW Police assessed the matter and decided to take no further action in relation to Smith. Smith was subsequently granted medical discharge from NSW Police from 5 September 2003. He was not reinstated to duty prior to his medical discharge. His last day of service was 5 September 2003. Accordingly the question of taking action pursuant to subsections 97(2)(c) and (d) of the Act is no longer applicable to him.

STEPHEN ANTHONY ST JOHN

LET'S DANCE SEGMENT

10.436 St John is an affected person because he is the subject of the substantial allegation that all police officers who were involved in the arrest of A1 and P1 entered into an agreement to share money corruptly taken during

Operation Let's Dance and that payments were also made to other nominated officers who were not involved in the Operation.

10.437 The admissible evidence against St John is the evidence of F7 as to the arrangements for the making of a payment to him to distribute some of the money taken from K2 on 5 February 1992 to members of the Surveillance Unit who had been involved in the Operation. F7's evidence was that the idea to pay money to the Surveillance Unit was raised by N1 after the money had in fact been taken and the shares were being calculated. F7 said that prior to N1 raising the matter there was no discussion with St John, or anyone else from the Surveillance Unit, about them sharing in the money. There is no evidence that St John was a party to the joint criminal enterprise that had as its objective the stealing of money from K2. There is no evidence he was a party to the conspiracy to pervert the course of justice. There is no evidence that St John actually collected or received the money F7 said was allocated to the Surveillance Unit and left for collection at the offices of MCSN. In all of these circumstances the Commission is of the opinion that consideration **should not** be given to the prosecution of St John for any criminal offence.

10.438 St John is no longer a serving police officer. Accordingly the question of taking action pursuant to subsections 97(2)(c) and (d) of the Act does not arise.

GREIG ROBERT VICARY

GUNS SEGMENT

10.439 Vicary is an affected person because he is the subject of the substantial allegations that:

- he was aware of and / or participated in the collection and retention of a stash of weapons at the offices of MCSN at Chatswood, ("the stash");
- he participated in the use of weapons and other items to load and / or verbal alleged offenders, ("the loads"); and
- he was aware of the dumping of a stash of weapons into the Hawkesbury River by former and current officers of NSW Police, ("the dump").

10.440 The Commission considers that Vicary engaged in police misconduct: subsection 16(1)(a) of the Act.

10.441 The admissible evidence against Vicary is that of M5 and the civilian M11. This related to a specific allegation of a load and related verbal.

10.442 The Commission is of the opinion that the admissible evidence in relation to Vicary's degree of knowledge, and participation in, the retention and use of the stash is insufficient for consideration to be given to the prosecution of

Vicary for any related criminal offence. In relation to the load of M11 the Commission is of the opinion that the evidence supports consideration being given to the prosecution of Vicary for the following criminal offences:

- Conspiracy to commit an act intending to pervert the course of justice (sections 319 and 342, *Crimes Act 1900*)
- Commit certain actions and / or omissions with the intention to pervert the course of justice (section 319, *Crimes Act 1900*)
- Fabricate / knowingly make use of false evidence (section 317, *Crimes Act 1900*)
- Perjury with intent to procure conviction (section 328, *Crimes Act 1900*)
- Make false instrument (subsection 300(1), *Crimes Act 1900*)
- Use false instrument (subsection 300(2), *Crimes Act 1900*)

10.443 Following the public hearings in this segment and prior to the completion of this Report, NSW Police investigated Vicary's involvement in this matter. A decision was made to take no further action because none of the victims was prepared to provide a statement or give evidence in court. Without this evidence a prosecution would not succeed.

10.444 In the circumstances the Commission is of the opinion that further consideration **should not** be given to the prosecution of Vicary for any criminal offences.

10.445 Vicary is no longer a serving police officer. Accordingly the question of taking action pursuant to subsections 97(2)(c) and (d) of the Act does not arise.

RONALD WALSH

NEWPORT SEGMENT

10.446 Walsh is an affected person because he is the subject of the substantial allegation that police involved in the prosecution of L17 corruptly assisted her in relation to the charges brought against her.

10.447 M5 gave evidence that Walsh had no idea that the record of interview with L17 was fabricated and that he did not participate in the sharing of money taken from the Newport premises.

10.448 Walsh provided a statement for the proceedings involving L17 in which he said that he spoke to her and asked whether she had read the notes taken by M5 and she replied affirmatively. He had also asked her whether the notes were a true record of the interview. Again she had replied in the

affirmative.[1681] Walsh could not recall being challenged by counsel for L17, when he gave evidence at her trial, about the adoption of the record of interview. The notes taken by the ODPP solicitor show that Walsh gave evidence on 14 February 1995 and was cross-examined but there is no indication of the content of the examination.[1682]

10.449 In her evidence L17 agreed that Walsh spoke to her but that she could not recall whether she told him that the notes were accurate. Because she did not consider the notes to be accurate she could not imagine that she would have told him that they were accurate and a true record of her interview. She also said however that she did not complain to Walsh about the theft of the $10,000 or the gold ingot.

10.450 There is no evidence that Walsh committed any offence and the Commission is of the opinion that consideration **should not** be given to the prosecution of Walsh for any offences arising out of these events.

10.451 Walsh is no longer a serving police officer. Accordingly the question of taking action pursuant to subsections 97(2)(c) and (d) of the Act does not arise.

GUY JOHN WILDING

LETTERS OF ASSISTANCE SEGMENT

10.452 Wilding is an affected person because he is the subject of the following substantial allegations, namely that:

- in relation to the preparation of assistance documentation concerning P4, he did an act intending to pervert the course of justice;
- in relation to the preparation of assistance documentation concerning P6, he did an act intending to pervert the course of justice; and
- he stole money from P4's premises during a search on 28 June 1992.

10.453 The Commission considers that Wilding engaged in police misconduct: subsection 16(1)(a) of the Act.

10.454 The Commission is of the opinion that the evidence is capable of supporting the conclusion that the document detailing the supposed assistance by P4, was signed by both Wilding and Kempnich with the intention to mislead the sentencing judge so that a lesser sentence would be imposed.

10.455 In relation to P6's assistance documentation the Commission is of the opinion the evidence is capable of supporting the conclusion that the document detailing the supposed assistance of P6 was created with the

[1681] PIC Exhibit 559B
[1682] PIC Exhibit 581C

intention to mislead the sentencing judge so that a lesser sentence would be imposed.

10.456 P6's sentencing proceedings were held in Victoria. The New South Wales Court of Criminal Appeal decision in *Regina v Lowe*[1683] considered the scope of Part 7 of the *Crimes Act 1900* and found that *"... The overwhelming implication from Part 7 as a whole is that it exists to protect the administration of justice in and of New South Wales"*. The court also considered the effect of section 12 of the *Interpretation Act 1987* and section 3A of the *Crimes Act 1900* and concluded that the matter or thing referred to in an Act must be *"in and of New South Wales"* thus requiring that the course of justice referred to in section 319 of the *Crimes Act 1900* must be the course of justice in and of New South Wales. Thus in relation to Wilding's actions and the letter of assistance for P6 the relevant offence for consideration is the Victorian offence rather than an offence under Part 7 of the *Crimes Act 1900*.

10.457 The Commission is of the opinion that the evidence supports the allegation that police took money fraudulently and with no consent or claim of right from P4's premises with a clear intention to permanently deprive P4 of it.

10.458 The Commission is of the opinion that the evidence supports consideration being given to the prosecution of Wilding, in relation to both the P4 and P6 letters of assistance, for the offences of:

- doing an act intending to pervert the course of justice; section 319, *Crimes Act 1900;*
- doing an act intending to pervert the course of justice at Common Law (Victoria)*;* and
- larceny at Common Law.

10.459 NSW Police sought advice, prior to the completion of this Report, from the ODPP regarding possible criminal proceedings against Wilding. The ODPP advised no proceedings should be commenced.

10.460 In the circumstances the Commission is of the opinion that further consideration **should not** be given to the prosecution of Wilding for any criminal offences.

10.461 Due to the unsatisfactory nature of the evidence concerning the allegation made by P4 concerning Wilding and Kempnich and the alleged dealing with F3, the Commission is of the opinion that consideration **should not** be given to the prosecution of Wilding for any criminal offence relating to this matter.

[1683] *Regina v Lowe* [2003] NSWCCA 150

10.462 Wilding is no longer a serving police officer. Accordingly the question of taking action pursuant to subsections 97(2)(c) and (d) of the Act does not arise.

PHILIP GEORGE WRICE

MAGNUM SEGMENT

10.463 Wrice is an affected person because he is the subject of the substantial allegations that:

- he, together with, F7, M5, King and Dowding agreed to pervert the course of justice and did so by fabricating evidence, specifically the false police identification, against Stuart;
- he, with F7, fabricated a record of interview allegedly held between Stuart and himself;
- he together with Bernasconi, F7, and M5 fabricated the adoption of the record of interview alleged to have taken place between Stuart and him;
- he made a false statement in relation to the arrest and interview of Stuart and perjured himself when he gave evidence in accordance with that statement; and
- members of Task Force Magnum, including, King, were prepared to do anything necessary to obtain convictions, including "loading" and "verballing" or both.

10.464 The Commission considers that Wrice engaged in police misconduct: subsection 16(1)(a) of the Act.

10.465 The admissible evidence against Wrice consists of the evidence of F7 who said that Wrice assisted in the creation of the false police identification.[1684] M5's evidence supports this allegation.[1685]

10.466 Stuart said, at his committal and trial, that the interview between himself and Wrice was fabricated. The evidence of F7[1686] confirms this allegation. M5 could not confirm that the interview was fabricated because he was not present at the relevant time however he said that F7 told him later that the interview was fabricated. M5 also said that he knew Stuart and that he would not have taken part in an interview. His evidence that he arranged for the adoption of the record of interview provides some weight to the allegation that the interview was a fabrication.[1687]

10.467 General support for the allegations is found in the evidence of N1 who said that he was aware of the creation of the false police identification and that

[1684] PIC Transcript, F7, 10 September 2002, pp. 5225, 5227
[1685] PIC Transcript, M5, 12 September 2002, pp. 5352, 5353, 5359-5360
[1686] PIC Transcript, F7, 10 September 2002, pp. 5233-5234
[1687] PIC Transcript, M5, 12 September 2002, pp. 5357-5360

Stuart was to be loaded with evidence.[1688] The allegations also receive general support from the evidence of F7, M5 and N1 about the approach and methods of Task Force Magnum.[1689]

10.468 Wrice denied that he was involved in the conduct as alleged by F7, M5 and N1.

10.469 The Commission is of the opinion that the evidence supports consideration being given to the prosecution of Wrice for perverting the course of justice pursuant to section 319 of the *Crimes Act 1900*.

10.470 Following the public hearings in this segment and prior to the completion of this Report, NSW Police sent a brief of evidence against Wrice to the ODPP for consideration of possible criminal charges. The ODPP recommended that no charges be laid.

10.471 In the circumstances the Commission is of the opinion that further consideration **should not** be given to the prosecution of Wrice for any criminal offences.

10.472 Wrice is a serving officer so it is necessary to consider the issues raised in subsections 97(2)(c) and (d) of the Act. In doing so the evidence he gave to the Commission may be considered. Wrice denied all allegations of impropriety in relation to the arrest and charging of C11 and Stuart. However as stated above the evidence of F7, and to a lesser extent that of M5 and N1, supports the allegation that Wrice at the very least knew of the creation of the false police identification if he did not take part in the creation of it. In addition their evidence supports the allegation that Wrice and F7 fabricated the record of interview and that Wrice made a false statement and gave false evidence at the committal of C11 and Stuart and at the trial of Stuart. The Commission is of the opinion that the evidence supports consideration being be given to the taking of action against Wrice pursuant to subsections 97(2)(c) or (d) of the Act.

10.473 The Commission has been advised that after the ODPP advice was provided to NSW Police the matter was referred to Wrice's commander with a recommendation that consideration be given to the taking of reviewable action pursuant to section 173 of the *Police Act 1990*. The commander determined there was insufficient evidence to make an adverse finding and that therefore no action was to be taken against Wrice. His decision was based on the ODPP advice that there was no reasonable chance of conviction. NSW Police further advised that Wrice is on long-term sick leave and is currently seeking medical discharge.

[1688] PIC Transcript, N1, 11 September 2002, pp. 5288-5289

[1689] PIC Transcript, F7, 10 September 2002, pp. 5241-5242, 5243-5245; PIC Transcript, N1, 11 September 2002, p. 5320; PIC Transcript, M5, 12 September 2002, pp. 5361-5362

10.474 In the circumstances the Commission is of the opinion that further consideration **should not** be given to the taking of action against Wrice pursuant to subsections 97(2)(c) or (b) of the Act.

11. PROCEDURAL MATTERS

Execution of Search Warrants 500
Supervision and Management 501
Review of Duty Officer Position 503
Command Management Framework 504
Letters of Assistance 505
Handling and Storage of Exhibits 507
The Post-Royal Commission Era 508

11.1 The Commission has a statutory role pursuant to section 14 of the *Police Integrity Commission Act 1996* to advise on possible ways in which police misconduct might be eliminated. With this objective in mind, it is appropriate to comment on the following matters.

EXECUTION OF SEARCH WARRANTS[1690]

11.2 The use of search warrants by NSW Police is governed by the *Search Warrants Act 1985*, and the Search Warrants Regulation 1999. The application for, and execution of, search warrants must be carried out in accordance with the relevant law and the NSW Police *Execution of Search Warrant Procedures*.

11.3 The Commission heard that Local Area Commands sometimes adapt the NSW Police procedures to suit the specific requirements of the particular command. Manly / Davidson was one such Local Area Command that had published its own Standard Operating Procedures (SOPs) for the execution of search warrants.[1691] The Manly / Davidson SOPs adapted the NSW Police SOPs for the execution of search warrants and the video / audio recording of search warrants. While the main points were the same there was less detail in the Manly / Davidson SOPs. The problem at Manly was not however with the procedures but rather with a lack of compliance with them, and even knowledge of them, by officers stationed in the Manly / Davidson LAC.

11.4 Peattie gave evidence that he did become not familiar with the SOPs for the execution of search warrants until December 2000. The reason he gave for this was that he believed he had a working knowledge of what was required so had never taken the time to read them.[1692]

11.5 Peattie agreed he had not complied with the SOPs and said that if the SOPs had been followed by all participants the sort of criminal conduct identified in Operation Florida would probably not have occurred. He also admitted that although he thought he knew what was required of an Independent Officer during the execution of a search warrant, in fact he did not, and told the Commission:[1693]

> If I had have, well, things would have been a lot better than they are today.

11.6 Recording the search on video was one area in particular where the SOPs were not followed by the Manly / Davidson officers. The SOPs require that the entire search should be filmed, not just those parts where something is located. Where only one camera is used, and in the Commission's opinion there is no reason why that should be so, searchers should operate in one area where their activity is capable of being recorded, rather than fanning out over various rooms within premises so that the Independent Officer and the camera operator have no chance of observing or filming all the searching activity.

[1690] See also discussion of Conduct of Police Officers during Searches in Chapter 2 at paragraphs 2.270-2.274
[1691] PIC Exhibit 270
[1692] PIC Transcript, RJ Peattie, 16 October 2001, pp. 274-275
[1693] PIC Transcript, RJ Peattie, 16 October 2001, pp. 275-276, 308-310

11.7 Resources need to be directed towards the maintenance and updating of equipment because equipment failure should not be an excuse for failing to film. Where equipment failure occurs however, searchers should wait for the delivery of equipment, in working order, before commencing or continuing to search. The Commission acknowledges that such an approach will take valuable time, however, the cost in time, convenience and resources, of compliance with the SOPs must be weighed against the cost to the community of the activities of corrupt police officers.

11.8 The Commission recommends that NSW Police give priority to improving technological resources, for example the provision of smaller and more efficient cameras for use during the execution of search warrants. The Commission also recommends that from time to time Local Area Commanders accompany police during the execution of search warrants, and check and / or watch the videos taken during the execution of search warrants, to raise the level of supervision in this area.

11.9 NSW Police advised in a submission to the Commission dated 18 November 2002, that in January 2002 the then Senior Deputy Commissioner of Police, K E Moroney, organised for a Search Warrant Review Committee to convene to review existing search warrant standard operating procedures.[1694]

11.10 NSW Police further advised the Commission by letter dated 10 December 2003[1695] that the working party had been considering new SOPs for search warrants but that the process had been held up by the delay in the commencement of the *Law Enforcement (Powers and Responsibilities) Act 2002*. That Act, when it commences, will repeal and replace the *Search Warrants Act 1985* and the Search Warrants Regulation 1999 amongst others. NSW Police advised that the commencement of the new Act was subject to ongoing consultation with the Attorney General's Department and that no clear date had been set for the commencement.

11.11 In further correspondence dated 8 January 2004[1696] NSW Police advised that the working party was considering amendments to the search warrant procedures and developing new SOPs to take account of the changes that will be brought about by the implementation of the *Law Enforcement (Powers and Responsibilities) Act 2002*. The Commission has requested NSW Police to inform the Commission of developments as they occur.

SUPERVISION AND MANAGEMENT

11.12 Supervision, or lack of it, was an obvious issue in a number of segments of Operation Florida.

[1694] PIC Exhibit 807, p. 26
[1695] PIC Exhibit 932
[1696] PIC Exhibit 934

11.13 In the Northern Beaches Segment, Superintendent Gary Raymond, the former Local Area Commander, and Assistant Commissioner Graeme Morgan, the former Region Commander, both gave evidence in relation to supervision and management. Their evidence is discussed in detail in Chapter 2.

11.14 In relation to the Let's Dance Operation there was evidence that the supervisors, Smith, O'Toole and Hulme, took part in the arrangements to take money and divide it amongst the involved officers and were thus aware that documentation prepared for the prosecution of P1 and A1 incorrectly understated the amount of money found. In the Newport segment there were allegations that the supervisors, Nield and Eade, were involved in the taking of money and sharing it among the officers.

11.15 In the Guns Segment the evidence was that Smith and O'Toole were aware of, and acquiesced in, the keeping of the stash of weapons at the Chatswood office of MCSN. It was Smith's boat that was used by M5 and Dowding to dispose of the weapons. There was also evidence that both Smith and, in particular, O'Toole, actively encouraged the loading and verballing of offenders, although both denied that they did this.

11.16 In the Magnum Segment N1, F7 and M5 all gave evidence that Davidson chose them to be members of the Task Force because he knew they were prepared to load and verbal offenders. F7 said that Davidson was put in charge of the Task Force because it was known that he was prepared to do whatever was necessary to charge the targets. N1 said that Davidson put pressure on him to do whatever was necessary to charge C11. Davidson then performed the adoption of C11's fabricated record of interview.

11.17 Where a supervisor condones the corrupt actions of those he supervises, or takes part in them, corrupt activities will continue unchecked whether corruption prevention plans are in place or not. This was demonstrated in the Manly / Davidson LAC, where, ostensibly, appropriate corruption prevention structures were in place. The Corruption Prevention Plan[1697] published at Manly, however, did little more than exhort officers not to act corruptly and to report any corruption of which they were aware. Such a plan had little effect because it failed to provide any guidance to officers concerning areas of risk that required increased vigilance, or to otherwise describe any indicators of corruption that should be reported. At Manly / Davidson the corruption prevention plan was combined with the adoption, by Raymond, of a high trust model of management with little intrusive supervision or checks.

11.18 It is clear that a high trust model of supervision is inadequate and inappropriate for corruption prevention. Police supervisors at the operational level must take a greater responsibility for ensuring that corrupt officers are identified and exposed. In addition it is important that NSW Police promotes awareness that complaints, such as those of Benbow and B6, will be acted upon.

[1697] PIC Exhibit 110

11.19 Morgan was invited during his evidence to comment on the success of the introduction of the Duty Officer position as the primary source of operational supervision. Morgan said that he wasn't sure how effective the implementation of the Duty Officer positions had been and that he was aware of some problems, however he qualified his comments by saying that he was not sufficiently familiar with enough Local Area Commands to make a general comment.[1698]

REVIEW OF DUTY OFFICER POSITION

11.20 The submissions of NSW Police dated 18 November 2002 advised that NSW Police was undertaking a:[1699]

> … lengthy review of Duty Officer roles and responsibilities and that a Duty Officer Performance Agreement has been developed to ensure adherence, across the State, to the agreed responsibilities and accountabilities of Duty Officers.

The submissions further advised that documents including Duty Officer roles and responsibilities, job stream responsibilities, a policy statement and performance agreement had been presented to all Local Area Commanders. According to these documents Duty Officers are required to increase their strategic input into commands through such areas as addressing accountability and corruption prevention.

11.21 In a letter dated 8 January 2004, NSW Police advised the Commission that the review of Duty Officer positions had been *"... finalised, communicated and implemented ..."*. The letter stated that in January 2003 senior management of NSW Police had agreed to, and endorsed, the Duty Officers Policy Statement. The letter said that the statement, developed in consultation with Duty Officers across the State (in both city and country areas), senior commanders and the Police Association, *"... clearly articulates the duty officer's roles and responsibilities in a practical, operational context"*. Following its endorsement the statement was published on the NSW Police Intranet and sent to all Local Area Commanders. An article in the Police Weekly accompanied the publication of the statement.

11.22 The Duty Officer Statement sets out the roles and responsibilities of the position of Duty Officer. The Duty Officer is expected to focus on both the strategic management of the Local Area Command and the tactical and supervision issues. In almost every LAC there will be 24-hour coverage by Duty Officers. This is a change from past practices where senior and supervisory staff were often not rostered on duty outside normal working hours. The aim of the Duty Officer position is to provide leadership and supervision to frontline police 24 hours a day. To achieve this aim the Duty Officer position has significant management responsibilities including

[1698] PIC Transcript, GR Morgan, 18 December 2001, pp. 2066-2067
[1699] PIC Exhibit 807, p. 28

involvement in complaint management, command management framework (CMF),[1700] human resource management and crime management.[1701]

11.23 The implementation of the Duty Officer Statement did not provide for a structure to enable evaluation of the position. The Commission recommends that NSW Police put in place both a structure and a timetable for evaluation of the effectiveness of the Duty Officer positions. In making this recommendation the Commission is mindful of the comments by Morgan in relation to the difficulties encountered in the Manly / Davidson LAC with the implementation of the Duty Officer positions. It is acknowledged that Morgan was speaking from the experience of one LAC only and it is possible that other LACs did not experience similar problems. Evaluation of the effectiveness of the new role will assist in identifying any difficulties or problems occurring throughout NSW Police and aid in the allocation of resources to resolve any issues.

COMMAND MANAGEMENT FRAMEWORK

11.24 The submissions of NSW Police also advised that in 2000 NSW Police commenced a change in direction from the external, and sometimes punitive, audits imposed on Local Area Commands, to a risk based self-assessment auditing process called the "Command Management Framework" (CMF). The CMF is also a corruption prevention system. The role of supervisors and Duty Officers in the CMF includes quality assurance, test sampling, reporting lack of compliance to the management team and identifying and actioning risk areas.[1702]

11.25 NSW Police intends to introduce an interactive intranet based version of the CMF, called iCMF. The iCMF contains a tool that enables supervisors to evaluate the performance of individuals and teams. Once the system is fully implemented supervisors will be able to ensure that individuals and teams update their performance reviews throughout the month rather than only submitting a return at the end of each month. In addition the system will allow access and audit by senior management and allow examination of trends and issues across the State.[1703] It is anticipated that this process will contribute to corruption prevention.

11.26 The Commissioner of Police endorsed the development of the iCMF as an interactive intranet web version in late 2001. It was intended that a demonstration model would be available by December 2002 and that implementation would begin at LAC level in early 2003.

11.27 In a letter dated 8 January 2004 NSW Police advised the Commission that the introduction of the iCMF had been delayed. The letter said further that a Vision document and a Specifications Requirement document had been

[1700] See paragraphs 11.24-11.28
[1701] PIC Exhibit 934
[1702] PIC Exhibit 807, pp. 22-25
[1703] PIC Exhibit 807, pp. 25-26

prepared and that development of the prototype was ongoing. It was hoped that the prototype, involving implementing selected CMF portfolios and running the system live on the NSW Police Intranet, would be ready for testing in early 2004.[1704]

11.28 The Commission recommends that NSW Police put in place an evaluation timetable for the CMF, and the iCMF once it has commenced.

LETTERS OF ASSISTANCE

11.29 Former Detective Superintendent Robert Lysaught gave evidence about the procedures in place, in 1992, for the checking of letters of assistance. He said that at that time there was no central register kept of such letters so there was no way of cross checking whether the information provided in one letter had been provided previously in relation to another person, as appears to have happened with the letters for P4 and P6 (see Chapter 5 of this Report). Lysaught said that the checks he did were limited to confirming that the arrests, particularised in the assistance document, had in fact occurred and whether or not the person was a registered informant. As these checks were sometimes done with the officer who had prepared the document, the checks were not a secure method of checking the information provided.[1705]

11.30 Lysaught signed the covering letters accompanying the letters of assistance for P4 and P6. He said that the practice of providing covering letters arose as a way of exerting more control over the numbers of letters going before the courts. Lysaught admitted that in signing such letters he was often relying on the word of the officer that the information provided was correct.[1706]

11.31 NSW Police advised, in a submission dated 18 November 2002, that the current procedures for such letters were set out in NSW Police Handbook in the section related to Court Matters under the heading of *"Affidavits of Assistance"*.[1707] The NSW Police Informant Management Manual provides similar procedures for police informants.

11.32 The procedures require the officer in charge of the case to prepare and sign a comprehensive report, with each page and paragraph numbered, setting out accurate details of the assistance provided, its worth and consequences, and any recognition provided by NSW Police. All the relevant documents, including transcript, charge sheets and court results, must be attached. The case officer's supervisor must countersign the report.

11.33 The report must then be sent to the case officer's Local Area Commander or equivalent who must be a line commander of the rank of Superintendent or above. The Commander must then decide, on the basis of the contents of the report and attachments, whether or not to provide a sworn Affidavit of

[1704] PIC Exhibit 934
[1705] PIC Transcript, RJ Lysaught, 17 April 2002, pp. 2377-7378, 2407, 2410-2411
[1706] PIC Transcript, RJ Lysaught, 17 April 2002, pp. 2377, 2407, 2410-2411
[1707] PIC Exhibit 833, pp.1-4

Assistance. If such an affidavit is provided by a Commander, the case officer must attach it to his or her report and, among other things deliver all the material in a sealed envelope either to the Director of Public Prosecutions or the relevant police prosecutor seven working days before the sentencing hearing. The case officer must be personally present when the affidavit is tendered to the sentencing judge or magistrate.

11.34 If the Commander of the case officer does not provide an Affidavit of Assistance the case officer may have the matter reviewed by his or her Region Commander or equivalent.

11.35 Further procedures are set out and must be followed where an Affidavit of Assistance is provided for a prosecution witness and where the Affidavit contains sensitive information that would be subject to a bona fide claim of public interest immunity. Where a Crown witness is provided with an Affidavit of Assistance the case officer must disclose its existence to the ODPP. Certain procedures must then be followed.

11.36 The NSW Police Handbook also sets out the procedure to be followed by the Commander of the case officer. He or she must confirm that the information in the report of the case officer is accurate. The Commander is required to examine the supporting documents. If the Commander is satisfied that it is appropriate to provide an Affidavit of Assistance, having regard to the seriousness of the offence(s) and the level of assistance provided, he or she then prepares the Affidavit. The Commander is required to annex the report to the Affidavit. The Affidavit must state that he or she is the case officer's senior supervisor and include a paragraph containing the words to the effect that he or she has made appropriate inquiries and as a result is satisfied that the contents of the report are true and correct.

11.37 The Commander must also mark and sign the case officer's report. The Handbook instructs the Commander to swear and sign the Affidavit before a Justice of the Peace who is not associated with the investigation. Finally the Commander is required to file copies of the report and the affidavit.

11.38 The current procedures are clearly more thorough than the ad hoc procedures in place in 1992. The requirement in the current procedures for a comprehensive report with all relevant documentation attached should render it difficult for the events that occurred in relation to P4 and P6 to recur.

11.39 NSW Police advised the Commission that the Informant Management Manual (IMM) has been reviewed. In December 2003 the Commissioner of Police approved a new IMM. The new IMM is in two parts, one part being a basic definition of principles and purpose and the second part being an IMM Policy and Procedures Manual to explain procedures in detail. NSW Police advised that although the IMM Policy & Procedures Manual had been approved in principle by the Commissioner, it still required some fine tuning and was expected to be approved at Deputy Commissioner level early in

2004. When this approval has been given the new arrangements will be released as a package.[1708]

11.40 The changes to the procedures in relation to Informant Management include linking informant information to a computer database and the expansion of the definition of the "source" of information to include community sources. Local Area Commanders are able to access and audit the database. Most Affidavits of Assistance are written in relation to information provided by informants. Such Affidavits are, with the implementation of the new system, included on the database. Local Area Commanders will continue to approve Affidavits of Assistance as set out above. However with the implementation of the new system their inquiries will include an interrogation of the database in relation to the informant and the information provided. This system should prevent misuse of information as occurred in relation to the Affidavits of Assistance provided for P4 and P6. NSW Police has further advised that the registration of "community sources" and the expanded database has been implemented ahead of the other changes and is currently in use.[1709] The Commission welcomes these developments.

HANDLING AND STORAGE OF EXHIBITS

11.41 In the Guns Segment evidence was given about the retention of firearms and related paraphernalia, by officers at MCSN, for use in loading suspects. N1, M5 and F7 all gave evidence that firearms and other items were illegally kept at the Chatswood office of MCSN. N1 said that these guns were obtained in a number of ways but the most common way was that during a search where two or three guns were found, the least traceable gun would be set aside and not booked up in the correct way as an exhibit, but instead illegally kept.[1710]

11.42 NSW Police currently has, and had at the relevant time in the 1990s, specific procedures in place for the handling of property seized as an exhibit. The procedures specify that property seized from a person is to be checked or counted in the person's presence at the first available opportunity and the details are to be entered in the officer's notebook. As soon as possible after seizure the details are also to be entered into the Exhibits Book at the police station. A cross reference to the exhibit is required to be made on the relevant COPS event. Receipts are issued from the Exhibit Book in certain circumstances. There are detailed procedures relating to the receipt of exhibits at a police station as well as procedures for the handling, storage and return or disposal of exhibits. All these procedures are substantially the same as those in place throughout the 1990s when the events, which were examined in the Guns Segment, occurred.

11.43 The procedures currently in place and existing at the time of the incidents in the Guns Segment appear to be appropriate. The problem appears to be the failure by individual officers to follow NSW Police procedures and a failure

[1708] PIC Exhibit 932
[1709] PIC Exhibit 933
[1710] PIC Transcript, N1, 4 June 2002, p. 3179-3180

of supervision of those officers. As identified already, where supervision is inadequate corrupt activities are able to continue, whether there are appropriate procedures in place or not. By allowing the collection of illegal firearms to be kept at the office in clear breach of NSW Police procedure and knowing about, and participating in, the use of those firearms to load suspects, Smith and O'Toole ensured that the illegal activities continued unchecked.

11.44 Although not asked specifically about their knowledge of the appropriate procedures M5, N1 and F7 all indicated that they knew, during the time they were working at MCSN at Chatswood, that the retention and use of the weapons for the loading of suspects was illegal. N1 knew that proper procedures existed because he said that the reason he kept the firearms, seized in the 1984 search warrant, was that they had not been recorded properly as exhibits so could not be disposed of correctly. He also said that one way of obtaining the weapons that comprised the illegal stash was to seize a number of firearms and fail to enter one or more of the seized firearms as exhibits. In this way the officers ensured that the firearms illegally retained never appeared on official records.

11.45 Both Smith and O'Toole denied knowledge of the stash of weapons at the MCSN office in Chatswood and the use of those weapons in the loading up of suspects. However in light of the evidence given to the Commission by M5, N1, and the victims P2 and M11, it is the opinion of the Commission that both Smith and O'Toole had far greater knowledge of and involvement in the illegal activities than they were prepared to concede.

11.46 It might be that the action, or inaction, of Smith and O'Toole in relation to the illegal activities of the officers under their respective commands was indicative of a broader police culture at that time that condoned certain activities and did not strictly enforce compliance with police procedures. The evidence given about the methods of the Magnum Task Force lend support to this theory.

THE POST-ROYAL COMMISSION ERA

11.47 NSW Police has undergone significant change in the last decade as a result of technological advances and the implementation of recommendations made by the Royal Commission into the New South Wales Police Service. Such changes should mean that activities of the type allowed to continue unchecked at the Chatswood MCSN offices, in relation to the handling of exhibits, and the storage and use of weapons are less likely to occur. However the evidence given in Operation Florida demonstrates that there is no room for complacency.

11.48 It is clear from the evidence that not all police officers were deterred by either the operations, or the findings, of the Royal Commission, and continued to perpetrate offences not dissimilar to those examined by the Royal

Commission, both during and immediately after the Royal Commission investigations had concluded.

11.49 The wide-ranging recommendations made by the Royal Commission, about the serious deficiencies in the culture and management of NSW Police, were generally accepted by the senior executives of NSW Police. However, in the light of the evidence given during Operation Florida, there needs to be careful assessment of the overall effectiveness of steps taken to implement the recommendations.

11.50 The issue of culture in a police service is complex. The Royal Commission identified and commented on many factors that contribute to the negative aspects of police culture. Those findings need not be repeated. However, the evidence given in the Operation Florida investigation indicates that there was not an instant transformation of the culture of NSW Police following the Royal Commission and that it will be difficult to bring about such a change.

11.51 To ensure the ongoing transformation of its culture NSW Police must continue to actively embrace an ethos emphasising the importance of compliance with proper procedures and the use of proper investigative methods. The Commission recommends that the training of officers, both on entry to NSW Police and thereafter, emphasises both compliance with police procedures and the use of proper investigation methods to achieve results. Such training must be enforced and reinforced at the operational level by appropriate supervision.

12. APPENDICES

Appendix 1 - Role and Functions of the Commission 512
Police Misconduct 512
Investigations 512
Reports to Parliament 513
Appendix 2 - Witness list 517

APPENDIX 1 - ROLE AND FUNCTIONS OF THE COMMISSION

A1.1 The Commission was established under the *Police Integrity Commission Act 1996* (the Act) on the recommendation of the Royal Commission into the New South Wales Police Service. The principal functions of the Commission, set out in section 13 of the Act, are:

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

A1.2 As far as practicable, the Commission is required to turn its attention principally to serious police misconduct (subsection 13(2)).

POLICE MISCONDUCT

A1.3 The expressions "police misconduct" and "serious police misconduct" are not specifically defined by the Act. They nevertheless include the following types of conduct (see subsection 5(2)):

> (a) police corruption,
>
> (b) the commission of a criminal offence by a police officer,
>
> (b1) misconduct in respect of which 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*.

A1.4 It follows that "police misconduct" may encompass not only serious criminal activity such as perverting the course of justice but also minor disciplinary breaches by police, the sanction for which may, for example, be nothing more than additional training and development.

INVESTIGATIONS

A1.5 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 (section 25);
- require any person (whether or not a public official or public authority) to produce documents or other things (section 26);
- enter public premises (section 29);
- obtain search warrants (section 45);
- obtain warrants under the *Telecommunications (Interception) Act 1979*;
- obtain warrants under the *Listening Devices Act 1984* (section 50); and
- require persons to attend and give evidence before a hearing of the Commission, either in public or in private (section 38).

REPORTS TO PARLIAMENT

When does the Commission Submit a Report to Parliament Regarding an Investigation?

A1.6 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 (subsection 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 (subsection 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 (subsections 96(3), (4) and (5)).

Components of a Report to Parliament Regarding an Investigation

A1.7 A report to Parliament in relation to an investigation will generally contain a number of components. Under subsection 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 (subsection 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" (subsection 97(3)).

The Commission's Approach to the Assessment of Information and Evidence

A1.8 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 (subsection 16(2)(a)). The Commission may form opinions as to whether police misconduct or other misconduct may have occurred, is or may be occurring, is or may be about to occur, or is likely to occur (subsection 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 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 (subsection 16(3)). That said, the Commission recognises, bearing in mind the definition of police misconduct may include conduct that amounts to criminal and disciplinary offences, 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.

A1.9 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 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

A1.10 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.[1711] 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 make findings or

[1711] 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" (subsections 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.

express opinions as to the veracity of evidence received from individual witnesses.

A1.11 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.

Statements Regarding "Affected" Persons

A1.12 Subsection 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,
>
> 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.

Recommendations and Opinions Regarding Disciplinary Action Against Police

A1.13 "Reviewable action" within the meaning of section 173 of the *Police Act 1990* refers to forms of disciplinary action that would ordinarily apply to more serious breaches of discipline. The available forms of reviewable action are:

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

Owing to the seriousness of these forms of disciplinary action, a police officer may appeal the imposition of any of these penalties to the Industrial Relations Commission of New South Wales.

A1.14 In addition to the requirement to include in a report to Parliament a statement of the Commission's opinions regarding those against whom substantial allegations have been made, the Commission has discretion to recommend that consideration be given to other disciplinary action. This includes "non-reviewable action" within the meaning of section 173 of the *Police Act 1990*. Non-reviewable action is disciplinary action available against police officers for less serious breaches of discipline. There is no avenue of appeal to the Industrial Relations Commission against the imposition of a form of non-reviewable action. The available forms of non-reviewable action are:

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

Other Types of Recommendations and Opinions

A1.15 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 or other persons carry out their respective duties and responsibilities.

APPENDIX 2 - WITNESS LIST

WITNESS	DATE OF EVIDENCE	SEGMENT
A1	12 November 2001	Let's Dance
Adams, Miles Bradley	14 November 2001	Let's Dance
Anderson, Peter Wallace *	13 and 27 August 2003	O'Toole
B4	16 October 2001	Northern Beaches
B6	11 October 2001	Northern Beaches
B8	13 November 2001	Let's Dance
Benbow, Luke Michael (B5)	9 October 2001	Northern Beaches
Bernasconi, Phillip Sydney	10 October 2002	Magnum
Blake, Ian Grant	9 October 2002	Magnum
Breedon, Brian Raymond	20 August 2002	King
Brett, Mark Christopher	19 April 2002	Letters of Assistance
Bridges, Steven Anthony	5 December 2001	Let's Dance
Brown, Lee Kevin	14 October 2002	Magnum
Butt, (Moore) Clare Margaret	19 August 2002	King
C6	10 April 2002	Letters of Assistance
C11	9 September 2002	Magnum
C12	12 September 2002	Magnum

* Gave evidence at a private hearing where the transcript was later admitted into evidence in the public proceedings.

WITNESS	DATE OF EVIDENCE	SEGMENT
Caccamo, Vincent	10 October 2001	Northern Beaches
Carson, Peter Dominic	29 November 2002	King
Crawford, Vivienne Alexa	1 May 2002	Let's Dance
Davidson, John Stuart	8 and 14 October 2002	Magnum
Davidson, Shaun Andrew *	12 December 2001	Northern Beaches
Dowding, Kim	3 and 4 June 2002	Guns, (Magnum)
Ducker, Anthony John Patrick	18 August 2002	King
Eade, Wayne James	15 July 2002	Newport
Ehsman, Peter John	18 June 2002	Guns
F2	11 and 19 October 2001	Northern Beaches
F3	17 April 2002	Letters of Assistance
F4	18 April 2002	Letters of Assistance
F7	8, 9 and 27 May, 5 June and 10 September 2002	Guns, Let's Dance, Magnum
Fabris, Michael Laurence	16 and 20 November 2001	Let's Dance
G2	11 October 2001	Northern Beaches
Green, Martin Geoffrey	7 and 17 December 2001	Northern Beaches
Gumley, Howard Robert	15 November 2001, 2 May 2002	Let's Dance
Hagan, Michael Arthur	27 May 2002	Let's Dance

* Gave evidence at a private hearing where the transcript was later admitted into evidence in the public proceedings

WITNESS	DATE OF EVIDENCE	SEGMENT
Hill, David Marshall	19 October 2001, 9, 11, 12 and 16 July 2002	Northern Beaches, Newport
Hollis, Wayne	1 May 2002	Let's Dance
Hulme, Paul	4 December 2001, 9 May 2002	Let's Dance
Irwin, Robert James	9 October 2002	Magnum
Ison, Ian Frederick	9 and 15 July 2002	Newport
Jamieson, Graeme Ronald	4 July 2002	Guns
Jasper, Matthew John	17, 18 and 19 October 2001	Northern Beaches
K2	13 November 2001	Let's Dance
Kehoe, Matthew James	13 December 2001	Northern Beaches
Kempnich, Michael Scott	18 April 2002	Letters of Assistance
Kendall, Glenn Wayne	15 November 2001, 5 and 6 December 2001, 2 May 2002, 18 June 2002	Guns, Let's Dance
Kennedy, Ian Malcolm	29 April 2002	Letters of Assistance
Kerr-Thomson, Timothy Andrew	10 and 16 July 2002	Newport
King, James Justin	16 November 2001, 9 May 2002, 14 June 2002, 14, 21, 22, and 23 August 2002, 11, 25, and 26 November 2002	Guns, Let's Dance, Magnum, King
L4	11 October 2001	Northern Beaches
L17	11 July 2002, 22 August 2002 *	Newport

* Gave evidence at a private hearing where the transcript was later admitted into evidence in the public proceedings.

WITNESS	DATE OF EVIDENCE	SEGMENT
Lysaught, Robert James	17 April 2002	Letters of Assistance
M1	11 October 2001	Northern Beaches
M3	11 October 2001	Northern Beaches
M5	11 June 2002, 10 July 2002, 15 August 2002, 12 September 2002, 27 November 2002	Guns, Newport, Magnum, King
M7	3 and 4 December 2001	Let's Dance
M11	12 June 2002	Guns
M13	16 August 2002, 25 November 2002	King
May, Thomas John	29 November 2002	King
McClelland, Stephen James	10 and 16 July 2002	Newport
McDonald, Craig Lee	11 October 2002	Magnum
McDougall, Glenn Bruce	13 December 2001	Northern Beaches
McDougall, Roslyn Gwen	20 August 2002	King
Messenger, Mark William	30 and 31 January 2002	Northern Beaches
Minehan, David Patrick	6 June 2002	Guns
Monk, Robert John	14 November 2001, 6 December 2001, 10 April 2002	Let's Dance
Morgan, Graeme Robert	18 December 2001	Northern Beaches

* Gave evidence at a private hearing where the transcript was later admitted into evidence in the public proceedings

WITNESS	DATE OF EVIDENCE	SEGMENT
N1	30 April 2002, 1 May 2002, 4 June 2002, 15 July 2002, 11 September 2002	Guns, Let's Dance, Newport, Magnum
Newman, Graeme Solomon	10 April 2002	Letters of Assistance
Nicholson, Ian Bruce	15 November 2001	Let's Dance
Nield, Maurice Gilbert	9, 12 and 15 July 2002	Newport
Nimmo, Michael James	20 November 2001, 3 December 2001	Let's Dance
O'Toole, Dennis Peter	5 December 2001, 2 May 2002, 13 and 17 June 2002	Guns, Let's Dance, (King, O'Toole)
O'Toole, Dennis John	4 July 2002	Guns
O'Toole, Joan Lesley *	27 February 2003, 7 August 2003	O'Toole
Owens, Geoffrey Richard	19 April 2002	Letters of Assistance
P1	12 and 13 November 2001	Let's Dance
P2	14 June 2002	Guns
P4	8, 9 and 18 April 2002	Letters of Assistance
P6	9 April 2002	Letters of Assistance
Patison, David Phillip	10, 11, 12, and 13 December 2001	Northern Beaches
Peattie, Raymond John	16 and 17 October 2001	Northern Beaches
R1	18 October 2001	Northern Beaches

* Gave evidence at a private hearing where the transcript was later admitted into evidence in the public proceedings.

WITNESS	DATE OF EVIDENCE	SEGMENT
Ramaccia, Frank	9 and 12 July 2002	Newport
Raymond, Gary Ernest	17 December 2001	Northern Beaches
S1	11 October 2001	Northern Beaches
S7 *	26 July 2002	Newport
S8	15 and 16 August 2002	King
Shepherd, Allen Gordon	20 August 2002	King
Smith, Ronald Bruce	5 December 2001, 2 May 2002, 12 and 13 June 2002, 16 and 19 August 2002	Guns, Let's Dance, King
St John, Stephen Anthony	27 May 2002	Let's Dance
Symonds, Peter	26 November 2002	King
Van Der Vlag, Gezinus	9 April 2002	Letters of Assistance
Vicary, Greig Robert	16 and 18 June 2002	Guns
W8	17 April 2002	Letters of Assistance
Walsh, Ronald	9 July 2002	Newport
Wilding, Guy John	8 and 18 April 2002	Letters of Assistance
Williams, Gary John	18 June 2002	Guns
Wrice, Philip George	10 and 11 October 2002	Magnum
Yabsley, Thomas William	9 and 10 September 2002	Magnum

* Gave evidence at a private hearing where the transcript was later admitted into evidence in the public proceedings

13. INDEX

21 Division (Northern Beaches Segment), 9, 60

A

A1

Let's Dance Segment, viii, 148,150,152–153, 155–158, 160–168, 181–183, 185–186, 188–203, 502

Letters of Assistance Segment, ix, 214, 216–219, 223–226

A2 (Guns Segment), vii, 90, 96, **126–132**, 133–137, 140–143

A3 (Letters of Assistance Segment), 216

A4 (Guns Segment)**, 95**

A5 (Northern Beaches Segment), 63

Adams, Miles Bradley

Let's Dance Segment, ix, 149–155, 157–158, 188–189, 417

Letters of Assistance Segment, 225

Affected persons, *Police Integrity Commission Act 1996*, s 97(2), v, xi, xiv, **413–497**

Guns Segment, 132–146

King Segment, 368–377

Let's Dance Segment, 187–203

Letters of Assistance Segment, 230–234

Magnum Segment, 310–327

Newport Segment, 257–272

Northern Beaches Segment, 74–84

AHU s*ee* Armed Hold-Up Squad

Allott, Sergeant (King Segment), 340, 345

Anderson, Peter Wallace (O'Toole Segment), 381–386, 388–391, 394–402, 404–405, 408–412

Armed Hold-Up Squad, CIB (Northern Beaches Segment), 9, 51

Armed Hold-Up Unit or Squad (AHU), Major Crime Squad North (MCSN)

Guns Segment, vi–viii, **87–146**

King Segment, 333

Let's Dance Segment, 156–157, 159, 161, 174, 190

Magnum Segment, 277, 279

Armed Hold-Up Unit (AHU), Major Crime Squad South (MCSS)

Guns Segment, 91, 127, 185

Magnum Segment, 276, 278–279, 282–283

Ashfield Police Station, 308–309

Asser, Inspector, 19

Assessment Centre, NSW Police (Northern Beaches Segment), 62

B

B4 (Northern Beaches Segment), 10, 17–18

B5 *see* Benbow, Luke Michael

B6 (Northern Beaches Segment), 10, 21–22, 58–59, 73, 503

B7 (Northern Beaches Segment), 36–40, 57

B8 (Let's Dance Segment), 150

B9 (Northern Beaches Segment), 56

B11 (Newport Segment), xi, 251–252, 258–259, 265, 418

Balgowlah (Northern Beaches Segment), 36

Benbow, Luke Michael (B5) (Northern Beaches Segment), iii, v, 7, 10, 12–13, 16–17, 27–30, 40–50, 73, 74–75, 77, 418–419, 503

Bernasconi, Phillip Sydney (Magnum Segment), xii, 275, **276**, 298–301, 303, 311–312, 318, 322–323, 325, 419

Bilgola Beach Surf Lifesaving Club

King Segment, 354, 356, 371

O'Toole Segment, 392–398

"Billy the Kid" (King Segment), 358, 360

Blake, Ian Grant (Magnum Segment), xii, 275, **276**, 278, 280, 285–291, 294–295, 302, 305–307, 311, 313–314, 316, 320, 324, 420–421

"Breakers" *see* Special / Organised Crime Unit, MCSN

Breedon, Brian Raymond (King Segment), 331, **332**, 340–341, 352

Brett, Mark Christopher (Letters of Assistance Segment), 207, 214, 222

Bridges, Steven Anthony

Let's Dance Segment, ix, 149–151, 153–155, 158, 188–190, 421

Letters of Assistance Segment, 225

Brooklyn *see* Hawkesbury River

Brown, Lee Kevin (Magnum Segment), xii, **276**, 308–311, 314–315, 422

Bullivant (solicitor) (Letters of Assistance Segment), 212–213

"Bumhole" *see* **Vicary**, Greig Robert

Burwood Police Station (Magnum Segment), 275, 277–280, 285, **288–296**, 305–306, 308, 313, 316, 320, 324

Butt, Clare Margaret see Moore, Clare Margaret

C

C1 (Northern Beaches Segment), 34

C2
- Let's Dance Segment, 162–166, 191–192, 196, 201
- Northern Beaches Segment, 33

C3 (Northern Beaches Segment), 51

C6 (Letters of Assistance Segment), 207, 227–230

C7 (Letters of Assistance Segment), 215

C8 (Letters of Assistance Segment), 216

C11 (Magnum Segment), xi–xii, 275–296, 301–307, 310, 313, 315–316, 319–320, 323–327, 502

C12 (Magnum Segment), 275, **277**, 284, 290–291, 293–295, 315–316

C14 (Magnum Segment), 282–283, 289, 304

Caccamo, Vincent (Northern Beaches Segment), v, 17, 29–34, 57, 74–76, 423

Cafe, Barry (King Segment), 342–343, 345–346

Campsie (Northern Beaches Segment), 29–31

Carey's case, 254

Carson, Peter Dominic (King Segment), 332, 354–356, 358, 362, 371

Chatswood
- King Segment, 343
- Northern Beaches Segment, 37
- *see also* Major Crime Squad North

Chullora (Northern Beaches Segment), 33

CIB *see* Armed Hold-Up Squad, CIB

Clarke, Inspector (Northern Beaches Segment), 11, 14

CMF *see* Command Management Framework

Code of Conduct and Ethics, NSW Police (Guns Segment), 104

Collaroy (Northern Beaches Segment), 24–26

Command Management Framework (CMF)
- Northern Beaches Segment, 67
- Procedural Matters, xv–xvi, 504–505

Complaints to NSW Police
- Northern Beaches Segment, 21, 73
- Procedural Matters, 503

Computerised Operational Policing System see COPS

Concord (Northern Beaches Segment), 2, 52

COPS (Computerised Operational Policing System)
- Guns Segment, 89, 99, 105, 108–109
- Handling and Storage of Exhibits, 507
- King Segment, 367–368
- Letters of Assistance Segment, 229
- Northern Beaches Segment, 28, 38

Court and Legal Services Branch, NSW Police (Northern Beaches Segment), 41, 43, 48

Crawford, Vivienne Alexa (Let's Dance Segment), ix, 149–150, 176, 179–180, 187–188, 190–191, 423–424

Cremorne
- Letters of Assistance Segment, 215, 226
- Northern Beaches Segment, 35, 37

Crime Agencies
- Guns Segment, 91, 93
- King Segment, 363
- Northern Beaches Segment, 71
- O'Toole Segment, 384–385

D

D6
- Guns Segment, 114, 116
- Northern Beaches Segment, 51

D7 (Letters of Assistance Segment), 216

Danny's Seafood Restaurant, La Perouse (Magnum Segment), xi, 275, 278–279, 281, **282–283**, 295, 304, 315

"David" (King Segment), 359–361

Davidson, John Stuart (Magnum Segment), xii, 275–276, **277**, 278, 280–281, 284–286, 288–292, 294–296, 302, 304–311, 314–316, 323–324, 425–427, 502

Davidson, Shaun Andrew (Northern Beaches Segment), iii, **7–8**, 10–13, 17–18, 21–24, 55–56, 62, 75–77, 424–425

Davidson Park *see* Roseville Bridge

DEA *see* Drug Enforcement Agency of NSW Police

Deceivers, Operation (King Segment), 341

Dee Why
- King Segment, 367
- Northern Beaches Segment, 34

Dee Why District Office (King Segment,), 332, 340–341

Dee Why Police Station (Northern Beaches Segment), 3, 9, 27, 34, 56

Dilworth, Philip, 2

Director of Public Prosecutions *see* Office of the Director of Public Prosecutions

District Drug Unit, Manly and Collaroy (Northern Beaches Segment), 61

"Doodles" *see* O'Toole, Dennis Peter

Dowding, Kim
- Guns Segment, vi, 88–89, **90–91**, 92–94, 96–118, 120, 122, 127–129, 131, 133–136, 427–429, 502
- Magnum Segment, xii, 275–276, **277**, 285, 296–298, 300–301, 310, 312, 317–318, 321–322, 325, 429–430

Downing Centre Local Court (DUI proceedings, 1994, King), 331, **348–350**, 352–353, 370, 380

Drug Enforcement Agency of NSW Police (DEA), 3
- Let's Dance Segment, 148
- Letters of Assistance Segment, ix–x, **205–234**
- Northern Beaches Segment, 9

Drug Units *see* Gosford Drug Unit; Major Crime Squad North Drug Unit; North Sydney Drug Unit

Ducker, Anthony John Patrick (King Segment), 331, **333**, 335–337, 339–342, 344–346, 348–349, 351–352, 370, 373–376

Duty Officers
- Northern Beaches Segment, 65, 67–68, 70, 72
- Procedural Matters, xv, 503–504

E

E2 (Guns Segment), 126–127, 129, 132

Eade, Wayne James (Newport Segment), xi, **237**, 239–243, 245, 249–250, 252, 258–260, 430–431, 502

Earlwood Police Station (Magnum Segment), 307–309

Ehsman, Peter John (Guns Segment), vii, **91**, 110, 127–134, 136–137, 143, 431–432

ERISP
- Magnum Segment, 297, 299, 301
- Northern Beaches Segment, 59

Erskineville Police Station (Letters of Assistance Segment), 228

Etheridge, Constable / Detective (Northern Beaches Segment), 11

Exhibits, Handling and Storage of (Procedural Matters), xvi, 507–509

F

F2 (Northern Beaches Segment), 10, 13–15

F3 (Letters of Assistance Segment), 207–208, 226–230, 232, 234

F4 (Letters of Assistance Segment), 207, 227–230

F5 (Letters of Assistance Segment), 215

F6 (Letters of Assistance Segment), 216

F7
- Guns Segment, vi–vii, 87, **91**, 92–93, 95–97, 101–102, 109–111, 128–134, 136–140, 142, 145, 432–434, 507–508
- Let's Dance Segment, viii, 148–149, 155–157, 159–165, 167–169, 171–192, 194–195, 197, 200–203, 434–435
- Magnum Segment, xii, 275, **277**, 280–285, 295–303, 310–313, 315–326, 435–436, 502

Farmer, Sergeant (Magnum Segment), 294–295

Frenchs Forest
- King Segment, 333, 335, 340–341
- Northern Beaches Segment, 56–57

G

G2 (Northern Beaches Segment), 10, 15–16, 39, 55–56

G3 (Northern Beaches Segment), 57

G4 (Northern Beaches Segment), 57

G5 (Northern Beaches Segment), 57

G6 (Letters of Assistance Segment), 216, 223

Gary Owen Hotel, Rozelle (King Segment), 350

GDU *see* Gosford Drug Unit

George (Northern Beaches Segment), 33

Gilligan, Chief Inspector (Let's Dance Segment), 158, 168, 178, 183, 185

Gladesville Bridge (Let's Dance Segment), 176

Goldberg, Ross (O'Toole Segment), 383, 385, 391

Gosford Office *see* Major Crime Squad North

Gosford Drug Unit (GDU)
- Newport Segment, x–xi, **236–272**
- Northern Beaches Segment, 53

Green, Martin Geoffrey (Northern Beaches Segment), v–vi, 7, 17, 40–50, 75, 77–78, 436–437

Greenacre (King Segment), 363

Gumley, Howard Robert (Let's Dance Segment), ix, 149–150, 152, 156, 160–163, 168, 182–183, 185–186, 188, 192–193, 200, 437–438

Guns Segment, **85–146**
- Executive Summary, vi–viii
- Handling and Storage of Exhibits, xvi, 507–508
- O'Toole Segment and, xiv, 380
- Supervision and Management, 502

H

H1 (Northern Beaches Segment), 50–51

H5 (Newport Segment), 265–266

Hagan, Michael Arthur (Let's Dance Segment), ix, 149–150, 160, 188, 193, 438–439

Haken, Trevor, 97

Halliday, Senior Constable (King Segment), 358–369

Harbord (Northern Beaches Segment), 11, 27–28, 30, 33, 56

Harborne, Roger Arthur (Magnum Segment), 275, **278**, 288, 292–293, 306

Hawkesbury River "dump" (Guns Segment), vi–vii, 87, 89, **94–111**, 133, 136, 139–142, 144, 146

Hawkesbury River Escapee incident (Guns Segment), 90, 96, **126–132**, 135–136, 138, 141

Heath, Inspector (Northern Beaches Segment), 11

Henry, Graham ("Abo") (Magnum Segment), 282, 288, 292, 304

Hill, David Marshall

- Newport Segment, xi, **237–238**, 239, 241–264, 270, 440–441
- Northern Beaches Segment, iii, 7, **8–9**, 22–24, 50, 53, 75, 78, 439

Hollis, Wayne (Let's Dance Segment), ix, 149–150, 152, 158, 188, 193–194, 441–442

Homicide Unit, MCSN (Guns Segment), 88, 93, 123

Hornsby Police Station

- Guns Segment, 126–128
- O'Toole Segment, 405

Hulme, Paul

- Let's Dance Segment, viii, 149–151, 153, 156–160, 166–168, 170–171, 178, 181–185, 188, 194–195, 200–201, 442–443, 502
- Letters of Assistance Segment, 225

I

iCMF, xv–xvi, 504–505

IMM *see* Informant Management Manual

Independent Officers

- Newport Segment, 237
- Northern Beaches Segment, 11–13, 19, 23–25, 62–64, 69

Informant Management Manual (IMM), xvi, 506–507

Integrity tests (Northern Beaches Segment), 22–29

Internal Affairs consultants (Northern Beaches Segment), 71

Internal Affairs investigations

- Guns Segment, 100, 130–132
- King Segment, 333, 337–340, 344–348, 350–353, 370, 374–376
- Let's Dance Segment, 198
- Magnum Segment, 277–279, 293, 295, 305, 308–309, 314
- Northern Beaches Segment, 21, 23, 26, 28, 51, 58–59, 65, 72–73

Irwin, Robert James (Magnum Segment), xii, 275–277, **278**, 279–280, 282–291, 293–296, 302, 305–307, 311, 313, 315–316, 319–321, 323, 443–444

Ison, Ian Frederick (Newport Segment), xi, 237, **238**, 240–242, 245–246, 249, 252, 258, 262–263, 445–446

Ivanhoe Hotel (King Segment), 365

J

Jacka Park, Harbord, 27–28

Jade, Operation, 71, 278–279

Jamieson, Graeme Ronald (Guns Segment), 90, 118–119, 143

Jasper, Matthew John

- King Segment, 364
- Northern Beaches Segment, iii–iv, 7–8, **9**, 10–13, 15–24, 26–40, 54–59, 63–65, 67, 69–70, 73, 75, 446–448

Jetz, Operation, 2–3

"Joe the Wog" (King Segment), 367

K

K2 (Let's Dance Segment), 150, 156, 162–164, 166, 191–192, 196, 199–203

K4 (Northern Beaches Segment), 53–54

K6 (Letters of Assistance Segment), 226–227, 229

Kehoe, Matthew James (Northern Beaches Segment), 7

Kempnich, Michael Scott (Letters of Assistance Segment), x, **207**, 208–211, 213, 215–219, 221–232, 448–449

Kendall, Glenn Wayne

- Guns Segment, **91**, 111–114, 116–117, 119, 133, 138–139, 449–450
- Let's Dance Segment, viii, 149–150, 161–162, 166–169, 171, 173, 179, 183, 185–186, 189, 195–196, 450–451

Kennedy, Ian Malcolm (Letters of Assistance Segment), 207, 214, 222

Kerr-Thomson, Timothy Andrew (Newport Segment), xi, 237, **238**, 239–241, 243, 252, 254, 258, 263–265, 452–453

Killara (Northern Beaches Segment), 35, 38–39

King, James Justin
- Guns Segment, vii, 91, **92**, 93–95, 106–109, 111, 115–116, 131, 133, 139–140, 453–454
- King Segment, xii–xiv, **329–377**, 456–458
- Let's Dance Segment, viii, 149–150, 156–166, 169, 172, 174–175, 180–185, 187, 189, 196–197, 201, 454–455
- Magnum Segment, xii, 275–276, 278, 285, 296–301, 310–311, 317–318, 321–323, 325, 455–456
- Northern Beaches Segment, 51
- O'Toole Segment, xiv, 380

King Segment, **329–377**
- Executive Summary, xii–xiv
- O'Toole Segment and, xiv

Kings Cross (Let's Dance Segment), 166

Kulnura (Newport Segment), 251–252

L

L4 (Northern Beaches Segment), 10–11

L9 (Northern Beaches Segment), 62

L17 (Newport Segment), x–xi, 236–237, 239–272, 459–460

L18 (Newport Segment), 241–242

L19 (Newport Segment), 243–244, 246

La Perouse *see* Danny's Seafood Restaurant

Lane Cove (Northern Beaches Segment), 53

Legal Services Branch *see* Court and Legal Services Branch

Let's Dance Segment, **147–203**
- Executive Summary, viii–ix
- Letters of Assistance Segment and, 206, 225
- Magnum Segment and, 277
- O'Toole Segment and, xiv, 380
- Supervision and Management, 502

Letters of Assistance (Procedural Matters), xvi, 505–507

Letters of Assistance Segment, **205–234**
- Executive Summary, ix–x

Local Area Commands, xv, 71, 500, 502–507
- *see also* Manly / Davidson Local Area Command

Lotz, Dr (Qld) (O'Toole Segment), 389

Lysaught, Robert James (Letters of Assistance Segment), 207, 213, 216–217, 220–224, 389, 505

M

M1 (Northern Beaches Segment), 10–12

M2 (Northern Beaches Segment), 33–34, 62

M3 (Northern Beaches Segment), 10, 20–21

M5
- Guns Segment, vi–vii, 87–91, **92**, 93–95, 97–112, 114, 117–134, 136–143, 145–146, 460–462, 502, 507–508
- King Segment, xiii, 331–332, **333**, 334–335, 339–343, 346–354, 361–368, 370–376, 464–465
- Let's Dance Segment, viii, 148, 168–181, 184
- Magnum Segment, xii, 275–276, 278–279, 281, 285, 295–301, 310–313, 315–326, 463–464, 502
- Newport Segment, xi, 236–239, 241–264, 266–271, 462–463
- Northern Beaches Segment, iii, 7, 9, 11–20, 22–29, 41, 56, 58–60, 62–64, 66, 75

M7
- Let's Dance Segment, 150–155, 156–160, 189–190, 194, 196–197, 201
- Letters of Assistance Segment, 225

M8 (Northern Beaches Segment), 54–55

M9 (Northern Beaches Segment), 53

M10 (Northern Beaches Segment), 53–54

M11 (Guns Segment), vii, 90, 111, 114, **120–126**, 133, 140–144, 146, 508

M13 ("Melt Down Man") (King Segment), xiii–xiv, 331–332, 343, 348–353, 362–364, 370–376, 380, 465

M14 (Magnum Segment), 278–279, 282–284, 289, 302, 304

MAC *see* Marine Area Command

Madden, Mr, Deputy Commissioner (Operations) (Let's Dance Segment), 198

Magnum Segment, **273–327**, 508
- Executive Summary, xi–xii
- Supervision and Management, 502

Magnum Task Force *see* Magnum Segment

Major Crime Squad North (MCSN)
- Guns Segment, vi, **85–146**, 502, 507–508
- King Segment, xii, 331, 334–335, 340–341, 362
- Let's Dance Segment, viii, **147–203**
- Letters of Assistance Segment, 214, 225
- Magnum Segment, 277–278, 280
- Northern Beaches Segment, 3, 9, 54
- Offices and Commander, 3, 87–88
- O'Toole Segment, 380
- Post-Royal Commission Era, xvi, 508

see also Armed Hold-Up Squad; Homicide Unit; Special / Organised Crime Unit

Major Crime Squad North Drug Unit
Guns Segment, 92–93
King Segment, 365
Newport Segment, x, **236–272**
Northern Beaches Segment, 10
see also Gosford Drug Unit; North Sydney Drug Unit

Major Crime Squad South (MCSS)
Guns Segment, 126, 128–129
Let's Dance Segment, 160–161, 182, 185
see also Armed Hold-up Unit

Malaya Restaurant (Let's Dance Segment), 169–174

Management *see* Supervision and Management

Manly
Let's Dance Segment, **147–203**
Letters of Assistance Segment, 210, 214, 225
Northern Beaches Segment, 16, 22–24, 26, 28–29, 35–36, 38, 40, 55, 60

Manly / Davidson Local Area Command
Audits, 67–68, 72
Corruption Prevention Plan and Survey, 61, 66, 70, 73, 502
Northern Beaches Segment, ii, 3, 7–10, 54, 65–73, 500, 502–504

Manly Local Court
PCA proceedings 2000 (King), 331, 356, 358–362, 370–371, 380
Northern Beaches Segment, 37, 40

Manly Pacific Hotel, viii
Let's Dance Segment, 148–158, 160, 162, 165, 178, 185–186, 189, 197
Letters of Assistance Segment, 214, 216–217, 225

Manly Police
Let's Dance Segment, viii, **147–203**
Letters of Assistance Segment, 210, 214, 225
Northern Beaches Segment, 3, 7–10, 12, 22–23, 26, 28–31, 34, 40, 46, 51, 54, 59–61, 64, 68–70

Manly Warringah Dolphins Soccer Club (King Segment), 367–368

Marine Area Command (MAC) (Guns Segment), 90, 118–119, 143

Markarian, Anthony (Northern Beaches Segment), 17, 33

Mascot, Operation, 2–3, 238

May, Thomas John (King Segment), 332, 356–357, 362, 371

Mayger, Detective Senior Sergeant (King Segment), 362

McClelland, Stephen James (Newport Segment), xi, 237, **238**, 241, 243, 245–246, 249, 251–252, 254, 257–259, 267–269, 465–467

McDonald, Craig Lee (Magnum Segment), 275, **279**, 282–284, 302

McDonald, Magistrate Ms G.M. (King Segment), 350–351

McDougall, Glenn Bruce (Northern Beaches Segment), 7

McDougall, Roslyn Gwen (King Segment), xiii, 331, **333**, 336–340, 342, 344–353, 370, 373–376, 467–468

McKay, Kim (Let's Dance Segment), 176

McKillop (Northern Beaches Segment), 56

McManus, Constable (King Segment), 359

MCSN *see* Major Crime Squad North

"Melt Down Man" *see* M13

Messenger, Mark William (Northern Beaches Segment), iv, 7, **9**, 24–29, 52, 56, 60, 62–64, 73, 75, 80–81, 468–469

Minehan, David Patrick ("Yuppie") (Guns Segment), 91, **92**, 93

"Miles" *see* O'Toole, Dennis John

Mitchell, Gary, 2

Mona Vale
King Segment, xiii, 331, 335–337, 351–352, 354, 359–360, 367
Let's Dance Segment, 169, 172, 175–176, 184, 187
O'Toole Segment, xiv, 393

Mona Vale Police Station
King Segment, xii–xiii, 331, 333, 336–338, 343–347, 351, 353, 359
Let's Dance Segment, 175, 180, 187
Magnum Segment, 276–277, 280, 296–301, 303
Newport Segment, 239, 244–247, 249

Monk, Robert John
Let's Dance Segment, ix, 149–155, 157–160, 164, 166–167, 183–186, 189, 197–198, 469–471
Letters of Assistance Segment, 225

Moore, Clare Margaret (later Butt) (King Segment), xiii, 331, **332**, 336–340, 342, 344–349, 351–353, 370, 373–376, 471

Morgan, Graeme Robert
Northern Beaches Segment, 7, 71–73
Procedural Matters, 502–504

Moroney, K.E., 501

Mosman (Letters of Assistance Segment), 227, 229

Mosman Patrol (Northern Beaches Segment), 34, 37

N

N1
Guns Segment, vi, viii, 87, 89, **92**, 93–95, 101–102, 105–106, 108–111, 113–115, 117–120, 126, 131, 133–134, 137–143, 145, 471–472, 507–508
King Segment, 364
Let's Dance Segment, viii–ix, 148–150, 155, 159, 161–164, 166–187, 189–192, 194–195, 197–203, 473–474
Magnum Segment, xii, 275–278, **279–280**, 281, 285–292, 294–296, 301–302, 305–307, 310–311, 313, 315–326, 502
Newport Segment, 237, 241–245, 251–257, 260–261, 263–264, 267–269, 271, 474–476

N2 (Northern Beaches Segment), 57

N4 (Northern Beaches Segment), 54–55

Narrabeen (King Segment), 3335–336

Natasha (Northern Beaches Segment), 15–16

New South Wales Crime Commission (NSWCC)
Guns Segment, 89, 92
Letters of Assistance Segment, 210, 216, 218–220
Newport Segment, 238
Northern Beaches Segment, 2–3, 16, 77

Newman, Graeme Solomon (Letters of Assistance Segment), 207, 209–210, 212

Newport
King Segment, 353–362
Newport Segment, x, 236, 241–242, **243–251**, 253–255, 257, 260, 263–264, 268–270

Newport Segment, **235–272**
Executive Summary, x–xi
Supervision and Management, 502

Nicholson, Ian Bruce (Let's Dance Segment), ix, 150, 152, 156, 160–162, 164, 166–167, 182, 185–186, 189, 192, 200, 477–478

Nield, Maurice Gilbert (Newport Segment), xi, 237, **238–239**, 241–242, 245–246, 249–250, 252, 258, 269–270, 476–477, 502

Nis, Task Force (Magnum Segment), 307

Nixon, Christine (Northern Beaches Segment), 71

Noonan, Peter (Magnum Segment), 307–308

North Metropolitan Region Commander (Northern Beaches Segment), 7, 71–73

North Sydney Drug Unit / Squad (NSDU)
Newport Segment, x–xi, **236–272**
Northern Beaches Segment, 52–53

North Sydney Office *see* Major Crime Squad North

North Sydney Police Station
King Segment, 362
Letters of Assistance Segment, 228–229
Northern Beaches Segment, 9

Northern Beaches Local Area Command (Northern Beaches Segment), 7, 71

Northern Beaches Segment, **5–83**
Executive Summary, ii–iii
Newport Segment and, 237–238
Procedural Matters, 500–504

Northwest Crime Squad (Guns Segment), 128–129

NSDU *see* North Sydney Drug Unit

O

Oates & Smith Solicitors (O'Toole Segment), 383

O'Brien, Constable (King Segment), 358–359

O'Connor, S.E. (King Segment), 351

ODPP *see* Office of the Director of Public Prosecutions

Office of the Director of Public Prosecutions (ODPP)
King Segment, 348, 372–376
Let's Dance Segment, 191, 199
Letters of Assistance procedures, 506
Letters of Assistance Segment, 232, 234
Magnum Segment, 280, 292, 304–305, 312–313, 316, 318, 321–322, 326–327
Newport Segment, 247, 254–257
Northern Beaches Segment, 43, 82

Olympic period (Northern Beaches Segment), 39

Ombudsman (King Segment), 350–351

Operations *see the names of the Operations*

Organised Crime Unit, MCSN *see* Special / Organised Crime Unit

O'Toole, Dennis John ("Miles") (Guns Segment), **93**, 123–126

O'Toole, Dennis Peter ("Doodles")
Guns Segment, viii, 88, 91–92, **93**, 94–96, 103, 108–111, 113–115, 117–123, 125–126, 131, 133, 142–144, 478–480, 502, 508
King Segment, xiii–xiv, 332, **333**, 334, 340–344, 346–350, 352–354, 357–358, 362–364, 369–371, 375–377, 481–482
Let's Dance Segment, ix, 150, 157, 159–161, 172–174, 179, 182–186, 189, 193, 200–201, 480–481, 502
O'Toole Segment, xiv, **379–412**, 482–483

O'Toole, Joan Lesley (O'Toole Segment), 381, 384, 388–396, 400–403, 405, 407, 410–411

O'Toole, Lawrence (O'Toole Segment), 387–388, 395, 399

O'Toole Segment, **379–412**
Executive Summary, xiv

P

P1
Let's Dance Segment, viii, 148, 150, 152–160, 162–163, 165, 167, 185–186, 188–203, 502
Letters of Assistance Segment, ix, 214, 216–219, 223–226

P2 (Guns Segment), vii, 90, **111–120**, 133–135, 138–139, 142–144, 508

P4 (Letters of Assistance Segment), ix, xvi, 207–224, 226–234, 505–507

P6 (Letters of Assistance Segment), ix, xvi, 207–208, 214, 216–219, 221–224, 226, 231–233, 505–507

Palm Beach (Newport Segment), 240

Patison, David Phillip (Northern Beaches Segment), iv–v, 7, 8, **9–10**, 12–26, 28–34, 36–37, 39–60, 64–65, 67–73, 75, 77, 79, 81–83, 483–485

Peattie, Raymond John (Northern Beaches Segment), v, 7, **10**, 11–13, 15–16, 18, 20–21, 32–34, 51, 54–56, 58–62, 64–66, 68–73, 75, 485–486, 500

Pelican, Operation, 2–3

Perl, Judith (King Segment) 348

Pickering, Constable, 20

Pickles, Dr (O'Toole Segment), **401**

Police Association (Northern Beaches Segment), 60, 69

Police Diving Squad *see* Marine Area Command

Procedural Matters, xiv–xvi, **499–509**

Professional Integrity Branch, NSW Police (King Segment), 338

Prosecuting Branch, NSW Police (Northern Beaches Segment), 40

Puffett, Richard (Northern Beaches Segment), 24

R

R1 (Northern Beaches Segment, 34–40, 79

R3 (Letters of Assistance Segment, 215

Ramaccia, Frank (Newport Segment), xi, 237, **239**, 241–243, 245–246, 248–249, 251–252, 254, 259, 270–271, 486–487

Raymond, Gary Ernest (Northern Beaches Segment), 7, 65–69, 73, 502

Recommendations *see* Procedural Matters

Regional Crime Squad North (Northern Beaches Segment), 51

Regional Crime Squad North Drug Unit (Northern Beaches Segment), 9

Roseville Bridge
Guns Segment, 90, 111–114, 116, 118, 120–124
Let's Dance Segment, 173–174, 181, 183, 186, 195
Northern Beaches Segment, 34–37, 39–40

Royal Commission into the New South Wales Police Service, ii
Guns Segment, vi–vii, 87, 89, 96–98
integrity tests, 22
Newport Segment, 237–238, 240
Operation Florida and, 3
Post-Royal Commission Era, xvi, 65, **508–509**
Supervision, 64

Rudolph, Mark (King Segment), 338, 345

S

S1 (Northern Beaches Segment), 10, 18–20, 64

S3 (Northern Beaches Segment), 28, 58

S4 (Northern Beaches Segment), 53

S5 (Northern Beaches Segment), 51–52

S6 (Northern Beaches Segment), 51

S7 (Newport Segment), 237, 239–241, 252–253, 256, 260–261, 263–269, 271

S8 (King Segment), xiii–xiv, 331, **333**, 336–340, 342–349, 351–353, 370, 372–377, 488

S9 (Magnum Segment), 282, 284, 289, 302, 304

Saxon, Ian (King Segment), 341–343, 347, 349, 352

SCIA *see* Special Crime and Internal Affairs

Search warrants, execution of
Northern Beaches Segment, 61–62, 66
recommendations, xv, **500–501**

Searches (Northern Beaches Segment), 10–22, 51–57, 63–66

Shepherd, Allen Gordon (King Segment), 331, **333**, 345–348, 351, 353, 370, 373–376

Shepherd, Dr (Southport Medical Centre, Qld) (O'Toole Segment), 380, 387

Smith, Ronald Bruce
Guns Segment, vi–vii, 89, 91–92, **93**, 96–100, 103–106, 108–109, 111, 133, 144–145, 488–489, 502, 508
King Segment, 331, **334**, 340–342, 352
Let's Dance Segment, ix, 150, 152, 156–157, 161, 172, 176, 179, 183, 186–187, 189, 193, 200, 202–203, 489–490, 502
Letters of Assistance Segment, 225

SOPs *see* Standard Operating Procedures

Special Crime and Internal Affairs (SCIA) command, NSW Police, 2, 71
see also Internal Affairs investigations
Special Operations *see* SPG
Special / Organised Crime Unit, MCSN ("Breakers")
Guns Segment, 88, 116–117
Let's Dance Segment, 190
Spence, Mal (Magnum Segment), 348
SPG (State Protection Group) (Guns Segment), 88, 91, 94–96, 98, 102–103, 106, 109
Spit Bridge Reserve (Northern Beaches Segment), 29–31
St John, Stephen Anthony (Let's Dance Segment), ix, 150, 160, 185, 187, 189, 203, 490–491
Standard Operating Procedures (SOPs)
Guns Segment, 119
Northern Beaches Segment, 8, 25, 59, 61–62, 64, 66–67, 70
Procedural Matters, 500
Starmer, Professor (King Segment), 348
State Protection Group *see* SPG
Stewart Green Mijovich, Solicitors, Manly, 40
Steyne Hotel, Manly
King Segment, 335, 341–343, 347–349, 351–352, 364, 371–372
Let's Dance Segment, 175, 180, 184, 187
Northern Beaches Segment, 56
Strathfield (Northern Beaches Segment), 52
Stuart, William Stanley (Magnum Segment), xi–xii, 275–285, 296–306, 310–312, 317–319, 321–323, 326–327
Supervision and Management
Northern Beaches Segment, 64–73
Procedural Matters, xv, **502–503**
Surry Hills
King Segment, 363
Let's Dance Segment, 161
Surveillance Unit (Let's Dance Segment), 150, 160, 185–187, 203
"Swamp Duck" see Symonds, Peter
SWOS *see* SPG
Sydney Airport
Let's Dance Segment, 160–161, 169
Newport Segment, 243
Sydney District Court (Letters of Assistance Segment), 207, 211–214
Symonds, Peter ("Swamp Duck") (King Segment), 332, 357–358, 360, 371

T

Task Force Magnum *see* Magnum Segment
Taxation issues (Northern Beaches Segment), 44, 49, 77
Taylor, Constable (Northern Beaches Segment), 11
Teh's case, He Kaw Teh v R (1985) 157 CLR 523 (Newport Segment), 245, 253–254
Time and Tide Hotel (Northern Beaches Segment), 33
Tony (Chullora) (Northern Beaches Segment), 33
Top Ryde (Northern Beaches Segment), 53
TPD robbery, East Gosford, 282–283

V

V1 (Northern Beaches Segment), 65–66
V2 (Northern Beaches Segment), 41, 46–48
V3 (Northern Beaches Segment), 52
V4 (Letters of Assistance Segment), 208–211
Van Der Vlag, Gezinus (Letters of Assistance Segment), 207, 209–210, 212, 215
Vanderlans, Mick (Northern Beaches Segment), 34
Vicary, Greig Robert ("Bumhole") (Guns Segment), viii, 91–92, **93**, 101–102, 112, 120–126, 133, 145–146, 491–492
Victorian County Court (Letters of Assistance Segment), 208, 216–217, 221, 224, 231–233

W

W4 (Northern Beaches Segment), 24–26
W5 (Northern Beaches Segment), 51
W8 (Letters of Assistance Segment), 207, 227–229
Walsh, Ronald (Newport Segment), xi, 237, 239, 246, 259, 271–272, 492–493
Warringah Anti-Theft Squad (Northern Beaches Segment), 55, 69
Warringah Mall (Northern Beaches Segment), 29–31
Wentworth Hotel (Let's Dance Segment), 175–181
West Ryde (Newport Segment), x, 236, 240, **241–243**, 244–246, 249, 260, 263–264, 268–270
Wilding, Guy John (Letters of Assistance Segment), x, 206, **207**, 208–213, 215–234, 493–495
Williams, Gary John (Guns Segment), **94**, 117
Willoughby Hotel
King Segment, 343, 350
Let's Dance Segment, 180, 187

"Wogs Out of Work" Operation, vii, 90, 95, **111–126**, 134–135, 138–142, 144

Wrice, Philip George (Magnum Segment), xii, 275–277, 279, **280**, 282–285, 296–305, 310–312, 317–319, 321–322, 325–327, 495–297

X

"X" (Newport Segment), 265–266

Y

Yabsley, Thomas William (Magnum Segment), 275–276, **280**, 288, 290, 293–296, 302, 306–311, 314–316, 320, 324

"Yuppie" *see* Minehan, David Patrick


POLICE INTEGRITY
COMMISSION