Report to Parliament | October 2009

# Operation Lantana

NSW Police Integrity Commission




# Operation Lantana
## Report to Parliament | October 2009

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The Hon Peter Primrose MLC
President
Legislative Council
Parliament House
SYDNEY NSW 2000

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

Dear President and Mr Speaker

In accordance with section 96(2) of the *Police Integrity Commission Act 1996*, the Commission hereby furnishes to you a Report regarding Operation Lantana, being a Report in relation to a matter as to which the Commission has conducted a public hearing.

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

Yours faithfully

**J Pritchard**
**Commissioner**

October 2009

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# EXECUTIVE SUMMARY

Operation Lantana was an investigation by the Police Integrity Commission ('the Commission') into allegations of serious police misconduct engaged in by two serving officers of the NSW Police Force and several of their civilian associates.

In September 2008 the NSW Police Force (NSWPF) received a complaint alleging that two unnamed officers had recently been involved in a "drug-rip" whereby a significant amount of drugs had been discovered in a vehicle which had been pulled over by the officers. It was alleged that those drugs were seized by the officers and the driver released without charge.

Given the seriousness of the misconduct alleged, the Commission elected to take over the investigation of that complaint from the NSWPF pursuant to section 70(1)(a) of the *Police Integrity Commission Act 1996* ("the PIC Act"). Both the NSWPF and the NSW Ombudsman's Office were advised of this decision.

An investigation code-named Operation Lantana commenced and the Commission undertook initial enquiries and intelligence gathering.

On 16 February 2009 the Commission commenced a public hearing in Operation Lantana. The general scope and purpose of that hearing was announced as follows:

> *To investigate allegations that certain NSW Police officers from south-western Sydney or any person or persons associated with them have been, or are currently, involved in serious police misconduct or criminal activity.*

The hearing received evidence from a total of five witnesses, two of whom were serving officers of the NSWPF and three civilian associates. Pursuant to an order made by the Commissioner during the course of the hearing, one of the police witnesses had his true identity suppressed and gave evidence under the pseudonym "LP1".

In addition to the oral evidence given by the witnesses, evidence obtained during the Commission's investigation by the lawful use of telephone interceptions was also played in the hearing.

Over the course of the hearing, in addition to evidence relating to the initial 'drug rip' allegation which gave rise to Operation Lantana, the Commission heard evidence in relation to a number of additional allegations of serious police or other misconduct and/or criminal activity. The matters to which this additional evidence related included allegations of theft, extortion, soliciting corrupt payments, conspiracy and unauthorised possession of firearms.

**Affected Persons**

The following persons were the subject of substantial allegations made during the Operation Lantana investigation and are therefore "affected persons" for the purposes of section 97 of the PIC Act:

- Witness LP1
- Nasser Mohamad BATTAL
- Mick SALEH (aka Mohamed "Mick" HIJAZI)

- Ahmad MASRI (aka Ahmad EL MASRI)
- Montaze "Monty" BAROUDI

All of those persons gave evidence after a declaration had been made pursuant to section 41 of the PIC Act. The effect of that declaration is that the evidence they gave before the Commission cannot be used against them in any criminal or civil proceedings, except in relation to offences under the PIC Act, and in the case of police officers, managerial action under the provisions of the *Police Act 1990.*

**LP1**

Pursuant to sub-section 16(1)(a) of the PIC Act the Commission is of the opinion that LP1 engaged in police misconduct in respect of the substantial allegations listed at paragraph 4.13 of this report. They are:

(i) He agreed to the proposal put to him by Battal that the two of them engage in wrongful conduct whereby, purportedly acting in their capacity as police officers, they would carry out 'fake' searches of tobacconists who were suspected of selling illegal tobacco and 'seize' that tobacco with the intention of on-selling it and keeping the proceeds;

(ii) He and Battal, while purportedly acting in their capacity as police officers carried out searches and seizures of tobacco on at least three separate occasions; namely, the three 'raids' on tobacco shops;

(iii) He and Battal shared payments which were corruptly received by them from the proprietors of at least two of those tobacconist shops on the basis that they could improperly influence any investigation into the possession by the tobacconists of illegal tobacco;

(iv) He and Battal, while purportedly acting in their capacity as police officers and with the assistance of Masri and others, carried out a "raid" at the home premises of a Cabramatta tobacconist shop proprietor as a result of which they wrongfully "seized" a large quantity of cigarettes and some illegal loose tobacco which were subsequently on-sold and the proceeds corruptly shared amongst Battal and LP1;

(v) He and Battal wrongfully took money in the sum of $40,000 from the residents of the Cabramatta premises on the pretence of making any "investigation" into their involvement with illegal tobacco *"go away"*;

(vi) On at least three separate occasions with the assistance of Battal and Hijazi, he wrongfully used his authority as a police officer in order to 'seize' drugs from persons with the intention of supplying the 'seized' drugs to Hijazi to on-sell and corruptly share the proceeds amongst the three of them;

(vii) He together with Battal, and purportedly acting in their capacity as police officers, used a hire-car intended to appear as a police vehicle and intercepted a truck carrying illegal tobacco with the object of 'seizing' that tobacco in order to on-sell it and wrongfully keep the proceeds for themselves ('the Masri truck incident'). Although the theft of the

tobacco was successfully carried out, it was ultimately returned to its 'owner' after persons unidentified showed up at Battal's premises and demanded the return of the tobacco;

(viii) He participated with Battal, Hijazi and Baroudi in carrying out a plan to intercept, as a purported police operation, a truck carrying a container of illegal tobacco and 'seizing' (i.e., stealing) the tobacco for the purposes of on-selling it and wrongfully sharing the proceeds with the others involved. That plan was not subsequently carried out as the 'target' truck failed to arrive at the intended interception point on the evening in question;

(ix) He agreed with Battal's proposal for theft of a large quantity of cigarettes and/or tobacco products from an unidentified warehouse although the proposal was never carried out.

In relation to allegations (iv) and (v), on 29 April 2009 LP1 was charged with the following offences, all of which relate to that incident;

- Corruptly receive a benefit pursuant to s249B of the *Crimes Act 1900;*
- Obtain property by deception pursuant to s178BA(1) of the *Crimes Act 1900;*
- Break and enter dwelling house and commit serious indictable offence pursuant to s112(2) of the Crimes Act 1900;
- Stealing from the person with circumstance of aggravation pursuant to s95(1) of the *Crimes Act 1900;*
- Enter dwelling house with intent to commit serious indictable offence pursuant to s111(2) of the *Crimes Act 1900.*

Accordingly in relation to these allegations the Commission is not of the opinion that consideration should be given to any further prosecution under section 97(2)(a) of the PIC Act.

In relation to the other allegations against LP1 which were examined by the Commission in Operation Lantana, and notwithstanding the evidence given by LP1 as to his involvement in the incidents alleged, the Commission is of the opinion that the paucity of admissible corroborative evidence renders successful prosecution an extremely doubtful proposition. Accordingly, the Commission is **not** of the opinion that consideration should be given to the prosecution of LP1 for specified criminal offences in relation to those other allegations.

On 29 April 2009, LP1 was removed as a sworn officer of the NSWPF pursuant to an order made by the Commissioner of Police under section 181D of the *Police Act 1990*. Accordingly, the question of taking action against LP1 pursuant to sub-sections 97(2)(c) and (d) of the PIC Act does not arise.

**Battal**

Pursuant to sub-section 16(1)(a) of the PIC Act the Commission is of the opinion that Nasser Mohamad BATTAL engaged in police misconduct in respect of all but one of the substantial allegations listed at paragraph 4.28 of this report. They are:

(i) He proposed to LP1 that the two of them engage in wrongful conduct whereby, purportedly acting in their capacity as police officers, they would carry out 'fake' searches of tobacconist shops which were suspected of selling illegal tobacco and 'seize' that tobacco with the intention of on-selling it and corruptly keeping the proceeds;

(ii) He and LP1, while purportedly acting in their capacity as police officers, carried out these activities on at least three separate occasions; namely, the three 'raids' on tobacconist shops;

(iii) He and LP1 shared payments which were wrongfully received by them from the proprietors of at least two of those tobacconist shops on the basis that they could improperly influence any investigation into the possession by the tobacconists of illegal tobacco;

(iv) He and LP1, while purportedly acting in their capacity as police officers and with the assistance of Masri and others, carried out a 'raid' at the home premises of a Cabramatta tobacconist shop proprietor as a result of which they wrongfully 'seized' a large quantity of cigarettes and some illegal loose tobacco which were subsequently on-sold and the proceeds shared between Battal and LP1;

(v) He and LP1 wrongfully took money in the sum of $40,000 from the residents of the Cabramatta premises on the pretence of making any "investigation" into their involvement with illegal tobacco *"go away"*;

(vi) On at least three separate occasions, with LP1 he wrongfully used his authority as a police officer in order to 'seize' drugs from persons with the intention of supplying the 'seized' drugs to Hijazi to on-sell and corruptly share the proceeds amongst the three of them;

(vii) He together with LP1, and purportedly acting in their capacity as police officers, used a hire-car intended to appear as a police vehicle and intercepted a truck carrying illegal tobacco with the object of 'seizing' that tobacco in order to on-sell it and wrongfully keep the proceeds for themselves (the Masri truck incident). Although the theft of the tobacco was ultimately carried out, it was subsequently returned to its 'owner' after a number of unidentified persons showed up at Battal's premises and demanded the return of the tobacco;

(viii) He participated with LP1, Hijazi and Baroudi, in carrying out a plan to intercept, as a purported police operation, a truck carrying a container of illegal tobacco and 'seizing' (i.e., stealing) the tobacco for the purposes of on-selling it and wrongfully sharing the proceeds with the others involved. That plan was not subsequently carried out, as the 'target' truck failed to arrive at the intended interception point on the evening in question;

(ix) He proposed to LP1 the theft of a large quantity of cigarettes and/or tobacco products from an unidentified warehouse although the proposal was never carried out;

(x) He purchased and possessed a prohibited pistol, being a .357 calibre revolver, without proper authorisation by way of a valid licence or permit.

The single exception to this relates to the allegation noted at paragraph (vi), that on at least three separate occasions, along with LP1, Battal wrongfully used his authority as a police officer in order to 'seize' drugs from persons with the intention of supplying the 'seized' drugs to Hijazi to on-sell and corruptly share the proceeds amongst the three of them. For the reasons discussed at paragraph 4.30 of this report, the Commission is not satisfied that there is sufficient evidence to allow an opinion as to police misconduct to be expressed regarding Battal's involvement in those incidents.

In relation to allegations (iv) and (v), on 16 April 2009 Battal was charged with the following offences:

- Corruptly receive a benefit pursuant to s249B of the *Crimes Act 1900;*
- Obtain property by deception pursuant to s178BA(1) of the *Crimes Act 1900;*
- Break and enter dwelling house and commit serious indictable offence pursuant to s112(2) of the *Crimes Act 1900;*
- Stealing from the person with circumstance of aggravation pursuant to s95(1) of the *Crimes Act 1900;*
- Enter dwelling house with intent to commit serious indictable offence pursuant to s111(2) of the *Crimes Act 1900;*
- 5 x Give evidence that is false or misleading before a hearing of the Commission pursuant to section 107 of the *Police Integrity Commission Act 1996.*

Accordingly in relation to these allegations the Commission is not of the opinion that consideration should be given to any further prosecution under section 97(2)(a) of the PIC Act.

In relation to the remaining allegations against Battal which were examined during Operation Lantana, aside from the one exception noted below, and for the reasons relating to the availability of admissible evidence noted above in relation to LP1, the Commission is **not** of the opinion that consideration should be given to the prosecution of Battal for specified criminal offences.

The exception referred to in the previous paragraph relates to allegation (x) in respect of the unauthorised possession by Battal of a prohibited pistol, being a .357 calibre revolver. On the basis of the evidence before the Commission in relation to this allegation, the Commission is of the opinion that consideration **should** be given to the prosecution of Battal for an offence against section 7 of the *Firearms Act 1996.*

On 31 March 2009 Battal was removed as a sworn officer of the NSWPF pursuant to the provisions of section 181D of the *Police Act 1990.*

Accordingly, the question of taking action against Battal pursuant to sub-sections 97(2)(c) or (d) of the PIC Act does not arise.

**Hijazi (aka Saleh)**

In the course of Operation Lantana Mohamed "Mick" Hijazi became the subject of the following allegations:

(i) He participated with Battal and LP1, in planning and facilitating the unlawful seizure of illegal drugs and the subsequent on-selling of those drugs, the sale proceeds of which were shared amongst the three of them;

(ii) He was a party to the planning and carrying out of the unlawful interception of a truck carrying illegal tobacco, and the theft of that tobacco, whereafter it was temporarily stored in the garage at his home premises prior to it being returned to its 'owner' (the Masri truck incident);

(iii) He was a party to the proposal to intercept a truck carrying a container load of tobacco products and the theft and subsequent sale of those products, albeit that this interception did not eventuate.

As detailed in the body of this Report, on the basis of the nature of the evidence heard by the Commission in relation to each of the above allegations, the Commission is **not** of the opinion that consideration should be given to the prosecution of Hijazi for specified criminal offences.

Hijazi is not a member of the NSWPF so the issue of him engaging in any police misconduct does not arise. Additionally, the Commission is **not** satisfied that there is sufficient evidence to allow for an opinion to be expressed that Hijazi engaged in other misconduct in relation to the allegations above.

**Masri**

Masri was the subject of the following substantial allegations:

(i) He assisted with the planning and carrying out of the unlawful 'raid' led by Battal and LP1 at the home premises of a Cabramatta tobacco shop proprietor on 16 October 2008 and the resulting theft of a large quantity of tobacco products and some illegal loose tobacco from those premises;

(ii) He facilitated the sale of the tobacco products and loose tobacco taken from the Cabramatta address on 16 October 2008, and corruptly shared the proceeds amongst himself, Battal and LP1.

In relation to these allegations, on 24 April 2009 Masri was charged with the following, all of which relate to the Cabramatta incident:

- Break and enter dwelling house and commit a serious indictable offence, pursuant to section 112(2) of the *Crimes Act 1900;*

- Obtain property by deception, pursuant to section 178BA(1) of the *Crimes Act 1900;*

- Steal from the person with circumstances of aggravation, pursuant to section 95(1) of the *Crimes Act 1900;*

- Enter dwelling house with intent to commit a serious indictable offence, pursuant to section 111(2) of the *Crimes Act 1900.*

Accordingly in relation to these allegations the Commission is **not** of the opinion that consideration should be given to any further prosecution under section 97(2)(a) of the PIC Act.

Masri is also not a member of the NSWPF so the issue of him engaging in any police misconduct does not arise. In the circumstances the Commission expresses no opinion as to whether Masri engaged in any other misconduct (section 16(1)(a) of the PIC Act).

**Baroudi**

Baroudi was the subject of the following substantial allegation:

(i) He was a party to the proposal to intercept a truck carrying a container load of tobacco products and the theft and subsequent sale of those products, albeit that this interception did not eventuate.

As discussed in the body of this Report, the Commission is not satisfied that LP1's evidence as to the object of the alleged proposal should be totally accepted, in light of the fact that the plan did not eventuate and that each of the other alleged participants denied the allegation made by LP1, however unsatisfactory their alternative explanations may have been.

Pursuant to section 97(2) of the Act the Commission is **not** of the opinion that consideration should be given to the prosecution of Baroudi for a specified criminal offence.

Baroudi is also not a member of the NSWPF so the issue of engaging in any police misconduct does not arise. In the circumstances the Commission is **not** of the opinion that Baroudi engaged in any other misconduct (section 16(1)(a) of the Act).

In undertaking the Operation Lantana investigation the Commission acknowledges the cooperation and assistance provided by the NSWPF, and in particular, officers from the Professional Standards Command and the Liverpool Local Area Command.

# 1. INTRODUCTION

1.1 Operation Lantana was an investigation conducted by the Commission into allegations of serious police misconduct and criminal activity by certain police officers stationed in south-west Sydney and other persons associated with them.

1.2 In September 2008 the NSW Police Force (NSWPF) received a complaint alleging that two unnamed officers had recently been involved in a "drug-rip" whereby a significant amount of drugs had been discovered in a vehicle which had been pulled over by the officers. It was alleged that those drugs were seized by the officers and the driver released without charge and allowed to continue on his way.

1.3 Given the seriousness of the misconduct alleged, the Commission elected to take over the investigation of that complaint from the NSWPF pursuant to section 70(1)(a) of the *Police Integrity Commission Act 1996* (the PIC Act). Both the NSWPF and the NSW Ombudsman's Office were advised of this decision.

1.4 An investigation code-named Operation Lantana was commenced and the Commission undertook initial enquiries and intelligence gathering.

1.5 Subsequently, as part of the Operation Lantana investigation the Commission conducted a public hearing commencing on 16 February 2009 and concluding on 19 February 2009. The general scope and purpose of that hearing was announced as follows:

> *To investigate allegations that certain NSW Police officers from south-western Sydney or any person or persons associated with them have been, or are currently, involved in serious police misconduct or criminal activity.*

1.6 The public hearing examined a number of allegations of serious police misconduct which had arisen in the initial stages of the Commission's investigation. Those allegations principally concerned two plain clothes police officers stationed at Liverpool Detectives office as well as several of their civilian associates.

1.7 In undertaking the Operation Lantana investigation the Commission acknowledges the cooperation and assistance provided by the NSWPF, and in particular, officers from the Professional Standards Command and the Liverpool Local Area Command.

### THE WITNESSES

1.8 Five witnesses gave evidence during the Operation Lantana public hearing. Of these, two were serving NSWPF officers, and the remaining three were civilians. A short profile of each witness follows.

## NSW POLICE FORCE WITNESSES

### Senior Constable Nasser Mohamad Battal

1.9 As at the date of the hearing, Nasser Battal (Battal) was a plain clothes Senior Constable of Police stationed at Liverpool Detectives office. He joined the NSWPF in January 2002 and had been stationed in Liverpool Detective's office since November 2006. He was removed from the NSWPF pursuant to the provisions of section 181D of the *Police Act 1990* on 31 March 2009.

### Senior Constable LP1

1.10 Pursuant to a non-publication order under section 52(1) of the PIC Act made at the public hearing (which remains in force), this witness had details of his true identity suppressed. He was referred to during the hearing by the pseudonym 'LP1'. Accordingly, he will be referred to by that pseudonym throughout this report. His full name and identity is known to both the Commission and the NSWPF.

1.11 As at the date of the hearing, LP1 was also a plain clothes Senior Constable of Police stationed at Liverpool Detectives office. He joined the NSWPF in January 2002 and had been stationed in the Liverpool Detectives office since July 2007. LP1 was also removed from the NSWPF pursuant to the provisions of section 181D of the *Police Act 1990* on 29 April 2009.

## THE CIVILIAN WITNESSES

### Mick SALEH (aka Mohamed "Mick" HIJAZI)

1.12 As at the date of the hearing Mohamed ("Mick") Hijazi had been a friend of Battal for approximately two and a half years.[1] Battal, in turn, introduced him to LP1 some time in early 2008.[2]

1.13 During his evidence before the Commission, Hijazi said that he had formally changed his surname to Saleh some twelve years prior to the date of the hearing. For the purposes of the Commission hearing, however, he was referred to by his former surname, Hijazi, on the basis that this was the name by which he was regularly referred to in the evidence of other witnesses. No discourtesy is intended to Mr Saleh in this respect. He will also be referred to by the name Hijazi in this Report.

1.14 At the date of the hearing Hijazi was the proprietor of the business 'Budget Wheels and Tyres Australia Pty Ltd' located at Moorebank, NSW.

### Ahmad MASRI (aka Ahmad EL MASRI)

1.15 As at the date of the hearing, Masri said that he had been a friend of Battal for approximately two years.[3] He said that he met LP1 through Battal around mid-2008.[4]

[1] PIC Transcript, M. Hijazi, 18 February 2009, p.209
[2] ibid
[3] PIC Transcript, A Masri, 19 February 2009, p.294
[4] ibid

As detailed later in this Report, however, this is contradicted by other evidence heard which suggested that Masri may only have met both Battal and LP1 as recently as August or September 2008.[5]

1.16 In any event, Masri was alleged to have been a party to certain events involving serious police misconduct that were examined during the course of the Operation Lantana investigation. In his evidence Masri made some qualified admissions in this regard.

**Montaze ('Monty') BAROUDI**

1.17 As at the date of the hearing, Baroudi was an associate of Hijazi and Battal, although the precise nature of their association was not examined in detail during the hearing. Baroudi is self-employed in the transport industry. He was summoned to give evidence before the Commission in relation to an incident involving the alleged planned theft of a large amount of tobacco in which he, Battal, LP1 and Hijazi were also allegedly involved.

## THIS REPORT

1.18 In this Report, prepared and furnished pursuant to section 96 of the PIC Act, the Commission examines the evidence heard during the public hearings.

1.19 The Report contains the Commission's assessments and opinions and expresses a view as to whether or not police misconduct, or other misconduct, has occurred in relation to each matter examined. The Report also contains the Commission's recommendations in respect of those individuals who, in its opinion, come within the definition of *"affected person"* pursuant to subsection 97(3) of the PIC Act.

1.20 Generally, persons are referred to in this Report, after the first mention of their name, by their surname only. This is done in the interest of economy and no discourtesy is intended.

[5] PIC Transcript, LP1, 16 February 2009, p.124-125

# 2. THE EVIDENCE

### Taking tobacco and receiving corrupt payments: The proposition

2.1 LP1 told the Commission that he was initially approached by Battal in the car park of Liverpool Council on a night about a quarter of the way through 2008. He said that Battal told him that he had *"a proposition"* [6] and explained that he had received some information about tobacconists who were selling illegal tobacco and that it was quite easy to go in to such places as a policeman, get the tobacco and that Battal had the means to sell such tobacco.[7] LP1 said that Battal had said that the information came from Battal's father's friend[8] and that the tobacco would be sold, also by a friend of his father and that *"we'd get a profit"* from the sale.[9]

2.2 According to LP1 Battal had explained the plan as it was later carried out: go in, tell the tobacconist that they were police officers, and that they had information about illegal tobacco justifying a search of the premises.[10]

2.3 LP1 told the Commission that he believed the discussion had only been about (illegal) loose tobacco, not about cigarettes.[11] He said he did not know anything about the value of loose illegal tobacco.[12]

2.4 LP1 said that he did not immediately agree to Battal's proposal[13] but that he did agree days or possibly a week later[14], having weighed up his *"very bad"* financial affairs against *"the ethical side of it"*.[15] Previously, when it had been suggested to him by offenders he had encountered that he act corruptly, he had rejected such offers.[16] Other than this evidence there was nothing else offered by LP1 to explain how or why he decided to engage in the serious misconduct he was to give further evidence about.

2.5 When Battal was called to give evidence he was asked whether LP1 was telling the truth about this proposition. Battal responded that LP1 was telling *"part of it"*.[17] He said that the proposition had been made, but that it was LP1 who had made it to him. Battal said in respect of the mention by LP1 of Battal's father's friend, that his father *"had nothing to do with it"*[18]. He said that LP1 had said to him that his information about such matters came from LP1's previous experience.[19] When asked at this point in his evidence whether he had then agreed with LP1's proposal, he said he had not.[20] He also denied that he had later agreed to become involved in such operations.[21]

[6] PIC Transcript, LP1, 16 February 2009, p.10
[7] ibid
[8] ibid
[9] PIC Transcript, LP1, 16 February 2009, p.11
[10] PIC Transcript, LP1, 16 February 2009, pp.11-12
[11] PIC Transcript, LP1, 16 February 2009, p.12
[12] ibid
[13] PIC Transcript, LP1, 16 February 2009, p.10
[14] PIC Transcript, LP1, 16 February 2009, p.13
[15] ibid
[16] PIC Transcript, LP1, 16 February 2009, p.14
[17] PIC Transcript, N M Battal, 16 February 2009, p.40
[18] PIC Transcript, N M Battal, 16 February 2009, p.40
[19] ibid
[20] ibid
[21] PIC Transcript, N M Battal, 16 February 2009, p.41

2.6 In later evidence during the hearing LP1 said that his only experience in relation to tobacco seizures came from his participation in 2007 in a joint operation with the Australian Customs Service which involved the seizure of unmanufactured tobacco. LP1 did not engage in any corrupt conduct in that matter.[22]

**Taking tobacco and corrupt payments: the first tobacconist**

2.7 LP1 told the Commission that he and Battal had discussed a tobacconist in Merrylands, in Sydney's western suburbs, who was to become their first target a week or two after his agreeing to Battal's proposition.[23] Later in his evidence he attributed, albeit uncertainly, the period of the three tobacconist thefts about which evidence was heard to a three to four month period ending around the middle of 2008.[24]

2.8 According to LP1's evidence, information about the first tobacconist came from Battal, who LP1 understood had received the information from a family friend.[25] They went to the store during an afternoon shift when both were on duty and carried out the plan which Battal had previously explained to him.[26] That plan involved Battal entering the shop, posing as a customer, seeking some loose tobacco, signalling to LP1, who would enter the shop and identify himself as a police officer and tell the shopkeeper that he was not allowed to sell loose tobacco.[27]

2.9 This, on LP1's evidence, is what subsequently occurred.[28] When LP1 had identified himself, Battal told the tobacconist to close the front roller door of the shop. At the request of one of the two police, the tobacconist then produced other loose tobacco in bags which was subsequently loaded into the police vehicle which had been moved to the rear of the shop.[29] Then the additional part of Battal's plan, according to LP1, was put into action. The tobacconist was told that the *"tax department"* and Customs and others might be interested in looking into the selling of illegal tobacco and the falsifying of the business' profit.[30] LP1 said that Battal went on to explain to the tobacconist that there were other means to prevent the continuation of any investigation, hinting that such means had a monetary value.[31] Battal carried this conversation but was backed up by LP1.[32]

2.10 The two police officers thereafter took the bags of tobacco in the police car to a house in Lurnea, near Liverpool, which Battal told LP1 was the home of his father's friend, where the tobacco was put into the garage.[33] Battal spoke to the occupant there, in what LP1 perceived to be Arabic.[34]

[22] PIC Transcript, LP1, 17 February 2009, p.153
[23] PIC Transcript, LP1, 16 February 2009, p.15
[24] PIC Transcript, LP1, 16 February 2009, p.118
[25] PIC Transcript, LP1, 16 February 2009, p.111
[26] PIC Transcript, LP1, 16 February 2009, p.16
[27] ibid
[28] PIC Transcript, LP1, 16 February 2009, pp.17-18
[29] PIC Transcript, LP1, 16 February 2009, p.18
[30] ibid
[31] PIC Transcript, LP1, 16 February 2009, p.19
[32] ibid
[33] PIC Transcript, LP1, 16 February 2009, p.20
[34] ibid

2.11 LP1 told the Commission that the next day the two police returned to the tobacconist shop and eventually located the man they had confronted the day before.[35] They explained that the investigation could be made to *"go away"*[36] and negotiated a payment of $10,000 in cash which was brought into the rear of the shop by a woman who LP1 believed to be the tobacconist's wife. The money, in cash, was taken away and divided up between the two officers.[37] A few days later, LP1 said, Battal produced some more money to him - he was uncertain of the amount but it may have been $1000, which Battal explained to LP1 was part of the proceeds of the sale of the tobacco taken from the shop[38], after splitting with the person who had sold the tobacco.[39] As with the previous money[40], LP1 took the cash and stored it at his home.[41] He said he did not want to know about the details of the transaction because he was *"haunted"* by the conflict in what he was doing.[42]

2.12 In his evidence, when Battal was first asked about this incident by Counsel Assisting, he denied that he had gone to the Merrylands tobacconist for the purpose of extorting money[43]:

*Q: Let me get this straight: are you saying that you did go to a Merrylands tobacconist with him*

*A: No, we didn't.*

2.13 He then said that the two of them only went together to tobacconists so that LP1 could buy cigarettes for himself.[44]

2.14 In later evidence on the same day of the hearing, however, when asked whether he had been involved with LP1 in any criminal activity before the Cabramatta incident on 16 October 2008 (which is discussed later in this Report), Battal said[45]:

*Yes, the Merrylands one.*

2.15 Battal sought to explain what he had earlier said in denying involvement in the Merrylands incident by contending that previously he had only been talking about the planning of what LP1 wanted to do.[46]

[35] PIC Transcript, LP1, 16 February 2009, p.21
[36] PIC Transcript, LP1, 16 February 2009, p.22
[37] PIC Transcript, LP1, 16 February 2009, p.23
[38] ibid
[39] PIC Transcript, LP1, 16 February 2009, p.24
[40] PIC Transcript, LP1, 16 February 2009, p.23
[41] PIC Transcript, LP1, 16 February 2009, p.25
[42] PIC Transcript, LP1, 16 February 2009, p.24
[43] PIC Transcript, N M Battal, 16 February 2009, p.41
[44] ibid
[45] PIC Transcript, N M Battal, 16 February 2009, p.76
[46] PIC Transcript, N M Battal, 16 February 2009, p.77

2.16 Battal then recounted to the Commission the plan which, by and large, LP1 had described in his evidence as the plan to enter the tobacconist's shop for the purpose of stealing the tobacco, except that Battal said that the plan originated with and was explained to him by LP1.[47] He recounted what he said actually happened at the shop, which was largely consistent with what LP1 said had occurred, except that on Battal's version, it was LP1 who had told the tobacconist to close his shop, and the amount of tobacco was *"only a small amount"*.[48] Battal said they took the tobacco and got rid of it through someone Battal knew,[49] although he said that he did not know that person's full name or his address (although he knew how to get there), and despite the fact that he described him as a friend.[50] Battal said that he told the man that he had some tobacco for him to get rid of and that he later received money as a result of him having sold the tobacco.[51]

2.17 Battal agreed that he and LP1 had gone back to the tobacconist and had a discussion about money and that he was there when the money was handed over, he said, to LP1. He said that he thought the amount was between $5000 and $7000[52] and that therefore, his share was *"something like"* an amount of between $2500 and $3500[53], which he spent *"probably paying bills and stuff"*.[54]

**Taking tobacco and receiving corrupt payments: The second tobacconist**

2.18 LP1 recalled that this second incident took place several weeks after the first (Merrylands) incident.[55] He described the plan which was essentially identical to that he described for the Merrylands incident, but with the additional component that the shop owner would be told that his shop had been under surveillance for a period of time.[56]

2.19 As LP1 understood it, the information about the targeted shop, which Battal gave to him, came from a friend of Battal's family.[57] LP1 said this second shop was *"just around the corner from the first one"*,[58] i.e., also in Merrylands.

2.20 The theft proceeded in a similar way to the first incident, with the tobacconist producing some loose tobacco and then a subsequent conversation about an investigation being carried out.[59] LP1 told the Commission that he recalled that in the end result some boxes of cigarettes and a small amount of loose tobacco were taken away in the police car.[60] On this occasion, according to LP1, Battal told LP1 to go and wait in the police vehicle whilst Battal remained with the shopkeeper and, LP1 assumed, had a conversation with him in LP1's absence. When Battal came out and they drove off, Battal produced a bag containing money.[61]

[47] PIC Transcript, N M Battal, 16 February 2009, p.77-78
[48] PIC Transcript, N M Battal, 16 February 2009, p.80-81
[49] PIC Transcript, N M Battal, 16 February 2009, p.81
[50] PIC Transcript, N M Battal, 16 February 2009, pp.82-83)
[51] PIC Transcript, N M Battal, 16 February 2009, p.84
[52] PIC Transcript, N M Battal, 16 February 2009, p.85
[53] ibid
[54] PIC Transcript, N M Battal, 16 February 2009, p.86
[55] PIC Transcript, LP1, 16 February 2009, p.109
[56] PIC Transcript, LP1, 16 February 2009, p.110
[57] ibid
[58] PIC Transcript, LP1, 16 February 2009, p.111
[59] PIC Transcript, LP1, 16 February 2009, pp.111-112
[60] PIC Transcript, LP1, 16 February 2009, p.113
[61] ibid

2.21 LP1 was uncertain as to the amount in the bag but recalled it was, or might have been, $7000 or $10000 which was subsequently split between the two officers.[62] The tobacco was taken to the same residence as before and unloaded into the garage.[63] Not more than a week later, LP1 said he received about $1000 from Battal which he believed was proceeds from the sale of the tobacco.[64]

2.22 When questioned about this incident Battal denied to the Commission that he had ever gone to any tobacconist, other than that described above as 'the first Merrylands incident', with the object of getting illegal tobacco and money from such a tobacconist.[65] When again called to give evidence on the second day of the hearing, Battal reiterated his denial of having been involved in the other two tobacconist incidents as LP1 had alleged in his evidence.[66]

**Taking tobacco: The third tobacconist**

2.23 The third incident which LP1 detailed to the Commission involving the theft of tobacco from a shop occurred in some other Sydney suburb which LP1 could not recall.[67] The plan was the same as in the second incident, and very similar to the first, both described above. The execution of the plan occurred in the same way. There was more loose tobacco in the shop. LP1 said that Battal told him to go back to the car and he did so. Battal came out and put some boxes into the boot and the rear seat of the car.[68] He told LP1 that he didn't get any money from the female occupant of the shop. As before, the tobacco (which, he said, looked to him like counterfeit cigarettes) was taken to the same house and placed in the garage.[69] Later, LP1 said, he received money from Battal which he believed was proceeds from the sale of that tobacco. He was uncertain of the amount, estimating that his share was around $700 to $800.[70]

2.24 As previously noted, Battal, in his evidence, denied that he had ever gone to any tobacconist other than that described above as the first tobacconist incident (at Merrylands) with the object of improperly obtaining illegal tobacco and money from such a tobacconist.[71]

**Seizing and supplying drugs: The first incident**

2.25 There were three incidents during which, according to LP1, what he at least believed to be illicit drugs were stolen by him and Battal. They occurred, he told the Commission, in a two to three week period midway through 2008.[72]

[62] PIC Transcript, LP1, 16 February 2009, pp.114-115
[63] PIC Transcript, LP1, 16 February 2009, pp.114ff
[64] PIC Transcript, LP1, 16 February 2009, p.115
[65] PIC Transcript, N M Battal, 16 February 2009, pp.86-87; 97
[66] PIC Transcript, N M Battal, 17 February 2009, pp.186-T187
[67] PIC Transcript, LP1, 16 February 2009, p.115
[68] PIC Transcript, LP1, 16 February 2009, p.116
[69] PIC Transcript, LP1, 16 February 2009, p.117
[70] ibid
[71] PIC Transcript, N M Battal, 16 February 2009, pp.86-87; 17 February 2009 pp.186-T187
[72] PIC Transcript, LP1, 17 February 2009, p.130

2.26 The first such incident occurred after information had been relayed to LP1 first by Battal and later by Hijazi.[73] LP1 had been introduced to Hijazi by Battal some weeks earlier, at night, in a car park somewhere in Lurnea.[74]

2.27 According to LP1, on the night in question, the two officers who were on duty, met with Hijazi, who told them that a vehicle, carrying *"speed"* (amphetamines), was to pass along Cowpasture Road in the Green Valley area.[75] Hijazi would then telephone with the details of the car which the two officers were to intercept.[76] They were to seize the drugs and give them to Hijazi.[77] Hijazi, LP1 said, indicated he knew who the owner of the drugs was.[78]

2.28 According to LP1 the plan was carried out with the vehicle being pulled over. LP1 said that he and Battal identified themselves to the driver as police officers.[79] LP1 pretended to make some radio checks on the driver's licence and then returned to the car, telling the driver that there was *"intelligence for drugs on the vehicle"* and that it would be searched. In response to Battal's question about whether there was anything in the car the driver wished to disclose, the driver said there was *"speed"* in the back of the vehicle. LP1 found a plastic container in the rear of the vehicle with a brown substance in it, which the driver said was the speed in question. Battal then told the driver that it would be seized and analysed and he would be contacted with the results of analysis.[80] The driver was allowed to go.[81]

2.29 The substance was then taken by Battal and LP1 to a residential estate in nearby Prestons where it was given to Hijazi, who drove off with it.[82] The two officers then returned to their police duties.[83]

2.30 LP1 told the Commission that Battal had told him that they would receive some unspecified amount of money as a result of the seizure.[84] Battal later explained to him that Hijazi had sought to sell the speed but that it needed further manufacture and that their payment was to be postponed.[85] Ultimately, no payment was ever made to LP1.[86]

2.31 In the course of his evidence Battal was asked about this incident and whether he was with LP1 when the car was pulled over. Battal said he did not recall taking anything from anyone.[87] When asked as to whether he denied his involvement, he chose not to, saying instead that he did not recall taking the substance to Hijazi.[88]

[73] PIC Transcript, LP1, 17 February 2009, pp.130-131
[74] PIC Transcript, LP1, 17 February 2009, pp.132-133
[75] PIC Transcript, LP1, 17 February 2009, pp.130-132
[76] PIC Transcript, LP1, 17 February 2009, p.134
[77] ibid
[78] PIC Transcript, LP1, 17 February 2009, p.136
[79] PIC Transcript, LP1, 17 February 2009, p.135
[80] PIC Transcript, LP1, 17 February 2009, pp.135-136
[81] PIC Transcript, LP1, 17 February 2009, pp.136
[82] ibid
[83] PIC Transcript, LP1, 17 February 2009, p.138.9
[84] PIC Transcript, LP1, 17 February 2009, p.138
[85] PIC Transcript, LP1, 17 February 2009, pp.138ff
[86] PIC Transcript, LP1, 17 February 2009, pp.139
[87] PIC Transcript, N M Battal, 17 February 2009, p.182
[88] PIC Transcript, LP1, 17 February 2009, pp.182

2.32 Hijazi, in his evidence, did not accept that the incident occurred and denied that the substance in question was conveyed to him.[89]

**Seizing and supplying drugs: The second incident**

2.33 LP1 said in evidence that some two to three weeks after the first drug 'seizure' incident a second proposed drug theft was also put to him by Battal.[90] It was to take place in front of a Casula Motel. LP1 said that subsequent to the initial discussion with Battal, he and Battal met with Hijazi in the Liverpool area on the afternoon preceding the incident for discussion between the three *"in relation to the finer details"*.[91]

2.34 According to LP1, the plan as described at these meetings and subsequently carried out, involved Hijazi organizing an associate to meet with a drug dealer. On this happening, Hijazi was to call Battal, who with LP1 would then drive to the motel where the meeting was to take place, pretend to arrest Hijazi's associate, seize the drugs, give them to Hijazi and receive money in return.[92]

2.35 The execution of the plan occurred on the eastern side of Box Road at Casula. Hijazi's associate was 'arrested' at the motel with a bag in his possession. The other man, the second party to the transaction, which apparently had just occurred, was not pursued.[93]

2.36 The detained man and the bag were taken by Battal and LP1 to Hijazi, to whom the man and bag were released.[94] LP1 said he saw that the bag itself contained 4 or 5 ziplock plastic bags, each of which he estimated to be 15 by 5 centimetres. He could not estimate the weight of the bags nor could he recall what, if anything, he had been told about the nature of the drugs.[95] Hijazi drove away with the bag and his associate.[96] LP1 said he was paid $5000 in cash by Battal as a result of this transaction.[97]

2.37 When Battal was asked whether he had participated in this theft, he said that *"we always used to go around there* (Box Road) *and pull up cars over there"*[98], but said that he did not recall taking anything or giving anything to Hijazi,[99] He said that if other evidence was presented to him, *"maybe"* his memory about such things might be refreshed.[100] No other evidence was presented in the hearings.

2.38 Hijazi, in his evidence, also denied that the substance was conveyed to him as related in LP1's description of this event.[101]

[89] PIC Transcript, M Saleh (aka Hijazi), 18 February 2009, p.211
[90] PIC Transcript, LP1, 17 February 2009, p.139
[91] ibid
[92] PIC Transcript, LP1, 17 February 2009, pp.139-T140
[93] PIC Transcript, LP1, 17 February 2009, pp.140-T141
[94] PIC Transcript, LP1, 17 February 2009, pp.141-T142
[95] PIC Transcript, LP1, 17 February 2009, p.143
[96] PIC Transcript, LP1, 17 February 2009, pp.142-43
[97] PIC Transcript, LP1, 17 February 2009, p.144
[98] PIC Transcript, N M Battal, 17 February 2009, p.183
[99] ibid
[100] ibid
[101] PIC Transcript, M Saleh (aka Hijazi) , 18 February 2009, p.212

**Seizing and supplying drugs: The third incident**

2.39 LP1 told the Commission that the third drug theft occurred probably three weeks after the second.[102] Again, LP1 said, Battal gave LP1 information about the plan which he (Battal) had been given by Hijazi.[103] The plan was to intercept a vehicle which would be waiting near the Pop-In Motel in Casula. The vehicle would be carrying an amount of drug precursor,[104] which the officers would seize, give to Hijazi and receive money in return.[105] LP1 could not recall if more information was given about the nature of the precursor.[106]

2.40 LP1 said that on the day of the theft, he and Battal met in a car park of an Italian restaurant at Casula where Hijazi gave them details of the vehicle and its location.[107] LP1 and Battal stayed at the car park after Hijazi had driven off. They waited for half an hour until (LP1 believed) Hijazi rang Battal about the location of the target car.[108] They then drove to that spot and produced their police identification to the driver of the parked car which was there. LP1, as before, pretended to make a radio check and the driver was duly told that there was *"intelligence on the vehicle for drugs"* and the car was then searched.[109]

2.41 In the car, LP1 found a sports bag with a shopping bag of white powder inside it,[110] which was seized. The bag of powder was about the size of a rugby league football.[111]

2.42 Battal telephoned Hijazi and told him they had *"this precursor to make a drug"* and they arranged to meet him. LP1 and Battal took the powder to Hijazi, LP1 said, and handed it over to him in a car park at Casula.[112] LP1 said he later received another $5000 in cash from Battal for this transaction.[113]

2.43 As previously mentioned in relation to the second drug incident and repeated here for convenience, when asked whether he had participated in the drug theft incidents, Battal said that *"we always used to go around there* [Box Road] *and pull up cars over there"*,[114] but said that he did not recall taking anything or giving anything to Hijazi.[115] He said that if other evidence was presented to him, *"maybe"* his memory about such things might be refreshed.[116] No other evidence was presented in the hearings in relation to this incident.

2.44 Hijazi, in his evidence, said that he could not remember meeting Battal and LP1 in the car park of the Italian restaurant as described by LP1.[117] He denied that material was conveyed to him by Battal and LP1 as described by LP1.[118]

[102] PIC Transcript, LP1, 17 February 2009, p.144
[103] ibid
[104] PIC Transcript, LP1, 17 February 2009, p.145
[105] ibid
[106] PIC Transcript, LP1, 17 February 2009, p.146
[107] PIC Transcript, LP1, 17 February 2009, p.145
[108] PIC Transcript, LP1, 17 February 2009, p.147
[109] PIC Transcript, LP1, 17 February 2009, pp.147-148
[110] PIC Transcript, LP1, 17 February 2009, p.148
[111] PIC Transcript, LP1, 17 February 2009, p.149
[112] ibid
[113] ibid
[114] PIC Transcript, N M Battal, 17 February 2009, p.183
[115] ibid
[116] ibid
[117] PIC Transcript, M Saleh (aka Hijazi), 17 February 2009, p.209, 210.
[118] PIC Transcript, M Saleh (aka Hijazi), 17 February 2009, p.211

**Taking tobacco: Masri's truckload**

2.45 In his evidence to the Commission LP1 put the timing of this incident some week or weeks before the Cabramatta incident described below.[119] This would mean that it occurred in late September or early October 2008. LP1 said that information was received, first from Battal and later from Hijazi, that a truck containing tobacco was to leave the Liverpool industrial estate which was near Hijazi's tyre outlet.[120] The two officers went to Hijazi's business and discussed the movements of people at that industrial estate with Hijazi and another man called Ali.[121]

2.46 Having received information via Hijazi that the truck had left the industrial estate, Battal and LP1 left Hijazi's business premises in a police car and intercepted the truck in the Chipping Norton industrial estate, pulling it over with the assistance of the police car's siren and flashing light.[122] They had earlier discussed that if the truck contained illegal tobacco, they would steal it. He was uncertain as to what was to happen to the stolen tobacco but recalled some discussion that Hijazi and Ali may have been able to sell it.[123]

2.47 According to LP1, Ahmad El-Masri (as LP1 called him, although there is no doubt he was referring to the witness Ahmad Masri) was in the passenger seat of the truck and claimed to be simply getting a lift to another location and knew nothing about the truck or its contents.[124] LP1 believed that this was the first time that Masri and Battal had met.[125] The driver said he had been paid by Masri to drive the truck.[126] The two officers drove Masri to Warwick Farm and returned to pick up the driver from the truck. LP1 believed that Hijazi and Ali were nearby and, as LP1 understood what then happened, the truck was driven to somewhere, unloaded and then taken to Lurnea, at which location Battal and LP1 dropped the driver off. He (the driver) then drove away in the truck.[127]

2.48 Later that afternoon, LP1 told the Commission that he and Battal met up with Hijazi and Ali in the Liverpool Council car park where Hijazi and Ali explained that the contents of the truck had been removed into the garage at Hijazi's residence.[128]

2.49 LP1 said he did not receive any payment from what had happened that day.[129]

2.50 Some days later, Battal told LP1 that a number of males had turned up at his home, seeking the return of the tobacco to Masri.[130] LP1 believed that this is what subsequently occurred.[131]

[119] PIC Transcript, LP1, 16 February 2009, p.119; 17 February 2009, p.128
[120] PIC Transcript, LP1, 16 February 2009, p.119
[121] ibid
[122] PIC Transcript, LP1, 16 February 2009, p.119-T120
[123] PIC Transcript, LP1, 16 February 2009, p.121
[124] PIC Transcript, LP1, 16 February 2009, p.120-121
[125] PIC Transcript, LP1, 16 February 2009, pp.124
[126] PIC Transcript, LP1, 16 February 2009, p.121
[127] PIC Transcript, LP1, 16 February 2009, pp.122-3
[128] PIC Transcript, LP1, 17 February 2009, p.127
[129] PIC Transcript, LP1, 16 February 2009, p.123
[130] PIC Transcript, LP1, 17 February 2009, p.128
[131] PIC Transcript, LP1, 17 February 2009, p.129

2.51 Battal gave evidence before the Commission denying that he had been involved in an incident involving Masri in a truck in the way described by LP1[132] or in taking the tobacco that was in that truck,[133] referring to the unlikelihood of such an event when, as he said, he had known Masri for some years. He also denied having told LP1 about meeting up with a group of males and having had a conversation with them about returning that tobacco.[134]

2.52 When Hijazi was asked about whether he was involved in the incident concerning Masri and the truck, he said he was aware of it after the incident happened.[135] He knew there were *"headaches"* after it occurred.[136] His recollection was vague, it seemed, but he said that he had heard from someone (he could not remember who) about Battal being required to return the tobacco taken from Masri's truck because, he said, Battal had been visited by people.[137]

2.53 Hijazi said that he could not recall if at any time LP1, Battal and Ali had been waiting at his premises with a view to intercepting a truck.[138] He said that he could not recall whether tobacco taken from the truck had been put into his garage at his home, as LP1 had said,[139] although he acknowledged that it was a possibility, *"maybe"*.[140]

2.54 Hijazi said that after the event he heard that someone had taken a load of tobacco from Masri's truck.[141] Although his recollection was expressed with imprecision, he said that he had become aware *(it might have been* [from] *Nasser* (Battal) *or LP1)* that *"some boys went to Nasser's house, trying to claim the tobacco"*. As a result, Hijazi said, he went to an area near Battal's house with some friends for *"back-up"* because Battal needed his help.[142] Afterwards, Battal told him that *"there's been a bit of a drama ... about some tobacco that they've confiscated".*[143]

2.55 Hijazi said that he believed that the incident concerned Masri's truck.[144] Consistent with what LP1 said in evidence, Hijazi also said that he believed the tobacco was returned,[145] and that he was told about that by Battal or LP1.[146]

2.56 When recalled to give evidence after Hijazi gave his evidence, Battal continued to deny that there had been an incident involving Masri's truck. He said he called on Hijazi for assistance *"heaps of times to sort out dramas we've got in the area with family feuds and stuff like that"* and said that he couldn't recall the exact occasion to which Hijazi was referring.[147]

[132] PIC Transcript, N M Battal, 17 February 2009, p.187
[133] PIC Transcript, N M Battal, 17 February 2009, p.188
[134] PIC Transcript, N M Battal, 17 February 2009, p.187
[135] PIC Transcript, M Saleh (aka Hijazi), 18 February 2009, p.218
[136] ibid
[137] PIC Transcript, M Saleh (aka Hijazi), 18 February 2009, pp.219ff
[138] PIC Transcript, M Saleh (aka Hijazi), 18 February 2009, p.220
[139] PIC Transcript, M Saleh (aka Hijazi), 18 February 2009, p.221
[140] PIC Transcript, M Saleh (aka Hijazi), 18 February 2009, pp.221-222
[141] PIC Transcript, M Saleh (aka Hijazi), 18 February 2009, p.222
[142] PIC Transcript, M Saleh (aka Hijazi), 18 February 2009, pp.222-225
[143] PIC Transcript, M Saleh (aka Hijazi), 18 February 2009, p.226
[144] PIC Transcript, M Saleh (aka Hijazi), 18 February 2009, p.227
[145] PIC Transcript, M Saleh (aka Hijazi), 18 February 2009, p.227, 228
[146] PIC Transcript, M Saleh (aka Hijazi), 18 February 2009, p.228
[147] PIC Transcript, N M Battal, 18 February 2009, p.247

2.57 Masri, in his evidence, also denied that the incident took place, asking rhetorically (as Battal had done: see paragraph 2.51 above) how that could happen if, as he said was the case, he had known Battal for two years.[148]

**Taking tobacco and corrupt payments: The Cabramatta incident**

2.58 According to LP1's evidence to the Commission, the genesis of the Cabramatta incident was information provided by Masri to Battal about an amount of illegal loose tobacco and illegal boxed tobacco (or counterfeit cigarettes) being stored at a residential address in Cabramatta.[149] The information was subsequently conveyed to LP1 initially by Battal and then discussed in further detail at a couple of meetings the two officers had with Masri at a cemetery near Liverpool.[150]

2.59 According to LP1's evidence, on the day of the incident, which occurred in October 2008,[151] Masri had organised a "pan-tech" style truck. Battal had taken some number plates, originally from a stolen vehicle, which Battal had stored in his office at Liverpool Detectives.[152] They had met with Masri and Battal had instructed him to put the number plates on the truck. They also handed over some police caps and some paper-style overalls to Masri.[153] Battal told the Commission that LP1 brought these items from his home and gave them to Masri.[154] In his later evidence, LP1 agreed that one of the caps was his but that the others had been supplied by Battal.[155] Battal had also said in evidence that he was troubled by this and that he told LP1 that the others shouldn't be posing as police but that, in effect, he went along with it because he was LP1's partner.[156]

2.60 According to LP1, the two police had then gone to the Cabramatta address (the details of which were the subject of non-publication orders and tendered as a confidential exhibit).[157] Upon their arrival at the address their initial contact was with the son of the husband and wife tobacconists who were absent but returned to the home shortly afterwards.[158] LP1 described what happened then as being similar to what had happened with the Merrylands tobacconist, in that they explained to the occupants that they had information about illegal tobacco and cigarettes.[159] The female opened the garage door at the premises when asked. LP1 had seen some loose tobacco in a freezer at the rear of the garage.[160] Inside the house, he sought and the couple provided information about the origin and cost of the loose tobacco and illegal cigarettes.[161] While inside, he could hear a truck coming down the driveway of the house. He assumed that Battal and Masri and some other males were loading the truck with the tobacco.[162]

[148] PIC Transcript, A Masri, 19 February 2009, p.295
[149] PIC Transcript, LP1, 16 February 2009, p.26
[150] PIC Transcript, LP1, 16 February 2009, p.27; 17 February 2009, pp.129.17ff
[151] PIC Transcript, LP1, 16 February 2009, p.26
[152] PIC Transcript, LP1, 16 February 2009, p.28
[153] ibid
[154] PIC Transcript, N M Battal, 17 February 2009, pp.199-200
[155] PIC Transcript, LP1, 19 February 2009, p. 315
[156] PIC Transcript, N M Battal, 17 February 2009, pp. 200-201
[157] PIC Transcript, LP1, 16 February 2009, p.28
[158] PIC Transcript, LP1, 16 February 2009, p.29-30
[159] PIC Transcript, LP1, 16 February 2009, p. 30
[160] ibid
[161] ibid
[162] PIC Transcript, LP1, 16 February 2009, p. 31

2.61 Five minutes later Battal came inside and spoke (untruthfully) to the couple about the *"tax department"* and Customs being interested in their illegal tobacco. Battal, LP1 said, appeared to make a telephone call which LP1 concluded was to make the couple think that a superior officer was also involved in the corruption which was shortly to be suggested. LP1 said that Battal *"planted the seed"* that they had a boss with *"very expensive tastes"*, which led to a negotiation with the couple as to how much had to be paid to them (i.e. Battal and LP1) in order to make the investigation go away. LP1 was initially uncertain as to whether this amount was $20,000 or $40,000.[163] It was agreed that the officers would return at 2:00pm later than day to get the money.[164] As to this version of events, Battal said in his evidence that LP1 did all the talking in the house.[165]

2.62 In the meantime, according to LP1, he and Battal met up with the truck at an industrial estate at Moorebank. Masri was there with some other men. LP1 saw loose tobacco and cigarettes in boxes and cartons.[166] It was his understanding that the tobacco was going to be sold.[167]

2.63 At 2:00pm that day, LP1 said that he and Battal went back to the Cabramatta address where they were handed money by the couple, as had been agreed earlier in the day. The couple also asked about the return of legitimate cigarettes which had also been taken.[168]

2.64 When questioned as to what share he received of the money taken from the Cabramatta couple LP1 repeated his lack of certainty about how much money they had taken away from the premises ($40,000 or $20,000) and how much his share of that total, which had been handed to him by Battal, ultimately was ($20,000 or $10,000 respectively).[169]

2.65 Some time later, LP1 told the Commission, he again received money from Battal which he was told was from the sale of the stolen tobacco. He again said he did not know the exact amount, but agreed that it was some tens of thousands of dollars.[170]

2.66 Later during LP1's evidence, a telephone call between himself and Battal on 17 October 2008 which had been lawfully recorded by the Commission was played.[171]

2.67 As a result of the content of that call, LP1 subsequently agreed that the total amount of money that had been received from the Cabramatta couple was $40,000[172] and that his share was $20,000.[173] When asked again to recall the amount he received from the sale of the tobacco, LP1 said *"it could have been around $20,000, maybe $30,000"*.[174] It was his understanding that Battal was to receive an equal split of the proceeds of the job.[175]

[163] PIC Transcript, LP1, 16 February 2009, p.33
[164] ibid
[165] PIC Transcript, N M Battal, 17 February 2009, p.201
[166] PIC Transcript, LP1, 16 February 2009, p.34
[167] PIC Transcript, LP1, 16 February 2009, p.35
[168] PIC Transcript, LP1, 16 February 2009, pp.35ff
[169] PIC Transcript, LP1, 16 February 2009, pp. 36.7ff
[170] PIC Transcript, LP1, 16 February 2009, p. 36
[171] PIC Exhibits 8 (transcript) and 9 (audio)
[172] PIC Transcript, LP1, 17 February 2009, p.156
[173] PIC Transcript, LP1, 17 February 2009, p.159
[174] PIC Transcript, LP1, 17 February 2009, p.160
[175] PIC Transcript, LP1, 17 February 2009, p.161

2.68 When Battal first gave evidence before the Commission on the matter, he denied that he had ever been to the Cabramatta address with LP1.[176] He also denied that he had anything to do with Masri being at the address on 16 October 2008.[177] He said that he had known Masri for *"a couple of years"*.[178] He denied speaking to Masri to arrange a truck to come to those premises.[179]

2.69 Battal was subsequently played a telephone call between himself and Masri which occurred on 16 October 2008 and which had been lawfully recorded by the Commission.[180] When questioned about the content of that call Battal agreed that it was his and Masri's voices in the call. Battal further agreed that in the call he was giving Masri instructions about changing number plates on the truck that Masri had on that date.[181]

2.70 Battal said that LP1 had supplied the number plates, which had been seized from a job that *"we had done at Bunnings"*.[182] He then admitted that he and LP1 had met up with Masri, and that *"maybe"* he had rung Masri to arrange that meeting.[183] Eventually he further admitted that he was aware that *"they* [i.e. LP1 and Masri] *wanted to change number plates and they wanted to grab the tobacco…from that address"* at Cabramatta.[184]

2.71 Battal admitted that, contrary to what he had first told the Commission, he had in fact gone to the Cabramatta premises with LP1.[185] He attempted to explain this change in his evidence claiming that his memory had been refreshed in the last quarter of an hour or so since his initial denial.[186]

2.72 Battal admitted that he had gone into the house but said that he had not participated in any conversation with the couple who lived there.[187] He said he was inside the house when Masri brought the truck to the premises for the purpose of loading the truck with the tobacco stored at the premises.[188]

2.73 Battal maintained his denial that it was he who had organised for Masri to go to the premises and repeated his allegation that it was LP1 who had organized this with Masri.[189] Battal said he had spoken to Masri about the arrangements for Masri to go to the Cabramatta address because it was he (Battal), and not LP1, who had Masri's phone number. Battal said that he was following LP1's instructions.[190]

[176] PIC Transcript, N M Battal, 16 February 2009, p. 43
[177] PIC Transcript, N M Battal, 16 February 2009, p.43
[178] PIC Transcript, N M Battal, 16 February 2009, p.44
[179] PIC Transcript, N M Battal, 16 February 2009, p.45
[180] PIC Exhibits 2 (transcript) and 3 (audio)
[181] PIC Transcript, N M Battal, 16 February 2009, pp.46-47
[182] PIC Transcript, N M Battal, 16 February 2009, p.48
[183] PIC Transcript, N M Battal, 16 February 2009, p.49
[184] PIC Transcript, N M Battal, 16 February 2009, p.51
[185] ibid
[186] PIC Transcript, N M Battal, 16 February 2009, p.52
[187] PIC Transcript, N M Battal, 16 February 2009, pp.52-53
[188] PIC Transcript, N M Battal, 16 February 2009, p.53
[189] PIC Transcript, N M Battal, 16 February 2009, p.53
[190] PIC Transcript, N M Battal, 16 February 2009, p.54

2.74 Battal agreed that he was at the premises knowing that a criminal act (the theft of the tobacco) was going to be committed but maintained that it was all LP1's idea.[191] He also admitted that he was there in the knowledge that he would share in the money which would come as a result of the criminal act being committed.[192] Battal said he could not recall how much money he received, but denied it was tens of thousands of dollars. He said that he was paid this money by LP1 and Masri.[193]

2.75 Battal admitted to the Commission that he and LP1 had met with Masri a couple of times to talk about who it was who lived at the Cabramatta house and other information about them.[194] He accepted that by the time that he went to the premises, he knew quite a bit about the persons who lived there and said that that information had *"probably"* come from Masri.[195] He adhered to this version of events in his later evidence, even after Masri had given conflicting evidence (see below, paragraph 2.96), although he did so somewhat cautiously.[196] Battal accepted that he went to the premises knowing that the purpose of the project was: namely, so that Masri could steal the tobacco and that he (Battal) and LP1 would identify themselves as police officers to assist in that endeavour.[197]

2.76 Battal tentatively suggested in his evidence that he was only at the premises because LP1 wanted the money and that he, Battal, was his partner.[198] He denied that he had organized the raid with Masri.[199]

2.77 Battal agreed that he was inside the house when the conversation had been had with the couple about how they might pay to get rid of any problems but said that it was LP1 who had made the suggestion and carried out the negotiations.[200] He said that they had gone back to the house later that day and that LP1 had gone into the house and came out with a bag or envelope from which he was later given a *"couple of grand"*. He agreed that he also received other money which had come in *"dribs and drabs"* from the sale of the tobacco.[201] He said he had talked to Masri from time to time about the sale of the tobacco and it had been conveyed to him by Masri that the tobacco was rotten.[202] In total, he said that he had got $10,000 to $15,000 from his participation in the Cabramatta 'raid'.[203]

2.78 Battal said that he had talked to Masri alone about the job (on occasions) because LP1 lived too far away and that he, Battal, had to do the *"running around"* as a result.[204] He agreed that he and LP1 were partners in these operations who shared equally but, he said, the operations were the idea of LP1.[205] Nothing was done, he said, without the approval and presence of LP1.[206] He said he would not *"initiate"* but would hear information and then meet up with LP1 and say to him *"what do you think?"*[207]

[191] ibid
[192] ibid
[193] PIC Transcript, N M Battal, 16 February 2009, pp.55-56
[194] PIC Transcript, N M Battal, 16 February 2009, p.58
[195] ibid
[196] PIC Transcript, N M Battal, 19 February 2009, p.305-306
[197] PIC Transcript, N M Battal, 16 February 2009, p.59
[198] PIC Transcript, N M Battal, 16 February 2009, p.60
[199] PIC Transcript, N M Battal, 16 February 2009, p.61
[200] PIC Transcript, N M Battal, 16 February 2009, pp.62-64
[201] PIC Transcript, N M Battal, 16 February 2009, p.63
[202] PIC Transcript, N M Battal, 16 February 2009, p.64ff
[203] PIC Transcript, N M Battal, 16 February 2009, p.65; 17 February 2009, pp. 201-202
[204] PIC Transcript, N M Battal, 16 February 2009, pp.66, 97
[205] PIC Transcript, N M Battal, 16 February 2009, p.98
[206] ibid
[207] ibid

2.79 Subsequent to it being played during the hearing, Battal agreed that an intercepted telephone call lawfully recorded by the Commission on 17 October 2008 at 15:37:53 hours was a call between himself and Masri.[208] He said that part of the discussion was *"maybe"* about Masri sending the tobacco to Melbourne.[209] He said the following reference in the translated transcript of that intercepted telephone call[210] *"But we have to report to the guys and tell them when to get paid …"* should have been translated as a reference to *"one guy"* and that the reference was about the topic of when it was that LP1 would get his money.[211]

2.80 When Battal was asked whether or not he had talked about a fourth person receiving some of the proceeds of the Cabramatta raid, he said he could not remember.[212] When asked specifically whether he had talked to LP1 about Hijazi receiving some of the proceeds, he said he had only spoken about giving Hijazi money in the context of going into business with him.[213] That joint business was, he said, one which would involve sharing in the purchase of tyres from overseas.[214] He said that he and LP1 had gone to America with Hijazi to attend a tyre expo and had travelled to Canada with Hijazi to visit his relatives.[215] He first said he assumed that Hijazi had paid for his own travel expenses,[216] but later said *"from memory"* that he and LP1 had shared the cost of the air ticket for Hijazi.[217] Hijazi, in his evidence, said that he had never been given money by Battal.[218]

2.81 When Battal was asked about the reference to money in a call between himself and LP1 on 17 October 2008[219] *("We'll say this is the thirty-five for the last job and for this job …")* he accepted that what he had meant was that money was to be paid to Hijazi.

2.82 He agreed that the reference to *"this job"* was to the Cabramatta operation which had taken place the previous day. He said that his reference in the call to *"the last job"* was a reference to the Merrylands job, but subsequently said that he could not remember what he had meant by the sentence *("We'll say this is the thirty-five for the last job and for this job …")*.[220] When asked on the following day of the hearing about having said that *"the last job"* was a reference to the Merrylands job, Battal said he could not remember what he had said on this topic the previous day.[221] Later, he sought to further explain how he came to say such things by saying that *"we used to show off all the time and talk shit in the car all the time, that we've done this and done that, but none of that is true"*.[222]

[208] PIC Exhibits 5 (transcript) and 6 (audio)
[209] PIC Transcript, N M Battal, 16 February 2009, pp.91-92
[210] PIC Exhibit 5 at page 5
[211] PIC Transcript, N M Battal, 16 February 2009, p.93
[212] PIC Transcript, N M Battal, 16 February 2009, p.67
[213] PIC Transcript, N M Battal, 16 February 2009, p.68
[214] PIC Transcript, N M Battal, 16 February 2009, p.69
[215] PIC Transcript, N M Battal, 16 February 2009, pp.70-71
[216] PIC Transcript, N M Battal, 16 February 2009, p.72
[217] PIC Transcript, N M Battal, 16 February 2009, p.76
[218] PIC Transcript, M Saleh (aka Hijazi), 18 February 2009, p.235
[219] PIC Exhibit 8
[220] PIC Transcript, N M Battal, 16 February 2009, pp.99-100
[221] PIC Transcript, N M Battal, 17 February 2009, p.196
[222] ibid

2.83 Battal agreed that in the call with LP1 on 17 October 2008[223] he had told LP1 that he had told Hijazi about the Cabramatta job.[224] He said however, that he could not recall having told Hijazi about stealing tobacco.[225]

2.84 Hijazi, in his evidence, said that he might have been told by Battal that *"they've done something"* but that Battal didn't go into specific details.[226]

2.85 When LP1 was asked to explain what he thought Battal meant by this reference to payment for *"…the last job…"*,[227] he said the purpose of paying the money to Hijazi was to make up for Hijazi's *"loss"* which arose from the return of the tobacco which had been seized from Masri's truck (see above: paragraphs 2.50-2.55).

2.86 Earlier in the same call, Battal had referred to Masri having said that he would bring Battal $55,000 that evening.[228] Battal said in evidence that that was the amount that had been talked about as being due to each of him and LP1 from the sale of the tobacco which had been taken from the Cabramatta address.[229] Battal said, however, that $55,000 was not the amount that they ultimately got.[230]

2.87 Later in the same telephone call of 17 October 2008[231], Battal was recorded as saying to LP1:

> *"…I didn't tell 'em about the forty…"*

That statement occurred immediately after Battal had told LP1:

> *"…I said…we ended up with a hundred and ten…"*

2.88 In his evidence, Battal agreed that the reference to *"…a hundred and ten…"* was a reference to his having told Hijazi how much money was to be paid (to himself and LP1) as a result of the Cabramatta job.[232]

2.89 When questioned in relation to the mention of *"the forty"*, however, Battal replied that didn't know what *"the forty"* was for,[233] but he denied that it referred to the amount in cash that the couple at the Cabramatta premises had agreed to pay to him and LP1.[234] When then asked to repeat the amount he had previously said he had received,[235] he said that he couldn't remember what he had said previously, or what the amount was.[236]

[223] PIC Exhibit 8,
[224] PIC Transcript, N M Battal, 17 February 2009, p.195
[225] ibid
[226] 230.20
[227] PIC Transcript, LP1, 17 February 2009, pp.157-158
[228] PIC Exhibit 8 at page 9
[229] PIC Transcript, N M Battal, 16 February 2009, p.104-105
[230] PIC Transcript, N M Battal, 17 February 2009, p.105
[231] PIC Exhibit 8 at page 11
[232] PIC Transcript, N M Battal, 16 February 2009, p.107
[233] ibid
[234] ibid
[235] That is, at p.65 of the transcript.
[236] PIC Transcript, N M Battal, 16 February 2009, p.108

2.90 Later in his evidence, when he was pressed to explain what he meant by the reference to *"the forty"*, he said that he had *"money put aside"*.[237] Nevertheless, he was still unable to explain what *"the forty"* referred to.[238]

2.91 Similarly, when asked about a subsequent reference to *"the twenty"* during the same call[239] where Battal said *"…All right, well what I'll do is take from the twenty that I took yesterday…"*, Battal said, when asked whether he had got $20,000 from anywhere else on that day,

> *"…Well, I'd have to check. I might have got some 20 from my brother. I don't know…"*[240]

2.92 When Masri came to give evidence, he denied that he had arranged for the truck to be present at the Cabramatta house[241] or for the recruitment of the other men in the truck.[242] He said that he had been asked by Battal and LP1 to go with them on a raid *"to just check out the quality of the tobacco and that".*[243]

2.93 Masri agreed that he did help Battal and LP1 to sell the tobacco and gave them money as a result.[244] He said initially the amount was *"around $10,000 to $12,000, $13,000, I think"* which he gave to them bit by bit until the tobacco was all gone. He subsequently said he gave them *"probably about $20,000"*.[245] He said that he handed money to both of them, except for one occasion when only Battal was present.[246]

2.94 Masri told the Commission that on the day of the Cabramatta incident LP1 had what, was to him (Masri), apparently a search warrant for the premises.[247]

2.95 Masri admitted he was present when false number plates were put on the truck. He said that LP1 had given them to him and had also given him a bag with blue caps and overalls.[248] He said that LP1 had instructed him that when Battal called, he was to put the number plates on the truck and bring the truck to the house.[249] He said that he thought the use of the number plates was part of police procedure.[250]

2.96 He denied, contrary to the evidence given by both Battal and LP1, that it was he who had supplied information to them about the house being a place where there would be tobacco.[251] He said LP1 had told him the previous day that he (LP1) had done his homework on the house and he was getting a search warrant ready.[252] He said that it was LP1 who had mentioned the house occupants were Asian.[253]

[237] PIC Transcript, N M Battal, 17 February 2009, p.198
[238] ibid
[239] PIC Exhibit 8 page 17
[240] PIC Transcript, N M Battal, 17 February 2009, p.199
[241] PIC Transcript, A Masri, 19 February 2009, pp.277, 281
[242] PIC Transcript, A Masri, 19 February 2009, p.280
[243] PIC Transcript, A Masri, 19 February 2009, p.277
[244] PIC Transcript, A Masri, 19 February 2009, p.278
[245] PIC Transcript, A Masri, 19 February 2009, p.279
[246] PIC Transcript, A Masri, 19 February 2009, p.280
[247] ibid
[248] PIC Transcript, A Masri, 19 February 2009, pp.281-282
[249] PIC Transcript, A Masri, 19 February 2009, p.282
[250] PIC Transcript, A Masri, 19 February 2009, p.284
[251] PIC Transcript, A Masri, 19 February 2009, p.284
[252] ibid
[253] PIC Transcript, A Masri, 19 February 2009, p.285

2.97 When Masri was played an intercepted telephone call between himself and Battal which was made on 12 October 2008 and lawfully recorded by the Commission, he denied that the reference to *"this job for the Chinese man"*[254] was a reference to the Cabramatta tobacconist but he could not explain what it otherwise referred to.[255]

2.98 In the same passage of that call, Battal said to Masri, *"Let's do it this week to try and get everyone's losses back"*, to which Masri responded, *"No worries"*.

2.99 Masri said this was about something else, later stating that it concerned a loan of money to, or from, Baroudi.[256]

2.100 Masri said that after the truck was loaded at the Cabramatta address, he went with it to an industrial estate in Chipping Norton or Moorebank where the tobacco and cigarettes were unloaded.[257] He said that he thought what had happened was legitimate up until the time that LP1 said *"This only happens in Hollywood",* when they were back at the unloading point.[258]

2.101 He said that he initially resisted becoming involved in selling the tobacco and that he assisted Battal and LP1 because he was scared. Eventually however, he did sell the tobacco at various places *"all over Sydney"* and gave Battal and LP1 the money,[259] although the loose tobacco was rotten or mouldy in part and some of the cigarettes were expired.[260]

**Baroudi's Truck: Proposed Interception and Seizure of Tobacco**[261]

2.102 In his evidence before the Commission LP1 recalled that a number of weeks after the Cabramatta incident detailed above Battal related to him a conversation that he (Battal) had recently had with Montaze Baroudi. Baroudi had told Battal about an approach that had been made to him (Baroudi) to organize a truck, a driver and labour to unload a truck carrying a container containing illegal tobacco.[262] LP1 said that he had heard about this first from Battal and later from Baroudi in the presence of Battal and Hijazi.[263] One such meeting took place about 20 minutes north of Liverpool; another, between LP1, Battal and Hijazi, took place at Battal's home.[264] According to LP1, he, Battal, Baroudi and Hijazi contrived a plan to intercept the truck carrying tobacco when it reached Liverpool or Green Valley and seize its contents.[265]

2.103 LP1 agreed that intercepted telephone conversations lawfully recorded by the Commission on 11 December 2008 between himself and Battal which were played to him during the hearing[266] were discussions about the proposed interception of the truck and

[254] PIC Exhibit 26, page 5
[255] PIC Transcript, A Masri, 19 February 2009, pp.287-288
[256] PIC Transcript, A Masri, 19 February 2009, pp.288-289
[257] PIC Transcript, A Masri, 19 February 2009, pp.289-290
[258] PIC Transcript, A Masri, 19 February 2009, p.291
[259] PIC Transcript, A Masri, 19 February 2009, pp.293-294
[260] PIC Transcript, A Masri, 19 February 2009, p.296
[261] Although the truck in question was in fact hired, it is convenient to refer to it for present purposes as 'Baroudi's truck'.
[262] PIC Transcript, LP1, 17 February 2009, pp.162-163
[263] PIC Transcript, LP1, 17 February 2009, pp.162ff
[264] PIC Transcript, LP1, 17 February 2009, p.164
[265] PIC Transcript, LP1, 17 February 2009, pp.163-164
[266] PIC Exhibits 13 (transcript) and 14 (audio)

were made around the time of the proposed interception. In another lawfully intercepted call between himself and Battal on 11 December[267], LP1 said that the conversation was about hiring a vehicle to pose as an unmarked police car,[268] the use of holsters both for the purpose of *"mak[ing] us look like we were actually on-the-job police officers"*.[269] The two also discussed how the truck would be pulled over.[270]

2.104 LP1 said that on the evening the plan was to be carried out he went with Battal and Hijazi in the hire car with the intention of pulling over the truck and stealing its contents.[271] Consistent with the plan to pass it off as a police operation there was also *"a blue strobe light, police-type light, in the car as well."*[272]

2.105 LP1 told the Commission that during the course of the evening there were various phone calls made between, he believed, Battal and Baroudi, about the time frames or the location of the truck. Following each of these calls Battal relayed the contents of the calls to LP1 and Hijazi, who were in the vehicle with him, saying, effectively, that Baroudi had no information other than *"it's on its way"* or *"it's travelling"*.

2.106 Ultimately, however, the truck never turned up to the location at which Battal, LP1 and Hijazi were awaiting it.[273] Accordingly, whatever was to happen in relation to pulling the truck over and seizing its contents did not occur.

2.107 In his evidence to the Commission, Battal said that he had participated in planning with Baroudi to pull over a truck, but not in the way, or for the purpose that LP1 had said.[274] Battal agreed that a car was hired so that it could be passed off as a police vehicle aided by a blue strobe light.[275] He said, however, that the purpose of his involvement was to assist Baroudi to identify persons who had been involved in setting Baroudi up to be *"busted"* by Customs earlier in 2008 in an operation in which, apparently, Baroudi had been accused of involvement in dealings with illegal tobacco.[276]

2.108 Battal said that he and LP1 believed that the same people were involved in Baroudi being *"set up"* earlier in 2008 and the second hiring of Baroudi which was to lead to the interception of the truck as discussed above.[277] Battal said Baroudi had told him they were the same people.[278] Battal said that when *"they"* (meaning he and the others) *"grabbed"* that person, they were going to *"call it in"* as a police job, meaning that those persons would be arrested.[279] Battal said Hijazi was with them to help out when they went out on this job, because:

> *"those guys [meaning persons involved with illegal tobacco] …always have another carload of people with them or they've got people watching the truck."*[280]

[267] PIC Exhibits 15 (transcript) and 16 (audio)
[268] PIC Transcript, LP1, 17 February 2009, pp.165
[269] PIC Transcript, LP1, 17 February 2009, pp.167-168
[270] PIC Transcript, LP1, 17 February 2009, p.168
[271] PIC Transcript, LP1, 17 February 2009, pp.169-170
[272] PIC Transcript, LP1, 17 February 2009, p.169
[273] ibid
[274] PIC Transcript, N M Battal, 17 February 2009, p.177
[275] PIC Transcript, N M Battal, 17 February 2009, p.177-178
[276] ibid
[277] PIC Transcript, N M Battal, 17 February 2009, p.178-179, 181
[278] PIC Transcript, N M Battal, 17 February 2009, p.179
[279] PIC Transcript, N M Battal, 17 February 2009, pp.179-180
[280] PIC Transcript, N M Battal, 17 February 2009, p.180

2.109 In his evidence in relation to this incident, Hijazi said he had been told by Baroudi about him having been *"set up"*, that Battal and LP1 wanted to help Baroudi and that he was asked if he could assist in providing a *"sort of back-up"*.[281] He said he understood that the plan involved pulling over a truck using a hire car intended to appear to be a police car. Hijazi said that it was he who, at the request of Battal, had hired the vehicle.[282]

2.110 Hijazi said that he understood that the plan was to *"help Monty* [Baroudi] *get his money"*[283] and that the persons it was aimed at *"owed Monty from previous things that they'd gotten involved in"*.[284] He had been told by Baroudi that the truck was carrying tobacco.[285] He said it was his understanding that upon the truck being pulled over the job was going to be *"called in"* to the police.[286]

2.111 The evidence given by Baroudi to the Commission was generally consistent with that which had been given by Battal. Baroudi said that he had previously been *"done"* by Customs in July 2008 for a shipment of illegal cigarettes about which he claimed to have had no knowledge.[287]

2.112 Baroudi told the Commission that when he was subsequently approached in similar circumstances to provide transport for a shipment of tobacco he suspected that the same people were involved and that this presented an opportunity to *"clear"* him of the allegations against him in respect of the prior shipment for which he had been *"done"*.[288] As a result, he said that he had contacted Battal and told him what was happening.[289] The arrangement which was then made was to intercept the truck and the people engaged by Baroudi after the container had been unloaded.[290]

2.113 Baroudi described the wait for the container to be delivered.[291] He said that he was aware that Battal and the others were waiting in a car nearby in order, as he understood it, to *"make a bust"*[292] and to seize the tobacco and arrest the people who were at the delivery point.[293] He said that the reason that Hijazi was there also was because Hijazi had wanted to help and make sure that nothing happened (to Baroudi) in the way that it had happened in relation to the prior shipment.[294]

2.114 The effect of Baroudi's evidence was that he denied that it was his intention to participate in the stealing of the tobacco, if in fact there was tobacco in the container at all.[295]

[281] PIC Transcript, M Saleh (aka Hijazi), 18 February 2009, p.235
[282] PIC Transcript, M Saleh (aka Hijazi), 18 February 2009, pp.236-237
[283] PIC Transcript, M Saleh (aka Hijazi), 18 February 2009, p.236
[284] PIC Transcript, M Saleh (aka Hijazi), 18 February 2009, p.239-240
[285] PIC Transcript, M Saleh (aka Hijazi), 18 February 2009, p.240
[286] ibid
[287] PIC Transcript, M Baroudi, 18 February 2009, pp.257-258
[288] PIC Transcript, M Baroudi, 18 February 2009, pp.257-263, 266
[289] PIC Transcript, M Baroudi, 18 February 2009, p.258
[290] PIC Transcript, M Baroudi, 18 February 2009, p.263
[291] PIC Transcript, M Baroudi, 18 February 2009, p.264-265
[292] PIC Transcript, M Baroudi, 18 February 2009, p.265
[293] ibid
[294] ibid
[295] PIC Transcript, M Baroudi, 18 February 2009, p.267

**Future Taking of Tobacco**

2.115 In the call between Battal and LP1 on 17 October 2008 previously referred to[296], Battal told LP1 about having *"told 'em about the big warehouse one"* immediately after the sentence which he had previously accepted in his evidence was a reference to the payment to Hijazi. He said he could not recall who he was talking about when he used the term *"'em"* there.[297] He said that he believed it was Masri who had told him about the warehouse in question.[298] Battal denied he was presenting this issue as his idea, saying instead that he was seeking LP1's approval[299] and the gathering of such information was on LP1's instructions.[300] Battal conceded, however:

> *"…If he's happy to do it and he wants to go ahead with it… I was happy with it …"*[301]

2.116 He subsequently qualified this enthusiasm by saying that the proposal was *"all rumours"*, with nothing confirmed[302] and that whether he would have ultimately joined in depended "on (what he was feeling at) the (relevant) time".[303]

**Possession of an unlicensed firearm**

2.117 In a lawfully intercepted telephone call between Battal and LP1 which occurred on 11 December 2008[304], Battal mentioned a *"thing that I got from Adelaide"*.[305] LP1 told the Commission that he believed that this was a reference to a firearm that Battal had previously told him that he purchased in Adelaide.[306]

2.118 When Battal was asked about that reference to the *"thing"*, he said that he did not get a firearm from Adelaide.[307] He said, however, that he could not recall, what the *"thing"* he was referring to actually was.[308]

2.119 During the execution of a search warrant by Commission officers at Battal's home on 28 January 2009 a loaded .357 calibre Smith and Wesson hand gun was located in a safe at the premises.

2.120 In his evidence before the Commission, Battal said that he had bought the firearm *"a couple of months ago"* in Sydney for $2000.[309] He said that he had bought the firearm *"from friends"* for *"protection"*.[310]

2.121 When asked whether he possessed a licence for the firearm Battal effectively answered in the negative, saying that he had a firearms licence previously but that it had expired *"last year [2008], I think, or the year before"*.[311]

[296] PIC Exhibit 8
[297] PIC Transcript, N M Battal, 16 February 2009, p.100
[298] PIC Transcript, N M Battal, 16 February 2009, p.101
[299] PIC Transcript, N M Battal, 16 February 2009, p.101
[300] PIC Transcript, N M Battal, 16 February 2009, p.102
[301] PIC Transcript, N M Battal, 16 February 2009, p.103
[302] ibid
[303] PIC Transcript, N M Battal, 16 February 2009, p.104
[304] PIC Exhibits 15 (transcript) and 16 (audio)
[305] PIC Exhibit 15 at p.5
[306] PIC Transcript, LP1, 17 February 2009, p.168
[307] PIC Transcript, N M Battal, 17 February 2009, pp.174; 176
[308] PIC Transcript, N M Battal, 17 February 2009, p.176
[309] PIC Transcript, N M Battal, 17 February 2009, p.176
[310] PIC Transcript, N M Battal, 17 February 2009, pp.175-176
[311] PIC Transcript, N M Battal, 17 February 2009, p.175

# 3. ASSESSMENTS AND OPINIONS

**Assessing witness credit – LP1 and Battal**

3.1 As a threshold issue and as the discussion of the evidence in Chapter 2 of this Report indicates, there are significant differences in the evidence given by each of the witnesses called during the public hearing on many of the key incidents examined during the hearing and none more so than those which emerged in the evidence given by LP1 and Battal. Having assessed their respective evidence and having regard to the manner in which they gave their evidence the Commission is satisfied that where there are differences in the evidence of LP1 and Battal in particular, the evidence given by LP1 is generally to be preferred to that of Battal. That does not mean however that the Commission accepts everything that LP1 said in his evidence where it is contradicted or denied by Battal or the other witnesses.

3.2 LP1 admitted to serious misconduct not only involving the Merrylands tobacconists and the Cabramatta couple, but to the other incidents as detailed in Chapter 2 of this Report. It is difficult to conceive of a motive for him doing so unless those incidents occurred as he related them. In addition, he gave his evidence in a candid and considered way consistent with someone who was doing his best to assist the Commission with its inquiry. Given the serious wrongdoing LP1 admitted to however, it also follows that his evidence needs to be approached and assessed with some caution. Nonetheless, as a general assessment, the Commission is satisfied that LP1 presented as a reliable witness. While the question of how a previously honest police officer managed to involve himself in such serious misconduct, which he freely admitted to, was not completely explained, he appeared to have realised at least by the time he gave his evidence that it was intrinsically wrong and appeared to genuinely regret his conduct.

3.3 Battal, on the other hand, presented as a less than impressive witness and made admissions only to the 'first' Merrylands incident, to the incident involving the Cabramatta couple, and to a version of the events involving Baroudi as referred to in Chapter 2 of this Report. Even when he denied certain matters put to him the force of his denial was less than resolute and comprehensive.

3.4 In respect of the Cabramatta couple, not unlike many initially recalcitrant witnesses who appear before the Commission, Battal admitted his involvement only after he became aware of evidence other than that of LP1 (primarily, electronic surveillance evidence).

3.5 In respect of the Merrylands incident, his admission was also belated, although, unusually in such circumstances, it did not follow as the result of confrontation with additional evidence, as appeared to be the case with his admissions in relation to the Cabramatta incident.

3.6 It cannot therefore objectively be seen as logical to have made the Merrylands admission whilst maintaining a denial to the other incidents, unless those other incidents did not occur, or he was mistaken about the additional evidence (other than that of LP1) likely to

be presented in respect of those incidents during the hearing. The Commission is also satisfied that the latter is the case, and thus Battal's denial of his involvement in the other two tobacconist incidents at least is not to be accepted.

3.7 When considering the credit of LP1 and Battal and where their evidence is in conflict, the Commission has taken greater note of admissions against self interest than of exculpatory statements and has cautiously approached those aspects of the evidence where, although making admissions, it is conceivable that a witness may be attempting at the same time to minimize his role, compared to another witness.

3.8 In considering this issue, there was reference during the second day of hearing by the legal representative for Battal that Battal was at that time in a *"state of significant ill health"* and that he was being treated by a psychologist who was considering having him admitted to hospital.[312] While it was suggested on behalf of Battal on this basis he might not be in a position to continue giving evidence, the Commission resolved that there was nothing raised in the submission or the limited additional material put in support of it that would prevent Battal's examination continuing but that if further matters touching on this issue came to light in the course of the hearing, the issue could be revisited.[313] There was however nothing put as part of the submission that urged that Battal's condition somehow affected his ability to recall matters about which he was being examined or that otherwise meant the quality of his evidence could be affected or diminished. As events transpired Battal proceeded to give his evidence without incident. There was no further mention of the issue until the fourth (and last) day of the hearing when a letter from Battal's treating psychologist was tendered indicating that Battal was being treated for stress and related anxiety.[314] By this stage Battal had concluded his evidence. There was also no further reference to these matters in any submissions on his behalf in response to those of Counsel Assisting following conclusion of the public hearing.

3.9 In the circumstances the Commission is satisfied that this issue has little if any bearing in assessing whether Battal's evidence is to be preferred to that of LP1 where there is conflict or other differences or in assessing the reliability or truthfulness of his evidence.

3.10 Generally therefore, but not in every example which has arisen in the course of the public hearing, the Commission is satisfied that LP1's version of events is to be preferred. Where, however, there is no evidence to corroborate what LP1 has said, or the particulars of the incidents are vague or simply lacking particularly in instances where Battal (or others) denies his involvement, care must be exercised in forming definitive conclusions solely on the basis of the evidence given by LP1 during the public hearing.

3.11 This assessment may also lead to the somewhat curious result in that the Commission could be satisfied about a matter, say, as against LP1 on the basis of his admission, but not as against Battal for the same matter in the absence of corroboration and where LP1's evidence is the only evidence available. This however is not an unusual or improper

[312] PIC Transcript, N M Battal, 17 February 2009, pp.171-172
[313] PIC Transcript, N M Battal, 17 February 2009, pp.173-174
[314] PIC Exhibit 28

result given the processes that bodies such as the Commission are required to adhere to as part of the function in assessing and reporting on conduct. In particular in arriving at its conclusions and expressing its opinions the Commission is required to meet an evidentiary standard of proof as formulated in the decision of *Briginshaw v Briginshaw*.[315] That formulation of reasonable satisfaction requires in part that proof of serious allegations should not be produced by *"inexact proofs, indefinite testimony, or indirect inferences."*[316]

3.12 In light of these matters, the topic headings below mirror those used in the review of the evidence in the preceding chapter of this report.

**Taking Tobacco and Corrupt Payments: The Proposition**

3.13 In their evidence before the Commission both Battal and LP1 attributed the genesis of their conduct examined during the hearing as being the inspiration of the other. There was no other direct evidence presented which permits one version on this issue to be preferred over the other. To a large extent it is unnecessary to reach any final conclusions on this point as it relates more to the respective role of each of LP1 and Battal in the conduct examined as opposed to whether they were each involved at all. Such questions of relative culpability or role in the events examined may be matters to be authoritatively determined elsewhere.

3.14 The Commission agrees with the submission of Counsel Assisting however, that when viewed as a whole the available evidence suggests that it is more likely that Battal was the instigator. In particular, it was he who provided the means of disposal of the tobacco. When regard is had to the telephone calls which were in evidence in relation to events occurring on or after 12 October 2008, those calls strongly suggest that Battal was the dominant partner in the conduct which was examined at the hearing, notwithstanding Battal's attempts to explain why he appeared to carry the load as regards the contacts shown in the calls. Such calls also provide objective independent evidence inconsistent with his evidence about his role and corroborative of LP1's evidence.

3.15 On either version both Battal and LP1 agreed they each participated in the first incident involving the tobacconist at Merrylands.

**Taking tobacco and corrupt payments: The first tobacconist**

3.16 As noted earlier this event was admitted to by both LP1 and Battal, although the details of their accounts differed in a number of respects, as identified in the review of the evidence in Chapter 2 of this Report. It is disputed by Battal that he led the conversation with the tobacconist, for example. The evidence presented during the hearing lacked particularity on significant matters such as timing, precise location, the identity of the victim(s) and the size of the theft to which each of LP1 and Battal admitted.

[315] Briginshaw v Briginshaw (1938) 60 CLR 336.
[316] ibid at 362 per Dixon J

3.17 Nevertheless, it is clear that each of them has accepted that he participated in the removal of the tobacco and the subsequent taking of money on the false and improper basis that such money was necessary to help prevent some future investigation, when in fact no such investigation was to take place.

3.18 Consistent with the observations noted earlier in this Chapter the Commission takes the view that LP1's version of events in relation to this incident should be accepted though no conclusion can be safely reached that it was Battal who was the dominant player as regards the conversation with the tobacconist as LP1 alleged.

**Taking tobacco and corrupt payments: The second tobacconist**

3.19 This event was only admitted by LP1. Battal denied any involvement whatsoever.

3.20 As already noted above, it is difficult to identify a reason why LP1 would falsely incriminate himself and in that context also falsely incriminate Battal in this incident. As in the previous incident (at Merrylands) however, important particulars are either lacking or vague and there was no evidence before the Commission in relation to this incident other than that given by LP1. The details that were provided are however similar to those for the first tobacconist incident at Merrylands.

3.21 In the Commission's view, however, it appears very unlikely that LP1 has fabricated his account of the incident or, accepting that it occurred, that he carried out the raid by himself or with others besides those he nominated. Together with observations made at the beginning of this Chapter the Commission accepts the version of events given by LP1 over that given by Battal. Again, however, the Commission is unable to reach a firm conclusion (nor is it necessary to do so) as to which of them led the conversation during the 'raid' on the tobacconist shop.

**Taking tobacco: The third tobacconist**

3.22 As in the second tobacconist incident, this event was only admitted by LP1 and as observed earlier for the second incident, it is difficult to identify a reason why he would falsely incriminate himself and in such a context, also falsely incriminate Battal's involvement. Also, as with the second tobacconist incident, important particulars are either lacking or vague and there is no evidence other than that of LP1. For the same reasons already referred to above, however, the Commission is satisfied that LP1's version of events should be accepted, albeit with the same proviso as to who carried or led the conversation.

**Seizing and Supplying Drugs: The three drug matters**

3.23 These matters can be properly dealt with together because in each case the supporting evidence comes solely from LP1. In each case there is evidence lacking on some essential aspects such as whether there were illegal drugs involved at all and if they were illegal, the nature of those drugs and the quantity of any drug that may have been involved.

3.24 The absence of evidence on these issues however does not necessarily have the effect of casting doubt on the reliability of LP1's evidence as to other details of each of these incidents and about which his evidence was otherwise clear and firm. Further, in the absence of the actual substance itself upon which normal scientific analysis could be conducted to determine if it was an illegal drug, LP1 could only ever describe what he saw and what he was told allowing him to at least believe or suspect that the substance in question in each incident was an illegal drug. His experience as a police officer in this respect is also relevant.

3.25 Aside from the question of the substance itself LP1's evidence as to other aspects of each incident, if accepted, suggest that as a police officer, he engaged in police misconduct given that it involved the use of his position as a police officer in the stop and unlawful search and seizure in each matter as he alleged.

3.26 While also an admission against interest as regards LP1, LP1's evidence however has to be seen in a different light as regards Battal and Hijazi. Any assessment of the evidence in relation to the three drug matters as regards each of them has the difficulty that neither Battal nor Hijazi admitted to any involvement in any of the matters albeit in Battal's case in particular those denials were less than complete. Their involvement is also not supported by any other evidence.

3.27 On this basis and having regard to the seriousness of the allegations in relation to each of the three drug matters involving as they do a greater level of misconduct than that associated with the incidents involving illegal tobacco and about which LP1 gave evidence, the Commission is satisfied that the evidence as regards LP1's own conduct is sufficient to allow firm conclusions to be reached. However the available evidence is not such as to allow similar conclusions to be safely made in relation to the involvement each of Battal and Hijazi in these three drug matters.

**Taking Tobacco: Masri's truckload**

3.28 In relation to this incident, LP1's evidence is supported, in part, by Hijazi's evidence concerning his (Hijazi's) attendance at Battal's home to provide *"back-up"* to Battal when the latter was apparently confronted by persons who had turned up there seeking the return of the tobacco. The evidence given by both LP1 and Hijazi is thus inconsistent with Battal's blanket denial of the whole of the evidence given by each of them. Masri, however, also completely denied that the incident took place.

3.29 On the other hand, Hijazi did not admit to his presence at conversations concerning the preparations for the interception of the truck and he distanced himself from the proposition that the tobacco ended up in his home garage, although his denial was very cautious and couched with conditions.[317] What LP1 knew of this disposal however, did not come from his direct knowledge but, rather from information which had been relayed to him.

3.30 In their evidence both Battal and Masri pointed to (what they said) was the length of their prior relationship as indicating the unlikelihood of the events occurring in the manner described by LP1 in his evidence.

3.31 Even if true, the fact that they had known each other for years is not necessarily inconsistent with the events as alleged by LP1, save for his understanding that Battal and Masri met for the first time when the truck was intercepted. This understanding does not appear to have assumed any great significance in the other evidence LP1 gave about this matter. Indeed, it may easily be conceived how a prior association between Masri and Battal (albeit unknown to LP1) may have in fact facilitated the events described by LP1 in his evidence before the Commission.

3.32 In addition, it is far more likely that the reference by Battal to the *"last job"* in the telephone call between he and LP1 on 17 October 2008, was a reference to this event, as was suggested by LP1 in his evidence.

3.33 As a result, together with other observations referred to earlier in this Report as regards the reliability of LP1's evidence the Commission is satisfied that LP1's version of what took place in relation to this incident should be accepted as against Battal and Masri, but it is not likewise satisfied in relation to Hijazi on the basis that his involvement in the incident was outside LP1's direct knowledge.

**Taking tobacco and corrupt payments: The Cabramatta Incident**

3.34 In the evidence given by each, both LP1 and Battal admitted their involvement in this incident, although their evidence differed as to which of them played the leading role in organizing the 'raid' and in carrying the conversations with the couple inside their house at the time of the raid.

3.35 Other objective independent evidence from intercepted telephone calls points to Battal having been the person responsible for arrangements with the assistance of Masri, which, on their own versions of their relationship, would appear more likely in any event.

3.36 As to the contest between LP1 and Battal as to their evidence concerning what took place inside the house, it is unnecessary to resolve which of the two officers led the

[317] PIC Transcript, M Saleh (aka Hijazi), 18 February 2009, pp.221-222.

conversation, since both admit to agreement about what took place at the premises. Both also admit as having shared the $40,000 cash taken from the couple, and in the proceeds from the sale of the tobacco they had taken from the couple's garage.

3.37 The same consideration applies to the provision of the 'false' number plates to be used on the truck and to supplying police apparel to be used by those in the truck. That is, whoever was the instigator of these activities, both LP1 and Battal by their own admissions, participated willingly in these events.

3.38 As to Masri, both LP1 and Battal say that he was the provider of information, transport and the means of sale. In the Commission's view, Masri's evidence lacked any credibility, except where it was against his own interests such as his admissions that he had in fact attended the Cabramatta address, had sold the tobacco taken from that address, and had paid LP1 and Battal the proceeds of that sale. The Commission is satisfied that Masri was a willing (if not instrumental) participant in the manner described in the evidence given by LP1.

**Baroudi's Truck: Proposed Interception and Seizure of Tobacco**

3.39 LP1's allegation in relation to this incident is that the whole event was aimed at stealing the tobacco from a truck which was to be intercepted. His version of events was disputed by each of Baroudi, Battal and Hijazi. The Commission considers, however, that the evidence of each of them, particularly in relation to what they each considered to be the acceptable use of the hire car as a police vehicle and the added proposition that the matter would be called in as a "police job" is simply not credible.

3.40 Given that the planned interception and whatever was to happen afterwards did not actually take place, however, the Commission is unable to conclude with any satisfaction that LP1's evidence as to the object of the exercise should be totally accepted. The fact that the evidence of the others might in turn also not be accepted does not make any difference to this proposition. Even given that other relevant evidence presents as intrinsically unlikely, LP1's evidence as to the parties' motivation for the plan is not corroborated by any other independent evidence.

3.41 As a result, the Commission is not satisfied that any firm assessments can be safely made about the purpose of these events.

3.42 Nevertheless, the Commission is of the view that in any event, in the circumstances, it was plainly wrong and unlawful for LP1 and Battal as police officers, and Hijazi to a lesser extent, to plan to use the hire car as if it was a police vehicle with the object of intercepting the truck, whatever the purpose of the interception may have been.

### Future Taking of Tobacco

3.43 As described in Chapter 2, lawfully obtained telephone interception evidence tendered at the public hearing indicated that it was Battal who presented the proposition to LP1 concerning (tobacco in) a *"big warehouse"* which might be the subject of a future theft.[318] That telephone conversation between them took place on 17 October 2008.

3.44 On being presented with that evidence, Battal gave evidence in reply that he was not presenting the idea as his own to LP1, but, rather, was merely relaying to LP1 information that LP1 had requested Battal to obtain. Battal's evidence was that he obtained the information for LP1 from Masri.

3.45 Given the total implausibility of Battal's evidence on this issue and the other general observations the Commission has made regarding Battal's credibility the Commission is satisfied that it was Battal who was suggesting the plan for the wrongful removal of tobacco from the warehouse.

[318] PIC Exhibits 8 (transcript) and 9 (audio)

# 4. AFFECTED PERSONS

**Section 97 of the PIC Act**

4.1 The Commission is required to furnish a Report to Parliament in matters where the Commission has conducted a public hearing; s 96(2) of the PIC Act.

4.2 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.[319]

4.3 Subsection 97(2) of the PIC 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; [320]

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.

4.4 In addition, pursuant to subsection 16(1)(a) of the PIC Act, the Commission may form opinions as to whether police misconduct, or other misconduct, has occurred. 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.

4.5 The expression *"police misconduct"* is not specifically defined by the PIC Act. It nevertheless includes the following types of conduct (see section 5 of the PIC 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;

(d) any other matters about which a complaint can be made under the *Police Act 1990.*

[319] Subsection 97(3) of the PIC Act

[320] 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 PIC Act) has no effective application to police officers. This is so even for police misconduct that occurred before this date.

4.6 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.

4.7 As alluded to in Chapter 3 of this Report (at paragraph 3.11) before expressing any opinion that misconduct may have occurred (section 16(1) of the PIC Act) or that in all the circumstances it is of the opinion that consideration should be given to the prosecution of any person for a specified criminal offence (section 97(2)(a) of the PIC Act), the Commission should be comfortably satisfied of the relevant facts applying the civil standard of proof in the manner suggested by Dixon J in *Briginshaw v Briginshaw*. His Honour said at p 361:

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

**Preparing This Report**

4.8 Following the conclusion of the Commission's public hearing on 19 February 2009, written submissions were prepared by Counsel Assisting the Commission and subsequently served on all witnesses called to give evidence at the hearing for the purpose of those witnesses, or their legal representatives, making any submissions in reply. Counsel Assisting's submissions, in part, serve to draw the attention of relevant persons, including witnesses, to the significant matters upon which the Commission may express adverse opinions and make related recommendations in its final Report based on the evidence presented during the Commission's public hearing.

4.9 By the closing date set for the receipt of submissions in reply, no submissions had been received on behalf of any of the witnesses who gave evidence during the public hearing. A short submission was subsequently received from Counsel on behalf of the NSWPF but which did not seek to address the specific conduct of persons examined during the public hearing. That submission has however been taken into account in preparing this Report and its contents referred to where considered relevant.

**Affected persons**

4.10 Based on the substantial allegations heard in evidence during the public hearing, the Commission is of the opinion that each of the following persons is an "affected person" for the purposes of section 97 of the PIC Act:

- Witness LP1
- Nasser Mohamad Battal
- Mick Saleh (aka Mohamed "Mick" Hijazi)
- Montaze Baroudi
- Ahmad Masri

4.11 Each of the affected persons gave his evidence after a declaration had been made under section 41 of the PIC Act. Therefore, pursuant to section 40 of the PIC Act, the evidence each of them gave is not admissible against him in subsequent criminal or civil proceedings, except for proceedings for an offence against the PIC Act, or for contempt of the Commission under section 118 the PIC Act. In relation to each of LP1 and Battal, even though given under objection, as then serving NSWPF officers, in each case their evidence may also be used by the Commissioner of the NSWPF in the circumstances provided for under section 40(3) of the PIC Act.

4.12 Despite the protection given by the declaration under section 41 of the PIC Act any answers given under objection or following a declaration made under section 41 are available to be used by the Commissioner of Police when considering whether to make an order under sections 173 or 181D of the *Police Act 1990*. Similarly, such material is admissible in proceedings under Divisions 1A or 1C of the *Police Act 1990*, or in proceedings for the purpose of an order under section 183A of that Act or any proceedings for the purposes of Division 2A of Part 9 of that Act with respect to an order under section 183A, and any disciplinary proceedings (section 40(3)). The same applies to any documents produced under objection.

**WITNESS LP1**

4.13 In the opinion of the Commission LP1 is an affected person because he is the subject of the following substantial allegations:

(i) He agreed to the proposal put to him by Battal that the two of them engage in wrongful conduct whereby, purportedly acting in their capacity as police officers, they would carry out 'fake' searches of tobacconists who were suspected of selling illegal tobacco and 'seize' that tobacco with the intention of on-selling it and keeping the proceeds;

(ii) He and Battal, while purportedly acting in their capacity as police officers carried out searches and seizures of tobacco on at least three separate occasions; namely, the three 'raids' on tobacco shops;

(iii) He and Battal shared payments which were corruptly received by them from the proprietors of at least two of those tobacconist shops on the basis that they could improperly influence any investigation into the possession by the tobacconists of illegal tobacco;

(iv) He and Battal, while purportedly acting in their capacity as police officers

and with the assistance of Masri and others, carried out a "raid" at the home premises of a Cabramatta tobacconist shop proprietor as a result of which they wrongfully "seized" a large quantity of cigarettes and some illegal loose tobacco which were subsequently on-sold and the proceeds corruptly shared amongst Battal and LP1;

(v) He and Battal wrongfully took money in the sum of $40,000 from the residents of the Cabramatta premises on the pretence of making any *"investigation"* into their involvement with illegal tobacco *"go away";*

(vi) On at least three separate occasions with the assistance of Battal and Hijazi, he wrongfully used his authority as a police officer in order to 'seize' drugs from persons with the intention of supplying the 'seized' drugs to Hijazi to on-sell and corruptly share the proceeds amongst the three of them;

(vii) He together with Battal, and purportedly acting in their capacity as police officers, used a hire-car intended to appear as a police vehicle and intercepted a truck carrying illegal tobacco with the object of 'seizing' that tobacco in order to on-sell it and wrongfully keep the proceeds for themselves ('the Masri truck incident'). Although the theft of the tobacco was successfully carried out, it was ultimately returned to its 'owner' after persons unidentified showed up at Battal's premises and demanded the return of the tobacco;

(viii) He participated with Battal, Hijazi and Baroudi in carrying out a plan to intercept, as a purported police operation, a truck carrying a container of illegal tobacco and 'seizing' (i.e., stealing) the tobacco for the purposes of on-selling it and wrongfully sharing the proceeds with the others involved. That plan was not subsequently carried out as the 'target' truck failed to arrive at the intended interception point on the evening in question;

(ix) He agreed with Battal's proposal for theft of a large quantity of cigarettes and/or tobacco products from an unidentified warehouse although the proposal was never carried out.

4.14 Based on the evidence described in Chapter 2, and as assessed in Chapter 3 of this Report, the Commission is of the opinion that LP1 engaged in police misconduct in relation to each of the substantial allegations outlined above: sub-section 16(1)(a) of the PIC Act.

4.15 In relation to the Cabramatta tobacconist premises (allegations 4.14 (iv) and (v) above) on 29 April 2009 LP1 was charged with the following offences, all of which relate to this incident;

- Corruptly receive a benefit pursuant to s249B of the *Crimes Act 1900*;
- Obtain property by deception pursuant to s178BA(1) of the *Crimes Act 1900*;
- Break and enter dwelling house and commit serious indictable offence pursuant to s112(2) of the *Crimes Act 1900*;

- Stealing from the person with circumstance of aggravation pursuant to s95(1) of the *Crimes Act 1900*;
- Enter dwelling house with intent to commit serious indictable offence pursuant to s111(2) of the *Crimes Act 1900*.

Accordingly in relation to these allegations the Commission is not of the opinion that consideration should be given to any further prosecution under section 97(2)(a) of the PIC Act.

4.16 As to the evidence of LP1 admitting his involvement in the three incidents involving the tobacconist shops, pursuant to section 40 of the PIC Act that evidence is not admissible against him in any criminal proceedings.

4.17 In relation to the first tobacconist incident at Merrylands, as previously noted in this Report, (at paragraphs 2.12-2.17), despite initial denials Battal ultimately admitted to his involvement with LP1 in this incident, and to also having improperly received payments as a result. As also earlier noted, however, Battal maintained his denial of any involvement in the second and third tobacconists' incidents.

4.18 The question arises, in relation to LP1 and section 97(2)(a) of the PIC Act whether the prospect of Battal giving evidence against LP1 in relation to the first tobacconist incident (at Merrylands) is sufficient to allow for a recommendation by the Commission of consideration of prosecution action against LP1 for a specified criminal offence. As Counsel Assisting submitted not only as a practical matter is it a remote possibility that Battal would give this evidence but there is also a certain paucity of essential particulars as previously noted which would make a prosecution an extremely doubtful proposition. There is also no corroborating evidence and the Commission's observations as to the caution needed in approaching LP1's evidence would apply with even more force in relation to Battal's evidence to support any recommendation for consideration of prosecution action.

4.19 For these reasons, the Commission agrees with Counsel Assisting's submissions on the available evidence presented at the hearing relating to the first tobacconist incident and is therefore **not** of the opinion that consideration should be given to the prosecution of LP1 for a specified criminal offence involving this incident.

4.20 With regard to the second and third tobacconist incidents, the evidence before the Commission is even more lacking in important details. Whilst LP1 gave evidence detailing his and Battal's role in those two incidents, Battal, in his evidence, completely denied any involvement in either incident. Notwithstanding the observations earlier in this Report as to the Commission's preference for the evidence of LP1 over that of Battal where their evidence is in conflict there is a lack of essential particulars in the evidence of LP1

relating to these other two tobacconist incidents which also makes prosecution action a doubtful proposition. For these reasons the Commission is also **not** of the opinion that consideration should be given to the prosecution of LP1 for specified criminal offences involving the second and third tobacconist incidents.

4.21 The Commission is of a similar opinion in respect of the three drug matters for reasons which have been referred to in Chapter 3 of this Report; namely, that there is insufficient admissible evidence to support prosecution action against LP1 and accordingly, the Commission is **not** of the opinion that consideration should be given to the prosecution for a specified criminal offence against LP1 in relation to those matters.

4.22 As to the Masri truck incident, the evidence of LP1 before the Commission is also unable to be used against him in criminal proceedings. Both Battal and Masri, in their evidence, denied completely that the incident occurred. For these reasons, in the absence of any other evidence of LP1's involvement in this incident the Commission is **not** of the opinion that consideration should be given to the prosecution of LP1 for a specified criminal offence in respect of the Masri truck incident.

4.23 As regards the proposed interception of Baroudi's truck, the same considerations apply and LP1's evidence is not admissible against him. LP1's version of events was also disputed by each of the other participants alleged to have been involved; namely, Baroudi, Battal and Hijazi, and each also gave different accounts which in some respects were also inconsistent with each other.

4.24 The Commission agrees with the submission of Counsel Assisting that, given that the proposed interception, and whatever was to happen afterward, did not take place, it is difficult to conclude with satisfaction that LP1's evidence as to the object of the exercise should be totally accepted. LP1's understanding was in large part also based on hearsay evidence.

4.25 While conceivably there might be the possibility of admissible evidence against LP1 from Battal and to a lesser extent Baroudi and Hijazi in support of a criminal offence surrounding the use of the hire car with the intention that it be improperly passed off as a police vehicle as part of a 'sham' police operation to intercept Baroudi's truck, there are problems in relying on such evidence given the inconsistencies in their respective versions and the lack of relevant particulars. In the circumstances the Commission is **not** of the opinion that consideration should be given to the prosecution of LP1 for a specified criminal offence in relation to the Baroudi truck incident.

4.26 As to the allegations against LP1 regarding the proposed taking of tobacco from a *"big warehouse"* at some time in the future, the evidence before the Commission points no higher than this being floated merely as an idea. Whether or not there may have, at some later time, been formed a firm agreement to carry out this endeavour, or indeed,

an attempt to do so, on the evidence before the Commission it is **not** of the opinion that consideration should be given to the prosecution of LP1 for a specified criminal offence.

4.27 As previously noted in this Report, on 29 April 2009 LP1 was removed as a sworn officer of the NSWPF pursuant to the provisions of section 181D of the *Police Act 1990*. Accordingly, the question of taking action against LP1 pursuant to sub-sections 97(2)(c) and (d) of the PIC Act does not arise.

## NASSER MOHAMAD BATTAL

4.28 In the opinion of the Commission Battal is an affected person because he is the subject of the following substantial allegations:

(i) He proposed to LP1 that the two of them engage in wrongful conduct whereby, purportedly acting in their capacity as police officers, they would carry out 'fake' searches of tobacconist shops which were suspected of selling illegal tobacco and 'seize' that tobacco with the intention of on-selling it and corruptly keeping the proceeds;

(ii) He and LP1, while purportedly acting in their capacity as police officers, carried out these activities on at least three separate occasions; namely, the three 'raids' on tobacconist shops;

(iii) He and LP1 shared payments which were wrongfully received by them from the proprietors of at least two of those tobacconist shops on the basis that they could improperly influence any investigation into the possession by the tobacconists of illegal tobacco;

(iv) He and LP1, while purportedly acting in their capacity as police officers and with the assistance of Masri and others, carried out a 'raid' at the home premises of a Cabramatta tobacconist shop proprietor as a result of which they wrongfully 'seized' a large quantity of cigarettes and some illegal loose tobacco which were subsequently on-sold and the proceeds shared between Battal and LP1.

(v) He and LP1 wrongfully took money in the sum of $40,000 from the residents of the Cabramatta premises on the pretence of making any "investigation" into their involvement with illegal tobacco *"go away"*;

(vi) On at least three separate occasions, with LP1 he wrongfully used his authority as a police officer in order to 'seize' drugs from persons with the intention of supplying the 'seized' drugs to Hijazi to on-sell and corruptly share the proceeds amongst the three of them;

(vii) He together with LP1, and purportedly acting in their capacity as police officers, used a hire-car intended to appear as a police vehicle and intercepted a truck carrying illegal tobacco with the object of 'seizing' that tobacco in order to on-sell it and wrongfully keep the proceeds for themselves (the Masri truck incident). Although the theft of the tobacco was ultimately carried out, it was subsequently returned to its 'owner' after a number of unidentified persons showed up at Battal's premises and demanded the return of the tobacco;

(viii) He participated with LP1, Hijazi and Baroudi, in carrying out a plan to intercept, as a purported police operation, a truck carrying a container of illegal tobacco and 'seizing' (i.e., stealing) the tobacco for the purposes of on-selling it and wrongfully sharing the proceeds with the others involved. That plan was not subsequently carried out, as the 'target' truck failed to arrive at the intended interception point on the evening in question.

(ix) He proposed to LP1 the theft of a large quantity of cigarettes and/or tobacco products from an unidentified warehouse although the proposal was never carried out.

(x) He purchased and possessed a prohibited pistol, being a .357 calibre revolver, without proper authorisation by way of a valid licence or permit.

4.29 In relation to all these allegations except for those in paragraph 4.28(vi), above, dealing with the three drug incidents, based on the evidence set out in Chapter 2 of this Report and as assessed in Chapter 3, the Commission is satisfied that Battal engaged in police misconduct: sub-section 16(1)(a) of the PIC Act.

4.30 In relation to the allegations involving the three drug incidents in paragraph 4.28(vi), the only evidence of Battal's involvement comes from LP1 and in Chapter 3 it was noted that both Battal and Hijazi deny involvement in any wrong doing as alleged by LP1. It was also observed that other than LP1's observations as to the substance seized there is no scientific evidence to establish that illegal drugs were involved or the quantity involved in each case. They are serious allegations to make against a police officer involving as they do wrongfully seizing and supply illegal drugs and then sharing in the proceeds of their sale. That feature gives the allegations an added dimension of serious wrong doing relative to those allegations against Battal involving tobacco albeit there are similar characteristics in the *modus operandi* alleged. In those circumstances, absent other corroborating evidence to support LP1's evidence, the Commission is **not** satisfied there is sufficient evidence to allow an opinion as to police misconduct to be expressed regarding Battal's involvement in each of those incidents (s16(1) PIC Act).

4.31 In relation to the Cabramatta tobacconist premises (allegations 4.28(iv) and 4.28(v), above) on 16 April 2009 Battal was charged with the following offences:

- Corruptly receive a benefit pursuant to s249B of the *Crimes Act 1900*;
- Obtain property by deception pursuant to s178BA(1) of the *Crimes Act 1900*;
- Break and enter dwelling house and commit serious indictable offence pursuant to s112(2) of the *Crimes Act 1900;*
- Stealing from the person with circumstance of aggravation pursuant to s95(1) of the *Crimes Act 1900*;
- Enter dwelling house with intent to commit serious indictable offence pursuant to s111(2) of the *Crimes Act 1900*;
- 5 x Give evidence that is false or misleading before a hearing of the Commission pursuant to section 107 of the *Police Integrity Commission Act 1996*.

Accordingly in relation to these allegations the Commission is not of the opinion that consideration should be given to any further prosecution under section 97(2)(a) of the PIC Act.

4.32 With regard to the substantial allegations dealing with the three "raids" on tobacconist shops (paragraph 4.28(ii) and (iii) above), as was noted earlier in this Chapter dealing with the substantial allegations against LP1 and as discussed in Chapter 3, Battal ultimately admitted to his involvement with LP1 in one of these matters and of having improperly received payments as a result, being the first tobacconist incident at Merrylands as recounted by LP1 in his evidence.

4.33 While that admission by Battal may be used by the Commission in assessing whether to express an opinion as to police misconduct by Battal (pursuant to section 16(1)(a) of the PIC Act), as it was given under objection it is not admissible against him in any prosecution for any criminal offences arising from that same conduct. That would mean, based on the evidence presented during the hearing that any prosecution would rest on the evidence of LP1 only. At paragraph 4.18 of this Report it was noted that the paucity of any necessary particulars would make prosecution action an extremely doubtful proposition and more so in the absence of any corroboration of LP1's evidence.

4.34 In the circumstances, in relation to the first tobacconist incident (at Merrylands) on the available evidence the Commission is therefore of an opinion similar to that discussed in relation to LP1 in that consideration should **not** be given to the prosecution of Battal in relation to this incident.

4.35 As to the allegations relating to the two other tobacconist incidents on the available evidence and for reasons similar to that discussed above in relation to the first incident (at Merrylands), the Commission is **not** of the opinion that consideration should be given to the prosecution of Battal for a specified criminal offence.

4.36 Similarly, as to the allegations relating to the three drugs matters (paragraph 4.28(vi) above), and as discussed in Chapter 3 and at paragraph 4.30 above, on the evidence before it the Commission is **not** of the opinion that consideration should be given to prosecution of Battal for a specified criminal offence.

4.37 As to the Masri truck incident, (paragraph 4.28(vii)) LP1's evidence before the Commission could be admissible in any prosecution against Battal. Again however, both Battal and Masri denied that the incident occurred and, presumably, are unlikely to change that position particularly in the face of prosecutorial action. Especially significant is that Masri is in the position of the "victim" but maintains that the larceny in question did not occur. For these reasons the Commission is **not** of the opinion that consideration should be given to the prosecution of Battal for a specified criminal offence arising from the Masri truck incident.

4.38 The nature of the evidence relating to the proposed interception of Baroudi's truck (paragraph 4.28(viii)) has been discussed in Chapter 3 of this report and in relation to LP1 above in this Chapter. As was stated in respect of LP1, given that the proposed interception, and whatever was to happen afterward, did not take place, the Commission is **not** satisfied that LP1's evidence as to the object of the exercise should be totally accepted. The Commission is **not** of the opinion that consideration should be given to the prosecution of Battal for a specified criminal offence arising from this incident.

4.39 As to the allegations regarding the proposed taking of tobacco from a *"big warehouse"* at some time in the future (paragraph 4.28(ix)), for similar reasons to those previously stated in respect of LP1 (paragraph 4.26) the Commission is **not** of the opinion that consideration should be given to the prosecution of Battal for a specified criminal offence.

4.40 With regard to the Smith & Wesson .357 calibre firearm that Commission investigators discovered in a safe at the home premises of Battal during the execution of a search warrant (paragraph 4.28(x)), the Commission is of the opinion that consideration **should** be given to the prosecution of Battal for an offence against section 7 of the *Firearms Act 1996.*

4.41 As previously noted in this Report, on 31 March 2009 Battal was removed as a sworn officer of the NSWPF pursuant to the provisions of section 181D of the *Police Act 1990*. Accordingly, the question of taking action against Battal pursuant to sub-sections 97(2)(c) or (d) of the PIC Act does not arise.

**MICK SALEH (aka MOHAMED "MICK" HIJAZI)**

4.42 In the opinion of the Commission Hijazi is an affected person because he is the subject of the following substantial allegations:

(i) He participated with Battal and LP1, in planning and facilitating the unlawful seizure of illegal drugs and the subsequent on-selling of those drugs, the sale proceeds of which were shared amongst the three of them;

(ii) He was a party to the planning and carrying out of the unlawful interception of a truck carrying illegal tobacco, and to steal that tobacco, whereafter it was temporarily stored in the garage at his home premises prior to it being returned to its 'owner' (the Masri truck incident);

(iii) He was a party to the proposal to intercept a truck carrying a container load of tobacco products and the theft and subsequent sale of those products, albeit that this interception did not eventuate.

4.43 In relation to paragraph 4.42(i) above, for reasons previously expressed in relation to LP1 and Battal regarding the three drug matters, the Commission is **not** of the opinion that on the evidence before it consideration should be given to the prosecution of Hijazi for a specified criminal offence involving the three drug matters.

4.44 Similarly, on the evidence before it the Commission is **not** of the opinion that consideration should be given to the prosecution of Hijazi for a specified criminal offence relating to the alleged incident involving the taking of tobacco from Masri's truck, and the subsequent removal of that tobacco to the garage at Hijazi's home premises.

4.45 In respect of the alleged plan to intercept Baroudi's truck, the evidence before the Commission has been discussed above (see paragraphs 2.102-2.114). As to Hijazi's alleged involvement in the incident, given that the proposed interception, and whatever was to happen afterward, did not take place, the Commission is not satisfied that LP1's evidence as to the object of the exercise should be totally accepted. The Commission is therefore **not** of the opinion that consideration should be given to the prosecution of Hijazi for a specified criminal offence arising from this incident.

4.46 Hijazi is not a member of the NSWPF so the issue of him engaging in any police misconduct does not arise. The Commission is **not** satisfied that there is sufficient evidence to allow for an opinion to be expressed that Hijazi engaged in other misconduct in relation to each of the substantial allegations outlined above (section 16(1)(a) of the PIC Act).

4.47 As Hijazi is not a member of the NSWPF it is also unnecessary to consider the question of any possible action under section 97(2)(c) or (d) of the PIC Act.

**AHMAD MASRI**

4.48 In the opinion of the Commission Masri is an affected person because is the subject of the following substantial allegations:

(i) He assisted with the planning and carrying out of the unlawful 'raid' led by Battal and LP1 at the home premises of a Cabramatta tobacco shop proprietor on 16 October 2008 and the resulting theft of a large quantity of tobacco products and some illegal loose tobacco from those premises;

(ii) He facilitated the sale of the tobacco products and loose tobacco taken from the Cabramatta address on 16 October 2008, and corruptly shared the proceeds amongst himself, Battal and LP1.

4.49 In relation to these allegations, on 24 April 2009 Masri was charged with the following offences, all of which relate to the Cabramatta incident:

- Break and enter dwelling house and commit a serious indictable offence, pursuant to section 112(2) of the *Crimes Act 1900*;
- Obtain property by deception, pursuant to section 178BA(1) of the *Crimes Act 1900;*
- Steal from the person with circumstances of aggravation, pursuant to section 95(1) of the *Crimes Act 1900;*
- Enter dwelling house with intent to commit a serious indictable offence, pursuant to section 111(2) of the *Crimes Act 1900*.

Accordingly in relation to these allegations the Commission is not of the opinion that consideration should be given to any further prosecution under section 97(2)(a) of the PIC Act.

4.50 Masri is also not a member of the NSWPF so the issue of him engaging in any police misconduct does not arise. The Commission expresses no opinion as to whether Masri engaged in any other misconduct (section 16(1)(a) of the PIC Act).

4.51 For the same reasons it is also unnecessary to consider any possible action against Masri under section 97(2)(c) or (d) of the PIC Act.

**MONTAZE BAROUDI**

4.52 In the opinion of the Commission Baroudi is an affected person because he is the subject of the following substantial allegation:

(i) He was a party to a proposal to intercept a truck carrying a container load of tobacco products and the unlawful seizure and subsequent sale of those tobacco products (though this interception and theft did not ultimately take place).

4.53 As discussed previously in this Report, with regard to this allegation (referred to as the 'Baroudi truck incident') the Commission is not satisfied that LP1's evidence as to the object of this proposal should be totally accepted, in light of the fact that the plan did not eventuate and that each of the other alleged participants denied the allegation made by LP1 in his evidence, however unsatisfactory their alternative explanations may have been.

4.54 Pursuant to section 97(2) of the Act the Commission is **not** of the opinion that consideration should be given to the prosecution of Baroudi for a specified criminal offence.

4.55 Baroudi is also not a member of the NSWPF so the issue of engaging in any police misconduct does not arise. The Commission is **not** of the opinion that Baroudi engaged in any other misconduct (section 16(1)(a) of the Act).

4.56 As Baroudi is not a member of the NSWPF it is also unnecessary to consider any possible action under section 97(2)(c) or (d) of the PIC Act.

# 5. APPENDICES

## APPENDIX 1 - ROLE AND FUNCTIONS OF THE COMMISSION

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

(a) to prevent police misconduct,

(b) to detect or investigate, or manage other agencies in the detection or investigation of, police misconduct,

(c) (repealed)

(d) to receive and assess all matters not completed by the Police Royal Commission, to treat any investigations or assessments of the Police Royal Commission as its own, to initiate or continue the investigation of any such matters where appropriate, and otherwise to deal with those matters under this Act, and to deal with records of the Police Royal Commission as provided by this Act.

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

In January 2007 the Act was amended to provide for a system of investigation, referral and oversight of complaints against certain members of the NSW Police Force who are not police officers. Sections 5A and 13A were inserted into the Act. Section 5A defines corrupt conduct of administrative officers.[321] Section 13A sets out the functions of the Commission in relation to administrative officers as follows:

(a) to prevent corrupt conduct of administrative officers,

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

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

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

### POLICE MISCONDUCT

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 the Commissioner of Police may take action under Part 9 of the *Police Act 1990*,

[321] Corrupt conduct is defined as any conduct of an administrative officer that is corrupt conduct for the purposes of the Independent Commission Against Corruption Act 1988.

(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*.

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

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 and Access) Act 1979*;
- obtain warrants under the *Surveillance Devices Act 2007*; 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?

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

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

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, or other, 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.

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

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.[322] Such a recommendation will be made to the relevant prosecutorial authority, for example, the New South Wales Director of Public Prosecutions. The Commission will not have regard to considerations, such as whether there is a reasonable prospect of conviction, or public policy considerations when deciding whether to make such a recommendation. These, and other discretionary considerations, are appropriately matters for the relevant prosecutorial authority. That said, the Commission may express opinions

[322] 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.

as to the veracity of evidence received from individual witnesses.

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

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

## STATEMENTS REGARDING *"AFFECTED PERSONS"*

**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 offence,

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

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

## RECOMMENDATIONS AND OPINIONS REGARDING DISCIPLINARY ACTION AGAINST POLICE

"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.

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

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

### OPERATION LANTANA PUBLIC HEARING

### 16-19 February 2009

| Witness | Date of Evidence |
|---|---|
| Witness LP1 | 16, 17 and 19 February 2009 |
| BATTAL, Nasser Mohamad | 16, 17 and 19 February 2009 |
| SALEH, 'Mick'<br>(*aka* HIJAZI, Mohamed 'Mick") | 18 February 2009 |
| BAROUDI, Montaze (*aka* 'Monty') | 18 February 2009 |
| MASRI, Ahmad (aka EL MASRI, Ahmad) | 19 February 2009 |




# Operation Lantana
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