Report to Parliament | December 2007

Operation Mallard

NSW Police Integrity Commission



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The Hon Peter Primrose MLC
President
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SYDNEY NSW 2000

The Hon Richard Torbay MP
Speaker
Legislative Council
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 Mallard, 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

December 2007

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EXECUTIVE SUMMARY

Operation Mallard was an investigation by the Police Integrity Commission (the Commission) into allegations of improper interference in the New South Wales Police Force[1] investigation of an allegation of sexual assault reported to Waverley Police on 20 November 2004. The Commission received a complaint in June 2005 that Superintendent Adam Purcell had interfered in the investigation by speaking to a person of interest in the investigation and providing him with advice. At the time of the police investigation Purcell held the rank of Inspector and was the Acting Commander of the Eastern Suburbs Local Area Command.

On Saturday, 20 November 2004 a young woman visiting Australia made a complaint to Waverley Police that she had been sexually assaulted by a number of men earlier that morning. The complainant told the police that she had met two men at a city hotel in the early hours of that morning and later travelled in a taxi with the men to the residence of one of them. She also said that over the Friday night of 19 November 2004 into the early hours of 20 November 2004 she had consumed a number of alcoholic drinks.

The complainant told police that while at the residence she was sexually assaulted by a number of men, including one of the two men she had met earlier, over a period in the early hours of the morning. She was able to provide a detailed description of one of these men whom she described as "the surfer guy".

A POLICE INVESTIGATION

Having taken the complainant's statement, the police immediately commenced an investigation. Detective Senior Constable Alison Brazel (as she then was) from Waverley Police was the officer in charge of the investigation.

The complainant produced a camera to the police and it contained a photo taken by the complainant on the night in question. That photograph depicted three males being the "surfer guy", another male who was eventually identified as his brother and Bryan Fletcher, the then captain of the South Sydney rugby league team. For the purposes of the Commission's hearing, the "surfer guy" and his brother were referred to as MAL12 and MAL13. The photograph appeared to have been taken from the front passenger seat of a car with the three men seated in the back.

On 22 November 2004 the complainant indicated to police that she was uncertain whether she could pursue the matter to prosecution and on that day she made a statement withdrawing her complaint but did not retract the allegations. She departed Australia for her home country on 24 November 2004 as previously planned.

The police continued with their inquiries and, having identified the residence of MAL12, executed a search warrant on the premises around 3pm on 24 November 2004.

Around the same time, having obtained Fletcher's mobile phone number from Ricky Stuart, then coach of the Sydney Roosters rugby league team and with whom Fletcher had previously played,

[1] The New South Wales Police Force was previously known as NSW Police and before that the Police Service of New South Wales. The expression NSW Police Force or NSWPF is used throughout this Report and includes references to the organisation when it was known by these other names.

Purcell telephoned Fletcher and asked him to come to Bondi police station to speak to him.

Fletcher attended the same day and Purcell informed Fletcher of various matters relating to the investigation. Arrangements were made for Fletcher to attend the next day and make a statement and provide a voluntary DNA sample. Fletcher also provided Purcell with information relating to his involvement with MAL12 and MAL13 and the complainant in the events of the early hours of 20 November 2004.

In a lawfully recorded conversation between Purcell and another police officer code named MAL14 in April 2007, Purcell said that during the meeting with Fletcher, Purcell told Fletcher that MAL12 and MAL13 were suspected of being involved in the assault and that Fletcher was not a suspect.

Neither MAL12 nor MAL13 agreed to participate in an interview with the police about the complainant's allegations nor did they make any other statement. Fletcher also did not participate in any formal recorded interview. DNA samples were subsequently taken from Fletcher, MAL12 and MAL13. These samples were tested along with the sample from the complainant and the results showed the DNA of MAL12 and MAL13 in the vaginal swab taken from the young woman but not Fletcher's.

The complainant having returned to her home country, and in the absence of any further evidence, the police investigation was suspended in February 2005.

THE COMMISSION'S INVESTIGATION

Records obtained by the Commission showed that from Wednesday, 24 November 2004 until April 2005 Purcell continued to have telephone contact with Fletcher. Purcell claimed in evidence to the Commission that he had distanced himself from any contact with Fletcher when an officer involved in the investigation had raised concerns at the time with Purcell about his (Purcell's) dealings with Fletcher. Purcell ceased acting as Commander of the Eastern Suburbs Local Area Command around the end of November 2004 when he went on leave, later returning to duties in another command.

In both his conversation with MAL14 and in his evidence to the Commission Purcell said that on the night of 24 November 2004 he received a call from Fletcher in which Fletcher told him that he was concerned about his DNA being in the complainant's mouth because he had been kissing her on the dance floor at the hotel earlier on the night of 19 November 2004. Purcell, in his evidence and in the conversation with MAL14, said that he advised Fletcher that if he had kissed her on the dance floor then his DNA would not be in her mouth.

The evidence also revealed that at Fletcher's request, Purcell spoke to Fletcher's wife to reassure her that Fletcher was not suspected of being involved in the assault. Also at Fletcher's request, Purcell confirmed to Shane Richardson the CEO of the South Sydney Rugby League Club that Fletcher was not suspected of being involved in the alleged assault.

During his conversation with MAL14 on 25 April 2007 Purcell also revealed that Fletcher had in early 2005 provided him with free tickets to a rugby league game.

Throughout his evidence to the Commission Purcell insisted that he had passed on to Brazel and the other officers involved in the investigation what he had been told by Fletcher. In their evidence these investigators, including Brazel, disputed Purcell's claims. When advised of the matters that Purcell claimed he had passed on, Brazel said that she had not been advised and she considered that her position as the officer in charge of the investigation had been compromised.

Purcell also had further contact with MAL12 after the police investigation had been suspended.

In a lawfully recorded telephone conversation with Brazel on 27 March 2007, Purcell informed her that he had met MAL12 in Melbourne in 2006 after a State of Origin rugby league game and that MAL12 had given him further information about the events of the morning of 20 November 2004. Even though he had received this information in 2006, his discussion with Brazel in March 2007 was the first occasion that any of the investigating police had been informed of it.

In his evidence to the Commission Purcell failed to disclose his conversations with MAL14 on 25 and 26 April 2007 nor did he reveal to the Commission the extent or true nature of the contact he had with MAL12 at the State of Origin rugby league game in Melbourne in 2006.

In her evidence to the Commission Brazel said that she was not aware of any contact between Purcell and Fletcher or Purcell and MAL12 and MAL13 since the investigation had been suspended in January 2005. This was despite having been told in the telephone conversation with Purcell on 27 March 2007, a month prior to her evidence, that he had met MAL12 in Melbourne in 2006.

In addition she was also examined in April 2007 about whether she could recall from whom Purcell had received further information about the conduct of Fletcher and MAL12 and MAL13 with the complainant at MAL12's residence on the morning of 20 November 2004. Brazel said she could not remember despite being told in the telephone call on 27 March 2007 with Purcell that it was MAL12 who gave him the information. Brazel said that she thought that it was another person who was mentioned and who was accompanying MAL12 at the time in Melbourne. In the telephone conversation it was in fact Brazel who prompted Purcell with the name of MAL12 as he was unable to recall it.

RELEASE OF OTHER CONFIDENTIAL POLICE INFORMATION

The Commission's investigation also identified three additional matters in which Purcell released confidential police information to members of the media, a Member of Parliament and a civilian staff member of the NSWPF. The matters were dealt with in the Commission's public hearings and are identified as the "*Quenten Roberts Matter*", "*the Cronulla Riots Report*" and "*the Media and the Sexual Assault of a Child*".

The evidence obtained by the Commission in relation to those matters established the following:

1. In respect to the Quenten Roberts Matter, Purcell provided information about a police investigation of a fraud that had occurred at a hotel at which Roberts had once worked as manager. Purcell initially provided it to Michelle Roberts and then spoke to Quenten Roberts about the same matter. Purcell was not authorised to release the information.

2. In respect to the Cronulla Riots Report Purcell spoke to Kara Lawrence, a journalist with the Daily Telegraph, at a time when the report had not been released publicly. Purcell revealed to Lawrence that he had conducted a debriefing of the police involved in the riots and that the report would contain critical comments about certain police and the force's response in general. Purcell was not authorised to release the information.

3. In respect to the Media and the Sexual Assault of a Child, Purcell released important details of the assault and the police investigation to selected members of the media and a Member of Parliament. He also provided details of the modus operandi of the assailant and information about a person who for a short time was a suspect but who was later cleared of any involvement, to the media and the Member of Parliament. Purcell was not authorised to release the information.

The release of confidential police information is contrary to the provisions of clause 46 of the Police Regulation 2000 and the NSWPF Code of Conduct and Ethics. No penalty is however provided for in the event of a breach of the Regulation.

AFFECTED PERSONS

It is the Commission's opinion that the following persons are affected persons because of the substantial allegations made against them:

- Superintendent Adam Michael Purcell
- Detective Sergeant Alison Rachael Brazel

Purcell is a serving NSW police officer. The Commission is of the opinion that he engaged in police misconduct: subsection 16(1)(a) of the *Police Integrity Commission Act 1996*, in relation to the release of confidential information regarding the following matters:

- The 2004 sexual assault investigation
- The Quenten Roberts matter
- The Cronulla Riots Report
- The Media and the Sexual Assault of a Child

The Commission is of the opinion that consideration **should not** be given to the prosecution of Purcell for the criminal offences of pervert the course of justice or attempt to pervert the course of

justice in respect of the investigation of an allegation of sexual assault made to Waverley police on 20 November 2004.

However the Commission is of the opinion that consideration **should** be given to the prosecution of Purcell for the common law offence of misconduct in public office in respect the release of confidential police information in each of the matters referred to in this report.

In addition the Commission is of the opinion that consideration **should** be given to the prosecution of Purcell for three offences under section 107 of the *Police Integrity Commission Act 1996* for giving false and misleading evidence to the Commission. The Commission considers that Purcell engaged in police misconduct in relation to that evidence.

Brazel is a serving NSW police officer. The Commission is of the opinion that she has engaged in police misconduct: subsection 16(1)(a) of the *Police Integrity Commission Act 1996* in relation to two parts of her evidence.

The Commission is also of the opinion that consideration **should** be given to the prosecution of Brazel for two offences under section 107 of the *Police Integrity Commission Act 1996* for giving false or misleading evidence to the Commission.

MATTERS ARISING

Clause 46 of the Police Regulation 2000 prohibits the release confidential information to persons outside the NSWPF. However it is not an offence and carries no penalty.

Legislation in other jurisdictions dealing with police provides for an offence to release confidential information without authority and provides for a penalty which may range from fines to terms of imprisonment for periods from six months to two years.

The Commission recommends that consideration be given to the enactment of a provision in New South Wales that creates a statutory offence of the unauthorised release of confidential police information which would cover the situations disclosed during the course of this investigation.

GLOSSARY

COPS	Computerised Operational Policing System
DNA	Deoxyribonucleic acid
JIRT	Joint Investigation Response Team
LAC	Local Area Command
MO	Modus Operandi
PMU	Police Media Unit
SAIK	Sexual Assault Investigation Kit

INTRODUCTION

1.1 In June 2005 the Commission received an anonymous complaint that Detective Inspector Adam Purcell had "*involved himself in the investigation of a sexual assault*" and that he had "*provided Bryan Fletcher with advice contrary to the best interests of the investigation. Took phone calls with the suspect in private*."

1.2 An investigation into the above allegations was commenced. The sexual assault investigation referred to was identified as involving a complaint made by a young female tourist in November 2004.

1.3 The assault was alleged to have occurred on the night of 19 to 20 November 2004. The young woman complained to the Waverley police on the morning of 20 November 2004. Over the following days she made a number of statements to police and produced a photograph of three men which she had taken in a taxi on the night of the alleged assault.

1.4 One of the males in the photograph was identified by the young woman as the first and principal assailant. She referred to this person as the "surfer guy". Apart from that person she was unable to identify anyone else in the photograph. The police subsequently identified one of the males in the photograph as Bryan Fletcher, the then captain of the South Sydney first grade rugby league team. The third person was subsequently identified by the police as the brother of the "surfer guy".

1.5 Following the identification of the three males, the police obtained a search warrant for the residence of the "surfer guy". That search warrant was executed at approximately 3.00 pm on 24 November 2004. While police were at the premises Purcell who was at the time the Acting Commander of the Eastern Suburbs Local Area Command contacted Fletcher by telephone. It is in this context that the Commission's investigation was conducted.

THE HEARINGS

1.6 The Commission conducted private hearings in April and May 2007 as part of the investigation.

To further the investigation a public hearing commenced on 30 May 2007 and concluded on 1 June 2007. The scope and purpose of the public hearing was announced as follows:

Whether any current or former police officer or any other person has been involved in serious police misconduct or criminal activity in connection with the investigation of the allegation of sexual assault made to Waverley Police on 20 November 2004.

WIDENING THE SCOPE AND PURPOSE OF THE HEARING

1.7 During the investigation the Commission identified a number of instances in which Purcell appeared to release confidential police information to persons who were not police officers and were not entitled to receive the information.

1.8 On 31 May 2007 the Commission amended the scope and purpose of the public hearing to include the following:

Whether Superintendent Adam Purcell has been involved in serious police misconduct or criminal activity in relation to the release of confidential police information.

THE WITNESSES

1.9 The Commission heard evidence from the following witnesses:

- Detective Senior Constable Michael Anthony **BINNS**
- Detective Sergeant Peter Mark **BISHOP**
- Detective Sergeant Alison Rachael **BRAZEL**
- Detective Sergeant Joseph John **DOUEIHI**
- Detective Sergeant Paul Raymond **DUNSTAN**
- Detective Senior Constable Emma Louise **MACLAY**
- A witness identified as **MAL12**
- A witness identified as **MAL13**
- Superintendent Adam Michael **PURCELL**
- Detective Inspector Gavin Kendall **WOOD**

1.10 Eight of the witnesses are serving NSW Police officers and two are civilians. Two witnesses, the alleged assailant and his brother, were allocated code names for the purpose of the public hearing (MAL12, MAL13).

1.11 A person of interest to the Commission's investigation was Fletcher who had been identified in the originating complaint as the person to whom Purcell had provided "advice contrary to the best interests of the investigation" and who had been identified in the photograph taken by the complainant. Fletcher did not give evidence at the Commission's hearings as he was living in the United Kingdom at the time. He was however advised personally of the public hearing and given an opportunity to arrange for an appearance to be made on his behalf but declined to do so.

1.12 A short profile of each witness follows.

MICHAEL ANTHONY BINNS

1.13 At the time of the Commission's investigation Michael Binns held the rank of Detective Senior Constable. He was attached to the Eastern Suburbs Local Area Command at the time of the police investigation into the assault allegation. He became aware of the fact Superintendent Purcell had interviewed Fletcher alone and expressed his concern to Purcell. He took a buccal swab from Fletcher in November 2004, for the purpose of obtaining a DNA sample.

PETER MARK BISHOP

1.14 At the time of the Commission's investigation Peter Bishop held the rank of Detective Sergeant. He was attached to the Eastern Suburbs Local Area Command at the time of the police investigation. He was one of the officers engaged in the conduct of the police investigation.

ALISON RACHAEL BRAZEL

1.15 At the time of the Commission's investigation Alison Brazel held the rank of Detective Sergeant. She was a Detective Senior Constable attached to the Eastern Suburbs Local Area Command and was the officer in charge of the police investigation. She led the execution of the search warrant on the home address of MAL12.

JOSEPH JOHN DOUEIHI

1.16 At the time of the Commission's investigation Joseph Doueihi held the rank of Detective Sergeant. He was attached to the Eastern Suburbs Local Area Command and was the Acting Crime Manager at the time of the police investigation. He attended the execution of the search warrant at the home address of MAL12.

PAUL RAYMOND DUNSTAN

1.17 At the time of the Commission's investigation Paul Dunstan held the rank of Detective Sergeant. He was attached to the Eastern Suburbs Local Area Command at the time of the police investigation.

EMMA LOUISE MACLAY

1.18 At the time of the Commission's investigation Emma Maclay held the rank of Detective Senior Constable. She was attached to the Eastern Suburbs Local Area Command as a Constable at the time of the police investigation. She was one of the officers involved in the execution of the search warrant at the home of address of MAL12.

MAL12

1.19 MAL12 is the person identified by the victim as the "the surfer guy". He is the brother of MAL13 and a personal friend of Fletcher. He was the only person in the photograph taken by the young woman on the night of the alleged assault who she identified. It was the home address of MAL12 that was searched.

MAL13

1.20 MAL13 is the brother of MAL12 and one of the persons identified by the police in the photograph taken by the victim on the night of the alleged assault. He also is a personal friend of Fletcher.

ADAM MICHAEL PURCELL

1.21 At the time of the Commission's investigation Purcell was a Superintendent and the Commander of Hurstville Local Area Command. At the time of the police investigation he held the substantive rank of Inspector and was the acting Commander, Eastern Suburbs Local Area Command at the rank of Acting Superintendent. He attended the briefings held to discuss the progress of the investigation. He made telephone calls to Fletcher and met with him. There was further telephone contact between Purcell and Fletcher during the afternoon and evening of 24 November 2004, the day that the search warrant was executed on the home of address of MAL12. In 2006 and 2007 in his position as Commander, Hurstville Local Area Command, Purcell engaged in conversations with non police about the progress of current police investigations and an internal police report.

GAVIN KENDALL WOOD

1.22 At the time of the Commission's investigation Gavin Wood was a Detective Inspector. At the time of the police investigation he was a Detective Inspector attached to the Eastern Suburbs Local Area Command. On 24 November 2004 he was the Independent Officer attending the execution of a search warrant at the home address of MAL12.

OTHER PERSONS

1.23 A short profile of other persons follows:

BRYAN FLETCHER

1.24 At the time of the police investigation Fletcher was the captain of the South Sydney first grade rugby league team. He had recently transferred from the Sydney Roosters. He was a personal friend of MAL12 and MAL13. He was photographed in the back seat of the taxi with MAL12 and MAL13 on the night of the alleged assault. At the time of the Commission's hearing Fletcher was residing in the United Kingdom where he had been playing professional rugby league since early 2006.

RICKY STUART

1.25 At the time of the police investigation Ricky Stuart was the coach of the Sydney Roosters first grade rugby league team. He had also only recently been appointed as the coach of the New South Wales State of Origin team. He was approached by Purcell to obtain the mobile telephone number of Fletcher.

MICHELLE ROBERTS

1.26 Michelle Roberts was a personal friend of Purcell. She is the wife of Quenten Roberts. Michelle Roberts received a telephone call from Purcell in which he asked her to arrange for her husband to contact him about a police investigation involving a hotel where he had been the Manager.

QUENTEN ROBERTS

1.27 Quenten Roberts is the husband of Michelle Roberts and spoke to Purcell about a police investigation involving a hotel where he had been the Manager.

KARA LAWRENCE

1.28 Kara Lawrence is a journalist with the Daily Telegraph in Sydney. She was the recipient of information from Purcell about a current police investigation and an internal police report.

ROBERT OVADIA

1.29 Robert Ovadia is a journalist with Channel 7 in Sydney. He was the recipient of information from Purcell about a current police investigation.

SHAUN FEWINGS

1.30 Shaun Fewings is a journalist with Channel 10 in Sydney. He was the recipient of information from Purcell about a current police investigation.

KEVIN GREENE MP

1.31 Kevin Greene MP is the Member of the NSW Legislative Assembly for the electorate of Oatley. He was the recipient of information from Purcell about a current police investigation.

MAL14

1.32 MAL14 is a NSWPF officer who participated in conversations with Purcell at his residence on 25 April 2007 and 27 April 2007 which were lawfully recorded by the Commission.

THIS REPORT

1.33 In this Report, prepared and furnished pursuant to section 96 of the *Police Integrity Commission Act 1996 (the Act)*, the Commission examines the evidence heard during the private and public hearings.

1.34 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 come within the definition of "affected person" in subsection 97(3) of the Act.

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

2. THE SEXUAL ASSAULT ALLEGATION

2.1 The sexual assault allegation referred to in this part of the Report was made to Waverley police on the morning of Saturday 20 November 2004. The details are drawn from the statements made by the young woman who made the complaint (the complainant), her female friend and various reports contained in the police investigation file.[2]

2.2 At about 7.30 pm on Friday 19 November 2004 the complainant, who was due to depart Australia on Wednesday 24 November 2004, met with some friends for dinner at the Royal Hotel at Randwick and there consumed a number of alcoholic drinks. She had also arranged to meet a girlfriend with whom she had been staying in Sydney and then go to the Orient Hotel in the Rocks. Later that night when her girlfriend telephoned and said that she was not able to meet her, the complainant decided to go on her own to the Orient Hotel and arrived there at approximately 12.20 am.

2.3 While at the Orient Hotel she met two males and consumed further alcohol and danced with and kissed one of them. She later referred to this male as the "surfer guy". The "surfer guy" invited her to go home with him. The complainant said that she believed that they departed the hotel between 2.00 am and 2.30 am and travelled by taxi to residential premises approximately 20 minutes from the Orient Hotel.

2.4 Based on her memory of the amount of alcohol she had consumed that evening it is clear that by the time they left the Orient Hotel the complainant was at least moderately affected, if not well affected, by alcohol.

2.5 Her memory in respect to the journey from the hotel to the premises where the alleged assault occurred was that she travelled in the back seat of a taxi with the "surfer guy" and that they continued to kiss while the second male travelled in the front passenger seat. As will be later indicated her memory of this journey is either only correct for part of it or incorrect for the whole of the journey.

2.6 When they arrived at the residential premises the complainant entered with the "surfer guy" and they consumed further alcohol and kissed in a lounge area before they went to a bedroom. Throughout this time she was not aware of where the second male was.

2.7 After they undressed in the unlit room the "surfer guy" removed her clothes from the bedroom and on his return they commenced a consensual act of sexual intercourse.

2.8 During that act and prior to the "surfer guy" ejaculating, she became aware that four or five males had entered the room and were standing at the foot and to the side of the bed. Each of them was naked and masturbating.

2.9 She terminated the act of consensual intercourse and said that she wanted to leave. The "surfer guy" restrained her arms and physically assaulted her by slapping her face before

[2] PIC Exhibit 80AC

commencing a non consensual act of sexual intercourse. As this was taking place one of the other males forced her to engage in a non consensual act of oral sexual intercourse.

2.10 It is not necessary to further describe what the complainant alleges occurred except to say that the perpetrators took turns to sexually assault her and the "surfer guy" threatened her with death while all of them laughed at her pleas to be released.

2.11 Eventually, when all the males other than the "surfer guy" had left the room he again commenced an act of non consensual intercourse. He eventually left the bedroom at about 5.30 am and did not return.

2.12 Some time later, as she could not hear the "surfer guy" or anyone else moving in the premises, the complainant took the opportunity to recover her clothes and while searching for them observed him asleep on a sofa in the lounge/kitchen area. She did not see any other person in the residence but did not search the whole of the premises. Unable to locate the red clog shoes she had been wearing, she dressed and left the premises without them.

2.13 As the alleged assaults took place at night in a dark unlit bedroom, while the complainant was restrained on the bed and her view obscured from time to time by those assaulting her, she was unable to describe any of the males to the police other than the "surfer guy". Her only observation was that they all appeared to be caucasian and that none was skinny or overweight.

2.14 On leaving the residence she ran for approximately five minutes, while distraught and fearful that she would be pursued, without knowing where she was or where she was going and without having noted the house number or the street name.

2.15 At 6.10 am, using her mobile phone, the complainant contacted the girlfriend with whom she had been staying and informed her that she had been raped. With the help of a passing pedestrian she was able to locate where she was and then caught a taxi to her friend's residence from which the police were immediately notified.

COMMENCEMENT OF THE POLICE INVESTIGATION

20 NOVEMBER 2004 - SATURDAY

2.16 Police officers from Waverley police station, which is part of the Eastern Suburbs Local Area Command (Eastern Suburbs LAC), attended her girlfriend's residence and the two women accompanied the police to Waverley police station where an investigation was commenced.

2.17 In order to identify the premises where the complainant alleged the assault took place,

police officers drove her through the area that she had identified. A residence of similar external appearance was identified and a search warrant was obtained and executed that day. However it immediately became obvious on the execution of the search warrant that the internal layout of the premises did not correspond with her description.

2.18 A full medical examination of the complainant, including the taking of swabs for DNA analysis, was carried out at Royal Prince Alfred Hospital on 20 November 2004. A Sexual Assault Information Kit (SAIK) was completed by the examining medical staff at the hospital and provided to the police the same day. It was recorded in police records at Waverley police station as having been received that day[3].

2.19 The report from the hospital included the information that while at her girlfriend's residence between the time of the last assault and the time that the medical examination was conducted the complainant had consumed three drinks and eaten food.

2.20 That information was particularly relevant to the allegation made by her that a number of the offenders had forced her to perform acts of oral intercourse. The consumption of beverages and food before the taking of any oral swab meant that it would be more than likely that the DNA of any offender would not be obtained from the swab. This would have been appreciated by any police officer reading the information contained in the SAIK.

2.21 When preparing the SAIK report the medical officer takes a brief history of the alleged offence. In this report the relevant history included the information that the alleged assaults took place over a two hour period between 3am and 5am and referred to six to eight additional persons entering the bedroom. The medical officer described the complainant as being distressed at the time of giving the history. Later on the same day the complainant made a detailed statement to the police.[4]

21 NOVEMBER 2004 - SUNDAY

2.22 On 21 November 2004 the complainant informed the police that she usually took photographs of people that she met and that although she could not remember doing so, it was possible that she had used a disposable camera she had been carrying that night to take a photograph. She located the camera, the film was developed and it contained a photograph of three males sitting in the rear of a taxi. The photograph had been taken by a person sitting in the front passenger seat of the taxi.

2.23 The complainant was immediately able to identify one of the persons as being the "surfer guy" but said that she had never seen the other two before. As foreshadowed in paragraph 2.5, the existence of the photograph apparently taken by her while in the front passenger seat of the taxi indicates that her recollection of being in the rear with the "surfer guy" is either only correct for part of the journey or incorrect for the whole of the journey.

[3] PIC Exhibit 80AC
[4] PIC Exhibit 80AC

2.24 In the circumstances, the photograph could only have been taken during the course of one or more taxi journeys after leaving the Orient Hotel and before arriving at the premises where it was alleged the assaults occurred.

2.25 Even though she could not recognize the two other males, the photograph was significant in that the complainant was able to positively identify the "surfer guy" and it provided evidence of two other persons who were with him at the time it was taken.

2.26 A further statement dealing with the photograph was obtained from the complainant that day.[5] Although in the statement made the previous day she had been able to provide descriptions of the two males she had met at the Orient Hotel, she said of the other two persons in the photograph that she had "*never seen them before*".

22 NOVEMBER 2004 - MONDAY

2.27 By Monday 22 November 2004 the complainant had begun to indicate that she was reluctant to take part in any prosecution as she did not think she was strong enough to cope with continuing and just wanted to put it behind her and return to her home country, as planned on 24 November 2004. She also asserted that she had not lied to the police when making the allegation. She made a statement that day to that effect.[6]

2.28 In the meantime the police were able to identify two of the persons in the photograph. The "surfer guy" was identified and for the purpose of the Commission's hearings and this Report he has been given the code name MAL12. The second person was identified as Fletcher who at the time was the captain of the South Sydney first grade rugby league team. He had previously been a member of the Sydney Roosters first grade rugby league team and a NSW and Australian representative player.

2.29 As to whom it was that actually identified Fletcher the evidence is not conclusive. For the purpose of the Commission's investigation however, it is accepted that Purcell identified Fletcher whether or not anyone else also identified him.

2.30 Brazel made inquiries that day on the police COPS[7] system between 8.46 am and 9.17 am relating to Fletcher. That appears to have occurred shortly after a conference to discuss the investigation at which, at least, officers Brazel, Doueihi, Purcell and Dunstan were present.

2.31 In her Duty Book entry[8] for that day Brazel records the meeting with Doueihi but fails to mention Purcell or Dunstan. Doueihi in his Duty Book[9] records the presence of Brazel and Purcell. Dunstan in the entry in his Duty Book[10] refers only to Brazel and Doueihi. As Brazel's COPS access is the first indication in this matter of any interest in Fletcher the fact that Purcell is identified by Doueihi as being present at the briefing suggests that the identification was probably made by Purcell.

5 PIC Exhibit 80AC
6 PIC Exhibit 80AC
7 COPS – Computerised Operational Policing System
8 PIC Exhibit 80AC
9 PIC Exhibit 80AC
10 PIC Exhibit 83

2.32 Brazel and Dunstan then carried out a reconnaissance of the residence occupied by Fletcher. The address identified as being that of Fletcher was a significant distance from the residence the complainant had previously misidentified and which was searched on 20 November 2004.

2.33 An entry in Brazel's Duty Book[11] indicates that she visited the complainant and discussed with her the inconsistencies in her first statement. Those inconsistencies related to the clothing worn by the "surfer guy". A further entry in the Duty Book is the first indication that the complainant was unsure about proceeding with her complaint and the ensuing prosecution. She and Brazel agreed to meet again later the same day.

2.34 Brazel's Duty Book entry also indicates that later that day the Brief Handling Manager, Detective Senior Sergeant Bernard Ford, was able to identify MAL12 and Fletcher[12].

2.35 Although not called to give evidence, Ford was interviewed by Commission investigators and said that he thought he was shown the photograph by Purcell or another male officer rather than Brazel but that it could have been Brazel. He also said that he was able to identify Fletcher and MAL12 but not MAL13. However, he also believed that whoever it was that showed him the photograph already knew the identity of the three persons depicted in it and that he was really only being asked for verification.

2.36 At 10.50 am on 22 November 2004 Brazel accessed the COPS system in respect of MAL12. In her Duty Book Brazel recorded the name of MAL12 and an address for MAL12 and she indicated that she carried out a reconnaissance of the premises. However, even though the correct street name is recorded, the house number is incorrect. The house number and street name recorded on the COPS system was correct. Dunstan, who again accompanied Brazel on the reconnaissance, correctly recorded the address in his Duty Book.[13]

2.37 The residence of MAL12 is located in a street parallel to the originally misidentified premises. Brazel in her Duty Book recorded that after the reconnaissance she had conducted with Dunstan the complainant was picked up and that they drove around while discussing the matter. She made the following entry; *"Retraction statement obtained victim withdrawn complaint. Crime Manager and Commander informed"*.[14]

2.38 At 2.53 pm Brazel made a number of entries to update the COPS system. This included an entry stating that she had conducted a "drive by" with the complainant of the street in which MAL12 resided and that she *"could not identify premises"*.[15] This *"drive by"* and failure to identify the premises is not recorded in her Duty Book, but the fact of the drive by is recorded in Dunstan's Duty Book.[16] A further COPS entry recorded the obtaining of the "retraction" statement.[17]

[11] PIC Exhibit 80AC
[12] PIC Exhibit 80AC
[13] PIC Exhibit 83
[14] PIC Exhibit 80AC
[15] PIC Exhibit 80AC
[16] PIC Exhibit 83
[17] PIC Exhibit 80AC

2.39 The remaining COPS entry for that day indicated that the persons of interest in the photograph had been identified as possibly being Fletcher and another named person.

2.40 Brazel told the Commission that on 22 November 2004 Constable Anthony Williams identified Fletcher and that she later took the photograph to Ford, the Brief Handling Manager, who identified both MAL12 and MAL13.[18]

2.41 In respect to the attempts to locate Fletcher, MAL12 and MAL13 that day, Brazel told the Commission that Fletcher had two addresses and that MAL12 had one address on the police computer system, whereas MAL13 was not recorded. In an attempt to identify the premises where the alleged assault took place she and Dunstan drove to each address to compare them to the description they had received from the complainant.[19]

2.42 In respect to the two addresses for Fletcher, Brazel's Duty Book entry only refers to a reconnaissance of the premises at which Fletcher then resided. There is no reference to a second address for Fletcher.

2.43 There was no further activity in respect of the investigation until 24 November 2004.

24 NOVEMBER 2004 - WEDNESDAY

2.44 For 24 November 2004 Brazel recorded in her Duty Book the following sequence of events:

- *Commencing duties at 8 am at Waverley Detectives.*
- *Obtaining legal advice.*
- *A morning briefing with Purcell, Doueihi and Dunstan.*
- *Attending to the search warrant application.*
- *Further legal advice.*
- *Arranging for the complainant to take part in a forensic procedure and noting the complainant was still unwilling to proceed.*
- *Attending Court to obtain the search warrant for the residence of MAL12.*
- *Briefing with Purcell, Doueihi, Wood and Dunstan.*
- *Briefing staff on the search warrant to be executed.*
- *Attending Bondi police station regarding forensic procedure forms.*
- *Drive past of MAL12's residence to confirm address.*
- *Attempting to inform the magistrate who granted the search warrant of a discrepancy.*
- *Attending the residence of MAL12.*
- *Contacting MAL12 by mobile phone as there was no one at the premises and informing him of the search warrant and noting his response.*
- *MAL12 attending shortly thereafter.*

[18] PIC Exhibit 16 – PIC Private Transcript, A Brazel, 26 April 2007, p. 8.
[19] PIC Exhibit 16 – PIC Private Transcript, A Brazel, 26 April 2007, p. 8.

- *Execution of the search warrant between 3.00 pm and 5.05 pm.*
- *MAL12 declining an interview but indicating that he will attend police the following morning.*
- *MAL12 being shown the photograph and identifying himself, MAL13 and Bryan Fletcher.*
- *Returning to Waverley police station and conducting a debriefing.*
- *Updating COPS and completing a SIT REP which was given to station officers for faxing.*
- *Updating duty book.*
- *Off duty at 7.30 pm.*[20]

2.45 The forensic procedure referred to above was a buccal swab taken from the complainant at 1.45 pm that day. She later flew out of Australia to her home country as she had indicated she intended to do.

2.46 Another entry made on 24 November 2004 by Brazel on COPS indicates that she contacted the complainant again at the airport and that the complainant still did not wish to proceed with the complaint. In his evidence to the Commission Purcell stated that the approach to the complainant at the airport was made at his request.[21]

2.47 The only contact between the complainant and the NSW Police after her departure from Australia was made by Brazel. The only records of that contact are contained in Brazel's Duty Book, COPS entries made by Brazel and emails between them which were retained and stored with the investigation file.[22]

2.48 During the search of MAL12's residence the police located the distinctive red shoes that the complainant said she could not find and had abandoned.

25 NOVEMBER 2004 - THURSDAY

2.49 On 25 November 2004 Brazel recorded the following events in her Duty Book:

- *On duty Waverley Detectives 8.00 am.*
- *Telephoning MAL12 and making an appointment with him.*
- *Contact from a relative of MAL12 and MAL13 indicating they were receiving legal advice.*
- *Subsequent contact from a lawyer advising that MAL12 and MAL13 would not participate in an interview or a voluntary forensic procedure.*
- *Meeting with Bryan Fletcher at some time after 1.30 pm when he declined to be interviewed but agreed to a voluntary forensic procedure to be taken by officer Binns.*
- *Updating case management.*
- *Off duty 6.00 pm.*[23]

[20] PIC Exhibit 80AC
[21] PIC Exhibit 15 – PIC Private Transcript, A M Purcell, 27 April 2007, p. 13 and PIC Transcript, A M Purcell, 30 May 2007, p. 27.
[22] PIC Exhibit 80AC
[23] PIC Exhibit ATH12C

2.50 From 5.20 pm to 5.38 pm Brazel created COPS entries which recorded the events listed above with the addition of a phone call made to MAL13 and a report of his agreeing to attend the police station before she received the telephone call from the lawyer in which she was informed that neither MAL12 nor MAL13 would be interviewed or provide a DNA sample. There is a further entry which indicates that an arrangement was made for MAL12 and MAL13 to attend on 30 November 2004 to formally refuse the forensic procedure and an interview. The entry in respect of Fletcher indicates that the arrangement was for him to attend at 2.30 pm.[24]

29 NOVEMBER 2004 - MONDAY

2.51 On 29 November 2004, following the application made by Brazel, a summons was obtained requiring MAL12 and MAL13 to attend Waverley Local Court on 7 December 2004 for a hearing of the application to require them to participate in a compulsory forensic procedure.[25]

30 NOVEMBER 2004 - TUESDAY

2.52 The solicitor acting for MAL12 and MAL13 informed Brazel that they would not voluntarily take part in either a forensic procedure or an interview. The summonses for the Local Court hearing on 7 December 2004 were then served on them.

2.53 Brazel recorded in her Duty Book for 30 November 2004 that she had received an enquiry from the Consulate representing the complainant's country of birth and that she attended the Consulate the following day.[26]

7 DECEMBER 2004 TO 22 DECEMBER 2004

2.54 On 7 December, the day of the proposed Local Court hearing, MAL12 and MAL13 both attended the Bondi police station and took part in a voluntary forensic procedure.

2.55 On 9 December 2004 Brazel created a COPS entry stating that she had sent an email to the complainant on 7 December 2004 to keep her informed of progress in the investigation and that no response had as yet been received from her.

2.56 On Sunday 19 December 2004 the *Sunday Telegraph* published an article containing information about the allegation of the sexual assault on a young tourist and named Fletcher as a person who had volunteered to provide a DNA sample to assist police. The article stated that police had confirmed that Fletcher had provided a DNA sample but was not a suspect as he had left the group before any incident had occurred. The article also stated that the complainant had told police that "s*he no longer wished to press charges against anyone in the group*". The article also contained the information that the DNA results would be available before Christmas.[27]

2.57 By 22 December 2004 all forensic samples had been supplied for analysis.

[24] PIC Exhibit 80AC
[25] PIC Exhibit 80AC
[26] PIC Exhibit 80AC
[27] PIC Exhibit ATH3C.

2.58 On 22 December 2004 Brazel created a number of COPS entries in which she noted the following:

- The forensic procedure samples from MAL12 and MAL13 were forwarded for analysis on 9 December.
- She had received an email on 17 December 2004 from the complainant:
  "Email received from victim [deleted] indicating she was interested in the forensic results but at this stage still did not wish to proceed with the complaint. Replied to stating police would keep her informed once the forensic results became known. Email filed."
- In the email referred to above, the complainant had stated:
  "I still feel like leaving the case as it is now, not to go any further. It will be interesting to see what the DNA says, might change my mind after that but for now it doesn't seem like a very strong case from my side at all and I don't think that I'll be able to go through with it and then not get anything out of it at the end."
- Enquiries on 19 December 2004 from the media through the Crime Manager about the involvement of Fletcher in the matter and making no comment.
- That she had received an email from the complainant on 22 December 2004 about the content of the Sunday Telegraph article and the assertion in it that forensic results would be available before Christmas. She was concerned that she was not being kept informed. Brazel said that she told her that the report was inaccurate and that she would be informed as soon as the results were available.
- Advice from Division of Analytical Laboratories (DAL) that the DNA results would be available mid February 2005.[28]

18 JANUARY 2005 TO 25 JANUARY 2005

2.59 On 25 January 2005 Brazel created several COPS entries indicating:

- DNA results received verbally from DAL on 18 January 2005 and that only the DNA profiles of MAL12 and MAL13 were identified and that there were no unidentified profiles.
- Email sent to the complainant on 18 January 2005 informing her of DNA results.
- An email was received from the complainant on 24 January 2005:
  "Wishes to consider her position over the next two weeks before considering whether to charge or not. Several questions about court procedure and third POI (Fletcher) asked. Email filed."

Although, the COPS entry refers to the email from the complainant being filed, it was not with the investigation file[29] when that file was obtained by the Commission.

[28] PIC Exhibit 80AC
[29] PIC Exhibit 80AC

- Email sent to the complainant on 24 January 2005 responding to questions she had asked.

Again the complainant's response email was not with the police investigation file when it was obtained by the Commission.

14 FEBRUARY 2005 TO 14 MARCH 2005

2.60 On 14 February 2005 Brazel created a further entry on COPS referring to the receipt of an email that day from the complainant in which she stated that she was unprepared to see the matter through to finalisation. The entry also notes that Brazel was to prepare a brief and forward it to Police Legal Services for final advice.

2.61 On 24 February 2005 Brazel completed a report in which she made the following recommendation:
"Given the serious and potential high profile nature of this complaint an advising is sort (sic) from Legal Services as to the most appropriate way to proceed. Consideration needs to be given to the Young woman's wishes as well as the expectations of the community in relation to such a serious offence."[30]

2.62 Brazel's report and the recommendation were considered by the then Investigations Manager, Crime Manager and Commander of Eastern Suburbs LAC, none of whom had been involved in the actual investigation. They agreed that in the circumstances the matter should not be prosecuted and the Commander decided to suspend the investigation unless there was a change in circumstances. The decision was based on a number of factors including the low prospect of a successful prosecution due to the reluctance of the complainant to assist in the prosecution, the DNA evidence showing that only MAL12 and MAL13 identified in the swab taken from the complainant and significant issues as to consent and the effect of the complainant's alcohol consumption.[31] These potential issues were clear from the statements the complainant made to the police.

2.63 On 14 March 2005 Brazel noted on the COPS system that the matter had been suspended.

RECORDS OF PURCELL'S PARTICIPATION IN INVESTIGATION

2.64 There is no indication in the official records of the police investigation either in the investigation file or on COPS, that Purcell performed anything other than the general supervisory role that would normally be expected to be carried out by the Local Area Commander.

2.65 The only reference to his participation in the investigation is contained in his personal diary[32] produced to the Commission and in the Duty Book entries made by other officers which were obtained by the Commission.

30 PIC Exhibit 80AC
31 PIC Exhibit 80AC
32 PIC Exhibit 5C and 82

2.66 With one exception the references in the Duty Books of the other officers mention only his presence at various briefings or of him being advised of certain events relating to the matter. The exception is an entry in the Duty Book of Doueihi for the date 30 November 2004;

> *"@ 4pm whilst with A/Commander Purcell received call from Bryan Fletcher re sexual assault investigation Fletcher inquired re [MAL12 and MAL13] brothers predicament, [Fletcher] informed by A/Commander Purcell, that no comment or information could be given to him re [MAL12 and MAL13], only info relating to him."* [33]

2.67 The call between Purcell and Fletcher, to which Doueihi refers, is an indication that Purcell played a more significant and largely undocumented role in the police investigation of the assault allegation. The only written record of Purcell's role is contained in his personal diary [34] which was not independently verified.

2.68 Doueihi told the Commission that he had only heard Purcell's side of the conversation, and that Purcell had told him what Fletcher had said. When asked why he had made a note in his Duty Book of the conversation between Purcell and Fletcher he said that he thought the conversation was a "bit odd". Doueihi added that it may also have been that Purcell told him to make the record.[35]

2.69 That Fletcher would see it as appropriate to contact Purcell is not surprising in the context of their contact as disclosed during the Commission's inquiry and telephone calls earlier that day by Purcell to Fletcher.

2.70 If the Duty Book entry was made by Doueihi at the request of Purcell it appears to be inconsistent with Purcell's actions in relation to two calls he had made earlier that day for 2:48 minutes at 11:42 am and 0:41 seconds at 11:49 am in respect of which he made no record or caused any record to be made by anyone else. As will later be demonstrated, telephone records obtained by the Commission indicate a significant degree of ongoing undisclosed contact between Purcell and Fletcher commencing from 26 November 2004 and continuing until 12 April 2005.

2.71 One possible explanation may be that as Purcell would have realised that Doueihi would be able to hear his half of the conversation, he used the opportunity to make it appear that his contact with Fletcher was a proper one and for that reason asked Doueihi to make a record of it. Such a course is not inconsistent with his failure to make a record of the two calls he made to Fletcher earlier the same day.

OTHER EVIDENCE OF THE PARTICIPATION OF PURCELL

2.72 Having been informed of the allegation made by the complainant on Saturday 20 November 2004, Purcell was first briefed about the complaint on the Monday. On that day he became aware of the photograph and likely identified Fletcher as one of the men depicted in it. He was also aware that the complainant no longer wished to pursue

[33] PIC Exhibit 80AC
[34] PIC Exhibits 5C and 82
[35] PIC Exhibit 17 – PIC Private Transcript, J J Doueihi, 26 April 2007, p. 8

the matter but had not withdrawn the allegation that she had been sexually assaulted by a number of men. Purcell told the Commission that he had been informed that Fletcher was not implicated in the offence. In addition he recalled that the complainant's recollection was that Fletcher did not do anything other than to go home or leave the house. He also claimed that he believed that the complainant had not been aware of Fletcher's presence in the taxi.[36]

2.73 Purcell's opinion, which he discussed with Doueihi and Brazel, was that, as the complainant did not wish to pursue the matter, they should get legal advice before continuing with the investigation. Later on the Monday he was informed that the legal advice had been received and that they could continue with the investigation.

2.74 The effect of this was that, although at least MAL12 had been identified by 10.50 am on the Monday 22 November 2004, when Brazel accessed his details on COPS, no search of his premises was carried out until Wednesday 24 November 2004, whereas the original misidentified premises had been the subject of a search on the day the allegation was reported. Given the close proximity of the original premises to the premises of MAL12 and that even from an external inspection of MAL12's premises it would have been obvious that they might meet the internal layout described by the complainant, it was essential that a search be carried out without delay. Indeed, even more so because the complainant had already positively identified MAL12 as one of the alleged offenders. It is not clear why MAL12's premises were not searched until 24 November 2004.

2.75 Prior to the search being conducted on 24 November 2004 there was a briefing early that morning attended by Purcell, Doueihi, Dunstan and Brazel and a further briefing later that day after the search warrant had been granted at which they were also present. This information is confirmed by the entry in the Duty Book of Brazel. Doueihi in his Duty Book records himself as returning for this briefing at 2.30 pm and a number of additional officers concerned in the search as being present. The search warrant was executed on the premises of MAL12 between 3.00 pm and 5.05 pm.

2.76 In relation to his contact with Fletcher, Purcell's evidence was that because Fletcher was a well known footballer he wanted to avoid any *"media circus and fiasco"*[37] such as that which had occurred as a result of the allegations concerning the Bulldogs rugby league team earlier in 2004. Purcell said that he offered to get in contact with Fletcher and to speak to him in what he referred to as a "contained environment" i.e. a police station, rather than in public or at his house. Purcell further said that it was agreed that he would speak to Fletcher while the search warrant was being conducted to minimise any opportunity that Fletcher, if he did have any knowledge of the matter, might have to warn any other persons involved. With this in mind Purcell said he contacted Ricky Stuart to obtain Fletcher's telephone number.[38]

[36] PIC Exhibit 15 – PIC Private Transcript, A M Purcell, 27 April 2007, p. 7.
[37] PIC Exhibit 15 – PIC Private Transcript, A M Purcell, 27 April 2007, p. 8.
[38] PIC Exhibit 15 – PIC Private Transcript, A M Purcell, 27 April 2007, p. 32.

2.77 Telephone records indicate that at 12.30 pm Purcell rang Stuart, who was at the time the coach of the Sydney Roosters rugby league team and had only recently been announced as the coach for the 2005 NSW State of Origin team. Stuart had coached Fletcher until he moved from the Sydney Roosters to South Sydney. The call was of 0:21 seconds duration.

2.78 Purcell said in his evidence that he arranged to meet with Stuart at Rushcutters Bay as he, *"was not comfortable speaking about it over the phone, and, indeed, I think it was on loud speaker and I didn't know who else was with him at the time".*[39]

2.79 Purcell told the Commission that when he met with Stuart he requested and received Fletcher's mobile telephone number telling Stuart in the process that he could not tell him what it was about and making a *"cursory inquiry"* about boarding houses in the area used by the Sydney Roosters club for their players.[40]

2.80 Stuart must have been fully aware of the problems that often arise from the off field conduct of footballers and would have immediately realised the significance of the contact. He was under no obligation not to inform Fletcher of the police interest in him. Indeed Purcell in his evidence said that his earlier contact with Stuart involved the education of Stuart's teams about "off-field" behaviour.[41]

2.81 There are two further versions of the meeting between Purcell and Stuart to be considered.

2.82 Although not called during the hearings, Stuart agreed to be interviewed by Commission investigators. He said that when Purcell rang him he said that he wanted to meet in person but would not tell him why he wanted to meet him. When they met Purcell told him that:

"…Bryan could be in some trouble…It was basically, like, a girl had reported that she had been raped. That she was with a couple of blokes from Bondi in a cab going home and she was drunk and/or, you know, forgotten what the circumstances were, what happened, and there's, you know, every opportunity that Bryan could have been involved and … Could have been involved as in being he was there. Did, did actually – now (UI) say – mention to me that they had some photos … and Bryan was in the cab and that they, they picked his picture out, which was the reason why he wanted to come to me, to talk to Bryan." [42]

2.83 This account is fundamentally different to the account given in evidence by Purcell. When Stuart's account was put to Purcell his response was that Stuart's recollection was; "*tainted and he has found that information out afterwards*".[43]

2.84 The third account of this meeting also comes from Purcell and supports Stuart's recollection

[39] PIC Exhibit 15 – PIC Private Transcript, A M Purcell, 27 April 2007, p. 10.
[40] PIC Exhibit 15 – PIC Private Transcript, A M Purcell, 27 April 2007, p. 10.
[41] PIC Exhibit 15 – PIC Private Transcript, A M Purcell, 27 April 2007, p. 10.
[42] Transcript of Record of Interview, R Stuart, 30 May 2007, p. 9.
[43] PIC Transcript, A M Purcell, 31 May 2007, p. 123.

that Purcell told him it was about a sexual assault. In a conversation which took place in Purcell's home on 25 April 2007 and was lawfully recorded by the Commission Purcell was heard telling a police colleague, code named MAL14, what he had said to Stuart;

"Ricky, I'll tell you what it's about. It's about a sexual inve…, a sexual assault involving a number of blokes and what my worry is, you've got a number of boarding houses in the area. Could they have been?" [44]

2.85 Stuart's recollection of the time at which the meeting took place was that it was some time between 1.30 pm and 2.30 pm. Stuart also said that after he met with Purcell he rang Fletcher to inform him that Purcell was going to contact him. Stuart said that he told Fletcher that it was about what had happened at Bondi and that he asked Fletcher to make sure that he told Purcell the absolute truth. Stuart said he was concerned that Fletcher not get into trouble and that rugby league at the time did not have a good reputation because of the events concerning the Bulldogs. From the entry in Doueihi's Duty book it appears that the meeting between Purcell and Stuart must have been prior to the briefing at Waverley police station at 2.30 pm which Purcell attended.

2.86 Telephone records show Purcell contacted Fletcher on 24 November at 3.03 pm and spoke for 2:05 minutes, which is approximately at the time the search commenced at the premises of MAL12. In evidence Purcell accepted that this would have been the call during which he arranged for Fletcher to attend the police station.

2.87 According to Purcell's personal diary he met with Fletcher at the Bondi police station at 3.45pm[45] and in evidence he said that the meeting took 10 to 30 minutes.[46] The meeting took place in Purcell's office and the only persons present were himself and Fletcher. The meeting was not electronically recorded.

2.88 The only record of what occurred at this meeting is contained in the personal diary maintained by Purcell. The relevant portions of the entry for that day are:

"Wednesday 24 November 2004

- *On duty 8.00 AM, at Bondi Police Stn: Attend to inside duties. Out to Wet Café re coffee/discussion with Detectives.*
- *Out to Rushcutters Bay and speak with Ricky Stuart re Bryan Fletcher's mobile – obtain same.*
- *Return to Waverley P.S. Attend briefing conducted by Brazel re search warrant.*
- *Return to Bondi P.S. Contact Bryan Fletcher by telephone and organise meeting at Bondi P.S.*
- *3.45 PM Fletcher attends Station. Meet with same. Inform him that we are investigation (sic) an allegation of sexual assault that occurred on Sat morning. Fletcher states that he was in taxi with [MAL12] & his brother [MAL13]. [MAL12] had a girl with him. When they got to [MAL12]'s she commenced giving [MAL12] a head job out front of premises. He & [MAL13] went inside and got a drink and by that stage [MAL12] had gone into*

[44] PIC Exhibit 10B
[45] PIC Exhibit 82
[46] PIC Transcript, A M Purcell, 30 May 2007, p. 81.

a front bedroom and was clearly having sex with the female. He and [MAL13] left. Fletcher walked home and was home by 5 AM. I asked for a voluntary DNA sample which he agreed to.

- *Purpose of meeting was to minimise potential media exposure for witness: Managing prospect of leaks. Fletcher agrees to attend Waverley on Thurs 25/11.*
- *Out to Chamber of Commerce Christmas Party with Doueihi at Teagardens Hotel.*
- *Speak with Fletcher via mobile at 7.30PM. Informed that he is seeking legal advice. States he is worried he kissed female in question and his DNA will be in her mouth as a result. Advised that he is entitled to seek legal advice and also advised to stop disclosing as it may be used in evidence.*

Off duty 8.30PM."[47]

2.89 The only other version of what occurred during the meeting is also one given by Purcell which was captured by the listening device on 25 April 2007 as he spoke with his colleague MAL14:

"AP: So, okay. So I get Bryan. Now I went to school with Bryan's brother but there was about fuckin' thirty years difference. Dave and I were good mates. That was it. We haven't kept in contact since. So I said, "Mate, I'm a good mate of Dave's. Can you come in and see me? I'm the Commander of, of (ui) Eastern Suburbs?". "Yeah. What's it about?". "I don't want to talk about it on the phone. Come in". I take him down to Bondi, away from the main station at Waverley. He comes in. I said, "Mate, it's an investigation of a sexual assault that occurred on Saturday night, on Friday night. I'm not gonna caution you but I want you to start giving me some information. There's the photo. We know him and him are involved. At this stage you're not. All I tell is – all I'll ask you is you tell me the truth. Okay? That's all I'm asking you. Who are the two guys?" "[MAL12 and MAL13], brothers". "Okay. No worries". He said, "Mate," he said, "she was fuckin' up for it". She said, he said, "We went home in the cab. [MAL12] was gettin' a fuckin' head job on the front lawn and he took her in the front room and started fuckin' her" and he said "and I walked home and I was home at five o'clock". He said, "I can't have my wife know it. Can't have the media". I said, "Mate, that's fine". I said, "I need a voluntary DNA 'cause there's DNA all over her". I said, "I need a voluntary DNA from you. Are you willing to do that?". "Yeah, yeah, yeah". I said, "No worries. Thanks for your assistance. You can't tell anyone". (ui) We got onto the fact that it was [MAL12] prior (ui). He was an old digger, ah, Sergeant down here. He said, "I know who that guy is. Don't know the other guys". They've organised a search warrant. It was one street parallel.

MAL14: *It was one street parallel?*

AP: *Yep. And they're executing the search warrant on his place while I'm interviewing Bryan Fletcher to find out who the third guy is. So I knew there couldn't be any compromise. So I said, "Mate, that's it. You come and do, give*

[47] PIC Exhibit 82

your DNA tomorrow. We'll keep it circumspect, but if you're tellin' me lies, you're gonna be charged. I'm just telling you that, Bryan, don't tell me lies". He said, "Mate, no way". (ui)

MAL14: *So you had to come and take a statement off him down there?*

AP: *No, 'cause he had to go to training. So – but I've taken notes. I've taken notes in my diary and I said – and that's where I've – you know, I should have. But because the police are doing search warrants I just said, "Right. You're gonna come in tomorrow, give us a voluntary DNA and the police will take a statement". "Yep, no worries" and off he goes. She withdraws it that afternoon. "I don't want to go ahead with it. I don't want to go ahead with it. I'm flying back to [deleted] on Friday" – this is on the Monday, ah, Tuesday – "I don't want to, I don't want to. No, I want to withdraw". So we've got no (ui). She does a withdraw. They do a search warrant. They recover her shoes, (ui). They've taken the bedding but don't charge anyone. I go to a function that night, on the Tuesday night.*

MAL14: *All of the suspects say nothing?*

AP: *No, and, ah, at this stage we still haven't got an offence because she's withdrawn it, and so...*

MAL14: *Did she provide a statement originally?*

AP: *Yeah, she did.*

MAL14: *Yeah.*

AP: *But, and so they don't take – but I'm not privy to this. I didn't go to the search warrant so I don't know, I don't know what happened down there. Woody's the fuckin' independent down there. So I go to this function that night, Chamber of Commerce. At 7.30 – phone – "It's Fletch here. I'm fuckin' worried. I've spoken – I, I think I should get legal advice. What about if there's DNA in her mouth that links me?". I said, "Bryan, why would there be DNA in her mouth?". "I kissed her on the dance floor at the Orient".*
I said, "If you kissed her, there's no DNA". I said, "That's fine". I said, "but I've got to stop you here. I'm not a mate, I'm a police officer. I'm going to have to use this in evidence. Stop disclosing to me" and gave him a cau... – and gave him a layman's caution. I said, "Mate, I encourage you to seek legal advice. If you're telling me shit, Bryan, you're gonna be in it." [48]

[48] PIC Exhibit 10B

2.90 There are a number of matters of significance in respect of the meeting and the further contact between Fletcher and Purcell on 24 November 2004. Whether one considers him at that stage of the investigation as a person of interest or a suspect, Fletcher had to be a person to whom the investigating police would have liked to speak. Whatever the reliability of the complainant's alcohol affected memory, there was a photograph of Fletcher together with an alleged offender, MAL12, and another person, MAL13, which could only have been taken during a taxi journey before the alleged assault.

2.91 After the development of the photograph, the complainant said that she had never seen Fletcher or MAL13 before. She had already provided descriptions of MAL12 and the other male she had first met at the Orient Hotel. In respect of the assault she said that, other than MAL12, she was unable to provide any description of the other alleged offenders, except that they were Caucasian and not skinny or fat, because the bedroom in which the assault took place was unlit and so dark that she could not see them. In those circumstances, Fletcher and MAL13 could have been involved in the assault or, at least be able to provide information relevant to the investigation. Both were present with MAL12 and the complainant in the taxi; both fell within the broad description given by the complainant of those that had assaulted her.

2.92 Purcell was not the investigating officer, but effectively appointed himself to that role in respect of Fletcher and only Fletcher. This is an unusual step for any police officer, whatever their rank, to take in respect of a matter where an investigating team has already been established and is conducting inquiries.

2.93 Purcell chose to make private arrangements to speak to Fletcher about a serious allegation in the absence of any corroborating officer and to do so without electronically recording what was said so that it was independently verifiable. If the note in his personal diary was a contemporaneous one he did not ask Fletcher to sign the diary as representing a true account of their conversation.

2.94 Purcell failed to caution Fletcher. If any admission or any provable false denial of any relevant fact was made it would not be admissible in evidence in any proceedings.

2.95 Purcell's evidence was that at the time of the meeting with Fletcher all he knew about the actual allegation made by the complainant was what he had been told by the investigating officers. Most importantly he claimed that he had not read either of the two statements which had already been made by her. [49]

2.96 It is of fundamental importance when interviewing or otherwise dealing with a person of interest or suspect that it be properly recorded and that before embarking on any direct contact with the person that the police officer is familiar with the allegation as well any evidence already acquired. On Purcell's own account he lacked relevant knowledge of

[49] PIC Transcript, A M Purcell, 30 May 2007, p. 75

the detail of the complaint. This meant that he embarked on a meeting in circumstances where he could not properly assess any response provided by Fletcher.

2.97 If the version of what Fletcher said as recorded by Purcell is correct, then it contained information significant to the investigation and fundamental differences to the allegation made by the complainant. According to Fletcher's account;

- The complainant gave MAL12 a "head job out front of (the) premises";
- Fletcher and MAL13 "went inside and got a drink and by that stage" MAL12 and the complainant were having "sex" in a front bedroom;
- Fletcher and MAL13 left. Fletcher walked home arriving by 5 AM.

2.98 In contrast, the complainant said:

- After alighting from the taxi she and MAL12 entered the house and had a drink in the lounge area;
- They then retired to the bedroom where consensual sexual intercourse commenced;
- She was not aware of anyone else being present in the house until she observed the other males standing around the bed;
- The assaults took place over a period between 3 am and 5 am.

2.99 If the complainant was giving a truthful, though alcohol affected, account there was no "head job" given to MAL12, and Fletcher may have been present in the house at a relevant time. There was no reason to assume, as Purcell apparently did, that Fletcher was being truthful and was accordingly to be regarded as a "witness". On the other hand if what Fletcher said was true it was of considerable significance to the police in evaluating the allegation made by the complainant.

2.100 Fletcher's residence was approximately 1.3 km by road from the residence of MAL12. On the available evidence, whether he walked or took a taxi, Fletcher could have still participated in the alleged assault or been a witness to it and still arrived home by 5:00 am, that being the time that Fletcher told Purcell he had arrived home.[50] Indeed, on his account Fletcher could have been present at the premises of MAL12 at the time the complainant said that the group assault occurred; or at least could have been present but departed before it was completed. His account failed to provide an explanation for the whole of the likely period of time between arriving at the residence of MAL12 and his arrival home.

2.101 While the diary entry records that Fletcher was to attend Waverley police station to provide a voluntary DNA sample there is no reference to providing a statement or participating in an interview.[51]

2.102 In the circumstances it would have been appropriate and essential to determine if Fletcher was prepared to take part immediately in a recorded interview under caution. Purcell did not do so. Even if Purcell genuinely believed Fletcher was a witness, rather than

[50] PIC Exhibit 82
[51] PIC Exhibit 82

a suspect, it was just as important to ensure that a statement was immediately taken while the incident was fresh in his mind and before Fletcher's recall could be affected by discussing the matter with anyone else.

2.103 In the lawfully recorded conversation between Purcell and MAL14 Purcell's explanation for wanting to obtain the mobile number for Fletcher was:

"… 'cause they're goin', "We'll go around to his house". I said, "No, no, no, no, no, no. He's just been married. She hasn't fingered him at this stage." … "I said, "No. If he hasn't been fingered as a person who's gone in there, let's keep it circumspect. He's a witness not a suspect." [52]

2.104 In the diary note Purcell records that he held the private meeting with Fletcher to minimise the media exposure for Fletcher and to manage the prospect of leaks, meaning leaks of Fletcher's involvement in the matter. That appears to indicate that Purcell had determined on the basis of the meeting, and on the basis of the conversation above, if not before, that Fletcher was a witness rather than a suspect or person of interest and that because he was a well known footballer he should be treated differently to any other member of the public. The effect of this treatment was such that Fletcher was given the opportunity to be made informally aware of the nature of the allegation and in circumstances where any response he made to it might not be available as evidence.

2.105 As to leaks, even if it was proper to take this into consideration, it is difficult to understand how there could be any less risk of a leak from police to the media if Purcell conducted a private meeting with Fletcher at a police station than if the investigating officers armed with all the information attempted to conduct an interview in due course. Indeed, the fact that Purcell, the acting Local Area Commander, conducted himself in this manner was bound to - and in fact did - become the subject of some disquiet and comment as well as a source of speculation and rumour amongst police about the propriety of what had occurred and why.

2.106 Even accepting Purcell's reason for his contact with Stuart, by doing so he created the potential for a leak. On the version of their conversation given by Stuart, which is supported by what Purcell was recorded saying to MAL14, Purcell had already leaked some detail of the police interest in Fletcher even before any search had been commenced or a possible participant spoken to by police. Disclosing that information to Stuart had the potential to adversely affect the investigation.

2.107 If the account given by Purcell of the contact with Fletcher at 7.30 pm that night is true, it also indicates that Fletcher at least perceived Purcell as being his advisor rather than an investigating officer.

2.108 The conversation between Purcell and MAL14 recorded by the listening device provides

[52] PIC Exhibit 10B

a clear indication of Purcell's interpretation of what Fletcher thought of the relationship he had with Purcell.

"It's Fletch here. I'm fuckin' worried. I've spoken – I, I think I should get legal advice. What about if there's DNA in her mouth that links me?'. I said, "Bryan, why would there be DNA in her mouth?". "I kissed her on the dance floor at the Orient". I said, "If you kissed her, there's no DNA. …"[53]

2.109 If this version of Purcell's account of the conversation with Fletcher is correct then it shows that Fletcher may have been concerned about evidence being obtained that would implicate him in an act of oral sex with the complainant. Not only did Purcell in that conversation provide advice but his advice also ensured that it would be very unlikely that Fletcher would in the future provide a statement or participate in a record of interview. If Purcell was aware, directly or indirectly, of the information contained in the SAIK, as to the fact that before any oral swab was taken from the complainant she had consumed food and three drinks, he would have known that it was highly unlikely that any foreign DNA would be found on forensic analysis.

2.110 The assertion by Fletcher that he had kissed the complainant while on the dance floor at the Orient should have also alerted Purcell to some level of involvement by Fletcher in the events. In her statements the only person that the complainant said that she kissed was the person she later identified as MAL12. Even if Purcell was not aware of the content of her statements what Fletcher told him was information that would have been of interest to the investigating officers.

2.111 Again in the lawfully recorded conversation with MAL14 Purcell said that when he spoke to Fletcher at the police station he said *"There's the photo. We know him and him are involved. At this stage you're not."* If at that time Purcell believed, whether correctly or not, that Fletcher was not involved the same reasoning had to apply to MAL13 as the evidence of MAL13's involvement was exactly the same as the evidence in respect of Fletcher. That is, they were both in the taxi photograph but the complainant had said that she had never seen either of them before.

2.112 In addition, if as the conversation indicates, he showed the photograph or a copy of it to Fletcher he was disclosing the only significant evidence available to the police at the time of who may have been involved or had the opportunity to be involved. If on the other hand, as Purcell later said in his evidence, he did not show the photograph to Fletcher, he still released vital information to a person who was a witness. He took that course, disclosing what the position was, rather than asking Fletcher what he had done or where he had been, which may have elicited a false alibi or false statement that the photograph could disprove. His actions were at least unprofessional and fell far short of what was to be expected of an officer of his senior rank and experience.

2.113 When questioned about the statement made to MAL14 concerning the photograph,

[53] PIC Exhibit 10B

Purcell's evidence was that he did not show the photograph to Fletcher and that he had not said to Fletcher what he had been recorded as telling MAL14 he had said. It is the Commission's opinion that because of the candid nature of the recorded conversation more reliance should be placed on what Purcell said to MAL14 rather than on his evidence on this issue. [54]

2.114 Telephone records for Purcell's mobile telephone indicate that after the meeting with Fletcher on 24 November 2004, there was another phone call from Purcell to Stuart. The call was at 4.21 pm and lasted for 4:35 minutes. [55] In evidence Purcell's only explanation for the call was that he must have rung Stuart to thank him for providing the mobile phone number of Fletcher.[56] Considering the fact that Purcell had obtained the number from Stuart in person only several hours before and that he must have thanked him then, there is a strong inference that the conversation occupying 4:35 minutes shortly after Fletcher had met with Purcell, related to the result of the meeting with Fletcher rather than a repeated thank you. However, other than the fact of the call and the duration of it there is no evidence of the content other than what Purcell told the Commission in evidence.

2.115 There are a number of calls between the mobile phones of Purcell and Fletcher on 24 November 2004. The only calls recorded in his diary by Purcell are the call to arrange for the attendance of Fletcher and the call that evening already referred to above. The full list of calls obtained by the Commission is as follows:

24/11/2004 15:03:00 – Purcell calls Fletcher – 2:05 minutes
24/11/2004 16:35:00 – Purcell calls Fletcher – 0:48 seconds
24/11/2004 16:47:53 – Fletcher calls Purcell – 0:13 seconds
24/11/2004 16:48:56 – Fletcher calls Purcell – 0:19 seconds
24/11/2004 16:54:00 – Purcell calls Fletcher – 5:38 minutes
24/11/2004 19:53:19 – Fletcher calls Purcell – 0:32 seconds
24/11/2004 19:54:07 – Fletcher calls Purcell – 8:48 minutes

2.116 Even allowing that some of the shorter calls may have related to the leaving of messages, there are still calls of significant duration which are unexplained or, where there is some explanation recorded in Purcell's diary, it is inadequate to explain the duration.

2.117 The list indicates that, after the meeting with Fletcher and the subsequent call to Stuart at 4.21 pm, Purcell at 4.35 pm rang Fletcher and was connected for 0:48 seconds. He then received two calls each of 0:13 and 0:19 seconds duration from Fletcher and again rang Fletcher at 4.54 pm for 5:38 minutes. There are no entries in the personal diary that explain the calls to Fletcher at 4.35 pm and 4.54 pm. The only calls that could possibly relate to the contact with Fletcher that evening that Purcell records in his diary as occurring at 7.30 pm and during which Fletcher told him of his concern about having kissed the complainant are at 7.53 pm and 7.54 pm. The second of those calls was for 8:48 minutes which Purcell took while he was at a Chamber of Commerce function. The

[54] PIC Transcript, A M Purcell, 31 May 2007, p. 144.
[55] PIC Exhibit 6
[56] PIC Transcript, A M Purcell, 31 May 2007, p. 98.

duration of the call is inconsistent with the content of the brief note in the diary.

2.118 The overall level of contact demonstrated by the calls is also inconsistent with any appropriate degree of contact between Purcell and Fletcher. If the purpose of Purcell's contact was to establish who the third person in the photograph was and to obtain a statement and voluntary DNA sample from Fletcher the task had been completed by the end of the meeting at Bondi police station and this high level of personal contact was entirely unnecessary and questionable.

2.119 By 25 November 2004 at least one police officer had expressed concern about the meeting between Purcell and Fletcher the day before. Purcell made a note in his personal diary as follows:

"Thursday 25 November 2004

- *On duty 8.00AM at Waverley Police Stn: Attend morning muster briefing.*
- *Speak with Tony Binns re concerns about contact with Fletcher 24/11. Explain actions. Commander's responsibility to ensure minimal risk to media exposure of witness and to potential victim.*
- *Speak to Fletcher by mobile/solicitor re appt for buccal swab. 2.30 PM at Waverley. Informed that Fletcher will not be providing statement.*
- *Off duty 4.30PM."* [57]

2.120 The content of the notation of the contact with Fletcher and possibly involving his solicitor indicates that the call must have been prior to Fletcher attending for the buccal swab. However there are two further calls made by Fletcher to Purcell that day neither of which is recorded in the personal diary:

25/11/04 10:32:05 - Fletcher calls Purcell - 2:39 minutes

25/11/04 12:59:07 - Fletcher calls Purcell - 6:54 minutes

2.121 The COPS entries made by Brazel for 25 November 2004 indicate that contact was made with Fletcher that day and an arrangement was made with him to attend the station at 2.30 pm. The video of the forensic procedure, which was taken by Binns, indicates that while Fletcher may have attended at 2.30 pm the sample was not taken until 2.50 pm. The Bondi police station Exhibit Book records the DNA Sample Kit relevant to Fletcher as being entered at 4.07 pm on 25 November 2004.

2.122 Once again the duration of the calls between Purcell and Fletcher appear to indicate conversations of a much greater detail than would be required to convey the information recorded by Purcell.

2.123 The only written record of these conversations is contained in Purcell's personal diary. On this occasion both calls were taken by Purcell after Binns had voiced his concerns about

[57] PIC Exhibit 82

Purcell's contact with Fletcher the day before. In describing Binns' concern to MAL14 Purcell said that Binns when speaking to him after the 8.00 am morning muster/briefing said:

"Boss, I don't agree with what you did yesterday". I said, "What did I do yesterday?", and I've written this in my diary. "I've got concerns you spoke with Bryan Fletcher and you've given him the heads up about the thing". I said, "Mate I didn't give him the heads up for anything." [58]

2.124 In his evidence in private hearing on 27 April 2007, and before he was shown the list of calls between himself and Fletcher[59] on 31 May 2007, Purcell gave the following explanation of his reaction to Binns concerns that he had given Fletcher a "heads up":

"But it dawned on me that – at that stage that it could be viewed as unprofessional and, indeed, I was thinking like a crime manager, not as a commander, and I then put in a conscious – put in conscious measures then to separate myself from Bryan Fletcher and let the investigation take its course." … "… I made conscious efforts to remove myself from contact or managing of Fletcher …"[60]

2.125 Purcell made no records in respect of any further contact between himself and Fletcher. However, there was a substantial degree of continuing contact between them as is evidenced by the telephone records:[61]

26/11/2004 09:49:43 - Fletcher calls Purcell – 0:18 seconds
26/11/2004 10:18:08 - Fletcher calls Purcell – 9:23 minutes
26/11/2004 11:41:31 - Fletcher calls Purcell – 3:38 minutes
30/11/2004 11:42:00 - Purcell calls Fletcher – 2:48 minutes
30/11/2004 11:49:00 - Purcell calls Fletcher – 0:41 seconds
30/11/2004 15:56:35 - Fletcher calls Purcell – 8:23 minutes
16/12/2004 12:45:17 – Fletcher calls Purcell – 0:20 seconds
17/12/2004 11:58:12 - Fletcher calls Purcell – 1:22 minutes
17/12/2004 12:09:59 - Fletcher calls Purcell – 0:19 seconds
17/12/2004 12:16:45 - Fletcher calls Purcell – 4:37 minutes
17/12/2004 16:05:58 - Fletcher calls Purcell – 5:54 minutes
20/12/2004 10:24:08 - Fletcher calls Purcell – 0:06 seconds
20/12/2004 10:27:26 - Fletcher calls Purcell – 0:03 seconds
20/12/2004 10:32:25 - Fletcher calls Purcell – 0:03 seconds
20/12/2004 10:46:00 - Fletcher calls Purcell – 0:03 seconds
21/12/2004 18:38:04 - Fletcher calls Purcell – 1:22 minutes
28/01/2005 17:35:00 - Purcell calls Fletcher – 0:29 seconds
17/02/2005 13:24:00 - Purcell calls Fletcher – 1:45 minutes
20/02/2005 01:03:00 – Purcell sends SMS to Fletcher

[58] PIC Exhibit 10B
[59] PIC Exhibit 6
[60] PIC Exhibit 15 – PIC Private Transcript, A M Purcell, 27 April 2007, pp. 14 – 15.
[61] PIC Exhibit 6

12/04/2005 15:09:00 – Purcell sends SMS to Fletcher

2.126 Many of these calls are of such short duration that they are likely to be calls which switched through to messages and where no message was left. Those calls are relevant to show that there were ongoing attempts at contact interspersed with calls where there was actual contact. The calls of significant duration are highlighted. They indicate a significant level of two way contact between Purcell and Fletcher at a time when Fletcher had to be still regarded as a person of primary interest in the police investigation which had not been terminated and in respect of which no DNA results were available until verbally communicated to Brazel on 18 January 2005. The evidence of the phone contact between Purcell and Fletcher between 26 November 2004 and February 2005 is not indicative of Purcell making a conscious effort to separate himself from Fletcher as he claimed.

2.127 Purcell's failure to record any of this ongoing contact with Fletcher is significant considering that by approximately 30 November 2004, if not before, Purcell was no longer involved in the investigation even in a supervisory role. After taking leave shortly after 30 November 2004 Purcell resumed duties in the Sydney CBD rather than the Eastern Suburbs LAC.

PURCELL'S PERSONAL DIARY

2.128 When the Commission requested the NSW Police Force (NSWPF) investigation file for the sexual assault allegation, the Commission was advised that a number of items could not be produced because they had not been located. This included Purcell's Duty Book. A further response stated that:

"LAC (Eastern Suburbs) has also indicated that despite requests made to Inspector Purcell, he has been unable to locate his duty book for this period and it is still marked outstanding with him."

2.129 Despite the request nothing was produced to the Commission until Purcell produced the personal diary [62] at the private hearing on 27 April 2007. He was served with a summons to attend the hearing on 23 April 2007. His explanation for being able to produce the document at that time was that he had located it in his garage after being served with the summons.[63]

2.130 While Commanders are not required to make daily entries in a Duty Book per se, it is clear that Purcell always appreciated that he had been required to produce any record in the nature of a Duty Book, or similar, maintained by him relevant to the investigation. The listening device recorded him giving the following explanation to MAL14 on 25 April 2007:

AP: *She retracted it. I didn't have anything to do with the investigation. Then they asked for our books. No duty book there. I've gone through my diary. I've got it. Fuck them. So I just said, "No, I can't, I can't find it". Get fucked.*

[62] PIC Exhibit 82
[63] PIC Transcript, A M Purcell, 31 May 2007, p. 126.

MAL14: *This is when what?*

AP: *When they – 12 months – last year.*

MAL14: *Yeah*.

AP: *So it's 2005, nearly twelve months later.*

MAL14: *Yeah.*

AP: *2006, two years later. I said, "Nah, I can't find it". I said, "I kept diaries and I've done six stations. I can't find it". I've just left it there. I might take it in. I'll just say I've done another search and (ui). And it's all recorded. And I've rung [deleted name]. I've informed him. I've recorded it in my diary and, and it's obviously dated. I haven't written up a diary. It goes for fuckin', you know, it's all in sequential order, the twenty days."* [64]

2.131 After the listening device recording had been played to Purcell he was examined about that portion of the conversation set out above. He said that at the time he made the above comment he was "*big noting*" himself. That is, that he was *"bigger than – better than the PIC"*.[65] MAL14 is also a senior officer with the NSWPF holding the same rank as Purcell, and also a Local Area Commander. The statement made to MAL14 by Purcell, if true, was an admission of having deliberately refused to comply with a direction from the NSWPF.

2.132 His later evidence appeared to be an attempt to gloss over what his real thoughts were at the time. Immediately following the passage quoted above Purcell emphatically reinforced the truth of what he had just disclosed when MAL14 asked:

MAL14: *So you're disclosing everything? You (ui) now, here tonight?*

AP: *Am I?*

MAL14: *Yeah.*

AP: *Fuckin' oath."*

2.133 In maintaining the assertion that he had only found the diary shortly before the private hearing of 27 April 2007 he revealingly disclosed in his evidence that when it had first been requested in 2006 he had not tried very hard to locate it:

"I didn't really try real hard to find it, because I honestly didn't think it would get to this stage, when my actions and those of my fellow officers were as transparent as they

[64] PIC Exhibit 10B
[65] PIC Transcript, A M Purcell, 31 May 2007, p. 147.

were during this inquiry. So I've got to say I didn't give it another thought after you'd subpoenaed the duty books that it would get this far." [66]

2.134 The only written records of any contact between Fletcher and Purcell and in particular of what Fletcher is alleged by Purcell to have said in their meeting and subsequent phone call on 24 November 2004 and the call the following day are the one entry made by Doueihi and those made by Purcell in his diary.

2.135 Purcell told the Commission that any communication with other police about what had been said was given orally and that the diary was not provided to anyone. He also said that he made no other written record or caused anyone else to make any written record of the fact that he and Fletcher met or that phone calls were received or made or of what was said in the various calls. Until produced to the Commission on 27 April 2007 there was no official record available to the NSWPF or the Commission indicating that Purcell had ever had any role other than the ordinary role of a supervising Local Area Commander.

2.136 As a police officer of approximately 27 years experience, reaching the rank of Superintendent in July 2006, having previously worked with the NSW Crime Commission and the Independent Commission Against Corruption, Purcell must have been aware when first asked to produce his Duty Book that the content of the diary was likely to provoke an investigation when contrasted with the official records. As he acknowledged in his evidence, the production of the diary at the hearing on 27 April 2007 had not done him *"any great favours"*. [67] However, by the time he produced it he really had no option. He was aware of the Commission's interest from at least the time he was first asked for his Duty Book and that other police officers concerned in the investigation or the supervision of it were also being called to give evidence about the investigation. The fact of his meeting with Fletcher was bound to be revealed as was his assertion to various officers that he had made records of his contact with Fletcher. He was also aware of concerns expressed at the time about his conduct and that there were rumours amongst police that he had at least acted improperly. Not to have produced a record at all would have put him in a worse position.

[66] PIC Transcript, A M Purcell, 31 May 2007, p. 147.
[67] PIC Transcript, A M Purcell, 31 May 2007, p. 147.

WHO KNEW OF THE MEETING OR WHAT HAPPENED DURING IT

EVIDENCE OF PURCELL

2.137 Purcell gave evidence that on the morning of 24 November 2004 he liaised with "the detectives" and suggested that he *"could get in contact with Bryan Fletcher to speak with Bryan in a contained environment"*. [68] He said that it was agreed that he would speak to Fletcher while the search warrant was being executed on the premises of MAL12. [69] As to who it was that agreed he said:

"Yes, I think I spoke about it with Alison Brazel and I'm not sure whether Joe was there or not, Joe Doueihi, but I certainly spoke with Alison Brazel prior to doing it and set a course of action in place as to where my interview would go if certain responses were given.[70]

2.138 In his evidence in the private hearing Purcell said that he had decided to contact Fletcher because of the potential for leaks and the possible media circus. He believed that the leaks would impact on or compromise the investigation. He said that other than Binns no one brought to his attention that they disagreed with his decision. [71]

2.139 In respect to informing the investigators of the meeting Purcell said that he certainly reported it to Doueihi and he thought that he told Brazel.[72] Purcell also told the Commission that he could not recall the response of Brazel and/or Doueihi to his suggestion that he would contact Fletcher but he did not think that it was negative.[73]

2.140 Purcell said that he passed onto Brazel orally the information that Fletcher had given him in the meeting that they had on 24 November 2004, telling her that:

- The third person in the photo was MAL13;
- That Fletcher corroborated that all three (MAL12, MAL13 and himself) caught a taxi home and that the complainant entered the bedroom with MAL12 freely;
- That Fletcher walked home arriving at about 5.00 AM
- That Fletcher would attend the police station on 25 November and voluntarily supply a DNA sample.[74]

He believed that he told Brazel about MAL12 having oral sex with the complainant outside the premises, because it is in his notes but he could not recall doing so. He said that he may have also told Sergeant Doueihi but he has no recollection of doing so. [75] He also said that he and Brazel spoke at length during the investigation about the fact that Fletcher had told him on the phone on the Wednesday night [24 November] that he had kissed the complainant on the dance floor at the Orient Hotel and that Fletcher was worried about his DNA being found in her mouth.[76]

[68] PIC Exhibit 15 – PIC Private Transcript, A M Purcell, 27 April 2007, p. 9.
[69] PIC Exhibit 15 – PIC Private Transcript, A M Purcell, 27 April 2007, pp. 9 – 10.
[70] PIC Exhibit 15 – PIC Private Transcript, A M Purcell, 27 April 2007, p. 22.
[71] PIC Transcript, A M Purcell, 30 May 2007, p. 9.
[72] PIC Exhibit 15 – PIC Private Transcript, A M Purcell, 27 April 2007, p. 17.
[73] PIC Transcript, A M Purcell, 30 May 2007, p. 25.
[74] PIC Exhibit 15 – PIC Private Transcript, A M Purcell, 27 April 2007, p. 17.
[75] PIC Transcript, A M Purcell, 30 May 2007, pp. 29 – 31.
[76] PIC Exhibit 15 – PIC Private Transcript, A M Purcell, 27 April 2007, p. 25

EVIDENCE OF DOUEIHI

2.141 Doueihi gave evidence that shortly after Fletcher had been identified in the photograph Purcell had told him that he intended to contact Fletcher and make arrangements for him to attend the police station for an interview or a forensic procedure. Doueihi agreed that the fact that Purcell had contacted Fletcher could be inferred as compromising the investigation. He said he found it unusual at the time that Purcell would do that and he discussed it with Purcell and Purcell said he was happy with what he was doing. Purcell told Doueihi that he was making notes of all the contact he had with Fletcher and that he in fact had informed the Region Commander, Mr Bob Waites, of the situation and his actions. [77]

2.142 As to what he was told by Purcell about what had occurred during the meeting, Doueihi told the Commission he could not recall the exact conversation he had with Purcell about the meeting with Fletcher but Purcell said that Fletcher was very concerned because he didn't want his wife to find out about the allegation. Doueihi said he recalled that Purcell told him that Fletcher may have had some concerns about supplying his DNA and he thought that Fletcher was told that if he didn't voluntarily supply his DNA, there might be a court application to obtain it.[78]

EVIDENCE OF BRAZEL

2.143 Brazel gave evidence in two separate private hearings before she gave evidence in the public hearing. In the first private hearing Brazel told the Commission that the police had two addresses for Fletcher but no phone number. She said she knew that Purcell initiated contact with Fletcher but she didn't know why or how that came about. She believed that it was a strategy that was discussed. Brazel was aware that Purcell had a meeting with Fletcher possibly on the Wednesday (24 November) or Thursday (25 November) in the Commander's office at Bondi police station and she was not aware of anyone else being at the meeting. She found out about the meeting through her supervisor, Doueihi, but she never saw any record of that meeting nor did she receive any information about the meeting. She said that as a result of the meeting Fletcher attended the police station and participated in a voluntary forensic procedure. Brazel said she never asked Purcell for a record of the meeting, as there was no issue in her mind in relation to the investigation. In her view nothing adverse came out of the meeting. The meeting didn't compromise the investigation and Fletcher volunteered to undergo a forensic procedure.[79]

2.144 In her second private hearing (after Purcell had given evidence in private) Brazel told the Commission that she did not recall being told by Purcell that Fletcher had told him:

- That he (Fletcher) had been in the taxi with MAL12 and MAL13 and that MAL12 had a girl with him.
- That when they got to MAL12's premises the girl commenced having oral sex with MAL12 out front of the premises.

[77] PIC Exhibit 17 – PIC Private Transcript, J J Doueihi, 26 April 2007, p. 6.
[78] PIC Exhibit 17 – PIC Private Transcript, J J Doueihi, 26 April 2007, p. 9.
[79] PIC Exhibit 16 – PIC Private Transcript, A R Brazel, 26 April 2007, pp. 10 – 12.

- That he (Fletcher) and MAL13 went inside and got a drink and by that stage MAL12 had gone into a front bedroom and was clearly having sex with the female.
- That Fletcher and MAL13 had then left and Fletcher had walked home and was home by 5.00 AM.[80]

Brazel agreed that it was relevant information and that if she had known she would have made a record of it and that there was no record of the meeting in the police investigation file.

2.145 Brazel also agreed that it would have been very important to her as the officer in charge of the investigation to have known what Fletcher said to Purcell about MAL12 and the complainant engaging in oral sex when they arrived outside the house and that he and MAL13 were present inside the house when MAL12 apparently engaged in sexual intercourse with the complainant.

This information she said would have indicated that there was evidence available that MAL12 and the complainant had engaged in sexual intercourse and that there were three persons present in the house, together with an indication of the time that Fletcher arrived home. Brazel conceded she never made inquiries of Fletcher's wife.[81]

2.146 Brazel told the Commission that she did not ask Purcell for any notes that he may have made regarding his meeting with Fletcher but if she had been told that he had made some she would have asked for them. When asked whether that meant notes had never been offered to her she said that she had never seen any notes of the meeting made by Purcell.[82]

2.147 She also said that the first time she heard that Fletcher was concerned about his DNA because he had kissed the complainant at the Orient Hotel was when he gave his DNA sample. Nor did Brazel recall Purcell telling her that he had had telephone conversations with Fletcher on the evening of 24 November 2004.[83]

2.148 Later in evidence during her second private hearing Brazel said she did not recall Purcell telling her that Fletcher was not involved in the alleged rape. She also said that she did know that Fletcher and Purcell had met and as a result of that meeting Fletcher would provide a DNA sample.

2.149 She made an offer to Fletcher to take part in a record of interview, but she did not recall if she had been told that he had earlier refused to take part in one. Nor could she recall whether it had been suggested to her that he would provide a witness statement.[84]

2.150 Having been made aware by the Commission of information that Purcell says he obtained from Fletcher, Brazel conceded that her position as the officer in charge of the investigation had been *"compromised"*, given that she had not been provided with this information.[85]

[80] PIC Exhibit 81 – PIC Private Transcript, A R Brazel, 29 May 2007, pp. 18 – 19.
[81] PIC Exhibit 81 – PIC Private Transcript, A R Brazel, 29 May 2007, p. 21.
[82] PIC Exhibit 81 – PIC Private Transcript, A R Brazel, 29 May 2007, p. 21.
[83] PIC Exhibit 81 – PIC Private Transcript, A R Brazel, 29 May 2007, p. 20.
[84] PIC Exhibit 81 – PIC Private Transcript, A R Brazel, 29 May 2007, p. 26.
[85] PIC Exhibit 81 – PIC Private Transcript, A R Brazel, 29 May 2007, p. 36.

OTHER DISCLOSED CONTACT BETWEEN PURCELL AND FLETCHER

2.151 Purcell told the Commission of contact with Fletcher on three other occasions. These took place after he had ceased acting as the Local Area Commander and when he had no further involvement in the investigation. Purcell did not document these contacts.[86]

2.152 On the first occasion Fletcher contacted him and said that there were leaks about the matter and asked whether he (Purcell) would speak to Shane Richardson, the Chief Executive of the South Sydney Rugby League Club, about it. Purcell said that he told Fletcher that he would not be able to disclose anything but was willing to confirm for Richardson that there was no evidence to link Fletcher to any offence. Purcell said that he gave that information to Richardson with the full knowledge of the investigators.[87]

2.153 On 19 December 2004 an article was published in the Sunday Telegraph titled "Innocent Rabbitoh Fletcher assists police". The article contained an outline of the allegation said to have come from police who were also said to have confirmed that Fletcher was not a suspect and that the complainant had told police "she no longer wishes to press charges". The article also quoted Richardson as saying, *"I have spoken to the police today and there is no case to answer"*. [88]

2.154 On the second occasion that Fletcher contacted him Fletcher was concerned because his wife had found out about the matter and he asked whether Purcell could reassure her that he was not involved in the offence. Purcell said that he spoke to her over the telephone and advised her that there was no evidence to link Fletcher with any offence. Purcell also said that he confirmed with her that Fletcher had arrived home at 4.45 am on the morning of 20 November 2004.[89]

2.155 The third occasion also concerned the publication of the article in the Sunday Telegraph on 19 December 2004.[90] Purcell said that on this occasion Fletcher was concerned about leaks to the press. Purcell said that he informed Fletcher that if there were any leaks they were not coming from the police. Purcell also told the Commission that he informed Fletcher that he no longer had anything to do with the investigation.[91]

2.156 Purcell denied being the source of the information said to have come from police contained in the newspaper article. There is no evidence that he was the source other than in respect of what Richardson is quoted in the article as saying.

2.157 At the time of the telephone contacts between Fletcher and Purcell the investigation team was still awaiting the results of the analysis of the DNA samples taken from MAL12, MAL13 and Fletcher. The only independent evidence of the time Fletcher arrived home was that obtained by Purcell who had confirmed with Fletcher's wife that he had arrived home at about 4.45 am. Nevertheless even on the version Purcell alleges that Fletcher gave him, Fletcher could have been present at the premises at the time of the alleged

86 PIC Exhibit 15 – PIC Private Transcript, A M Purcell, 27 April 2007, pp. 15 – 16.
87 PIC Exhibit 15 – PIC Private Transcript, A M Purcell, 27 April 2007, p. 15.
88 PIC Exhibit ATH3C
89 PIC Exhibit 15 – PIC Private Transcript, A M Purcell, 27 April 2007, p. 16.
90 PIC Exhibit 15 – PIC Private Transcript, A M Purcell, 27 April 2007, pp. 16 – 17.
91 PIC Exhibit 15 – PIC Private Transcript, A M Purcell, 27 April 2007, pp.15 – 17.

offence.

2.158 In those circumstances, considering that Purcell was no longer involved in the investigation, the Commission considers that it was improper of him to disclose to anyone, let alone Fletcher, Fletcher's wife or Richardson that, "at this stage no evidence linked him (Fletcher) with any offence". It is obvious that to disclose to a potential offender that the police had no evidence implicating him or her is unlikely to assist an investigation.

2.159 The evidence obtained during the Commission's investigation shows that, whether his assessment of the state of the evidence in the assault investigation was correct or not, Purcell was prepared to disclose confidential information which should not have been disclosed. In doing so he was not acting in the interests of the investigation but doing a favour to assist someone who was at the very least a person of interest in the investigation, if not a suspect, and who had declined to assist the police by taking part in an interview or providing a statement.

UNDISCLOSED CONTACT – PURCELL AND FLETCHER- TICKETS TO GAME

2.160 During the recorded conversation between Purcell and MAL14 on 25 April 2007 Purcell also revealed that:

- he had received three tickets to the 2005 pre-season Charity Shield rugby league match between St George and South Sydney from Fletcher,
- he perceived the receipt of the tickets as a matter of serious concern; and
- he was not going to reveal the receipt of the tickets to the Commission unless he was specifically asked about them at the private hearing which he was about to attend.[92]

2.161 During that conversation with MAL14, Purcell recounted a telephone conversation with Fletcher in which Fletcher invited him to a golf day. When Purcell indicated that he was unable to attend Fletcher subsequently offered to provide the tickets to the Charity Shield match. Purcell indicated to MAL14 that he and two friends went to the game and that he believed that he had made an error in accepting the tickets.[93]

2.162 Purcell also speculated whether the Commission would send investigators to the United Kingdom to interview Fletcher and whether Fletcher would tell the Commission about the tickets. He concluded that even if the Commission did send investigators to speak to Fletcher he would not inform them about providing the tickets to Purcell. Purcell also said that there was no bribery involved in the matter as Fletcher was not involved in the assault.[94]

2.163 Purcell added that while he was not going to inform the Commission about the receipt of the tickets he was going to tell the Commission about everything else.[95]

2.164 When Purcell gave evidence two days later he did not disclose the contact with Fletcher or the receipt of the tickets. Nor did he disclose it when he was called again during the public hearing on 30 May 2007 until after the recorded conversation had been played.

[92] PIC Exhibit 10B
[93] PIC Exhibit 10B
[94] PIC Exhibit 10B
[95] PIC Exhibit 10B

2.165 During the conversation he referred to receiving the tickets three months later which means that at the earliest he received them was in late January or early February 2005. That was well after his contact with Fletcher about the Sunday Telegraph article published on 19 December 2004. On 27 April 2007 Purcell gave evidence that he had had no contact with Fletcher since the time of the newspaper article.[96]

2.166 On 27 April 2007 Purcell gave further evidence that after he received the summons to appear at the Commission he had not contacted any person about the allegation concerning the gang rape. However he said that he had spoken to a fellow officer about another matter and was told by that officer that he also had received a summons to attend the Commission. The other officer informed Purcell that he had been instructed not to speak about the matter and Purcell told the Commission that they had not done so.[97]

2.167 Contrary to his evidence, Purcell had been recorded the previous evening arranging with MAL14 to deny that they had had any conversation about this matter unless the Commission played a tape of it. Purcell added that if a recording of the conversation was played then he would say that he spoke to MAL14 on a welfare basis.[98]

2.168 In his evidence on 27 April 2007 Purcell acted in accordance with the arrangement he made with MAL14 not to disclose the conversation they had on 25 April 2007.

2.169 The summons served on Purcell included a statement that:

"You must not disclose any information about this summons, except where the disclosure is made in accordance with the Police Integrity Commission Act 1996"

With the summons was a notice headed "Information for Witnesses" which set out what could not be disclosed and the circumstances in which a disclosure could be made. The disclosure to MAL14 does not fall within the disclosures permitted.

2.170 Purcell paid no regard to the requirement not to disclose, even though he was well aware of the requirement. He told MAL14:

"The scope, the scope of it is – which I'm not supposed to say but that's too bad – the scope is police, serving police, former police and other people have indulged in serious misconduct and/or criminal ac-, criminal activity in relation to the investigation of a sexual assault that was reported at Waverley on the 20th of November (ui)" [99]

THE 2006 STATE OF ORIGIN, PURCELL AND MAL12

2.171 On 27 April 2007 Purcell told the Commission that he had been in Melbourne for the final rugby league State of Origin game in 2006 between NSW and Queensland when he was introduced to a former football player in the hotel foyer. MAL12 was also there and overheard the conversation and introduced himself.

….. the guy on the other lounge got up and walked over to me and shook - put his hand

[96] PIC Exhibit 15 – PIC Private Transcript, A M Purcell, 27 April 2007, p. 17.
[97] PIC Exhibit 15 – PIC Private Transcript, A M Purcell, 27 April 2007, p. 22.
[98] PIC Exhibit 12B
[99] PIC Exhibit 10B

out and said, "I think you know me". I said, "Well, I don't". He said, "I'm [MAL12]", and he shook my hand, and he said, "I think I need to thank you" - or "I think I should give you some thanks" - I don't know exactly how he said it. He wouldn't have said "gratitude" because he's not that learned, and I said to him - it was a bit embarrassing because I was still sort of in the crowd, so I sort of moved away from the crowd and I said, "[MAL12], you don't need to thank me because, I'll tell you this, I had - I did nothing untoward. I did nothing that assisted you and, indeed, I don't have much time for you and I'll ask you just to move away from me", and he said, "Oh, you don't have to be like that", I said, "Yeah, I do, and just - let's just go our separate ways"

Then we moved off and I think we went to a hotel and next minute - or some time after we attended the hotel in Melbourne, I don't know which one it was, [MAL12] walked in and attempted to buy me a drink and I refused it. I said, "I don't want a drink and I don't want anything to do with you", and I said, "Just get on with your life and I'll get on with mine", and with that I left the hotel and went to the casino on the way home and, again, some time later he rolled up, but he didn't attempt to make any contact with me, and I haven't seen him since. I have never spoken to [MAL13] ever, and until that time, I'd never spoken to [MAL12]." [100]

2.172 However, in his conversation with MAL14 two days earlier, Purcell had provided a different version of the contact he had had with MAL12. He told MAL14 that he had met MAL12 in Melbourne in 2006 while he was there for the State of Origin rugby league match. He was approached by MAL12 who thanked him for what he had done. Purcell told MAL14 that he said to MAL12 that any thanks should be directed to the victim, because if she had maintained her complaint he (MAL12) would have been charged. Purcell then said to MAL12 *"… but, mate, no worries. Have a good night, catch you later"*. Purcell also told MAL14 that he now believed that Fletcher had told MAL12 and MAL13 that he was friends with Purcell and that they would be *"alright"*. He also believed that MAL13's wife who had left him over the incident was somehow responsible for the inquiry being conducted.[101]

2.173 There is a significant difference between this earlier version and Purcell's later evidence in that there is just one conversation which commences with a relatively convivial greeting from Purcell on introduction to MAL12 and a similarly convivial departing comment, *"… but, mate, no worries. Have a good night, catch you later"*. In evidence he spoke of two conversations the tone of which he presented as both indignant and hostile on his part. On the first occasion the later part of the conversation was; *"I don't have much time for you and I'll ask you just to move away from me"*, and he said, *"Oh, you don't have to be like that", I said, "Yeah, I do, and just - let's just go our separate ways."* This was followed by a further meeting on the same night at a different venue when he said MAL12 offered him a drink and he replied; *"I don't want a drink and I don't want anything to do with you", and I said, "Just get on with your life and I'll get on with mine"*.

[100] PIC Exhibit 15 – PIC Private Transcript, A M Purcell, 27 April 2007, p. 27
[101] PIC Exhibit 10B.

2.174 A third version of his contact with MAL12, which is also significantly different to the other two versions, was provided to Brazel during the course of a telephone conversation lawfully recorded by the Commission on 28 March 2007.

AP: I'll tell you this for free. I've heard, ah now it jogs the memory. When I was down in Melbourne last year for the last origin game.

AB: Yeah, yeah.

AP: I ah met, who was the guy that you did the search warrant on who was the main protagonist?

AB: [MAL12].……

AP: So I went to a couple of functions and [MAL12]'s there. Anyway he came up to me and said, you don't remember me. I said I don't have a clue who you are. He said I'm ah [MAL12] or whatever his name is, you're Adam Purcell, thank you very much. I said mate, no need to thank me, we didn't do any-, I didn't do anything to help ya. And I, I saw him at a couple of other things later on and I said ah fuck it, I had a few beers in me one night. I said mate, what did happen that night, will you tell me?

AB: -Laughs- Yeah.

AP: And Bryan Fletcher got a head job on the front ah, the front garden.

AB: Yeah, yeah.

AP: Um, and came in.

AB: Yeah.

AP: They both started having sex with her and

AB: They, Bryan Fletcher?
AP: No.

AB: with [MAL12] or

AP: No. The brother, the brother and [MAL12].

AB: Right, right.

AP: And Bryan was watching

AB: Right.

AP: 'cause he'd already got the head job.

AB: Yeah.

AP: And then she said no, no, that's it

AB: Yeah.

AP: and he ran away.
AB: He ran away? Bryan Fletcher ran away?

AP: Ran away, ran home.

AB: -Laughs- Right.

AP: And he, he swears that when she said no that was it.

AB: And they all stopped.

AP: Yeah. Well, so he sai-, told me, I don't give a fuck.

AB: Mm, mm.[102]

2.175 The significance of this version is that as with the version told to MAL14 the meeting with MAL12 is of a different nature to that he suggested in his evidence before the Commission and that the indication is that he met MAL12 again either later that night or a different night when Purcell asked MAL12 to tell him what had occurred on the night of the alleged assault.

2.176 The further contact, whether or not it was on the same night in Melbourne or on some later occasion, is highly significant. According to Purcell's account, not only did MAL12

[102] PIC Exhibit 8AC, pp. 6 – 8.

thank him for the help provided in respect of the allegation but he so trusted Purcell that he was prepared to reveal to Purcell a version of the events in which it was revealed that Fletcher had oral sex with the complainant and that he said Fletcher had been present watching MAL12 and MAL13 having sexual intercourse with her. Then when the complainant said *"no, no, that's it"* he ran away. This version supports, in part at least, the complaint made by the complainant and was significantly different to the version that Purcell recorded in his diary as being given to him by Fletcher on 24 November 2004.[103]

2.177 In respect of what he says that MAL12 told him in their encounter in Melbourne he should have made an official record. Although the investigation had been suspended in March 2005, whether or not the information provided by MAL12 could have been used against him in a prosecution, that information was very significant and should have been recorded for intelligence purposes and in case there was any consideration in the future of proceeding.

2.178 When confronted at the hearing on 31 May 2007 with the intercepted call between himself and Brazel, Purcell was asked whether what he told Brazel was a true recollection of the conversation he had with MAL12 in Melbourne. Purcell said that he couldn't recall having that conversation with MAL12.[104]

2.179 When pressed on whether he had been "making up" what he told Brazel in the telephone call, he responded that he could not recall.[105]

2.180 Purcell was asked whether what he told Brazel about the allegation made by MAL12, that Fletcher had engaged in oral intercourse with the complainant outside the residence and that he (Fletcher) had watched while MAL12 and MAL13 had intercourse with her until she withdrew her consent and then ran away, was a truthful recounting of the conversation with MAL12 in Melbourne. He responded *"If I told Alison Brazel that on the 20th, yes. But I don't have any independent recollection."*[106]

2.181 He agreed that what he told the Commission in his private evidence on 27 April 2007 was entirely inconsistent with what he told Brazel in the telephone conversation only a month earlier.[107]

2.182 During the examination he was asked whether he had met MAL12 on more than one occasion and he responded that;

"My recollection of that is that I met him on one night over a series of three places. My recollection isn't that I met him at another place afterwards, and certainly not back in Sydney." [108]

[103] PIC Exhibit 82.
[104] PIC Transcript, A M Purcell, 31 May 2007, p. 127.
[105] PIC Transcript, A M Purcell, 31 May 2007, p. 128.
[106] PIC Transcript, A M Purcell, 31 May 2007, p. 128.
[107] PIC Transcript, A M Purcell, 31 May 2007, pp. 129 – 130.
[108] PIC Transcript, A M Purcell, 31 May 2007, p. 130.

2.183 Purcell said that the portion of the conversation between himself and MAL12 in which he asked him "Mate, what did happen that night, will you tell me?" could quite possibly have taken place in those terms as he was always of the opinion that Fletcher had engaged in oral intercourse with the complainant and he was sure that he had spoken with Brazel and possibly other police involved in the investigation about it.[109]

2.184 However when pressed about whether it was a true recollection of what he had been told by MAL12 he responded that "I don't recall [MAL12] telling me that, and I don't recall saying that to Alison, but I obviously have." He denied making up the content of the conversation with MAL12. He was asked:

"*Q: So you had had a conversation with [MAL12] in which he told you those things? A: Well, I presume so, that if I said that to Alison, that that would have been right."* [110]

2.185 Purcell's evidence was that apart from telling Brazel in March 2007 what MAL12 had told him in July 2006 he had not made a record of the conversation with MAL12. His explanation for not doing so was that the investigation was concluded and the complainant had withdrawn her complaint within 24 hours. He suggested that if the investigation was re-opened he would have passed on the information.[111]

2.186 Purcell was also examined on his failure to inform the Commission on 27 April 2007 and 30 May 2007 of the content of the conversation with MAL12 as given to Brazel. When asked whether he could have forgotten the conversation he responded:

"No, but at this stage - what I'm saying is I could have quite honestly forgotten that piece of the information. But, at the end of the day, it was still not inculpatory. It was still consensual. It had nothing to do with Bryan Fletcher, insofar as him committing any offence, and the information, in any event, was passed on to Alison Brazel." [112]

2.187 Purcell had acquired significant and relevant information in July 2006 from MAL12 in Melbourne at the State of Origin game. He was able to give a detailed account of that conversation to Brazel less than a year later on 28 March 2007. On 27 April 2007, one month later, he gave a highly detailed account of his meeting with MAL12 in a private hearing. Not only was that account significantly different in respect of his asserted reaction to MAL12, it failed to disclose the most relevant feature of the contact. Purcell's claim is not that he had forgotten the call but that he could have forgotten the conversation with Brazel. His claim that he did not report the conversation immediately was because it was not inculpatory and had nothing to do with Bryan Fletcher cannot be accepted. The information was significant and should have been reported to the investigating officer or at least reduced to writing and attached to the case file.

BRAZEL AND THE TELEPHONE CALL OF 28 MARCH 2007 WITH PURCELL

2.188 When giving evidence on 26 April 2007 Brazel disclosed the telephone call with Purcell when asked about any recent contact she had had with anyone in respect of this matter. She gave

[109] PIC Transcript, A M Purcell, 31 May 2007, pp. 130 – 131.
[110] PIC Transcript, A M Purcell, 31 May 2007, p. 131.
[111] PIC Transcript, A M Purcell, 31 May 2007, p. 132.
[112] PIC Transcript, A M Purcell, 31 May 2007, p. 133.

the following evidence:

Q: What was your conversation with him?

A: He told me about some rumours that he'd heard in relation to the investigation.

…

Q: … What did he tell you about rumours?

A: That he'd heard through a third party that [MAL12] and [MAL13] had had sex – which we knew from the DNA anyway, had had sex with the complainant and that he had heard that Bryan Fletcher had oral sex with the victim. It was certainly not in the context of what the victim had described in consent – with the story he [was] being told. I believe, was it was all consenting.

Q: I see. Those three persons had had sexual contact with her, but that it had been consented to?

A: Yes.

Q: And did he tell you where he heard that rumour –

A: He did tell me –

Q: -- who he'd heard it from?

A: -- and I cannot remember the name of the person he said he heard it from.

Q: Are you aware of Commander Purcell having any contact with Mr Fletcher or the two [MAL]s since the time of the investigation being completed?

A: No, I'm not."[113]

2.189 One rumour that Purcell told her that he had heard was, "… *I remember the admin girls were going "Oh, it's because Adam Purcell knows Bryan Fletcher it was squashed"*.[114] Brazel in the call told him that she had also heard that rumour. That rumour was not one that Brazel told the Commission that had been referred to by Purcell.

2.190 Significantly, in respect of the rumour that she did disclose she claimed not to be able to remember the name of the third party that Purcell said he had heard it from and also said that she was not aware of Purcell having any contact with MAL12 since the time of the investigation.[115] This was despite the fact that it was Brazel who in the call had to provide Purcell with the name of the "main protagonist", MAL12. [116]

2.191 When called to give further evidence on 29 May 2007 the intercepted call was played to Brazel and she was then asked the following questions in relation to the part of the call set out above:

Q: That call, Ms Brazel, was on 28 March 2007 at 15:49:25, so it was approximately a month before you gave evidence here on the last occasion?

[113] PIC Exhibit 16 – PIC Private Transcript, A R Brazel, 26 April 2007, p. 15.
[114] PIC Exhibit 8B
[115] PIC Exhibit 16 – PIC Private Transcript, A R Brazel, 26 April 2007, p. 16
[116] PIC Exhibit 8B

A: Yes.

Q: In that call Mr Purcell told you that he hadn't spoken to Bryan Fletcher in over - well, it would be over 12 months?

A: Yes.

Q: Then he did tell you about speaking with [MAL12]?

A: Yes.

Q: At the State of Origin?

A: Yes.

Q: And he did tell you about [MAL12] on apparently some other occasion giving him information about what he, [MAL12], said had happened on that night?

A: Yes.

Q: That would have all been highly significant information to you, wouldn't it?

A: Yes.

Q: It wasn't something you could have forgotten about between 28 March and the time at which you gave evidence on 26 April, was it?

A: Well, I did. I was mistaken, and I can tell you why. He said he was with another person, [name deleted]. That's the name I couldn't remember, and that's who I believed when I gave my evidence last time he said he had spoken to. Clearly I was wrong." [117]

2.192 In the call Purcell clearly tells Brazel that he had met with MAL12 at the State of Origin game and that MAL12 had introduced himself by name to Purcell and then thanked him. As far as Brazel knew there had never been any contact between Purcell and MAL12 during the investigation. The assertion that MAL12, a person identified by the complainant as somebody involved in a serious sexual assault upon her, had thanked Purcell is something that must have stood out to her. Particularly when she was already aware of rumours that Purcell had "*squashed*" the investigation and that such rumour must also adversely reflect on her as the investigation team leader.

2.193 Purcell also clearly tells Brazel that MAL12 gave him a version of the events that was significantly relevant to the investigation. Brazel knew that Fletcher, MAL12 and MAL13 had all refused to be interviewed. She was, on her evidence, completely unaware of any version of the events said to have been given by Fletcher to Purcell. It is difficult to accept that she could have misunderstood or forgotten within one month of the disclosure to her by Purcell of MAL12's version of the events of the night of 20 November 2004. Brazel's evidence that she thought that it was someone else who had supplied the information is difficult to accept. Even if she might have been mistaken in that respect, she had been

[117] PIC Exhibit 81 – PIC Private Transcript, A R Brazel, 29 May 2007, p. 13

told by Purcell that he had met with MAL12 but her evidence to the Commission was that she was not aware of Purcell having any contact with either MAL12 or MAL13 or Fletcher since the time of the investigation.[118]

[118] PIC Exhibit 16 – PIC Private Transcript, A R Brazel, 26 April 2007, p. 15

3. THE RELEASE OF CONFIDENTIAL POLICE INFORMATION

3.1 On 30 May 2007 the general scope and purpose of the public hearing was amended with the addition of the following paragraph:

"Whether Superintendent Adam Purcell has been involved in serious misconduct or criminal activity in relation to the release of confidential police information."

THE NSW POLICE FORCE CODE OF CONDUCT AND ETHICS

3.2 The NSWPF Code of Conduct and Ethics must be complied with by every employee of the Police Force. Failure to do so may result in management action being taken against an officer or employee. The list of requirements, while broad, consistently reflects the need for ethical behaviour by all officers and employees.

3.3 The code requires amongst other things, that all employees

- Act with care and diligence while on duty.
- Know and comply with all policies, procedures and guidelines that relate to their duties.
- Access and use and/or disclose confidential information only if required by their duties and allowed by NSWPF policy.
- Not make improper use of their position or the NSWPF information or resources.

THE NSW POLICE FORCE MEDIA POLICY

3.4 The NSWPF Media Policy[119] is designed to enable police to effectively communicate with the community via the media. It urges officers to always keep the Police Media Unit (PMU) informed of any contact they may have with the media. All police employees, i.e. sworn officers and civilians, are required to comply with the policy. The policy provides that breaches may result in disciplinary action or criminal or civil sanctions.

3.5 The policy acknowledges however the need for co-operation between the NSWPF and the media. The aim of the policy is to ensure that the relationship between them functions smoothly. It applies to all forms of media: local and metropolitan press, radio and television and the internet. All employees whether on duty or not, on leave, or the subject of suspension are bound by the policy.

3.6 NSWPF officers have obligations to maintain confidential information which becomes available to them in the course of their duties. The policy stresses that the release of such information may result in civil or criminal action.

3.7 Police officers are urged to contact the PMU whenever they are dealing with any of the following situations:

- Suspicious deaths
- Emergencies or disasters
- Major arrests

[119] PIC Exhibit 84

- Serious crimes
- Controversial issues
- Incidents involving celebrities
- Requests to interview, photograph or film police

3.8 The policy stresses that fairness in dealing with the media is one of the guiding principles. Favouring one outlet over another can create ill feeling among those journalists who do not receive the information. Such a situation can have long lasting ramifications on the relationship between the media and the NSWPF.

3.9 The policy stresses the need for care when dealing with confidential information and requires that the PMU be contacted before information is released to the media.

3.10 Police officers are advised that comments on routine operations or investigations can be given by the officer in charge of the operation or investigation or the Local Area Commander. However, consideration should be given to the implications any announcement might have for other commands and if there are possible implications then approval must be obtained from the relevant senior officer of the Command or from the PMU.

3.11 The policy contains a description of matters that can and cannot be revealed to the media during an investigation. Amongst those that should not be revealed are details of criminal methods or distinguishing methodology used by criminals or the investigating police. In respect to criminal methodology the purpose is to reduce the possibility of copy-cat offenders. The prohibition on the release of police methodology is obviously directed towards preventing the criminal from planning against the application of the methodology to avoid detection.

3.12 In respect to victims of crimes the policy states that information that would identify, embarrass or distress a crime victim or reveal their address should never be released. Nor should any information which would reveal details of a crime that might be known only to the offender.

3.13 During the investigation conducted by the Commission evidence was obtained by means of electronic surveillance that Purcell had extensive contact with selected members of the media and provided them with information which in some cases was subsequently published.

3.14 Purcell was also detected passing information about on going investigations to members of the public who should not have been provided with that information.

THE QUENTEN ROBERTS MATTER

3.15 On 14 March 2007 two telephone calls involving Purcell were lawfully intercepted by the Commission. The first call was made to Michelle Roberts, a personal friend. The second call was made to Purcell by her husband, Quenten Roberts.

3.16 In the first call to Michelle Roberts Purcell informed her about a police investigation into a person who had been recently sacked at a hotel at which Quenten Roberts had previously been a manager. He asked her to arrange for Quenten Roberts to telephone him. Purcell's concern was that he did not know how far back into the affairs of the hotel the fraud investigation would go and whether it would cover the period when Quenten Roberts had been the manager. Because of his concern that the investigation may involve Quenten Roberts, Purcell stressed to Michelle that she was not to tell Quenten what it was about over the telephone because telephones may be "off" as a result of the investigation.

3.17 He then went on to explain that he needed Quenten Roberts to "come and see me. ... I don't know how far back it's going ..".[120] Purcell told Michelle Roberts to tell Quenten Roberts to ring him and make an appointment to see him about football jumpers; a subterfuge to enable them to arrange a face to face meeting where the matter could be discussed. He told her that it was alright for Quenten Roberts to ring him on the mobile telephone to ask about the football jumpers.

3.18 Approximately two hours later Quentin Roberts returned the call. Purcell then told him: *"...Mate I-I can tell you over the phone, um, not ah jeopardising anything ah now, what's happened is um, we went down to the pub, there was an issue there, ah er, at [name of hotel deleted] on Sunday morning involving Bankstown police and oh all sorts of things and our police got involved and it was a shit fight ..."*[121]

3.19 Purcell then informed Roberts that he had been told by the new manager of the hotel that the former manager had been dismissed and that when he asked why he was told that the Fraud Squad was involved and that he may have been under arrest. Purcell explained that he had made contact with Roberts to let him know *"just out of interest"*.

3.20 Purcell proceeded to inform Roberts of the amount involved in the fraud. Then contrary to his explanation that he was informing Roberts *"out of interest"* he said that he had been concerned that the investigation may have extended to the period when Roberts had been involved with the hotel. He also expressed the concern that Roberts may have been called as a witness.[122]

3.21 It is clear from this exchange that Purcell was sufficiently concerned that his friend may have been involved in the investigation in some way that he was prepared to alert him to the current inquiries being conducted by the police.

[120] PIC Exhibit 21
[121] PIC Exhibit 23
[122] PIC Exhibit 23

3.22 Purcell added in the course of the call that he initially believed that the Fraud Squad was conducting the investigation and he was concerned because he thought the local police, of which he was the Commander, had not been informed. That fact had aroused his interest and he sought an explanation by contacting the solicitors for the hotel. It would appear that it was from them that he became aware of the extent of the fraud and that it ultimately had been reported to the local police and was not being conducted by the Fraud Squad. His second reason was to identify how extensive the investigation was and whether it would cover the period during which Roberts had been at the hotel.[123]

3.23 Approximately six weeks prior to the telephone conversations with Michelle and Quenten Roberts Purcell became aware that Quenten Roberts had approached a senior police officer who was due the following day to interview Purcell's ex-wife, for a promotion. Roberts approached the officer in an attempt to get the questions that Purcell's ex-wife would be asked in her interview. The approach was reported by the senior police officer and an investigation into the incident was carried out by NSWPF. During the course of that investigation the investigating officer contacted Purcell who said that Quenten Roberts was completely unaware of what could happen as a result of his action. He also described Roberts in very unflattering terms.

3.24 When it was put to him in evidence that the comments on the character of Quenten Roberts that he had made to the investigating officer were a reflection of his opinion of Roberts, Purcell acknowledged that it was his opinion of Roberts. However, shortly before that passage and the circumstances in which it was said were put to him, he gave the following evidence.

Q: You didn't actually have a very high opinion of his integrity, did you?

A: I don't have any comment on his integrity.[124]

3.25 The purpose of the two calls is clear from their content. In view of what he told Michelle Roberts it is clear that the only telephone Purcell had in mind as possibly being intercepted was that of Quenten Roberts. Purcell also told Michelle Roberts that he wanted to see Roberts personally because Purcell would not be able to say much over the telephone and requested that she tell Roberts to use a code, *"football jumpers or, you know something like that"*, when ringing Purcell to arrange a meeting.

3.26 Quenten Roberts rang Purcell approximately two hours later and by that time Purcell had obtained further information; *"Mate I-I can tell you over the phone, um, not ah jeopardising anything ah now ... when I rang Smurf I just ah, ah, as I said I wasn't quite as much in the picture as I am now"*.

3.27 The two calls make it clear that Purcell was prepared to and intended to give Roberts, a friend, a *"heads-up"* in respect of a police investigation into a serious fraud and to do

[123] PIC Exhibit 23
[124] PIC Transcript, A M Purcell, 1 June 2007, p 182

so in a clandestine fashion. If Roberts had been under investigation then any information provided by Purcell would have alerted him and forearmed him. It is clear in the first call to Michelle Roberts that Purcell was endeavouring to assist his friend. Significantly Purcell also asked Quenten Roberts to keep the information he had provided confidential.[125]

3.28 When confronted with these calls Purcell endeavoured to portray his actions as being of assistance to the investigation because Roberts may have been a witness who could provide evidence to the investigators. Such an assertion cannot be accepted in the face of the unambiguous content of the calls and the fact that Purcell believed that neither he nor his command were involved in the investigation when he tried to arrange the clandestine meeting with Roberts.

3.29 Purcell acknowledged in the call that providing the information to Roberts may jeopardise the investigation. The potential compromise was clear from the fact that the alleged offender was identified to Roberts and that he appeared from the calls to know him and that Purcell was then unaware if the alleged offender knew of the investigation. Regardless of that perception, Purcell improperly provided the information to Roberts before requesting that he keep it confidential. Considering his expressed opinion of Roberts, he could have had no faith in Roberts maintaining confidentiality. In any event, the information should never have been provided to Roberts.

3.30 Purcell's apparent concern that the person under investigation may not have been aware of the extent and he did not want to "jeopardise" the investigation appears somewhat hollow when compared with his own intentions in informing Roberts of the investigation when he thought that Roberts may have been a person of interest.

3.31 The parallels between Purcell's actions in this matter and the manner in which Purcell dealt with Fletcher in the sexual assault investigation are obvious.

DEALINGS WITH THE MEDIA

3.32 The next two matters deal with Purcell's relationship with the media. The very nature of a journalist's job is to seek information on matters of public interest from a reliable source and report on it. There is nothing unlawful or even improper in a journalist seeking to obtain information by making personal contact with a police officer and asking questions and seeking clarification of matters that they wish to report on. However, it may not be lawful or proper for the police officer to respond and provide the information or confirm matters that may or may not be correct. It would also be a different proposition if to obtain the information a benefit or reward was offered or given. There is no evidence here that a reward or benefit was offered or provided. However, there is evidence that Purcell released confidential police information to selected members of the media which contravened the NSWPF Media Policy.

[125] PIC Exhibit 23

THE CRONULLA RIOTS REPORT

3.33 The "Cronulla Riots" as they are now commonly referred to, took place between 11 and 13 December 2005. Not long after that the then NSW Commissioner of Police directed that a review be undertaken in relation to the initial response by the police. The review was completed by September 2006. An edited version of the first volume of the report was publicly released on 20 October 2006. On 18 October 2006 Kara Lawrence, a journalist with the Daily Telegraph in Sydney, rang Purcell to find out whether the report was finished and when it would be released. Purcell was unable to assist with any more information than was already in the public domain.[126]

3.34 However, Purcell informed her that he had conducted a debriefing for the entire operation on behalf of the region over a seven week period and had provided a fourteen page report to Assistant Commissioner Goodwin canvassing all sections involved in the operation.

3.35 When Lawrence asked Purcell what errors had occurred he informed her of a number of specific criticisms of the police response arising from the debriefing and criticisms of senior officers involved in the response. His overall assessment was that the eventual report would be unfavourable because it would be a personal attack on Goodwin.

3.36 Approximately two hours later, after she had written a newspaper article, Lawrence again contacted Purcell. She read the article to him in case it caused him concern. Purcell confirmed the matters about which he had informed her in the earlier call and which she had included in the article and also persuaded her to remove one comment that she had sourced elsewhere on the basis that it was incorrect.

3.37 The "Cronulla Riots", the police response and the report on the police response were all matters of a highly sensitive nature to the NSWPF.

3.38 Within minutes of the last call from Lawrence, Purcell rang and spoke to a member of Goodwin's staff:

UM: GUS (ui).

AP: G'day mate. How are ya?

UM: Good mate. What's happening?

AP: Mate, I'm just sort of giving you a heads up. ..... Um I'm just giving you a heads up that Kara Lawrence just rang me from The Telegraph.

UM: Right.

AP: Ah I don't know whether you're, the boss is aware that there's going to be an

[126] PIC Exhibit 26

article in tomorrow's Telegraph about the report coming out and she's made a number of speculative assumptions on the report and she found out that I was doing the debrief for Seta[127] and wanted me to confirm or knock out any (ui) assumptions and ah, um I said KARA I don't want to be involved in this, wasn't involved in the report. All my job was to give the debrief. But ah I can tell you one of the assumptions is that Seta was an overkill and ah, I said to her that's a naïve view and one taken in, in retrospect because ah if there had been another riot and there weren't enough police what would have been the headlines.

UM: Mm.

AP: I said that, and I said I can tell you the overwhelming police response at the debrief was that it was well resourced for a change, one of the few times the police actually addressed the problem with more numbers rather than less numbers.

UM: Mm.

AP: But I'm just letting you know that there's going to be some article, speculative

UM: Okay.

AP: and I don't think it's going to be very flattering for the police.

UM: Alright.

AP: Okay.

UM: Thanks mate.

AP: So if you could pass that on to Mister Goodwin.

UM: I'll do that.

AP: Just know I got ambushed and ah, I'll um, and as I said, I don't know what else is going to be in there but that was one of the things she threw at me and I just said that's bullshit.

UM: Yeah.

AP: Okay.

UM: Alright buddy. Thanks.

AP: I'll speak to you.

UM: (ui) ya. Bye.

[127] Seta was the name assigned by the NSWPF to the Cronulla riots police operation.
[128] PIC Exhibit 31

AP: Bye.[128]

3.39 Purcell's account of his contact with Lawrence was inaccurate with the exception of the reference to the one criticism that he had persuaded Lawrence to remove. Not only had he confirmed the criticisms but he had in fact provided the information to Lawrence.

3.40 There was a further call approximately one hour later between Purcell and Goodwin. Purcell supplied the same false account, but in more detail, to Goodwin.

3.41 Calling Goodwin and providing a false account allowed Purcell to deflect suspicion, if there was any, from himself of having been the police source.

3.42 When confronted with the call to Goodwin, Purcell gave the following evidence:

Q: Mr Purcell, yourself and Mr Goodwin?

A: Yes.

Q: Talking about the information and Kara Lawrence?

A: Yes.

Q: And you pretending to have not been the source of the information that you knew was going to be in the newspaper article?

A: No.

Q: You were trying to create a position where you would be able to, in the future, say to Mr Goodwin, "Well, obviously I wasn't the source of the information because I wouldn't have rung you and told you I'd had the conversation with her"; that was it, wasn't it?

A: No, I informed him that I had the conversation with her.

Q: You didn't inform him as to the truth of what had happened, did you?

A: I informed him of exactly what the conversation was about.

.....

Q: You told him false things about --

A: No.

.....

Q: That conversation you had, you were telling him the absolute truth about all of the conversations you had had with Ms Lawrence, were you?

A: Mr King, I didn't take notes --

.....

Q: Were you telling him the truth of what had transpired between yourself and Ms Lawrence?

A: ***As best as I knew it at that time, yes.*** *I didn't take any notes of our conversation and nor do I think it was outside the parameters of the actual conversation (Emphasis added).*

Q: Yes, thank you.[129]

3.43 There was no need for Purcell to take notes given that the two conversations occurred within minutes of each other. He could not have already forgotten or been unclear on the detail by the second call given the short intervening period between it and the first with Lawrence.

THE MEDIA AND A SEXUAL ASSAULT ON A CHILD

3.44 On 4 October 2006 two children were assaulted in a park within the Hurstville LAC. Purcell was at the time the Local Area Commander. He received a phone call at 1.44 pm from an officer at the scene providing the then known details. Within minutes of completing the call Purcell telephoned Robert Ovadia, a journalist with Channel 7 in Sydney, and informed him of the assault, the location and details of the allegation. Purcell asked Ovadia not to disclose that he was the source of the information and to say if asked that he had heard of the assault by use of a radio scanner. Ovadia replied; "*Yeah of course, of course, absolutely,* ***as always****"* (Emphasis added).[130]

3.45 Reflecting a similar pattern to that set out in the previous section dealing with the "Cronulla Riots", within minutes of the call to Ovadia, Purcell informed the PMU of the assault and said that it would not "*be long before the vultures descend*" as it had been broadcast over police radio. Purcell continued to liaise with the PMU to arrange a press conference to be given by him at the scene. In the circumstances, the call to the PMU appears likely to have been aimed at allaying any suspicions the PMU might form as to how the media became aware of the matter so quickly, such as an internal tip off, like the one just given by Purcell.[131]

3.46 The same day the local Member of Parliament, Mr Kevin Greene, Member for Oatley in the NSW Legislative Assembly, telephoned Purcell at 3.17 pm and left a message seeking confirmation of a significant crime in the local area.[132] At 3.31 pm Purcell rang

[129] PIC Transcript, A M Purcell, 1st June 2007, p 193
[130] PIC Exhibit 35
[131] PIC Exhibit 37
[132] PIC Exhibit 43

Greene and provided extensive detail including a description of the assault, the injuries suffered by one of the children and a description of the offender. Included in the detail was information as to how the offender had lured the children away from their parents. Purcell also provided detail of police methodology that had been used to identify a person of interest in the local area who was said to fit the description of the offender. The methodology was so sensitive that having revealed it, Purcell then requested that Greene keep it confidential. In addition Purcell also informed Greene that surveillance of a person of interest had been put in place.[133]

3.47 To have confirmed to Greene that there was an allegation of a sexual assault on children at a location in the local area and that the offender had not yet been apprehended would have been sufficient to satisfy his legitimate interest as the local Member of Parliament, without revealing police methodology, the existence of a person subject to surveillance in the local area or detail about the offence that, if disseminated further, could seriously prejudice the investigation.

3.48 The circumstances of this release of information is significant in that, once disclosed, the only control on further disclosure by the recipient of the information was entirely at the discretion of the recipient. This is why there is a policy to regulate and monitor the release of confidential police operational information. Within approximately three hours of the time of the incident Purcell had disclosed to Greene everything that was then known to police about the incident as well as the state of the investigation.

3.49 At 9.24 pm Goodwin rang Purcell and they discussed a Situation Report in respect of the matter. Goodwin was concerned that there appeared to be past incidents of a similar nature where the same modus operandi (MO) had been used by the offender and that media reports of the current assault and investigation had referred to the offender as "*a known previous offender*". Goodwin explained that they did not want the MO disclosed and Purcell said; "*No obviously that's a hold back*". Purcell had in fact already disclosed it to Greene.[134]

3.50 At 9.45 pm Purcell received a call from a civilian employee of the NSWPF, who was not involved in the investigation and who knew the victim's families. The employee had become aware of the events involving the families. Purcell provided some limited detail of the assault and requested that the employee not raise the matter with the families unless it was raised by them as he had told them the identity of the children would be protected. He also told the employee that the police investigators believed the offender had committed a number of previous offences and requested that that information not be passed on to the families.[135]

3.51 On the following day, 5 October 2006, at 8.55 am Purcell received a call from Shaun Fewings, a journalist working for Channel 9 in Sydney, who requested an update on the progress of the investigation. Purcell informed him that the Joint Investigation Response

[133] PIC Exhibit 45
[134] PIC Exhibit 49
[135] PIC Exhibit 50AC

Team (JIRT) was taking over the investigation and that he was to have a briefing with them later in the morning and expected a "comfit drawing" to be available later that day. Purcell told Fewings that he would ring him after he had attended the briefing.[136]

3.52 At 9.50 am Helen Begg, the Superintendent in charge of the Child Protection and Sex Crimes Squad of which JIRT is part, spoke with Purcell and referred to the media interest, asking if Purcell had had any inquiries that morning from the media. Despite having spoken to Fewings an hour earlier, Purcell falsely informed her that he had not had any contacts.[137] It is clear from this call that Purcell was intent on maintaining a personal media relationship in respect of the investigation which he did not disclose to other senior officers.

3.53 At 10.12 am Ovadia again rang Purcell seeking any further information that might be useful for a further media report. Purcell informed him that he was to have a briefing with Begg and that he expected her to take over the investigation. He also informed Ovadia that a "comfit" should be available later that day. This was the same information that he had provided to Fewings earlier.

3.54 Purcell then disclosed what Goodwin had said should not be disclosed. That is, that police investigators believed that the offender was a serial offender who had committed three similar assaults in the past. Purcell also confirmed the MO of those similar assaults and linked them to the current investigation. Although Ovadia had already become aware of one earlier incident with a similar MO before speaking with Purcell, Purcell confirmed the MO and disclosed the suspected link to further incidents. Purcell also provided the date of one of the earlier incidents and information that there had been a media release at that time which drew a link between the three previous incidents so that Ovadia would be able to identify the previous media release. Purcell did stress to Ovadia that the MO should not be disclosed and Ovadia agreed not to do so. Purcell also said that he would ring Ovadia after the briefing with Begg.[138]

3.55 At 12.42 pm Greene again rang Purcell and received an update on the current status of the investigation and information that police believed the offender was a serial offender who had committed four previous offences.[139]

3.56 At 12.57 pm Rhett Watson, a journalist also with the Daily Telegraph who had not been available the previous day when the assault occurred, rang Purcell. Purcell informed him that Begg would be holding a press conference that afternoon and that he would be *"... quite happy to give you anything at all mate". Purcell then again disclosed that police believed there was a link to earlier offences. Watson requested information about the child; "how badly are we talking"*. Purcell provided some detailed information about what was believed to have been done to her and the emotional reaction of the child and family. As to the emotional reaction Purcell said;

136 PIC Exhibit 52
137 PIC Exhibit 54
138 PIC Exhibit 56
139 PIC Exhibit 56C

"But don't put that in from me. 'Cause I went to great pains to say yesterday that I would protect, protect the identity and not talk about the impact of this on the victims. So I made that ah pledge to the family yesterday".

Purcell requested Watson to ring him when he had written the article and suggested that he might ask Watson to include in the article that Purcell was a local who used the park.

3.57 Watson requested a "tip off" if the police apprehended the offender. There are some indistinct words in the call, *"... so we can catch (ui)"*, but in the context it appears that the "tip off" being requested was so that the press would be able to obtain a photograph of the offender on arrest. Watson said; *"Well give me a yell any, any time doesn't matter what time day or night"*. Purcell's response was:

"*Mate I'll let y-, if you're going to be handling this case from now on, ah mate I've got your phone number there Rhett, I'll, I'll ah be talking to you directly before, because mate if we get this dickhead um we'll want to market it big time."*[140]

3.58 At 5.40 pm Ovadia sent an SMS to Purcell:

"*Adam, letting you know out of courtesy... I've confirmed elsewhere that the [deleted suburb] attacker is a serial offender. We'll be running it tonight. ..."*[141]

3.59 Purcell responded by SMS at 5.41

"Sweet"[142]

3.60 Within seconds Ovadia rang Purcell to explain the purpose of the SMS:

.....

RO: Just sending that text to cover bases in case there's any (ui) dramas.

AP: Yeah, no mate, that's why, its sweet mate, no worries.

RO: Yep, no worries, just in case you've got a bit of a

AP: Good on ya mate.

RO: Good on ya. See ya.

AP: Thanks mate,

RO: Bye.

[140] PIC Exhibit 59
[141] PIC Exhibit 61AC
[142] PIC Exhibit 62AC
[143] PIC Exhibit 68

AP: I look forward to seeing the report, bye bye mate.

RO: Yep, it'll -Line disconnects-[143]

3.61 Approximately half an hour later, at 6.15 pm, Purcell, consistent with his already demonstrated pattern of behaviour, telephoned Begg and provided an entirely different and false account of the telephone call from Ovadia:

HB: Um Ovadia, er, um he gave me a call today.

AP: Yes.

HB: The, wh-what actually was said to him?

AP: Well he said to me that um, the one he said that a, a [deleted name] has seen, have seen a, a suspect in the area. Ah had seen the offender in the area. He works at [deleted]. and you might want to speak to him. I said oh okay, thank you. Um and then.

HB: Is that your bloke or not?

AP: Yeah well no, [deleted name]. but he was very (ui)

HB: Yeah.

AP: close.

HB: Yeah that's what I thought it was [deleted name] that you were saying?

AP: Yeah (ui), but he's pretty bloody close. And then he said ah, and my information is, and he's, he quoted The Leader that there would been a um ah press release of some sort back in the early two thousands about a serial offender through [deleted place name]. So -Coughs- was it linked with that? And I said ah well this stage we're exploring it Rob obviously we're looking back at possibilities of linkages ah and that's it. So he said oh okay, and I said but there's a press conference at two o'clock with yourself and um, um I'm sure that ah Helen will be canvassing um fact that we're going over old jobs. And I left it at that.

HB: Alright.

AP: (ui). I dunno where he got it. I dunno how he got it.

HB: Yeah he, he quoted police sources so um well, what, the, the line that I ran is look it's, it's early days in the investigation and we're, we're looking at all um possible incidents that could be you know, that have happened in the past and similar M-O but I didn't

actually go down the path of saying you know we think that there's some, some serious (ui) linked jobs 'cause I think it's a bit too early to be,

AP: Oh (ui)

HB: to play that ace card out.

AP: the, the other thing is um, he did say four, four to five jobs. Oh yeah that's right he did say I've heard it's been linked to four or five other, other um jobs. Or other ah similar incidents over the last um, since the year two thousand. I said oh Rob I said, the last (ui) we wanna do is get the message out to any offender out there that we think he's only probably done four or five.

HB: Mm.

AP: I (ui) what about if he's done forty?

HB: Yeah.

AP: Or what about if he hasn't done any? And it's a one off.

HB: Yeah.

AP: (ui) mate, we just don't need to start naming numbers. And I said so you won't get any numbers out of me ah in so far as linked jobs. (ui), I said you don't have to be an Einstein to work out that we'd be looking at similar jobs if there are any over the last you know recent history, and you know in the local, local area.

HB: Yeah.

AP: But that was it. And as I said and then he, then he started telling me about this .....

HB: -Laughs-

AP: So he's been doing ah (ui).

HB: He's been getting out there.

AP: He's (ui) been, he's been adding up two and two and coming up with about four and

a half. It's pretty bloody close.

-Further into the conversation-

HB: Alright.

AP: Look I d-, I dunno where Ovadia's getting his information but as I said he's around about the mark.[144]

3.62 At 7.29 pm Purcell rang Ovadia and informed him of his conversation with Begg saying that Ovadia had her "ruffled" and that she suspected that he (Purcell) was the police source and that he had denied it. Purcell's attitude to his conduct in providing the information to Ovadia was:

RO: Good stuff. You're well protected where I'm coming from. Obviously you know why I sent that text through, so?

AP: Oh yeah mate. And I'm, I'm completely at ease

RO: Yep.

AP: with the fact that it's been leaked and we spoke about it at the briefing today and she was the only one going, Oh, should we say it?

RO: Yeah.

AP: Absolutely, doesn't impact on our investigation at all.[145]

3.63 During the course of the investigation information was received by the police that a retired police officer residing in the local area had been seen in the vicinity of the location of the assault at the relevant time. He was interviewed and a search warrant was executed on his premises on 8 October 2006.

3.64 At 1.20 pm on 9 October 2006 Kara Lawrence rang Purcell as she had heard about the search and that it concerned an ex-police officer. Purcell declined to confirm that he was a suspect but then told her "*off the record*" that there was a witness who placed the ex-police officer in the vicinity ten minutes after the time of the incident wearing similar clothes to the offender. Purcell also disclosed that the ex-police officer had said that he was in the vicinity but at a time well before the assault and that he was wearing clothes that did not fit the description of those worn by the offender. Purcell confirmed that the ex-police officer lived in the vicinity. In respect of the search, he informed Lawrence that an item of clothing

144 PIC Exhibit 66
145 PIC Exhibit 68
146 PIC Exhibit 70

the offender was identified as wearing had not been located during the search.[146]

3.65 At 1.36 pm Purcell rang Goodwin and informed him of the call from Lawrence telling him that Lawrence knew before speaking to him of information that he had in fact supplied to her. That is, that there was a witness who placed the ex-police officer in the vicinity of the alleged assault and that the search did not locate the item of clothing worn by the assailant.[147]

3.66 At 2.37 pm Purcell rang Lawrence and asked her to hold back on publication for two days as within that time the ex-police officer may be discounted. Lawrence, while allowing that he had "*done right by me in the past*", declined because it was too good a story, but offered not to include the information that he had given her. He informed her that he had informed Region and Begg that Lawrence had a source for the "obvious reason" that "*the last thing I wanted them to think was that it was me ... I've leaked information to you before but not this stuff...*".[148]

3.67 During the call it is clear that part of the attraction for Lawrence to the story was that she suspected that there was a weak foundation for obtaining a search warrant because of various factors such as the description of the offender not matching the ex-police officer. However, as she raised the points of dissimilarity Purcell provided reasons for why the descriptions may not be dissimilar. Eventually Purcell confirmed that while the ex police officer was not a "firm suspect" he was a suspect. Eventually, they agree that Lawrence would include in the article that:

KL: Local Area Commander Adam Purcell said police would not comment on the ongoing investigation. Something like that.

AP: That's it, perfect.

KL: Alright.

AP: And that's if, that's in, exactly in accord with what I've just told Mister Goodwin and ah, and Helen Begg.

KL: Yeah. Look mate if, if you hadn't told me or if you just, you know what I mean,

AP: Mm.

KL: but it was all there on a plate, I can't really hold off because

AP: No, no, that's fine,

147 PIC Exhibit 72
148 PIC Exhibit 74
149 PIC Exhibit 74

KL: I've got it all.[149]

3.68 The article written by Kara Lawrence was published in the Daily Telegraph the following day, 10 October 2006. It included the information Lawrence had obtained from Purcell as well as information from other sources. There was no reference to Purcell in the article, which simply stated that; "Police yesterday refused to comment on the raid".[150]

3.69 On 20 October 2006 Greene rang Purcell for an update. Purcell said; *"Well, I can tell you this and it's to remain confidential..."*. Purcell then went on to disclose information about forensic evidence, police methodology, the existence of several unnamed suspects and that the ex-police officer had been eliminated as a suspect.[151]

3.70 On 9 November 2006 Lawrence rang Purcell, and he again disclosed information about forensic evidence and the elimination of the ex-police officer.[152]

3.71 The NSWPF Media Policy acknowledges at paragraph 3.10 that the Local Area Commander has a role in liaising with the media. Purcell acknowledged he was aware of this during his evidence before the Commission.[153]

3.72 The policy also requires relevant officers to keep the PMU acquainted with developments in an investigation and to make use of the expertise in the unit for the management of media campaigns. Purcell told the Commission that at the time of the investigation into the sexual assault allegation made to Waverley Police in November 2004, he saw no need to contact the PMU as there was no need to manage the media. He added that around this time in late 2004 he also had concerns about leaks from the PMU. He hastened to add that his current opinion of the PMU had changed dramatically from then when he thought that they were a "risk".[154]

3.73 The evidence revealed in the Commission's hearing demonstrates however that Purcell did little in the way of keeping the PMU informed of important information relating to police investigations and only made contact with it after he had himself provided detailed and sensitive information directly to selected media contacts. As an insight into how Purcell himself recognised the improper nature of these contacts he was at the same time also conscious of the need to cover his tracks and reassure his senior officers and colleagues that he at least was not providing information to the media.

150 PIC Exhibit 75AC
151 PIC Exhibit 77
152 PIC Exhibit 79
153 PIC Transcript, A M Purcell, 31 May 2007 p 118
154 PIC Transcript, A M Purcell, 31 May 2007 p 119

4. AFFECTED PERSONS

4.1 A person against whom, in the Commission's opinion, substantial allegations have been made in the course of, or in connection with, an investigation, is an "*affected person*" for the purposes of a Report to Parliament by the Commission.[155]

4.2 Subsection 97(2) of the *Police Integrity Commission Act 1996* (the Act) requires the Commission to include in a Report to Parliament a statement in respect of each affected person as to whether or not in all the circumstances the Commission is of the opinion that consideration should be given to the following:

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

b) the taking of action against the person for a specified disciplinary offence;[156]

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`.

4.3 In addition, pursuant to subsection 16(1)(a) of the 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.

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

a) Police corruption;

b) The commission of a criminal offence by a police officer

b1) Misconduct in respect of which the Commissioner of Police may take action under Part 9 of the *Police Act 1990*,

c) Corrupt conduct within the meaning of the I*ndependent 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*.

4.5 It follows that "*police misconduct*" may encompass not only serious criminal activity such as perverting the course of justice but also minor disciplinary breaches by police, the sanction for which may, for example, be nothing more than additional training and development.

4.6 The substantial allegations that have been made in this investigation are as follows:

1) That Adam Purcell perverted or attempted to pervert the course of justice in respect of the investigation of the allegation of sexual assault made to Waverley police on 20 November 2004.

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

[156] The power of the Commissioner of Police to refer a departmental charge against a police officer for hearing by the Police Tribunal was repealed on 8 March 1999. Since that date, the powers and obligations of the Commissioner to recommend or state whether consideration should be given to the prosecution of a person for a specified "disciplinary offence" (subsections 16(1)(b), 97(2)(b) of the Act) has no effective application to police officers. This is so even for police misconduct that occurred before this date.

2) That Adam Purcell released confidential police information during the police investigation of the sexual assault reported to the Waverley police on 20 November 2004 and in the matters identified previously in this report under the headings "*the Quenten Roberts matter*", "*The Cronulla Riots Report*" and "*The Media and a Sexual Assault on a Child*".

3) That Adam Purcell at a hearing before the Commission gave evidence that he knew was false or misleading in a material particular in relation to:

(a) The supply of tickets to a rugby league match to him by Fletcher;

(b) His conversation with MAL14 prior to giving evidence at a hearing of the Commission on 27 April 2007;

(c) The full extent of his meeting and conversation with MAL12 in Melbourne in 2006.

4) That Alison Brazel at a hearing before the Commission gave evidence that she knew was false or misleading in a material particular in relation to:

(a) Her knowledge of Purcell's contact with MAL12 since the time of the investigation into the allegation of sexual assault made to the Waverley police in November 2004.

(b) Her knowledge of the name of the person from whom Purcell said that he had received information that Fletcher had received oral sex from the complainant.

4.7 Based on the substantial allegations the Commission is of the opinion that the following persons are affected persons:

a) Superintendent Adam Michael Purcell

b) Detective Sergeant Alison Brazel

4.8 Both Purcell and Brazel gave their evidence after a declaration had been made under section 41 of the Act. Therefore pursuant to section 40 of the Act the evidence they gave is not admissible against them in subsequent criminal or civil proceedings, except for proceedings for an offence against the Act, or for contempt, under the Act.

4.9 Before expressing any opinion that misconduct may have occurred (s 16(1) of the 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 (s 97(2)(a) of the 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*.[157] His Honour said at p 361:

> "*The seriousness of an allegation made, the inherent unlikelihood of the 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."*

[157] (1938) 60 CLR 336

4.10 Despite the protection given by the declaration under section 41 of the 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 section 173 or section 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 purposes 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 documents produced under objection.

ADAM MICHAEL PURCELL

4.11 Purcell is an affected person because he is the subject of the following substantial allegations:

i. He perverted or attempted to pervert the course of justice in respect of the investigation of an allegation of sexual assault made to Waverley police on 20 November 2004.

ii. He released confidential police information to persons outside the police force relating to the investigation of the sexual assault allegation and in the matters previously identified under the headings "the Quenten Roberts matter", "The Cronulla Riots Report" and "The Media and a Sexual Assault on a Child".

iii. That at hearings before the Commission he gave evidence that he knew was false or misleading in a material particular in respect to the investigation of an allegation of sexual assault made to Waverley police on 20 November 2004.

ALLEGATION i

4.12 The offence of perverting the course of justice is defined in section 312 of the *Crimes Act 1900 (Crimes Act)*, as obstructing, preventing, perverting or defeating the course of justice or administration of the law. Section 319 of the *Crimes Act* states that "*a person who does any act, or makes any omission intending in any way to pervert the course of justice is liable to imprisonment for 14 years*". The elements of the offence are that the person must do an act or make an omission with the intention that the act or omission will pervert the course of justice.

4.13 It is well established that an act which has a tendency to deflect the police from prosecuting a criminal offence before a judicial tribunal or from adducing evidence of the true facts, is an act which tends to pervert the course of justice and if done with the intent to achieve the result, constitutes an attempt to pervert the course of justice.[158] In the High Court decision of *R v Rogerson* Justices Brennan and Toohey said:

> *"The gravamen of the offence of an attempt to pervert the course of justice is an interference with the due exercise of jurisdiction by courts and other competent*

[158] R v Rogerson [1992] 174CLR268

judicial authorities. ... an act which has a tendency to deflect the police from invoking that jurisdiction when it is their duty to do so is an act which tends to pervert the course of justice. Subject to a limited discretion not to prosecute, it is the duty of police to prosecute when offences are committed." [159]

4.14 The evidence obtained by the Commission during the investigation which is discussed in Chapter 2 of this Report, established the following:

i. That on 24 November 2004 Purcell met with Bryan Fletcher, who at the time was a person of interest in the investigation of the sexual assault allegation, in the absence of any other police officer.

ii. That he failed to reveal to the investigators the full extent of what occurred during his meeting with Fletcher, other than that Fletcher would attend Waverley Police Station the following day to provide a forensic sample.

iii. That he maintained personal contact with Fletcher which was not officially recorded or otherwise recorded by him from 24 November 2004 to 12 April 2005.

iv. That he provided information about the investigation to Fletcher.

v. That he improperly provided information about Fletcher and the investigation to Ricky Stuart, Britt Fletcher and Shane Richardson.

vi. That he received three tickets to a rugby league game from Fletcher at a time when Fletcher was still a person of interest in the investigation.

4.15 The lodgement with the police of the complaint of sexual assault set in train an investigation which, if it identified sufficient evidence, could have led to the police invoking the jurisdiction of the courts of NSW. As it transpired, the investigation was, and effectively remains, suspended because the complainant did not wish to proceed with any prosecution.

4.16 The evidence obtained by the Commission raises the question of whether the actions of Purcell deflected the police investigation and whether Purcell intended his actions to have that effect.

4.17 The first issue which may have impacted on the investigation is the information provided to Stuart by Purcell that the police were conducting an investigation into an allegation of sexual assault and that they wished to speak with Fletcher.

[159] Op cit

4.18 In his interview with the Commission, Stuart corroborated what Purcell said in his recorded conversation with MAL14 as to what he (Purcell) told Stuart. Purcell however did not reveal to Stuart that there was a search warrant about to be executed at MAL12's premises.

4.19 The second issue was Purcell's revelation to Fletcher that his friends, MAL12 and MAL13, were suspected of being involved in the sexual assault. Purcell told MAL14 about this in their recorded conversation. Purcell passed this information to Fletcher at the same time that the search warrant was being conducted. The execution of the search warrant and the basis for it would have indicated to MAL12 that he was suspected of being involved in a sexual assault.

4.20 The third issue was Purcell's advice to Fletcher about the unlikelihood of DNA being present in the mouth of the young woman if Fletcher had been kissing her. Purcell also discussed this in his recorded conversation with MAL14. That alone, while it may have given comfort to Fletcher and been influential in his agreeing to supply a voluntary DNA sample for testing, would not have deflected the police investigation. Police were in a position to make an application to the local court to obtain a DNA sample from Fletcher, if necessary, as they did in the case of MAL12 and MAL13.

4.21 Purcell also failed to pass on the information which he later relayed to Brazel in their conversation of 24 March 2007 that he obtained from MAL12, in Melbourne in 2006, that he (MAL12) and MAL13 had had intercourse with the young woman and that she had performed oral sex on Fletcher and Fletcher had left the premises when she withdrew consent to further sexual activity. The information, relating to MAL12 and MAL13, important though it may have been to the overall investigation, was at the time, already available in the form of the DNA results. The information in respect to Fletcher did not suggest his involvement in any offence as alleged by the complainant.

4.22 The Commission is of the opinion that there is insufficient admissible evidence to establish a prima facie case against Purcell of pervert or attempt to pervert the course of justice.

4.23 The Commission is of the opinion that consideration **should not** be given to the prosecution of Purcell for the criminal offences of pervert the course of justice or attempt to pervert the course of justice in respect of the investigation of an allegation of sexual assault made to Waverley police on 20 November 2004.

4.24 The Commission is however of the opinion that Purcell engaged in police misconduct in respect of his actions in relation to the investigation of the allegation of sexual assault.

4.25 In the opinion of the Commission the actions of Purcell in respect of that matter make it inappropriate that he remain a member of the NSWPF. The Commission is of the opinion

that consideration **should** be given to the taking of action against Purcell pursuant to subsection 97(2)(c) of the Act. If no such action is taken the Commission is of the opinion that consideration **should** be given to the taking of action against Purcell pursuant to subsection 97(2)(d) of the Act.

ALLEGATION ii

4.26 Purcell is an affected person because of the substantial allegation that he released confidential police information during the police investigation of the sexual assault reported to Waverley police on 20 November 2004 and in the matters identified in Chapter 3 under the headings, "*The Quenten Roberts Matter*", "*The Cronulla Riots Report*" and "*The Media and a Sexual Assault on a Child*".

4.27 Clause 46 of the Police Regulation 2000 is headed "Confidential Information" and relevantly provides as follows:

(1) A member of the NSW Police Force ... must treat all information which comes to his or her knowledge in his or her official capacity as strictly confidential, and on no account without proper authority divulge it to anyone.

(2) In particular, a member of the NSW Police Force ... must observe the strictest secrecy in regard to NSW Police Force business, and is forbidden to communicate without proper authority in any way to any person outside the NSW Police Force any information in regard to police or other official business connected with his or her duties, or which may come to his or her knowledge in the performance of them.

4.28 The NSW Police Force Code of Conduct and Ethics requires that an employee must behave honestly and in a way that upholds the values and the good reputation of the NSW Police Force and comply with the law whether on or off duty. It requires that an employee act with care and diligence while on duty, know and comply with all policies, procedures and guidelines that relate to his/her duties. It also requires that an employee should only access, use and/or disclose confidential information if required by his/her duties and allowed by NSWPF policies.

4.29 In relation to the unauthorised release of confidential information there is no statutory offence in NSW which applies to the conduct engaged in by Purcell. There is however the common law offence of misconduct in public office which has a long history and continues to exist in NSW as a common law misdemeanour punishable by fine and/or imprisonment the amount and term of which is at the discretion of the Court.

4.30 The elements of the offence were formulated by Mason NPJ (former Chief Justice of the High Court of Australia), in *Sin Kam Wah v Hong Kong Special Administrative Region* as follows:

The offence is committed where:

(1) a public official;

(2) in the course of or in relation to his public office;

(3) wilfully misconducts himself; by act or omission, for example, by wilfully neglecting or failing to perform his duty;

(4) without reasonable excuse or justification; and

(5) where such misconduct is serious, not trivial, having regard to the responsibilities of the office and the officeholder, the importance of the public objects which they serve and the nature and extent of the departure from those responsibilities.

The misconduct must be deliberate rather than accidental in the sense that the official either knew that his conduct was unlawful or wilfully disregarded the risk that his conduct was unlawful. Wilful misconduct which is without reasonable excuse or justification is culpable[160].

4.31 The accepted definitions of "*public official*" and the term "*public officer*" which are frequently used interchangeably is "*an officer who discharges any duty in the discharge of which the public are interested, more clearly so if he is paid out of a fund provided by the public*".[161] The court went on to say in *Sin Kam Wah* that if taxes are used to pay a person for the performance of a duty and the public has an interest in the duties he performs then the person is a public officer. The word "*interested*" was defined in *Graham v White (Inspector of Taxes)* as being "*in the sense of legitimate concern rather than of the mere gratification of curiosity."* [162]

4.32 In the English case of *R v Dytham* (which involved the failure of a police officer to intervene in an assault that resulted in the death of the victim) the Court of Appeal said that the neglect of a public duty must be wilful and not merely inadvertent. It also has to be culpable in the sense of being without reasonable excuse.[163] Their Honours went on to say that the deliberate failure or wilful neglect of duty must have a level of culpability that is not restricted to corruption or dishonesty but must be of such a degree that the misconduct is calculated to injure the public interest so as to call for condemnation and punishment.[164]

4.33 There is no doubt Purcell was at all times a police officer and as such a public official and was acting in the course of or in relation to his public office.

4.34 The Commission is of the opinion that consideration **should** be given to the prosecution of Purcell for the common law offence of misconduct in public office in respect of his actions in the investigation of an allegation of sexual assault made to Waverley police on 20 November 2004 in relation to the following:

- That he informed Fletcher in the meeting on 24 November 2004 that MAL12 and MAL13 were suspected of involvement in the sexual assault and that he (Fletcher) was not a suspect;

160 [2005] HKCFA 27 at 45 & 46
161 R v Whitaker [1914] 3 KB 1283 at 1296
162 [1972] 1 WLR 874 at 878
163 [1972] 1QB 722 at 727
164 [1972] 1QB 722 at 727 – 728

- That he provided information about the investigation to Ricky Stuart, Britt Fletcher and Shane Richardson without authority.

4.35 In respect to the part of the allegation dealing with the matters identified in Chapter 3 under the headings, "*The Quenten Roberts Matter*", "*The Cronulla Riots Report*" and "*The Media and a Sexual Assault on a Child*", the following was established:

i. That Purcell released confidential police information concerning a fraud investigation to Quenten Roberts and Michelle Roberts without authority.

ii. That Purcell released confidential police information regarding an internal police report to Kara Lawrence, a journalist with the Daily Telegraph, without authority.

iii. That Purcell released confidential police information regarding the police investigation of an allegation of child sexual assault to Robert Ovadia, Kara Lawrence and Kevin Greene, MP without authority.

4.36 In respect to the Quenten Roberts matter Purcell informed Michelle Roberts that there was a current police investigation into a fraud committed at a hotel at which her husband Quenten Roberts had previously been a manager. Purcell informed Michelle Roberts that he could not speak openly on the telephone to Quenten Roberts about the matter and did so in such a way as to alert her to the fact that Purcell suspected Quenten Roberts may be a person of interest to the police investigating the matter and that there was a possibility that his telephone was being intercepted.

4.37 In respect to the Cronulla Riots matter, the evidence obtained by the Commission revealed Purcell in telephone conversations releasing information to Kara Lawrence regarding an internal report on the police handling of the Cronulla riots in December 2005. At the time this report had not been publicly released and Purcell informed Kara Lawrence that he had debriefed the local police following the event and that the report was likely to contain adverse comments on some of the police involved. That Purcell was aware that this was information he was not authorised to release, is evidenced by his attempt to disguise the source of the information given to Lawrence by falsely informing his Commander that Lawrence had telephoned him and already had reliable information about the contents of the report.

4.38 Similarly the evidence obtained from the lawfully intercepted telephone conversations in respect of his actions in releasing confidential information to the media, Kevin Greene, MP, the local State Member of Parliament and a civilian employee of the police force about the police investigation of the sexual assault on the child, demonstrates that Purcell provided sensitive and detailed information about the matter that had the potential to seriously prejudice the police investigation.

4.39 The Commission is of the opinion that consideration **should** be given to the prosecution of Purcell for the common law offence of misconduct in public office in respect of his

actions in releasing confidential police information in the matters described as "*The Quenten Roberts Matter*", "*The Cronulla Riots Report*" and "*The Media and a Sexual Assault on a Child*".

4.40 In the opinion of the Commission Purcell engaged in police misconduct by releasing confidential police information in the instances outlined above. The Commission is of the opinion that consideration **should** be given to the taking of action against Purcell pursuant to subsection 97(2)(c) of the Act. If no such action is taken the Commission is of the opinion that consideration **should** be given to the taking of action against Purcell pursuant to sub section 97(2)(d) of the Act.

ALLEGATION iii

4.41 Purcell is an affected person because of the substantial allegation that at hearings before the Commission he gave evidence that he knew was false or misleading in a material particular.

4.42 The evidence which it is alleged he gave knowing it to be false or misleading was:

i. That on 27 April 2007 when he was asked whether there was anything else that he could think of that might be relevant to the inquiry or of interest to the Commission that had not been covered during the course of his evidence he said that there was nothing he could think of at the moment and did not disclose the contact he had with Fletcher relating to Fletcher giving him tickets for a rugby league match, despite revealing this fact in a conversation with MAL14 recorded on 25 April 2007 and also revealing that it was not his intention to reveal the fact unless it was raised in the hearing.

ii. That on 27 April 2007 he gave evidence and he did not disclose his conversations with the person identified as MAL14 on 25 and 26 April 2007 in relation to the inquiry conducted by the Commission.

iii. That when giving evidence on 27 April 2007 and 30 May 2007 he did not disclose the extent and true nature of the contact he had with the witness identified as MAL12 at the State of Origin football match in Melbourne in 2006.

4.43 Section 107 of the Act provides as follows:

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

4.44 As has already been noted Purcell gave his evidence on objection. However, in accordance with the provisions of subsection 40(4) of the Act that objection does not provide protection in relation to a prosecution for giving of false or misleading evidence at a hearing of the Commission.

4.45 The Commission is of the opinion that consideration **should** be given to the prosecution of Purcell for the offences of giving evidence at a hearing before the Commission that is, to his knowledge, false or misleading in a material particular in respect to:

- His evidence on 27 April 2007 concerning the contact with Fletcher and Fletcher giving him tickets to a rugby league match;
- His evidence on 27 April 2007 in which he failed to disclose his conversations with the person identified as MAL14 on 25 and 26 April 2007; and
- That on 27 April 2007 and 30 May 2007 he did not disclose the extent or true nature of the contact he had with the witness identified as MAL12 at the State of Origin football match in Melbourne in 2006.

4.46 The Commission considers that Purcell engaged in police misconduct in relation to the allegations: subsection 16(1)(a) of the Act.

4.47 The Commission is of the opinion that consideration **should** be given to the taking of action against Purcell pursuant to subsection 97(2)(c) of the Act. If no such action is taken the Commission is of the opinion that consideration **should** be given to the taking of action against Purcell pursuant to subsection 97(2)(d) of the Act.

ALISON BRAZEL

4.48 Brazel is an affected person because of the substantial allegation that at hearings before the Commission she gave evidence that she knew was false or misleading in a material particular.

4.49 During the hearings the following was established:

i. That when giving evidence on 26 April 2007 Brazel gave evidence which was false or misleading in a material particular in that she said she was not aware of Purcell having any contact with MAL12 since the time of the investigation into the allegation of sexual assault made to the Waverley police in November 2004.

ii. That when giving evidence on 26 and 29 April 2007 Brazel gave evidence which was false or misleading in a material particular when she said that she was not aware of the name of the person from whom Purcell said that he had received information that Fletcher had received oral sex from the complainant.

4.50 The Commission considers that Brazel engaged in police misconduct in relation to the allegations mentioned above: subsection 16(1)(a) of the Act.

4.51 The Commission is of the opinion that consideration **should** be given to the prosecution of Brazel for the offences of giving evidence at a hearing before the Commission that is, to her knowledge, false or misleading in a material particular.

4.52 The Commission is of the opinion that consideration **should** be given to the taking of action against Brazel pursuant to subsection 97(2)(c) of the Act. If no such action is taken the Commission is of the opinion that consideration **should** be given to the taking of action against Brazel pursuant to subsection 97(2)(d) of the Act.

5. MATTERS ARISING

5.1 The Commission has a statutory role, pursuant to section 16 of the Act, to make recommendations for the taking of other action that the Commission considers is appropriate in relation to the subject matter of its assessments or opinions, or the results of any investigations.

5.2 During the course of this investigation the Commission examined aspects of the handling and proper management of confidential police information. The categories of confidential information that come into the possession of the NSWPF are many and varied. It may range from private and personal details of individuals, allegations of serious criminal conduct, intelligence and other details of crimes, information about on going investigations and the methodologies used to investigate and combat criminal activity. Often this information is highly sensitive, based on little more than hearsay and is uncorroborated and untested. If published it may seriously compromise a criminal investigation as well as cause serious damage to the reputation of individuals who are limited in avenues available to challenge or test any errors in the information. It is important therefore that the management and security of this information is subject to strict controls and processes.

5.3 Earlier in this Report Clause 46 of the Police Regulation 2000 was discussed. It prohibits the release of confidential police information and in part it provides:

> *a member of the NSW Police Force ... must observe the strictest secrecy in regard to NSW Police Force business, and is forbidden to communicate without proper authority in any way to any person outside the NSW Police Force any information in regard to police or other official business connected with his or her duties, or which may come to his or her knowledge in the performance of them*".

5.4 It is worthy of note that no sanction is provided for in the event of a breach of this provision.

5.5 There have been a number of prosecutions of NSW police officers who have released confidential information which they have accessed from various police electronic databases such as COPS. The relevant legislation is Part 6 of the *Crimes Act 1900*, in particular sections 308C or 308H, which deal with the unlawful or improper access to a computer. In some cases a prosecution under Part 6 may not be available because the officer obtained the information otherwise than by accessing a database as was the case with Purcell in the matters examined earlier in this report. The police officer concerned may have also accessed the data base for legitimate reasons, but having become appraised of the information subsequently divulged the information for an impermissible purpose. In the absence of any specific offence the only available option is to prosecute the officer or other employee under the common law offence of misconduct in public office.

5.6 In addition to the Police Regulation 2000 the NSWPF Code of Conduct deals with the unauthorised release of confidential information. The Code requires amongst other things

that all employees access and use or disclose confidential information only if required by their duties and as allowed by the NSWPF.

5.7 In New South Wales there are a number of statutory provisions which deal with the release by employees of government agencies of confidential information obtained by them in the course of their duties. In many cases these provisions create an offence and stipulate penalties for breaches. The penalties generally range from fines to terms of imprisonment, for periods of 6 months to two years. Parliaments in other Australian jurisdictions have enacted criminal sanctions covering the same behaviour in relation to police officers as well as other government employees.

5.8 In Queensland the *Police Service Administration Act 1990* deals with disclosure of information. Section 10.1 states that any officer or staff member who, except for the purposes of the police service, discloses information that has come to their knowledge through the exercise, performance or use of any power commits an offence against the Act, unless the disclosure is authorised or permitted under the Act. The maximum penalty on conviction is 100 penalty units.

5.9 In addition, section 85 of the *Queensland Criminal Code Act 1899* provides that a person who is or has been employed as a public officer (which includes a person employed pursuant to *Police Service Administration Act 1990*, by virtue of the definition at chapter 1 section 1) who unlawfully publishes or communicates any information that comes or came to his or her knowledge, or any document that comes or came into his or her possession, by virtue of the person's office, and that it is or was his or her duty to keep secret, commits a misdemeanour. The punishment for this offence is a maximum of 2 years imprisonment.

5.10 In Victoria Section 127A of the *Police Regulation Act 1958* provides that any member of the police force who publishes or communicates any fact or document which comes to his or her notice or into his or her possession by virtue of his or her office and which it is his or her duty not to disclose shall be guilty of an offence against the Act and liable to a fine of not more than 20 penalty units. Subsection 127A (2) extends the application to former police officers who disclose information after they have left the police force, which came to their knowledge when they were members of the police force.

5.11 There have been cases in Victoria in which police officers have been convicted and sentenced to custodial terms for the common law offence of misconduct in public office in relation to the release of confidential police information.[165]

5.12 In 2005 the Victorian Parliament enacted the *Commissioner for Law Enforcement Data Security Act 2005*. The functions of the Commissioner are amongst other things:

[165] See DPP v Marks [2005] VSCA, (24 November 2005) R v Bunning [2007] VSCA 205 (27 September 2007)

(i) to establish appropriate standards for the security and integrity of law enforcement systems.

(ii) to establish appropriate standards and protocols for access to and the release of, law enforcement data, including release to members of the public.

5.13 In South Australia Clause 20 of the Code of Conduct established by the *Police Regulations 1999* provides that an employee of the South Australian Police must treat information obtained by the Police or by the employee by virtue of his or her employment, as confidential and must not improperly use or disclose the information.

5.14 Section 39 of the *Police Act 1998* states that the Commissioner of Police may charge a member of the South Australian Police with a breach of the Code of Conduct. Pursuant to Section 40 of the Act, if an officer is found guilty of a breach of the code of conduct, the Commissioner of Police may take any one of a number of actions ranging from suspension to dismissal and fines. Pursuant to Clause 28 of the Regulations the maximum fine that the Commissioner can impose is $1250.

5.15 Provisions such as these demonstrate the importance various legislatures have placed on the need for proper and strict controls on dealing with confidential police information. They also recognise the very sensitive nature of this information requiring such controls. More importantly, the unauthorised release of such information could potentially prejudice or jeopardise the successful outcome of a particular investigation.

5.16 The Commission **recommends** that consideration be given to the enactment of a similar provision in New South Wales that creates a specific statutory offence of the unauthorised release of confidential police information such as to cover factual situations of the kind disclosed during the course of this investigation.

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.[166] 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)).

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 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,

[166] 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*.

(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 *Listening Devices Act 1984* (section 50); and
- require persons to attend and give evidence before a hearing of the Commission, either in public or in private (section 38).

REPORTS TO PARLIAMENT

When does the Commission Submit a Report to Parliament Regarding an Investigation?

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

[167] 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.

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.

NAME	DATE OF APPEARANCE
Binns, Anthony Michael	30 May 2007
Bishop, Peter Mark	26 April 2007 *
Brazel, Alison Rachael	26 April 2007*, 29 May 2007* and 30 May 2007
Doueihi, Joseph John	26 April 2007* and 30 May 2007
Dunstan, Paul Raymond	27 April 2007*
Maclay, Emma Louise	26 April 2007*
MAL12	4 April 2007* and 31 May 2007
MAL13	5 April 2007*
Purcell, Adam Michael	27 April 2007*, 30 May 2007, 31 May 2007 and 1 June 2007
Wood, Gavin Kendall	27 April 2007 and 1 June 2007

(*Evidence given in private)

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