REPORT TO PARLIAMENT

OPERATION MALTA



REPORT TO PARLIAMENT OPERATION MALTA
JANUARY 2003

ISBN 1 74003 123 7
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The Hon Meredith Burgmann MLC
President
Legislative Council
Parliament House
SYDNEY NSW 2000

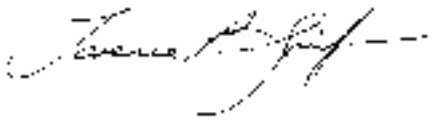
The Hon John Murray MP
Speaker
Legislative Assembly
Parliament House
SYDNEY NSW 2000

Dear Madam 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 Malta, 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



T P Griffin
Commissioner

January 2003

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EXECUTIVE SUMMARY

Operation Malta was an investigation commenced by the Police Integrity Commission in October 2000 into a number of serious allegations which had been made against senior NSW police.

THE ALLEGATIONS

The allegations were made by four members of the NSW Police Service Crime Management Support Unit. It was alleged that unnamed senior members of the Service had been deliberately obstructing the reform of the Service over the preceding three years. It was also alleged that the Commander of Crime Agencies and the Commander of Special Crime and Internal Affairs had abused their positions in order to take detrimental action intended to smear or harass members of the Unit.

The Crime Management Support Unit (CMSU), had been established in June 2000 at the direction of the Commissioner of Police, Peter James Ryan. At the time of the complaints on 20 October 2000, the Unit consisted of five members and a Commander, Kenneth John Seddon, who was a seconded police officer from England. Two of the members of the Unit were sworn police officers and the remaining three were civilian members of the Service.

One of the complainants, James Andrew Ritchie, made his allegations publicly in a media conference at 11.00am on 20 October 2000. A media release and confidential police documents were distributed at that conference.

The other three complainants, Paul Francis Herring, Michael Edwin Lazarus and Dean Richard Olsen, attended the Commission and lodged a written complaint in similar terms.

It was alleged that an internal investigation into the travel allowance and other expenses of the Crime Management Support Unit, which was underway at the time, was aimed at destroying the Unit. Furthermore, it was alleged that the investigation was being used to derail and delay reform.

The allegations in the two complaints ran to some pages and contained references to conduct of senior executives which included “drunken threats”, “fear and intimidation” and use of “control and punishment mechanisms”.

THE COMMISSION'S INVESTIGATION

The Commission commenced an investigation to examine the allegations. A large volume of documentation was obtained and considered. In mid-December 2000 the Commission received a copy of the Internal Affairs report arising from the abovementioned internal investigation into the members of the CMSU. In late December 2000 the Commissioner of Police terminated the employment of James Ritchie, suspended Paul Herring and terminated the secondment of Ken Seddon, the Commander of the CMSU.

It was evident that the Commission's investigation of the issues surrounding the complaints would not be resolved quickly. In view of the seriousness of the original allegations and the public interest in the work of the Commission, particularly having regard to the findings of the Royal Commission into the New South Wales Police Service three years previously, the Commission announced the commencement of a public hearing in March 2001, for the purpose of investigating the following:

- The allegations made by the members of the CMSU;
- The internal investigation into the members of the CMSU; and
- The action taken by the Police Service against the members of the CMSU.

There were 73 days of evidence. 51 witnesses were called. The last day of evidence was 18 March 2002. Following the completion of the evidence Counsel Assisting the Commission prepared written submissions which were served on the legal representatives for the witnesses in April. Submissions in reply were then provided to the Commission, the last such submission being received in October 2002.

The hearing examined a series of events dating back to 1998, commencing with the following two significant events:

- The secondment of two English detectives to the NSW Police Service in October 1998; and
- The decision by the NSW Police Service to introduce an Integrated Crime Management Model across the state for the improving the investigation and prevention of crime.

THE EVIDENCE

The developments which flowed from the above two events and which were examined in detail in the Commission hearing were as follows:

- The two English officers, Kenneth John Seddon and Robin Peter Napper, were placed in Crime Agencies but operated completely outside the policies and procedures of the Command;
- They were given special projects to do for Commissioner Ryan and undertook extensive travel as required for their purposes;

- They were not sworn officers in the NSW Police Service yet they were given NSW Police Service Superintendent badges to wear, and Police Service vehicles for their own personal use, although never required to complete log books;
- They were given specific responsibilities in a reform project called the Integrated Crime Management Model. Seddon was to progress the roll-out of crime management units in every Local Area Command and Napper was to assist with the development of a Crime Faculty and DNA legislation;
- Seddon experienced frustration in the implementation of the crime management units across the state. In September 1999 he became aware of the work of the Behavioural Change Unit and determined that elements of it could be beneficial to the process of establishing the crime management units;
- At that time the Behavioural Change Unit had been scheduled for closure at the end of 1999 as a result of structural re-organisation in the Human Resources command;
- Seddon met with Ryan in late 1999 and persuaded him that two civilian members of the Behavioural Change Unit, James Ritchie and Paul Herring should be transferred to Seddon's area for the purpose of integrating the work of the Behavioural Change Unit with the crime management unit program;
- Ryan expressed concern to Seddon over reports he had received from his senior officers about Ritchie's past conduct, which had reportedly caused friction in previous positions held by him;
- Nevertheless, Ryan supported the creation by Seddon of a special unit, called the Crime Management Support Unit, to assist in the roll out of the crime managements units across the state;
- Ritchie and Herring moved from the Behavioural Change Unit when it ceased to exist at the end of 1999 and started working with Seddon. Ritchie and Seddon discussed with Ryan the number of additional positions which should be created in the Unit and the salaries to be offered;
- In the first half of 2000 Seddon hand-picked three further people to join the CMSU team. Human Resources was asked to prepare contracts of employment;
- In April 2000 Ryan formally announced that the CMSU would be part of the crime management project to be implemented state wide;
- Seddon was asked to produce a business plan and other documentation required for the creation of a new unit;
- Although the documentation had not been prepared, Ryan directed his executive team on 24 May 2000 to have the Unit fully established by 6 June 2000, when he was due to appear before a Parliamentary Budget Estimates Committee Hearing;
- This direction caused consternation amongst the Deputy Commissioners, Kenneth Edward Moroney and Jeffrey Thomas Jarratt;
- The Crime Management Support Unit was formally established by Human Resources on 7 June 2000. The Unit was placed in the Crime Agencies Command but no

budget allowance was made to enable Crime Agencies to fund the cost of the positions.

- In August 2000 Napper made a complaint to Moroney about Seddon and nominated seven issues of personal integrity and possible financial impropriety;
- At that stage Napper's two year secondment was coming to an end, while Seddon had been given a one year extension to his secondment;
- Moroney appointed Commander Malcolm James Brammer of Special Crime and Internal Affairs to investigate the Napper allegations;
- Following discussions in September 2000 between Brammer, Moroney and Commander Clive Thomas Small of Crime Agencies about concerns regarding the secondment of Seddon and Napper, the creation of the Crime Management Support Unit, the exercise of financial delegation by Seddon and the disregard of Service procedures by members of the Crime Management Support Unit, the investigation was broadened to incorporate these issues;
- An internal audit was commenced as part of Brammer's investigation;
- The members of the CMSU were not formally told about the investigation and they became alarmed when they learned in October 2000 that they were under investigation;
- Small met with the members of the CMSU and provided some information about the investigation and explained that as members of Crime Agencies, the members of the CMSU were expected to comply with the Crime Agencies policies and procedures;
- On 20 October Ritchie held a press conference in which he made the allegations referred to on page 1 of this Executive Summary. Herring, Lazarus and Olsen attended the Commission the same day and lodged a written complaint in similar terms. Those complaints are set out in full in this Report;
- Later in October 2000 Brammer met with Ryan and briefed him on the progress of his investigation, codenamed "Operation Spa";
- Ryan expressed concern to Brammer about the amount of time it was taking to resolve the initial allegations which had been made by Napper against Seddon. Ryan asked Brammer to separate all of the other administrative issues from the Napper complaint and deal with them separately;
- In December 2000, without speaking to any of the members of the CMSU, Brammer finalised his report and gave it to Ryan;
- None of the allegations made by Napper had been found sustained;
- The Spa report made extensive criticisms of Seddon, Ritchie and Herring and their work in the CMSU, as well as extensive criticisms of Ryan and the Service for the manner in which the secondments had taken place, the manner in which Seddon and Napper had been managed, the manner in which the CMSU had been created, and the manner in which the members of the CMSU had conducted themselves;

- The Spa report recommended the termination of Seddon's secondment and the termination of the Ritchie and Herring from the CMSU;
- Following receipt of the Spa report Ryan obtained legal advice and took action on 22 December 2000, terminating Seddon's secondment, terminating Ritchie's employment with the Service and suspending Herring.

THE COMMISSION'S OPINONS

The Commission has formed the following assessments and opinions concerning the matters examined in the hearing:

- The allegation by Ritchie, Herring, Lazarus and Olsen that senior members of the Service were deliberately obstructing the reform of the Service was not supported by the evidence;
- There was evidence that some senior members of the Service, namely Moroney, Jarratt, Brammer and Small displayed a lack of support at times for the Crime Management Support Unit;
- Lack of support for the Crime Management Support Unit or its members was not synonymous with lack of support for the reform process;
- There was evidence to support the allegation by Ritchie, Herring, Lazarus and Olsen that Brammer was affected by bias in his investigation of Seddon and the Crime Management Support Unit;
- There was a lack of fairness in Brammer's investigation in that none of the individuals concerned were spoken to about the allegations against them;
- The Commissioner of Police had obtained legal advice prior to taking the action he took in December 2000 against Seddon, Ritchie and Herring.

RECOMMENDATIONS

In the Commission's opinion the following persons are "affected persons" because they were the subject of substantial allegations during the investigation:

- James Andrew Ritchie;
- Paul Francis Herring;
- Michael Edwin Lazarus;
- Dean Richard Olsen;
- Kenneth John Seddon;
- Malcolm James Brammer;
- Clive Thomas Small;
- Kenneth Edward Moroney;

- Jeffrey Thomas Jarratt; and
- Peter James Ryan.

In the case of each affected person the Commission recommends that consideration **should not** be given to the taking of any action under subsections 97(2)(a),(b),(c) and (d) of the *Police Integrity Commission Act 1996*.

GLOSSARY

ABEF	Australian Business Excellence Framework
BCU	Behavioural Change Unit, alternative name of the BCG
BCG	Behavioural Change Group, alternative name of the BCU
BIG	Business Implementation Group
CA	Crime Agencies
CET	Commissioner's Executive Team
CMSP	Crime Management Support Program
CMSU	Crime Management Support Unit
CMU	Crime Management Unit
CoP	Commissioner of Police
DCoP	Deputy Commissioner of Police
GMP	Greater Manchester Police
IA	Internal Affairs – see SCIA
ICMM	Integrated Crime Management Model
IPC	Internal Police Complainant
LAC	Local Area Command
NCF	National Crime Faculty
Operation Spa	SCIA investigation of CMSU personnel
PLEB	Principle Led Evidence Based Model
Operation Puddletown	Codename of investigation undertaken by SCIA
RJG	Restorative Justice Group
SCIA	Special Crime and Internal Affairs – see IA
SPIU	System Process and Inspection Unit

SIGNIFICANT DATES

October 1998	Secondment of Napper and Seddon to the Service for a two year period
October 1998	Service initiates the Integrated Crime Management Model (ICMM) project
17 December 1999	CoP agrees to extend Ritchie's contract for a further 12 months
8 March 2000	Meeting between CoP, Seddon and Ritchie to discuss the structural placement of the CMSU within the Service
6 April 2000	Public announcement by CoP concerning formation of CMSU
9 May 2000	"Clear the Air" Meeting between CoP, Seddon, Jarratt and Moroney
24 May 2000	CoP directs CET to establish CMSU
6 June 2000	CoP attends Parliamentary Budget Estimates Committee Meeting
15 June 2000	Creation of the "Yellow" document by Seddon
28 June 2000	Brammer approaches Seddon re Operation Puddletown
3 August 2000	Napper complains to Moroney about Seddon
18 August 2000	Moroney formally requests Brammer to commence investigation of Napper's complaints concerning Seddon
18 September 2000	Small writes to Moroney seeking clarification on the status and entitlements of Seddon and Ritchie
25 September 2000	Brammer engages Abraham to audit the CMSU
26 September 2000	Brammer discusses SCIA investigation into CMSU with Small
10 October 2000	Meeting between Small, McGowan and Seddon. Seddon becomes aware of the SCIA investigation into the CMSU
19 October 2000	Small and Seddon are made aware of Ritchie's intended press conference
20 October 2000	Ritchie's press conference and media release
20 October 2000	Herring, Lazarus and Olsen make complaint to PIC
23 October 2000	Brammer briefs CoP on the Operation Spa investigation
22 December 2000	Seddon's secondment terminated, Ritchie's contract terminated

1. INTRODUCTION

ORIGINS OF OPERATION MALTA

1.1 On 20 October 2000, three members of the New South Wales Police Service Crime Management Support Unit (CMSU) – Paul Francis Herring, Acting Chief Inspector Michael Edwin Lazarus and Acting Chief Inspector Dean Richard Olsen – attended the Police Integrity Commission (the Commission) and lodged a formal complaint alleging that senior officers of the Service had deliberately obstructed police reform processes over the past three years.

1.2 The complaint was in the following terms:[1]

> 1. We the members of the above group wish to express our extreme concerns about the long trail of deliberate obstruction of Police reform by senior members of the Police Service over the past three years.
>
> 2. We also have grave apprehension about the appalling protocols for internal investigation and the unprofessional way in [sic] these are instigated, based on hearsay, the absolute lack of evidence, and how they are focused on building a brief on certain individuals. These issues should have been addressed up-front with us initially rather than embarking on a surreptitious smear campaign to destroy the credibility of the team and our work in the field. We consider this is nothing short of a '*set-up*'
>
> 3. As officers involved in a comprehensive and significant reform program, namely the implementation of the Commissioners *'Principle-Led & Evidence-Based'* Policing model throughout the State, we have determined the Police Service is totally confused about the direction in which it is going. In a few instances management tactics are modern and collaborative – in others they mostly resort to fear and intimidation upon the staff.
>
> 4. We consider working in this type of environment is completely untenable. There is definitely no commitment to reform from the senior members of the Service – particularly Superintendents and above. None of them remotely understand the complexities of what it is we do, and it appears none are genuinely interested.
>
> 5. We are alarmed at the preposterous claims of our group rorting the travel allowance process, the allegations of tampering with statistical data concerning crime reduction successes in the Local Area Commands where the CMSP is operating, and the drunken threats towards members of the CMSU from a member of the Commissioners Executive Team (CET), Des Mooney *(see attached document)*
>
> 6. We are annoyed by the constant veiled threats leveled at this unit indicating it is destined for death – Edd Chadbourne, *(through the Morgan & Banks Report)* Mick Tiltman and Christine Nixon who were all directed by the Commissioner to close us down. And Des Mooney who indicated in his recent drunken rage (quote) – *"I make decisions about people like you"*.

[1] PIC Exhibit 174, barcode 6157809-10

> And lastly, Deputy Commissioner Ken Moroney's open and blatant declaration in a speech at the Police Academy to – *'see Ken Seddon on a plane back to the UK'*.
>
> 7. Within the policing domain, because of the so-called controversial work we are engaged in, no branch within the Service has wanted to own us. As a consequence, no budget has been allocated, we have no reasonable accommodation, no administrative support has been provided and a rather malicious investigation, aimed clearly at *'catching us out'*, has been launched into our administrative procedures.
>
> 8. Because he has had an on-going link to the Commissioner in relation to the rolling out of this program, the Commander of the CMSU – Ken Seddon has become *'out of favour'* with the Commander of Crime Agencies and has had his delegated authority withdrawn.
>
> 9. We consider Ken Seddon a thoroughly professional officer who has demonstrated enormous courage challenging the Deputy Commissioners at times about their inappropriate behaviour, and swaying the Commissioner towards the virtues of the model and this reform process. Ken is considered highly popular and respected in the field for his unquestionable integrity and his ability to influence rather than direct others. His only crime has been to accept command of the CMSU.
>
> 10. We are not here to argue the merits or the demerits of the Commander of Internal Affairs – Mal Brammer, however, in this instance, we consider he is highly prejudice, [sic] has embarked on a *'witch hunt'*, and is obviously intent on deconstructing the CMSU. Evidence of this is referred to in a memo he sent to Ken Seddon. A member of Mr Brammer's staff also reported (quote) *"He is obsessed about your group"*. We consider this not only unprofessional, but also rather distressing behaviour.

1.3 On the same day, 20 October 2000, James Andrew Ritchie, another member of the CMSU, held a press conference in which he alleged that there was a misuse of power by senior police officers, and a campaign within the Service to inhibit genuine reform. Ritchie, a civilian employee of the Service, distributed a document in which he described himself as "one of the architects of the New South Wales Police reform programme". Attached to the release were copies of a number of internal emails which had been exchanged between the Commander of Internal Affairs and the Commander of the CMSU. The media release alleged:[2]

> …
>
> Internal affairs are using malicious and unfounded investigations into individuals as a means of maintaining the old control and punishment mechanisms in order to derail and delay genuine reform.
>
> …
>
> The cultural change programme has elicited widespread praise from those within it, and is the principal means of reform of the NSWPS. It is the centrepiece of the Commissioners policing model and is to be included as a central platform of the next industrial agreement between police unions, the Service and the government. It is now threatened with derailment. It is to be

[2] PIC Exhibit 142, barcode 5727502-3

> completely emasculated by people in Crime Agencies who have worked surreptitiously against it for some time.
>
> …
>
> This present activity is no accident. It is part of a much wider and longer campaign by senior police in NSW to close down, or in any way possible inhibit genuine reform in the NSWPS.
>
> …

1.4 Ritchie's allegations are quoted in full in Chapter 7 of this Report. The allegations attracted substantial media attention and raised questions as to whether genuine reform had been achieved since the findings in 1997 of Justice James Wood's Royal Commission into the New South Wales Police Service (the Royal Commission).

1.5 Commissioner Peter James Ryan, who had been appointed Commissioner of Police in August 1996, denied Ritchie's allegations and called publicly for them to be fully investigated.

1.6 The Commission commenced a preliminary investigation into the two complaints and began seeking information and documents from the Service. A number of interviews and private hearings were held.

1.7 The Commission was already aware that an internal investigation into members of the CMSU, codenamed Operation Spa, was being conducted by Commander Malcolm James Brammer of the Special Crime and Internal Affairs Unit (SCIA), and was nearing completion. A decision was made to await provision of the final Operation Spa report so that its findings could be assessed.

1.8 In mid-December 2000, the final Operation Spa report was forwarded to the Commission. Operation Spa was originally instigated to investigate complaints made against Kenneth John Seddon, a seconded UK officer who became the Commander of the CMSU, however, the investigation was later expanded to include an investigation of Ritchie and other members of the CMSU. The report found that ultimately none of the complaints against Seddon could be sustained, however, the report was critical of many aspects of the CMSU and its staff, including Seddon, Ritchie and Herring.

1.9 Following the provision of the Spa report to the Commissioner of Police on 13 December 2000, Seddon's secondment was terminated. Ritchie's contract of employment was terminated and Herring, a civilian employee, was suspended with pay. Action was also taken by the Service in the NSW Supreme Court to injunct Seddon, Ritchie and Herring from releasing any further Service information. This action resulted in a renewed wave of publicity and fanned the claims by the three individuals concerned that they were being targeted by the Service because of resistance at the senior level to the CMSU and cultural change generally.

PUBLIC HEARING

1.10 The Commission announced that a public hearing would commence in March 2001. The first public hearing date was 19 March 2001 and the last date was 18 March 2002. There were 73 actual hearing days. There were numerous adjournments, primarily to accommodate the availability of legal representatives appearing for the numerous witnesses. The general scope and purpose of the hearing announced on 19 March 2001 was as follows:[3]

> To investigate:
>
> (1) Allegations by certain members of the Crime Management Support Unit of the New South Wales Police Service concerning certain members of the New South Wales Police Service;
>
> (2) The investigation by the New South Wales Police Service of allegations of misconduct concerning certain members of the Crime Management Support Unit and matters arising from the conduct of that investigation;
>
> (3) Action taken by the New South Wales Police Service concerning certain members of the Crime Management Support Unit.

1.11 Large volumes of documentation continued to be received from the Service after the commencement of the public hearing. Some material was provided voluntarily and some was produced pursuant to notices issued by the Commission. The Service objected to the production of some material. Challenges were made by the Service to the Commission's power to call for certain documents. Those challenges were overruled. After the commencement of the public hearing, the Service produced statements from 33 people. Many of those statement makers had to be called to give oral evidence. In total, 51 witnesses gave evidence and 483 exhibits were tendered.

1.12 A complete list of witnesses who gave evidence before the Commission in this matter can be found at Appendix 3.

THIS REPORT

1.13 In this Report, prepared and furnished pursuant to section 96 of the *Police Integrity Commission Act 1996* (the Act), the Commission considers the evidence received during the public hearing.

1.14 The Report also includes assessments and opinions concerning the matters examined during the hearing, in particular, the SCIA investigation of the CMSU, the complaints made on 20 October 2000 by members of the CMSU and the action taken by the Commissioner of Police in December 2000.

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3 PIC Transcript, 19 March 2001, p 2

1.15 On 18 August 2001, the term of Judge P D Urquhart QC as Commissioner of the Police Integrity Commission expired. The Malta hearing had not concluded at that time. On 20 August 2001, Judge Urquhart was appointed as Assistant Commissioner, for the purpose of presiding over the remaining hearing. A copy of the Instrument of Appointment is included at Appendix 2.

1.16 Throughout this Report the New South Wales Police Service has been referred to as "the Service". This was done to reflect its name at the time of the Commission hearing. Since 12 July 2002, the Service has been officially known as NSW Police.

1.17 Generally, persons are referred to in this Report by surname only. This was done in the interests of economy and no discourtesy is intended.

2. BACKGROUND TO THE CRIME MANAGEMENT SUPPORT UNIT

CULTURAL CHANGE

2.1 The Malta investigation took place as a result of the allegations made publicly by Ritchie, and privately by Herring, Olsen and Lazarus to the Commission on 20 October 2000. At the time, all four were members of the CMSU, a group which had been formally created earlier that year.

2.2 In order to understand the background to the allegations it is necessary to examine the historical context in which the CMSU was established, and events involving the CMSU after its establishment. This chapter considers some relevant developments in the Service, in the area of "cultural change", prior to the formation of the CMSU.

2.3 The final report of the Royal Commission, released in 1997, recommended that the long term solutions to the problems of corruption it had exposed lay in addressing the structure, attitudes and professionalism of the Service. As well as making individual recommendations for reform, the Royal Commission final report, in Appendix 31, published a list of ten key areas of the Service which needed to be addressed. It was suggested that reform to these areas of the Service incorporate not only structural change but cultural change.[4]

2.4 Cultural change was a concept already being advocated in some pockets of the Service, prior to the end of the Royal Commission. The concept was later adopted by the CMSU in 2000 and incorporated in its philosophy.

RESTORATIVE JUSTICE GROUP AND BEHAVIOURAL CHANGE UNIT

2.5 In 1995, a number of officers working in the Human Resources (HR) Command formed a group which became known as the Restorative Justice Group (RJG). The leader of the group was Sergeant Terry O'Connell. O'Connell had been involved, whilst a police officer at Wagga Wagga, in group conferencing work, particularly with juveniles, which promoted the concept of bringing together victims and offenders with a view to achieving a form of "restorative justice" for the victim. O'Connell transferred to HR, under the command of Assistant Commissioner Christine Nixon, where he worked on processes for managing conflict in the workplace and using group conferencing principles as a means of improving the management and leadership of the Service. Among those who came to work with this group were civilians Ritchie and Herring.

---

[4] Royal Commission into the New South Wales Police Service, *Final Report Volume III: Appendices*, May 1997, p A246

2.6 The work being performed by the group started to be described as "behavioural change", as opposed to "restorative justice". The essence of "behavioural change", so far as it related to police work, involved participation of the whole investigation team in police decision-making. This differed from the more traditional approach of the command and control method of policing.

2.7 Herring told the Commission that the RJG became known as the Behavioural Change Unit (BCU) around 1998.[5] The unit remained within the HR Command and was concerned with promoting philosophies of policing based on behavioural change principles. Despite the fact that the RJG had changed its name to the BCU, many people within the Service still referred to the unit by its former name of RJG. Sometimes it was referred to as the Behavioural Change Group (BCG). For the purposes of this report the group will be hereinafter referred to as the BCU.

2.8 At the time the BCU was formed the structure of the Service consisted of 80 Local Area Commands (LACs), which existed within 11 Regional Commands.

2.9 Ryan was asked during the hearing if he saw the BCU fitting in to the reform of the Service. He said:[6]

> Yes, there were several areas of the reform process that needed attention – quite obviously the way we did our core business of policing, basic policing, other areas of systems and reforms – systems and administration and procedures were outmoded, outdated or not delivering on time or against what we expected performance to be, and a third area could be said the way people interrelated to each other.
>
> In the latter part, the interrelation of people with each other, this is where the behavioural change group, as the name began to almost emerge, I think, as opposed to it being christened as such, seemed to be having some impact.

2.10 In its early stages, the BCU only carried out its work at Waratah and Shoalhaven LACs. Acting Chief Inspector Dean Olsen, who later became a member of the CMSU, gave evidence about the effect of the behavioural change program in the Waratah LAC in 1997. He said he was an operational police officer at Waratah when the behavioural change program commenced there in 1997. At the end of that year he took on a HR coordination role which involved implementing the behavioural change program and cultural change within the LAC. When asked what he did to achieve the objectives of the behavioural change program he said:[7]

> Well, a lot of what the behavioural change program was about, as I understood it then, was involving officers from the field, engaging them in conversation,

5 PIC Transcript, PF Herring, 5 April 2001, p 806

6 PIC Transcript, PJ Ryan, 4 March 2002, p 5326

7 PIC Transcript, DR Olsen, 8 June 2001, p 2334

> in decision making within the command. I think one of the crucial roles that I played was to construct the HR systems or processes within that command to bring people together to be able to carry out those activities.
>
> I played a role also within the command of being involved in the strategic planning for crime reduction, and I think that was a direct link with the behavioural change program as well, moving from a whim-based approach to an evidence based approach to policing.

2.11 Ryan said he received a report that there had been an improvement in the way that Waratah was managed. Relationships were reported to have improved and it was claimed that crime had gone down as a result of this.[8]

2.12 During 1998 and 1999, the BCU worked at Shoalhaven LAC. There was a significant change within Shoalhaven LAC during the period in which the BCU was involved. The command improved in terms of how officers behaved internally and how they related to the community around them. There was a reduction in the local crime rate. What was seriously in dispute both at that time and later in the Commission's inquiry, was whether the improved crime rate and other improvements were due to the work of the BCU or other factors.

2.13 Ryan approved the work of the BCU in general terms. He told the Commission:[9]

> The idea was to try to broaden the base of decision-making in a unit or group of people so that everyone felt that their view was as valuable as anyone else's, and I had been touring the Police Service by that time from about October '96 well into '97 and continuing on from that point briefing large groups of Police Service employees – this is police officers and civil servants, public servants – on my vision of the Police Service which was a participative organisation, where people worked together in groups or teams if you like, where everyone was valued, where people were recognised for their worth, that we celebrated successes and individuals' thoughts and ideas.
>
> Now, that had been my mantra on how we should be running the Police Service. It seemed that the behavioural change unit was in there somewhere.

2.14 However Ryan was concerned that initially only one LAC had become involved in the BCU program and that they had been working with that LAC for two years. At that rate, Ryan said it would take 160 years to introduce the program to all 80 LACs.[10] Ryan believed that the process needed to be speeded up substantially.[11] In addition, concerns had been expressed to him about the claims

8 PIC Transcript, PJ Ryan, 4 March 2002, p 5327

9 ibid.

10 ibid., p 5343

11 ibid.

that the program was the only thing driving down crime and about the attitude of the individuals involved in delivering the program.[12] Ryan said:[13]

> What I didn't like was the other messages I was getting, which was how abrasive and rude were the presenters about senior commanders and those who didn't agree with them, that only those who subscribed to the doctrine that was being preached by this group of people were supported and others were then, in some cases, vilified for their view. There was no tolerance of another view of how things ought to be.

2.15 These were themes that were to re-emerge later in relation to the work of the CMSU.

CLOSING DOWN THE RESTORATIVE JUSTICE GROUP / BEHAVIOURAL CHANGE UNIT

2.16 Following the Royal Commission the firm of Morgan & Banks was engaged to conduct a review and provide advice to the Service about HR Command. A report was presented to Ryan in 1998. For reasons that were not examined during the Commission hearing, and are not relevant to this Report, the Morgan & Banks report was not made public. However, the evidence before the Commission was that the HR section of the Service was considered by Morgan & Banks to be overstaffed. The basis for this conclusion was twofold:[14] firstly that the allocated staffing was approximately 180 and the actual staffing was approximately 400; and secondly that a comparison with industry in general showed that the ratio of HR to staff was much higher in the Service.

2.17 According to Ryan, one of the suggestions of the report was that the BCU should be looked at, and, if it was to remain, then consideration be given as to where it would sit.[15]

2.18 The Service engaged Dr Edwin Chadbourne as Executive Director, HR Services, in September 1999, initially for a period of twelve months. One of Chadbourne's express tasks was to implement the Morgan & Banks report and reduce the size of the HR section. In December 2000 Chadbourne was appointed Executive Director of HR for a three year term. Ryan said he made no decision himself to close down the BCU, but that it was a matter for Chadbourne to consider in light of the overall reduction required in the HR area.[16] Chadbourne said that the Morgan & Banks report recommended that an evaluation of the functional necessity of the BCU be undertaken if the Service retained the Unit.[17]

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12 PIC Transcript, PJ Ryan, 4 March 2002, p 5329

13 ibid., p 5328

14 PIC Transcript, PJ Ryan, 7 March 2002, p 5548

15 ibid.

16 ibid., pp 5548-9

17 PIC Exhibit 336, barcode 5917902

2.19 Chadbourne made the decision to close down or end the activities of the BCU, at least as a group within HR.[18] The Unit was formally closed down in late 1999. Although during 1999 the personnel of the BCU continued in their functions, their duties were to cease by the end of 1999. Some of them were employees of the Service and were to be re-allocated to other duties. Others were to leave the Service. Ritchie had a contract as a consultant with the Service, which was due to end in December 1999. Prior to that time, reports reached Ryan that Ritchie's behaviour had caused difficulties, particularly in his presentation of the Behavioural Change Program concept.

2.20 There was other evidence before the Commission that Ritchie's behaviour did cause some friction. The fact that he was the central person in the various reported incidents formed a reasonable basis, later, for Ryan to have reservations about the engagement of Ritchie in the CMSU. However, he did allow Ritchie to continue to work in the area of behavioural change.

[18] PIC Exhibit 336, barcode 5917902

3. THE SECONDMENT OF KENNETH JOHN SEDDON AND ROBIN PETER NAPPER

A SHORTAGE OF DETECTIVES

3.1 Ryan gave evidence that, as a result of the departure of many experienced detectives following the Royal Commission, there was an "… acute shortage of people with new ideas"[19] and he decided to advertise overseas for experienced detectives. In 1997, the Service placed an advertisement in the *Police Review Magazine,* a police journal in the United Kingdom (UK), seeking expressions of interest from police officers with certain skill areas. The positions were initially advertised as permanent Superintendent positions, but were later changed to seconded positions for a term of two years.

THE SELECTION OF KENNETH JOHN SEDDON AND ROBIN PETER NAPPER

3.2 Ryan said in evidence that he was frustrated by the time it was taking to organise the secondments. Accordingly, whilst in England on personal leave in 1997, Ryan attended the Police Staff College at Bramshill and personally interviewed a number of interested candidates.[20]

3.3 Almost a year later, in October 1998, detectives Kenneth John Seddon and Robin Peter Napper were seconded to New South Wales from England. Ryan described in his evidence the particular purposes for which Seddon and Napper were selected. Seddon was seconded from the Greater Manchester Police (GMP), for his experience in child protection, general detective work, and the management of crime.[21] Napper was seconded from the Thames Valley Police for his expertise in the use of DNA in police investigations and for his knowledge of the UK Crime Faculty. Ryan wanted a crime faculty similar to the UK model replicated in Australia.[22]

3.4 Seddon commenced work with the Service on 1 October 1998 for an initial period of two years.[23] Seddon told the Commission that when he arrived, he examined the state of the New South Wales Child Protection Unit and procedures in place at that time. While he may have been able to add something to the Child Protection Unit procedures when he first applied in 1997 to come to Australia, by the time he arrived here the Unit and its procedures had been developed to such a high level that he felt there was nothing he could add to

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19 PIC Transcript, PJ Ryan, 4 March 2002, p 5336

20 ibid.

21 ibid., p 5338

22 ibid., p 5337

23 PIC Transcript, KJ Seddon, 2 May 2001, p 1074

them. He advised Ryan accordingly.[24] Seddon told Ryan he had perceived a problem in the way crime was managed generally through the LACs and asked if he could work on that. Ryan agreed.[25]

3.5 Ryan said he wanted Seddon and Napper to become familiar, in general terms, with policing in New South Wales.[26] He placed them in the Crime Agencies Command. He wanted them to examine the way the Service managed crime, investigations and detectives.[27]

RANK AND REMUNERATION

3.6 Both Seddon and Napper held the rank of Detective Chief Inspector in the UK. As an incentive to make the secondment more attractive, they were offered the notional rank of Superintendent when they came to New South Wales. They were given a temporary promotion in their respective home forces to Superintendent and they were allowed to use that rank when they arrived in New South Wales.[28]

3.7 They said in evidence that a green badge with the word "Superintendent" arrived on their desks some time after they arrived in Sydney.[29] Just why they were given the badges was unclear. They were not sworn in as New South Wales police officers, but it would seem that someone in HR believed they were entitled to a New South Wales police badge. This would later cause confusion. They wore the badges and there is no question that they believed they were entitled to wear them. They were not, however, officers sworn into the Service. Nor could they be, as they were not Australian citizens.

3.8 Ryan said that there was no need for them to be sworn in, as their duties were to implement certain aspects of the reform process, and it was never envisaged that they would carry out any arrests or any operational duties. The result was that, although they were not in fact Superintendents in the Service, they wore the badge of such rank and were treated by those around them as having that rank. They were believed by those around them to be New South Wales police officers.[30]

3.9 Correspondence between the Service and the Australian Taxation Office (ATO) prior to the commencement of the secondments indicated that Seddon and Napper would remain under the management, direction and discipline of their home

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24 PIC Transcript, PJ Ryan, 4 March 2002, p 5338

25 ibid.

26 ibid., p 5345

27 ibid., p 5346

28 ibid., p 5356

29 PIC Transcript, KJ Seddon, 2 May 2001, pp 1074-5; KJ Seddon, 3 May 2001, pp 1173-4

30 PIC Transcript, PJ Ryan, 4 March 2002 p 5356; MJ Brammer, 21 March 2001, p 201

forces. They would provide advice but have no control/command over members of the Service. Furthermore, they would not be subject to the direction of any member of the Service.[31]

3.10 Seddon and Napper continued to be paid by their home forces. The Service reimbursed each of their home forces on a quarterly basis, rather than pay Seddon and Napper directly. The salary package paid by the Service to Seddon was equivalent to approximately AUD200,000 gross per annum.[32] This was significantly more than was paid to any New South Wales police officer (including the Deputy Commissioners), other than the Commissioner. The disparity was caused by the different rates of pay in the UK and in Australia, the additional expenses and the exchange rate of the Australian dollar against the UK pound.

TAXATION ISSUES RELATING TO SEDDON AND NAPPER

3.11 In April 1999 the UK forces ceased making regular tax deductions from the salaries paid to Seddon and Napper. According to a letter from Seddon's home force (GMP) to the Service, this was based on advice from the UK tax authority to the effect that a person carrying out duties abroad, even if paid in the UK, may in certain circumstances be paid without deduction of tax. The letter went on to state that whether or not this applied was a matter for the taxpayer and that when the overseas duties ceased the taxpayer should notify the UK tax authorities accordingly.[33]

3.12 Because Seddon and Napper received their salary payments directly from their respective UK force, the ATO did not deduct tax instalments from either salary (the "double tax agreement"). This was explained in correspondence from the ATO to the Service.[34]

3.13 Seddon did not pay tax by periodic deductions in the UK or Australia after 1999. He stated in evidence that he made enquiries after his tax deductions ceased and he was told that he would be billed for the UK tax when he returned home and that he would pay the tax then as a lump sum.[35] Seddon also produced a tax assessment form dated 24 January 2001 from the UK tax authority which assessed his tax liability for the 1999/2000 and 2000/2001 financial years (approximately 11,000 pounds sterling for each year).[36]

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31 PIC Exhibit 4, barcode 5755185

32 PIC Exhibit 56, barcode 5827097

33 PIC Exhibit 16C, barcode 5767121

34 PIC Exhibit 6, barcode 5755184

35 PIC Transcript, KJ Seddon, 3 May 2001, pp 1221

36 PIC Exhibit 311, barcode 5827296

3.14 It appears that Napper had already made arrangements with the UK authority and was making regular payments. Napper explained his position as follows:[37]

> I had sorted all my taxation position out with the Australian tax authorities and the private ruling that I had was that as I was a seconded officer, I could still pay tax in the UK under the double taxation agreement between the two countries. Now, I was pretty pleased about that because it meant that I would actually only pay 40 per cent on the top rate of my pay instead of 47 per cent, so there was a saving for me of probably around $10,000 a year. So I was quite pleased over that.

3.15 Later, Napper was to complain about the fact that he believed Seddon was avoiding his tax liabilities.

USE OF POLICE MOTOR VEHICLES

3.16 Ryan said that in his first meeting with Seddon and Napper he explained the terms and conditions of their secondment quite clearly:[38]

> …
>
> I gave them advice on things like medical care, taxation, motor vehicles, driving, a whole range of issues of which I had only just gone through myself so I was able to give them this advice.
>
> I also said to them that they would be attached to Crime Agencies where they would best be suited for their work.

3.17 Seddon told the Commission that there had initially been an offer of rental assistance but that when he arrived rental assistance was not granted and in its place, the private use of a Service motor vehicle was permitted by Ryan.[39] Ryan said that there had been an arrangement to provide rental assistance to Napper and Seddon only for the initial six weeks of their secondment. After this period the rental assistance was to cease.[40]

3.18 For whatever reasons, extensive private use of a Service motor vehicle for both Seddon and Napper was permitted. There was nothing in writing in relation to the terms of the use of the motor vehicles. Both Seddon and Napper said that Ryan told them they could use their vehicle for private use, the only limitation being that he did not want to find it in North Queensland.[41] In his evidence Ryan thought that he had said "over the other side of the mountains" but he accepted that he may have expressed it in the terms that both Seddon and Napper

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37 PIC Transcript, RP Napper, 29 March 2001, p 600

38 PIC Transcript, PJ Ryan, 4 March 2002, p 5357

39 PIC Transcript, PJ Ryan, 5 March 2002, p 5363

40 ibid., p 5358

41 PIC Transcript, KJ Seddon, 2 May 2001, pp 1075-6

described. Ryan said he had authority to allow Seddon and Napper extensive use of the motor vehicles.[42]

3.19 Ryan stated that he told Seddon and Napper to abide by the normal Service procedures and policies in relation to cars and other equipment, and make themselves familiar with how the Service operates. He did not give them any directions about the use of vehicle logs or the system for private use of the motor vehicles, other than to tell them that they had to keep records.[43] Ryan said that it was the function of others to provide such detail.[44] However, no one else gave any details to either Seddon or Napper about the private use of the vehicles. Ryan had expected that logs would be used and the private and official use would be fully and properly recorded for official use.[45] This never happened.

SEDDON'S VISA APPLICATION

3.20 The stated purpose on Seddon's visa application for entry into Australia was to provide expertise on child protection to the Service.[46] In fact, he did not perform those duties once he arrived in Australia.

3.21 It does not appear as though there was a deliberate intention to mislead the immigration authorities. The significance of the child protection purpose expressed in the documents, however, is that at a later time when opposition was growing in relation to Seddon and an internal investigation was taking place, this particular item became a focus of attention and criticism.

SEDDON'S RETURN TO THE UK IN 1999

3.22 In late August 1999, Seddon's mother died. Her death was unexpected. Superintendent Megan Joy McGowan, Staff Officer to Commander Clive Thomas Small, submitted a memorandum recommending approval for Seddon's family to attend the funeral. The memo included the following:[47]

> …
>
> … The Seddons must travel within the next few days. They have reserved three flights (for Mr Seddon, Mrs Seddon, and their eldest son) and must confirm those bookings by 12.30pm today, the 23 August 1999. …

42 PIC Transcript, PJ Ryan, 4 March 2002, p 5358
43 ibid., p 5359
44 PIC Transcript, PJ Ryan, 5 March 2002, pp 5363-4
45 PIC Transcript, PJ Ryan, 4 March 2002, pp 5358-9
46 ibid., p 5357
47 PIC Exhibit 129B, barcode 6091998

3.23 McGowan's memorandum said that Seddon was seeking approval to utilise the return flight provided for in his contract to return to the UK. He did not have sufficient funds in Australia to purchase tickets, and funds from the UK would take one week to get here. McGowan said:[48]

> …
>
> He proposes that the Service purchase the return flights to the United Kingdom. Mr Seddon will obtain funds while in the United Kingdom and repay half the cost of all air fares on his return to Australia. This arrangement will exhaust the travel component of his contract and he will undertake to fully finance his family's travel home at the end of his secondment. Given the difference in cost between one-way and return air fares this arrangement is highly advantageous to the Police Service.
>
> …

3.24 This is a puzzling memorandum because, if correct, the Service was in fact only providing three single fares. Under the original arrangement made at the start of the secondment the Service was to provide six return fares to England for Seddon and his family.

3.25 It would seem that by providing only three single fares to England, in discharge of the original agreement, the Service had benefited unfairly from the arrangement, if in fact Seddon was to repay the cost of the fares back to Australia after the funeral, and the fares home for all of his family at the end of the secondment.

3.26 Ryan said in evidence that he believed that there was a total of $12,000 set aside for Seddon to use for airfares.[49] It was his understanding that the arrangement for travel to the funeral exhausted the duties of the Service to Seddon in respect of travel costs.[50] The Commission found no reference to a limit of $12,000 in any of the documentation supplied during the investigation. There was evidence in correspondence from both Seddon's home force and the Service that the agreement was for the Service to pay for the outgoing and return airfares for Seddon and his family.[51]

3.27 McGowan, in her evidence, said there was no doubt in her mind the arrangement was that Seddon would repay the three fares to return to Sydney after the funeral.[52] Seddon, on the other hand, rejected this as being the fact and it seems difficult to understand why Seddon would have sacrificed six fares for three fares. It also seems to be inconsistent with Ryan's understanding of what the arrangement

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48 PIC Exhibit 129B, barcode 6091998

49 PIC Transcript, PJ Ryan, 5 March 2002, p 5367

50 PIC Transcript, PJ Ryan, 11 March 2002, p 5635

51 PIC Exhibit 3, barcodes 5767130-1 and Exhibit 9, barcodes 5767136-7

52 PIC Transcript, MJ McGowan, 25 June 2001, p 2910

was, and it may well have been unfair to Seddon, at a time when he was probably vulnerable.

3.28 It is difficult to accept that McGowan's version is correct. Nevertheless, it was McGowan's version that was put into writing, on 23 August 1999, and forwarded to be approved by Mr Mick Tiltman, who was at the time Acting Executive Director of HR. There was also a note that verbal approval had been provided by Ryan and there is a written approval on the memorandum with a signature that looks like "D Mooney" dated 23 August 1999.[53]

3.29 As will be seen, the Service's interpretation of this arrangement came as a surprise to Seddon when he learned of it in October 2000. During a conversation in October 2000 Small told Seddon that he had never repaid this money. It does seem unusual that if the arrangement was for Seddon to repay money, it had been left from August 1999 to October 2000 to take any steps to recover it.

THE INVESTIGATION IN WAGGA WAGGA

3.30 In addition to the "general" activities, both Napper and Seddon were given some specific duties to carry out at Ryan's direction. For example, in Wagga Wagga there had been a series of murders. A person had been charged and was due to go to trial. There were a series of questions or doubts surrounding the accused, which came to the attention of Ryan. Ryan requested that Napper and Seddon review the investigation. In the early part of 1999, that review was carried out and a report was prepared by Napper. The report made significant criticism about the process leading to the accused being charged. Seddon and Napper had contrary views about the report. Seddon refused to sign it and said it was completely wrong.[54] Indeed, Seddon told Napper that if the report "… goes in with my name on it I'll tell you now, I'll rip it up in a thousand pieces and shove it [the report] up your fucking arse …".[55] This is the first incident where Seddon is recorded as using forthright and even abusive language. Later, other instances of his doing so were to assume particular significance.

3.31 Despite Seddon's opposition, Napper forwarded the report to Ryan, but the report led nowhere. Ultimately, the accused pleaded guilty to the three murders and was duly convicted. One of the issues between the two men was that Seddon did not want to be associated with the report.[56] Seddon himself had been an operational detective. Small gave evidence that Seddon said "one of the reasons that he wanted to disassociate himself from the report was … that he'd had

53 PIC Exhibit 129B, barcode 6091998

54 PIC Transcript, KJ Seddon, 2 May 2001, p 1086

55 ibid.

56 ibid.

considerable operational experience himself in murder investigations, whereas Mr Napper apparently hadn't".[57] Seddon said Napper had been attached to the Crime Faculty in the UK and had little operational experience.[58]

NAPPER'S PROPOSAL FOR A CRIME FACULTY

3.32 After the Wagga Wagga incident with Napper, Seddon continued with the establishment of crime management units (CMUs). Napper continued work on the establishment of a Crime Faculty and the development of DNA legislation, in both of which he had considerable experience. Small confirmed in his evidence that Napper had made a contribution to the introduction of the DNA legislation and DNA procedures within New South Wales.[59]

3.33 The Crime Faculty was established, but not in the form that Napper advocated. The main difference, according to Ryan and Small, was that Napper wanted a stand-alone Crime Faculty, whereas the model which was ultimately adopted was a Crime Faculty within Crime Agencies.[60]

3.34 There were various reasons why the stand-alone model Napper advocated was not accepted. The main reason given was that the stand-alone model was appropriate for the English policing system where there were a number of independent forces, but that in New South Wales, where there was one Service, it was appropriate to have it within the framework of an existing area of varying but particular expertise, namely Crime Agencies.

3.35 Small said in evidence that Napper wanted the stand-alone unit so that he could become the head of the Crime Faculty and remain in Australia.[61] Napper's evidence on this indicated his interest in developing a faculty that was to be separated from Crime Agencies.[62] Ryan himself said that the work that Napper had done on the Crime Faculty was very competent and well put together but that the model was not appropriate for New South Wales, and for that reason he had chosen the other model.

3.36 Napper in his evidence complained about what he said was the treatment he received in relation to his model. For example, he said that he was barred from having his model put to Ryan, and that he did not have an opportunity to speak to Ryan about it.[63]

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57 PIC Transcript, CT Small, 28 May 2001, p 1320

58 PIC Transcript, KJ Seddon, 2 May 2001, p 1085

59 PIC Transcript, CT Small, 30 May 2001, pp 1596-7

60 The model of the Crime Faculty incorporated a central body which contained all or most of the high level forensic expertise in the Service – scientific expertise, document examination expertise, pathology expertise and the like. The idea is that such a faculty is available at the end of the phone or an email from any LAC to provide "high level" expertise and answers.

61 PIC Transcript, CT Small, 29 May 2001, p 1481

62 PIC Transcript, RP Napper, 4 April 2001, pp 720-1

63 ibid., pp 678-80

3.37 The evidence before the Commission was that his model did go to Ryan.[64] It appears that Napper may have been absent from meetings where the model was discussed, because of illness in his family.[65] There were issues raised about whether Napper had told people this and whether that explained his absence, or whether he was simply absent and others thought he was not sufficiently interested.

3.38 On completion of his two year secondment, Napper returned to his home force.

SEDDON'S INVESTIGATION OF "OFFICER W"

3.39 Apart from the establishment of CMUs, Seddon was given some other specific tasks by Ryan. Among these was the review of the case of an officer, "Officer W", against whom adverse comments had been made in the Royal Commission. Officer W had been dismissed from the Service following the Royal Commission, but was reinstated on appeal. It was alleged that Officer W had assaulted an offender with the butt of his shotgun. In August 2000 Seddon wrote a detailed report at the request of Ryan on the circumstances of the matter.[66] He concluded that there had in fact been a constructive dismissal and that Officer W should be reinstated. Ryan did not act on the advice.

3.40 Ryan said he was concerned about the breadth of the attacks on people contained in Seddon's report, particularly on those who had been involved in the Royal Commission. This had an effect on his view of Seddon:[67]

> … I was disappointed in the intemperate nature of the statements made within the document and just extraordinarily disappointed and quite surprised that they should be made in that way.

3.41 Ryan, in answer to questions during the hearing about the reasons for termination of Seddon's secondment, raised this report as one of his reasons.[68] The fact that it was raised specifically suggested that it was an important factor in Ryan's termination of Seddon's secondment.

3.42 A reasonable perusal of the document, however, does not suggest that its wording is offensively extreme. It is forthright but not unnecessarily so. Whether Seddon's conclusions were correct or not in his report was not an issue – the issue for Ryan was the language used.

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64 PIC Transcript, PJ Ryan, 4 March 2002, p 5347

65 PIC Transcript, RP Napper, 4 April 2001, p 668

66 PIC Transcript, PJ Ryan, 7 March 2002, p 5528

67 ibid.

68 ibid., p 5529

SUPERVISION

3.43 As stated above, Ryan arranged for Seddon and Napper to be accommodated in Crime Agencies:[69]

> They arrived at Crime Agencies and found everything they needed. There was an office, computers, it was all laid out for them and I left it with Crime Agencies to give them any further induction that they felt they might need, the idea being that once the officers had gone – once Seddon and Napper had gone round for a couple of weeks, or three weeks or a month, they would come back to me with how they found things and I could give them more clear instructions on what it was they were to do.

3.44 Seddon said in evidence that he was told nothing about reporting requirements.[70] Ryan said he told Seddon that he would be attached to Crime Agencies and would report to the boss there, Small. When asked if he gave Seddon any indication about a line of command Ryan said "No, other than to say he would be working for the agencies and Small". Ryan agreed that he probably said to Seddon something like: "Settle in and we will sort out what it is I want you to do in due course".[71]

3.45 Small said that "From the outset there was a degree of blurring of responsibilities and accountabilities with respect to the two officers. Given that they were undertaking projects for the Commissioner they were given wide latitude and were not held to account for their time and performance of duties in the same way other members of the NSW Police were held to account."[72]

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69 PIC Transcript, PJ Ryan, 4 March 2002, p 5359-60

70 PIC Transcript, KJ Seddon, 2 May 2001, p1076

71 PIC Transcript, PJ Ryan, 4 March 2002, pp 5360-1

72 PIC Exhibit 24C, barcode 5793744

4. EVENTS LEADING TO THE ESTABLISHMENT OF THE CMSU

THE INTEGRATED CRIME MANAGEMENT MODEL AND THE EMERGENCE OF THE CMSU

4.1 One of the projects initiated by the Service following the Royal Commission was the introduction of CMUs to each LAC. The CMUs would coordinate the evaluation, resource allocation, progress monitoring and finalisation of reported crime. In addition the Units would be the repository for the Command's intelligence capacity and the analysis of information, crime and incident patterns.[73]

4.2 The project would also integrate the delivery of services to the LACs from specialist units such as Forensic Services, Information and Intelligence systems, Major Crime Investigations, and the new Crime Faculty, which was to be established. The project was called the Integrated Crime Management Model (ICMM).

4.3 The concept of CMUs had been introduced in many parts of the UK. Ryan was asked in evidence to explain how the Units operated. He said:[74]

> Their role was to pull together the current thinking as a result of research and other ideas on how we ought to police generally, the object being to reduce crime, catch criminals, make the public feel safer, because there was a somewhat – all over the world – pretty scatter gun approach to the way the new ideas were being introduced.
>
> They were given tags, names – "intelligence driven policing", "tasking for multiple effects"- all of these were being bandied around the broader police world, but they hadn't been properly captured and converted for use by operational police. It was almost as if the police were supposed to read these things and go out and do it.
>
> So the crime management units in the UK were formed to do a better analysis of the crime picture in an area, local command as far as we're concerned, and then look at better ways and strategies and developments of attacking the problem and getting the police officers then to be focused and targeted on how to do it as well as where to do it and against whom should the operations be managed.

4.4 The New South Wales model would consist of a small group of people at each LAC who coordinated the activities of the local investigators and the various sources of policing support such as intelligence and the latest research techniques in preventing crime. It was also hoped that the CMUs would initiate crime

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73 PIC Exhibit 271, barcode 5869624-5

74 PIC Transcript, PJ Ryan, 4 March 2002, p 5339

reduction by establishing prevention measures rather than waiting for crime to occur.

4.5 In October 1998 a Steering Committee was established to guide the project, with Deputy Commissioner Jeffrey Thomas Jarratt, as chairman, and Seddon and Napper as project coordinators, reporting to the Commander, Crime Agencies, who was project manager. The other members of the Steering Committee were:

- Deputy Commissioner Kenneth Edward Moroney;
- Commander, Special Crime and Internal Affairs;
- Commander, Special Services;
- Commanders, Greater Hume and North Metropolitan Regions;
- Executive Directors from HR, Development and Management Services; and
- Director Forensic Services.

4.6 The Steering Committee's purpose was to ensure that the various elements of the ICMM progressed and combined to provide a comprehensive response to criminal investigation.

4.7 The process adopted by the Steering Committee consisted of two phases. Phase One involved the development of the CMUs and Phase Two involved the roll-out of the CMUs to all 80 local area commands. The initial plan was for all CMUs to be operating by July 1999, however this did not occur. Nevertheless, a formal roll-out program was implemented, with a two-day workshop to be conducted in each Region.[75] Seddon was responsible for the roll-out of the program.

SEDDON AND RITCHIE

4.8 In late 1999 Seddon visited Shoalhaven LAC. While he was there, he heard Ritchie and two officers from Shoalhaven give a presentation at Nowra. As noted earlier, the BCU was at this time working in Shoalhaven LAC and was reporting impressive results. Seddon was impressed with the presentation and the ideas for behavioural and cultural change, and thought that these ideas could be incorporated into the work being done towards the development and establishment of the CMUs.

4.9 Seddon told the Commission that he met Ritchie following the presentation and thereafter he "began to make my own inquiries into the behavioural change

[75] PIC Exhibit 394, barcode 5946830

program".[76] Ritchie told the Commission that Seddon spoke to him after the presentation and told him that he had been looking for a way to breathe some life into the CMUs.[77] When Seddon learned that Ritchie was leaving the Service at the end of 1999 he (Seddon) asked Ritchie if he could "take it up with the Commissioner", to which Ritchie agreed.[78]

4.10 On 21 October 1999, in a meeting between Seddon and Ryan, Seddon told Ryan of what he had learned of the work being performed by the BCU.[79] Seddon suggested incorporating the work of the BCU with the CMU project. There are conflicting versions of what was said at this meeting. Seddon gave evidence that Ryan said: "Yeah, I know about Ritchie, he talks shit. Don't listen to what he says, he talks shit".[80] Ryan denied in evidence that he used such terms during the 21 October 1999 meeting, but he agreed that he warned Seddon that the BCU upset a lot of people and that Ritchie was particularly unpopular.[81] Both Seddon and Ryan agreed that Ryan warned Seddon about "falling under Ritchie's spell".[82]

4.11 Nevertheless, Ryan agreed that there were benefits to be obtained by the combining of the two Units, so long as the process, and the personnel of the BCU, were properly managed.

4.12 Ryan said in evidence that if the claims made by the BCU at Waratah LAC were right, then it could be put to use in the CMUs:[83]

> … - drive the intellectual thinking, if you like, behind new methods of crime investigation, police operations and so on, and get behavioural change in with that focus as well. It is like killing two birds with one stone. You could show a practical outcome and a positive outcome for a joint input of thinking and ideas about how we could do the job better.

4.13 Ryan permitted Ritchie's contract to be extended and agreed that Ritchie and Herring could work with Seddon on the CMU project.

4.14 Ritchie said he agreed to stay on in the Service, after Seddon held out to him, "the promise of a rejuvenated program, marrying behavioural change and crime management units together".[84]

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76 PIC Transcript, KJ Seddon, 2 May 2001, p 1089

77 PIC Transcript, JA Ritchie, 4 June 2001, pp 1839-40

78 ibid., p 1840

79 PIC Transcript, KJ Seddon, 2 May 2001, p 1090

80 ibid.

81 PIC Transcript, PJ Ryan, 4 March 2002, pp 5350-53

82 PIC Transcript, PJ Ryan, 4 March 2002, p 5353; KJ Seddon, 2 May 2001, p 1091

83 PIC Transcript, PJ Ryan, 6 March 2002, p 5490

84 PIC Transcript, JA Ritchie, 4 June 2001, p 1843

4.15 Ryan told the Commission that when Seddon first raised the prospect of incorporating the work of the BCU with the CMU project, he (Seddon) also raised the idea of a support group to help with the roll-out: [85]

> He had mentioned that he, because of the sheer size of the place and the number of police stations, was having difficulty getting round them all and servicing the requests for the integrated crime management model approach that we were taking and he could do with some help.

4.16 According to Ryan, it was around this time that the working title of Crime Management Support Unit (CMSU) was coined.

4.17 Ryan accepted that Seddon couldn't do the job on his own over such a wide area, but he was concerned that the progress of the BCU to date had been slow. By December 1999, according to Ryan, they had completed Waratah LAC and were at Shoalhaven LAC. Ryan felt that if they were going to do something, they needed to condense the message so that it didn't take so long.[86]

4.18 On 17 December 1999 there was a meeting between Seddon, Ryan and Small. Following that meeting Seddon sent an undated memorandum to Chadbourne, in which he said that Ryan had approved a proposal to involve Ritchie and Herring in Phase Two of the ICMM implementation program.[87] In his evidence, Ryan agreed that this memorandum generally set out the state of thinking as at that date.[88] The document stated, and Ryan acknowledged, that he had given approval for Ritchie's contract to be renewed for a further 12 months.[89]

4.19 Ryan said there was no detailed discussion at that stage about staffing for the unit or levels of seniority because he knew that a number of things had to happen – firstly, it would be discussed at the ICMM Steering Committee meeting, and secondly, Ryan wanted a plan from Seddon:[90]

> … I knew a paper was being drawn up. I wanted that to be delivered first so we could discuss it and finally, before we did anything, I would expect a business plan to arrive with details which can then be signed off. There didn't need to be a huge document, but it needed to have sufficient information to enable us to take action by way of finances, transfers and the like.

4.20 Ryan was asked in evidence if there was any discussion at that time (December 1999) about the line of authority for Seddon and the CMSU. He said in reply that Seddon was attached to Crime Agencies and he "assumed, as there was no information to the contrary, that everything was comfortable, it was working

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85 PIC Transcript, PJ Ryan, 4 March 2002, p 5349

86 ibid., p 5351

87 PIC Exhibit 98, barcode 5753856

88 PIC Transcript, PJ Ryan, 6 March 2002, p 5489

89 PIC Exhibit 98, barcode 5753856

90 PIC Transcript, PJ Ryan, 5 March 2002, p 5374

there, the things were happening, you know, administrative or human resources mode, there didn't seem to be any problems at all".[91]

4.21 Ryan was then asked:[92]

> In terms of him working at Crime Agencies, at this time – this is before we get to 2000 – what sort of supervision would you have expected him to have, if any?

He replied:

> Well, general, general supervision. His task was quite clear. He was a senior officer. His time span within the Service was relatively limited, two-year secondment – I know we increased it later, but that is another issue.
>
> He was working for a fairly robust commander. Systems and procedures were in place for things like payment and desks and equipment and the like. He would be, I would anticipate, very good at self-governing himself and he had a broad oversight of the senior officers within Crime Agencies.

Ryan was also asked:

> Would you, for example – and I ask this not knowing what the actual procedures for senior officers in the Police Service are – have expected him, for example, to inform Mr Small who was head of Crime Agencies, where he was each day?

He replied:

> Not necessarily each day, but certainly to keep him abreast of what he was doing, why he was doing it, where he was going in a general sense.

4.22 This evidence is significant because there was other evidence at the hearing that Seddon was not keeping Small abreast of what he was doing, and this was to create problems later when Small tried to impose some reporting and other requirements upon Seddon and the other members of the CMSU.

CONCERNS RAISED BY THE ICMM STEERING COMMITTEE

4.23 On 26 November 1999 Jarratt wrote a memorandum to Seddon expressing his disappointment with the general standard of project updates being presented for consideration by the Commissioner's Executive Team (CET). Jarratt noted that all Steering Committee members were providing written status reports for each ICMM meeting and minutes were being disseminated in a timely fashion after those meetings. Jarratt asked that comprehensive and informative project updates

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91 PIC Transcript, PJ Ryan, 4 March 2002, p 5354

92 ibid., pp 5354-5

be provided for the CET and asked that all future updates be signed off by Seddon.[93]

4.24 In December 1999, Jarratt wrote to Small enclosing a copy of the 26 November memorandum sent to Seddon. Jarratt noted that the reports submitted for the CET "are not yet providing the executive with information which enables them to be satisfied that the project is moving in accordance with a defined plan which has clearly specified outcomes". Jarratt requested Small to provide a progress report for the next Steering Committee meeting on 18 January 2000 and an updated project brief to address the next phase of the project.[94]

4.25 On 4 January 2000, Seddon responded to Jarratt's memorandum. He expressed his concurrence with Jarratt's dissatisfaction and sought responsibility for the preparation of all future progress reports.[95] He suggested that the members of the Steering Committee forward their status reports to him prior to each meeting and he would compile a comprehensive progress report which would be provided to the Steering Committee and the CET.

4.26 At the ICMM meeting held on 18 January 2000, Seddon reported on the compliance by LACs with implementation of the model.[96] The minutes of the meeting record that Seddon's data reflected a "generally high level of compliance with the staffing of the model" but that Small and another member expressed the view that the reported compliance was higher than was suggested in anecdotal reports.[97] The Committee noted that there were a range of competing factors which impacted on the ability of the LACs to implement the model.

4.27 Small advised the meeting that a workshop would be held to produce a range of documentation in support of the ICMM, including an updated project brief.[98]

4.28 It was agreed at the meeting that reports from each Steering Committee member were to be submitted to Seddon who would collate them into a project progress report, which would be submitted to the Steering Committee for endorsement prior to submission to CET.[99]

4.29 The next meeting took place on 16 February 2000. The minutes record that Commander Graeme Morgan "… expressed his reservations regarding the large number of projects which were becoming subsumed under the ICMM banner and the inherent risk of a lack of focus for the Steering Committee". The minutes further record that "Mr Small noted that the Steering Committee needs to identify

93 PIC Exhibit 271, barcode 5869574
94 ibid., barcode 5869573
95 ibid., barcode 5869571
96 ibid., barcode 5869558
97 ibid., barcode 5869558-9
98 ibid., barcode 5869561
99 ibid., barcode 5869562

all of the projects which relate to the ICMM and to specify reporting requirements, including frequency, in respect of those projects. Mr Small was requested to incorporate this task in the workshop which he is undertaking to document the model".[100]

4.30 It was agreed at the meeting that all committee members would provide a projected schedule of achievements for 2000 which would be included in the March progress report.

4.31 Seddon drafted a comprehensive progress report for the next meeting.[101] He included reference to the success achieved by Shoalhaven LAC in the management of crime. He said that the Behavioural Change Program had been the "driving force" behind the recent achievements at Shoalhaven. Seddon advocated the incorporation of the Behavioural Change Program into the ICMM project. He also proposed that, as a support mechanism for the rollout, a newly designed program, known as the Crime Management Support Program, should be implemented. This program would require a specified unit of 10 officers to be established to assist LACs.

4.32 Ryan told the Commission that he was shown a draft of Seddon's report before it was circulated.[102] He had to ask Seddon to make certain changes:[103]

> Q. And what was the gist of the changes that you sought?
> A. To take out the inflammatory language which was in there, which, to any reader – and we were hoping to sell this as a new model. Anyone reading it would be enraged by some of the comments in there which were made about management, management style and the like. Irrespective of whether some of those comments might have a grain of truth, one doesn't put it in a document and then say to the people, "The document says you are stupid, but read this anyway." That's the last thing on earth you would wish to do. So I asked for those references to be taken out.

4.33 The report was amended and circulated to the members of the Steering Committee. The minutes of the meeting on 29 March 2000 record that Jarratt thought the report required clarification. He reiterated the need for a suite of documents to clarify the various elements of the model and an overview document to explain the linkages. Small was requested to be accountable for the overview document and the CMU document.[104]

4.34 Ryan described the role of the ICMM Steering Committee as being able to push forward the changes to crime investigation. Members of the ICMM Steering Committee complained that they were bypassed in the decision making process

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100 PIC Exhibit 271, barcode 5869554
101 PIC Exhibit 197, barcode 5755187-258
102 PIC Exhibit 204, barcode 5787385-423
103 PIC Transcript, PJ Ryan, 5 March 2002, p 5388
104 PIC Exhibit 271, barcode 5869519

for the establishment of the CMSU. Certainly, as will be seen below, Ryan was well advanced in discussions with Seddon and Ritchie about the establishment of the CMSU, before the idea was first presented to the Steering Committee. Ryan, when asked about this, said:[105]

> I can't respond really. That is their view. I can say I discussed it with sufficient people to make sure, you know, people had it in their minds when things were happening. Making it happen was what I finished having to do, really.

STRUCTURAL PLACEMENT OF THE CMSU – THE MEETING OF 8 MARCH 2000

4.35 On 8 March 2000, Ryan held a meeting with Seddon and Ritchie and discussed the structural placement of the proposed CMSU.

4.36 Ryan told Seddon and Ritchie that the CMSU was to reside in Crime Agencies. Seddon already came under the line management of Crime Agencies. Ryan said he decided to put them in Crime Agencies:[106]

> … Simply to give them legitimacy with the rest of the Service. If they saw them attached to an operational group as opposed to a fluffy HR unit, which was kind of the scene, they may have additional credibility.

4.37 Seddon said of Ryan:[107]

> … He told us he was putting us specifically under Crime Agencies, and he actually said, "I'm putting you under Crime Agencies for your protection". By that, it was clear that if we were there in Crime Agencies, any of the interference that was run into the Behavioural Change Program previously would be - what's the word? - dissuaded, or whatever, you know. I can't think of a word.

4.38 When this transcript excerpt was read to him during the hearing Ryan said he would not argue with the word "protection" but could neither confirm nor deny that he had used the word.[108] He stated that his reasons for placing the group under Crime Agencies were to give the Unit the comfort of being part of an established and professional group that was recognised as operational. Ryan further stated that this would enable the group to have the credibility that it needed.[109] Ritchie also said that Ryan told them the reason he put them into Crime Agencies was to protect them from opposition to their program.[110]

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105 PIC Transcript, PJ Ryan, 5 March 2002, p 5376

106 PIC Transcript, PJ Ryan, 6 March 2002, p 5493

107 PIC Transcript, KJ Seddon, 2 May 2001, p 1123

108 PIC Transcript, PJ Ryan, 6 March 2002, p 5497

109 ibid.

110 PIC Transcript, JA Ritchie, 4 June 2001, p 1848

4.39 Ryan said:[111]

> I think I would have preferred, really, for it to have been in one of our research units, because we're dealing with not just crime, we're dealing with process, principles, procedures, a range of issues which are probably best dealt with by a research unit in an environment where that thing can flourish, where it can flourish. But they also needed strong leadership.
>
> They seemed to be, or gave the impression of being, a leaderless group, wandering around without any proper structure or management. That was the impression. Therefore, putting them under Small in the agencies, he would make sure they were properly managed and accounted for themselves.

4.40 Ryan said Small was a strong leader and he would "pull them into line".[112]

4.41 Ryan told the Commission that he thought the CMSU should have a limited life span.[113] Ryan saw its role as facilitating the implementation of the CMUs. If a Behavioural Change Program could work effectively in the longer term, then it could be attached to other developments within the Service. He did not think that there should be a group of people whose only function was to travel around the State sitting alongside officers advising them how to do their business forever.[114] Further, he hoped that up-front training would be implemented so that officers would learn these principles early in their career.[115]

4.42 Seddon said in evidence that at the meeting of 8 March 2000 or earlier, Ryan said that the CMSU project had to come out of "this office, nowhere else; it's got to come from this office".[116] During evidence, Ryan denied using those words and stated that he used words to the effect, "We will drive it from this office". And he said that this meant, "… we will drive the formation of the unit, not the actual unit on a daily management basis, but we will drive it from this office".[117]

4.43 According to Seddon, Ryan said he had previously had problems with the Behavioural Change Program because the reform was seen as someone else's agenda, in particular, former Assistant Commissioner Christine Nixon's.[118] Nixon had been head of HR at the time when the program was in its early development. Ryan denied that he said this.[119] A statement from Nixon produced to the Commission by Ryan's legal representatives confirmed that there had been no problem between Nixon and Ryan over the BCU developments.[120] Ryan said

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111 PIC Transcript, PJ Ryan, 6 March 2002, p 5494
112 ibid.
113 PIC Transcript, PJ Ryan, 5 March 2002, p 5408
114 PIC Transcript, PJ Ryan, 6 March 2002, p 5491
115 ibid.
116 PIC Transcript, KJ Seddon, 2 May 2001, p 1106
117 PIC Transcript, PJ Ryan, 5 March 2002, pp 5383-4
118 PIC Transcript, KJ Seddon, 2 May 2001, pp 1106-7
119 PIC Transcript, PJ Ryan, 5 March 2002, pp 5384-6
120 PIC Exhibit 454, barcode 5872206-7

that he wanted to convey to Seddon that "behavioural change" and Seddon's activities were seen by many in the Service to be outside the general run of what was happening. It was outside the broader essence of reform. Ryan said the gist of his direction to Seddon was that the CMSU had to work as a team within the Service and not become an isolated unit using language and behaviour that detracted from the positive message and concepts that the CMSU presented.[121]

4.44 Ryan told the Commission that he wanted to take the opportunity, at the 8 March 2000 meeting, to talk to Ritchie about how Ritchie should behave, what he should do, and what Ryan expected from him. Ryan said he wanted to gauge Ritchie's reaction. Ryan described the situation this way:[122]

> … I was hoping he could change his manner – probably impossible, but dare give a hope – and we could progress. We didn't need what was going on, the conflicts that were arising there. We needed to move on and this navel gazing and hand wringing was a nonsense. We had a job to do here. We had to deliver policing and we had to do it properly and effectively.

4.45 As well as discussing the role of Small, as commander for Seddon and the CMSU, the meeting of 8 March 2000 also addressed the role of Deputy Commissioners Jarratt and Moroney. Both Ritchie and Seddon said that Ryan said words to the effect "leave the Deputies to him".[123] Ritchie and Seddon said that this suggested to them that Ryan would smooth out any opposition or problems with Jarratt and Moroney.

4.46 Ryan's evidence was that he said, "Look I will deal with the executive team". Ryan said by that he meant that he would speak to them, not deal with them in a brutal sense.[124]

4.47 Both Seddon and Ritchie confirmed during evidence that they felt there was opposition from Jarratt and Moroney, either direct or indirect, to the setting up of the CMSU.[125] Ryan described any apparent opposition as, "Not opposition. There were concerns about the composition of the membership of the unit".[126]

4.48 In relation to the meeting on 8 March 2000, Ryan said, in a Statement of Information supplied to the Commission, "I believe I raised my concerns regarding the delay in rolling out the program".[127] Ryan said he also emphasised the importance of the CMSU being able to quantify and measure its results.[128]

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121 PIC Transcript, PJ Ryan, 5 March 2002, p 5385

122 PIC Transcript, PJ Ryan, 6 March 2002, p 5492

123 PIC Transcript, KJ Seddon, 2 May 2001, pp 1107-8; JA Ritchie, 4 June 2002, p 1845

124 PIC Transcript, PJ Ryan, 5 March 2002, p 5386

125 PIC Transcript, KJ Seddon, 2 May 2001, p 1134; JA Ritchie, 4 June 2001, pp 1849, 1886-8

126 PIC Transcript, PJ Ryan, 6 March 2002, p 5494

127 PIC Exhibit 449, barcode 5844773

128 ibid.

MEASURING THE RESULTS OF THE BEHAVIOURAL CHANGE PROGRAM

4.49 Ryan said that the BCU had made claims about improvements at Waratah LAC, including crime reduction, reduced sickness rate, better management, and other issues. He asked for the claim to be examined and the response that came back was that the results were "not as clear cut as they made out".[129]

4.50 Ryan did not say however that the claims were not justified. There was apparently friction between the auditing group and the BCU. In Shoalhaven LAC, similar claims were made and an independent study had been undertaken there by Charles Sturt University. The study from the University was less than precise, according to Ryan, but it highlighted some improvements that had occurred.[130]

4.51 Ryan pointed out that determining the cause of the improvement was difficult: "… it is not like giving a pill to a sick person and watching the miraculous recovery as the disease disappears".[131] Ryan pointed out that there were "bright, young, determined, enthusiastic people" who wanted to make the Service better and wanted the improvements to happen.[132] Their contribution was substantial to the changes. He thought that particularly of Superintendent Wayne Dedden, attached to Shoalhaven LAC, who he described as a "very good officer".[133]

4.52 On 4 April 2000, Ryan sent a memorandum to Superintendent Alan Crumpton, the Commander of Shoalhaven LAC.[134] The memorandum commended Crumpton and his staff for the consistent efforts in reducing crime in the LAC, "… as well as acknowledging the transformation you have been able to achieve in workplace relations at Shoalhaven".[135]

4.53 Ryan's memorandum to Crumpton on 4 April 2000, referred to the "independent evaluation" carried out recently by Charles Sturt University and went on to say that Shoalhaven LAC had been a testing ground for what was to be launched as a "… State-wide initiative. I have recently given approval for the Crime Management Support Program to be rolled out across the state".[136]

THE PRINCIPLE LED AND EVIDENCE BASED POLICING MODEL

4.54 A document titled "A Principle Led and Evidence Based Policing Model" (PLEB), was written by Seddon and Ritchie and circulated to the ICMM Steering

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129 PIC Transcript, PJ Ryan, 6 March 2002, p 5496
130 ibid.
131 ibid.
132 ibid.
133 ibid.
134 PIC Exhibit 453, barcode 6037951
135 ibid.
136 ibid.

Committee at about this time. The introduction to the document stated that the Commissioner had directed that a CMSU be established to accelerate the necessary cultural change in the crime management project:[137]

> … Its charter is to offer an integrated consultancy service, pulling together a number of important themes, and translating them into a truly practical change program. Specifically it has been tasked to:
>
> Design the NSWPS Crime Management Model,
>
> Implement the Model,
>
> Ensure All Model Components Work in Fact,
>
> Educate the Service in the Model.

4.55 Ryan said that he thought the PLEB document was a good document for people wishing to improve policing techniques.[138] He said:[139]

> It was an amalgamation of ideas that were current in police thinking. Quite a lot of people - not so much in Australia, we don't have that sort of academic background here, but the United States particularly, United Kingdom, there was a huge body of research material on policing as an activity and as a profession, and therefore lots of documents contain ideas on how policing as an activity could take place.
>
> That document was dragging together some of those ideas and threading it through with some new thinking on how best we could have a principle-led, evidence-based project here.

4.56 It was apparent at the hearing that the members of the CMSU regarded the PLEB document as representing the template for the way criminal investigation would proceed under the CMU model. Others attached less significance to the document.

RYAN'S PUBLIC ANNOUNCEMENT ABOUT THE FORMATION OF THE CMSU

4.57 The next step in the development of the CMSU was a public announcement by Ryan that the Unit was going to be set up. Ryan made the announcement at a meeting of Local Area Commanders at the NSW Masonic Centre on 6 April 2000.[140] The Region Commanders and people from Headquarters were also present. The precise terms of Ryan's announcement are not in writing, however, there is no dispute that he made such an announcement.

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137 PIC Exhibit 101, barcode 5727489

138 PIC Transcript, PJ Ryan, 6 March 2002, p 5501

139 ibid., p 5502

140 PIC Transcript, KJ Seddon, 2 May 2001, p 1112

4.58 Seddon gave evidence of what Ryan said at the meeting of 6 April 2000.[141] Ryan concurred with Seddon's account. Ryan said that he had a question and answer session immediately afterwards and there was a robust discussion about the concept amongst all those present.

MORONEY'S COMMENTS AT THE CRIME MANAGEMENT COURSE, GOULBURN

4.59 On 10 April 2000, a few days after Ryan's public announcement, Moroney addressed a Crime Manager's Course at the Police Academy, Goulburn. Moroney said that he received the PLEB document from Seddon a day or so before his address.[142] He said that he read it in the car on the way down to the Goulburn meeting. There is substantial dispute about what was said by Moroney at the meeting.

4.60 Herring's evidence in relation to the issue was as follows:[143]

> Mr Moroney made references to the pom connection, and in his address he said, "We should not pay too much attention to the work of the CMSU". He said that "others are having just as good a success in crime reduction", and he referenced the work done by the crime manager, Mr Rafferty, at Maroubra, and he went on to say, "crime was going down before Seddon and Napper arrived and will continue to go down long after they've gone". He then referenced the "English invasion" and I took that to mean Mr Seddon -

4.61 Lazarus' evidence in relation to this issue confirmed Herring's evidence.[144] Moroney, however, absolutely denied that any such things were said by him.[145]

4.62 There is evidence that Moroney's usual use of language is moderate, and evidence that he would not use such words as "Pom".[146] It may be significant to note that Lazarus' memory of what was said is more consistent with the type of language Moroney normally uses. Lazarus thought for example that the words "the Englishmen" might have been used, not "the Poms". His version of what was said was:[147]

> Okay. He made comment initially in relation to crime reduction within the Service and he said that – or words similar to the effect, that crime reduction has been working within the Police Service long before Ken Seddon arrived on these shores, … I was taken aback when he made comments similar to – after he'd spoken briefly about the crime management support program, without

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141 PIC Transcript, KJ Seddon, 2 May 2001, p 1112

142 PIC Transcript, KE Moroney, 1 June 2001, p 1755

143 PIC Transcript, PF Herring, 5 April 2001, p 818

144 PIC Transcript, ME Lazarus, 19 June 2001, p 2508

145 PIC Transcript, KE Moroney, 31 May 2001, p 1666

146 PIC Transcript, KE Moroney,1 June 2001, p 1756; ME Lazarus, 19 June 2001, pp 2509-10, 2560; PJ Ryan, 6 March 2002, p 5503

147 PIC Transcript, ME Lazarus, 19 June 2001, p 2508

> giving a lot of details, he mentioned the fact that either himself or other officers would be, you know, quite willing to purchase return tickets back to the UK. Now, he either said Ken Seddon or – might have used the word "Pommy", but I think it was more Ken Seddon or "Pommy" or "you Englishman", or something similar. I can't remember definitely if he mentioned Ken Seddon but he was certainly looking in that direction and he was certainly obvious who he was speaking to … I was certainly surprised by his comments.

4.63 A further point of contention for the CMSU members was the fact that Moroney in his opening address did not make express reference to the work of the CMSU. Moroney, in response, said that he did incorporate areas from the PLEB document into his opening address, but he accepted that he did not directly make reference to the CMSU.[148] He said that he meant no offence by this, but rather he was talking generally about crime management and he made use of the ideas in the PLEB document.[149]

4.64 Seddon gave the following evidence in relation to Moroney's opening address on 10 April 2000:[150]

> Q Was there something that he said that you took exception to?
> A Well, yeah, the whole tenor of his opening address I took exception to. Not so much as being insulted, I thought it was a missed opportunity.
>
> Q What did he say that you saw as representing a missed opportunity?
> A Yeah, I'll tell you what the missed opportunity was first: it was to say, "Right, the Commissioner's announced a principle-led model to the Crime Management Support Unit, and this is going to be the way forward. This is where we're all going".
>
> What he did was he came along and said, "You'll hear a whole lot of new proposals this week, some of which are good, some of which might not be so good. What you've got to remember is that crime was going down before Ken Seddon and Robin Napper came to these shores and crime will be going down once they've gone".

4.65 The same day Seddon sent an email about the incident to Suzette Gay, Executive Officer to Ryan.[151] Seddon said in the email that Ryan had told him he would speak to Jarratt and Moroney regarding the way forward with the PLEB Policing Model that Ryan launched at the Local Area Commanders meeting on 6 April 2000. Seddon then referred to the comments that Moroney had made at the Police Academy during the launch of the Crime Manager's Course. The email said:[152]

> Mr Moroney saw fit to relate to the Crime Managers that all is well, steady as we go, no change here. He underlined that by reminding those present that

[148] PIC Transcript, KE Moroney, 1 June 2001, p 1756
[149] ibid., p 1812
[150] PIC Transcript, KJ Seddon, 2 May 2001, pp 1114-5
[151] PIC Exhibit 207, barcode 5830918
[152] ibid.

> crime was going down "before Ken Seddon arrived on these shores and will doubtless do so when he and Robyn Napper have left".
>
> I am pretty pissed off. I expected more.

4.66 On 17 April 2000, Gay emailed Seddon telling him that she had passed on to Ryan Seddon's email of complaint about Moroney's remarks at the Police Academy.[153]

4.67 Ryan gave evidence that he could not remember Gay informing him of Seddon's complaint.[154] He said that he thought the communication would have come to his attention, but Gay didn't show him the email. Ryan said that he thought he had probably spoken to Jarratt and Moroney at one of their weekly meetings, but he did not remember the details.[155]

4.68 A number of Local Area Commanders who were present gave evidence that they did not hear Moroney say anything untoward.

4.69 Whatever was said, there is no doubt that the members of the CMSU were affected by Moroney's comments. Moroney said that he meant no offence in what he said to the gathering, and he could recall nothing that he said which might be offensive.[156] Certainly, the language in the account contained in Seddon's email could hardly be described as extreme. Perhaps it was a question of over-sensitivity on one side, and lack of sensitivity on the other. Precisely what was said cannot now be determined, but it does seem that there was something said which an observer might take to be negative, or lacking in support, from someone from whom support would be expected, given Ryan's directions. The problem was that this was how it was interpreted by the members of the CMSU.

JARRATT'S RESPONSE TO THE ICMM PROGRESS REPORT AND PLEB DOCUMENT

4.70 On 12 April 2000, Jarratt sent a memorandum to Small in relation to the ICMM project.[157] He said in the memorandum that a considerable amount had been done, but it was evident that a considerable amount remained to be done in terms of embedding the model within the Service:[158]

> … A crucial part of this process is the availability of documentation which describes the model and its constituent elements in clear and concise terms. This documentation will underpin subsequent development work and serve as the basis for improving communication about the model within the Service. …

153 PIC Exhibit 205, barcodes 5830915-6

154 PIC Transcript, PJ Ryan, 5 March 2002, p 5393

155 ibid.

156 PIC Exhibit 236, barcodes 5853621-22; PIC Transcript, KE Moroney, 1 June 2001, p 1756

157 PIC Exhibit 100, barcode 5753837

158 ibid.

4.71 Jarratt noted that each member of the Steering Committee had been asked to prepare documentation relevant to their sphere of responsibility for consideration at the meeting to be held on 19 April 2000. Jarratt requested Small, in addition to a document describing the CMU, to prepare a document:[159]

> … which describes in clear, simple terms the *Integrated Crime Management Model*. This would be the over-arching document which links together the various elements (Crime Management Unit, Crime Faculty, Intelligence, Forensic, Brief-handling, etc.)

4.72 Jarratt said in his memorandum that this request did not diminish the value of material previously produced, but recognised the need for documentation tailored to the wider audience within, and possibly outside, the Service. He said that the ICMM progress report of March 2000 included "a great deal of useful information".[160] However, he said it lacked a degree of clarity which would enable its use as a status report. He thought it might have exceeded its scope by advocating a "way ahead", in a document which had not had the benefit of input or endorsement from the ICMM Steering Committee.[161] Jarratt also commented on the PLEB document as follows:[162]

> I have fundamental concern with concepts advanced in this paper. In short, it appears to me that the Project Team has prematurely diverted its focus and resources from the refinement of the Model itself to the development of supporting mechanisms. Until such time as the essence of the Crime Management Model has been distilled to the satisfaction of all key stakeholders, it is premature to speculate on the nature and role of a proposed Crime Management Support Unit.

4.73 In a further email to Gay on 18 April 2000, Seddon expressed concerns about Jarratt's attitude to the CMSU developments. In the email, Seddon stated that there had been a meeting between Small and Jarratt on 7 April 2000. Seddon said that Small had told him that he, Small, had briefed Jarratt fully about Ryan's instructions. Jarratt also had copies of both the ICMM progress report and the PLEB document. Seddon said that he was left to conclude that Jarratt was seeking to influence the future direction of the ICMM in ways other than in accord with Ryan's view.[163]

4.74 Jarratt told the Commission that at the time he sent his memorandum to Small on 12 April 2000, he was unaware that Ryan had endorsed the PLEB document or that he had addressed the Local Area Commanders meeting on 6 April 2000. Jarratt stated: "I don't believe I was aware at the time of sending that memo that those other events had taken place."[164]

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159 PIC Exhibit 100, barcode 5753837

160 ibid., barcode 5753838

161 ibid.

162 ibid.

163 PIC Exhibit 205, barcode 5830915

164 PIC Transcript, JT Jarratt, 5 October 2001, p 4555

4.75 If Jarratt knew at that time that Ryan had in fact announced that this project was the way forward, then his comments could perhaps be seen to be resistant to this reform initiative. Bearing in mind that the support had been openly stated in Ryan's announcement on 6 April 2000, Jarratt should have known of Ryan's intentions. On the other hand, it may be that all Jarratt's memo illustrates is a conservative approach to this project, and the need for its principles to be clearly articulated.

THE "CLEAR THE AIR" MEETING

4.76 The next step seems to have been what became known as the "Clear the Air" meeting which took place on 9 May 2000 between Jarratt, Moroney, Ryan and Seddon.[165] The meeting was clearly held to deal with what Seddon saw as resistance or opposition from Jarratt and Moroney. Notes were taken of that meeting, however they do not make clear to whom the various comments are attributed.[166] The notes certainly stated that everyone present at the meeting accepted that the CMSU had been decided as the way forward. It was noted, however, that it was accepted "in theory" and "not in practice".[167] Ryan said in evidence that he was aware of the purpose of the CMSU, however, he had concerns in relation to the roll-out. He said: [168]

> … I think what the notes reflect is that the Crime Management Support Unit is what we're trying to do, but we still have got these problems of getting the whole thing rolling along properly.

4.77 In the minutes under the heading "Issues" the following was stated:[169]

> 1. CMU not in place. (JJ) – no roll out.
>
>   Wants to see plan of action.
>
>   Convert from concept to reality/plan.
>
>   Crime Mgmt training perceived as successful.
>
> 2. DCOP's [Deputy Commissioners] feed back that they were against plan – clarified they were not.

4.78 The notes from the meeting also indicated that the "CoP apologised for not providing more information"[170] to Jarratt and Moroney. Ryan was asked about this during the hearing.[171] He said that he thought that was "pretty well" what

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165 PIC Transcript, KJ Seddon, 21 June 2001, p 2715; KJ Seddon, 22 June 2001, p 2775

166 PIC Exhibit 198, barcode 5755682-3

167 ibid., barcode 5755682

168 PIC Transcript, PJ Ryan, 5 March 2002, p 5394

169 PIC Exhibit 198, barcode 5755682

170 ibid., barcode 5755683

171 PIC Transcript, PJ Ryan, 5 March 2002, p 5394

was said at the meeting but it was the next line which was the important one, namely: "Formalise procedure, business plan/ implementation plan".[172]

4.79 Ryan said that Jarratt and Moroney were really looking for a formalised procedure of a business plan and an implementation plan, "which was what we were going to try and get up and running".[173] The notes of the meeting also recorded that Ryan said the process was not to be forced on to LACs and that it was a voluntary procedure.

4.80 During the Commission hearing, Moroney was asked about the "Clear the Air" meeting. According to Moroney there was a view developing that both he and Jarratt were not supportive of the CMSU model or the Unit itself.[174] Moroney said he decided to clarify a few issues concerning his support of the CMSU:[175]

> … So at my instigation, the four of us met on 9 May and, as the brief minutes of that meeting relate, there was clarification of the view, and certainly there was no lack of support by DC Jarratt, nor myself, for the concept or the model.

4.81 Moroney told the Commission that during the meeting Ryan did not raise the issue that either he (Moroney) or Jarratt was opposed to the CMSU.[176] At the end of the meeting, Moroney stated that he "felt that there was an atmosphere of goodwill".[177]

4.82 In a statement provided to the Commission by Jarratt's legal representatives, Jarratt claimed that the "Clear the Air" meeting, was held "because a number of things had occurred which made DC Moroney and me unsure as to whether we were carrying out the Commissioner's requirements precisely."[178] According to Jarratt the meeting came about as a result of the things Moroney was alleged to have said at the Crime Managers Course held at the Police Academy on 10 April 2000.[179] During the Commission hearing, Jarratt was asked whether it had ever been suggested that he and Moroney were undermining the CMSU. Jarratt said he was "stunned" by these suggestions and felt he had given whatever support he could. Jarratt also said that the allegations concerning Moroney's comments on the 10 April 2000 were "… the catalyst for asking for that meeting with the Commissioner".[180]

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172 PIC Exhibit 198, barcode 5755683

173 PIC Transcript, PJ Ryan, 5 March 2002, p 5394-5

174 PIC Transcript, KE Moroney, 1 June 2001, p 1763

175 ibid.

176 ibid.

177 PIC Transcript, KE Moroney, 29 October 2001, p 4740

178 PIC Exhibit 394, barcode 5946831

179 ibid., barcode 5946832

180 PIC Transcript, JT Jarratt, 5 October 2001, p 4618

4.83 Jarratt said in his statement that as a result of this meeting, Ryan apologised to himself and Moroney for not keeping them fully informed and both he and Moroney committed themselves to the ongoing support of the CMSU.[181]

EARLY DISCUSSIONS ABOUT CONTRACTS

4.84 At Ryan's meeting with Seddon and Ritchie on 8 March 2000, Ryan asked Ritchie to meet with Chadbourne to prepare a contract. Ryan said that he spoke to Chadbourne shortly after 8 March 2000 to warn Chadbourne that Ritchie was coming to negotiate a 12-month contract.

4.85 Chadbourne said in evidence that he was surprised that Ryan was directly involved in the CMSU staffing issue involving Ritchie, as it was unusual for him to deal with such matters. Chadbourne knew that Seddon enjoyed what he called "a direct working relationship with the Commissioner" and he assumed that Seddon had raised the matter of Ritchie's employment personally with him. Chadbourne said that it was his clear view at the time that, notwithstanding the organisation reporting line structure that was in place, in reality Seddon was reporting directly to Ryan.[182] According to Chadbourne, Ryan said to Chadbourne words to the effect:[183]

> I want Ritchie's contract to be drawn up for a period of [12] months with a salary of $55,000 to $60,000 net in hand plus oncosts and superannuation.

4.86 Chadbourne said that he would draft the contract. Chadbourne interpreted the phrase "net in hand" to mean gross salary inclusive of tax, plus an amount to compensate Ritchie for discontinuance of the expenses he was claiming in respect of living at Goulburn and travelling to Sydney, including accommodation and meals when in Sydney. A day or so later, Chadbourne spoke with Ritchie and told him of the offer and provided to him a written contract dated 15 March 2000. Ritchie responded that he could not sign the contract as $60,000 was totally inadequate. He said that he would have to talk to Seddon and then they would take it up with the Commissioner. Chadbourne said he made detailed handwritten notes at the time of these conversations. From these he prepared a detailed statement, which was provided to the Commission.[184]

4.87 A short time later, Chadbourne spoke to Seddon who said that Ritchie should be paid the same as a Superintendent. Seddon said he was proposing that each of the CMSU team leader positions would be at Inspector level and Ritchie's role would be to develop those team leaders.[185] Ritchie would advise Seddon directly.

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181 PIC Exhibit 394, barcode 5946832

182 PIC Exhibit 336, barcode 5917907

183 PIC Transcript, E Chadbourne, 4 September 2001, p 3153

184 PIC Exhibit 336, barcode 5917908

185 ibid.

Seddon would direct the policing aspects of the CMSU and Ritchie would have responsibility for the behavioural change aspects. Seddon said that Ritchie's total cost to the Service at that time was not dissimilar to a Superintendent's remuneration package so it was logical that Ritchie should be paid the equivalent of a Superintendent.

4.88 Chadbourne asked his Executive Officer, Justin Holmwood, to provide details of Ritchie's existing package. Chadbourne was advised that Ritchie was being paid $52,000 per annum and that the Service reimbursed his Sydney hotel and meal expenses totalling between $30,000 and $35,000 per year. He was told that these arrangements had originally been approved a couple of years earlier, when Ritchie was transferred from the Police Academy to the HR Command in Sydney.[186] When asked by Chadbourne, Ritchie confirmed that he was being paid $500 to $600 per week for accommodation and meals.

4.89 Within the next few days, Chadbourne spoke with Ryan and advised him that Ritchie was unhappy with the $60,000 offer. He told Ryan of the $30,000 to $35,000 per year expenses.[187] Ryan said he found that situation incredible and said to offer Ritchie a total remuneration package of $70,000.[188] Chadbourne did not prepare a revised contract. He thought it was premature until the offer was accepted.[189]

4.90 In late March, Chadbourne spoke with Ritchie and told him that Ryan had agreed to an increase to $70,000. Ritchie responded that this was less than he was presently receiving, that he understood that Seddon had spoken with Ryan and that he was to be paid the equivalent rate of a Superintendent. Ritchie said he would have to speak to Seddon again.

4.91 Chadbourne said he and Ryan had further discussions about Ritchie in March 2000. During one of their meetings, Ryan expressed misgivings about extending Ritchie's contract, because he had heard negative comments expressed about Ritchie. Chadbourne responded that he thought Ritchie had a lot to offer and was an expert in what he was doing. He did say that it was important to make sure that Ritchie was effectively managed, "… Maybe we should structure his employment on the basis of six (6) monthly intervals". To which Ryan responded "Maybe we should".[190]

186 PIC Exhibit 336, barcode 5917909
187 ibid.
188 ibid.
189 ibid.
190 PIC Exhibit 336, barcode 5917910

4.92 Sometime around April or May 2000, Seddon and Ritchie came to Chadbourne to brief him on their ideas for staffing of the CMSU. In his statement Chadbourne recalled Ritchie saying the following:[191]

> We just want to keep you updated about what we are thinking in terms of staffing the CMSU. We think we will establish five, two person teams to be staffed on the basis of six (6) months rotating secondments which will provide officers with developmental opportunities.

4.93 According to Chadbourne, Seddon told him that they had signed up 23 LACs to the program, and that for the time being, the Unit could manage with a staff of seven.[192] Seddon said that there was himself, Ritchie, Herring and hopefully Harriet Stacey. He said he was planning to bring on board Mike Lazarus.[193] This was the first time Chadbourne heard either name put forward as a member of the CMSU.[194] Seddon did not suggest any grades or ranks at that stage.

4.94 Ryan said in his statement, provided to the Commission pursuant to section 25 of the Act, that at the "Clear the Air" meeting Seddon raised with Ryan a plan for staffing the Unit:[195]

> … We discussed this plan and finally agreed that to ensure that the Service took the Crime Management Support Unit seriously, it probably needed people at Inspector rank leading the teams. We discussed that in order to get non-sworn staff with appropriate skills and qualifications, it would be necessary to reimburse at that sort of level.
>
> ... As best I am now able to recall Mr Seddon mentioned that a Ms Stacey was available for this work and would be leaving the Australian Graduate School of Police Management where she enjoyed a good reputation for similar types of work.
>
> … I do not recall the names of other officers mentioned. However, other names were raised by Mr Seddon and I told him that he should be very careful whom he chose, that they should have good credibility and should only be temporary in the posts.
>
> During these discussions I do remember discussing salary levels. I did not agree to the positions being at Chief Inspector level. I felt then and continue to feel that such a level is too high. All positions were to be treated as the same. …

4.95 According to the minutes of the "Clear the Air" meeting, Ritchie's contract was also discussed. The minutes record that Ritchie's terms of contract were "… offered permanent position on salary to be handled properly by HR approx $60k".[196] As will be seen later, this may have some significance when looking

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191 PIC Exhibit 336, barcode 5917910

192 ibid.

193 ibid.

194 ibid., barcode 5917910-11

195 PIC Exhibit 449, barcode 5844773-4

196 PIC Exhibit 198, barcode 5755683

at the ultimate terms on which Ritchie was engaged – particularly the word "permanent".

4.96 Ryan said during evidence that there was debate at this meeting about Ritchie's position and the amount he was to be paid. Some of the concerns were whether the amount was too much, whether it was enough, how the amount would fit with the contract, required costs and Service liabilities. The debate culminated in the meeting "agreeing that HR should handle these issues".[197]

22 MAY 2000 ENVIRONMENTAL AUDIT

4.97 On 22 May 2000, Seddon handed Small a briefing note addressed to Small which had attached to it a number of Position Overviews and a document entitled "Environmental Audit – Work Analysis".[198] The document was seeking approval for the proposed structure and positions of the CMSU.[199] Seddon said he handed the document to Small. According to Seddon the document was prepared on the advice of John Hodson from Workforce Planning.[200] Seddon had been advised that it was necessary that protocols be fulfilled in order that a unit such as the CMSU could be created within the Service. Small denied being given the covering note but confirmed that he was shown a document by Seddon on 22 May 2000 which detailed a draft of the position structure for the CMSU. Small recalled, "Mr Seddon did come and show me some draft Position Overviews that I understood had been drawn up by Mike Lazarus". Small said that he told Seddon he had some reservations about some of the titles that were given to the positions and he requested that some more work be done on them.[201]

4.98 According to the document entitled "Environmental Audit – Work Analysis", the unit was to be the CMSU, located in Crime Agencies Command at Strawberry Hills. The Work Unit Description stated:[202]

> The Crime Management Support Unit is to be established upon the instruction of the Commissioner to accelerate cultural change based upon the newly released "Principle-Led and Evidence-Based Policing Model". …

4.99 The Unit was described as an "A1 reform project". The key activities were to be:[203]

- Detailed gap analysis of the available assets and nature of liabilities at each LAC site.

197 PIC Transcript, PJ Ryan, 5 March 2002, p 5396
198 PIC Exhibit 201, barcode 5759106-19
199 PIC Transcript, KJ Seddon, 2 May 2001, pp. 1118-21
200 ibid., pp. 1119-20
201 PIC Transcript, CT Small, 28 May 2001, p 1351
202 PIC Exhibit 201, barcode 5759109
203 ibid.

- Coaching, teaching and mentoring key LAC personnel especially the Commander, Crime Manager and Duty Officers, and Crime Management Unit personnel.
- Negotiating the introduction of new processes.
- Over sighting and leading the development of new, relevant police practice products.
- Identification of local product champions who were capable of sustained performance improvement effort.
- Supplying and interpreting the latest relevant police research.
- Negotiating with all Service support mechanisms such as Regions, Operational Programs, Reform Coordination Unit.
- Educating all Service actors in the Principle-Led and Evidence Based Policing Model and its implications.
- Identification of the 60 key personnel referred to in the Model documentation.
- Development of training sites as per the model documentation.

4.100 In relation to Seddon's authority the document proposed:[204]

> LEVEL OF AUTHORITY:
>
> The Commander, Crime Management Support Unit, has financial delegation to incur expenditure, approve overtime, direct tasks, etc.

4.101 So far, as can be seen from later documentation, nowhere is the above proposal stated to be incorrect and, in the oral evidence given by various senior officers, no one stated to Seddon that the proposal was incorrect. On the face of the document, Seddon made it quite clear what he was proposing and possibly had reasonable grounds for believing that he did have financial delegation and for acting upon that belief. In fact, for reasons that will be explained below, Seddon should not have had any financial delegation.

4.102 The document stated that the position of Commander CMSU was accountable to the Commander Crime Agencies.[205] The document stated that the Unit had the following working relationships:[206]

- Liaises with external agencies.
- Liaises with other branches of the Service.
- Liaises with International, National and inter-state Policing research programmes.

[204] PIC Exhibit 201, barcode 5759110
[205] PIC Exhibit 103, barcode 5754079
[206] ibid.

- Liaises with tertiary institutions.
- Integrated Crime Management Steering Committee.
- The Specialist Task Force Workgroup.
- Advise and support Local Area Command Management teams and the Crime Management Unit

4.103 On 22 May 2000, Seddon met with Small, Moroney and Jarratt to discuss the proposed budget for the new unit. According to Small, it was agreed at that meeting that Seddon would prepare a business case.[207] On 23 May 2000, there was a meeting of the ICMM Steering Committee. Small was absent from this meeting, however, Seddon reported that Small was seeking to clarify what he had to write by way of documentation. Jarratt undertook to speak to Small. Seddon was requested to provide a presentation about the CMSU as reflected in the PLEB document at the next meeting.[208]

4.104 Perhaps the main point which comes out of the meetings and the minutes is the emphasis on developing correct documentation. By this time, it was some six weeks since Ryan had announced the formation of the CMSU at the meeting of the Local Area Commanders on 6 April 2000. The senior officers of the Service in almost all their recorded comments referred to the need for further documentation and a business plan.

4.105 As at 23 May 2000, there appeared to be no particular deadline specified by the ICMM Steering Committee for the creation or establishment of the CMSU. However there was in fact, if not a deadline, an urgency to get things moving.

[207] PIC Transcript, CT Small, 28 May 2001, p 1349

[208] PIC Exhibit 271, barcode 5869512-4

5. THE FORMAL ESTABLISHMENT OF THE CMSU

THE MEMORANDUM OF 24 MAY 2000 IN RELATION TO THE NSW PARLIAMENTARY BUDGET ESTIMATES COMMITTEE

5.1 As part of its accountability to government, the Service regularly reports to the NSW Parliamentary Budget Estimates Committee. This Committee takes a keen interest in all aspects of the Service, including issues relating to reform and cultural change. The Committee is made up of a cross section of Members. The manner of consultation is in the form of prepared questions that the Commissioner of Police is required to answer. There was a scheduled Committee meeting on 6 June 2000.

5.2 On 24 May 2000, Ryan sent a memorandum to his executive team – Jarratt, Moroney, Chadbourne and Mr Des Mooney, the then Executive Director, Management Services – about the Parliamentary Budget Estimates Committee.[209] In this memorandum, he said that he had "… seen a copy of the questions to be asked at the Estimates Committee next week". He said that one of the questions related to the present situation, with regards to behavioural change. Ryan said that the topic was constantly raised by the Opposition and had been the basis of numerous critical media articles.[210] He said that this subject was used by critics as a prime example of the Service's failure, in their view, to achieve significant cultural change. He said that it was important that the Service show that "our version of 'Behavioural Change' is being put in place".[211]

5.3 Ryan also said in the memorandum of 24 May 2000:[212]

> We have agreed to progress the initiative of the Crime Management Support Model, particularly as this small unit will be able to provide hands on operational support in the LAC's where it is most needed.
>
> The announcement of the Support Unit has been generally welcomed in the LAC's and the training given to crime management shows good prospects of delivering this change process.
>
> It is essential that the Crime Management Support Unit be properly structured and resourced before the 6th June, 2000 so that I can give truth to my responses to the Committee.
>
> The minimum staff should be provided now with the estimated full complement joining over the next few months once we have collectively agreed the final structure at the next CET meeting.
>
> I expect each member of the CET to ensure that relevant actions are undertaken immediately to achieve this objective.

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209 PIC Exhibit 104, barcode 5753861

210 ibid.

211 ibid.

212 ibid.

SENIOR OFFICERS' RESPONSE TO RYAN'S MEMORANDUM OF 24 MAY 2000

5.4 Ryan's memorandum of 24 May 2000 was not addressed to Seddon but to Jarratt, Moroney, Mooney and Chadbourne.[213] It could be concluded that Ryan expected one or all of them to take some action to set up a proper structure and provide proper funding and resources. However directing it to four people without making it clear what he wanted any one of them to do could lead to a situation where no one did anything. Initially, this seems to have been what happened. Each said they were waiting for one of the others to act.

5.5 Chadbourne said in his statement that he believed he would be required to instruct Workforce Planning to establish a structure for the CMSU as soon as he had received a formal proposal from Moroney, who was the responsible CET member for the CMSU.[214] He never received the formal proposal.

5.6 Although Ryan's memorandum was dated 24 May 2000, it was not received by either Jarratt or Moroney, until 29 May 2000. The first note of it having been received appears in an email from Moroney to Jarratt of 29 May 2000. Moroney said in the email:[215]

> I have, today, received a copy of the COP's minute of 24/5/00 re the establishment of the CMSU. I am, to say the least, astounded at what I must regard as a blatant backdoor effort presumably on the part of Ken Seddon to staff the CMSU along the lines suggested by him in our discussions of ten days ago.
>
> This is a $1M proposal and notwithstanding the merits of CMU and Behavioural Change programs, I am bloody annoyed (as I suspect you are) at the approach taken.
>
> I will discuss with you tomorrow. Glad I got that off my chest!

5.7 Jarratt responded to Moroney on the same day:[216]

> Ditto. A very bad sign.

5.8 Moroney said he believed that Seddon had gone to Ryan to avoid compliance with the proper procedural steps needed, and as set out at the ICMM meeting on 23 May 2000.[217] Moroney said that he was not annoyed with Ryan about the approach taken, but at Seddon.

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213 PIC Exhibit 104, barcode 5753861

214 PIC Exhibit 336, barcode 5917911

215 PIC Exhibit 105, barcode 5754083

216 ibid.

217 PIC Transcript, KE Moroney, 31 May 2001, pp 1682-3

5.9 Ryan said in evidence that Moroney's interpretation that Seddon had gone behind Moroney's back was not a correct interpretation of what happened.[218] He said he was not aware of the reasons why there was such a misunderstanding. Ryan was asked:[219]

> Q. One of the issues which has been raised during the hearing is whether it would have been appropriate for Mr Moroney to have encouraged Mr Seddon to take the immediate steps to set up a temporary structure. Would you consider that that was appropriate, or would have been appropriate?
> A. It would have been appropriate for all those who should be helping in the process to get on and do it. That wasn't done.

5.10 Ryan agreed that there was no reason that he could see on the facts why Moroney should be annoyed at all, nor did he know why Jarratt responded by email to Moroney that it was a "very bad sign".[220] Neither Moroney nor Jarratt told him that it was inappropriate to set up the CMSU on a temporary basis initially, with an evaluation later.[221] Ryan recalled discussing the concerns they expressed in the email in general terms, but he said, "I can't recall details of those conversations".[222]

5.11 Ryan did not accept that Jarratt and Moroney's email suggested that they were being duplicitous.[223] He said that it was not his interpretation that they were "working their hardest behind the scenes to thwart the process".[224]

5.12 On the same day, 29 May 2000, Moroney sent an email to Seddon in which he said that he had seen the memorandum signed by Ryan of 24 May 2000 "… requiring the formal establishment of the CMSU before the 6 June, 00".[225] It appears that, although the 24 May 2000 memorandum did not refer expressly to "formal" establishment of the CMSU, Moroney inferred that it did in fact require that step.

5.13 Moroney's email to Seddon, in effect, told Seddon that it could not be done. After raising a number of issues that Moroney said needed to be considered and setting out some historical facts, he said:[226]

> Your proposal will be submitted to the B.I.G. (sub-CET) for endorsement and referral to CET for approval. This is the Service-wide policy on proposals of this nature. Simply stated, I need a rationale (with associated financial costings, HR evaluations etc) for the proposal.

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218 PIC Transcript, PJ Ryan, 5 March 2002, p 5412
219 ibid., p 5414
220 PIC Transcript. PJ Ryan, 11 March 2002, p 5591
221 ibid.
222 ibid.
223 ibid., p 5592
224 ibid.
225 PIC Exhibit 106, barcode 5754084
226 PIC Exhibit 106, barcode 5754084

5.14 Moroney's statement could be interpreted as a direct prohibition of any formal establishment of the CMSU before 6 June 2000. Moroney's words required that before anything further could happen two things had to be done: first, that the Business Implementation Group (BIG) endorse the proposal,[227] and second, that the CET approve the proposal. Having passed the BIG it had to then proceed to the CET. Moroney's email was not sent until the evening of 29 May 2000. There were five days available, including a weekend, in which to have the endorsement and the approval before anything could be done.

5.15 The email concluded:[228]

> Finally, lest my position be misunderstood, I am fully aware of the Commissioner's written direction to me and the requirements to comply with that direction. I do, however, need to ensure that the relevant guidelines (for all public sector agencies) are adhered too [sic] and followed. My questions are not posed as issues for obstruction, rather, compliance with established practices.

5.16 Moroney sent a copy of it to Jarratt for his comments. Jarratt commented in an email to Moroney on the same evening, 29 May 2000, a few hours later:[229]

> Carefully crafted and to the point. Again, we await normal fare. This is not dissimilar to the request of the boss to Terry O'Connell some time ago. We never saw it. I wonder if it will be different this time?

5.17 Ryan stated in evidence that the purpose of his memorandum was to ensure that the Unit was established, on a temporary basis, prior to 6 June 2000. Ryan said that the Unit had already been operating for some months and that the process they were currently going through was to formally establish the CMSU, and to make sure that the Service could account for its activities and do all the business and planning. Ryan said that the reason he required the Unit to be established on a temporary basis was that it could take up to eight months for the formal steps to be taken to establish a permanent structure and he described it as a "terrible process".[230]

THE FORMAL BUT TEMPORARY ESTABLISHMENT OF THE CMSU

5.18 On 29 May 2000, Chadbourne had a conversation with Seddon in the corridor in which Seddon told him he had received a "strange email" from Moroney about staffing the CMSU. Seddon told Chadbourne that he would give him a copy of Moroney's email as well as a copy of his own reply sent on 30 May 2000.[231] In

[227] The BIG is made up of the members of Ryan's Executive team (the CET) minus Ryan.

[228] PIC Exhibit 106, barcode 5754085

[229] ibid., barcode 5754084

[230] PIC Transcript, PJ Ryan, 5 March 2002, p 5407; PJ Ryan, 11 March 2002, p 5593

[231] PIC Exhibit 107, barcode 5754086

relation to the formal proposal to establish the CMSU Seddon's reply stated the following:

- The proposal for the CMSU had financial implications around $1M.
- He had supplied the documents outlining the proposed structure to Chadbourne. These had been prepared for the last meeting with Moroney.
- A model was in place.
- Roles and responsibilities had been developed with Workforce Planning.
- A project brief was well underway, being constructed with the assistance of Lesley Bently and her team.
- The ICMM review itself provides a detailed rationale for the intended program.[232]

5.19 In addition Seddon acknowledged the public sector guidelines, but asked were they so rigid that they could not accommodate "timely advancement of this programme".[233] Seddon said he had been told by the head of Workforce Planning that, given appropriate authority, the positions could be created on a temporary basis and evaluated subsequently. Seddon said that at that time the CMSU consisted of himself, Ritchie, Herring and Lazarus, and the minimum requirement was for a further two police officers and one non-sworn member. On the basis that the minimum staff level was reached by 6 June 2000, Seddon had engaged 23 LACs into the Crime Management Support Program. He concluded:[234]

> Perhaps you will forgive my lack of understanding in this process; but are there not specialist personnel in this Service who's [sic] role it is to advance these issues on behalf of the Executive in ways that might ensure the meeting of the 6th June deadline?

5.20 On 4 June 2000 Chadbourne had one of his regular meetings with Ryan. At that time he had still not received an approved proposal for establishing the CMSU. Chadbourne said he did not expect to receive a proposal from Moroney by 6 June 2000. Chadbourne therefore raised the matter with Ryan, because he wanted to know if Ryan wanted him to expedite the creation of the CMSU structure so it would be in place by 6 June 2000. He said that he knew Ryan's deadline could only be met if he created a temporary structure for the CMSU. According to Chadbourne's statement the following exchange took place between them:[235]

> Chadbourne: Commissioner, unless we do something right now, there is no way that the CMSU structure will be put in place before you appear before the

[232] PIC Exhibit 107, barcode 5754086

[233] ibid.

[234] ibid., barcode 5754087

[235] PIC Exhibit 336, barcode 5917912-13

> Budget Estimates Committee in two (2) days time. Ken Moroney has advised Ken Seddon that he wishes to go through all the normal processes for establishing the unit and I reckon that will take at least a couple of months, especially since he also wishes to have the proposal discussed by the Business Implementation Group and subsequently submitted to CET for approval.
>
> Ryan: I've been trying for months to get the CMSU properly set up. I should never have been placed in this situation. I'm becoming very annoyed with the staff in the Deputy Commissioner's office who seem to be deliberately slowing things down and coming up with all sorts of excuses as to why these types of things shouldn't be done.

5.21 When asked to comment on the above evidence Ryan said he could not remember saying those things. He said "I'm not accepting the words 'deliberately slowing the process down', but I will agree I had concerns about staff in the deputies' office not doing as much as they could do to see the process through. That does not mean Jarratt or Moroney".[236]

5.22 Later it was put to Ryan that what Moroney was endeavouring to do in his email to Seddon was in fact to slow the process down. Ryan replied:[237]

> I wouldn't like to put that interpretation on it. I would put the interpretation that he wanted the unit to be set up properly and in accordance with the Public Service guidelines, as we all did – I think that is quite clear here. If that slowed the process down, then that would be the end result. So he could slow the process down, but it's not necessarily to say it was a deliberate attempt to jeopardise the formation of the unit.

5.23 Ryan said in evidence that it would have been preferable if Moroney's memorandum had said something positive and suggested a way forward, in particular suggesting that the CMSU be established on a temporary basis.

5.24 Chadbourne said in his statement that he made the decision at the meeting on 4 June 2000, to take the initiative and proceed immediately to establish a temporary structure for the CMSU, knowing that all of the positions would subsequently be evaluated under the Service's normal job evaluation process and the formally evaluated grades and ranks would replace the temporary ones. He told Ryan he would take action to set up the CMSU as a temporary structure that day and Ryan said "Good".[238]

5.25 In his evidence Ryan said he had no argument with Chadbourne's version of that exchange.

5.26 On the same day as Chadbourne's 4 June 2000 meeting with Ryan Chadbourne spoke with Seddon about the staffing arrangements. He asked Seddon what grades/ranks the team leader positions should be.

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[236] PIC Transcript, PJ Ryan, 11 March 2002, p 5561

[237] ibid., p 5594

[238] PIC Exhibit 336, barcode 5917913

5.27 According to Chadbourne's statement Seddon responded that he had spoken with Ryan and proposed that Ritchie's role should be graded at equivalent to Superintendent level, "because that level of seniority will be necessary in order for him to have credibility with his peers" and the team leader positions should be equivalent to Chief Inspector.[239]

5.28 Chadbourne said in his statement that Seddon did not expressly state that the Commissioner had agreed with the levels he was proposing, but Chadbourne assumed that if the Commissioner had had any major concerns at that time he would have told Seddon, who would in turn have advised Chadbourne.[240]

5.29 On 5 June 2000, Chadbourne moved to formally establish the CMSU. His first step was to email John Hodson at Workforce Planning within HR, directing him to establish the temporary structure at the levels proposed by Seddon.[241] A copy of this email was sent to Superintendent Andrew Scipione, Ryan's Staff Officer.

5.30 The email read:[242]

> As you know from previous discussions with Ken Seddon, we are moving ahead with the establishment of the Crime Management Support Unit. This initiative has the full support of the Commissioner and promises to be a key part of his strategic vision for the future.
>
> Obviously we will need to formally establish the staffing structure for the CMSU in the near future.
>
> However, the Commissioner has requested that we take immediate steps to establish the following Temporary Structure for the CMSU:
>
> 1. Commander (Ken Seddon, whose current position will continue)
> 2. Model Design & Implementation Consultant (Jim Ritchie. Position level yet to be determined but for the present time, assume it is equivalent to Superintendent level).
> 3. Administrative Officer (Grade 5/6).
> 4. Five Team Leader Positions (Position level yet to be determined, but for the present, assume equivalent to Chief Inspector).
> 5. Five Team Member Positions (Positions Level yet to be determined, but for the present, assume equal to Inspector).
>
> John, could we please establish these temporary positions today, as the Commissioner will be assuring the Government tomorrow, that we have actually taken appropriate steps to establish the CMSU.
>
> Please let me know if you have any queries.

[239] PIC Exhibit 336, barcode 5917914

[240] ibid.

[241] ibid.

[242] PIC Exhibit 109, barcode 5750716

5.31 On the bottom of that email is a hand written note by John Hodson to HR, asking for the establishment of the structure as set out in Chadbourne's email with the technical details of rank, grade and numerical classification alongside the various levels. Hodson also said "CMSU may also need to be created as a location within Crime Agencies".[243]

5.32 On 5 June 2000 Ryan's Executive Officer sent an email to Chadbourne regarding the position grades in the CMSU. The email said:[244]

> … Andrew asked me to respond to your memo regarding the Crime Management Support Unit.
>
> The Commissioner feels that the gradings for the temporary structure for the CMSU may be too high. Could you please have a look at them, adjust and resubmit. …
>
> This email was obviously in response to the email referred to above, sent by Chadbourne to John Hodson on 5 June 2000, which was copied to Ryan's staff officer, Andrew Scipione.

5.33 According to Chadbourne, he spoke with Seddon after receiving the email from Ryan's office.[245] Chadbourne told Seddon that Ryan's office wanted him to look at the proposed position grades as they might be a little high. Seddon responded:[246]

> It sounds like people in the Deputy Commissioners office are playing their little games again and trying to sabotage the CMSU. I see no valid reason to change any of the proposed grades.

5.34 Chadbourne responded, "OK Ken, time is of the essence and I'm not going to second guess you".[247]

5.35 Chadbourne said in evidence that he did not reject Seddon's view about the people in the Deputy Commissioner's offices "playing their little games" nor did he adopt that view either.[248] Chadbourne said that from his professional background as a change manager, he understood the nature of organisational change resistance.[249] He decided not to take the matter up further and it progressed through the normal procedure for a temporary structure and was placed on the computer mainframe on 7 June 2000.

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243 PIC Exhibit 109, barcode 5750716

244 PIC Exhibit 110, barcode 5754092

245 PIC Exhibit 336, barcode 5917915

246 ibid.

247 ibid.

248 PIC Transcript, E Chadbourne, 5 September 2001, pp 3263-4

249 PIC Exhibit 336, barcode 5917915

THE PARLIAMENTARY BUDGET ESTIMATES COMMITTEE MEETING

5.36 On 6 June 2000 Ryan gave evidence to the Parliamentary Budget Estimates Committee.[250] The first question related to DNA testing and then Ryan was asked the following question by the Honourable M J Gallacher:[251]

> Considering the results that restorative justice has had in Wagga Wagga, Nowra and other pilot areas around New South Wales, are you in a position to tell the Committee why Mr O'Connell's restorative justice and behavioural change unit was axed in October last?

5.37 Ryan's response was, "It was never axed".[252] Ryan went on to explain to the Committee that Ritchie designed the Behavioural Change Program in 1997 whilst attached to the RJG. He said that in August 1999 O'Connell, former section head of the RJG, indicated his intention to leave the Service and the Behavioural Change Program became the primary focus "of this particular unit's work".[253] Ryan also discussed the results achieved by the RJG / Behavioural Change Program in Waratah and Shoalhaven LACs and said that although there had been some good results there was no sustainable improvement.

5.38 Ryan told the Committee that in April 1999 an ICMM program began and Seddon was given the responsibility to oversee the implementation of the CMUs at each LAC. Ryan also said that the first phase of the program was entirely structural and that the second phase was planned to address working practices and systems. Ryan told the Committee that in September 1999 he directed Ritchie and Herring to work closely with Seddon to design Phase Two of the program.[254]

5.39 Ryan went on to say:[255]

> … The result of this collaborative work was the creation of the crime management support unit, which is a key component of the behavioural change program, and they perform the cornerstone of the crime management support program. …

5.40 There is an issue about whether Ryan was correct when he told the Committee that the restorative justice and behavioural change unit was "never axed". In the statement provided to the Commission by Chadbourne, Chadbourne said that the Morgan & Banks report contained a specific recommendation that there be a

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250 PIC Exhibit 439, barcode 5903702

251 ibid.

252 ibid.

253 ibid.

254 ibid.

255 ibid., barcode 5903702-3

re-evaluation of the functional necessity of the RJG.[256] The Morgan & Banks report said that if it was to be retained, it should be placed under the employee management unit in the new HR Command. Chadbourne said that soon after he joined the Service in early October 1999, he had a meeting with Ryan to seek his views on the specific recommendations. He said that during the discussions, Ryan expressed considerable disappointment with the progress achieved by the RJG and also with some of its staff, including Ritchie.[257]

5.41 According to Chadbourne, Ryan believed they had been pursuing their own interpretation of cultural reform rather than supporting the Service's real cultural reform agenda. Ryan wanted Chadbourne to give a high priority to determining the future of the RJG. Chadbourne said that as a result of discussions with Ryan he decided to commence the general downsizing of HR services:[258]

> … by firstly closing down the Restorative Justice Group. Soon after deciding to pursue this course of action, I met with Terry O'Connell, Jim Ritchie and Paul Herring and advised them that as part of the restructuring of Human Resource services, the Restorative Justice Group was going to be closed. Terry, Jim and Paul expressed serious concerns about the consequences of this decision. They said it would jeopardize the future implementation of the Behavioural Change Program and they wanted to know what alternative plans were envisaged to continue implementing much needed cultural change throughout the Service. I explained that it was proposed that we would incorporate the principles of behavioural change into the Service's future management and supervisory training courses and then hold course participants accountable for adopting and modelling those behaviours in the course of carrying out their day-to-day responsibilities. …

5.42 It would seem therefore that the unit was in fact closed down. It was also clear, however, both from Chadbourne's evidence and other evidence before the Commission that as at 6 June 2000, there was commitment to continuing the principles of the Behavioural Change Program.

5.43 Ryan told the Commission that he knew the sort of questions about the unit that were likely to come at the Committee Meeting, because there had been newspaper articles written by members and former members of the CMSU intending to show that there was a deliberate attempt to disband the unit.

5.44 This could explain the reason put forward in Ryan's memorandum of 24 May 2000 for wanting the CMSU "properly structured and resourced" before 6 June 2000, namely, "… so that I can give truth to my responses to the Committee".[259]

5.45 The use of this expression could imply that it would not have been truthful for Ryan to give the answer he gave on the basis of the state of the CMSU as at

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256 PIC Exhibit 336, barcode 5917902

257 ibid.

258 ibid., barcode 5917902-3

259 PIC Exhibit 104, barcode 5753861

24 May 2000. However, the fact was that the CMSU had been de facto operating for some time. From any view, it would seem that members of the former BCU were working as part of the CMSU. Seddon was physically at Crime Agencies and was carrying out CMSU work, including the actual creation of it. Ritchie was certainly being paid during the first half of 2000 to carry out that work, as was Herring and, later, Lazarus.

5.46 Ryan, in evidence before the Commission, said that there was a distinction between the word "create" and the word "establish".[260] The word "establishment" had a particular technical meaning in HR, namely, being placed on to the Service computer mainframe so that it had formal existence, but "creation" had no technical meaning. He said that in his response to the Parliamentary Budget Estimates Committee on 6 June 2000, he deliberately used the word "created" rather than the word "established" with reference to the CMSU.[261] Ryan's point in oral evidence was that the members of the CMSU had been carrying out its functions for some months prior to 6 June 2000.

5.47 Ryan said that it was not possible for the CMSU to be established in any final form between 24 May and 6 June 2000. The time was too short.[262] Ryan did explain, however, that it could have been set up on a temporary basis and that temporary establishment could take place within 24 hours. Permanent establishment took longer because a number of procedures had to be followed including advertising for positions in a unit.

5.48 Ryan described to the Commission what he meant by the phrase "properly structured and resourced".[263] He said he wanted to see action being taken to staff the CMSU with people who had already been identified, or who were in the process of being identified. He said he wanted to see action, so it was evident that the unit was being financed and in the process of being developed, "… Just that the thing was in the process of being formed".[264]

5.49 Ryan said in the memorandum of 24 May 2000 that he expected each member of the CET to ensure that relevant actions were undertaken.[265] Ryan expected Chadbourne to deal with the HR issues of advertising the posts and making sure that the necessary interviewing, transferring and moving people around were complied with. Mooney, who was in charge of finances, would need to have a "budgetary head".[266]

5.50 The additional budget was to be looked after by Mooney, but as far as possible using existing resources. Most of the people who were being engaged for the

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260 PIC Transcript, PJ Ryan, 6 March 2002, p 5508

261 ibid.

262 PIC Transcript, PJ Ryan, 5 March 2002, p 5408

263 ibid., pp 5411-2

264 ibid., p 5412

265 PIC Exhibit 104, barcode 5753861

266 PIC Transcript, PJ Ryan, 5 March 2002, p 5409

unit were already on a salary. Where there was an acting promotion, it was planned that it could be taken from one of the reserved positions at that rank which was not being used at that time.[267] For example, the Service had a certain number of authorised Chief Inspector positions. At times the authorised number of positions were not being used and therefore the ranks were held in reserve so that they were available should someone be needed at that rank level. Ryan said in evidence to the Commission:[268]

> … there are vacancies … where we can use a staff position, empty staff position which is funded. There are vehicles which are in a location which are surplus to requirements, or we can use pool vehicles, a whole range of issues to minimise costs.

5.51 Ryan said he saw Seddon coordinating the whole thing.[269] He intended a Superintendent or equivalent to be the leader of the CMSU and advertising and planning had to take place, but in the short term he saw Seddon as fulfilling the leadership role.

5.52 On 8 June 2000 Hodson sent an email to Chadbourne stating that the positions had been placed on the system effective 7 June 2000 and that they were currently either over-strength police positions or temporary administrative positions. He set out a list of the positions, the numbers of each position, the rank of each position, and the numerical codes.

MEMBERS OF THE CMSU AFTER 7 JUNE 2000

5.53 Before June 2000, members of the CMSU were Seddon, Ritchie, Herring and Lazarus.

5.54 Herring had been a police officer in the 1970s, had left the Service and returned as a non-sworn officer in 1995. Herring worked with the RJG between 1995 and 1998 and thereafter the BCU. He told the Commission that in October 1999 he started working with Seddon.[270]

5.55 Lazarus joined the Service in 1978. By early 1990, he had been promoted to rank of Sergeant. In 1995, Lazarus moved to the HR section of the Service and worked on the promotion system. In 1998, he worked on other HR projects. In early 2000, Lazarus became involved with the CMSU.[271]

5.56 After June 2000, two more individuals joined the CMSU, Dean Richard Olsen and Harriet Lucy Stacey. Olsen joined the Service in 1990. He worked in

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[267] PIC Transcript, ME Lazarus, 19 June 2001, p 2516; JE Hodson, 22 October 2001, p 4648

[268] PIC Transcript, PJ Ryan, 5 March 2002, p 5410

[269] ibid., p 5409

[270] PIC Transcript, PF Herring, 5 April 2001, pp 806-7

[271] PIC Transcript, ME Lazarus, 19 June 2001, pp 2503-5

Metropolitan Sydney before moving to Waratah LAC in 1996. He joined the CMSU in June 2000.[272]

5.57 The last person to be invited to join the CMSU was Stacey. Stacey joined the Hertfordshire Police Constabulary in 1989. In the mid 1990s, she took a position with Charles Sturt University working at the Police Academy. In 1999, Stacey commenced working with the Australian Federal Police.

5.58 Stacey had officially resigned from her position in the UK but for reasons that are not clear a view prevailed for a time that she still held her status as a police officer in the UK. If true, this would have meant that when she was appointed to the Service, she held two offices of profit under the Crown. In lay language, that is a government employee in the UK and a government employee in New South Wales, and such a situation was not permitted. There is no doubt that she had resigned from her position in the UK and how such a misunderstanding could possibly have come about was never explained.

5.59 In early June 2000, Ritchie came to Chadbourne and advised him that the CMSU wanted to hire Stacey who was then with the Australian Federal Police in Sydney. Ritchie said Stacey was very capable and he had worked with her before at Charles Sturt University. He asked Chadbourne to speak with her as she had a number of employment related questions that she wanted to ask. Ritchie said, "I propose that we offer her a three (3) year contract". Chadbourne responded, "Okay, I will meet with her, but I think we should agree that either party may terminate her employment contract on three (3) months notice".[273]

5.60 Chadbourne said that he suggested the approach of termination by notice in order to provide the Service with the flexibility to terminate Stacey's services if her performance proved unsatisfactory, or if the future direction of the CMSU changed in such a way as to no longer require her services. Ritchie protested at this suggestion and said that such an offer would not leave her any job security and he did not think she would leave her current employment to join under those conditions. Chadbourne accepted Ritchie's point and said, "… Alright we won't include that provision in the terms and conditions of her employment".[274]

5.61 Ritchie gave Stacey's contact details to Chadbourne who arranged to meet her on 9 June 2000. Chadbourne said that his meeting with Stacey was for two reasons. The first was to enable him to answer her employment related questions. The second was to enable him to form an opinion about whether or not she possessed the relevant skills, knowledge and experience needed to enable her to be an effective contributor to the CMSU team. He did not conduct a comprehensive assessment of her candidature, but based on what Seddon and Ritchie had told him of what was needed, he formed the view that she possessed

[272] PIC Transcript, DR Olsen, 8 June 2001, pp 2333-4

[273] PIC Exhibit 336, barcode 5917915-16

[274] ibid., barcode 5917916

the necessary basic skills required. At the meeting they discussed her salary expectations, which were in the mid $80,000s, her commencement date, which she requested to be in one month, and a request by her for leave without pay to take up a teaching contract in the UK from 14 October 2000 to 16 January 2001.[275] In July 2000, Stacey took up a position with the CMSU.[276]

5.62 Around mid-June 2000 Chadbourne met Olsen. Olsen was at the photocopy machine outside his office and Chadbourne walked up and introduced himself to Olsen. Chadbourne did not know how Olsen had come to join the CMSU, but assumed that it had been arranged by Seddon and Ritchie. As the CMSU did not report into HR, but rather into Crime Agencies, he considered that Olsen's selection was not in his line of responsibility.[277]

THE "YELLOW" OF 15 JUNE 2000

5.63 Chadbourne supplied to the Commission a copy of a document dated 15 June 2000 bearing his signature and the date 16 June 2000 handwritten alongside the signature.[278] It contained details of the temporary CMSU positions which had been established within Crime Agencies from 7 June 2000, the applicable salary rates, and the names of the individuals nominated for positions at that stage. There was also a space for the Commissioner's signature although the document had not been signed by Ryan. This document was described as a "Yellow", a term used in the Service for all correspondence going to the Commissioner or Deputy Commissioners.

5.64 Chadbourne said in his statement that the document would have been prepared by his Executive Officer, Justin Holmwood, and given to Chadbourne for his signature.[279] The document was in the following terms:[280]

> **ISSUE**
>
> **Crime Management Support Unit proposed staffing arrangements**.
>
> **BACKGROUND**
>
> To facilitate the commencement of the work of the new Crime Management Support Unit pending formal evaluation of the positions required, the following overstrength (police) and temporary (administrative) positions have been established within Crime Agencies from 7 June, 2000:-
>
> 1 x Superintendent [Model Design and Implementation Consultant]
> 5 x Chief Inspectors [Team Leaders]
> 5 x Inspectors [Team Members]
> 1 x Clerk, Grade 5/6 [Administrative Officer]

[275] PIC Exhibit 336, barcode 5917916
[276] PIC Transcript, HJ Stacey, 20 June 2001, p 2645
[277] PIC Exhibit 336, barcode 5917917
[278] ibid., barcode 5917972
[279] ibid., barcode 5917917
[280] ibid., barcode 5917972

Practical measures now have to be taken to fill these positions and, notwithstanding the ranks and gradings currently applicable to them, it is proposed that the Team Leader positions will in fact be pitched at Inspector level rather than Chief Inspector Level. However, to differentiate between Team Leaders and Team Members, it is proposed to pay Team Leaders at the top of the Inspector range (i.e. $84,779) and Team Members at the bottom of the range (i.e. $82,109).

COMMENT

The salary rates applicable to these positions, with effect from the 1 July, 2000 will be:-

Superintendent - $103,470 - $106,139
Chief Inspector - $88,118 - $89,451
Inspector - $82,109 - $84,779

However, in view of the comments in the last paragraph of the "Background" section above and recognising that Mr Jim Ritchie, the intended Model Design and Implementation Consultant, will not be expected to perform the policing duties of a superintendent, the following appointments are proposed, at the salaries indicated, within the Crime Management Support Unit:-

Mr Jim Ritchie (Model Design and Implementation Consultant) - $90,000
Mr Mike Lazarus (Team Leader) - $84,779
Mr Dean Olsen (Team Leader) - $84,779
Mr Paul Herring (Team Leader) - $84,779
Ms Harriett Stacey (Team Leader) - $84,779

[N.B. In three month's time and at the Commissioner's discretion, it is proposed that Mr Ritchie's position be evaluated, and, if appropriate, his salary reviewed].

RECOMMENDATION

That the appointments proposed above in relation to Messrs Ritchie, Lazarus, Olsen and Herring and Ms Stacey be approved.

Commander,
Crime Management Support Unit
June 15, 2000

5.65 Ryan confirmed in evidence that he had seen a Yellow that recommended a salary level of $90,000 for Ritchie and other salary levels for the others.[281] On 22 June 2000, Ryan wrote a memorandum to Seddon. The memorandum refers to the document supplied by Seddon to Ryan about the proposed salaries for the CMSU. It read:[282]

> With reference to your report recommending gradings for the CMSU, I do foresee one or two problems.
>
> Mr Ritchie, as a consultant, can continue in that role and at the proposed salary of $90,000 per annum. However, all other employees who are earning

[281] PIC Transcript, PJ Ryan, 12 March 2002, p 5714

[282] PIC Exhibit 332, barcode 5877309

> less than your recommendation, could not automatically be rewarded pay increases without there first being some form of job evaluation and probably there will be a need to advertise the positions to meet industrial agreements. Police officers could be appointed under Section 66 arrangements.
>
> Miss Harriet Stacey could be employed directly on a temporary basis, or as a contractor at the proposed salary level and then in the future apply for the full time position which would have to be advertised, again to meet industrial agreements.
>
> You should check with HR on those matters before proceeding and ensure that you have their sign off before committing the Service to these proposals.

CONTRACTUAL ISSUES

5.66 On 27 June 2000 Chadbourne took one week's holiday and returned to work on 10 July 2000. On his return, Holmwood told him that in the preceding week he had issued letters concerning the appointment of members of the CMSU, including details of their salary. Holmwood told Chadbourne there was a problem with some of the offers.

5.67 The letters of offer to each of the CMSU staff were dated 6 July 2000.[283] The letter to Ritchie stated that his salary was to be $90,000 per annum. For the others the salary was $84,779 per annum (the top of the range for an Inspector). These amounts accorded with the proposal contained in the "Yellow" which went to Ryan and was approved by him. The problem was that although all the Team Leaders were to be paid at the top rate for an Inspector, only some of them were sworn police officers (Lazarus and Olsen) and this made a difference. The salary for a police officer includes a 10 per cent loading to reflect the fact that they made be recalled to duty after hours. Administrative officers, which is what Herring and Stacey were, were not entitled to such an allowance.

5.68 Accordingly, both Herring and Stacey were advised that their salary would be discounted by the 10 per cent loading paid to all non-executive police and their new salary would be $79,306.00. Herring and Stacey complained to Chadbourne about this.

5.69 Advice was obtained from Joe Vass, Principal Industrial Officer, who noted that the intention of the Service had been to offer temporary employment to both officers for a period of up to three years. Positions were evaluated at Clerk Grade 10. Offers of temporary employment were made on 6 July 2000, pursuant to sections 90 and 91 of the *Police Service Act 1990*. The offer of employment to both officers quoted a substantially inflated rate of pay above the substantive rate for a Clerk Grade 10, namely, $63,138 to $65,019. Both Herring and Stacey

[283] PIC Exhibit 332, barcode 5877340-44

were offered a salary of $84,779 per annum. This salary equated to the rate of an Inspector Level 4.[284] Vass confirmed:[285]

> … It is accepted practice that where administrative officers relieve in police positions the 10% loading should be discounted as the loading is compensation for work performed on weekends, shift work, recall to duty and other incidents of employment not covered by the respective police agreements. Administrative officers are not subject to those disabilities.

5.70 Vass advised that because the Service had offered employment at a particular rate of pay and the offer had been accepted then the Service was bound to honour the terms of the contract.[286] The letter of offer made no reference to the substantive Clerk Grade 10 position that both Herring and Stacey were intended to be appointed to. It merely quoted a salary that was not the rate of the substantive classification and grade.

5.71 In relation to tenure, the letters to Ritchie, Herring and Stacey stated:[287]

> Whilst employment under sections 90 and 91 of the [Police Service] Act is predicated on the basis of periods of four months, it is envisaged that the specific task for which your employment is being offered should provide work for a period of up to three years, subject to satisfactory conduct and performance.

5.72 Although technically the letters did not offer three years' employment, the wording of the letters was such that it could have been implied. The relevant matter is that Ryan had envisaged Ritchie's contract being only 12 months.

5.73 Ryan had the view that the CMSU would eventually wind down once all the CMUs were up and running. He held the view, and said to Ritchie on 8 March 2000, that he should train the other officers in the CMSU to do the work which he was doing so they could carry on the work without the need for him to be involved after 12 months.[288]

5.74 In relation to the proposal in the letter of four months, with at least an implied renewable provision, Ryan said:[289]

> Well, as I have previously just said, I've never known it to be done in that way. We're looking at a temporary employment in any event and the individual – there is nothing there that says, other than 'satisfactory conduct and performance', there is nothing in there that says that these jobs will be advertised for which you can later apply if you so wish.

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284 PIC Exhibit 115, barcode 5748717

285 ibid.

286 ibid.

287 PIC Exhibit 332, barcode 5877341, 5877342 & 5877344

288 PIC Transcript, PJ Ryan, 5 March 2002, p 5381

289 ibid., pp 5437-8

> It seems to indicate to someone that, really, all things being equal, you can work for us for three years. I would have thought that was a most unwise thing to do, and it wasn't within the agreement I'd had with Seddon about the temporariness of the initial employment of the people who were forming the unit.
>
> …
>
> [Ritchie] had been offered similar terms of employment [to other CMSU staff] against my express direction that he be offered a one-year contract.
>
> I did have grave doubts in my mind as to how that came about – who had pressured or otherwise put forward these ideas to make Holmwood send letters out like that. It was against the spirit of what I was trying to do – indeed, the direction of what I was trying to do.

HOLMWOOD'S ROLE IN THE CONTRACTS

5.75 Holmwood said in a statement provided to the Commission that Seddon spoke both to himself and to Chadbourne about the interim structure and staffing of the CMSU. In particular, on 15 June 2000, Seddon sat at Holmwood's desk and under Seddon's instructions, Holmwood drafted the submission for Chadbourne and Ryan to approve the appointments proposed in that submission.[290] This was the Yellow to go to Ryan for approval. Seddon denied any involvement in its creation. He said it was given to him by Holmwood and he (Seddon) took it up and handed it to Ryan.[291]

5.76 The Commission is of the view that Holmwood's evidence is to be preferred. Holmwood said that Chadbourne and Seddon wanted him to draft letters of offer to the persons involved.[292]

5.77 Holmwood had obtained advice before sending the letters on 6 July 2000. On 4 July 2000 Holmwood sent a memorandum to Seddon, in which he referred to their recent discussions. He stated that he had had discussions with John Greig and Hodson of Workforce Planning about what might be the simplest arrangement. He said:[293]

> … The arrangements suggested are in respect of the recently established temporary police positions which it is understood will later be the subject of a formal evaluation process. The arrangements are as follows:-
>
> Mr Jim Ritchie
>
> He is already a temporary employee but he could be re-employed under sections 90/91 of the Police Service Act on a new salary, equal to whatever percentage of a Superintendent's salary is represented by $90,000 per annum, to complete the work of the Crime Management Support Unit over a period of no more

290 PIC Exhibit 332, barcode 5877015

291 PIC Transcript, KJ Seddon, 2 May 2001, p 1140

292 PIC Exhibit 332, barcode 5877015

293 ibid., barcode 5877348

> than three years. Once re-employed, Mr Ritchie would relieve into the Superintendent's position within the CMSU.

5.78 Holmwood then discussed Herring, and Stacey, and stated that the arrangements were all "stop gap" and would have to be reviewed once the positions involved had been formally evaluated. He said:[294]

> The engagement of any of the people mentioned above as consultants instead of as employees is not recommended. From an industrial point of view such an act would be viewed suspiciously as being designed to avoid employer responsibilities to provide such things as leave and workers compensation coverage, especially when others working in the same Unit will be employees performing similar, if not identical, duties.

5.79 On 6 July 2000 Greig wrote to Holmwood giving advice about the draft letter to be sent to the individual CMSU members. He said:[295]

> Rather than saying to "complete the work of the Crime Management Support Unit over a period of no more than three years", we should be offering "temporary employment under Ss. 90/91 of the Police Service Act, 1990, for the specific task of the development and implementation of the Police Service of NSW Crime Management Support Program, and, whilst employment under Ss. 90/91 is predicated on the basis of periods of 4 months, it is envisaged that the specific task for which the employment is offered, should provide work for a period of up to three years, subject also to satisfactory conduct and performance".

5.80 Greig said that these words would give as much protection as possible under the provisions of the Industrial Relations Regulations.[296] Unfortunately, this was what Ryan did not want for Ritchie but, understandably, Holmwood accepted Greig's advice given from the industrial perspective. Greig said that these provisions did not apply to Lazarus or Olsen because they were appointed under section 66 of the *Police Service Act 1990*.

5.81 On the same day, 6 July 2000, there was a further letter from Holmwood to Seddon. It refers to the preference for employment as employees rather than contractors. The letter concluded:[297]

> In view of the suggestions made above and my knowledge of the wishes of all concerned, I have prepared some letters of offer for Jim, Paul and Harriet which you might now care to present them with for their consideration. In relation to Mike and Dean, I suggest that you contact Ken Peterson, the Director, Workforce and Careers, … to arrange for their appointment under Section 66 of the Police Service Act. I have alerted Ken to the likelihood of your being in touch with him about this matter.

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294 PIC Exhibit 332, barcode 5877349

295 ibid., barcode 5877359

296 ibid.

297 ibid.

5.82 It would seem that it was as a result of the advice in the two documents from Greig that the error concerning Ritchie's tenure occurred. Chadbourne was away at the time. Holmwood was apparently left with the impression that Ritchie, Stacey and Herring were to have the same tenure. Someone had told him that the work was to be carried out over a period of three years. No doubt, as a result of that, he envisaged a three year term. The precise wording to support the tenure was put forward by Greig for industrial reasons. It appears that the error about Ritchie's tenure occurred as the result of a series of misunderstandings.

5.83 Holmwood said in his statement:[298]

> Wording the letters of offer was difficult because all the nominees, particularly Harriet Stacey who had to resign from her job in the Australian Federal Police (AFP), wanted the amount of payment they would be receiving to be spelt out in their letters before they would accept the offer being made to them. I obtained advice from John Greig and Mark Gilchrist as to what sections of the Police Service Act each appointee would be employed under and what to say about their temporary status and the Service's right to review their performance at regular intervals notwithstanding that the work for which they were being engaged was for a period of up to three years.

5.84 It is the Commission's opinion that Holmwood could not have obtained the information that the work that they were being engaged for was up to three years except from Seddon or Ritchie.

RYAN'S EMAIL OF 11 DECEMBER 2000

5.85 On 11 December 2000, in answer to a request for information from Commander Brammer of SCIA, Ryan sent a four-page email to Brammer regarding Ryan's involvement in the establishment of the CMSU and its operations.[299] That information was requested by Brammer from Ryan to assist in an internal investigation being conducted by Brammer, which is discussed later in this Report. Shortly after sending the first email, Ryan sent another email to Brammer, in which he said the following:[300]

> I have thought of something else I should have mentioned.
>
> I heard only last week that Ritchie, Herring and Stacey had been offered employment in a letter signed by someone from HR. I was unaware of this offer being made, the terms of the offer or the date on which it was made. This matter was never discussed with me nor did I give any approvals at any time for such an offer.
>
> I always intended that Ritchie was to be an outside contractor for 1 year. Seddon would lead the team as a Superintendent, all other staff were to be temporary employees or secondees from within the Service.

[298] PIC Exhibit 332, barcode 5877016

[299] PIC Exhibit 120, barcode 5776736

[300] PIC Exhibit 121B, barcode 5903869

5.86 This seems an unusual claim by Ryan, given the earlier documents evidencing Ryan's involvement in the negotiations; for example, the memorandum from Ryan to Seddon on 22 June 2000 approving a salary of $90,000 for Ritchie.

5.87 Chadbourne was questioned about the email, and stated that it was not correct.[301] His position was perfectly understandable given the information he had at the time.

5.88 When Ryan gave evidence about this issue six months later, he explained what he meant in the email, namely, that at all times he had intended Ritchie to be on a one year contract and he knew nothing about any offer of a three year period.[302] The email as it was written, however, suggested that Ryan knew nothing of any of the terms of the offer. In that sense the email was misleading. As has been noted elsewhere, Ryan was aware of all other significant details of Ritchie's contract and in particular the amount that he was to receive.

5.89 It was not until Ryan explained what he meant by the email in his evidence that the apparent falsity of the statement was explained.

[301] PIC Transcript, E Chadbourne, 10 September 2001, pp 3481-2

[302] PIC Transcript, PJ Ryan, 6 March 2002, pp 5461-2

6. THE INTERNAL INVESTIGATION INTO SEDDON

NAPPER'S COMPLAINT

6.1 As stated earlier in this Report, difficulties had arisen in the relationship between Seddon and Napper by the end of 1999. Seddon told the Commission they did not work together again after their difference of opinion concerning the report Napper had written about the Wagga Wagga murder investigation.[303]

6.2 On 22 March 2000, Napper approached Des Mooney. Mooney said that Napper told him of his suspicion that Seddon was not paying tax.[304] Napper also had a suspicion that Seddon had procured someone to certify he had known Seddon for five years when this was not possible. This was in connection with an application for Seddon's son to become an Australian citizen.[305]

6.3 Mooney told the Commission that on 30 March 2000 he passed the information on to Deputy Commissioner Moroney and asked, given that the issues were pure speculation on Napper's part, whether he had an obligation beyond reporting it to Deputy Commissioner Moroney. Moroney told him that he would look into the matter and Mooney took no further action.

6.4 Moroney said in evidence that he in fact approached Mooney after receiving an approach directly from Napper:[306]

> I had a conversation with Mr Mooney in relation to the alleged non-payment of taxation by Mr Seddon. I approached Mr Mooney on the basis that Mr Napper had told me that he, Napper, had made an approach earlier to Mooney, and I inquired as to what, if any, action he had taken. I recall Mr Mooney saying that the allegations were so broad and so generalised as to be absolutely non-specific, and that no further action was taken in relation to that matter.

6.5 Moroney told the Commission that he was satisfied by Mooney's explanation regarding the taxation position, namely, that the taxation matters were private between the payee and the relevant taxation authority and that the Service had no right the intrude into the issue.[307] Accordingly, no further action was taken until Moroney received another approach from Napper later in the year, with an expanded list of allegations against Seddon.

6.6 On 3 August 2000 Moroney met with Napper.[308] The meeting was a part of their regular discussions on the implementation of the DNA legislation. At the end of

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303 PIC Transcript, KJ Seddon, 2 May 2001, pp 1086-97

304 PIC Transcript, DJ Mooney, 5 April 2001, p 769

305 PIC Exhibit 154B, barcode 6158215

306 PIC Transcript, KE Moroney, 1 June 2001, pp 1711-12

307 ibid., p 1712

308 ibid., p 1713

the meeting Napper made a series of allegations against Seddon, incorporating those he had made earlier to Mooney and Moroney.

6.7 It appears that the allegations were made orally by Napper and Moroney recorded them. The first written record of the complaints is in a report dated 14 August 2000 from Moroney to Brammer, Commander SCIA.[309]

6.8 Brammer gave evidence that, on or about 7 August 2000, whilst in Dubbo, Moroney first raised the Napper allegations with him. It appears that Brammer commenced a preliminary investigation from around this date. It is likely that Moroney gave Brammer a verbal direction to commence a preliminary investigation, however this was not confirmed by either Brammer or Moroney in evidence. Moroney did state in evidence that, prior to providing a written direction to Brammer to proceed with the investigation on 14 August 2000, he and Brammer had had discussions on the telephone in relation to the Napper allegations.[310]

6.9 On 11 August 2000, Brammer sent an email to Moroney in which he asked that Moroney provide him with a formal request to commence an investigation. Brammer's email stated as follows:[311]

> Could you provide me advice and a request to proceed with the investigation regarding Sedden [sic].
>
> Also could locate and forward to me the appointment papers regarding Sedden [sic] and Napper. I have had initial conversations with Michael Outram (London Met), without being specific on the issue at hand, he believes there are opportunities to pursue lines of inquiry over there quitely [sic].
>
> I will enlist John Dolan and one of his people to assist in this, they can make discrete inquiries through the resources of the NSWCC. I will arrange to interview Robin Napper next week once I have their files and the papers you showed me the other night.

6.10 In his 14 August 2000 memorandum to Brammer, Moroney recited the allegations as follows:[312]

> 1. That at the time of his employment in the NSW Police Service, both he and Mr Seddon were required to complete documentation to the effect that they would (respectively) meet Taxation payments either in Australia or, alternatively, in the United Kingdom. I understand that such an arrangement accords with Section 15 of the Double Tax Agreement (between the respective countries). Simply stated, taxation must be paid, however, by election the person so taxed may elect the Country where the tax is to be paid.
>
> A copy of a Private Ruling provided to Mr Napper by the Australian

[309] PIC Exhibit 43, barcode 5830413-4

[310] PIC Transcript, KE Moroney, 6 June 2001, p 2174

[311] PIC Exhibit 237, barcode 5752613

[312] PIC Exhibit 43, barcode 5830413-4

Taxation Office (regarding his taxation liability) is attached. He also indicates that a similar document was provided to Mr Seddon.

2. That the (approximate) taxation requirement is 800 English Pounds per month.

3. That Mr Seddon is not paying taxation either in Australia or in the United Kingdom in accordance with the Double Taxation Agreement. As proof [sic] this allegation, Mr Napper produced a pay advice slip for the period 28 July 2000. That pay advice slip clearly shows that for the period in question, no taxation appears to have been deducted from Mr Seddon's salary.

   The Executive Director, Corporate Services, Mr Des Mooney, advises me that in the case of Messes Seddon and Napper, their respective salaries are forwarded to the Greater Manchester Police Service and the Thames Valley Police Service on a monthly basis. I am also advised that no taxation deductions are made at this end and that there is a 'whole-of-salary' transfer arrangement.

   Mr Napper advised me that he had obtained this latter mentioned pay advice slip from a desk in Mr Seddon's office.

4. That Mr Seddon was in receipt of a Transitional Rent Allowance of 247 English Pounds per month. I understand that the nature of this allowance is to recompense English Police Officers who are living away from their actual residence and broadly stated, is to assist (in a monetary way) with maintenance issues associated with their premises. Mr Napper alleges that as at 28 July 2000 (as evidenced on the attached pay advice slip) Mr Seddon was still in receipt of that allowance when, in fact, he had sold his former residence in the United Kingdom in about January 2000.

   If the latter assertion is correct, it is Mr Napper's belief that Mr Seddon is not entitled to the Allowance and is, to his mind, falsely claiming this allowance.

5. That some little time ago, Mr Napper met a Mr Mark Alston, an IT Consultant employed by XTEC Pty Ltd, Fyshwick, ACT. Mr Napper stated that at the time of his meeting with Mr Alston, he, Alston, was affected by alcohol. Mr Alston is alleged to have indicated to Mr Napper that in January 2000 and following the birth of Mr Seddon's child (in Australia), Mr Seddon approached Alston and asked him to complete a Passport Application in the name of the newborn child, and, amongst other things, certify that he, Alston, had known Mr Seddon for more than five years. This, Mr Napper alleges, was done. He also alleges that Alston had not known Mr Seddon for this period of time, rather, he had known him for a matter of months.

   Mr Napper also alleges that Mr Alston advised him that in return for the Passport Certification, Mr Seddon "… *steered IT business arising from the Eagle@eye Project"* towards XTEK Pty Ltd.

   It needs reiteration that this reported conversation allegedly occurred whilst one of the parties (Alston) was affected by alcohol. No independent proof of this allegation was provided by Mr Napper and should, perhaps obviously, be the subject of audit and verification in terms of the implementation of the *Eagle@eye Project.*

6. That Mr Seddon allows his teenage son to drive the Police Service vehicle allocated to him and that when so driving Mr Seddon's son does so with 'P' plates clearly displayed on the vehicle.

> 7. That Mr Seddon proposes to make a false claim against the NSW Police Service for an injured back. As 'proof' of his allegation, Mr Napper relies on the fact that Mr Seddon is currently taking a prescribed pain relief medication – Naprosyn SR1000 – for an existing back injury. How Mr Napper comes to this conclusion (in the absence of other proof at this time) I am a little uncertain.
>
> As with the Pay Advice Slip, Mr Napper advises me that all documentation provided to me by him was obtained from the office of Mr Seddon. As you know, both share adjoining accommodation within the Crime Agencies Command.
>
> Finally, in concluding his allegations against Mr Seddon, Detective Superintendent Napper alleged that prior to his secondment to the NSW Police Service, Mr Seddon was the Intelligence Officer attached to the Manchester United Soccer Club. This, I understand, was a function performed on behalf of his parent organisation, the Greater Manchester Police Service. Mr Napper alleged that whilst performing these duties, Mr Seddon became involved in 'matters' involving his expense account and that as a consequence of this he, Mr Seddon, faced a series of disciplinary charges.
>
> Mr Napper alleges that this fact was not made known to the NSW Police Service at the time of the secondment and had it been known then this Service may not have employed Mr Seddon on the basis of integrity issues.

6.11 Moroney's memorandum then concluded with the following paragraph:[313]

> These are serious allegations and are to be the subject of complete and thorough examination. As indicated, you are to keep me appraised of your investigation.

6.12 Moroney requested that the complaint be initiated in accordance with Service policies and that the appropriate external oversight agencies be advised. Napper was to be formally interviewed, as well as any other person in a position to assist with the investigation.[314]

6.13 Upon receipt of Moroney's memorandum of 14 August 2000, Brammer directed one of his officers to create an Investigation Chronology.[315] Brammer also directed the preparation of an Investigation Plan. The strategies identified for the investigation of the back injury claim allegation illustrate the nature of the planned investigation:[316]

- Obtain results of medical examination in UK immediately prior to departure to NSW (D/I Outram).
- Obtain conditions of employment that relate to the pensionable medical discharge after 26-½ years service.
- Profile medication Naprosyn SR1000 from Coroners Office (MIMS Handbook).
- Obtain details of sick history whilst in NSW.

313 PIC Exhibit 43, barcode 5830414

314 ibid., barcode 5830412

315 PIC Exhibit 275, barcode 5841224-31

316 PIC Exhibit 274, barcode 5841235

6.14 On 17 August 2000, Brammer responded to Moroney's request in the following way:[317]

> Thanks for the paperwork. Just in relation to the interview of Napper I will be using Detective Inspector Brett McFadden and also D/I Michael Outram (London Metropolitan Police). John Dolan will assist me when it comes to interviewing Sedden [sic] and others. Regarding inquiries overseas I will use Michael but also may well ask Sir David O'Dowd for assistance from the MH Inspectorate of Chief Constable to assist. He was over here last year and may be able to acquirre [sic] information under the guise of their work.
>
> Regarding the documentation there are some other issues we probably need to discuss, i.e. that relating to Jim Ritchie which appears quite strange. I am also told that Sedden [sic] has taken his family on country trips, given the nature of the allegation regarding his expense account I feel bound to examine those records here. Garry Richmond has a trusted contact in the administration area of Crime Agencies who should be able to assist in acquiring relevant documentation.
>
> I suggest we maintain some constraint in what we tell the COP about this until we get to a point where some proper conclusions can be made. I will maintain the contact with you through this median [sic] in so far as advice goes.

6.15 On 18 August 2000, Brammer and Detective Inspector Brett McFadden from SCIA interviewed Napper. Brammer's report to Moroney was as follows:[318]

> Interview Napper this date, not much more came out of the interview. It was the off the record things that are of note. It is apparent that he and Sed don [sic] had a falling out some time ago … Also he indicated that it was Seddon's intent from the very start to immigrate here. It also appears that Seddon has some financial problems, he borrowed money of [sic] Napper at times, until on one occasion Napper had to chase him. Apparently Seddon was living in one place paying $600.00 per week. His wife is an ex-police officer as well. Apparently there was some delays in approving Seddon, one being that he had to do a fairly rigorous fitness test, something Napper was subject to at the time.
>
> We will continue with inquiries quietly. Michael Outram will make inquiries tonight with his home force regarding the taxation, child allowance and the Manchester United Football club. It also appears that the motor vehicles [sic] was one of the conditions when they came here, they could use privately in NSW but the Commissioner did not want to see one up the top of Queensland. Napper completes a car diary, identifying private usage. Their spouses are allowed to use it. Interestingly, there is more than likely no documented authority.
>
> I have a thing at home called a colander, I'm a thinking this secondment thing has nearly as many holes in it.

6.16 On 30 August 2000, Brammer met with members of the CMSU. The discussion involved the work conducted by the CMSU. Brammer told the Commission that he instigated the meeting for the following reason: "… so I could understand

[317] PIC Exhibit 238, barcode 5861575

[318] PIC Exhibit 239B, barcode 5752605

myself what they were doing and to dissipate this prejudice that may be created in myself relating to certain views that are expressed by other people".[319] According to Brammer, he told the members of the CMSU at the start of the meeting that he "… had a prejudice towards them because of what I'd been told and the impressions that are imparted by various people".[320] As a result of the meeting, Brammer said that his prejudice was dispelled to an extent.[321]

6.17 During the 30 August 2000 meeting, notes were taken by Sergeant Marea Rayment, from SCIA. Rayment's notes included the following:[322]

> Brammer left meeting and Supt. Seddon stated after I said it was a good mtg and opport to move forward "I'll believe it when I fuckin' see it. No way Brammer knows what the fuck we are up to…" I then informed Mr Brammer of these comments as soon as I left the meeting.

6.18 On 1 September 2000, Brammer sent an email to Moroney and amongst apparently unrelated matters, he reported:[323]

> … I had a meeting with Sedden [sic] and Ritchie the other day. In some ways what Jim has to say has some considerable merit, however it is obvious that Sedden [sic] has a problem. It became even more evident after I left the meeting and some of the things he imprudently said to my people about myself, obviously meant to get back to me. Irrespective I will still pursue trying to develop some bridges, with MAG, CMU, Education Services and HR. …

6.19 Part of the prejudice admitted to by Brammer, in his meeting on 30 August 2000, may have stemmed from a complaint he had received from Gregory Moore of the Police Academy. The complaint alleged that Ritchie had a conflict of interest with his work, due to his undertaking consultancy work with a former police officer and ex-member of the RJG. On 1 August 2000, Brammer received the following email from Moore:[324]

> … you may recall that I sent you an article on consultancy undertaken by Jim Ritchie and [the other officer], and the confilct [sic] of interest I saw in this. Has there been any response about the issue – the issue is still an open discussion point around the traps.

6.20 Brammer replied to Moore, noting that, as Ritchie was a civilian employee, such issues were generally not dealt with by SCIA.[325] Brammer promised to follow up on the matter, and forwarded the information to the Chief of Staff, Commissioner's Office.[326]

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319 PIC Transcript, MJ Brammer, 22 March 2001, p 243

320 ibid., p 244

321 ibid.

322 PIC Exhibit 341, barcode 5856249

323 PIC Exhibit 240C, barcode 5752597

324 PIC Exhibit 248, barcode 5752615

325 ibid.

326 PIC Exhibit 248, barcode 5752615; also see PIC Transcript, MJ Brammer, 11 September 2001, p 3570

6.21 A more likely reason for Brammer's prejudice may have been an incident a few months earlier and an exchange of emails with Seddon about it. The incident became known as "Puddletown".

OPERATION PUDDLETOWN

6.22 Prior to the formal establishment of the CMSU in June 2000, the Unit had been carrying out work in some LACs. One of the LACs involved with the program was an LAC referred to as "Puddletown" for the purpose of the hearing. According to Seddon, during April 2000, the Commander of Puddletown LAC contacted Seddon by telephone and requested his assistance in resolving an internal management dispute.[327] By this time Herring was working with Seddon in the CMSU. Seddon arranged for Herring to go to the LAC and give assistance by way of mediation.

6.23 Herring went to Puddletown and interviewed the people on one side of the dispute only. The officers who had been making the complaints were not interviewed.

6.24 Herring formed the view that the complainants had been making vexatious and unfounded complaints. He wrote a report in which he stated that the behaviour of these officers was "… not only highly questionable but bordering on psychotic …".[328] Herring recommended that the two officers have their appointments removed and be psychologically assessed as to their fitness to perform duty as police officers. He recommended that one of the officers "… be the subject of a 181D inquiry in relation to his on-going inappropriate and unprofessional behaviour towards members of the community …".[329]

6.25 Section 181D was a section inserted in the *Police Service Act 1990* following the Royal Commission to enable the Commissioner of Police to dispense with the services of an officer in whom he has lost confidence. When asked about his recommendation at the hearing Herring stated that he was not recommending dismissal when he recommended section 181D proceedings, but rather he was recommending that the officer be subject to the section 181D process:[330]

> I didn't suggest that they should be got rid of; I just simply suggested that they be subjected to the 181D process. That's the outcome of the 181D process, but that's not what I suggested.

6.26 Herring's report was endorsed by Seddon and forwarded to the relevant Region Commander. At that time, June 2000, the involvement of SCIA in its own investigations at Puddletown had not been completed.

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327 PIC Exhibit 51B, barcode 6091992

328 PIC Exhibit 464B, barcode 6158248

329 ibid.

330 PIC Transcript, PF Herring, 10 April 2001, p 906

6.27 Seddon told the Commission that he was not aware at the time that SCIA was involved on any ongoing basis.[331] Herring said in evidence that he was told by officers at Puddletown that the SCIA involvement was completed.[332]

6.28 The report came to Brammer's attention. On 28 June 2000 Brammer sent an email to Seddon regarding Herring's report:[333]

> It has come to my notice that your group attended [Puddletown] LAC and provided a report on issues regarding Inspector … [and the two complainants] and recommending managerial action, including s181d.
>
> This is most unfortunate, and indeed inappropriate, given that this command has been conducting an extensive investigation over a period of time regarding these and other officers in the command in consultation with the Region Commander and LAC.
>
> Surely, they would have told you of this fact, yet no contact was made with this command. I wonder why? …

6.29 The email went on to require that Brammer be provided with "all documentation and supporting evidence available" and concluded:[334]

> I would appreciate that in future if you are going to intervene that the provisions of the Police Service Act are considered and addressed.

6.30 Seddon responded on the same day to Brammer:[335]

> Thanks for that. I have heard stories of your grasping for the memo system the instant you have a problem with something. That is fine except that a permanent record of a sometimes short-sighted appreciation of a given situation is created. That is the case here. Please don't send me shit like this again. If you have a problem - speak to me.

6.31 About 15 minutes later, Brammer responded to Seddon via email stating he would choose what medium he wished and would be accountable for that. Brammer denied grasping for anything. Brammer said he did the best to protect the organisation and it was "… a somewhat lonely job". He suggested to Seddon that he might appreciate that respect was due to people in the organisation. He said, "Maybe if the courtesy had been paid to us in the first place the 'short sightedness' may not be prevailing".[336]

6.32 He asked Seddon to reflect on his attitude and suggested that it was obvious that Seddon was not prepared to be accountable. He concluded:[337]

> It is interesting that one could perceive that the behavioural change program is

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331 PIC Transcript, KJ Seddon, 3 May 2001, p 1201

332 PIC Transcript, PF Herring, 10 April 2001, p 867

333 PIC Exhibit 48B, barcode 5742945

334 ibid., barcode 5742944

335 PIC Exhibit 49, barcode 5449964

336 PIC Exhibit 142, barcode 5727507

337 ibid.

> about arrogance, autonomy and no accountability. I might be wrong, but I also have heard the "rumours".

6.33 On 3 July 2000 Brammer issued a direction to Seddon "… in accordance with the provisions of the Police Service Act …" to provide him with all documents held in relation to the Puddletown LAC. He also demanded a "… comprehensive written advice …" upon a lengthy list of matters relating to Mr Herring's visit and subsequent report.[338] Seddon replied on 3 July 2000, noting, inter alia, that he was told that the matters that were under investigation by SCIA had been resolved.[339]

6.34 When asked about the incident Ryan said that he was aware of the investigation but not of the details of it until the Commission inquiry commenced.[340] Ryan's comments on Seddon's email of 28 June 2000 in response to Brammer's first email were as follows:[341]

> I thought it was unfortunate that a memo such as this should be sent anyway. It is bound to anger the recipient – bound to. And it is bound to have an impact on that recipient's view of the individual sending it. Now, whether that went to partiality in the investigation, I wouldn't like to say, but there did not seem during this period, or the period I found out about it, which was much later than 28 June, any problems about the partiality or impartiality.

6.35 The emails were obviously regarded as significant by members of the CMSU. Three of the emails discussed above were released publicly by Ritchie when he held his media conference on 20 October 2000 (see Chapter 7).

WIDENING THE INVESTIGATION

6.36 On 5 September 2000 Brammer's investigation was formally expanded to include Ritchie. An excerpt from the Investigation Chronology discloses the following:[342]

Date	Event	Information	Action/ Comment	Reference
5.9.00	Separate file created re concerns involving James (Jim) Ritchie	Material originally received indicates that there MAY be some concern about the circumstances in which Ritchie was appointed to the position he currently holds, and the extent to which Ritchie is claiming allowances.	Separate file commenced.	

338 PIC Exhibit 50B, barcodes 6091988-90

339 PIC Exhibit 51B, barcodes 6091992

340 PIC Transcript, PJ Ryan, 6 March 2002, p 5446

341 ibid., p 5448

342 PIC Exhibit 351, barcode 5866939

6.37 In evidence Brammer sought to explain the decision to investigate matters concerning Ritchie as follows:[343]

> … I mean basically you just can't ignore it. The issue was it was still floating around about Ritchie in relation to his secondary employment, still floating around about his travelling allowance and accommodation issues down in Sydney. I mean no doubt it was an issue that we recorded at that time which we thought we'd need to look at insofar as establishing whether any further action need be done, because obviously nothing was being done at that stage or addressed, to my knowledge.

6.38 Brammer agreed that the issues concerning Ritchie could have been dealt with by way of an inquiry of the HR Department, but that course was not taken.[344] Indeed, when Moore referred the allegation about Ritchie's consultancy work to Brammer in August 2000 Brammer expressed the view that his command would not deal with the issue as Ritchie was a civilian (see paragraph 6.21 above).

BACKGROUND TO THE AUDIT INTO THE CMSU

6.39 On 21 September 2000 Small sent an email to Moroney's Staff Officer, Adrian McKenna. He expressed concern over the budget allocation for the CMSU. Crime Agencies did not submit a budget for the CMSU because, according to Small, it was not involved in the CMSU set up and did not know details of the arrangements or staffing. Small said he was under the impression that, as "HQ" was setting up the Unit, financial issues, including the budget, would be addressed by HQ. Small had received information that the CMSU budget was included in the overall allocation to Crime Agencies which involved $156,000 transferred from HR, being $127,000 in salaries and $26,000 for maintenance and working expenses.[345] The salary transfers related to Ritchie and Herring. In the CMSU, however, it should be noted that Ritchie's salary had been significantly upgraded. Small said:[346]

> The issue of salary negotiation for all personnel on the CMSU has been handled at HQ and it would appear to have been irresponsible for that negotiation not to have considered the issue of funding.

6.40 Small added that there was frequent intrastate travel by members of the Unit and the ongoing costs were likely to be considerable. He said that over a four-pay period during July and August, the CMSU incurred airline and travel expenses of $6,900 and that almost all of these costs were incurred by Seddon, Ritchie and Herring. He noted that an additional three staff had been appointed to the Unit in more recent times, with the intention to increase the total to ten.

6.41 Small concluded by saying that if the funding presently allocated to Crime

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343 PIC Transcript, MJ Brammer, 11 September 2001, p 3576

344 ibid., pp 3582-3

345 PIC Exhibit 117, barcode 5750718

346 ibid.

Agencies included the full costs of the CMSU then the Crime Agencies' budget was totally unacceptable. He sought a meeting with Moroney.

6.42 On 22 September 2000, Moroney sent a detailed email to Brammer.[347] In this email, Moroney stated that Small had recently raised a number of concerns regarding the CMSU. Moroney suspected that Small's concerns and Brammer's inquiry into Napper's complaints were "inter-related".[348] Moroney suggested that Arthur Abraham "… start with a detailed and comprehensive audit of a range of issues including financial delegations and practices".[349]

THE ABRAHAM AUDIT

6.43 On 25 September 2000 Arthur Abraham, Audit Manager within SCIA, was engaged by Brammer to conduct an audit of the CMSU. Abraham gave evidence that he was directed to conduct a comprehensive audit of the systems operations of the CMSU, which included auditing the CMSU's financial and administrative systems, management control processes and records management.[350] Abraham further gave evidence that Brammer had provided him with a copy of Napper's complaint against Seddon, and that as part of the audit, Abraham was to "… work with the team leader, chief investigator, and provide any advice, gather any information that I could in relation to the complaint".[351]

6.44 On 26 September 2000 a meeting was held between Brammer, Small, Abraham and McFadden. In his investigation chronology, Brammer recorded the following:[352]

> … Small provides information in relation to general concerns about the management, supervision and control of Seddon and Napper. Overall impression was that there was confusion between Headquarters and Crime Agencies as to who was responsible for supervision, budgets and the day-to-day management of the Crime Management Support Unit to which Seddon belonged. Small highlighted problems in managing Napper, and to a lesser extent, Seddon. Indicated that both were difficult and at times, refused to accept the direction of Small or others at command.

6.45 In relation to this meeting Abraham recorded in his chronology under the heading "Action/Comment":[353]

> Scope of audit expanded to encompass related concerns and review CMSU's establishment, operations, authority, staff selection and secondment process.
> …

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347 PIC Transcript, KE Moroney, 5 June 2001, p 2050

348 PIC Exhibit 122B, barcode 6178286

349 ibid.

350 PIC Transcript, AS Abraham, 30 October 2001, pp 4806-9

351 PIC Transcript, AS Abraham, 30 October 2001, p 4808

352 PIC Exhibit 347B, barcode 5954022

353 PIC Exhibit 401, barcode 5925836

6.46 In evidence Abraham said that the expansion of the audit on 26 September 2000 was in response to concerns raised by Small.[354] However, he did say that it was his (Abraham's) decision to expand the audit.[355]

6.47 As a result of the meeting, Brammer wrote to Small on 28 September 2000 asking him to answer certain questions in relation to the circumstances of the employment of Napper and Seddon, the financial aspects of their attachment to Crime Agencies and Small's knowledge of the establishment of the CMSU. Brammer also requested that Small outline any concerns he may have had in relation to the officers, or the Unit.[356]

6.48 The CMSU was at that time notionally located within Crime Agencies although Seddon was the only one with an office there. Herring and the other members had not yet physically relocated from Police Headquarters.

6.49 On 29 September 2000, Brammer sent an email to Small assuring him that he (Small) was not under investigation. Rather, Brammer intended to report on the difficulties that Small had faced and the attempts that Small had made to clarify and provide accountability "in the processes surrounding the UK officers and the establishment of the Crime Management Unit".[357] Brammer said in the email:[358]

> … I recognise that you need to manage the situation and ensure the value for public money is registered and applied. I am of a view that a true and comprehensive picture needs to be illuminated when approaching the Commissioner, at this time we are not in that position. Once Arthur Abraham has completed his audit and we have made some other inquiries we will be in a better position. Mr Moroney has raised the issue with the Commissioner in very recent times. My view is that you should immediately formalise the reporting regime and constraints that will be applied regarding the management and activities of the group as part of a prudent risk management strategy. …

6.50 Brammer was asked during the hearing to explain why he had incorporated an investigation of Ritchie into the Napper complaint.[359] Brammer stated that the audit was not solely concerned with investigating Ritchie, but rather it was initiated in response to concerns raised by Small, combined with the allegations raised by Napper:[360]

> Q. … How did you come to identify the need for an audit in relation to Mr Ritchie?

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354 PIC Transcript, AS Abraham, 30 October 2001, p 4851

355 ibid., p 4810

356 PIC Exhibit 127, barcode 5750733

357 PIC Exhibit 126, barcode 5750732

358 ibid.

359 PIC Transcript, MJ Brammer, 19 March 2001, p 57

360 ibid.

> A. Well it came about by, in particular – the audit wasn't about Mr Ritchie particularly; it was about Crime Management Support Unit and concerns raised by Mr Small, but it also incorporated a redress relating to the original allegation… the original issue of complaint by Mr Napper about the history of Mr Seddon, and I think it was incumbent upon us to ensure that if that was the case in relation to Mr Seddon, that those sorts of issues weren't still prevailing for the New South Wales police in so far as his expenditure…

6.51 Brammer confirmed that there had been no complaint made against Ritchie. He said, "there were issues raised about Mr Ritchie".[361] When asked how it was that SCIA assumed carriage of this investigation into Ritchie, Brammer replied:[362]

> The investigation in relation to Mr Ritchie per se evolved out of the audit which encapsulated those sorts of issues as well and which was commenced I think in late September.

6.52 It was pointed out to Brammer that the audit did not commence until at least 25 September 2000. It was put to him that he was investigating issues relating to Ritchie well before that. Brammer did not agree with this assertion and claimed that the matters concerning Ritchie were associated with the audit.[363] Brammer went on to say:[364]

> … There was issues raised in relation to Mr Ritchie which were notarised in the chronology and placed in a separate file. No investigation took place as far as that in the intervening period because of a whole range of other contingencies. Certainly there was a collection of material evolving and once the audit commenced, that was encapsulated in the audit.

6.53 When Moroney was asked about the circumstances behind the decision to widen the investigation of Napper's complaint to incorporate the CMSU, and in particular Ritchie, he gave this evidence:[365]

> Q. … here you have, as far as we can work out at that point in time, precise complaints that have been articulated against Superintendent Seddon, but on the basis of that, you were prepared to authorise quite an extensive investigation of the unit as a whole, were you not?
> A. Yes, to determine the truth of all of the matters.
>
> Q. Well, all of the matters concerned seven allegations made by Mr Napper and two concerns that Mr Small had raised; isn't that right?
> A. Yes, but it's not – I agree, but it's not unusual in these investigations that one starts at a central point and that the investigation branches out into several arms. That's not unique to this particular investigation.

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361 PIC Transcript, MJ Brammer, 11 September 2001, p 3550

362 ibid., p 3551

363 ibid., pp 3551-2

364 ibid., p 3552

365 PIC Transcript, KE Moroney, 6 June 2001, p 2154

6.54 On 29 September 2000, Moroney sent an email to Small in which he said that Brammer had copies of his advice to Small on this confidential and sensitive issue. Moroney said he agreed with Brammer's approach:[366]

> My concern is that there are so many loose ends in this matter, that they each need to be identified and tidied up. I agree with Mal that the first part of the process rests with Arthur. Let us identify the issues, then the solutions. I suspect that at that stage (when all is clear) we need to discuss the findings, solutions and actions taken or proposed with the COP.

6.55 Moroney, at this point in the email discussed issues concerning compliance with procedures. He said:[367]

> My priority in this matter is to ensure compliance with systems, procedures and, where relevant, legislative requirements. It may well be that each of the identified issues can be resolved in the affirmative. If not, then suitable action will be taken. I have not SEEN evidence at this stage that there is a level of impropriety on the part of any officer. What I suspect is the case AT THIS TIME is that there are too many loose ends or threads. Arthur's inquiries will be useful in this regard and are a good starting point.

6.56 Moroney went on to say that the concept of the CMSU was not in doubt. He said that he was committed to its introduction and expansion, and that it should be placed within Crime Agencies. He said that Small should put arrangements in place to ensure that the Unit had "… a structured Business Plan …".[368] He said the Unit was expected to comply with the *Public Finance and Audit Act 1983*. He said if there was any deficiency of knowledge in these areas, it should be addressed in the normal course of Crime Agencies' business reporting. Moroney warned Small to be careful of addressing any risk management issue because it might cut across a SCIA investigation and it was important that they should not inadvertently hamper the SCIA lines of inquiry.[369]

SMALL'S 3 OCTOBER 2000 MEMORANDUM

6.57 As mentioned above, on 26 September 2000 a meeting was held between Brammer, Small, Abraham and McFadden. As a result of the meeting, Brammer sent an email to Small on 28 September 2000 seeking Small's knowledge of the circumstances and conditions of the employment of Napper and Seddon, the financial aspects of their attachment and his knowledge of the establishment of the CMSU. Brammer further asked Small to outline any concerns he may have about either officers or their management, Small's concerns about the circumstances surrounding the establishment of the CMSU, and the conduct generally of the CMSU.[370] Small responded to Brammer by memorandum on 3 October 2000.

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366 PIC Exhibit 150B, barcode 6109980

367 ibid.

368 PIC Exhibit 150B, barcode 6109980

369 ibid., barcode 6109981

370 PIC Exhibit 127, barcode 5750733

6.58 Small stated in his response to Brammer that around August or September 1998, Ryan informed him that he was bringing the two English officers to New South Wales to assist him with specific projects.[371] He was told that Seddon had widespread operational experience and was to assist in the establishment of CMUs to help improve the management of criminal investigations. Small agreed to their placement in Crime Agencies. Small said in his memorandum:[372]

> It was my understanding that these officers were working on projects for the Commissioner and would have direct access to him. My role was to facilitate that arrangement and to provide general administrative support to them. This support included office accommodation, the provision of a computer, mobile telephone, etc, and working and maintenance costs which were to be absorbed by Crime Agencies. They were also to be provided with a motor vehicle. My understanding with respect to the motor vehicle was that it was, essentially, part of their contractual arrangements with the NSW Police Service and that it was an 'SES type' of arrangement that included private use.

6.59 Small said that his belief had always been that financial arrangements with respect to the private use of the vehicles, and the authority to grant private use, would be dealt with by those responsible for negotiating the agreement with the two officers. He said he was led to believe that the two officers would be regarded as Superintendents while performing duty with the Service and they were issued with Police identification. He believed this had been organised by Police Headquarters.[373]

6.60 Small then complained about accountability of the officers:[374]

> From the outset there was a degree of blurring of responsibilities and accountabilities with respect to the two officers. Given that they were undertaking projects for the Commissioner they were given wide latitude and were not held to account for their time and performance of duties in the same way other members of the NSW Police were held to account.

6.61 Small complained about Napper in his memorandum to Brammer, and in particular, his inability to locate Napper on may occasions. Small further asserted that Napper was "… loose with the truth".[375] Small said that following the arrival of Seddon and Napper, a steering committee was established under the Chair of Jarratt.[376] This was the Steering Committee for the ICMM that was intended to ensure that the various elements of the ICMM progressed and fitted together to provide a comprehensive response to criminal investigation. Small said the introduction of CMUs in the LACs was one element of the ICMM, and the element for which Seddon had the responsibility. Small said that in March or February 2000, he learned informally that there was an intention to transfer

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371 PIC Exhibit 24B, barcode 6158137

372 ibid., barcode 6158137-8

373 PIC Exhibit 24B, barcode 6158138

374 ibid.

375 ibid., barcode 6158139

376 ibid., barcode 6158140

Ritchie and Herring to Crime Agencies to work with Seddon. Small stated that some months later, he heard that the CMSU was being established under the Crime Agencies' umbrella, with Seddon to be in charge of it, and Ritchie and Herring to be employed in the CMSU.[377]

6.62 Small said that he was not formally consulted or advised of these intended arrangements. He said he was also concerned at the budgetary implications for Crime Agencies. In addition he said there were stories spreading about the financial arrangements relating to Ritchie and the fact that he (Ritchie) had been receiving a travel allowance for several years.[378]

> On what I had been told I had concern about the propriety of these arrangements and if Ritchie was to be transferred to my Command I required clarification of the situation.

6.63 According to Small, Chadbourne said that there had been talk about Ritchie and Herring being transferred to Crime Agencies and he undertook to obtain clarification. On 22 March 2000, Chadbourne wrote to Seddon regarding the transfer of the CMSU to Crime Agencies.

6.64 Small further reported that on 23 March 2000 Chadbourne communicated with Small and advised that the salary and other issues concerning Ritchie and Herring were being addressed. Chadbourne said Ritchie had sought a pay increase and that was part of the negotiation. He sent Small two documents including a handwritten document entitled "Restorative Justice 2217", outlining a budget transfer. Small could not recall when he first saw Chadbourne's document to Seddon in relation to the transfer of the CMSU to Crime Agencies. Small said that he saw the document sometime after his conversation with Chadbourne, possibly in late March 2000, but more likely sometime in April 2000. Small had discussions with Moroney, Jarratt, McKenna and others, regarding the arrangements and budgetary implications of the CMSU. The result of these discussions was that Crime Agencies would provide a business case for the establishment of the CMSU and a budget application for its operations during the 2000/2001 financial year.[379]

6.65 Small said in the memorandum of 3 October 2000 to Brammer that in early June 2000 he became aware Chadbourne and HR had created the CMSU, including the temporary rank structure. Small said he found this out by chance and he submitted a brief memorandum to Moroney, pointing out that the earlier discussions (about documentation and business plan) had been superseded and that the CMSU was now established. Small said that he was not involved in the establishment process, nor was he consulted.[380] He thought that those who created

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377 PIC Exhibit 24B, barcode 6158140

378 ibid., barcode 6158140-41

379 ibid., barcode 6158141

380 ibid.

the CMSU were responsible for the budget application. Small further stated that he had indicated in the Crime Agencies budget bid that it did not include financial provision for the CMSU. Small stated that he had also raised the issue of budget allocation orally with Moroney. Although there was a transfer of budget from HR to Crime Agencies for Ritchie and Herring, this was inadequate because it did not allow for the substantial salary increases they had received.[381]

6.66 Small said that these developments caused him to write to Moroney on 18 September 2000 seeking clarification on the status and entitlements of Seddon and Ritchie. He said he had not received a response at the time of his memorandum to Brammer.[382] Small said that he had only just found out that week (the week of 18 September 2000) that Seddon had been exercising financial delegation which Seddon was not entitled to do. Seddon had authorised recoupment of Ritchie's accommodation costs. Small said that it appeared that Ritchie's recoupment of costs through Crime Agencies had been taking place since May 2000.[383] Small said that Ryan had taken a publicly stated position that all appointments to Crime Agencies were required to undergo an additional integrity assessment process. This was part of the submission by the Service in the Police Integrity Commission hearing concerning Task Force Bax. He said none of the CMSU positions was subject to that process. They had been exempted from it and he thought that placed Ryan and the Service at significant risk.[384]

6.67 Small said that he was particularly concerned about Seddon and his family's continued use of the police vehicle. There was a question about Napper's use of the title "Superintendent", and speculation whether this might constitute the criminal offence of "assume designation". Small said serious issues arose about the appointment of Seddon as Manager of the CMSU, including discipline of the CMSU staff and Small's command relationship with Seddon. Small said that he advised Seddon that he had no financial delegation and further, that there had been no budget allocated to the CMSU. Small advised Seddon that he should focus on the formal establishment of the CMSU.[385] Small said at the conclusion of his memorandum to Brammer:[386]

> I am well aware of the Commissioner's interest in this matter and I am loath to intervene, however, to not do so, in my view, places the Service and the Commissioner at considerable risk

6.68 Small then said that he believed the situation placed him (Small) in contravention of four Acts of Parliament, Premier's guidelines and the Service's own Code of Conduct.[387]

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381 PIC Exhibit 24B, barcode 6158142

382 ibid.

383 ibid., barcode 6158143

384 ibid.

385 ibid., barcode 6158143-44

386 ibid., barcode 6158145

387 ibid.

7. THE COMPLAINTS OF 20 OCTOBER 2000

EVENTS LEADING UP TO 20 OCTOBER 2000 – MEETINGS AT CRIME AGENCIES

7.1 In early October 2000, Abraham started requesting vehicle logs and other records necessary for the conduct of his audit.

7.2 On 10 October 2000 at 9.45 am Small had a meeting with Seddon. Small's Staff Officer, McGowan, was also present.[388] Small advised Seddon that a complaint had been made against him, and that Brammer had briefed Small about it.[389]

7.3 The minutes from this meeting refer to a number of issues which may have caused concern to a person in Seddon's position. This is particularly so because some of the issues, so far as Seddon was aware, were not the subject of contention; for example, the conditions of employment and his entitlement to a motor vehicle.

7.4 Small raised seven issues with Seddon at the start of the meeting. None of the issues coincided with those that Brammer was originally directed to investigate. The only possible overlap with the Napper allegations was the use of motor vehicles. The issues, as recorded in the minutes, were as follows:[390]

- No financial delegation for Seddon – cannot legally approve expenditure and must not approve any further expenditure
- No budget for CMSU - Crime Agencies will absorb for the time being while issue of budget is pursued. Not included in CA bid, as we were not involved in establishment of the CMSU
- Range of issues regarding responsibilities and accountabilities which will need further clarification
- Commissioner has made it clear that CMSU is part of CA and all members are to be held accountable in the same way - this includes the requirement for business plans etc
- Use of motor vehicles must be consistent with CA practice - non operational areas are not entitled to routinely take cars home
- Secondary employment status of Jim Ritchie needs to be clarified - no record of secondary employment application being lodged at CA
- Complaint covers range of issues including allegation against you (Seddon) but is not exclusive to you

7.5 Seddon responded to the issues by asking Small whether he would be notified of the nature of the complaint. Small told him that once the preliminary inquiries were undertaken, "… they [SCIA] will speak to you".[391] Small said, "Some

388 PIC Exhibit 217, barcode 5755803

389 ibid.

390 ibid.

391 ibid.

concerns relate to conditions of employment and your status, for example your entitlement to a motor vehicle given that you are a consultant".[392]

7.6 Seddon responded to this by saying:[393]

> You (Clive) were there when the Commissioner told me the vehicle was for my personal use – professional and reasonable private use and I said what's reasonable and he said I don't expect to see you on the north coast of Queensland in it. I took that to mean I couldn't take it outside the State.

7.7 According to the 10 October 2000 minutes, Small then raised further matters about taking vehicles home, the need for business plans, a procedure for measurable outcomes, and a requirement that all future staffing arrangements come through Ian Dimmock (HR Manager in Crime Agencies). Reference was made by Small to a public undertaking previously given by the Service to the Police Integrity Commission that all staff for Crime Agencies would undergo an integrity assessment. Small told Seddon that all future vacancies were to be advertised and filled in accordance with standard practice.

7.8 According to the minutes, Small directed Seddon that travel could only be approved by certain specified persons within Crime Agencies.[394] At this point, Small raised what he called "… legal complications …" and told Seddon that if he took a position of authority within an Australian organisation then he was an Australian taxpayer.[395]

7.9 The minutes record, in bold type, the words: "Seddon appears to become mildly upset – red in face, slightly teary" and then McGowan was asked by Small to leave the room.[396]

7.10 McGowan was later advised by Small that Seddon:[397]

> … expressed gratitude for consideration of his privacy. Mr Small commented on Mr Seddon's professional response to the news of a complaint and his willingness to assist in bringing CMSU within Crime Agencies structure and processes.

7.11 There was a further meeting on 11 October 2000, this time involving a number of members of the CMSU.[398] Small, McGowan, Stacey, Herring and Ritchie were present. Seddon was absent. Small commenced by advising them that there was a SCIA investigation underway and that he had learned the previous

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392 PIC Exhibit 217, barcode 5755803
393 ibid.
394 ibid., barcode 5755804
395 ibid.
396 ibid.
397 ibid., barcode 5755805
398 ibid., barcode 5755806

week that allegations had been made and a number of issues raised:[399]

> Some issues relate to Ken (Seddon) directly. Some issues in my view don't impact on Ken one way or the other as they relate to issues of contract and the appropriateness of those arrangements. These matters concern headquarters (NSW Police) and Ken's home force. There are also a number of matters that relate broadly to the CMSU.

7.12 Small said that he could not deal with matters at length, but that he could deal with some matters straight away.[400] He said that he spoke to Ryan the previous Monday and Ryan made it clear that Small was responsible for the CMSU. Small said Ryan told him that he expected the CMSU to operate within the systems and procedures that apply to the whole of Crime Agencies. Small said:[401]

> Rest assured that in my conversation with the Commissioner there was no criticism of any individual. I want to be clear that we are dealing with managerial issues today and not with any complaint.

7.13 Small said that the latitude extended to the CMSU by Ryan had been withdrawn.[402] He also said his (Small's) concerns with the CMU program related to issues of sustainability and that he wanted to ensure the success of the CMU program. It was for that reason that Ryan had indicated he required a guarantee from Small that it would operate strictly in accordance with Crime Agencies' operating arrangements.[403]

7.14 Small also advised the staff that no budget had been allocated to the CMSU because of the way it had been set up. He said:[404]

> We understood that headquarters was setting it up. I was not consulted or involved in the establishment of the unit. We flagged in May that there was no budget for the CMSU. I've now formally flagged the fact that there is no budget and we're doing what we can to remedy that.

7.15 Small said a business plan was needed, a two to six page document explaining what the CMU program was all about. It needed a framework and performance measures. He said the Australian Business Excellence Framework should be used. This had a series of categories for measuring performance.[405]

7.16 Ritchie replied to Small that everything could be answered in terms of the four corporate goals. He said they had already produced everything Small was asking for but just hadn't given it to him. Small responded that clearly stated goals

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399 PIC Exhibit 217, barcode 5755806

400 ibid.

401 ibid.

402 ibid.

403 ibid.

404 ibid.

405 ibid., barcode 5755807

were needed and that although "… masses of paperwork" had been produced he had still not seen anything that told him what the program aimed to achieve and what the stages of the process were to reach that achievement.[406]

7.17 According to the minutes, Small said there was no one type of CMU in the UK. Small asserted that there were at least two very different crime management models and the Service needed to be clear which model was being used. Small said that he was concerned the Region Commanders did not have a clear view of the program. He said it had not been articulated in a way that would help them understand it or give them a sense of "… what they do, how they do it and why they do it …". Ritchie is recorded as responding, "I am not sure anyone knows".[407]

7.18 The 11 October 2000 minutes record McGowan stating that it was important that the Region Commanders had an understanding of, and had a role in, the coordination of reform. Small reminded the group of the need to have an ethical base for all their activities/programs. He also reminded the meeting of the Qualitative and Strategic Audit of the Reform of the Police Service (QSARP) and in particular the fact that at some time the program would be audited. He said, however, that he believed that Seddon had been acting in good faith.[408]

7.19 The minutes further record that Small raised the issue of Seddon's lack of authority for financial delegation. Small stated that Seddon was a consultant and not a sworn member of the Service, and therefore had no financial delegation. Small stated that the situation was "… just a matter of law …" and that there was no legal way around the delegation situation. As a consultant, Seddon could not direct members of the Service.[409]

7.20 Small raised the issue of the use of motor vehicles, and said that the vehicles could not be taken home routinely. Ritchie said in response that part of the confusion was that, "… we were the unwanted baby". He also said that he had an arrangement with his Commander and the Deputy Commissioner to take the car home. He said the reason why neither Mick Tiltman, (former Director of HR) nor Chadbourne would do a budget was that they were "trying to close us down".[410]

7.21 Small acknowledged that there had been some confusion but said that now the CMSU was in Crime Agencies the concerns would be sorted out. Small gave as an example, a concern that Stacey was still attached to her home force in the UK and therefore held two positions under the Crown. Stacey immediately pointed out that that was not true and she had resigned from her job in the UK to take up

406 PIC Exhibit 217, barcode 5755807
407 ibid.
408 ibid., barcode 5755807-8
409 ibid., barcode 5755808
410 ibid.

a position with the AFP, before being recruited to the CMSU.[411]

7.22 Small then raised the issue of Ritchie's secondary employment. Ritchie responded by showing an approval signed by Tiltman.[412] There was a debate later about whether a new approval was required when Ritchie moved to Crime Agencies.

7.23 Ritchie mentioned a seminar that he had planned for 26 November to 1 December 2000 at the Police Academy for around forty people. When asked he admitted that he had not really thought about the budget at that time. He said to Small, "I suppose we thought you'd pay for it". Small said that he would need to be satisfied of the value of the seminar and that it would not just be a "… talk fest …".[413] He requested that the group meet again the following Wednesday morning. Ritchie said he was not available until the afternoon and Small arranged for the meeting to take place on the Wednesday afternoon.

7.24 According to the minutes Small asked for all of the documentation to be brought to the next meeting and added "At this stage the priority is a business plan and that 4 to 6 page document as well as a description of the process you're going to use for the conference". Herring then asked what they would do about getting travel claims approved and Small advised that they should submit their claims to McGowan as a temporary measure until things were resolved.[414]

7.25 Immediately following the 11 October 2000 meeting, there was a second meeting between McGowan, Herring and Stacey. At this meeting, McGowan said that all travel had to be approved in advance, that the group was to fulfill existing travel commitments and then concentrate on the Business Plan. Herring raised the problem with the contracts he and Stacey had been given. They were both given undertakings regarding their salary and now were getting 10 per cent less. Stacey said that she was given a document saying the Service wanted to withdraw the original offer and offer less money. McGowan replied that if they were offered a certain salary then they were entitled to it. She asked them to give her all the documentation so that she could chase it up. The minutes record that the meeting ended and McGowan then had a conversation with Ritchie in the hallway outside the Commander's office. Ritchie confirmed he also had a contract and gave an undertaking he would fax it to her, but according to a further note on the minutes she never received it.[415]

7.26 As arranged, at 2.00 pm on the following Wednesday, 18 October 2000, there was a meeting at Crime Agencies. Present were Small, Seddon, Herring, Lazarus, Olsen, Vic Baueris and Chris McHugh, both from Crime Agencies. Ritchie was absent. Small asked Seddon why Ritchie was not present, as the meeting had

411 PIC Exhibit 217, barcode 5755808
412 ibid.
413 ibid., barcode 5755809
414 ibid., barcode 5755809
415 ibid., barcode 5755810-1

been arranged to suit Ritchie's availability. Seddon said that Ritchie had taken the day off.[416]

7.27 A draft CMSU Business Plan was produced by Olsen and Lazarus. The plan was quickly perused by Small. He stated it would have to be properly evaluated and Baueris and McHugh would provide a response in a few days. Small requested that Baueris and McHugh work with the CMSU to bring the Unit's planning processes in line with the Crime Agencies' approach.[417]

7.28 According to the minutes, Small said that he was looking for a business plan that articulated what the CMSU was going to do and how the results would be measured. Small suggested that an obvious action within the Business Plan would be to develop a structure for the program that the CMSU was currently attempting to implement. Seddon reportedly agreed and stated that it was a good idea and made sense.[418]

7.29 Lazarus referred to the internal inquiry into the CMSU and asked about the scope of that investigation. He also referred to the comments made about the inquiry by people other than members of Crime Agencies. Small stated that he was aware of the general details only. He broadly covered the issues of the inquiry, making direct reference to the appropriate use and authorisation of capital expenditure. Small stated that Ryan had now placed him in charge of the CMSU and its activities, and wanted more defined and clearly articulated models to be developed, in order to move the program forward.[419]

7.30 Small spoke about the need for a clear contract of service between the CMSU and LACs including clearly defined performance criteria and measures. He emphasised the need for consistency across the LACs in the measurement of outcomes and performance. Olsen and Lazarus stated that the performance measures of the CMSU did not change, but the rate of change within the LACs varied. Each time they attended an LAC, the CMSU generated a report that assessed whether the LAC had achieved each phase of the implementation.[420]

7.31 Small asked whether a Local Area Commander could be given a copy of the model and implement the CMU without the consultation of the support Unit, and whether it could be done by correspondence. The minutes record that "Lazarus and Olsen stated the process was extremely complex and difficult to evaluate and hence LACs required the support of the CMSU". Seddon said that Albury, Tweed Heads and Moree LACs had been sent the program outline and instructions on how to implement the CMSU program, but each of the three LACs informed him that the program made no sense.[421]

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416 PIC Exhibit 217, barcode 5755812

417 ibid.

418 ibid.

419 ibid., barcodes 5755812-3

420 ibid., barcode 5755813

421 ibid.

7.32 The minutes then record:[422]

> The program was described as a three-year process of development for the LAC. When asked whether the program was a defined project with a start and finish date or a unit that would theoretically continue on indefinitely Paul Herring stated it was a unit, whilst Lazarus and Olsen stated it was a project over three years covering all 80 LACs.

7.33 There was further debate about whether the claims of improvements could be substantiated. Seddon pointed to the difference in the crime rates within Bathurst and Orange LACs. Orange had adopted the CMU program. Bathurst had resisted. Small said that he was not yet convinced that the CMSU was able to prove that its program directly influenced crime reduction. The CMSU members stated that they could demonstrate crime reduction as a result of the implementation of the program. Small believed that there were 40 LACs involved in the program but was informed by CMSU personnel there were only 16 LACs involved in the CMSU program, with 17 interested in joining.[423]

7.34 Lazarus asked whether Small intended any review of the CMSU, and whether or not he had a brief to determine if the CMSU should in fact exist or not. Small stated that there were no instructions or agendas for him to determine the future of the CMSU. Rather, the CMSU had to fall into line with the processes of Crime Agencies, and he requested an appropriate management process. According to the minutes:[424]

> Mr Small concluded by stating that he wanted to ensure that good work by the unit continues but he also wants to ensure that the work being conducted by the unit is in fact good work.

7.35 Baueris and McHugh were to provide feedback and assist the CMSU with planning. The minutes record that Herring, Lazarus and Olsen stated they were pleased that someone was taking responsibility for the CMSU and they now "... have a home". The meeting concluded with the CMSU personnel agreeing to distribute a number of papers that outlined aspects of their program.[425]

SEDDON'S VERSION OF EVENTS LEADING TO 20 OCTOBER 2000

7.36 Seddon produced a document to the Commission titled "Chronology of events and details of notes regarding evidence to the Police Integrity Commission Detective Superintendent Seddon".[426]

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422 PIC Exhibit 217, barcode 5755813

423 ibid., barcode 5755813-4

424 ibid., barcode 5755814

425 ibid.

426 PIC Exhibit 200C, barcode 5759021

7.37 The first entry in Seddon's chronology is dated 21 September 2000. Seddon noted that Small rang him while he was in Tweed Heads to ask him for the CMSU budget. Seddon told Small it was in Crime Agencies where it had always been. Small advised him that there was a problem with the budget because Seddon had no delegated authority under the Finance Act and could not sign or authorise expenditure. Small said he would sort it out when Seddon was next in the office.[427]

7.38 There are a number of entries made by Seddon in his chronology about meetings in early October 2000. The first of these relates to a meeting held on 5 October 2000 in Moroney's office, with Moroney, Terry Myers, Ritchie and Seddon. There is a reference to "Integrative Leadership" and "P.P. Presentation" followed by the comment "Jeff & Ken must take the lead here but they appear reluctant - at least Ken does - Jeff probably thinks its Kens problem!". Seddon then refers to a meeting scheduled for 21-22 November and continues:[428]

> 'Integrated Leadership' - 'Strategic Leadership' - 'Tactical Leadership'
>
> This would be PJ's (the Commissioner's) problem. He would be used to a whole raft of ACC's, all pretty competent in their own right. All working together!
> Look here - Fuck all.
> Just Mal & Clive trying to score points over each other.
>
> They need a new product to discuss/argue over.
>
> Ken seems pretty pleased - Jim & I will work on a model for them.

7.39 The next entry is a reference to Seddon being asked on 6 October 2000 to supply vehicle logbooks for all three CMSU vehicles.[429]

7.40 By Monday 9 October 2000, according to Seddon's notes, there was "An obvious atmosphere at Crime Agencies". Seddon recorded that he submitted a tyre bill and valet bill together with his monthly phone bill. He took them to Brian Reith, a Chief Superintendent within Crime Agencies, who signed the repair bill but refused to sign the phone bill and said he could not sign the phone bill because of the audit.[430]

7.41 According to Seddon's notes, he took a petty cash voucher to the Accounts Clerk, who backed out of the office and ran down the corridor to a Finance Officer. The Finance Officer went into Reith's office. Seddon followed and said, "Is there a problem?" and Reith answered, saying he should not have signed the repair bill because of the audit. Seddon again asked was it causing a problem and, on receiving no immediate reply, ripped up the voucher and threw it in the bin.[431]

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427 PIC Exhibit 200C, barcode 5759021

428 ibid.

429 ibid.

430 ibid., barcode 5759022

431 ibid.

7.42 At 1.00 pm on the same day, 9 October 2000, Seddon had a briefing with Peter Walsh, the Northern Region Commander.[432] At 4.00 pm on the same day, there was a meeting with Ryan. Seddon described him as appearing:[433]

> … quite indifferent to the whole programme. Can't remember what HIS definition of Leadership is and when I remind him he laughs scornfully. Told him about the enquiry and he tells me he already knows. It is about Jim's photo in Goulburn. No mention whatever of me!!
> I told him that our vehicle diaries had been called for.

7.43 As noted earlier there was a formal meeting on the following day, 10 October 2000, between Seddon and Small, which was minuted by McGowan. Seddon's notes record that at 8.15 am he received a call to tell him that Abraham was doing an audit of his secondment and as part of that, Abraham had been asking about Seddon's relationship with Mark Alston (the computer technician named in Napper's complaint). At 8.30 am he spoke with Abraham outside his office and asked was he under investigation to which Abraham responded "No". Seddon questioned Abraham:[434]

> KS: "Well why are you making enquiries about me ?"
>
> Abraham: "I'm not. Mr Small has asked me to do an audit"
>
> KS: "Are you doing an audit of my secondment ?
>
> Abraham: "No"
>
> KS: "Is anyone ?"
>
> Abraham: "No. I'm doing an audit but you'd better ask Clive"

7.44 According to Seddon's notes, he was called into Small's office at 9.00 am on 10 October 2000. Small's notes say that this meeting commenced at 9.45 am. Seddon's notes recorded that Small told Seddon a complaint had been made, that there were a number of issues, that some included him but were not exclusive to him, and that there was no CMSU budget. According to Seddon's notes, Small said that there were two parts to the complaint. Part One of the complaint related to internal affairs, Ritchie's secondary employment, and accommodation and travel. Small said there were various financial irregularities and issues about telephone use. Small also said there was an issue about Seddon's delegated authority and the fact that Stacey appeared to have had two Crown appointments. When this was explained to Seddon he said that she did not have two Crown appointments as she had resigned from the AFP. Small said that she was still a member of an English constabulary but he did not know which one. He thought it was Hertfordshire. Seddon said that she had been in Australia for four years. Small said that she had taken long service leave and Seddon said that there was no long service leave in the UK Police Service.[435]

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[432] PIC Exhibit 200C, barcode 5759022

[433] ibid.

[434] ibid., barcode 5759023

[435] ibid., barcode 5759023-4

7.45 Seddon reminded Small that Small had said there were two parts to the complaint. Small said that the other part related to accountability of the CMSU and Seddon's contractual arrangements such as his access to a car. Small said he needed a business plan, including a description of the CMSU program, the date it started and an outline of its performance milestones. According to Seddon's notes, Small said that Ryan had told him, "… in no uncertain terms …", that he was responsible for the running of the CMSU. Small said he had a meeting about other matters with the two Deputy Commissioners and at the end of that meeting he raised the issue. Moroney told him to be careful because he had raised the issue with Ryan some weeks before and "… almost got his head bitten off kinda thing …".[436]

7.46 Seddon's notes recorded Small telling Seddon that he had mentioned the CMSU to Ryan and Ryan said it was all down to Small. According to Seddon, Small said to him, "He doesn't want you briefing him, that's all down to me now, he certainly seems to be distancing himself from you and the unit".[437]

7.47 According to Seddon's notes Small continued:[438]

> I'm just interested in covering the Commissioners back, for instance the Commissioner gave an undertaking to PIC regarding recruiting to Crime Agencies, that anyone who came here would be cleared with PIC first and that's not happened, that sort of thing. It all needs sorting out.

7.48 Small told Seddon that all recruitment needed to go through the HR Manager in Crime Agencies. Seddon asked how long it would take to sort out and Small said he did not know.[439]

7.49 The next meeting that Seddon recorded in his chronology was on 16 October 2000. There is no record by Small or McGowan of a meeting on 16 October 2000. Seddon's note said that at 8.40 am Small came to Seddon's office and asked him to go to his (Small's) office. Small advised Seddon that he had a few more details about the issues of the investigation. The issues revolved around the use of Seddon's car and whether he was a contractor or a consultant. According to Seddon's notes, Small said, "If you are a consultant then we are not allowed to give you a car and there is the issue about you not paying Australian Tax".[440]

7.50 Seddon told Small that when he was first approached about coming to Australia, there was an offer of accommodation which was later withdrawn and he spoke with Service employee Tony Wallace, who told him he was to be given a car, and that amounted to $15,000 because it included private use. Small said that

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436 PIC Exhibit 200C, barcode 5759024

437 ibid.

438 ibid.

439 ibid., barcode 5759024

440 ibid., barcode 5759025

there was a suggestion that Seddon had defrauded the English tax system by making untruthful submissions and that Seddon's change of status from consultant meant that he should be changing his tax affairs here in Australia. Small also stated that the investigation was looking into the use of Seddon's mobile phone and the flight to England for his mother's funeral. Seddon recorded the following:[441]

> KS - "My mum's [funeral]. What about it?
>
> Small (Replete with grave look) - "Well mate you are in the shit."
>
> KS - "Why?
>
> Small - "Well the department paid your airfare and you were supposed to pay half of it back and you never did."
>
> KS - "What are you talking about, pay half back?
>
> Small - "It's about $3 - 4,000. It was agreed that you pay that back and you haven't done so."
>
> KS - "Clive I don't know where you have got that from but that is bollocks. My contract said 6 flights here and 6 flights home at the end of the secondment. I couldn't buy a return because the return was more than 12 months. When my mum died it was a Thursday and when I came to book a flight I didn't have enough money here and to have it sent over would have meant 2-3 days delay and then 3-4 days to get a flight booked. What we arranged was that I swop 6 flights home for 3 return flights. I absolved NSWPS from all responsibility of getting us home. 6 singles for 3 returns! This is the first I've heard. Who has given me a bill?

7.51 According to Seddon's notes, Small went on to say that Ritchie was also in trouble because he had submitted accommodation claims for staying in Sydney after he signed his contract and moved to Sydney. Seddon said that he authorised those claims and he had told Ritchie he could continue his current arrangements for a month or so until he found somewhere to stay. Small then said there was an issue regarding Ritchie's attendance at a conference in Canberra and then travelling to an LAC, instead of returning home to Goulburn that night and travelling to the LAC from home the next morning. He also indicated that there were discrepancies concerning Ritchie's meal claims.[442]

7.52 Seddon's next record in his notes was 17 October 2000 when he recorded that he went to Cabramatta for a CMSU meeting. He said:[443]

> …
>
> Later in the afternoon I find that Mal shared with last Tuesday's Regional Commanders meeting that the CMSU personnel were under investigation.
> - That would explain why my phone has been a little quiet! …

441 PIC Exhibit 200C, barcode 5759025-6

442 ibid., barcode 5759026

443 ibid.

7.53 Seddon's notes for 19 October 2000 record that at about 5.00 pm Darren Goodsir, a journalist, rang him and told him Ritchie was going to hold a press conference the following day and that Goodsir was offering to help. According to Seddon's notes, Goodsir said that he knew about Seddon being under investigation and asked what it was for. Seddon responded that he did not know. Goodsir said that he would put a call into Small and ask what it was about. About 15 minutes later, Goodsir rang Seddon and said that Small had told him:[444]

> … all about what I [Seddon] was being investigated for. It was for 'rorting' travel claims and submitting fraudulent Tax claims. Asked for a comment. I declined.

7.54 According to Seddon's notes Small phoned him at 6.00 pm that same day. He told Seddon that Goodsir had rung him and there was going to be a huge article in the Sydney Morning Herald the following day. Small said that he told Goodsir that he had no comment on the subject.[445]

7.55 Seddon's notes record that about 9.00 pm on that same day, 19 October 2000, Small telephoned Seddon again and advised him that Ritchie had put out a press release. In the conversation, as recorded by Seddon, Small said:[446]

> In the article he [Ritchie] talks about having had a meeting with Ken Moroney to discuss how he can deal with; and these are my notes – The corrosive nature of the competitiveness of the senior executives from Crime Agencies and Internal Affairs who are obsessed with their own egos (my words not Small's). Is that me he's talking about?

7.56 To which Seddon said, "I would say so, yes". According to Seddon, Small then said:[447]

> Well mate that just confirms everything everybody always said about him being malicious and untrustworthy. I don't know. I've finished with him now. All I've ever done for him was to look after his interests but I'll tell you mate I'm stuffed if I know what to do.

7.57 Seddon's notes record him responding that Ritchie would just have to get by without Small's help. Small advised Seddon that Ritchie was holding a press conference the next day. Seddon suggested that Small brief Ryan.[448]

RITCHIE'S MEDIA RELEASE AND THE COMPLAINT TO PIC ON 20 OCTOBER 2000

7.58 Ritchie's conference took place at 11.00am on 20 October at the Salvation Army

444 PIC Exhibit 200C, barcode 5759026-7
445 ibid., barcode 5759027
446 ibid.
447 ibid., barcode 5759027
448 PIC Exhibit 200B, barcode 5759027-8

building in Elizabeth Street, Sydney. Ritchie distributed a media release which was just over two pages long, with six pages of attachments. The full text of the release is set out hereunder (not including the attachments).[449]

> **FEAR AND THREAT REMAIN PREDOMINANT POLICE MANAGEMENT TACTICS IN NSW**
>
> **James Ritchie – one of the architects of the New South Wales Police reform programme will be conducting a Press Conference to discuss the following issues of concern:**
>
> **Internal Affairs Issues (SCIA)**
>
> **Issue 1**
> A senior officer is misusing SCIA investigative powers to conduct a personal vendetta against the senior officer managing the NSW Police Service's primary change management and cultural change programme, and members of the Crime Management Support Unit (CMSU). A wide ranging 'witch hunt' is being conducted.
>
> > 'Internal Affairs are using malicious and unfounded investigations into individuals as a means of maintaining the old control and punishment mechanisms in order to derail and delay genuine reform.'
>
> Inappropriate actions of senior SCIA personnel include;
>
> - Briefing the Commissioner of Police employing inculpatory materials leaving easily accessed exculpatory materials unpresented [sic], in what could reasonably be regarded as a deliberate process of smearing.
> - Briefing all Regional Commanders on Tuesday 10th October advising them that senior personnel in the CMSU were being investigated by SCIA.
>
> The senior officer's interest in briefing the Regional Commanders – the same group that voted secretly in September 1997 not to participate in behavioural change initiatives – is explained by his inaccurate and unfounded reference in the attached paper.
>
> There is a clear implication of payback involving a group known to have been antagonistic to this.
>
> **Issue 2**
> This same senior officer is simultaneously, and separately, in blatant and direct contradiction of PIC guidelines spelt out in the Dresden Report, being himself the subject of an investigation by a more junior officer.
>
> **Crime Agency Issues**
>
> **Issue 1**
> A senior office in Crime Agencies has released to those being investigated, on almost a daily basis, aspects of the IA investigation. (The CMSU comes under Crime Agencies aegis). This entirely inappropriate behaviour is clearly meant to intimidate personnel under investigation as well as bystanders.
>
> All personnel in the CMSU are under investigation, apparently. In six separate investigative matters revealed to date, all are preposterously ill-informed propositions.

[449] PIC Exhibit 142, barcode 5727502-4

Issue 2
The group members now being investigated were, on a couple of occasions over the last few months, asked to advise Deputy Commissioner Moroney on ways that the Service could manage the destructive consequences of the constant ego driven ambitions of these two individuals; one from Internal Affairs and the other from Crime Agencies.

Issue 3
The cultural change programme has elicited widespread praise from those within it, and is the principal means of reform of the NSWPS. It is the centrepiece of the Commissioners policing model and is to be included as a central platform of the next industrial agreement between police unions, the Service and the government. It is now threatened with derailment. It is to be completely emasculated by people in Crime Agencies who have worked surreptitiously against it for some time.

Where to From Here?

a) In Respect of the Investigation
No one minds being investigated, when fair process is on offer. Complaints in the NSWPS have to be investigated. But this inquisition is not about precise complaints at all. It is designed to cower and intimidate. In any case, any hint of fair and just treatment has been completely obliterated in the behaviours of these two officers. We welcome any relevant complaint being handed to an independent authority.

b) In Respect of Reform Efforts
This present activity is no accident. It is part of a much wider and longer campaign by senior police in NSW to close down, or in any way possible inhibit genuine reform in the NSWPS. This ongoing and multi-faceted campaign has been very well documented by past and present members of the Crime Management Support Unit. Our investigation into the senior officers of the NSW Police Service has been proceeding for two years.

It reveals a world of total incompetents; of drunken, threatening, bullying, hand picked members of the Commissioner's Executive 'team'; of Deputy Commissioners meeting Senior Constables secretly in pubs to correct their own Superintendent-level posting errors; of constant last minute scrambling to make the Commissioner 'look good'.

Material will now be released to demonstrate that despite the emergence of a few wonderful and indeed exceptional reform 'islands', the senior executives of the Police Service are simply not committed to deep reform.

7.59 As part of his media release, Ritchie attached a number of internal documents. These were the emails that passed between Seddon and Brammer, when Brammer rebuked Seddon for the involvement of Herring and the CMSU in Puddletown. Someone, presumably Ritchie, had blacked out large parts of these documents to take out the names of individuals and other specific references.[450]

THE COMPLAINT TO PIC ON 20 OCTOBER 2000 BY HERRING, LAZARUS & OLSEN

7.60 A written complaint was lodged at the Commission by Herring, Lazarus and

[450] PIC Exhibit 142, barcode 5727505-10

Olsen on the same morning as Ritchie's media conference. The full text of that complaint is set out in Chapter 1 of this Report.

7.61 There was no media publicity surrounding the attendance of Herring, Lazarus and Olsen at the Commission on that day. Their complaint became public knowledge at the commencement of the public hearing on 19 March 2001.

7.62 The Commission's assessment of both Ritchie's complaint and that of Herring, Lazarus and Olsen is contained in Chapter 10 of this Report.

SMALL'S RESPONSE TO RITCHIE'S PUBLIC ALLEGATIONS

7.63 Small's first documented response to Ritchie's media release was in an email sent on 23 October 2000 to Ryan, Jarratt, Moroney, Mooney, the Regional Commanders and the Commanders in Specialist Operations.[451]

7.64 The email commenced as follows:[452]

> Colleagues
>
> You are all probably wondering 'What the hell is going on here?' with Jim Ritchie's media releases and his interviews of the past few days. Some of you at least are also probably wondering why I haven't publicly responded, so I thought I should give you at least an overview of the current situation.
>
> …

7.65 The email was three pages long. Small confirmed that there was a SCIA investigation into the CMSU. He said that because of the nature of the investigation, Ritchie and others became increasingly aware of it over the past fortnight. Small also said that he had attempted, in the last fortnight, to bring the CMSU within Crime Agencies' umbrella in accordance with Ryan's wish. Small stated that the rule was that there should be no special treatment for the CMSU.[453]

7.66 According to the email, Small had recently met with members of the CMSU and had explained to them that the day-to-day management issues, such as financial delegation needed to be sorted out. Small further stated that their travel was to be approved in advance, their use of motor vehicles was to be in "… strict accordance with departmental policy …", and that all future recruitment to the CMSU would have to go through the HR unit within Crime Agencies, in accordance with public sector guidelines. Small said he informed the members of the CMSU that he required a business plan and a budget bid, and that there was room for improvement in their program before it was sustainable. He said he asked for the background material on which the program was based. Small

[451] PIC Exhibit 97, barcode 5755261-4

[452] ibid., barcode 5755261

[453] ibid.

also said that on 19 October 2000 he received a telephone call from the media informing him of "the storm that was about to break".[454]

7.67 Small expressed regret in relation to what had occurred and in particular that it involved people "… who in name at least, have been attached to Crime Agencies …". Small said:[455]

> I have no doubt that those who seek to undermine the reform of the Service will be able to find some examples to support their assertions, but in their negative, destructive ways they will measure the distance yet to be travelled rather than the significant progress already achieved.

7.68 Small said that the reform process was not without its weaknesses, and that achieving change in a large organisation the size of the Service was never going to be simple.[456]

7.69 Small went on to say in the email that the CMSU had now been transferred to the Organisational Policy and Development Command. He expressed full support for Brammer and the staff at SCIA. He also said many might disagree with current processes and procedures involved in the investigation by SCIA, but that people outside the Service set many of the standards and the rules to be followed.[457]

7.70 Small concluded the email by saying that he was sure that most, if not all senior officers of the Service, were very angry at what had occurred. He requested that the recipients convey his position to members of their commands.[458]

7.71 On 3 November 2000 Small provided the Commission with a lengthy, formal response to Ritchie's allegations. In a covering memorandum Small said that Ritchie's central allegation was that there was a conspiracy among senior police against the reform of the Service. Also, that Ritchie had included allegations against Small and other staff at Crime Agencies. Small indicated that he proposed to prepare a separate response to the allegations specifically relating to his conduct. He added, "… I have acted ethically and appropriately at all times …".[459]

7.72 In the response Small commenced by saying that among Ritchie's criticisms there were two in particular that required his response. These criticisms were that, firstly, there had been little progress in the reform process, and, secondly, that members of the Service had plotted against Ryan and the reform of the Service, and conspired to maintain the pre-1997 status quo.[460]

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454 PIC Exhibit 97, barcode 5755261-2

455 ibid., barcode 5755262-3

456 ibid., barcode 5755262

457 ibid., barcode 5755263

458 ibid.

459 PIC Exhibit 212, barcode 5755047

460 ibid., barcode 5755048

7.73 Small examined the criticisms individually. He said that Crime Agencies had been a leader in reforming the Service and that the achievements were summarised in the "Crime Agencies Continuous Improvement Schedule April 1997 to October 2000" which was annexed to his submission. He also referred to other documentation that shows the extent of cultural change achieved by Crime Agencies. This included:

- Annual Report for 1999/2000;
- recognition in the Australian Quality Awards at the Foundation level of Business Excellence;
- winning the Risk Management (General) Award for the Public Sector sponsored by the Government Insurance Office;
- winning an award from the Australian Information Industry Association for recognition of the best use of technology to improve operations and services to benefit government and taxpayers for the e@gle.i project aimed to improve the management of major crime investigations;
- benchmarked against an ICAC survey of 20 other government and semi-government departments Crime Agencies achieved higher scores in response to 80 per cent of questions relating to organisational integrity; and
- enrolment of six leadership team members in the ACQ "Senior Executive Leadership Benchmarking" programme.[461]

7.74 Small set out some of the difficulties that the CMSU seemed to have, and pointed out that the CMSU is not able to "… provide consistent and credible arguments to support claims of successes of the program".[462] He referred to an email sent by Seddon on 5 September 2000 which claimed there were 40 LACs taking part in the CMSU program, when fact that were 16 LACs with 17 interested in joining.[463]

7.75 Small challenged the claims by Seddon that there had been certain improvements in Canobolas LAC at Orange; for example, that crime rates for all five key crime categories were at the lowest level and that officer sickness levels had fallen as well.[464] Small said that:

- there was no discernable difference in crime trends when compared with surrounding LACs not participating in the program;
- the data was not of sufficient duration to demonstrate that a crime reduction had taken place; and

[461] PIC Exhibit 212, barcode 5755051-5
[462] ibid., barcode 5755069
[463] PIC Exhibit 217, barcode 5755814
[464] PIC Exhibit 213C, barcode 5753296-7

- no discernable change in sick leave patterns could be attributed to the program. (While Small recognised there was a reduction in sick leave, he said that inquiries disclosed that the CMSU was not in any way involved in achieving this).[465]

7.76 Small's conclusion was that the claims for success made in Seddon's email of 5 September 2000 were "… distortions of truth, and, being less generous, outright lies …".[466]

7.77 Small was critical of the voluntary participation in the program. His point was that if the program was:[467]

> … considered contemporary and beneficial to the Service, and it is to be one of the Service's strategies for reform, then it should be a requirement for all areas within the Service to adopt the principles that underpin it. To do otherwise creates confusion in the minds of people about the Service's executive leadership and sense of direction.

SMALL'S FURTHER RESPONSE TO RITCHIE'S ALLEGATIONS

7.78 In March 2001 Small provided a further response to the Commission in relation to Ritchie's claim that Small improperly released information relating to a SCIA investigation to members of the CMSU.[468] Ritchie had alleged that this release of information was intended to intimidate CMSU personnel. Small said that he acted ethically and appropriately at all times and the allegations were falsehoods and distortions of the truth. He said that his "… actions were taken, to varying degrees, in consultation with Commissioner Ryan ... and Deputy Commissioner Moroney … and Commander Brammer …".[469]

7.79 Small said that on 26 September 2000 he learned that Brammer was conducting an internal investigation into Seddon and some aspects of the CMSU. He learned this as a result of a meeting with Brammer and Abraham at which he was given a broad overview of the investigation and where it was headed. His assistance was sought in securing records and documentation. On 29 September 2000 he received a direction from Brammer to report his knowledge on a number of issues. Small said:[470]

> The internal inquiry required the collection of car and personal diaries, records relating to expenditure, rosters, correspondence and the like. As a result the existence of the inquiry became "common knowledge". Comments being made by Superintendent Seddon and Ritchie to a number of people were becoming more vocal and aggravated. Superintendent Seddon approached me on one

[465] PIC Exhibit 212, barcode 5755066-7
[466] ibid., barcode 5755069
[467] ibid., barcode 5755070
[468] PIC Exhibit 217, barcode 5755795
[469] ibid., barcode 5755795
[470] ibid., barcode 5755796

> occasion and we spoke about financial delegations. Given Ritchie's past behaviour and Seddon's attitude (including a rocky relationship with Commander Brammer), I was concerned that the matter could get quite out of hand and that there was a need to try and calm things down and encourage the members of the Crime Management Support Unit to get on with their job. In addition, there had emerged a number of issues, such as the authorisation of expenditure by the Crime Management Support Unit members, their use of departmental motor vehicles, and reporting requirements that, in my view, required immediate clarification. There was correspondence between Deputy Commissioner Moroney, Commander Brammer and myself on these matters.
>
> For these reasons I spoke with Commander Brammer and Mr Abrahams and expressed the view that there was a need to speak with the members of the Crime Management Support Unit to try and calm things down and avoid significant disruptions within the administrative area of Crime Agencies and, perhaps, the Service more generally. They agreed. We also agreed on the broad parameters of the discussions.

7.80 Small repeated in summary form the contents of the minutes from that meeting. He added, however, that after McGowan had left, Seddon expressed "… personal bitterness …" toward Brammer and accused Napper of being the initiator of the complaint. Small said that Seddon:[471]

> … went on to say that since Napper's incompetence in the Wagga Wagga murder review he, Seddon, had been carrying the taint of Napper's poor reputation. The Superintendent also referred to at least one inquiry undertaken by Special Crime and Internal Affairs that he considered had been botched. The Superintendent had discussed this particular inquiry with me previously.

7.81 Small said in his submission to the Commission that at the meeting on 10 October 2000, he told Seddon the best thing that could be done was to "… assist the current internal inquiry and hope for a speedy resolution …". Small told Seddon that it was important for him to speak with other members of the CMSU to try and calm things down. Small said that on 11 October 2000, he saw Ritchie, Herring and Stacey in his (Small's) office with McGowan present. Small again referred to the minutes. He said that he met with the members again on 18 October 2000 and again set out the notes of this meeting. He said that the meeting had been adjusted to allow for Ritchie's attendance, but that Ritchie did not attend.[472]

7.82 Small said that members of the CMSU did not produce material that he had frequently requested to support their work, such as the business plan, the budget and the three to four page document outlining the goals and the method of verification. He had become convinced that there would be some "public outburst" by Ritchie claiming "persecution" and criticising the Service.[473] Small said that at the meetings with the CMSU, the material revealed was within the parameters agreed verbally by Brammer and Abraham. He said there were

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471 PIC Exhibit 217, barcode 5755797

472 ibid., barcode 5755797-8

473 ibid., barcode 5755799

multiple purposes for the meetings including, trying to calm things down, trying to get the CMSU focused, and trying to get proper management and quality control arrangements in place.[474]

7.83 Small said in his submission that neither the meeting notes, nor other correspondence, supported the claim that any information concerning the internal investigation was improperly leaked to members of the CMSU.[475]

7.84 In oral evidence Small confirmed the position adopted by him in the written submissions he had supplied to the Commission.

[474] PIC Exhibit 217, barcode 5755799
[475] ibid.

8. THE OPERATION SPA REPORT

BRAMMER'S PRELIMINARY ADVICE TO RYAN

8.1 On 23 October 2000 Brammer met with Ryan and briefed him on the preliminary findings of his investigation, which had been codenamed "Operation Spa".[476] On 26 October 2000 they met again and Brammer supplied Ryan with a draft report titled "Preliminary Advice on Issues Surrounding Superintendent Ken Seddon and the Crime Management Support Unit".[477]

8.2 It was clear from the first paragraph of the document that the issues encompassed by the investigation went much further than those initially raised by Napper:[478]

> This document provides preliminary advice as to the issues, findings and further action required relating to the investigation into allegations made against Superintendent Seddon, the evolving systems and processes inspection of the Crime Management Support Unit, issues surrounding its establishment and activities in a complaint investigation [in Puddletown]. It also includes responses to issues raised by Mr Ritchie in his media campaign of recent times.

8.3 The "primary issues" were identified as follows:[479]

1. Complaint regarding Superintendent Ken Seddon
2. Secondment processes of both Mr Napper and Mr Seddon
3. Action by Commander, Crime Agencies regarding the proper management of Mr Seddon, Mr Napper and the Crime Management Support Unit.
4. Systems/Processes Management Compliance Audit
5. Establishment of the Crime Management Support Unit
6. SCIA Operation Puddletown
7. Secondary Employment of Mr James Ritchie and Mr Paul Herring, CMSU.
8. Media Exposure by Mr James Ritchie, CMSU.
9. Emerging Issues regarding the employment status of Mr James Ritchie and others attached to the Crime Management Support Unit.
10. Risks to the Commissioner and Service generally

8.4 It was apparent from the preliminary findings that none of the original allegations against Seddon had been substantiated.[480] Advice was still awaited from the GMP, the ATO, the Department of Immigration and the SCIA audit unit

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476 PIC Transcript, MJ Brammer, 26 March 2001, p. 335

477 PIC Exhibit 157B, barcode 6158216-45

478 ibid., barcode 6158216

479 ibid., barcode 6158216-17

480 ibid., barcode 6158218

(Abraham's audit). Under the heading "Intended Actions" were the notations "Interview Mr Seddon", "Interview witnesses" and "Gather evidence/material facts".[481]

8.5 When asked in evidence about the Preliminary Advice, Ryan said that he was concerned that the investigation of the seven Napper complaints had taken Brammer such a long time. Ryan said that when he met with Brammer in October and became aware of the expanded nature of the investigation, he said to Brammer:[482]

> We ought to concentrate on the main issues. If there are administrative or management issues on the side, we will deal with those later. Not brush them away, we will deal with those later and we will examine them separately.

8.6 Ryan said that by late October or November 2000, he began to feel "uncomfortable" about the way in which Brammer's investigation was developing.[483]

8.7 In a Statement of Information supplied to the Commission pursuant to section 25 of the Act Ryan said:[484]

> At a meeting in November 2000 I had a discussion with respect to the investigation by Mr Brammer which indicated a change of emphasis with respect to the investigation of the complaints made by Mr Napper. From my discussion with Mr Brammer, I formed the view that the focus of the investigation was changing from an examination of the complaints by Mr Napper to an examination of the management of the secondment process and human resource issues with respect to the formation of the Crime Management Support Unit. During these discussions, Mr Brammer indicated that in his view things could have been done better and that I could have been better advised with respect to both the secondment process and the formation of the Crime Management Support Unit. I agreed that, in broad terms, things could have been done better. However, I asked Mr Brammer to focus on the primary issues of the investigation in relation to the complaint that had been made with a view to dealing with the administrative or management matters separately following a speedy resolution to the principal complaints.

8.8 In a subsequent Statement of Information Ryan said that he gave Brammer a "… clear direction that he should confine his inquiries to matters of the specific allegations …".[485]

8.9 Brammer told the Commission that he did not ever receive a clear direction from Ryan to confine his investigation to the Napper allegations.[486] An email

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481 PIC Exhibit 157B, barcode 6158219

482 PIC Transcript, PJ Ryan, 11 March 2002, p. 5640

483 PIC Transcript, PJ Ryan, 5 March 2002, p. 5442

484 PIC Exhibit 447, barcode 5823995

485 PIC Exhibit 451, barcode 5880407

486 PIC Transcript, MJ Brammer, 21 September 2001, p. 3796

from Brammer to Ryan on 15 November 2000 suggests, however, that Ryan had spoken to Brammer in very firm terms:[487]

> Commissioner,
>
> Whilst maybe smarting from your views lately about our approach to legislation and compliance issues, the very basis of it is protect yourself and the Service and ultimately it may well pay some dividends. As is the case in all the activities we undertake faithfully under your stewardship which probably others should follow. We cop it on the chin and get on with it. Some of the chops have been coming from other HQ quarters who maybe should firstly look in their own backyard.
>
> What follows is another example of why the fruits of our endeavours are important and seems to have a constant precedence in this overall inquiry. This very issue was raised in the document on bureaucratic management I provided to your [sic] only recently. This is not by any means to say I told you so but maybe you need to consider the merits of advice you are receiving or for that matter protection being committed to you. I would say that again your position has been more than likely used or abused. …

8.10 The email then went on to set out some information Brammer had gleaned with respect to the letter of offer sent to Ritchie, and commented upon the likelihood of Seddon being "… fairly deeply involved in this process".[488]

8.11 On 4 December 2000 Brammer sent an email to Seddon inviting him to participate in the investigation into the complaint that had been made against him. A number of options were offered, including a formal interview. Seddon was not informed of the actual allegations that had been made against him.[489] Seddon replied the same day that he was in the country doing CMSU work and would like to seek legal advice.

THE AUDIT REPORT

8.12 On 11 December 2000 Abraham completed his audit report concerning the CMSU. Brammer countersigned the report the following day. As with the preliminary Spa report, none of the subjects of the inquiry had been spoken to or had their views ascertained.[490]

8.13 The first section of the report, titled "Background", was in the following terms:[491]

> - Following serious allegations against a staff member of the CMSU, Special Crime and Internal Affairs (SCIA) commenced an investigation of the

[487] PIC Exhibit 153B, barcode 6158211-3
[488] ibid., barcode 6158211-2
[489] PIC Exhibit 17, barcode 5775883-4
[490] PIC Exhibit 56, barcode 5827079-132
[491] ibid., barcode 5827079

issues. Assistance, be way of audit, was sought from the Systems Process and Inspection Unit (SPIU).

- Initially the audit scope was limited to financial and administrative systems and records, however because of related concerns communicated to the audit team the audit scope was expanded to include CMSU's establishment and operations, recruitment, selection and secondment process, secondment and establishment costs, accounting for taxation, allowances and entitlements and asset management.
- The audit approach included discreet enquiries with service personnel, information and evidence gathering and verification and, where applicable, recommending remedial action. In the interests of confidentiality and risk management, CMSU personnel were not approached. Matters arising and requiring explanation are to be referred to the investigators.

8.14 The areas examined by the audit were reported under the following headings:

1. Secondment Process – Overseas Police Recruitment
2. Crime Management Support Unit – Establishment and Operation
3. Authority and Responsibility – Financial, Managerial and Administrative
4. Accommodation, Meal and Travel Claims and Allowances
5. Motor Vehicle Usage

8.15 The audit report was critical of the activity examined under each of the above subject headings. It found an absence of procedures and regard for due process in the overseas secondments and the setting up of the CMSU. It found numerous instances of questionable claims and lack of due economy in relation to the travel expenses and motor vehicle use by the members of the CMSU.

8.16 There were personal attacks on individuals, although they had not been spoken to about the matters under examination. For example, in relation to the establishment of the CMSU:[492]

> … Of most concern is the manner and approach adopted by Mr Seddon to establish the CMSU. Resorting to stealth, heavy handedness and using the Commissioner's position inappropriately to achieve his goals is unprofessional and an abuse of position.
>
> Mr Seddon's actions have brought about unnecessary conflict, confusion and have proved wasteful and divisive.
>
> In the haste to establish the CMSU, there was little consideration given to value for money, quality service and performance. There is no evidence to indicate that alternate approaches were considered that may have rolled out the Integrated Crime Management Model service-wide faster, better and cheaper. For example NSWPS Education Services (incl. EDOs and others) could have been engaged to deliver the model.

[492] PIC Exhibit 56, barcode 5827088

> It would appear that the haste in establishing the CMSU was more to satisfy the PIC and Parliamentary Budget Estimates Committee enquiries than to genuinely deliver the Cultural Change and the ICM Model.

8.17 In evidence Abraham agreed with Counsel for Seddon that he used the words "stealth" and "masterminds" in relation to that issue because of the fact that the Commissioner had not been transparent in the way he set up the unit.[493]

8.18 In relation to the secondments, Abraham agreed with Counsel for Seddon that the whole thing was mismanaged.[494] He said that he used the words "stealth" and "mastermind" to "describe the whole process and all those parties involved, including the Commissioner".[495]

8.19 When questioned by Counsel for Ryan, however, Abraham agreed with a different set of propositions. He was asked to assume a number of assumptions. They were all matters established in evidence before the Commission.[496] The following exchange then followed:[497]

> Q. I don't want you to draw any further conclusions from those assumptions, but I want to put this proposition to you: in those circumstances, having drawn those conclusions, there was nothing secret in what Mr Seddon was doing was there?
> A. No, not from the assumptions.
>
> Q. And there was no deception by Mr Seddon either, was there?
> A. No.
>
> Q. He told Mr Moroney exactly what he'd done with Mr Chadbourne?
> A. Yes.
>
> Q. In those circumstances, there was no stealth by Mr Seddon at all, was there?
> A. No.
>
> Q. And there was no stealth by the Commissioner of Police?
> A. I've never – no, there was no stealth by the Commissioner of Police.

8.20 In forming its opinions the Commission placed little reliance on Abraham's report.

THE OPERATION SPA REPORT

8.21 Without making further contact with Seddon, Brammer finalised the Operation Spa report and supplied it to Ryan on 13 December 2000. It was 61 pages long.[498]

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493 PIC Transcript, AS Abraham, 2 November 2001, p. 5011
494 ibid., p. 5012
495 ibid., p. 5013
496 PIC Transcript, AS Abraham, 5 November 2001, pp. 5141-7
497 ibid., p. 5147
498 PIC Exhibit 81, barcode 5828266-326

8.22 The report does not contain an index or table of contents. The first nine pages contain an overview of the findings and recommendations. The first sentence is in the following terms:

> In the absence of an opportunity to interview Mr Seddon or seek a response from him the conclusion of the investigation is at an unsatisfactory stage, however the following has been established …

8.23 The allegations made by Napper against Seddon are then discussed on pages 1 and 2. None of the evidence which had been gathered gave any support to the allegations. Brammer agreed in evidence that, as matters stood at the conclusion of the investigation, none of the Napper allegations could be sustained.[499] The balance of the overview consisted essentially of a range of criticisms of Seddon, Ritchie and Herring for their activities in the CMSU, together with a range of criticisms of the Commissioner of Police and the Service for the deficiencies in the secondment process and in the management of Seddon and Napper.

8.24 The Recommendations set out at the end of the overview are as follows:[500]

> **RECOMMENDATIONS**
>
> **Superintendent Seddon:**
>
> - Consideration is given to terminating his secondment as a consultant to the Police Service.
> - The issues raised in the complaint by Mr Napper and generally in the investigation are referred to the Greater Manchester Police for consideration and whatever action they consider necessary.
> - The Service consider its position in regards to the outstanding financial remits of Mr Seddon arising out of payment of his rental bond and airfares or any other personal cost accrued by the Service.
> - The Service consider its position in regards the implications of its FBT and PAYE/PAYG liabilities as they relate to the private use of the Service motor vehicle and his emerging employment status.
> - That a proper evaluation be undertaken of the service delivery provided by the Greater Manchester Police through auspices of Mr Seddon, and where in appropriate circumstances recognition be accorded.
>
> **NSW Police Service:**
>
> - The issues raised regarding the elements of a positive approach to bureaucratic management including governance and compliance to legislation, policy and accepted practices and critically risk management in its broadest sense be communicated throughout the Service so as to ensure that the Service capitalises on the undeniable consequences of good corporate citizenship.

499 PIC Transcript, MJ Brammer, 21 March 2001, p. 169

500 PIC Exhibit 81, barcode 5828273-4

- The Executive Director, Human Resource Services, consider the exposures identified in this investigation as they relate to consultancy, secondment and temporary employment processes, it is then recommended that the current systems are either enforced or adjusted so that the objectives of clarity, probity, proper coordination and compliance to accepted practices are met. Intrinsic to whatever system put in place is the compliance to the provisions of the State Records Act and the establishment of a centralised repository of all relevant documentation so as to ensure that the probative nature and transparency of the processes are readily established.

- Given the exposures identified in this investigation and some others the FBT implications attached to 'private use' of Service motor vehicles by senior members of the Service be expeditiously reviewed and clarified. No doubt there are other issues arising out of the audit conducted of the CMSU that also need to be considered.

Crime Management Support Unit:

- Given the critical role of the CMSU immediate steps need to be taken to ensure its structure and functionality is evaluated and clearly established. Reporting and management conditions need to be firmly established. Proper selection processes should be applied to all positions once evaluated and approved.

In the interim a new regime of management needs to be put in place, including a Commander who has the appropriate leadership and operational credentials to re-establish esprit de corps in the Unit and take forward an integrated approach to crime management and behavioural change. The Service might also consider identifying key people who could be recruited, as an interim measure to ensure that work already commenced in the field is not lost whilst the establishment processes are undertaken.

8.25 The overview also states that "adverse findings" have been made in relation to Ritchie and Herring and recommends the termination of their services in the CMSU.[501]

8.26 The balance of the Spa report, from pages 10 to 61, ranges across the same issues which were identified as "primary issues" in the preliminary advice (see paragraph 8.3 above). In addition, some new topics are included.

8.27 The underlying theme of the report seems to have been the identification of risks to the Service. The result is an examination of the various aspects of the secondment process, the management of Seddon and Napper, the formation of the CMSU, the activities of the CMSU, and the personal conduct of particular members of the CMSU. The request of Ryan to Brammer, to concentrate on the main issues and deal with the administrative issues separately, appears to have gone unheeded. Not only is the report wide ranging in its compass, but it extends at times to some very subjective analysis of the motivations and behaviour

[501] PIC Exhibit 81, barcode 5828273

of the individuals in question. The following paragraphs from the overview are an example:[502]

Conduct of Mr Seddon within the NSW Police Service

- In fairness to Mr Seddon it needs to be recognised the difficult task he has undertaken as part of his secondment in dealing with the cultural issues of the organization following the Royal Commission. There is no doubt that there would have been resistance to the Commissioner bringing in 'new blood' from outside irrespective of their merit and potential to assist in reform.

- It should also be acknowledged that for some time his efforts regarding the establishment of the Crime Management Model [CMM] program, were well received and his ideas; attitude and personal nature were often complimented, he having few detractors. There is little doubt that he encountered problems promoting and gaining acceptance of the CMM, however the concept did spread throughout the State in one form or another.

- That high regard has changed, as has apparently the behaviour of Mr Seddon personally, in the way he acts professionally and delivered service [sic]. That was despite firm instructions and advice from the Commissioner met by undertakings by Mr Seddon to do all things by the book. Why the change occurred is problematic however perhaps it was the influence of Mr Ritchie and others involved in the former Justice Restorative Group and Behavioural Change Unit. There is no doubt that the influx of the behavioural change influence changed the face of the CMM, not that this approach is considered detrimental. However, the way in which it was and is being delivered is questionable and in some cases with dire consequences ie. [Puddletown] interference in an internal investigation and anguish for internal police witnesses.

- Executive management of the service increasingly became concerned about the manner in which Mr Seddon was and is still operating in delivering the Crime Management Model, in that the manner and approach of the CMSU to the LAC's was arrogant, antagonistic, demeaning and contrary to all expectations.

- There is also a view that Mr Seddon and others in the CMSU have misrepresented the success and progress of the CMM and that they have been abusing the Commissioner's position and will for behavioural change to succeed, without authority to achieve his own means and those of others in the CMSU. This has led to a view that Mr Seddon has abused the confidence in him held by the Commissioner. It also raises the question as to his real intentions if he intends to remain in Australia and establish a career in the NSWPS. In other words is he consolidating that future by mounting a case to occupy a role that no-one can or should do.

- For one holding a senior management position in the Service and the incumbent high expectations and being a primary advocate for promoting behavioural change on its behalf and the ingredients of accountability and professional standards, Seddon's credibility has been adversely affected. He has achieved this by his seemingly [sic] lack of transparency, lack of personal accountability, apparent self-interest, excessive autonomy and his autocratic style. He is also perceived as arrogant with a tendency

[502] PIC Exhibit 81, barcode 5828268-9

> to 'shoot the messenger' when confronted with a different view. He is known to be vitriolic when dealing with those at his supervisory level or others who may call him to account, with those [sic] may have contrary but probative views, or those whose organisational charter requires them to examine issues affecting him. Mr Ritchie has exhibited similar tendencies, calling into question whether they are individual traits, jointly adopted or the result of each person's influence on the other.
>
> …

8.28 Seddon was clearly disadvantaged by not having an opportunity to give his own account. The report does not mention the fact that Seddon was only invited to participate in an interview on 4 December 2000 and was not given any further notice before the report was finalised and given to Ryan on 13 December 2000.

8.29 Brammer took the opportunity early in the report to defend himself against the criticisms previously made by Ryan about the wide-ranging nature of the Operation Spa investigation. He said, under the heading, "The Issue of Bureaucratic Management":[503]

> The Special Crime and Internal Affairs investigation into Operation SPA concerning aspects of the Crime Management Support Unit has attracted some internal criticism. Central to that criticism is a view of excessive focus on the bureaucratic aspects of the engagement of the individuals concerned, accountability for their activities in the CMSU and the people themselves. The high levels of public exposure that followed the statements to the media by Mr Ritchie, has exacerbated the issue. There is a view among some members of the Service that SCIA may have 'gone too far' with the investigation, abused its powers, authority and placed the Service at unnecessary risk due to the issues being publicly exposed. However, others may suggest SCIA has not gone far enough.
>
> The Commissioner has on occasion expressed concern regarding the levels of compliance with legislation and policy by the Human Resources Services and the former Justice restorative [sic] Group and Behavioural Change Group, both apparent fore-runners to the CMSU. Compliance deficiencies had also been identified through audits in HRS, including issues surrounding Mr Ritchie. In those circumstances and with the evolving concerns relating to like issues surrounding the management practices of the Crime Management Support Unit it was proper that a comprehensive audit be conducted.
>
> The Commissioner regards the CMSU as the central linkage to behavioural change and reform in crime management in the NSWPS. Therefore it is critical that its business management complies with accepted standards and that the Service enjoys a symbolic reputation as a good corporate citizen.
>
> This report demonstrates that such investigations are necessary to arrive at the facts of a complaint and that the Command is not concerned with matters of minutia or trivia at the expense of the broader corporate perspective. The processes adopted in relation to this matter should be regarded as consistent with the reform process rather a [sic] hindrance to it and is in fact consistent with the requirements for public sector integrity under the current government framework in New South Wales.

[503] PIC Exhibit 81, barcode 5828277-8

8.30 The actions and motivations of Ryan in relation to the secondments and the formation of the CMSU is also examined in the report. In a section titled "Role of the Commissioner in the Establishment of the Crime Management Support Unit", Brammer discusses the history of Ryan's involvement with the Unit, reciting the information supplied to him by Ryan in Ryan's email of 11 December 2000.[504]

8.31 In the same section Brammer then considers Ryan's evidence to the Parliamentary Budget Estimates Committee on 6 June 2000:[505]

> On 6 June 2000 Commissioner Ryan appeared before the NSW Parliament Budget Estimates Committee. Mr Ryan was questioned by the Honourable M J Gallagher [sic] regarding the 'axing' of the Restorative Justice and Behavioural Change Unit in October 1999. Mr Ryan provided a historical explanation on the history of the Behavioural Change Program and the Integrated Crime Management Model. He indicated that the Crime Management Support Unit had been recently established, and addressed its achievements.
>
> This was technically incorrect as the unit was still in an embryonic form. The Commissioner however wanted to ensure that behavioural change was being properly addressed in the Service. He was also of the view that he and the Service had to have answers to questions he knew, would be asked there. He believed that Senior Sergeant Terry O'Connell had been talking to members of that Committee with his own version of events, which were quite contrary to his and the Service's position.
>
> The Commissioner's approach to his appearance before the Budget Estimates Committee on 6 June 2000 was driven by concerns that there would be further Committee sanctions as regards the perceived demise of the behavioural change program or otherwise the Justice Restorative Group. Even their most ardent critics recognize that the programs have merit, however the method of service delivery had contributed to a dysfunctional application throughout the Service.

8.32 The actions of Seddon and Herring in Puddletown are examined in considerable detail. Brammer includes the full text of his email to Seddon on 28 June 2000, and Seddon's response, in which Seddon makes reference to Brammer "grasping for the memo system". These are the emails which were attached to Ritchie's media release on 20 October 2000. There is then a reference to an exchange of emails between a Mr Richmond of SCIA and Seddon, in which Seddon refers to the practices of SCIA as "despicable, cowardly, dishonest and corrupt".[506]

8.33 Whilst emphasising the unprofessional nature of Seddon's conduct over this incident, Brammer failed to acknowledge that Seddon, in his written response regarding the circumstances that led to Herring's and his own involvement in the affairs of Puddletown, had clearly stated that he was not aware that there was an ongoing SCIA involvement in Puddletown. That fact should have been taken into account in any balanced consideration of the incident.

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504 PIC Exhibit 81, barcode 5828291-5

505 ibid., barcode 5828293

506 ibid., barcode 5828308

8.34 Later in the Spa report, in a section titled "Further Issue Regarding Mr Seddon – ICCM" criticisms made by Seddon of Brammer are again held up as evidence of Seddon's lack of professionalism. As members of the ICMM Steering Committee, Brammer had written a paper titled "Integrated Crime Management Model – Optimising Professional Standards and Safety in Local Area Commands" and Seddon had made some negative remarks about it. After quoting Seddon's email in full, Brammer made the following comment in his report:[507]

> If Mr Seddon does not believe in the essence of the paper than [sic] others may be entitled to form a view that he is not an advocate of good supervisory practices. The level of arrogance, accountability and autonomy in which he himself seems to operate within this Service may well be testimony that it is more than a view.

8.35 Ultimately, Brammer seeks to justify the reference to this material by the support it may lend to his conclusion concerning Seddon's "questionable ethical standards".[508]

8.36 It is hard not to conclude that the Spa report was as much about the personal antipathy between Seddon and Brammer, and the opportunity it provided Brammer to defend his own work against attack by others, as it was about the identification of risks to the Service.

[507] PIC Exhibit 81, barcode 5828314-5

[508] ibid., barcode 5828315

9. THE ACTION BY THE COMMISSIONER OF POLICE IN DECEMBER 2000

9.1 On 22 December 2000 the Commissioner took action against three members of the CMSU. Ritchie's temporary employment was terminated. Seddon's secondment was terminated. Herring was suspended with pay and his temporary appointment to the CMSU was terminated. He was returned to his substantive position in the Service.

9.2 Letters were served on the three individuals confirming the action which had been taken. In addition, they were served with Orders made by the Supreme Court, on the application of the Commissioner of Police on 21 December 2000, restraining them from divulging or communicating any information in regard to police or other official business which had come to their knowledge in the performance of their duties.[509]

9.3 The formal steps leading to the action taken on 22 December 2000 are set out in a Statement of Information provided to the Commission by Ryan[510] and in his oral evidence.

9.4 Ryan said that a number of factors over some months had caused him to lose confidence in Ritchie. He had held concerns for an extended period about the manner in which Ritchie was conducting himself and the fact that his conduct was not conducive to achieving the aims of the CMSU. Ryan said he had previously had concerns about the improper release of confidential information by Ritchie and members of the former BCU. This was a reference to a documentary video which was made by a filmmaker, Dee Cameron, on police premises on 3 June 1999 at the instigation of Ritchie. The video showed Ritchie and other members of the BCU discussing their work and was highly critical of senior police. A copy of the video was subsequently distributed to the media on 9 November 2000 by Cameron.[511]

9.5 Ryan also cited the media conference and unauthorised disclosure on 20 October 2000 as a reason for his loss of confidence in Ritchie and his decision to terminate his employment.[512] It was considered that Ritchie had breached the Service media policy, Code of Conduct, and clause 46(1) of the Police Service Regulation 2000[513] (which required members of the Service to treat all information coming to their knowledge in their official capacity as strictly confidential and to divulge it to no one).

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509 PIC Exhibit 180, barcode 5180644-5

510 PIC Exhibit 445, barcode 5741971-87

511 ibid., barcode 5741978

512 PIC Transcript, PJ Ryan, 6 March 2002, pp. 5465-6

513 PIC Exhibit 445, barcode 5741979

9.6 Ryan said in his statement that he was legally advised that the *Police Service Act 1990* and the common law provided the authority for him to terminate the temporary employment of Ritchie.[514]

9.7 In relation to Herring, Ryan said that he had lost confidence in his capacity to continue to perform operational duties with the CMSU. He said that he had in fact lost confidence in Herring performing any duties within the Service. He said he was aware of matters regarding Herring from the Operation Spa report, and the fact that there was an ongoing investigation with respect to Herring. Ryan also referred to Herring's involvement, while a member of the BCU, in the making of the video on 3 June 1999. He said that he was not aware of the video until November 2000 but that "These matters together caused me to lose confidence and to take the decision to suspend Mr Herring".[515]

9.8 In oral evidence Ryan also referred to the involvement of the CMSU in Puddletown and the inappropriateness of Herring's actions and his recommendations.[516]

9.9 Ryan said in his statement that he was legally advised that the *Police Service Act 1990* and the common law provided the authority for him to suspend Herring.[517]

9.10 In oral evidence Ryan said that he formed the view that there was a connection between the complaint to the Commission by Herring, Lazarus and Olsen on 20 October 2000 and Ritchie's release of information to the media, because of the timing. It should be noted that Ryan did not say that he lost confidence in Herring because he complained to the Commission. Ryan confirmed that it was the right of a police officer to complain to the Commission and no action could be taken against that officer for doing so. However, what concerned him was an inference that Herring knew of, and was associated with, Ritchie's disclosure.[518]

9.11 Herring confirmed in his evidence that he was aware, prior to 20 October 2000, that Ritchie intended to conduct a media conference on the same day that Herring and others complained to the Commission. During questioning about the complaint made by Herring and others the following exchange took place:[519]

> Q. Are you aware that on the same day Mr Ritchie conducted a media conference?
> A. Yes.
>
> Q. Did you know in advance that he was going to do so?
> A. Yes, I did.

514 PIC Exhibit 445, barcode 5741976
515 ibid.
516 PIC Transcript, PJ Ryan, 6 March 2002, pp. 5469-70
517 PIC Exhibit 445, barcode 5741976
518 PIC Transcript, PJ Ryan, 11 March 2002, pp. 5651-2
519 PIC Transcript, PF Herring, 5 April 2001, pp. 820-1

Q. Was that something that had been discussed by you and Mr Ritchie and perhaps others prior to October the 20th?
A. Yes.

Q. When was that?
A. We discussed it the day before.

9.12 In relation to Seddon, Ryan said, in his Statement of Information, that Seddon's secondment was terminated on 22 December 2000 "on the basis that I had lost confidence in him". He said a number of factors over the months had caused him to lose confidence. They were:[520]

> I had concerns about the manner in which Mr Seddon had been managing personnel attached to the Crime Management Support Unit and about his behaviour to other members of the Service, including very senior members and I was concerned that officers of the Crime Management Support Unit were conducting themselves in a manner which was not conducive to achieving the aims of the Crime Management Support Unit and that Mr Seddon was not properly managing their conduct. Further, following the unlawful and improper release of confidential police documentation by Mr James Ritchie in October 2000, I came to the view that some of the material released had necessarily been of a confidential nature and must have been supplied to Mr Ritchie by Mr Seddon. In addition, I was concerned that Mr Seddon had acquiesced in the release of this material by Mr Ritchie. This raised concerns which I had previously had with respect to the leaking and/or distribution of confidential police documentation by members then attached to the former Restorative Justice and Behavioural Change Unit, now renamed Crime Management Support Unit. I also had access to reports prepared as a part of Operation Spa. In combination this material caused me to lose confidence in Mr Seddon and accordingly to form the view that his secondment should be terminated.

9.13 Ryan said in his statement that he received legal advice that the *Police Service Act 1990* and the common law provided authority to terminate the secondment of Seddon at will.[521]

9.14 Ryan added in his oral evidence that Seddon's report on the investigation of Officer W contributed to his loss of confidence.[522] As noted earlier, an examination of the report on Officer W does not suggest to a reasonable reader that the language was inappropriate. It was certainly forthright and critical of certain people. It may well have contained incorrect conclusions. However, Ryan's complaint about the report was not that it was incorrect, but rather that the language was inappropriate.

9.15 It is clear from Ryan's Statement of Information and oral evidence that he consulted thoroughly and obtained legal advice before taking the action he did against Ritchie, Herring and Seddon. He also sought advice about an injunction to prevent the further release of confidential information, and, subsequently,

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[520] PIC Exhibit 445, barcode 5741971

[521] ibid.

[522] PIC Transcript, PJ Ryan, 7 March 2002, pp. 5528-9

instructed his legal advisors to commence proceedings for that purpose in the Supreme Court.[523] Those proceedings were taken in February 2001.[524]

9.16 Ryan met with Brammer on 5 January 2001 and 29 January 2001. At one of the meetings Brammer queried whether Ryan had lawful authority to vindicate his actions. Ryan said in light of the advice he had received he was confident that he had acted lawfully.[525]

9.17 On 22 January 2001 Ryan had a meeting with Chadbourne. He advised him of the suspension of Herring and indicated that a full investigation of the conduct of Herring was to take place. Ryan said he requested that Chadbourne write to Herring confirming that his suspension would continue until finalisation of the investigation, given the lack of confidence Ryan had in Herring at the time.[526]

9.18 Chadbourne said in his statement that on 26 February 2001 he received a memorandum from Ryan requesting that HR take over the investigation of Herring from SCIA. The memo said:[527]

> … I am advised by Commander Brammer that SCIA is only able to investigate allegations concerning police officers. The investigation of civil servants falls within the responsibility of Human Resource Services. …

9.19 On 6 March 2001 Chadbourne forwarded a formal direction pursuant to the *Public Sector Management Act 1988* to the Director, HR Administration, to conduct a preliminary inquiry into alleged breaches of discipline by Herring. The alleged breaches related to:[528]

> … i) falsification of travelling allowance, meal and toll charge claims between May and July 2000; ii) non compliance with the Flexible Working Hours Agreement during the period June to October 2000; iii) engaged in secondary employment without approval in accordance with the NSW Police Service Secondary Employment Policy and Guidelines. …

9.20 The Commission's investigation did not examine the above allegations against Herring.

9.21 In relation to the action taken by Ryan in December 2000, the Commission is satisfied that he acted on legal advice and had the authority to act as he did in relation to the termination of Seddon's secondment, the termination of Ritchie's employment, and the suspension of Herring from duties.

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523 PIC Exhibit 445, barcode 5741973

524 ibid., barcode 5741977-87

525 ibid., barcode 5741974

526 ibid.

527 PIC Exhibit 336, barcode 5918000

528 ibid., barcode 5918001

10. ASSESSMENTS AND OPINIONS

THE SECONDMENT PROCESS

10.1 The events that have been examined in this Report began with the secondment of Seddon and Napper in 1998. Although the idea of bringing in overseas experience and knowledge had merit, and there was value in some of the work done by the two officers, ultimately their personalities, and in particular their clash of personalities, gave rise to a complaint by Napper against Seddon and triggered a series of events which resulted in considerable embarrassment and damage to the Service.

10.2 Ryan was intimately involved in the secondment process. He hand-picked Seddon and Napper and decided where they would be placed in the Service. He nominated the projects they would work on. He dealt with them directly.

10.3 The placement of Seddon and Napper in Crime Agencies without an integrity check was contrary to the Service policy of subjecting all prospective members of Crime Agencies to integrity checks. Ryan said he considered the references given by the two men, and his own personal knowledge of the officers who had supervised them in the UK, was a sufficient integrity check. That may have been so, but the combination of this and the other instances of special treatment accorded to Seddon and Napper (for example, personal use of a service vehicle, the exercise of financial delegation by Seddon), led to a not unnatural resentment amongst some police.

10.4 This would have been mitigated to a large degree if there had been a set of procedures or guidelines in place which governed the situation. There was not even a written agreement between the Service and either of the two men. This was regrettable.

10.5 It does not follow that Ryan should be held personally responsible for the absence of procedures. He himself said he was frustrated by the amount of time the secondment process was taking. The Service has taken steps to put in place a set of guidelines for the conduct of overseas secondments in future and the Commission supports those developments. They are discussed in Chapter 12 of this Report.

SUPERVISION OF SEDDON AND NAPPER

10.6 Ryan agreed during evidence that Seddon had an informal line of communication to him (Ryan).[529] In the Commission's opinion it was a very direct line, and this was the case for both Seddon and Napper. The blurring of responsibilities and

[529] PIC Transcript, PJ Ryan, 6 March 2002, p 5520

accountabilities is a matter for which Ryan must take some responsibility. Either Seddon and Napper were under Ryan's control and had to account to him, or they had to account to Small. Ryan stated that he intended they account to Small at all times from the beginning.[530] It is clear, however, that this did not happen.

10.7 It would not have been realistic for Ryan to personally supervise Napper and Seddon. The Commission is of the view, however, that if Ryan was not going to supervise Napper and Seddon directly, then he should have ensured that Small knew that he was expected to fulfil the supervisory responsibilities.

10.8 The Commission accepts that Small was placed in a position where it was very difficult for him to exercise any supervisory control over the activities of Seddon and Napper. There is evidence that they did not keep Small informed of their activities, and that they both had the view that, because of their relationship with Ryan, they could bypass Small.

10.9 Ryan himself had decided that when the CMSU was set up, it would be under an ordinary line command through the Commander of Crime Agencies, Small. In evidence he admitted that he was not personally aware whether they were in Crime Agencies or not.[531] Ryan said that "the actual mechanics of the thing slipped away". He said everyone was very busy during the period because of the 2000 Olympics. He was not aware until much later, after 20 October 2000, about what had been happening in relation to the placement of the CMSU.

10.10 It is arguable that Small should have started asking questions about the activities of the CMSU members before September 2000. It does appear as though he took no action until Brammer's investigation was underway. On the other hand, given that Seddon was the only CMSU member at Crime Agencies, and none of the others had moved across from Headquarters at that stage, Small's lack of knowledge about what they were doing is, to a large extent, understandable.

THE ESTABLISHMENT OF THE CMSU

10.11 It is the Commission's assessment that Ryan must take some responsibility in relation to his involvement in the establishment of the CMSU and the problems that flowed thereafter. Ryan dealt directly with Seddon from late 1999 in agreeing to the concept of the CMSU, its structure and the recruitment of Ritchie and Herring onto the team. In the early months of 2000 Ryan continued discussions with Seddon, in the absence of any of the members of the ICMM Steering Committee, about Ritchie's salary and the other recruits who had been hand-picked by Seddon and Ritchie. Later, Ryan's Deputies, Jarratt and Moroney, were told what was happening, but on any view of it, the manner in which the formation of the Unit progressed was unorthodox.

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530 PIC Transcript, PJ Ryan, 4 March 2002, pp 5360-1

531 PIC Transcript, PJ Ryan, 6 March 2002, pp 5450-1

10.12 When the members of the Steering Committee learned that Ryan had approved the creation of a CMSU, Seddon was requested to provide a presentation to the Steering Committee about the proposed new Unit. That request was made at the Steering Committee meeting on 23 May 2000.[532] At the next meeting, on 3 July 2000, Seddon reported that Ryan had signed off on the current staff attached to the Unit and given approval to hire Stacey.[533]

10.13 Ryan's memorandum to his executive team on 24 May 2000, requesting the creation of the Unit by 6 June 2000, had intervened. It is regrettable that the process happened this way and not in closer consultation with the Steering Committee, which had the responsibility for driving the whole crime management project. Ryan's evidence was that things weren't happening quickly enough. That may have been so but, in the Commission's view, the conduct of separate discussions between Ryan and Seddon, in the absence of the officers who were supposed to be managing the project, was not the answer.

10.14 When Chadbourne learned from Seddon that nothing was happening in response to Ryan's 24 May 2000 memorandum, he determined to act swiftly in order that Ryan's timetable could be met. The temporary structure was created. No criticism should be made of Chadbourne or Holmwood in relation to the establishment of the CMSU. At all times they acted with complete propriety.

10.15 In relation to the letters of offer that were sent out on 6 July 2000, the Commission considers that no one individual can be held responsible for the errors contained therein. The events which led to Ritchie being offered what was in effect a three year contract are summarised in Chapter 5 of this Report. When Ryan was critical of this arrangement in his email on 11 December 2000 to Brammer, he was unaware of the other issues. No criticism of Chadbourne or HR in general is warranted.

10.16 Seddon can be criticised for his failure to create the required paperwork for the CMSU. Ryan made it clear to Seddon in 1999 that he expected a business plan and other relevant documentation to be put together. Although Seddon said in evidence that it was not his job to put together the CMSU, it in fact fell to him to ensure that it was done. There was no lack of initiative on Seddon's part in the early days in getting Ryan's agreement to the structure he wanted. If Seddon expected others to complete the work, then he should have communicated this to them. Small and McGowan said there was assistance available to Seddon in the creation of the documentation had he sought it. He did not seek it.

10.17 Seddon and Ritchie did prepare some documentation, examples being the PLEB document, the Environmental Audit and the report to the ICMM Steering Committee of March 2000. However, Jarratt, Moroney and Small considered

[532] PIC Exhibit 271, barcode 5869514

[533] ibid., barcode 5869508

they were not sufficient for the needs of the Service. In the Commission's view, their requests for more documentation at that time were not unreasonable. Small was still asking for a business plan at the meetings in early October 2000. He was given a draft by Lazarus and Olsen in the meeting of 18 October 2000. This was a year after Ryan had first asked Seddon to provide a business plan.

10.18 Seddon should have ensured that a budget was prepared and provided to Crime Agencies covering the totality of the costs for the CMSU, including salaries and the differentials for the acting up positions and the costs of equipment, cars and travel. Even if, as Seddon claimed, it was not his function to prepare such a budget, he had done the initial costing in the Environmental Audit of 22 May 2000, and one would have expected that he would have made inquiries to ensure that whoever he thought would be the responsible person in Crime Agencies, was in fact arranging for the funds to be available for the CMSU.

10.19 In the Commission's view, Small cannot be blamed for the failure to make allowance for the CMSU in the Crime Agencies/budget. He was not involved in its establishment. Although involved in discussions in May 2000 about the structure of the Unit, he was not consulted while the actual establishment was taking place. His view that the matter had been taken out of his hands by HR was not unreasonable in the circumstances.

10.20 Small was correct in telling Seddon that he could not exercise financial delegation, once he became aware it was happening. Seddon was not a member of the service. However, he had been permitted to conclude that, as the Commander of the CMSU, he did have financial delegation. He had foreshadowed his intention to exercise financial delegation in the Environmental Audit document in May 2000. So far as can be ascertained from the records, no one corrected this or questioned him when he began to exercise financial delegation.

10.21 Seddon should have checked whether or not he could exercise a financial delegation. He was aware that he was not a NSW police officer, nor an unsworn member of the Service. He should have liaised more closely with Small and worked in a more cooperative way with Crime Agencies, instead of acting as if the CMSU was independent of any line authority. There is evidence that when he had difficulties in relation to the CMSU, he tried to go directly to Ryan and this caused uncertain line control. He should have realised this could happen.

SENIOR OFFICERS' SUPPORT OF THE CMSU

10.22 It is the Commission's assessment that a number of senior officers were not well disposed to the CMSU and/or some of its members. There were instances disclosed in the evidence where support was lacking from Moroney, Jarratt, Small and Brammer. That is not to say they were opposed to the reform process.

10.23 Ryan said in evidence that Moroney, Jarratt and Small had all expressed concerns to him about Ritchie, prior to the formation of the CMSU.[534] The decision to allow Ritchie to extend his contract and work with Seddon on the crime management project appears to have been Ryan's alone. Although Small was told in December 1999 that Ritchie and Herring were to join Seddon in the formation of a new unit, it appears Moroney and Jarratt were not formally told until some time later, in the following year.

10.24 The proposal for the CMSU was published by Seddon in his ICMM March Progress Report and his April PLEB document. It appears that Seddon believed the PLEB document represented the template for how the Service would manage crime in the future, and the CMSU would be central to that model. This was his interpretation of Ryan's address on 6 April 2000 when Ryan announced the formation of the CMSU. The senior officers did not have such a definite view about the significance of the PLEB document. Jarratt expressed some concerns about the concepts advanced in the paper and asked for some clarification. In relation to the ICMM March Progress Report, Jarratt noted that it advocated a "way ahead", without the benefit of input or endorsement from the Steering Committee.[535] In the Commission's view these were not unreasonable comments from Jarratt.

10.25 Moroney said that he read the PLEB document on his way to Goulburn to open the Crime Managers Course on 10 April 2000. He said that he incorporated areas from the PLEB document in his opening address, but accepted that he did not make specific reference to the document or the CMSU. In relation to the complaints by the members of the CMSU about Moroney's comments in his Goulburn address, it is the Commission's assessment that there is evidence to support a view that Moroney did speak in a way which, whilst not unsupportive of the CMSU, may reasonably have given rise to the reaction of Seddon and the other staff. The Commission accepts that the comments were not intended to be critical of the CMSU or the PLEB document.

10.26 It is the Commission's assessment that Moroney was not involved in any active steps in opposition to the CMSU, but neither did he demonstrate active support. When help was needed for expedition in the establishment of the CMSU, after Ryan's memorandum of 24 May 2000, he did not take any active steps to assist in its establishment. Moroney's only action was to direct that the formalities for permanent establishment had to be complied with. This reaction may have been understandable, given the discussions which had taken place in the meetings of 9 May and 22 May 2000 in which Seddon had agreed to produce more paperwork. Such a direction however, in the absence of any suggestions of assistance, was not helpful in expediting the direction from Ryan.

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[534] PIC Transcript, PJ Ryan, 11 March 2002 p 5558

[535] PIC Exhibit 100, barcode 5753838

10.27 By late May 2000 it seems both Moroney and Jarratt believed that Seddon had gone behind their backs in relation to the setting up of the CMSU. This view may not have been completely justified. Ryan did not think that it was. It was probably more a case of poor communication at that time. From the point of view of Moroney and Jarratt, they may have just been exercising reasonable caution towards a project about which they were uncertain and which had, as one of its central players, Ritchie, who had a reputation for creating difficulties elsewhere in the Service.

10.28 On the evidence before the Commission, Jarratt was not involved in any active steps in opposition to the CMSU or the reform process. Like Moroney, however, the evidence suggests that he did not demonstrate active support for the CMSU.

10.29 Small's position was that, in general, he was supportive of the CMSU and provided it appropriately with facilities and equipment at Crime Agencies. His own evidence was that he understood that this was what was required of him and he took appropriate steps to provide these things. The suggestion by some CMSU members that he did not provide space at Crime Agencies for the CMSU is not substantiated. There was space being created at the Crime Agencies for the CMSU, but time was needed for the building modifications to be carried out. Initially, Small was seen by the CMSU as a supporter and members of the CMSU agreed that they were pleased with the fact that they were being placed within Crime Agencies. Seddon himself had a good working relationship with Small and there appears to have been mutual respect between them.

10.30 In addition, Ritchie stated in an email to Adrian McKenna, Moroney's Staff Officer, on 1 September 2000 that he had found Small to be "... a progressive, adaptable Commander able to accept challenge, and able to provide the resources we [the CMSU] needed".[536] Ritchie later denied the truth of his comment in the email.[537]

10.31 It is the Commission's view that the evidence establishes Small was supportive of the concept of behavioural change and the CMSU. Like the Deputies, he had reservations about Ritchie's past behaviour and the proposal that he be part of the CMSU.[538] Small's view was that when Ritchie entered the scene, the CMSU process was hijacked.[539]

10.32 Small said that he found an increasing resistance to feedback from members of the CMSU, and that this appeared to be directly related to their belief in an increasing power base and their special status within the Service. The Commission is of the opinion that Small is correct in his assertion that their acting as a special elite group was not appropriate.

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536 PIC Exhibit 213C, barcode 5753303

537 PIC Transcript, JA Ritchie, 18 June 2001, pp 2422-3

538 PIC Transcript, CT Small, 28 May 2001, p 1354

539 PIC Transcript, CT Small, 29 May 2001, pp 1485-6 & 1493-4

10.33 Ryan himself maintained that he had made no mistakes in relation to the CMSU. It is the opinion of the Commission that Ryan did make mistakes. When he placed the CMSU within Crime Agencies Small was not properly put in charge of the Unit. Ryan said he expected Small, in his role of Commander Crime Agencies, to have control of the CMSU from its start. This in fact did not occur.

10.34 Had Small been put in charge of the CMSU at the beginning, so that he had proper control over it, the steps which he took in October 2000 would not have been seen in the way that they were perceived by the members of the CMSU. The members of the CMSU saw the activity as opposition, with the purpose of destroying the Unit.

10.35 It appears that Ryan was almost certainly unaware of the extent of the perceived threat felt by members of the CMSU at the time they became aware of Brammer's investigation. Ryan said in evidence that he did not want to become involved in matters to do with Brammer's investigation, because ultimately he may have been called on to exercise a judgement in accordance with his powers to discipline, dismiss or take other action under the *Police Service Act 1990*.

THE PARLIAMENTARY BUDGET ESTIMATES COMMITTEE

10.36 There were allegations made during the Commission hearing that Ryan wasn't genuine in his support of the CMSU, and that it was only established to avoid criticism by the Parliamentary Budget Estimates Committee of abandonment by Ryan of the behavioural change reform. Ryan was also criticised by Brammer in the Operation Spa report in relation to his evidence to the Committee.

10.37 The Commission is of the view that the evidence does not support this criticism. The discussions about the CMSU and steps to set it up were taking place in late 1999 and early 2000, as reported by Ryan to the Parliamentary Budget Estimates Committee.

10.38 It seems clear, whether Ryan had the specific questions or not, he knew that he might be asked about the axing of the Restorative Justice/Behavioural Change Group. When Ryan went to the Committee hearing, he wanted to be able to point out that there had been no axing of "behavioural change" principles because it was continuing in the form of the CMSU.

10.39 The Commission is of the view that Ryan's response to the Committee in relation to the proposition that the Restorative Justice/Behavioural Change Group had been axed was appropriate. Although the unit was no longer operating under that name, the concept was still being applied by Ritchie and Herring in their work in the CMSU. They were clearly working together as a unit with Seddon prior to June 2000. The Commission is of the view that Brammer's assertion in his Spa report about Ryan's evidence to the Committee was simply a misunderstanding and was incorrect. The Commission is further of the view

that no criticism should be made of Ryan in relation to his evidence to the Committee about behavioural change.

THE NAPPER COMPLAINT

10.40 The motivation for the allegations made by Napper against Seddon is unclear. It may be that Napper took a strict view of a police officer's obligations and any suspicion in his mind would lead to a reporting to the appropriate authority. Nevertheless, some of his complaints had very little foundation. In Napper's opinion the complaints were reasonable, but objectively, some were doubtful at best.

10.41 With respect to the taxation matter, Napper had a "pay slip" belonging to Seddon. Leaving to one side any questions about Napper's possession of that document, and assuming its authenticity, it would have been a simple exercise to ask Seddon if, in accordance with the terms of the secondment, he was meeting his taxation obligations. Further investigation may then have been unnecessary.

10.42 Seddon stated in evidence that he had made arrangements with the UK Tax Authority and he was to pay his tax in instalments.[540] Documentary evidence was produced to the hearing to verify this.[541]

10.43 The allegation in respect of the application for an Australian passport did not contain any further information than was deemed by Moroney to be unworthy of investigation in March 2000. There were two aspects to the allegation: firstly, the making of the declaration; and secondly, the favouring of the declarant's business with IT contracts. As to the first allegation, the relevant records could either be obtained or not. As to the second allegation, the particular company either had contracts with the Service or it did not. In either case, there was nothing to prevent Brammer or another officer asking Seddon whether he had any dealings with any company or person with respect to IT contracts.

10.44 The issue of the rent allowance from the Greater Manchester Police was another simple matter. Seddon was either receiving an allowance or he was not. He was entitled to it or not. The putting of the question to Seddon could hardly be said to create an opportunity to destroy or to manufacture evidence.

10.45 The question of whether Seddon had permission to allow his son to drive the Service vehicle ought to have been a simple administrative inquiry. The terms upon which he had the use of the vehicle would, ideally, be found in a document that either Seddon, and/or the Employment Management Branch had. If there were no such document, it might have been sensible to sort the matter out there and then by asking Seddon. It was hardly a matter requiring a covert investigation.

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[540] PIC Transcript, KJ Seddon, 3 May 2001, pp 1221-2

[541] PIC Exhibit 311, barcode 5827296-9

If he did have permission, that was the end of the matter. If not, then further inquiries could have been made about the basis upon which Seddon was allowed to use the motor vehicle. This would have involved inquiries from Ryan, but there was no reason why this could not be done.

10.46 The remaining matter involving Seddon's alleged intention to claim compensation for a back injury was a claim completely lacking in support. Evidence was offered by Napper in the form of a packet for the prescription drug Naprosyn. In essence this was a complaint about prospective behaviour. No reasonable action could have been taken. According to Seddon, he in fact had a back injury before he came to Australia.[542] There is evidence that he sought a change of vehicle because of the existing back injury.[543] There was no evidence that Seddon sought to allege he had suffered a back injury while he was in Australia.

10.47 The Commission is of the view that the Napper complaints could have been investigated in a more expeditious and efficient manner. They were capable of quick resolution. Despite Brammer's statement that he could not interview Seddon about them initially, but had to carry out background inquiries, an early interview with Seddon would have provided a great deal of information which could then have been appropriately checked. The covert course that was taken inevitably gave rise to questions about the true motivation of the investigation. The fact that the investigation was completed without Seddon being given an opportunity to give his version of events lends force to such questions.

OPERATION PUDDLETOWN

10.48 It appears that there was a serious misunderstanding between Seddon and Brammer in relation to Operation Puddletown. Brammer believed that Seddon must have been told by the local officers that SCIA was still involved, and therefore he should have kept out. Seddon and Herring said that they had no knowledge that SCIA was still involved and they acted at all times in good faith.[544]

10.49 Seddon's email responses to Brammer over Operation Puddletown were inappropriate. On the other hand, the opening email from Brammer to Seddon was also unnecessarily abrasive, in the Commission's view, and set the tone for the successive emails.

10.50 Herring can be criticised for his involvement in Operation Puddletown. His report was inadequate in the following respects:

- He did not make inquiries about other investigations or matters which were taking place at "Puddletown";

[542] PIC Transcript, KJ Seddon, 2 May 2001, p 1145

[543] PIC Transcript, MJ Brammer, 20 March 2001, pp 156-7

[544] PIC Transcript, PF Herring, 10 April 2001, p 867

- He failed to interview all parties involved in the "Puddletown" issues;
- He made judgements about "Puddletown" based on inadequate information and in particular from information obtained from only some of the parties involved in the conflict; and
- The result of these inadequacies meant that his report ran the risk of creating significant problems in the SCIA investigation, and it did in fact create difficulties.

10.51 The Commission is of the view that Herring had no qualifications to reach some of the conclusions he did and was unlikely to have the necessary experience to resolve the type of dispute that had occurred at Puddletown.

10.52 Examination of Herring's evidence suggests that he did not understand the significance of what he was recommending, in particular the section 181D recommendations. Nevertheless, Herring acted in good faith, and part of the responsibility for his mistakes must lie with his manager, Seddon, who should have taken steps to ensure that he was capable of doing the job he had given him.

THE DECISION TO COMMENCE THE SCIA INVESTIGATION

10.53 The obvious difficulty with the Spa investigation was the perception that Brammer may not have brought an unbiased mind to the investigation, in light of the previous dispute between Brammer and Seddon over Operation Puddletown. Brammer had himself declared to the members of the CMSU after the Puddletown incident that he had a prejudice towards them which he was seeking to dispel.[545] Despite his claim to have dispelled his prejudice to an extent, Brammer should have recognised the inappropriateness of his position and declined to undertake the investigation personally.

10.54 Brammer was also a member with Seddon on the ICMM Steering Committee. It was inappropriate for him to sit on that Committee, which was responsible for coordinating the crime management project, whilst at the same time covertly investigating Seddon, and the unit Seddon had set up to advance the work of the crime management project. As Commander of the Service's internal investigations unit, Brammer had a responsibility to ensure there was scrupulous adherence to the principle of impartial investigation by his unit. This did not happen.

10.55 Moroney was asked in evidence about the appropriateness of Brammer's involvement. Moroney's answer to this was that it is not unusual for Service people who are being investigated to attack SCIA.[546] That may be so, but it does

[545] PIC Transcript, MJ Brammer, 22 March 2001, p 243

[546] PIC Transcript, KE Moroney, 1 June 2001, p 1796

not answer the particular issues in the present matter that there was existing ill feeling between Seddon and Brammer. Moroney told the Commission that he had no qualms about assigning the investigation to Brammer, and would have assigned it to another officer had he had any concerns.[547] He said that Brammer was very thorough. He conceded that Seddon and others may have perceived bias, but as the report would go to the oversight agencies, any perceived bias would be detected by those agencies.[548]

10.56 Brammer told the Commission that consideration was given to asking Seddon's Commander at Crime Agencies, Small, to conduct the investigation. Brammer said he discussed the issue with Moroney, and Moroney decided that SCIA should undertake the investigation. Essentially, the decision was made for reasons of the "sensitive nature of the investigation". Brammer believed he would be able to put out of his mind the offensive email from Seddon.[549] Brammer stated that the appropriateness of continuing his place on the ICMM whilst investigating Seddon, and later the CMSU, "... didn't enter my mind".[550] However, Brammer said that with the benefit of hindsight he would not have investigated either Seddon or Ritchie.[551]

THE DECISION TO WIDEN THE SCIA INVESTIGATION

10.57 When he initially referred Napper's complaints to Brammer, Moroney said that "These are serious allegations and are to be the subject of complete and thorough examination".[552] That of itself would suggest nothing more than an appropriate, thorough procedure. It would seem that Brammer had been given these documents at a point when he was not investigating anything to do with Ritchie. Subsequently, in a series of emails on 22 and 25 September 2000, following an approach by Small to Moroney, Brammer and Moroney agreed to widen the investigation to include a comprehensive audit by Abraham into "... a range of issues including financial delegations and practices".[553]

10.58 The investigation became a wide-ranging inquiry into the CMSU. While it is true that it is necessary for there to be a full and thorough investigation whenever an investigation is called for, it was important that the original complaints be dealt with promptly and appropriately. Ryan himself said this, and said that he expected the Napper complaints to be investigated and resolved first, and that other matters could then take their turn.

10.59 There was little justification for an extension of the original investigation into these matters. There may have been some grounds for a separate investigation.

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547 PIC Transcript, KE Moroney, 1 June 2001, p 1781

548 ibid., p 1793

549 PIC Transcript, MJ Brammer, 27 March 2001, pp 453-5

550 PIC Transcript, MJ Brammer, 11 September 2001, p 3609

551 PIC Transcript, MJ Brammer, 21 September 2001, pp 3810-1

552 PIC Exhibit 43, barcode 5830414

553 PIC Exhibit 122B, barcode 6178286

However, there was no reason why the initial inquiry could not have been dealt with promptly and simply. It became swamped by the other events. The explanation given by Brammer and others about why the investigation expanded, namely, because documents were found during the course of the investigation of Napper's nine points which required further investigation, does not adequately explain the course that was taken.

10.60 Not only did the Napper complaint lead to a wholesale investigation into the CMSU, it led to a complete examination of the secondment process and how the CMSU was set up. It would seem that Brammer thought this was a necessary part of a full and thorough investigation. Brammer's motivation may have been to support Ryan. He certainly said that was so.

10.61 If there were administrative deficiencies, they needed to be rectified expeditiously so that the CMSU could do its work. That imperative only became stronger if there were, indeed, breaches of laws with respect to the expenditure of moneys or the command of staff by persons who were not sworn officers of the Service. Yet the course pursued by SCIA was such that all aspects of the Unit were put under the microscope. This was all done without actually speaking to anyone in the CMSU.

10.62 Abraham's audit was undertaken as part of Brammer's investigation. The evidence does not establish that Abraham was involved in any inappropriate conduct. The Commission placed little reliance on his conclusions.

10.63 It is submitted by Seddon's Counsel that the investigation and the audit was nothing more than a "witch hunt", essentially unstructured and unfocused, and infected by significant bias on the part of Brammer.

10.64 In the Commission's view, there is evidence to support the claim of bias. The extended personal attacks on Seddon in the report, particularly concerning instances where Seddon had been critical of Brammer or Brammer's work, reveal a very personal involvement in the subject matter and lack of objectivity. That Seddon never had the opportunity to respond to the findings which had been made about him lends force to this view.

10.65 During the hearing, Ryan acknowledged the difficulties under which the SCIA Command was operating. There were too many complex investigations with too few staff, and poor perception of such commands amongst the rank and file.[554] There is no doubt that it is important to recognise that SCIA is tasked with difficult and challenging work. There is also no doubt that there are resource difficulties in this and other areas of the Service.

10.66 However, Operation Spa was made complex by an approach to the investigation of straightforward issues that saw a tendency to gather more issues, without

[554] PIC Transcript, PJ Ryan, 12 March 2002, pp 5684-8

laying down a plan as to how the ever increasing list of issues could be resolved. Links were found on a tenuous basis, so that as new issues were added to old, the original issues remained "live" whilst the investigation ploughed on through ever-broader and more diverse fields. The approach created risks for the Service. Had there been substance in the original Napper complaints, allowing them to fester whilst administrative and historical issues were pursued, was apt to compound problems.

10.67 The Commission is mindful that there must be scope for flexibility in the conduct of internal investigations, in order that issues which arise in the course of an investigation can be dealt with, if appropriate, as part of that investigation. Indeed, the Royal Commission warned in its report and this Commission has warned in subsequent reports, against the practice of fragmenting complaints into separate issues, resulting in the gravity of some matters being minimized. There is a risk, when taking a blinkered view of separate allegations, as opposed to a holistic view, that "tell tale" signs of corruption can be missed.

10.68 In this case, Moroney and Brammer believed that the Napper allegations, viewed collectively, raised integrity issues about Seddon which were serious and, potentially, put Ryan at risk. The Commission does not disagree with that view. The Commission also agrees that it was more appropriate for SCIA, rather than Small, to conduct the inquiries. As stated above, however, it was not appropriate for Brammer to conduct the investigation personally. In the Commission's view, the request by Ryan to keep the personal allegations against Seddon separate from the other administrative issues was appropriate, and the Napper allegations should never have been joined with the inquiry which ensued.

THE COMPLAINT TO THE COMMISSION BY HERRING, LAZARUS AND OLSEN

10.69 In the formal complaint by Herring, Lazarus and Olsen dated 20 October 2000, they stated that they wished to express extreme concerns about the "... long trail of deliberate obstruction of Police reform by senior members of the Police Service over the past three years".[555] It is the Commission's assessment that the evidence did not support that assertion. In relation to the reference to the past three years it is important to note that only Herring had been involved in the BCU and CMSU for that period. Lazarus and Olsen had only joined the CMSU in the first half of 2000.

10.70 The specific allegations then commenced with the internal investigation into the CMSU:[556]

> ... appalling protocols for internal investigation … based on hearsay, the absolute lack of evidence and how they are focussed on building up a brief on

[555] PIC Exhibit 174, barcode 6157809

[556] ibid.

> certain individuals**.** These issues should have been addressed up-front with us initially rather than embarking on a surreptitious smear campaign to destroy the credibility of the team and our work in the field. ...

10.71 As discussed above, it is the assessment of the Commission that the Spa investigation is open to criticism, however, that is not to say it was based on "hearsay, the absolute lack of evidence" or that it was directed to destroying "the credibility of the team and our work in the field".

10.72 There were applicable procedures in the Service for activities such as vehicle use and travel claims and there did appear to be justifiable concerns by Small that they were not being observed. The request for relevant paperwork was therefore, on its face, not unreasonable. Herring said in evidence that he was referring in that part of the complaint to the way in which they found out they were under investigation. He said they were told initially it was just a random check of diaries of the Crime Agencies branches but when they asked as to why all the diaries in their group had been called for they were told that an investigation was being conducted into the group.[557] The Commission considers that this was an unsatisfactory way for the CMSU members to find out they were under investigation and it should have been done more openly, once the records were called for.

10.73 The third point of the complaint was that the "… Police Service is totally confused about the direction in which it is going".[558] This was not an appropriate comment by these officers. While they may have had experience sufficient to comment on the PLEB document and the CMU program, this represented a small fraction of the work of the Service and they were clearly not in a position to make such a sweeping statement. The reference to tactics of "fear and intimidation" in this paragraph of the complaint were not substantiated in evidence.

10.74 The fourth point of the complaint stated that there was no commitment to reform from senior members of the Service, particularly Superintendents and above. They stated that "None of them remotely understand the complexities of what it is we do, and it appears none are genuinely interested".[559]

10.75 For the same reasons stated above this was an unjustified, sweeping statement about the senior officers in the Service. In fact there were Superintendents who spoke very highly of, and were supportive of the CMSU, such as Dedden.[560] The claim about the environment being untenable seems contradicted by the email sent by Herring to Crime Agencies in July 2000 praising the support the CMSU had received from Small and his staff,[561] and the email sent by Ritchie in September 2000,[562] referred to in paragraph 10.31 above.

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557 PIC Transcript, PF Herring, 6 April 2001, p 837

558 PIC Exhibit 174, barcode 6157809

559 ibid.

560 PIC Transcript, WR Dedden, 12 September 2001, p 3675

561 PIC Exhibit 213C, barcode 5753305

562 ibid., barcode 5753303

10.76 The Commission is of the view that there was evidence of a commitment to reform from senior members of the Service. That is not to say there was not doubt about the method of reform proposed by the CMSU. The two propositions are able to stand together. If there was a lack of enthusiasm for that type of reform, some of the responsibility must fall upon the CMSU and its leader, whose job it was to produce the program in a way that was easily understandable and saleable to the LACs and, as part of that process, to the CET and the Region Commanders.

10.77 The fifth point of the complaint by Herring, Lazarus and Olsen expressed alarm at the "... preposterous claims of our group rorting the travel allowance process, [and] the allegations of tampering with statistical data concerning crime reduction successes ...".[563] As stated above, there were accepted procedures in the Service for the making of travel allowance claims and the Service was entitled to ask for documentation. In that way it could be quickly determined if the claims were preposterous or not. If the procedures were not being followed then the Service was entitled to reaffirm the need for procedures to be observed.

10.78 In relation to the claim that they had been accused of tampering with statistical data about crime reduction successes in LACs in which the CMSU was operating, no evidence was produced to support this. Small certainly questioned some of the statistics he had been given and no doubt this was a sensitive point for the members of the CMSU. There was no evidence however that allegations had been made of CMSU members "tampering" with the statistical data. The Commission did not conduct its own independent examination of the statistics to determine whether or not the CMSU was successful in relation to crime reduction.

10.79 The sixth point of the complaint was as follows:[564]

> We are annoyed by the constant veiled threats leveled at this unit indicating it is destined for death – Edd Chadbourne, *(through the Morgan & Banks Report)* Mick Tiltman and Christine Nixon who were all directed by the Commissioner to close us down.

10.80 According to Herring, Chadbourne had told them that, based on the Morgan & Banks report, he had been instructed to close them down.[565] There was evidence that Chadbourne was asked by Ryan to consider the future of the then RJG, and that he took into account the recommendation in the Morgan & Banks Report that consideration be given to the continuation of the RJG. Chadbourne did take the decision to close down the Unit. However, this was not done at the direction of Ryan. This was confirmed by Chadbourne and Ryan in evidence.[566] It is the Commission's opinion that the allegation was unfounded in relation to

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563 PIC Exhibit 174, barcode 6157809

564 ibid.

565 PIC Transcript, PF Herring, 6 April 2001, pp 843-4

566 PIC Transcript, E Chadbourne, 10 September 2001, p 3504; PJ Ryan, 18 March 2002, pp 5802-3

Chadbourne, who had been a strong supporter of the CMSU and Ritchie. Herring's evidence in relation to Tiltman was that Tiltman told him at a meeting that they "... needed to learn to toe the party line ...".[567] It is difficult to see how this amounted to a veiled threat indicating the unit was destined for death. In relation to Christine Nixon, neither Herring, Lazarus nor Olsen gave any evidence of anything being said to them by Nixon. There was no evidence that Nixon was directed to close down the RJG.

10.81 Herring, Lazarus and Olsen alleged in the sixth point of their complaint that Mooney had said in a "drunken rage": "I make decisions about people like you" and that Ken Moroney had made an open and blatant declaration at the Police Academy to "see Ken Seddon on a plane back to the UK".[568] Mooney denied the words attributed to him, however he admitted that a heated exchange had occurred with Seddon and Ritchie at a work function in a hotel on 5 October 2000, and that he had used strong language. Even if he did say, "I make decisions about people like you", it does not, in the Commission's view amount to a threat to close down the CMSU. Nor is the allegation that Moroney referred to seeing Seddon "on a plane back to the UK" in his speech at the Police Academy. That incident is discussed earlier in this Report. On any view, these two incidents were isolated events and hardly indicative of an overall attitude to the CMSU.

10.82 In the seventh point of the complaint, Herring, Lazarus and Olsen complained that no branch within the Service wanted to own them and no budget had been allocated and they had no accommodation.[569] The evidence was that the CMSU had been placed in Crime Agencies by Ryan. It was not as a consequence of no branch wanting to own the CMSU that no budget had been allocated. Although Seddon said that he was not responsible for those matters in relation to the establishment of the CMSU, it seems that in a de facto sense he was responsible and he should have ensured that proper steps were taken to establish a budget.

10.83 The claim about accommodation is an unjustified allegation. Seddon was already working in the Crime Agencies building. From June 2000 steps were taken to arrange accommodation for the other members of the unit, who were still in Headquarters, where HR was located. There was evidence of some delay in the completion of the building work because of the 2000 Olympics.[570] It was not appropriate for Herring, Lazarus and Olsen to complain about the lack of accommodation. In July Herring had sent an email to Small's personal assistant expressing his gratitude for the "can do attitude" shown by Crime Agencies staff to the members of the CMSU.[571] Herring said in evidence that leading up to 20 October 2000 Seddon had said that he was having increasing difficulty dealing with Small about getting resources and decisions made in relation to the move.[572]

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567 PIC Transcript, PF Herring, 6 April 2001, p 844

568 PIC Exhibit 174, barcode 6157809

569 ibid., barcode 6157809-10

570 PIC Transcript, CT Small, 29 May 2001, p 1468

571 PIC Exhibit 213C, barcode 5753305

572 PIC Transcript, PF Herring, 6 April 2001, p 853

According to McGowan and Small, accommodation was well and truly ready and available, before the complaint on 20 October 2000.

10.84 The seventh point of the complaint also asserted that a malicious investigation aimed clearly at "catching us out" had been launched into the group's administrative procedures.[573] As stated above, the Service was entitled to ask for the records to be produced. The records would indicate whether or not there was any wrongdoing. In that regard it is hard to see how anything furtive, as suggested by the words "catching us out", could be alleged. The Commission's assessment is that this was not a correct assertion, although, as stated above, the manner in which the members came to learn of the investigation could have led them to regard it as a furtive exercise.

10.85 It is relevant to next consider the tenth point of the complaint which was that Brammer was highly prejudiced, had embarked on a "witch hunt" and was intent on "deconstructing" the CMSU.[574] Herring said that the reference to Brammer's prejudice related to Brammer's unfavourable relationship with Seddon, as demonstrated by the Puddletown emails and heated exchanges between Brammer and Seddon. Herring said that he considered that if Brammer was conducting the investigation, rather than somebody externally, they would be somewhat prejudiced.[575] For the reasons stated earlier in this chapter, the Commission considers that this perception was not unreasonable. That is not to say that it justifies the next two assertions, which were that there was a "witch hunt" and an intent to "deconstruct" the CMSU.

10.86 Brammer's own position was that at all times he was seeking to protect Ryan from procedures that had gone wrong. The results may have been, in effect, a deconstructing of the CMSU. Nevertheless, in relation to the administrative practices of Herring and the members of the CMSU, Brammer's investigation would be dependent on records and documentation, and would therefore stand or fall on the evidence it uncovered. As stated above, the individual instances of alleged misuse of travel allowance by members of the CMSU were not examined during the Commission's investigation.

10.87 The points numbered eight and nine in the written complaint of Herring, Lazarus and Olsen were concerned with Seddon, who they said was a "... thoroughly professional officer ..." and who "... has demonstrated enormous courage challenging the Deputy Commissioners at times about their inappropriate behaviour, and swaying the Commissioner towards the virtues of the model and this reform process."[576]

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573 PIC Exhibit 174, barcode 6157810

574 ibid.

575 PIC Transcript, PF Herring, 6 April 2001, p 847

576 PIC Exhibit 174, barcode 6157810

10.88 The evidence does not suggest that Seddon challenged the Deputy Commissioners about their behaviour at all. The evidence does show that he demonstrated initiative and determination in ensuring that the CMSU was established, and established in accordance with Ryan's wishes, at a time when Jarratt and Moroney had not been moving with any alacrity.

10.89 Herring, Lazarus and Olsen were carefully examined during the hearing about the elements of their complaint and their responses revealed significant errors in the matters asserted. It is the Commission's opinion that the complaint showed a lack of judgement in its formulation. As noted above, there were aspects of the assertions made which were understandable, and some of the conduct considered during the hearing could reasonably have been interpreted as being resistance, opposition and perhaps even a campaign against them by some officers. In the Commission's assessment, however, there was no such campaign and the phrasing of the allegations was exaggerated and inappropriate.

10.90 Nevertheless, Herring, Lazarus and Olsen were entitled to bring their complaint to the Commission, however wrong they may have been in their interpretation of facts, and however exaggerated the complaint may have been. In a submission made to the Commission by Counsel for the Service, it was suggested that they were wrong for not reporting their allegations to a senior officer. This is incorrect. Members of the Service are entitled to make claims directly to the Commission without first giving notice to their senior officers. Ryan himself said in evidence that the action he took against Herring was not because of Herring's actions in approaching the Commission.[577]

RITCHIE'S MEDIA RELEASE

10.91 The actions of Herring, Lazarus and Olsen are to be contrasted with that of Ritchie who went public with extravagant allegations which were intended to attract maximum media attention.

10.92 The first issue raised by Ritchie was the Brammer investigation of Seddon and the CMSU. The allegations were in similar terms to those of Herring, Lazarus and Olsen. Ritchie referred to "A senior officer is misusing SCIA investigative powers to conduct a personal vendetta ..." and a "wide ranging 'witch hunt'".[578] Although Brammer was not named, it was clear that he was the SCIA officer Ritchie was referring to. As stated above, the Commission considers that aspects of Brammer's investigation are open to criticism, however, that is not to say that he had no basis for raising the issues that he did, and for that reason the Commission does not agree with the description of the investigation employed by Ritchie.

[577] PIC Transcript, PJ Ryan, 11 March 2002, p 5650-1

[578] PIC Exhibit 142, barcode 5727502

10.93 Ritchie cited two specific actions by Brammer as inappropriate:[579]

- Briefing the Commissioner of Police employing inculpatory materials leaving easily accessed exculpatory materials unpresented, in what could reasonable be regarded as a deliberate process of smearing.
- Briefing all Region Commanders on Tuesday 10th October 2000 advising them that senior personnel in the CMSU were being investigated by SCIA.

10.94 As to the first, Ritchie said in evidence that this allegation was based on his understanding that Brammer had shown Ryan a photograph of him (Ritchie) presenting a seminar in Goulburn but not availed himself of information demonstrating that approval had been given for him to undertake secondary employment.[580] His understanding that Brammer had shown Ryan the photograph came from Seddon. His belief that exculpatory material had not been presented arose from the fact that Small had questioned Ritchie about his secondary employment approval in October 2000. In cross examination Ritchie accepted that Small was quite right to raise the matter with him.[581] The Commission considers that having regard to the information available to Ritchie at the time, the allegation in his media release in relation to this matter, implying as it does a pattern of behaviour when there was none, was exaggerated and unwarranted.

10.95 As to the second point, Ritchie had received this information from a Superintendent, who had been told by someone else. The Superintendent Ritchie spoke to had not been present at the meeting of Region Commanders on 10 October 2000. Ritchie did not know if the other person had been present and did not make enquiries to verify the information before making his media release. Given the strength of the information, it was clearly inappropriate for Ritchie to assert the matter as fact in a public declaration.

10.96 Ritchie then referred to a secret vote by the Region Commanders in September 1997 "... not to participate in behavioural change initiatives ...". Ritchie was unaware of the date of the meeting or where it took place. He was uncertain about his source and ultimately said it was a "compilation" of conversations that he had with former Assistant Commissioner Christine Nixon and a Superintendent who had been in a meeting with Moroney at some time after 1997 and been told by Moroney of a decision taken by the Region Commanders in 1997.[582] Again, the Commission considers that it was inappropriate for Ritchie to publish this assertion without taking much greater care to establish its veracity.

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579 PIC Exhibit 142, barcode 5727502

580 PIC Transcript, JA Ritchie, 4 June 2001, p 1856

581 PIC Transcript, JA Ritchie, 5 June 2001, p 1934

582 ibid., pp 1944-8

10.97 After making reference to an unrelated SCIA investigation, which is not relevant for the purposes of this Report, Ritchie then listed a number of issues in relation to Crime Agencies. The primary allegation was:[583]

> A senior officer in Crime Agencies has released to those being investigated, on almost a daily basis, aspects of the IA investigation. (The CMSU comes under Crime Agencies aegis). This entirely inappropriate behaviour is clearly meant to intimidate personnel under investigation as well as bystanders.

10.98 The action taken by Small which is referred to in this allegation was considered in some detail in Chapter 7 of this Report. In a number of meetings during October 2000 Small provided information about the SCIA investigation to various members of the CMSU. It was alleged that Small had released the information for the purpose of intimidating them. There was no evidence to support this allegation. Detailed notes of Small's meetings with the members were kept. Those notes were supplied to the Commission with Small's first submission in early November 2000.

10.99 Small might have been correct in his statement that his purpose was simply to ensure that the CMSU was not a special case and that it complied with public sector procedures.[584] However, it is likely that the information which Small provided to the individuals concerned did cause them distress. Members of the CMSU believed they were the subject of unjustified allegations and became fearful of the SCIA investigation. This is not to say that there may not have been some appropriate issues being investigated by SCIA. The circumstances were probably such that, no matter how he revealed that information, it was going to cause some distress.

10.100 The Commission is satisfied that Small took the action he did because of the need for him, as Commander, to try and manage the situation, once the members of the CMSU were aware that Brammer was conducting an investigation into their Unit. The Commission considers the action taken by Small was appropriate and well-intentioned, and was not meant to intimidate the individuals involved or any bystanders, as alleged by Ritchie.

10.101 The final section of Ritchie's complaint was titled "Where To From Here?"[585] He reiterated the allegations about the Spa investigation, calling it an "inquisition" and accused both Brammer and Small of responsibility for the obliteration of fair and just treatment.

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583 PIC Exhibit 142, barcode 5727503

584 PIC Exhibit 217, barcode 5755799

585 PIC Exhibit 142, barcode 5727503-4

10.102 Ritchie then alleged that the present activity was:[586]

> … part of a much wider and longer campaign by senior police in NSW to close down, or in any way possible inhibit genuine reform in the NSWPS. This ongoing and multi-faceted campaign has been very well documented by past and present members of the Crime Management Support Unit. Our investigation into the senior officers of the NSW Police Service has been proceeding for two years.
>
> It reveals a world of total incompetents; of drunken, threatening, bullying, hand-picked members of the Commissioner's Executive 'team'; of Deputy Commissioners meeting Senior Constables secretly in pubs to correct their own Superintendent-level posting errors; of constant last minute scrambling to make the Commissioner 'look good'.
>
> Material will now be released to demonstrate that despite the emergence of a few wonderful and indeed exceptional reform 'islands', the senior executives of the Police Service are simply not committed to deep reform.

10.103 Ritchie's suggestion of threatening and bullying behaviour implied that this occurred as a regular pattern by members of the CET. The Commission found no substance to this allegation. It was established that there was one incident at a hotel after work involving Mooney, who made comments to Seddon. The situation may have become aggressive. The picture that Ritchie painted was of a "world" of these things. The drinking incident was one incident only.

10.104 While it may be true that there was some opposition and even resistance to the CMSU, in the Commission's view it could not be referred to as threatening or bullying behaviour. The alleged "secret meeting" of the Deputy Commissioners at a "pub" involved one meeting where Jarratt had been asked by a Senior Constable to meet the Senior Constable in a hotel for security reasons. The meeting was quite legitimate, however Ritchie chose to portray it in a sinister light.

10.105 In relation to the "material" released by Ritchie, he said in evidence that Seddon showed him the emails from Brammer in relation to Operation Puddletown, and he either made a copy or was handed a copy.[587] There was no evidence that they were supplied by Seddon for the purpose of being publicly released.

10.106 Once Seddon became aware of Ritchie's intention he should have taken steps, as Ritchie's manager, to direct him, request him or influence him not to go ahead with his public statement.

10.107 There can be little doubt that Ritchie's personality played a major role in the events that occurred in 2000. There was evidence that he can be a charismatic figure. Allied with that, however, there appears to have been an intolerance by

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[586] PIC Exhibit 142, barcode 5727503-4

[587] PIC Transcript, JA Ritchie, 4 June 2001, p 1860

him of the views of others. Some witnesses described him as a person who took the view that if you did not agree with him personally, then you were opposing whatever he saw himself as standing for. In the context of the Service, he saw himself as standing for reform. Anyone who opposed him therefore opposed reform.

10.108 Ryan was concerned about the behaviour of Ritchie during his period with the RJG and BCU.[588] He warned Seddon not to fall under Ritchie's spell. A criticism of Ritchie's behaviour was that he promoted a view of the Service that denigrated senior officers and those whose responsibility it was to manage the Service. He used language such as "goons and galahs" when referring to those people.[589]

10.109 It is difficult to understand what benefits Ritchie thought he could achieve by taking his allegations to the media. It would seem inevitable that his position would be terminated from that point on. He was at the time on a four monthly temporary contract, which commenced from 6 July 2000 and was due to end on 6 November 2000. While it is true that the letters of offer contained a statement that there was enough work for three years subject to satisfactory performance, on any view of it Ritchie's public statements took him outside the question of satisfactory performance. Indeed, there would have been good argument that Ryan could have terminated Ritchie immediately because of that behaviour. Irrespective of such a legal right, Ritchie's behaviour was such that it was unlikely that any person in the Service would be likely to trust him and his usefulness with the CMSU was obviously at an end.

10.110 Once Ritchie made the statements publicly, the CMSU, with Seddon as its manager, would have been completely discredited in the eyes, not just of the senior executive, but in the eyes of many operational police officers in the LACs.

THE PROCESS OF REFORM

10.111 The Commission has concluded that there is no evidence to support the sweeping allegation made by Ritchie, Herring, Olsen and Lazarus that senior members of the Service were deliberately obstructing the reform process. The actions of Ritchie, Herring, Olsen and Lazarus on 20 October 2000 were clearly triggered by the realisation that their Unit was the subject of an internal investigation. That is plain from the references to the investigation in their allegations. Whether they seriously considered the reform process at large to be under threat or just their own personal survival is difficult to discern. Certainly, the references by Ritchie in his media release to opposition to reform at senior levels was an effective device to attract the publicity he sought for his cause.

[588] PIC Transcript, PJ Ryan, 7 March 2002, p 5530

[589] PIC Transcript, PJ Ryan, 6 March 2002, p 5472

10.112 Ritchie called himself "one of the architects of the New South Wales Police reform programme ...".[590] It is important to point out that the CMSU was a Unit of six people in a Service of approximately 18,000. Ritchie was only one member of this group, which was in itself one small component of the overall reform of the Service. This was confirmed by several witnesses in evidence.[591]

10.113 That is not to say that the Crime Management Units and the CMSU did not have an important role in the progress of the Service. The Crime Management Units were the primary instruments of the reform of the criminal investigation process arising from the ICMM. The CMSU was a mechanism to provide support for the establishment of the CMUs. This included the incorporation of behavioural change principles in the process. Nevertheless, participation in the program was voluntary.

10.114 It was submitted by Counsel for Seddon that the Minutes from the ICMM Steering Committee meetings[592] indicate that members such as Brammer and Small consistently failed to produce important documentation requested of them and contributed to the inaction of the ICMM. The March 2000 minutes indicate that Brammer was tasked with developing a document to address the themes of integrity, accountability, probity and risk management as they pertain to the CMSU model. The August minutes detail both Brammer's lack of attendance and his failure to submit a report based on the specific task assigned to him. The minutes also disclose a repeated failure by Small to produce the Overview document which had been requested of him by Jarratt. When the CMSU was moved to another Command after the complaint by Ritchie on 20 October 2000, the responsibility for the Overview document was passed to the member of the Steering Committee responsible for that Command.

10.115 The significance of those failures on the part of Brammer and Small, in the context of the work performed by the CMSU and the broader question of reform is not, however, so readily quantified. It may be an example of lack of enthusiasm for the CMSU on the part of those officers.

10.116 The Commission has not in this Report endeavoured to measure the progress of reform within the Service. Nor has it sought to examine the philosophy behind the CMSU or the particular model it was established to implement. What is clear from the evidence is that the task of introducing crime management units to all LACs and integrating behavioural change principles into that process was a substantial one, and one that would take significant time.

590 PIC Exhibit 142, barcode 5727502

591 PIC Transcript, GR Morgan, 26 September 2001, p 4054; KE Moroney, 1 June 2001, p 1777; C Evans, 27 September 2001, p 4161; PJ Ryan, 7 March 2002, p 5532

592 PIC Exhibit 271, barcodes 5869490-651

10.117 Ryan said in evidence that real and lasting cultural change would be difficult to achieve and could take up to ten years to complete.[593] He also agreed, in cross examination by Counsel for Seddon that resistance to cultural change can take the form of attacking the message, or attacking the messenger.[594]

10.118 In this case the messengers perceived that they were under attack. Their response was to make emotional and extravagant allegations.

10.119 The difficulty was that the complainants believed that any criticism of them or their program represented opposition to reform generally. The Commission has concluded that the evidence does not support the claim that senior members of the Service were either actively or surreptitiously working against the reform of the Service.

[593] PIC Transcript, PJ Ryan, 11 March 2002, p 5554

[594] ibid., p 5555

11. AFFECTED PERSONS

11.1 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.[595]

11.2 Subsection 97(2) of 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,
>
> (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.

11.3 In discharging its functions under subsection 97(2), the Commission is mindful of the provisions of section 40 of the Act, which provides that answers made and documents and other things produced on objection by a witness at a hearing before the Commission are not admissible against the witness in a subsequent criminal or civil proceeding, except in proceedings for an offence against the Act. However, such material is available to the Commissioner of Police in considering whether to make an order pursuant to sections 173 or 181D of the *Police Act 1990*. Such material is also available in proceedings under Division 1A or 1C of Part 9 of the *Police Act 1990* and any disciplinary proceedings.[596]

11.4 Based on the allegations made during the hearing, the Commission is of the opinion that each of the following is an affected person:

- James Andrew Ritchie;
- Paul Francis Herring;
- Michael Edwin Lazarus;
- Dean Richard Olsen;
- Kenneth John Seddon;
- Malcolm James Brammer;

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[595] Section 97(3), *Police Integrity Commission Act 1996*

[596] Section 40(3) and (4), *Police Integrity Commission Act 1996*

- Clive Thomas Small;
- Kenneth Edward Moroney;
- Jeffrey Thomas Jarratt; and
- Peter James Ryan.

JAMES ANDREW RITCHIE

11.5 The Commission considers Ritchie to be an affected person because he is the subject of the following substantial allegations:

- He made unauthorised disclosures and released confidential internal documents in breach of his obligations as a member of the Service.[597]
- He made extravagant allegations, that were calculated to bring into disrepute senior officers of the Service, and that were shown to have no substance.[598]

11.6 There is no evidence that Ritchie was involved in criminal conduct. Pursuant to subsection 97(2)(a) of the Act the Commission is of the opinion that consideration **should not** be given to the prosecution of Ritchie for any criminal offence.

11.7 As Ritchie was an unsworn officer and is no longer a member of the Service, the question of taking action pursuant to subsections 97(2)(b), (c) and (d) of the Act does not arise.

PAUL FRANCIS HERRING

11.8 The Commission considers Herring to be an affected person because he is the subject of the following substantial allegations:

- He made wild, extravagant and baseless allegations and showed complete disregard for his position and duties as a member of the Service.[599]
- In his Puddletown inquiry, he neglected to follow rudimentary principles and failed to exercise fairness and justice to all parties concerned.[600]
- He was aware of Ritchie's intention to release the information publicly on 20 October 2000, and failed to report this to his superiors as required by Clause 20 of the Police Service Regulation 2000.[601]

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597 PIC Exhibit 445, Statement of Information supplied by the Commissioner of Police; PIC Exhibit 475C, Submissions by Counsel for NSW Police

598 PIC Exhibit 475C, Submissions by Counsel for NSW Police

599 ibid.

600 ibid.

601 ibid.

11.9 There is no evidence that Herring was involved in any criminal conduct. Pursuant to subsection 97(2)(a) of the Act the Commission is of the opinion that consideration **should not** be given to the prosecution of Herring for any criminal offence.

11.10 Herring is an unsworn employee of the Service. He has been suspended since December 2000 and remains suspended. Pursuant to subsection 97(2)(b) of the Act, the Commission is of the opinion that consideration **should not** be given to the prosecution of Herring for any disciplinary offence. The Commission recommends that the suspension of Herring be lifted. This recommendation is based on the matters examined in the Commission's investigation and does not take into account any additional matters which are the subject of investigation by the Service.

11.11 As Herring was an unsworn officer, the question of taking action pursuant to subsections 97(2)(c) and (d) of the Act does not arise.

MICHAEL EDWIN LAZARUS

11.12 The Commission considers Lazarus to be an affected person because he is the subject of the following substantial allegation:

- He made wild, extravagant and baseless allegations and showed complete disregard for his position and duties as a member of the Service.[602]

11.13 There is no evidence that Lazarus was involved in any criminal conduct. Pursuant to subsection 97(2)(a) of the Act the Commission is of the opinion that consideration **should not** be given to the prosecution of Lazarus for any criminal offence.

11.14 Lazarus is still a serving police officer. In respect of subsections 97(2)(b),(c) and (d) of the Act, the Commission is of the opinion that consideration **should not** be given to the taking of any action.

DEAN RICHARD OLSEN

11.15 The Commission considers Olsen to be an affected person because he is the subject of the following substantial allegation:

- He made wild, extravagant and baseless allegations and showed complete disregard for his position and duties as a member of the Service.[603]

[602] PIC Exhibit 475C, Submissions by Counsel for NSW Police

[603] ibid.

11.16 There is no evidence that Olsen was involved in any criminal conduct. Pursuant to subsection 97(2)(a) of the Act the Commission is of the opinion that consideration **should not** be given to the prosecution of Olsen for any criminal offence.

11.17 Olsen is still a serving police officer. In respect of subsections 97(2)(b),(c) and (d) of the Act, the Commission is of the opinion that consideration **should not** be given to the taking of any action.

KENNETH JOHN SEDDON

11.18 The Commission considers Seddon to be an affected person because he is the subject of the following substantial allegations:

- The allegations made by Napper in his complaint to Moroney (see paragraph 6.10 above).
- The allegations made by Brammer in his Spa report[604] (see Chapter 8 above).

11.19 Seddon was a seconded officer and was never a member of the Service. His secondment was terminated on 22 December 2000 and he has returned to the UK.

11.20 There is no evidence that Seddon was involved in any criminal conduct. Pursuant to subsection 97(2) of the Act the Commission is of the opinion that consideration **should not** be given to the prosecution of Seddon for any criminal offence.

11.21 As Seddon is not a member of the Service the question of taking action pursuant to subsections 97(2)(b), (c) and (d) of the Act does not arise.

MALCOLM JAMES BRAMMER

11.22 The Commission considers Brammer to be an affected person because he is the subject of the following substantial allegations:

- He misused SCIA investigative powers to conduct a wide-ranging "witch hunt" into members of the CMSU and a personal vendetta against Seddon.[605]
- He used malicious and unfounded investigations into individuals as a means of maintaining the "old control and punishment mechanisms" in order to derail and delay genuine reform.[606]

11.23 There is no evidence that Brammer was involved in any criminal conduct.

[604] PIC Exhibit 81, Operation Spa report

[605] PIC Exhibit 142, Media Release by Ritchie; PIC Exhibit 174, Complaint by Herring, Lazarus and Olsen

[606] PIC Exhibit 142, Media Release by Ritchie

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

11.24 Brammer ceased employment with the Service in July 2002. Accordingly the question of taking action pursuant to subsections 97(2)(b), (c) and (d) of the Act does not arise.

CLIVE THOMAS SMALL

11.25 The Commission considers Small to be an affected person because he is the subject of the following substantial allegations:

- He worked surreptitiously to emasculate the cultural change program.[607]
- His release of information about the internal investigation into the members of the CMSU was entirely inappropriate behaviour clearly meant to intimidate personnel under investigation as well as bystanders.[608]

11.26 There is no evidence that Small was involved in any criminal conduct. Pursuant to subsection 97(2)(a) of the Act the Commission is of the opinion that consideration **should not** be given to the prosecution of Small for any criminal offence.

11.27 Small is still a serving police officer. In respect of subsections 97(2)(b),(c) and (d) of the Act, the Commission is of the opinion that consideration **should not** be given to the taking of any action.

KENNETH EDWARD MORONEY

11.28 The Commission considers Moroney to be an affected person because he is the subject of the following substantial allegations:

- He made veiled threats at the CMSU indicating it is destined for death.[609]
- The investigation carried out by Brammer at Moroney's behest was a witch hunt which was designed and intended by Moroney to undermine the CMSU and its members.[610]

11.29 There is no evidence that Moroney was involved in any criminal conduct. Pursuant to subsection 97(2)(a) of the Act the Commission is of the opinion that consideration **should not** be given to the prosecution of Moroney for any criminal offence.

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607 PIC Exhibit 142, Media Release by Ritchie

608 ibid.

609 PIC Exhibit 174, Complaint by Herring, Lazarus and Olsen

610 PIC Exhibit 473C, Submissions by Counsel for Seddon, Ritchie, Herring, Lazarus and Olsen

11.30 Moroney is still a serving police officer. In respect of subsections 97(2)(b),(c) and (d) of the Act, the Commission is of the opinion that consideration **should not** be given to the taking of any action.

JEFFREY THOMAS JARRATT

11.31 The Commission considers Jarratt to be an affected person because he is the subject of the following substantial allegation:

- He and Moroney actively undermined the Principle Led and Evidence Based Model and the CMSU.[611]

11.32 There is no evidence that Jarratt was involved in any criminal conduct. Pursuant to subsection 97(2)(a) of the Act the Commission is of the opinion that consideration **should not** be given to the prosecution of Jarratt for any criminal offence.

11.33 Jarratt ceased employment with the Service in October 2001. Accordingly, the question of taking action pursuant to subsections 97(2)(b), (c) and (d) of the Act does not arise.

PETER JAMES RYAN

11.34 The Commission considers Ryan to be an affected person because he is the subject of the following substantial allegations:

- He did not comprehend that his Deputies were undermining the PLEB and the CMSU and he displayed a marked lack of insight and gross mismanagement.[612]
- He directed Edd Chadbourne, Mick Tiltman and Christine Nixon to close down the BCU/CMSU.[613]
- He gave evidence to the Parliamentary Budget Estimates Committee which was technically incorrect.[614]

11.35 There is no evidence that Ryan was involved in any criminal conduct. Pursuant to subsection 97(2)(a) of the Act the Commission is of the opinion that consideration **should not** be given to the prosecution of Ryan for any criminal offence.

11.36 Ryan ceased employment with the Service in April 2002. Accordingly, the question of taking action pursuant to subsections 97(2)(b), (c) and (d) of the Act does not arise.

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611 PIC Exhibit 473C, Submissions of Counsel for Seddon, Ritchie, Herring, Lazarus and Olsen

612 ibid.

613 PIC Exhibit 174, Complaint by Herring, Lazarus and Olsen

614 PIC Exhibit 81, Operation Spa report

OTHER PERSONS

11.37 In the course of the Commission's investigation, allegations and criticisms were made about individuals whose names do not appear in this Chapter as "affected persons". The Commission has expressed its opinions and assessments about the matters examined in the investigation in Chapter 10 of this Report.

11.38 Not all criticisms amount to substantial allegations. This chapter was concerned to discharge the Commission's responsibilities under subsection 97(2) of the Act with respect to persons against whom, in the Commission's opinion, substantial allegations have been made in the course of, or in connection with, the investigation.

12. PROCEDURAL MATTERS

GUIDELINES FOR INTERNATIONAL SECONDMENTS TO THE NSW POLICE SERVICE

12.1 During the course of the Commission's hearing the Service sought external advice about appropriate procedures for the conduct of future secondments.

12.2 In May 2001 Mr J W Shaw QC provided a preliminary memorandum of advice to the Service which suggested a number of points for inclusion in proposed guidelines for international secondments:[615]

> 1. The Commissioner should be empowered to decide a secondment in real and pressing emergency circumstances without the necessity of following the guidelines.
>
> 2. … the Commissioner should consider a cost-benefit analysis of whether the particular envisaged role or function can be undertaken by a serving NSW officer or an officer from another Australian jurisdiction or whether an overseas secondment is preferable in all of the circumstances. …
>
> 3. … without limiting the generality of the Commissioner's discretion, such an overseas secondment would be justified where particular expertise, knowledge, skills or independence from the existing Police Service possessed by the proposed secondee were regarded by the Commissioner as desirable in the public interest.
>
> 4. Prior to any formal contract or arrangement being entered into, a confidential written assessment by the lending agency of the capacity, expertise, character and career history of the proposed secondee should be obtained and considered by the Commissioner.
>
> 5. The terms and conditions of the proposed secondment should be documented by a formal contract between the NSW Police Service and the secondee … and should be executed prior to the secondment being taken up. …

12.3 The Service subsequently drew up a comprehensive policy entitled "International (In-Bound) Secondment Guidelines".[616] In the Commission's view, those guidelines are appropriate and, if followed, would prevent much of the difficulty which arose in the secondments examined in this Report.

12.4 In September 2001 a report was provided to the Service by Deloitte, Touche and Tohmatsu (Deloittes) in relation to the secondment of Seddon and Napper. The report contains a comprehensive analysis of the steps involved in the two secondments, based on documentation provided by the Service to Deloittes, and

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[615] PIC Exhibit 410, barcode 5950974-5

[616] ibid., barcode 5950966-70

measures those steps against the general principles of recruitment and procurement.[617]

12.5 The findings of the Deloittes report are as follows:[618]

- The selection of Mr Seddon and Mr Napper was merit based;
- The process utilised in the evaluation and selection procedure was impartial;
- The selection process was competitive and allowed for the maximum pool of candidates possible in the circumstances;
- Given the circumstances, it is apparent from the documentation that due regard was given to value for money considerations;
- The lack of documentation to clearly demonstrate accountability may expose the service to a level of criticism that could have been avoided if secondment policies and procedures had been in place requiring documentation of the reasons for the decision. The lack of documentation does not of itself suggest that the process was conducted without proper regard for accountability of decisions taken;
- Overall, the recruitment process was conducted in an open manner. However, the Service would have been advantaged by a more formal documentation of the process and the decisions made at each stage of the process, and;
- On analysis of the material provided, the shortcomings identified in the recruitment process do not constitute maladministration.

12.6 The Deloittes report also provides a number of recommendations for use in future overseas secondments:[619]

- A secondment procedure be put in place that would ensure that the importance of documenting decisions and the reasons for those decisions is recognised and implemented;
- as a quality assurance mechanism, include in the secondment procedure, a review and assessment by an independent member of the Premier's Department, and;
- With respect to complex issues involving the liability of the Service, eg tax liabilities, external advice is sought and the request for and receipt of that advice is clearly documented.

12.7 The Commission supports the Deloittes findings and recommends that the additional measures suggested by Deloittes be incorporated in the procedures already implemented by the Service, if that has not already occurred.

617 PIC Exhibit 434, barcode 5984499-681

618 ibid., barcode 5984502

619 ibid., barcode 5984503

THE INVESTIGATION OF CIVILIAN OFFICERS BY SCIA

12.8 The Operation Spa investigation encompassed issues relating to sworn and unsworn members of the Service. Brammer said in evidence that there was a lack of consistency in the different policies governing how internal investigations relating to sworn and unsworn officers are to be conducted and that this was problematic in investigations involving both.[620]

12.9 It was submitted to the Commission by the legal representatives for Brammer that SCIA should have the power to investigate allegations of misconduct against all employees of the Service, whether sworn or unsworn. It was submitted that it should be made clear by amendment to the *Public Sector Management Act 1988*[621] and the *Police Act 1990* that SCIA is empowered, in appropriate circumstances, to investigate the conduct of administrative officers.[622]

12.10 This view was not supported in submissions made on behalf of the Service. Those submissions state in part:[623]

> 3.10 The core business of Special Crime and Internal Affairs is the investigation of criminal offences committed or suspected of being committed by police officers. The Special Crime Unit investigates criminal conduct of civilians assisted or "greenlighted" by police. Consequently, it is essential in those circumstances that the criminality of those persons be investigated in order to establish, if any, the links between them and corrupt police. It is only in those circumstances that civilians will be investigated by SCIA.
>
> 3.11 Investigations will not be conducted into persons who are not police officers and who are suspected of having committed breaches of policy or misconduct under the provisions of the *Public Sector Management Act*. There are already procedures in place for these investigations to be conducted by Senior Public Service personnel.

12.11 The Commission accepts the position adopted by the Service but notes that some flexibility must be available for SCIA to deal with situations where sworn and unsworn personnel need to be interviewed for the purposes of a SCIA investigation. SCIA should be able to interview unsworn officers in certain situations.

12.12 The current legislative regime does not impose a total prohibition on SCIA officers interviewing an unsworn officer for the purposes of a SCIA investigation. If the unsworn officer is suspected of a breach of discipline then it is appropriate that the procedures set out in the regulations under the *Public Sector Management Act* be followed, in which case the matter will be removed from the SCIA

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620 PIC transcript, M J Brammer, 20 September 2001, pp 3767-8

621 The *Public Sector Management Act 1988* has been repealed and replaced with the *Public Sector Employment and Management Act 2002*.

622 PIC Exhibit 469C, barcode 6090539-42

623 PIC Exhibit 481C, barcode 6136401-2

investigation to be dealt with separately, as contemplated in the submission from the Service above. This is what happened in the case of Herring, when the issues concerning him were transferred from SCIA to Chadbourne to be dealt with under the *Public Sector Management Act,* as discussed in Chapter 9 above.

12.13 The Commission accordingly makes no recommendation for a change in legislation but recommends that a policy be adopted by the Service that permits the interviewing of unsworn personnel, where necessary for the purposes of a SCIA investigation, in circumstances where the person to be interviewed is not being investigated for any breach of discipline.

ROLE OF SCIA COMMANDER IN INTERNAL INVESTIGATIONS

12.14 The submissions made on behalf of the Service contain reference to a number of steps that have been taken to improve the quality of internal investigations. A practice has been adopted at SCIA to ensure that "objectivity" is applied to internal investigations at a senior level in SCIA. According to the submissions:[624]

> 3.6 Commander Scipione [Brammer's successor] did not conduct internal affairs investigations while Commander SCIA, nor does Commander Reith [the current Commander]. This practice will ensure an objective view is applied to investigations at a suitably high level in future.

12.15 The Commission accepts that this development may, in many cases, provide a more objective environment for the handling of internal investigations.

12.16 However, it does not accept that removing the Commander of SCIA from conducting internal investigations will, of itself, ensure that an objective view is applied in every case. Nor does the Commission accept that the Commander should necessarily be removed from the conduct of all investigations. There may well be occasions when the Commander, for a variety of proper reasons, will need to become involved in particular investigations.

12.17 In any event, the Commission is concerned that there is no Service policy to prescribe the extent to which the Commander may become involved in the conduct of an internal investigation. This remains, regardless of the current arrangement, at the discretion of the Commander.

12.18 The Commission therefore recommends that the Service consider developing a policy that: delineates the circumstances, if any, in which the Commander of SCIA can personally conduct, or become involved in the conduct of, an internal investigation; and, demonstrates how those investigations can be reviewed and managed. It is further recommended that the Service consider, when drafting the policy, a requirement to consider and mitigate, where appropriate, the potential for prejudice and conflict of interest.

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624 PIC Exhibit 481C, barcode 6136400-1

13. APPENDICES

APPENDIX 1 - ROLE AND FUNCTIONS OF THE COMMISSION

A1.1 The Commission was established under the *Police Integrity Commission Act 1996* (the Act) on the recommendation of the Royal Commission into the New South Wales Police Service. The principal functions of the Commission, set out in section 13 of the Act, are:

> (a) to prevent serious police misconduct and other police misconduct,
>
> (b) to detect or investigate, or manage other agencies in the detection or investigation of, serious police misconduct,
>
> (c) to detect or investigate, or oversee other agencies in the detection or investigation of, other police misconduct, as it thinks fit,
>
> (d) to receive and assess all matters not completed by the Police Royal Commission, to treat any investigations or assessments of the Police Royal Commission as its own, to initiate or continue the investigation of any such matters where appropriate, and otherwise to deal with those matters under this Act, and to deal with records of the Police Royal Commission as provided by this Act.

A1.2 As far as practicable, the Commission is required to turn its attention principally to serious police misconduct (sub-section 13(2)).

POLICE MISCONDUCT

A1.3 The expressions "police misconduct" and "serious police misconduct" are not specifically defined by the Act. They nevertheless include the following types of conduct (see sub-section 5(2)):

> (a) police corruption,
>
> (b) the commission of a criminal offence by a police officer,
>
> (b1) misconduct in respect of which Commissioner of Police may take action under Part 9 of the *Police Act 1990*,
>
> (c) corrupt conduct within the meaning of the *Independent Commission Against Corruption Act 1988* involving a police officer,
>
> (d) any other matters about which a complaint can be made under the *Police Act 1990.*

A1.4 It follows that "police misconduct" may encompass not only serious criminal activity such as perverting the course of justice but also minor disciplinary breaches by police, the sanction for which may, for example, be nothing more than additional training and development.

INVESTIGATIONS

A1.5 In matters where the Commission determines to carry out an investigation (whether or not in the nature of a preliminary investigation), it has a wide range of powers at its disposal in order to acquire information. For example, the Commission may:

- require public officials and public authorities to produce statements of information (section 25);

- require any person (whether or not a public official or public authority) to produce documents or other things (section 26);
- enter public premises (section 29);
- obtain search warrants (section 45);
- obtain warrants under the *Telecommunications (Interception) Act 1979*;
- obtain warrants under the *Listening Devices Act 1984* (section 50); and
- require persons to attend and give evidence before a hearing of the Commission, either in public or in private (section 38).

REPORTS TO PARLIAMENT

When Does the Commission Submit a Report to Parliament regarding an Investigation?

A1.6 In circumstances where the Commission has conducted a public hearing for the purposes of an investigation, the Commission must prepare a report to Parliament in respect of the matter to which the public hearing related (sub-section 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 (sub-section 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 (sub-sections 96(3), (4) and (5)).

Components of a Report to Parliament regarding an Investigation

A1.7 A report to Parliament in relation to an investigation will generally contain a number of components. Under section 97(1) 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 (sub-section 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" (sub-section 97(3)).

The Commission's Approach to the Assessment of Information and Evidence

A1.8 In forming the assessments, opinions and recommendations referred to above, the Commission may not make a finding or form an opinion that a specified person is guilty of, or has committed, is committing, or is about to commit a criminal or disciplinary offence (sub-section 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 (sub-section 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 (sub-section 16(3)). That said, the Commission recognises, bearing in mind the definition of police misconduct may include conduct that amounts to criminal and disciplinary offences, that such an opinion may in some circumstances take on the appearance of a finding of a court or tribunal. The Commission's approach is, as far as possible, to avoid the expression of opinions that may be characterised as findings by a court.

A1.9 The standard of proof applied by the Commission to the formation of an opinion as to whether a person has engaged in police misconduct or other misconduct is the balance of probabilities. Such an opinion will be reached having regard to the principles in *Briginshaw v Briginshaw* (1938) 60 CLR 336, that is, the more serious the matters under consideration, the more stringent will be the requisite degree of satisfaction.

Recommendations and Opinions that Consideration be Given to the Prosecution of a Person for a Criminal or Disciplinary Offence

A1.10 If, in the Commission's opinion, the available evidence is sufficient to establish a prima facie case in respect of a criminal or disciplinary offence then, except in one very limited circumstance discussed below, it is the Commission's approach to recommend that consideration should be given to the prosecution of a person for a specified criminal or disciplinary offence.[625] Such a recommendation will be made to the relevant prosecutorial authority, for example, the New South Wales Director of Public Prosecutions. The Commission will not have regard to considerations, such as whether there is a reasonable prospect of conviction, or public policy considerations when deciding whether to make such a recommendation. These, and other discretionary considerations, are appropriately matters for the relevant prosecutorial authority. That said, the Commission may make findings or express opinions as to the veracity of evidence received from individual witnesses.

A1.11 The circumstances in which the Commission may, in the exercise of its discretion, decline to furnish or defer furnishing a brief of evidence to the relevant prosecutorial authority are:

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

Statements regarding "Affected Persons"

A1.12 Sub-section 97(2) of the Act requires that:

> The report must include, in respect of each 'affected person', a statement as to whether or not in all the circumstances the Commission is of the opinion that consideration should be given to the following:
>
> a) the prosecution of a person for a specified criminal offence,

[625] 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" (section 97(2)(b)) have no effective application to police officers. Those powers and obligations may however have application to other public officials.

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

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

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

Recommendations and Opinions regarding Disciplinary Action Against Police

A1.13 "Reviewable action" within the meaning of section 173 of the *Police Act 1990* refers to forms of disciplinary action that would ordinarily apply to more serious breaches of discipline. The available forms of reviewable action are:

- a reduction in a police officer's rank or grade;
- a reduction in a police officer's seniority;
- a deferral of a police officer's salary increment; and
- any other action (other than dismissal or the imposition of a fine) that the Commissioner of Police considers appropriate.

Owing to the seriousness of these forms of disciplinary action, a police officer may appeal the imposition of any of these penalties to the Industrial Relations Commission of New South Wales.

A1.14 In addition to the requirement to include in a report to Parliament a statement of the Commission's opinions regarding those against whom substantial allegations have been made, the Commission has a discretion to recommend that consideration be given to other disciplinary action. This includes "non-reviewable action" within the meaning of section 173 of the *Police Act 1990*. Non-reviewable action is disciplinary action available against police officers for less serious breaches of discipline. There is no avenue of appeal to the Industrial Relations Commission against the imposition of a form of non-reviewable action. The available forms of non-reviewable action are:

- coaching;
- mentoring;
- training and development;
- increased professional, administrative or educational supervision;
- counselling;
- reprimand;
- warning;
- retraining;
- personal development;
- performance enhancement agreements;
- non-disciplinary transfer;

- change of shift (but only if the change results in no financial loss and is imposed for a limited period and is subject to review);
- restricted duties; and
- recording of adverse findings.

Other Types of Recommendations and Opinions

A1.15 If the Commission considers it appropriate in the circumstances, a report to Parliament may also include recommendations for the taking of other action. Such recommendations may, for example, relate to the need for law reform or for changes to policies and procedures affecting the way in which police or other persons carry out their respective duties and responsibilities.

APPENDIX 2 - INSTRUMENT OF APPOINTMENT, DIRECTION AND DELEGATION

7919/1235

INSTRUMENT OF APPOINTMENT, DIRECTION AND DELEGATION

Whereas:

(i) it is intended that **JUDGE PAUL DAVID URQUHART QC** be appointed an Assistant Commissioner of the Police Integrity Commission ("the Commission") for the purpose of exercising some of the functions and powers of the Commission and Commissioner of the Police Integrity Commission in connection with the investigation codenamed "Operation Malta".

(ii) a public hearing is being held for the purpose of Operation Malta ("the hearing")

Appointment, direction and delegation

I, **Geoffrey Ernest (Tim) Sage**, being Acting Commissioner and Chief Executive Officer of the Commission hereby:

(a) pursuant to section 10 of the *Police Integrity Commission Act 1996* ("the Act") appoint **JUDGE PAUL DAVID URQUHART QC** as an Assistant Commissioner of the Police Integrity Commission,

(b) pursuant to subsection 32(2) of the Act determine that the hearing shall be conducted by **JUDGE PAUL DAVID URQUHART QC**;

(c) pursuant to section 9 of the Act direct that **JUDGE PAUL DAVID URQUHART QC** shall exercise the functions of the Commissioner in connection with Operation Malta as set out in (d) hereunder; and

(d) pursuant to subsection 11(4)(b) and (c) of the Act delegate to **JUDGE PAUL DAVID URQUHART QC** the powers of the Commission and Commissioner, as the case may be, all or in connection with the hearing, save and except for the functions described in subsection 11(5) of the Act.

Term of appointment, direction and delegation

This instrument shall remain in force until such time as it is revoked or the Commission's functions in relation to Operation Malta are discharged, whichever occurs sooner.

G E (Tim) Sage
Acting Commissioner
20 August 2001

APPENDIX 3 - WITNESS LIST

Name	Date/s of Appearance before the Commission
Abraham, Arthur Sami	30-31 October 2001, 1-2 November 2001, 5-6 November 2001, 4 March 2002
Adams, Richard Stephen	28 September 2001
Anderson, Jennifer Anne	3 October 2001, 4 October 2001
Baueris, Victor George	24 September 2001
Begg, Helen Marie	24 September 2001
Brammer, Malcolm James	19-29 March 2001,10-11 September 2001, 20-21 September 2001
Chadbourne, Edwin	4-10 September 2001
Coady, Christopher Paul	4 March 2002
Cooper, Brett Shane	2 July 2002
Corboy, Michael John	28 September 2001
Cranna, James Stuart	6 September 2001
Dedden, Wayne Raymond	12 September 2001
Ebrill, Max Leslie	5 September 2001
Evans, Christopher	27 September 2001
Goodwin, Mark	22 June 2001
Graham, Douglas Stuart	6 July 2001
Gumley, Howard Robert	26 June 2001
Herring, Paul Francis	5-6 April 2001, 11 April 2001
Hodson, John Edward	22 October 2001
Holahan, Mark William	3 July 2001
Holmwood, Justin Joseph	3 September 2001
Jarratt, Jeffrey Thomas	4-5 October 2001
Jenkins, Mark Oswell	2 July 2001
Johnson, Steven Martin	2 July 2001, 12 September 2001
Katsogiannis, Arthur	3 July 2001
Lazarus, Michael Edwin	19-20 June 2001
Lewis, Laurence D'Arcy	4 October 2001
Lollback, Michael John	2 July 2001

Name	Date/s of Appearance before the Commission
Mahoney, Reginald	2 July 2001
Mann, Judy Ruth	28 September 2001
McFadden, Brett Anthony	24-25 September 2001
McGowan, Megan Joy	25 June 2001
McKenna, Adrian Vincent	2 October 2001, 3 October 2001
Mooney, Desmond Joseph	5 April 2001
Morgan, Graeme Robert	26 September 2001
Moroney, Kenneth Edward	31 May- 6 June 2001, 26 October 2001, 29 October 2001
Napper, Robin Peter	29 March – 5 April 2001
Nilon, Geoffrey Paul	27 September 2001
Olsen, Dean Richard	8 June, 18 June 2001
Perrin, David	2 July 2001
Petrech, Robert George	6 July 2001
Phillips, Timothy Graham	7 November 2001
Rayment, Marea Catherine	22 June 2001, 5 September 2001
Ritchie, James Andrew	4-8 June 2001, 18-19 June 2001
Ryan, Peter James	4-7 March 2002, 11-12 March 2002, 14 March 2002, 18 March 2002
Seddon, Kenneth John	2-4 May 2001, 21-22 June 2001
Small, Clive Thomas	28-31 May 2001, 2 October 2001
Stacey, Harriet Lucy	20 June 2001
Temple, Sharon Jacintha	6 September 2001
Tiltman, Michael Bernard	3 October 2001
White, Miriam Sybil	26 September 2001


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