

REPORT TO PARLIAMENT

OPERATION SAIGON

June 2001

REPORT TO PARLIAMENT OPERATION SAIGON
JUNE 2001

ISBN 1 74003 117 2
© Police Integrity Commission 2001

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 Saigon, 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 Act, pursuant to which I recommend that this Report be made public forthwith.

Yours faithfully

Judge P D Urquhart QC
Commissioner

June 2001

LEVEL 3 111 ELIZABETH STREET GPO BOX 3880 SYDNEY NSW 2001 AUSTRALIA
TELEPHONE [61 2] 9321 6700 FACSIMILE [61 2] 9321 6799 FREECALL 1 800 657 079

TABLE OF CONTENTS

1. INTRODUCTION 1

Background 1

Operation Borden and Operation Addlestone 1

Operation Hull 2

Operation Saigon Phase I 2

Saigon Phase II and Phase III 3

The Shooting of Roni Levi 4

This Report 5

2. THE COMMISSION'S APPROACH 7

Role and Functions of the Commission 7

Police Misconduct 7

Investigations 8

Reports to Parliament 8

When may the Commission Submit a Report to Parliament regarding an Investigation? 8

Components of a Report to Parliament on an Investigation 9

The Commission's Approach to the Assessment of Information and Evidence 9

Recommendations and Opinions that Consideration be Given to the Prosecution of a Person for a Criminal or Disciplinary Offence 10

Statements regarding 'Affected Persons' 10

Recommendations and Opinions regarding Disciplinary Action against Police 11

Other Types of Recommendations and Opinions 12

3. SAIGON PHASE I 13

Use and/or Supply of Prohibited Drugs and Association with Drug Suppliers 13

Senior Constable Christan Bruce 13

Assessment of Evidence of Senior Constable Bruce's Use and/or Supply of Prohibited Drugs and Association with Drug Suppliers 15

Former Senior Constable Peter Murrant 16

Assessment of Evidence of former Senior Constable Peter Murrant's Use and/or Supply of Prohibited Drugs and Association with Drug Suppliers 17

Lenin Marx Lambert 17

Assessment of Evidence of Lenin Lambert's Use and/or Supply of Prohibited Drugs and Association with Drug Suppliers 18

Lisa Troost 18

Assessment of Evidence of Lisa Troost's Use and/or Supply of Prohibited Drugs and Association with Drug Suppliers 18

Constable Rodney Podesta 19
Assessment of Evidence of Constable Rodney Podesta's Use and/or Supply of Prohibited Drugs and Association with Drug Suppliers 20
SA19 20
Assessment of Evidence of SA19's Use and/or Supply of Prohibited Drugs and Association with Drug Suppliers 20
Easton James 21
Assessment of Evidence of Easton James' Use and/or Supply of Prohibited Drugs and Association with Drug Suppliers 21
Senior Constable Anthony Dilorenzo 22
Assessment of Evidence of Senior Constable Anthony Dilorenzo's Use and/or Supply of Prohibited Drugs and Association with Drug Suppliers 23
Senior Constable David Price 24
Assessment of Evidence of Senior Constable David Price's Use and/or Supply of Prohibited Drugs and Association with Drug Suppliers 24
Senior Constable Anthony Binns 24
Assessment of Evidence of Senior Constable Anthony Binns' Use and/or Supply of Prohibited Drugs and Association with Drug Suppliers 26
Senior Constable Matthew Crotty 26
Assessment of Evidence of Constable Matthew Crotty's Use and/or Supply of Prohibited Drugs and Association with Drug Suppliers 27
RELEASE OF CONFIDENTIAL POLICE INFORMATION 27
Assessment of Evidence of Crotty and Bruce Releasing Confidential Information 28
UNAUTHORISED SECONDARY EMPLOYMENT 29
Senior Constable Anthony Binns 29
Assessment of Evidence of Senior Constable Anthony Binns' Involvement in Unauthorised Secondary Employment 32
Former Senior Constable Peter Murrant 32
Assessment of Evidence of former Senior Constable Peter Murrant's Involvement in Unauthorised Secondary Employment 33
The Investigation by Petith and Thompson into Binns' Unauthorised Secondary Employment in the Security Industry 33
Sergeant Paul Petith 35
Assessment of Evidence of Sergeant Paul Petith's Involvement in Unauthorised Secondary Employment 37
Assessment of Evidence of former Senior Constable Peter Murrant's Breaches of the Security Industry Act 1997 37
DUTY BOOKS 38

4. SAIGON PHASE II 43
BACKGROUND TO SAIGON PHASE II 43
USE AND/OR SUPPLY OF PROHIBITED DRUGS AND
ASSOCIATION WITH DRUG SUPPLIERS 44
Constable Rodney Podesta 44
Drug Use by Podesta Before Joining the Police Service in 1995 45
Use and Supply of Prohibited Drugs by Podesta
Between May 1995 and 27 June 1997 46
Assessment of the Evidence of the Use and Supply of Prohibited
Drugs by Podesta Between May 1995 and 27 June 1997 52
Podesta's Use and Supply of Prohibited Drugs After 28 June 1997 53
Assessment of the Evidence of Podesta's Use and Supply of
Prohibited Drugs After 28 June 1997 53
Podesta's Association with Drug Suppliers 54
Assessment of the Evidence of Podesta's Association with
Drug Suppliers 55
Podesta – Conclusions concerning Paragraphs (i) and (iv)
of the General Scope and Purpose 56
Anthony Dilorenzo – Use and Supply of Prohibited Drugs 56
Assessment of Evidence of Anthony Dilorenzo's Use and Supply
of Prohibited Drugs and Improper Association
with Suppliers of Prohibited Drugs 57
WHETHER PODESTA AND/OR DILORENZO WERE AFFECTED BY
DRUGS AND/OR ALCOHOL AT THE TIME OF THE
SHOOTING ON 28 JUNE 1997 58
Rodney Walter Podesta 58
Anthony Dilorenzo 63

5. SAIGON PHASE III 67
BACKGROUND TO SAIGON PHASE III 67
ALLEGATIONS OF CORRUPTION OR MISCONDUCT BY MEMBERS
OF THE POLICE SERVICE IN THE INVESTIGATION OF THE
FATAL SHOOTING OF RONI LEVI ON 28 JUNE 1997 67
Information Held by Internal Affairs concerning
Podesta and Dilorenzo Before 28 June 1997 69
What did Internal Affairs Tell the Shooting Investigation Team
about Podesta and Dilorenzo? 69
The Information from SA1 and SA3 71
Assessment of the Evidence concerning the Information
from SA1 and SA3 73
The Information from SA2 75
The Information from SA5 75

The Information provided by SA6 76
The Information Provided by SA8 76
Assessment of the Flow of Information from One Part of the Police Service to Another 77
The Investigation on 28 June 1997 78
Involvement of Bondi Police in the Investigation 79
Assessment of the Evidence of the Involvement of Bondi Police in the Investigation 81
ASSESSMENT OF THE POLICE INVESTIGATION OF THE SHOOTING OF RONI LEVI 82
THE CORONIAL INQUEST 84
OTHER ISSUES RAISED IN SUBMISSIONS OF MS DUNDAS 85

6. AFFECTED PERSONS 87
SAIGON PHASE I 88
Christan David Bruce 88
Peter John Murrant 89
Lenin Marx Lambert 91
Lisa Jane Troost 92
Rodney Joseph Walter Podesta 92
Easton Barrington James 93
SA19 94
Anthony Stephen Dilorenzo 94
David Jeffrey Price 94
Anthony Michael Binns 95
Matthew James Crotty 96
Paul James Petith 97
SAIGON PHASE II 98
Rodney Joseph Walter Podesta 99
Anthony Stephen Dilorenzo 100
Ronald James Quin 101
Renee Rose Robertshaw 101
Terry Voto 102
SA10 102
SA11 102
SA9 103
Easton Barrington James 103
Kieran Brian O'Connor 104
SA12 106
SA2 106
SA15 106
SA13 107
Mark Alan Dilorenzo 107
SAIGON PHASE III 108

7. ASSESSMENTS AND CONCLUSIONS CONCERNING ISSUES OF POLICY AND PROCEDURE 111

INVESTIGATIONS OF SHOOTINGS BY POLICE OFFICERS 111

DRUG AND ALCOHOL TESTING OF POLICE OFFICERS 113

Phased Introduction of Drug and Alcohol Testing 114

The Westmead Study – October 1998 114

Targeted Drug Tests 116

Random and Targeted Alcohol Tests 117

Police Service Response to the Westmead Study 117

Testing of Officers Involved in Critical Incidents 119

Recall to Duty for Drug Testing Purposes 124

RECOMMENDATIONS 125

Random Drug Testing 125

Blood Tests in Critical Incidents 126

Range of Drugs – Critical Incident Testing 127

Refusal to Submit to a Test 128

OTHER MATTERS ARISING FROM THE PUBLIC HEARINGS 129

Drug and Alcohol Education Programs at the Academy Level 129

Adequacy of Checks Performed Prior to Joining the Police Service 131

APPENDIX 133

SAIGON PHASE I 133

SAIGON PHASE II 133

SAIGON PHASE III 135

EXECUTIVE SUMMARY

BACKGROUND TO OPERATION SAIGON

In May 1996 the Internal Affairs Branch of the NSW Police Service ('the Police Service') began investigating Senior Constable Anthony Dilorenzo of Bondi Patrol in relation to alleged improper association with drug dealers. That investigation was codenamed Operation Addlestone. In May 1997 Internal Affairs commenced an investigation, codenamed Operation Borden, into Constable Rodney Podesta's alleged use and supply of prohibited drugs. In May 1997 Operation Addlestone was joined to Borden.

One month later, on 28 June 1997 at approximately 7.30am, Mr Roni Levi was shot dead by Constable Podesta and Senior Constable Dilorenzo on Bondi Beach. Neither police officer was tested for drugs or alcohol following the incident, although both officers were still under investigation by Internal Affairs in relation to drug related allegations. The statutory power had existed since 1 January 1997 to conduct random or targeted drug and alcohol tests of police officers. However, in circumstances which should not attract criticism, that power was not being utilised given a phased programme for the introduction of testing. There was no statutory power at that time requiring officers involved in critical incidents to provide samples for drug and alcohol testing.

Operation Borden, which continued as a separate covert investigation at the same time as the shooting was being investigated, led to the identification of several other police officers suspected of the use and supply of prohibited drugs. A further investigation, codenamed Operation Hull, was instigated by Internal Affairs in respect of those other officers.

The physical and electronic evidence gathered by Internal Affairs during Operations Borden and Hull was provided to the Police Integrity Commission ('the Commission') in 1998. The Commission then commenced its own investigation codenamed Operation Saigon.

THE PUBLIC HEARINGS

Public hearings in relation to Operation Saigon were held over three phases between February 1999 and March 2000. The Saigon Phase I hearings focused on allegations that members of the Police Service were using and/or supplying prohibited drugs, were associating with drug dealers, and were involved in secondary employment in the security industry.

Saigon Phases II and III focused on the allegations of drug use by Podesta and Dilorenzo and also examined the Police Service investigation of the shooting of Roni Levi.

It is important to point out that the Commission's investigation did not re-investigate the shooting of Mr Levi, other than in the context of the scope and purpose of the investigation, that is, to examine allegations that Podesta and/or Dilorenzo were affected by drugs and/or alcohol at the time of the shooting, and to examine allegations of possible police misconduct with respect to the investigation of the shooting.

EVIDENCE HEARD DURING OPERATION SAIGON PHASE I AND PHASE II CONCERNING USE AND SUPPLY OF PROHIBITED DRUGS AND INAPPROPRIATE ASSOCIATION WITH DRUG DEALERS

During Operation Saigon Phase I and Phase II, the Commission heard evidence concerning the use and supply of prohibited drugs by members of the Police Service and evidence concerning inappropriate associations between police officers and suppliers of prohibited drugs.

Senior Constable Christan Bruce gave evidence to the Commission that he had used cocaine, cannabis and ecstasy while he was a serving police officer. He further gave evidence that he had used prohibited drugs with former Senior Constable Peter Murrant, Constable Matthew Crotty, Senior Constable Anthony Binns, Senior Constable David Price and Constable Rodney Podesta. Bruce's evidence was supported by listening device material played during the hearings.

Former Senior Constable Peter Murrant denied during evidence that he had used or supplied prohibited drugs, which was at odds with Bruce's evidence and some of the electronic evidence heard by the Commission. The Commission also heard evidence that Bruce attempted to warn Murrant about a possible search of his business and home, as Bruce believed that Murrant had drugs on the premises.

Constable Rodney Podesta admitted in evidence that he did not always enforce the law in relation to drugs. Podesta admitted that he had used cannabis as a teenager and that he had used cocaine and ecstasy around the end of 1997. He admitted in Saigon I that he had agreed to purchase cocaine in February 1998 with the intention of supplying it to a friend, SA14. There was a large body of evidence before the Commission suggesting that Podesta's drug use was far greater than that which he admitted to in evidence. The Commission heard evidence that Podesta used cocaine, ecstasy and cannabis before he joined the Police Service in 1995. In the period between May 1995 and 27 June 1997, the Commission heard evidence that Podesta frequented nightclubs at which drug use was common, and associated with a circle of friends who were users of prohibited drugs. The Commission also heard evidence that Podesta was involved in the use of cocaine and ecstasy during that period. The Commission heard evidence that Podesta continued to use cocaine and ecstasy after 28 June 1997, the day that Mr Levi was shot.

Senior Constable Anthony Dilorenzo denied using prohibited drugs, with the exception of cannabis a couple of times when he was a teenager. The Commission heard extracts from listening device material, however, which suggested that Dilorenzo was involved

in drug use. In addition, information was given by SA2 that Dilorenzo had used cocaine and ecstasy while he was a serving police officer.

Senior Constable David Price denied using prohibited drugs or being present when any police officer had taken prohibited drugs. Bruce told the Commission that he and Price had used cocaine together, which Murrant supplied, whilst in Las Vegas.

In evidence given by Bruce before the Commission, Bruce implicated Senior Constable Anthony Binns in the use and supply of prohibited drugs, namely cocaine. Binns denied using prohibited drugs or seeing any other officer use prohibited drugs. The Commission heard extracts from listening device material which tended to confirm Binns' involvement in the use of prohibited drugs.

Constable Matthew Crotty denied using prohibited drugs. Extracts of listening device material played during the Saigon Phase I hearing implicated Crotty in the use of cocaine and ecstasy. This material also indicated that Crotty had an improper relationship with Murrant, a drug supplier.

ALLEGATIONS THAT PODESTA AND DILORENZO WERE AFFECTED BY DRUGS AND/OR ALCOHOL AT THE TIME OF THE SHOOTING

Podesta and Dilorenzo were not subject to blood, urine or breath tests following the fatal shooting of Roni Levi on 28 June 1997, to determine whether there were drugs or alcohol in their systems. This was despite the fact that both officers were under investigation by Internal Affairs in relation to drug related allegations. It became evident during the course of the hearings that the Shooting Investigation Team was not advised of all the information held by Internal Affairs with respect to Podesta and Dilorenzo's involvement in drugs. Indeed Detective Senior Sergeant McDougall, the head of the Shooting Investigation Team, told the Commission that he had no knowledge at all that Podesta and Dilorenzo were under investigation by Internal Affairs with respect to allegations of drug use and supply as at 28 June 1997. McDougall said that if he had known this on the day he would have asked the two officers to volunteer samples for the purpose of testing.[1]

The Commission examined all the evidence available in relation to whether Podesta and Dilorenzo were affected by drugs and/or alcohol at the time of the shooting, and found that the evidence did not support a finding that either officer was affected by drugs or alcohol at the time of the shooting. However, if both officers had been drug tested after the incident there would be no doubts as to whether they were affected by drugs or alcohol at that time. The issue of random and targeted drug testing within the Police Service and critical incident testing were canvassed as part of the Operation Saigon hearings and is discussed in detail in this Report.

---

1 Operation Saigon Phase III, PIC Transcript, R N McDougall, 28 February 2000, pp. 282-283.

THE POLICE INVESTIGATION OF THE SHOOTING

A Shooting Investigation Team was formed on the morning of 28 June 1997 to examine the shooting of Mr Levi. The team was led by Detective Senior Sergeant McDougall.

The Commission is of the view that no orderly or structured control was taken of the scene of the shooting immediately after it occurred. McDougall indicated that there were resource difficulties, and as a result officers from Bondi Police Station, the same station where Podesta and Dilorenzo were based, were involved in the initial investigation. While the Commission is not of the view that there was any impropriety with respect to the involvement of the Bondi police officers in the investigation, it is clear that there was a systemic failure to comply with the then procedures, and there was a real risk that such an important investigation may have been carried out by officers who might be perceived as not being at an arm's length from Podesta and Dilorenzo.

McDougall was not advised at the outset by Internal Affairs that Podesta and Dilorenzo were the subject of a current covert investigation. There was some confusion in relation to the line of command in Internal Affairs and a breakdown of communication between Internal Affairs and the Shooting Investigation Team. As a result, the Shooting Investigation Team was not advised of crucial information in relation to Podesta and Dilorenzo, and the allegations that both officers were affected by drugs and/or alcohol were not adequately investigated by either Internal Affairs or the Shooting Investigation Team. Commander Brammer, who was then the Commander of Internal Affairs, confirmed that there were no procedures in place for Internal Affairs to pass on information to a Shooting Investigation Team. He admitted that he was very concerned about a breach of security in relation to releasing information held by Internal Affairs. There was clearly an inadequate flow of information between Internal Affairs and the Shooting Investigation Team resulting in some information not being investigated adequately and other information being effectively lost. The Commission is of the view that the inadequate flow of information was a result of confusion and misunderstanding and was due in part to the undue secrecy of Internal Affairs in relation to the information it held. The Commission is not of the opinion that the deficiencies in the investigation and the inadequate flow of information were due to corruption or misconduct, merely confusion and misunderstanding.

MATTERS OF CONCERN ARISING FROM THE PUBLIC HEARINGS

Problems were identified during the Royal Commission into the NSW Police Service ('the Royal Commission') in relation to the personal use and supply of prohibited drugs

by members of the Police Service. The Royal Commission undertook a detailed examination of the problem and found, among other things, that:[2]

> … it emerged that police were attending, on a social basis, various inner city night clubs and dance parties where drugs were known to be openly and readily available, and providing security services (without secondary employment approval), at such premises …

Similar concerns emerged during Operation Saigon. It is troubling that the officers named in Operation Saigon were attending nightclubs, some of which were 'off-limits'[3] to police officers due to the high level of drug activity, and some of the same officers were undertaking secondary employment as security guards without approval. The concern is that this was occurring at the same time, and shortly after, the release of the Royal Commission's final report. The Commission is of the view that the 'impact' of the Royal Commission has not been felt amongst some younger officers.

The problems stemming from alcohol and substance abuse amongst police officers are obvious. As identified by the Royal Commission, some of these problems include the circumstances that:[4]

- the nature of police duties which call for calm and careful decisions, a clear head and a balanced exercise of discretion, and the need to use motor vehicles and weapons are incompatible with the impaired judgment and coordination which can result from drug use;

- public respect for the Police Service, and the maintenance of good order and discipline are impossible in an environment that tolerates the presence of police at clubs, hotels and the like where they are seen to be affected by alcohol or drugs;

- the necessary association of any police officer who uses drugs, even for recreational purposes, with a supplier creates opportunities for compromise, blackmail and corruption, particularly if the habit becomes expensive to feed;

- a user of prohibited drugs is unlikely to approach the enforcement of drug laws with any degree of conviction; and

- participation in any form of criminal offence by a police officer is in fundamental conflict with the sworn duty of the officer to uphold the law.

---

2 Royal Commission into the NSW Police Service, *Final Report Volume I: Corruption*, May 1997, p. 100.

3 Operation Saigon Phase II, PIC Transcript, R J W Podesta, 1 November 1999, p. 77.

4 Royal Commission into the NSW Police Service, *Final Report Volume II: Reform*, May 1997, pp. 505-506.

Some of the officers involved in Operation Saigon did not see the inappropriateness of recreational drug use amongst off-duty police officers. The officers were of the opinion that when they were socialising, they were off-duty. As one witness stated, when Podesta was at a party where cocaine was being freely ingested, 'he wasn't in police mode, he was definitely in human mode'.[5] Furthermore, Podesta admitted that when he was attending nightclubs where drugs were prevalent he had not always enforced the law in relation to drugs.[6] The Commission is concerned about the attitudes expressed by some of the officers involved in Operation Saigon that when they were off-duty they weren't police officers and could therefore behave in a way that was entirely inappropriate for a police officer. As noted in the Royal Commission '… participation in any form of criminal offence by a police officer is in fundamental conflict with the sworn duty of the officer to uphold the law'.[7]

Of further concern to the Commission was that the officers involved in the Operation Saigon investigation could not see the inappropriateness of having close personal associations with drug dealers. Podesta was a close personal friend of Mark Dilorenzo, a man whom he knew to be a convicted drug dealer. As identified by the Royal Commission, '… the necessary association of any police officer who uses drugs, even for recreational purposes, with a supplier creates opportunities for compromise, blackmail and corruption …'.[8]

Operation Saigon disclosed information in relation to secondary employment in the security industry at dance parties and nightclubs where drugs are prevalent. This was another area of concern identified by the Royal Commission as a causal factor leading to serious misconduct among police officers.

It is clear that police are still drawn to these areas, particularly the provision of security services, as a means of supplementing their income. The evidence of Constable Anthony Binns, former Senior Constable Peter Murrant and Sergeant Paul Petith demonstrated that departmental action for engaging in unauthorised secondary employment was no disincentive to them continuing to perform unauthorised secondary employment in that industry.

The Commission notes, however, that since the Operation Saigon investigation, secondary employment guidelines have been further restricted by the Police Service, in that the approval of the Regional Commander is required and a probity assessment risk/conflict analysis by Internal Affairs is required prior to approval being granted for secondary employment in the 'high risk' industries, such as the commercial and private enquiry agents, transport, liquor, security and gaming and racing industries.

---

5 Operation Saigon Phase II, PIC Transcript, SA11, 11 November 1999, p. 447.

6 Operation Saigon Phase I, PIC Transcript, R J W Podesta, 23 February 1999, p. 447.

7 Royal Commission into the NSW Police Service, *Final Report Volume II: Reform*, May 1997, p. 506.

8 Royal Commission into the NSW Police Service, *Final Report Volume II: Reform*, May 1997, p. 506.

It must be emphasised that Operation Saigon focused on a small group of police officers in one specific area. Therefore, conclusions in relation to the extent of drug and alcohol abuse among young officers cannot be reached from this investigation alone. However, Operation Saigon disclosed information in relation to improper associations between police officers and suppliers of prohibited drugs, and also disclosed troubling evidence in relation to drug use and supply among young officers within the Police Service. Both of these are causal factors leading to serious misconduct among police officers.

RECOMMENDATIONS WITH RESPECT TO PROCEDURAL ISSUES

The legislative power to drug test officers existed but was not being implemented in NSW at the time of the shooting of Roni Levi in June 1997. A phased introduction of testing was underway at the time for understandable reasons. This case, however, is a powerful example of the necessity for an effective system of drug and alcohol testing of police officers involved in critical incidents such as the shooting of Mr Levi. If the test is negative, it clears the air for the involved officers. If the test is positive, it provides an objective foundation to assess the level of impairment of the officer at the time of the critical incident. The Commission is of the opinion that the law should allow for, and require the obtaining of, the best evidence for the purpose of drug and alcohol testing of a police officer following a critical incident. The Commission therefore recommends the introduction of blood testing of a police officer following a critical incident.

There are also compelling reasons why random drug testing should proceed in NSW. The power has been on the statute books since 1 January 1997. The phased implementation process has been complete since October 1998, however, random drug testing has not been introduced as it is strongly opposed by the Police Association. The Commission is of the opinion that random drug testing should proceed without further delay. The legislation should also provide for blood testing as a method of undertaking random and targeted tests in order to test for impairment, not just the existence of drugs and/or alcohol in the system.

As it currently stands, refusal of a police officer to submit to a drug test may constitute a disciplinary offence or grounds for action under section 181D of the *Police Service Act 1990*, but refusal does not constitute a criminal offence. As is applicable under the traffic legislation for motorists, the Commission is of the opinion that refusal of an officer to submit to a drug test should constitute a criminal offence. Without a sanction of that type, it might be considered that the drug and alcohol testing powers contained in the legislation are not sufficiently strong.

RECOMMENDATIONS FOR CONSIDERATION OF PROSECUTION OR DISCIPLINARY ACTION

This Report recommends that the NSW Director of Public Prosecutions ('the DPP') give consideration to the prosecution of the following police officers and civilians:

- former Senior Constable Peter Murrant;
- Constable Anthony Binns;
- Constable Rodney Podesta ;
- Easton Barrington James; and
- SA15.

Prosecutions have already been undertaken against the following in relation to matters disclosed in the Saigon hearings:

- Constable Rodney Podesta;
- Easton Barrington James;
- Lenin Marx Lambert;
- Senior Constable Christan Bruce;
- Former Senior Constable Murrant;
- Sergeant Paul Petith; and
- Constable Anthony Binns.

It is recommended in this Report that the Commissioner of Police give consideration to making an order pursuant to section 181D of the *Police Service Act 1990* dismissing the following officers from the Police Service:

- Senior Constable Matthew Crotty;
- Constable Anthony Binns; and
- Sergeant Paul Petith.

A number of witnesses gave public evidence at the hearings but were the recipients of orders pursuant to section 52 of the *Police Integrity Commission Act 1996* prohibiting publication of their names and likenesses.

To preserve the protection afforded by those orders, those witnesses are referred to in this Report by codenames in place of their actual name.

Similarly, other individuals who did not give evidence, but were referred to during the hearings by codename are referred to in this Report by their respective codenames.

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

1. INTRODUCTION

BACKGROUND

OPERATION BORDEN AND OPERATION ADDLESTONE

1.1 In May 1997 an allegation was made to the Internal Affairs Command of the NSW Police Service ('the Police Service') that Constable Podesta of Bondi Police had been using prohibited drugs, namely cocaine, in a nightclub at Kings Cross. It was further alleged that Constable Podesta was dealing in drugs and that he frequented the Liberty Lunch Café at Bondi Beach.

1.2 In May 1997 Internal Affairs commenced a covert investigation into Constable Podesta codenamed Operation Borden. Operation Borden also investigated allegations that were made in May 1997 that three plain-clothes police officers from Bondi were involved in the sale of drugs at the Bondi Hotel and the Liberty Lunch Café.

1.3 Since May 1996, Internal Affairs had been investigating Senior Constable Dilorenzo of Bondi Police in relation to alleged improper association with drug suppliers. This investigation was codenamed Operation Addlestone. In May 1997 Operation Addlestone was joined with Operation Borden.

1.4 A month later, on the morning of 28 June 1997, Roni Levi was shot by Constable Podesta and Senior Constable Dilorenzo on Bondi Beach. Mr Levi died shortly afterwards as a result of the gunshot wounds.

1.5 An investigation team was formed to investigate the shooting and to prepare a brief for the Coroner. An inquest was conducted in February 1998 and on 6 March 1998 the Coroner referred the matter to the NSW Director of Public Prosecutions ('the DPP'), as he was 'satisfied that the evidence established a prima facie case against known persons for an indictable offence in which the question whether the known persons caused the death is an issue'.[9]

1.6 The Coroner published a set of recommendations on 11 March 1998 in which he recommended a number of changes to police training and procedures.[10]

1.7 On 30 June 1998 the DPP decided not to prosecute Podesta and Dilorenzo in relation to the shooting of Roni Levi, on the basis that there was no reasonable prospect of conviction of either officer.

---

9 PIC Exhibit 117.

10 PIC Exhibit 118.

OPERATION HULL

1.8 Operation Borden, the covert Internal Affairs Operation, continued at the same time as the shooting was being investigated. During the second half of 1997 and the first half of 1998, the Internal Affairs investigation made use of telephone call analysis, and physical and electronic surveillance of Podesta and Dilorenzo. The surveillance of Podesta and Dilorenzo led to the identification of a number of other police officers suspected of involvement in the use and/or supply of prohibited drugs. Internal Affairs extended its technical surveillance to other police officers in 1998. A further covert operation, codenamed Operation Hull, was initiated in respect of those other officers.

1.9 On 11 December 1998 Senior Constable Christan Bruce of the Police Air Wing received a briefing which led him to believe that a search warrant was to be executed on the home and business premises of an associate, former Senior Constable Peter Murrant. Intercepts on the home and mobile telephone services of Murrant recorded calls made by Bruce warning Murrant to remove certain items from his properties. That telephone intercept product, and other evidence gathered during Operation Borden and Operation Hull, was supplied by Internal Affairs to the Police Integrity Commission ('the Commission') in December 1998.

1.10 Between February 1999 and February 2000 the Commission held a series of public hearings relying on evidence obtained by the Police Service in operations Borden, Addlestone and Hull and further investigations conducted by the Commission. The Commission's investigation was codenamed Operation Saigon and public hearings were heard over three phases.

OPERATION SAIGON PHASE I

1.11 Saigon I focused mainly on allegations of the involvement of police officers in the use and supply of prohibited drugs, improper relationships with suppliers of prohibited drugs and involvement in secondary employment in the security industry, contrary to the Police Commissioner's *Instructions*.

1.12 The scope and purpose of the hearings for Saigon I, announced by Commissioner Urquhart at the commencement of hearings was to investigate:[11]

> (i) Allegations that some members of the NSW Police Service are associating with suppliers of prohibited drugs;
>
> (ii) Allegations that some current and former members of the NSW Police Service are involved in the use and supply of prohibited drugs contrary to the provisions of the Drug Misuse and Trafficking Act 1985; and

[11] Operation Saigon Phase I, PIC Transcript, Commissioner Urquhart, 15 February 1999, p. 4.

(iii) Allegations that some current and former members of the NSW Police Service are involved in security work contrary to the Commissioner's Instructions issued by the Commissioner of the NSW Police Service and/or contrary to the provisions of the Security Industry Act 1997.

SAIGON PHASE II AND PHASE III

1.13 During the course of Saigon I, evidence was heard indicating drug use by various police, including Podesta. The finalisation of Saigon I was deferred to allow completion of Saigon II and III, which focused primarily on the allegations of drug use by Podesta and Dilorenzo and the Police Service investigation of the shooting of Roni Levi.

1.14 On 1 November 1999 the Commission commenced its hearing relating to Operation Saigon II.

1.15 At the commencement of Saigon II public hearings, Commissioner Urquhart announced that the general scope and purpose of the hearing was to investigate:[12]

(i) Allegations concerning the involvement of current and former members of the New South Wales Police Service in the use and supply of prohibited drugs;

(ii) Allegations that Rodney Podesta and Anthony Dilorenzo were affected by drugs and/or alcohol at the time they were involved in the fatal shooting of Roni Levi at Bondi Beach on 28 June 1997;

(iii) Allegations of corruption or misconduct by members of the New South Wales Police Service in the investigation of the fatal shooting of Roni Levi at Bondi Beach on 28 June 1997; and

(iv) Allegations that members of the New South Wales Police Service are associating with suppliers of prohibited drugs and releasing information regarding police methodologies and investigations.

1.16 The Saigon II public hearings focused particularly on paragraphs (i) and (ii) and to a lesser extent, paragraph (iv) of the general scope and purpose. For the purpose of Saigon II, paragraph (i) of the general scope and purpose involved an investigation of allegations of the use and supply of prohibited drugs by Rodney Podesta and Anthony Dilorenzo. Paragraph (ii) of the general scope and purpose involved the investigation of allegations that Podesta and Dilorenzo were affected by drugs and/or alcohol at the time they were involved in the fatal shooting of Roni Levi on Bondi Beach on 28 June 1997. Paragraph (iv) of the general scope and purpose touched upon certain associations of Podesta and Dilorenzo with other persons.

[12] Operation Saigon Phase II, PIC Transcript, Commissioner Urquhart, 30 September 1999, p. 2.

1.17 The Saigon III public hearings commenced on 24 February 2000, with the same scope and purpose as Saigon II. The focus of attention of the Saigon III hearings was paragraph (iii) of the general scope and purpose. In addition some evidence was led in Saigon III which related to paragraphs (i) and (ii) of the general scope and purpose. Evidence was also taken in Saigon III concerning policy issues, including random and targeted drug testing of police officers and the manner in which police shootings are investigated by the Police Service.

THE SHOOTING OF RONI LEVI

1.18 This section of the Report attempts to provide to readers who may be unfamiliar with the circumstances of the death of Mr Levi some background information in order that the discussions and assessments contained in the Report may be better understood.

1.19 Roni Levi was fatally shot at approximately 7.30am on 28 June 1997 on Bondi Beach by police officers Constable Rodney Podesta and Senior Constable Anthony Dilorenzo.

1.20 Roni Levi was 33 years old at the time of his death. On the evening before the shooting Mr Levi, with the assistance of some friends, voluntarily admitted himself to St Vincent's Hospital suffering from borderline delusional thought processes. Sometime during the night, Mr Levi left the hospital and went home to his flat at Bondi. Mr Levi was observed by his flatmate as being uncommunicative and in a confused and distressed state. Mr Levi obtained a knife from the kitchen and left the flat. His flatmate followed him for a short while before running to nearby Bondi Police Station and informing police of the situation. Mr Levi was spotted a short time later on Bondi Beach still in possession of the kitchen knife. He was pursued by six police officers, four from Bondi Police Station and two from Paddington Police Station. The six officers partially surrounded Mr Levi, who was still holding the knife, and remained in a semi circle position around him as he moved up Bondi Beach towards the esplanade. After about twenty-five minutes, at approximately 7.30am, Podesta and Dilorenzo each fired two shots fatally wounding Mr Levi. Mr Levi was pronounced dead approximately one hour later at St Vincent's Hospital.

1.21 The shooting of Mr Levi was the subject of a coronial inquiry, however the inquiry was terminated on 6 March 1998, and the matter was referred to the DPP. On 30 June 1998 the DPP determined that there was no reasonable prospect of conviction against either Podesta or Dilorenzo and decided not to prosecute the officers in relation to the shooting of Roni Levi.

1.22 The Commission's investigation did not re-investigate the circumstances of the shooting of Roni Levi on 28 June 1997, other than in the context of the scope and purpose of the hearings, namely to examine allegations that one or both officers involved in the shooting were affected by drugs/and or alcohol at the time of the shooting, and to examine allegations of police misconduct with respect to the investigation of the shooting.

THIS REPORT

1.23 This Report is prepared and furnished pursuant to section 96(2) of the *Police Integrity Commission Act 1996* ('the Act'). In this Report the Commission summarises the evidence given before the Commission in the Saigon Phases I, II and III hearings.

1.24 In this Report the Commission makes assessments and forms opinions in relation to that evidence. In Chapter 6 the Commission also makes statements with regard to a number of persons who are found to be 'affected persons' within the meaning of the Act (sub-section 97(3)). This Report also includes recommendations for changes to police practices, policies and procedures which, it is hoped, will serve to help prevent police misconduct and mismanagement in the future.

2. THE COMMISSION'S APPROACH

ROLE AND FUNCTIONS OF THE COMMISSION

2.1 The Commission was established under the Act on the recommendation of the Royal Commission into the NSW Police Service ('the Royal Commission'). 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.

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

POLICE MISCONDUCT

2.3 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 the Commissioner of Police may take action under Part 9 of the *Police Service 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 Service Act 1990.*

2.4 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

2.5 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 of the Act); 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 MAY THE COMMISSION SUBMIT A REPORT TO PARLIAMENT REGARDING AN INVESTIGATION?

2.6 The Commission must prepare a Report to Parliament where it has conducted a public hearing for the purpose of an investigation (sub-section 96(2)). The Report must be in respect of the matter to which the public hearing related, but not necessarily other matters forming part of the investigation. 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(4) and (5)).

COMPONENTS OF A REPORT TO PARLIAMENT ON AN INVESTIGATION

2.7 A Report to Parliament in relation to an investigation will generally contain a number of components. First, it will assess the relevant evidence (sub-section 16(1)(a)). Based upon this assessment, the Commission may form opinions as to whether police misconduct or other misconduct has or 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)). These opinions in turn help to inform whether any recommendations should be made or opinions expressed as to whether consideration should or should not be given to the prosecution of persons (including police officers) for criminal or disciplinary offences and, in the case of police officers, certain other forms of disciplinary action (sub-section 16(1)(b), sub-section 97(2)).

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

2.8 In relation to the power and obligations of the Commission to express an opinion as to whether a person has engaged in police misconduct or other misconduct, 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 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 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 that the definition of police misconduct may include conduct that amounts to criminal and disciplinary offences, 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.

2.9 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

2.10 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 or opine that consideration should be given to the prosecution of a person for a specified criminal or disciplinary offence.[13] Such a recommendation will be made to the relevant prosecutorial authority, for example, the NSW Director of Public Prosecutions. The Commission will not have regard to discretionary considerations, such as whether there is a reasonable prospect of conviction or public policy considerations, when deciding whether to make such a recommendation. This 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.

2.11 The only circumstance in which the Commission may, in the exercise of its discretion, decline to recommend that consideration be given to the prosecution of a person, despite the existence of a prima facie case, is in the rare case where it is considered that to do so is likely to be counterproductive to the Commission's pursuit of its principal statutory functions.

STATEMENTS REGARDING 'AFFECTED PERSONS'

2.12 Where substantial allegations are made against a person in the course of or in connection with an investigation in respect of which the Commission intends to report to Parliament, the Report to Parliament must include a statement as to whether or not in all the circumstances the Commission is of the opinion that consideration should be given to prosecution of the person for a specified criminal or disciplinary offence and, if the person is a police officer, whether consideration should be given to:

- the taking of action (including the making of an order under section 181D of the *Police Service Act 1990*) against the police officer with a view to dismissing, dispensing with the services or otherwise terminating the services of the police officer (sub-section 97(2)(c));

- the taking of 'reviewable action' within the meaning of section 173 of the *Police Service Act 1990* against the police officer (sub-section 97(2)(d)).

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

RECOMMENDATIONS AND OPINIONS REGARDING DISCIPLINARY ACTION AGAINST POLICE

2.13 'Reviewable action' within the meaning of section 173 of the *Police Service 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 the police officer's seniority;
- a deferral of the 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.

2.14 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 Service 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

2.15 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.

3. SAIGON PHASE I

3.1 Saigon I focused primarily on allegations that members of the Police Service were involved in the use and supply of prohibited drugs, improper associations with drug dealers, and unauthorised secondary employment. The Commission heard evidence from police officers and civilians with respect to these allegations.

USE AND/OR SUPPLY OF PROHIBITED DRUGS AND ASSOCIATION WITH DRUG SUPPLIERS

SENIOR CONSTABLE CHRISTAN BRUCE

3.2 Senior Constable Bruce gave evidence to the Commission that he had used cannabis, ecstasy and cocaine while he was a serving police officer. He stated that he had, on separate occasions, used ecstasy with former Senior Constable Peter Murrant and Senior Constable Matthew Crotty and cocaine with Murrant, Constable Anthony Binns, Senior Constable David Price, Constable Rodney Podesta and SA18. Bruce stated that Murrant gave him ecstasy tablets on numerous occasions and in the period 1994/1995 he paid Murrant around $500 to $1,000 for the ecstasy.[14]

3.3 According to Bruce, he had a practice of going out on Thursday, Friday or Saturday night with Murrant and Crotty. They would normally meet at a hotel then later in the evening they would take an ecstasy tablet before going to a nightclub.[15] Bruce gave evidence that sometimes when they were out with Murrant, they would have to wait for Len Lambert, a friend of Murrant's who was not a police officer, to turn up before Crotty and Bruce were given ecstasy. Bruce stated that Murrant would say, 'don't tell Len that you're giving me money for these tablets'.[16]

3.4 Bruce gave evidence that he went to the United States with Murrant in September 1998. Bruce stated that in Las Vegas, Murrant gave him a package containing some cocaine to use with Price. Bruce and Price went outside and lined up the cocaine on Price's warrant card and snorted it. The remaining cocaine in the package was returned to Murrant. No payment was given to Murrant for the cocaine.[17]

3.5 Bruce told the Commission that Bruce and Murrant would sometimes use code when talking about drugs on the telephone, in case their telephones were tapped.[18]

---

14 Operation Saigon Phase I, PIC Transcript, C D Bruce, 17 February 1999, pp. 183-184.
15 Operation Saigon Phase I, PIC Transcript, C D Bruce, 17 February 1999, p. 182.
16 Operation Saigon Phase I, PIC Transcript, C D Bruce, 17 February 1999, p. 185.
17 Operation Saigon Phase I, PIC Transcript, C D Bruce, 17 February 1999, pp. 201-202.
18 Operation Saigon Phase I, PIC Transcript, C D Bruce, 17 February 1999, pp. 175-176.

3.6 In an intercepted telephone conversation with Murrant on 26 September 1998,[19] Bruce told Murrant that he was out with Crotty and that when Bruce said 'woof' to Crotty, Crotty got all excited. Bruce gave evidence that the term 'woof' was a reference to obtaining some cocaine.[20] During the same telephone conversation Murrant asked Bruce, 'Did you bring that dog that was at home? Did you bring that, the barking dog?'[21] Bruce explained that this was a reference to some cocaine that Bruce had left over from a previous night out with Murrant and Crotty. Bruce stated that Murrant knew that Bruce had that cocaine at his home and was asking Bruce in code if Bruce had brought that cocaine out with him.[22] Bruce explained that a reference in the same conversation to someone putting 'a pink rinse through his dog' was a reference to pink ecstasy tablets.[23]

3.7 Bruce gave evidence of a visit to Lambert's house, on 4 July 1998. He had met Murrant the previous evening at Byblos nightclub where Murrant had given him an ecstasy tablet. Later that evening they went to Sugareef Nightclub with Binns and a friend of Murrant's. At the Sugareef Bruce had a line of cocaine with SA18 and another civilian.[24] Later that night, when Sugareef was closing, Bruce asked the civilian if he could obtain some more cocaine, and was told that it would cost $200, which Bruce ultimately paid. Bruce and SA18 then went to the Black Market Café for the next two or three hours and periodically they would go into the toilets and have a line of the cocaine.[25]

3.8 Bruce stated that at approximately 10.00am the next day Bruce and SA18 left the Black Market Café and went to SA18's flat where they had a shower and changed clothes. Bruce gave evidence that SA18 was keen to buy some more cocaine and he made numerous calls to Lambert. Bruce and SA18 then went to a hotel in Bondi and SA18 drew about $300 out of an EFTPOS machine in the hotel. They then went to Lambert's house in Bondi. Bruce said that Lambert said words to the effect of 'you know where it is. You may as well do it yourself', and then SA18 obtained a package from somewhere in the kitchen and weighed out a quantity of white powder with kitchen scales.[26]

3.9 Bruce gave evidence that he saw SA18 put some money down on the kitchen bench. SA18 then invited Bruce to have some of the cocaine with him. Bruce declined and left Lambert's house because he wanted to get some sleep before Murrant's birthday dinner which was planned for that evening. Lambert was at Murrant's birthday dinner that night and he told Bruce that after he had left that day, SA18 came out of Lambert's bathroom with blood streaming from his

---

19 Operation Saigon Phase I, PIC Exhibit 12, barcode 5180375.
20 Operation Saigon Phase I, PIC Transcript, C D Bruce, 17 February 1999, p. 174.
21 Operation Saigon Phase I, PIC Transcript, C D Bruce, 17 February 1999, pp. 174-175.
22 Operation Saigon Phase I, PIC Transcript, C D Bruce, 17 February 1999, p. 175.
23 Operation Saigon Phase I, PIC Transcript, C D Bruce, 17 February 1999, pp. 176-177.
24 Operation Saigon Phase I, PIC Transcript, C D Bruce, 17 February 1999, p. 196.
25 Operation Saigon Phase I, PIC Transcript, C D Bruce, 17 February 1999, p. 197.
26 Operation Saigon Phase I, PIC Transcript, C D Bruce, 17 February 1999, p. 198.

nose. Bruce assumed that this meant that SA18 had taken more cocaine and that had caused the bleeding nose.[27]

3.10 On 11 December 1998 Bruce attended work at the Police Air Wing and received a briefing in relation to a job that was to be undertaken that day. The briefing led Bruce to believe that Murrant's business and private premises were to be searched by police that day for cocaine and ecstasy. Bruce gave evidence that he believed it was his duty as Murrant's friend to phone him and warn him that something was going to happen at those premises in regards to cocaine and ecstasy. Prior to leaving in the police helicopter Bruce made two or three telephone calls on his mobile phone to Murrant's home and mobile services and left messages.[28] Bruce turned his mobile telephone off while he was in the helicopter. When he returned to the Air Wing he had a message on his mobile telephone from Murrant[29] to call him, so Bruce returned his call.[30]

3.11 Bruce said that he attempted to talk in code so that he could warn Murrant about what was happening in a way that would not be obvious to anyone else besides Murrant and himself. Bruce used the expression 'low maintenance and high maintenance bits and pieces[31] as code to refer to ecstasy and cocaine respectively. He was going to meet up with Murrant that night for a drink and wanted to warn him just in case there were some prohibited drugs at his home or work premises.[32] When asked what caused him to suspect that Murrant might have had drugs in either of those two premises, Bruce gave the following evidence:[33]

> Because on previous occasions, when we'd gone out socially to drink and so on, he'd had drugs at his house and that evening – Friday 11 December last year – we were to go out and have a social drink and so I suspected that he would have some illegal drugs at his house prior to going out.

ASSESSMENT OF EVIDENCE OF SENIOR CONSTABLE BRUCE'S USE AND/OR SUPPLY OF PROHIBITED DRUGS AND ASSOCIATION WITH DRUG SUPPLIERS

3.12 The Commission accepts the evidence of Bruce in relation to the use and supply of drugs and accepts that Bruce was involved in the use of prohibited drugs, and associated with a supplier of prohibited drugs, namely Murrant.[34]

---

27 Operation Saigon Phase I, PIC Transcript, C D Bruce, 17 February 1999, p. 199.

28 Operation Saigon Phase I, PIC Exhibit 13, barcode 5180371.

29 Operation Saigon Phase I, PIC Exhibit 14, barcode 5180372.

30 Operation Saigon Phase I, PIC Exhibit 15, barcode 5180373; Operation Saigon Phase I, PIC Transcript, C D Bruce, 16 February 1999, pp 165-167.

31 Operation Saigon Phase I, Exhibit 13, barcode 5180371.

32 Operation Saigon Phase I, PIC Transcript, C D Bruce, 16 February 1999, p. 168.

33 Operation Saigon Phase I, PIC Transcript, C D Bruce, 24 February 1999, p. 479.

34 PIC Exhibit 94, barcode 5666001.

FORMER SENIOR CONSTABLE PETER MURRANT

3.13 Murrant gave evidence that he had not used prohibited drugs or seen any other police officer use prohibited drugs. Murrant said that he had not supplied drugs to any person or kept prohibited drugs in his possession at his home or office.[35]

3.14 Murrant said in evidence that he had never been supplied drugs by Lambert and had never supplied drugs to Lambert. Murrant said that Lambert was a close personal friend. Murrant admitted to visiting Lambert's father in gaol but did not know that Lambert's father was serving a sentence for supplying heroin.[36]

3.15 In telephone calls between Bruce and Murrant[37] 'dogs' were discussed. Murrant explained the use of the term 'dogs' as references to pet dogs.[38]

3.16 In evidence before the Commission Murrant provided an explanation for a telephone conversation that took place between himself and Bruce on 26 September 1998.[39] During this conversation Murrant asked Bruce 'Did you, did you bring that dog that was at home?' Bruce said 'Sorry?' and Murrant then asked, 'Did you bring that, the-the-that dog, the barking dog?' Murrant told the Commission that he was referring to Bruce's dog Bo, which was the source of a long-running joke between Murrant and Bruce because Murrant thought that Bruce did not look after his dog very well.[40]

3.17 Murrant's explanation of this conversation contradicts the evidence given by Bruce that the word 'dog' was a code word referring to cocaine.

3.18 Murrant's account of the telephone calls from Bruce to Murrant on 11 December 1998 is also contradictory to the evidence given by Bruce. Initially Murrant could not recall the calls made to him by Bruce that day. Later Murrant recalled the day but could not recall what Bruce was talking about on the telephone.[41] Murrant stated that he did not have prohibited drugs in his home but feared a search of his house because he possessed a firearm.[42] Murrant later admitted that Bruce was trying to warn him of something in code.[43]

---

35 Operation Saigon Phase I, PIC Transcript, P J Murrant, 16 February 1999, pp. 108-109.
36 Operation Saigon Phase I, PIC Transcript, P J Murrant, 16 February 1999, pp. 293-294.
37 Operation Saigon Phase I, Exhibit 12, barcode 5180375.
38 Operation Saigon Phase I, PIC Transcript, P J Murrant, 16 February 1999, pp. 150-151.
39 Operation Saigon Phase I, Exhibit 12, barcode 5180375.
40 Operation Saigon Phase I, PIC Transcript, P J Murrant, 16 February 1999, p. 151.
41 Operation Saigon Phase I, PIC Transcript, P J Murrant, 16 February 1999, p. 154.
42 Operation Saigon Phase I, PIC Transcript, P J Murrant, 16 February 1999, p. 155.
43 Operation Saigon Phase I, PIC Transcript, P J Murrant, 18 February 1999, p. 234.

ASSESSMENT OF EVIDENCE OF FORMER SENIOR CONSTABLE PETER MURRANT'S USE AND/OR SUPPLY OF PROHIBITED DRUGS AND ASSOCIATION WITH DRUG SUPPLIERS

3.19 The Commission is of the opinion that the evidence of Bruce offers a more satisfactory explanation of the intercepted telephone calls between Bruce and Murrant. The Commission finds that the references to 'dogs' in the telephone call between Murrant and Bruce on 26 September 1998[44] are references to prohibited drugs. The explanation provided by Murrant of the references to 'dogs' in that telephone conversation lacks credibility.

3.20 The Commission also prefers Bruce's evidence in relation to the calls between Bruce and Murrant on 11 December 1998. The Commission is of the opinion that Bruce was attempting to warn Murrant to remove prohibited drugs from his premises. The Commission accepts Bruce's evidence in relation to the supply by Murrant of drugs and concludes that Murrant was involved in the use and supply of prohibited drugs between late 1994 and late 1998.

LENIN MARX LAMBERT

3.21 Lambert admitted to the Commission that he had used cocaine but denied supplying drugs, other than using cocaine with SA18. Lambert initially disagreed with Bruce's evidence in relation to Bruce and SA18 attending Lambert's home on 4 July 1998. Lambert also said that SA18 did not bleed from the nose while at Lambert's home on that occasion.[45] However, after listening to Exhibit 35, which was an extract from a listening device tape of a conversation between Lambert and a friend, in which Lambert describes SA18's nose bleed the same day, Lambert conceded to the Commission that the incident could have happened.[46]

3.22 Lambert told the Commission he had no recollection of 84 grams of cocaine which was found in the dryer of his girlfriend Lisa Troost's apartment during a search by police on 20 August 1998.[47] A video recording of that search was played to the Commission. Lambert did not recall arriving at the premises where the cocaine had been stored, and giving a 'don't talk' signal and then going directly to the laundry,[48] although a surveillance tape showed to Lambert during his evidence, Exhibit 38, demonstrated Lambert doing so.

---

44 Operation Saigon Phase I, Exhibit 12, barcode 5180375.

45 Operation Saigon Phase I, PIC Transcript, L M Lambert, 18 February 1999, pp. 250-251.

46 Operation Saigon Phase I, PIC Transcript, L M Lambert, 18 February 1999, p. 256.

47 Operation Saigon Phase I, PIC Transcript, L M Lambert, 18 February 1999, p. 262.

48 Operation Saigon Phase I, Exhibit 38, barcode 5180405; Operation Saigon Phase I, L M Lambert, 18 February 1999, pp. 265, 267.

ASSESSMENT OF EVIDENCE OF LENIN LAMBERT'S USE AND/OR SUPPLY OF PROHIBITED DRUGS AND ASSOCIATION WITH DRUG SUPPLIERS

3.23 During evidence Lambert consistently gave the response 'I don't recall' to questions put to him. He stated that he had difficulties with his memory and that he forgot things. The Commission is of the opinion that Bruce's evidence should be preferred to that of Lambert. The Commission accepts Bruce's account of the events of 4 July 1998 involving Lambert and SA18. The Commission notes that Bruce's account is corroborated by recorded telephone intercept material contained in Exhibits 31, 32, 33, 34 and 35, and the video material in Exhibits 37 and 38.[49]

3.24 Having regard to the evidence of Bruce and the material contained in Exhibits 31, 32, 33, 34, 35, 37 and 38, the Commission is of the opinion that Lambert was involved in the use and supply of prohibited drugs and that he had possession of the 84 grams of cocaine that was found at his girlfriend's premises on 20 August 1998.

LISA TROOST

3.25 The Commission heard that Troost could recall the day that her unit was searched in August 1998, however she did not recall telling Lambert that something was missing, but agreed that she could be heard doing so on the video which is Exhibit 38. Troost's explanation was that she had lost some jewellery and a camera, however that turned out not to be the case.[50]

3.26 Troost agreed that she had used cocaine with Lambert at the premises but she denied keeping cocaine there. She said that Lambert might have kept some cocaine there for personal use.[51] When they shared cocaine she said that Lambert would give it to her, however, she said that she did not know where he got the cocaine.[52]

ASSESSMENT OF EVIDENCE OF LISA TROOST'S USE AND/OR SUPPLY OF PROHIBITED DRUGS AND ASSOCIATION WITH DRUG SUPPLIERS

3.27 Having regard to the conversation and actions depicted on Exhibit 38, and the fact that no complaint of lost property was made to the Police Service, the Commission is of the opinion that Troost was aware of the existence of the

---

49 Operation Saigon Phase I, Exhibit 31, barcode 5180397; Exhibit 32, barcode 5180402; Exhibit 33, barcode 5180398; Exhibit 34, barcode 5180399; Exhibit 35, barcode 5180400.

50 Operation Saigon Phase I, PIC Transcript, L J Troost, 18 February 1999, p. 282.

51 Operation Saigon Phase I, PIC Transcript, L J Troost, 18 February 1999, p. 284.

52 Operation Saigon Phase I, PIC Transcript, L J Troost, 18 February 1999, p. 286.

cocaine in the dryer and therefore was in possession of the cocaine, either jointly with Lambert or on his behalf. The Commission is also of the opinion that Troost was involved in the use of prohibited drugs.

CONSTABLE RODNEY PODESTA

3.28 Podesta admitted during evidence that he had used cocaine and ecstasy following the death of his father in late 1997.[53] Podesta admitted that on 28 February 1998 he asked Easton James to supply him with 3.5 grams of cocaine so that he could cut it and sell it to a friend codenamed SA14.[54] Podesta wanted a gram for himself.[55] Podesta was searched by police later that day and did not have any cocaine in his possession. He could not recall if he actually received the cocaine from James.

3.29 Podesta admitted that he had used cocaine previously with James and had purchased cocaine from him before.[56] Podesta did not know where James got the cocaine. Podesta did not supply cocaine to James and to his knowledge did not supply to anyone else.[57]

3.30 Christan Bruce gave evidence that he was given some cocaine by Murrant at Byblos nightclub, which he used with Podesta. Bruce stated that Murrant asked him whether he wanted some 'woof' (cocaine). Bruce replied that he did, and Murrant told him to 'go with Rod', referring to Rodney Podesta. Bruce gave evidence that he followed Podesta to the toilets, where Podesta 'laid out two lines of coke on the cistern of the toilet which we both inhaled'.[58] Bruce was unable to remember an exact date of this incident, but he estimated that it occurred in early 1998. Bruce said that Podesta had used a prohibited drug in his presence.[59]

3.31 Podesta said that he had used cocaine in nightclubs, possibly in the toilets in nightclubs on Oxford Street. Podesta had worked with Murrant and knew him only as an 'associate'. He had seen Murrant once or twice at nightclubs in 1998. Podesta stated that he did not know Bruce, and could not say if he had 'cut a line of cocaine' with Bruce.[60] Podesta also said that he did not use cocaine with Murrant and could not recall discussing cocaine with Murrant.[61]

---

53 Operation Saigon Phase I, PIC Transcript, R J W Podesta, 23 February 1999, p. 421.
54 Operation Saigon Phase I, Exhibit 54, barcode 5180460.
55 Operation Saigon Phase I, PIC Transcript, R J W Podesta, 23 February 1999, pp 404-408.
56 Operation Saigon Phase I, PIC Transcript, R J W Podesta, 23 February 1999, p. 410.
57 Operation Saigon Phase I, PIC Transcript, R J W Podesta, 23 February 1999, p. 416.
58 Operation Saigon Phase I, PIC Transcript, C D Bruce, 17 February 1999, pp. 189-190.
59 Operation Saigon Phase I, PIC Transcript, C D Bruce, 17 February 1999, pp. 189-190.
60 Operation Saigon Phase I, PIC Transcript, R J W Podesta, 23 February 1999, pp. 418-419.
61 Operation Saigon Phase I, PIC Transcript, R J W Podesta, 23 February 1999, p. 421.

3.32 Podesta admitted that he had not always enforced the law in relation to drugs and that he was conscious of the need to conceal his involvement in drug use from his superiors.[62]

ASSESSMENT OF EVIDENCE OF CONSTABLE RODNEY PODESTA'S USE AND/OR SUPPLY OF PROHIBITED DRUGS AND ASSOCIATION WITH DRUG SUPPLIERS

3.33 Based upon the evidence in Saigon I, the Commission is of the opinion that Podesta was involved in the use of prohibited drugs after late 1997 and that he agreed on 28 February 1998 to purchase 3.5 grams of cocaine from Easton James for the purpose of cutting and supplying it to SA14. Podesta did not deny the incident described by Bruce involving Bruce and Podesta using cocaine at a nightclub. The Commission accepts Bruce's account of that incident. It will be seen from the evidence given in Saigon II and III that Podesta's involvement in the use of prohibited drugs, including cocaine, dated from a much earlier time.

SA19

3.34 SA19 was a friend of Podesta and James. In his evidence before the Commission SA19 admitted to using cocaine and ecstasy. He said that he had used cocaine with James on more than one occasion and at more than one place. He admitted that he had obtained cocaine from James and had sometimes paid James for the cocaine.[63]

3.35 SA19 gave evidence of going to James' home on 7 April 1998. James had a couple of small bags of cocaine and gave SA19 a small quantity which SA19 snorted.[64] While SA19 was there Anthony Dilorenzo arrived at James' home. SA19 received a call on his mobile phone shortly after Dilorenzo arrived and left James' home. SA19 gave evidence that he had never seen Dilorenzo use drugs but that he, SA19, had used cocaine with Podesta.[65]

ASSESSMENT OF EVIDENCE OF SA19'S USE AND/OR SUPPLY OF PROHIBITED DRUGS AND ASSOCIATION WITH DRUG SUPPLIERS

3.36 SA19 gave evidence before the Commission in a frank and convincing manner. The Commission is of the opinion that SA19 used cocaine with Podesta and James and that James supplied cocaine to SA19 on 7 April 1998. SA19 died in March 1999 in circumstances unrelated to the Commission's inquiry.

---

62 Operation Saigon Phase I, PIC Transcript, R J W Podesta, 23 February 1999, p. 447.

63 Operation Saigon Phase I, PIC Transcript, SA19, 25 February 1999, pp. 537-538.

64 Operation Saigon Phase I, PIC Transcript, SA19, 25 February 1999, p. 539.

65 Operation Saigon Phase I, PIC Transcript, SA19, 25 February 1999, p.541.

EASTON JAMES

3.37 Easton James was a friend of Podesta, Dilorenzo, SA18, SA19 and Lambert. James was the manager of the Liberty Lunch Café and is not a police officer. During evidence before the Commission, James denied using or supplying drugs. He admitted to trying cocaine a couple of times but said he had never supplied it.[66] A number of listening device tapes were played to James. James claimed that the substance being discussed in the conversations played to him, which were recorded in his home in April 1998, referred to protein powder, not cocaine. The Commission is of the view that James' evidence is at odds with the evidence provided to the Commission by Podesta and SA19. James' evidence lacked credibility and is not accepted by the Commission.

3.38 Exhibit 54 was a tape recording of a conversation between Podesta and James on 28 February 1998 in which Podesta arranged to purchase '3 ½ g's' from James. Podesta then advised James as follows: 'Cos I want to turn my 3 and half into 5 … she owes me heaps of money [SA14], so it's, it's sort of a way I can get money off her, you know'.[67] Having regard to Podesta's evidence and the conversation contained in Exhibit 54, the Commission is of the opinion that James agreed to supply cocaine to Podesta on 28 February 1998.

3.39 Exhibits 49 and 50 were extracts of listening device material recorded in James' home on 7 April 1998. In Exhibit 49 SA19 and James are heard discussing the weight of a substance in bags. SA19 questions the price of a bag, to which James replies 'A g'. In Exhibit 50, SA19 asks James to 'rack it up'. SA19 is then heard inhaling a substance and noting 'Not even a burn. *(Coughing)*. It's so powdery …'.[68] In view of SA19's evidence and the conversations contained in Exhibits 49 and 50, the Commission is of the opinion that James supplied cocaine to SA19 on 7 April 1998.

ASSESSMENT OF EVIDENCE OF EASTON JAMES' USE AND/OR SUPPLY OF PROHIBITED DRUGS AND ASSOCIATION WITH DRUG SUPPLIERS

3.40 The abovementioned evidence and the conversations contained in Exhibits 52, 53 and 58, provide a credible basis for a conclusion that James was involved in the use and supply of prohibited drugs. The Commission is therefore of the opinion that Easton James was involved in the use and supply of prohibited drugs.

---

66 Operation Saigon Phase I, PIC Transcript, E B James, 22 February 1999, p. 377.

67 Operation Saigon Phase I, PIC Exhibit 54, barcode 5180460.

68 Operation Saigon Phase I, PIC Exhibits 49, barcode 5180466; Exhibit 50, barcode 5180464.

SENIOR CONSTABLE ANTHONY DILORENZO

3.41 In evidence before the Commission, Dilorenzo denied using or supplying prohibited drugs.

3.42 When questioned about the listening device tapes played to him in evidence, Dilorenzo was reluctant to concede that his voice could be heard on the tapes. In relation to Exhibit 51, an extract of a recording made in James' house on 7 April 1998, he said his use of the words 'it helps me relax' was a reference to a protein powder that he had obtained from James, and was not a reference to a prohibited drug.[69] He so claimed, even though the phrase was used just minutes after SA19 had snorted cocaine supplied to him by Easton James at the same premises.

3.43 Exhibit 58, an extract from a listening device tape, was played to Dilorenzo during the hearings. The tape contained the following conversation between Dilorenzo and James on 1 April 1998:[70]

TD = Anthony (Tony) Dilorenzo
EJ = Easton James
(ui) = unintelligible

EJ: It's hard when you give someone something way below the price and … and you know … (ui) this guy doesn't give me a break (ui).
TD: Who this guy? Do I know him?
EJ: Who I get it from.
TD: (ui) Who Lennie?
EJ: Yeah.
TD: Lennie ahh fuck I can't remember his last name.
EJ: (ui)

…

TD: He's always up, he was up at ummm Sugar Reef that morning you and I were there late in the morning.
EJ: Yeap.
TD: Ah (ui) I should tell him fucken give me an ounce and I'll fucken look after him. Because I'll say I heard (ui) coming down.
EJ: (ui) He won't know if it's from me. (ui)
TD: Will he?
EJ: (ui)
TD: He's, he's got no back up though has he.
EJ: I don't know actually. Actually, he does.
TD: Nothing like I can get.
EJ: He's got the DEA.
TD: Has he?

---

69 Operation Saigon Phase I, PIC Transcript, A S Dilorenzo, 23 February 1999, pp. 431-432.

70 Operation Saigon Phase I, Exhibit 58, barcode 5180468.

EJ: (ui) yeah.
TD: (ui) Well that's nothing (ui).
EJ: (ui)
TD: Who's that? The DEA guy? (laughter). (Pause) I feel like I've got a fluff ball in my head.
EJ: Look, look what I find.
TD: What's that?
EJ: (ui)
TD: Shit, don't walk around with that (ui).

…

EJ: Yeah.
TD: Um. I had one of those and remember once I opened one and the fucken thing snapped. Pow, and it shot it all up the wall it landed (ui). You know what we did?
EJ: Yeah.
TD: It was on the floor. You know what we did.
EJ: What?
TD: We got the vacuum cleaner and I put the fucken paper towel over the top. Right and then I sucked it up and it sucked the air sucked the paper towel and turned it off like that and turned it on and poured it back on the table.
EJ: That's a good one.

3.44 In relation to the recorded conversation in Exhibit 58 Dilorenzo conceded that his voice could be heard on the recordings. However, he disagreed that it was his voice on the incriminating part of the recording about providing 'back up' to Len.[71] The Commission is of the view that Dilorenzo's evidence in relation to this matter lacked credibility. The Commission is also of the opinion that the reference to the Drug Enforcement Agency ('DEA') makes it difficult to conclude that the conversation was about anything other than prohibited drugs.

3.45 Similarly, Dilorenzo was unable to explain the portion of the conversation about picking something up from the floor using a paper towel and a vacuum cleaner and pouring it back on the table. Having regard to the context in which the comments were made and in the absence of any alternative explanation, the Commission is of the opinion that the conversation was about prohibited drugs.

ASSESSMENT OF EVIDENCE OF SENIOR CONSTABLE ANTHONY DILORENZO'S USE AND/OR SUPPLY OF PROHIBITED DRUGS AND ASSOCIATION WITH DRUG SUPPLIERS

3.46 The Commission is entitled to form its own views about the voices on the tapes and the content of the conversations. The Commission is of the opinion that Dilorenzo was involved in the use of prohibited drugs and had an improper association with Easton James in early 1998.

[71] Operation Saigon Phase I, PIC Transcript, A S Dilorenzo, 23 February 1999, pp. 442 & 462.

SENIOR CONSTABLE DAVID PRICE

3.47 Price gave evidence that during his time in the Police Service he had not been present when any police officer had taken prohibited drugs.[72] He said that he had gone to school with Murrant and that they had been best friends. Their friendship included sharing information about share trading. He gave evidence that they made multiple applications for Telstra and TAB shares and used each other's addresses in order to apply for an allocation of shares which exceeded their entitlement.[73] Price also used different versions of his name and other addresses to increase his chances of a larger allocation.

3.48 In evidence, Price denied the account given by Bruce that they snorted cocaine in Las Vegas, supplied by Murrant. The only element of Bruce's account with which Price agreed was that his warrant wallet was like an American style badge wallet.[74]

ASSESSMENT OF EVIDENCE OF SENIOR CONSTABLE DAVID PRICE'S USE AND/OR SUPPLY OF PROHIBITED DRUGS AND ASSOCIATION WITH DRUG SUPPLIERS

3.49 There is a clear conflict between the evidence of Price and Bruce. Bruce gave evidence of drug use with a number of police colleagues and civilians. The evidence of Bruce is preferred to that of Price, and the Commission is of the opinion that Price was involved in the use of cocaine whilst a serving police officer and had an improper relationship with Murrant. The Commission is also of the opinion that Price provided misleading information in his applications for Telstra and TAB shares.

SENIOR CONSTABLE ANTHONY BINNS

3.50 In evidence given by Bruce on 17 February 1999, Bruce implicated Senior Constable Anthony Binns in the use and supply of prohibited drugs.

3.51 Bruce gave evidence in relation to drug use in Binns' car while both were serving police officers. Bruce described an incident whereby Bruce, Murrant, Binns and a fourth man left the Soho Bar and went to Binns' car. Bruce gave the following evidence with respect to that incident:[75]

> A. … I can't remember who it was, someone reached under the driver's seat and produced a sheet of glass and the four of us proceeded to inhale lines of cocaine from the glass.

---

72 Operation Saigon Phase I, PIC Transcript, D J Price, 15 February 1999, pp. 51-52.

73 Operation Saigon Phase I, PIC Transcript, D J Price, 15 February 1999, p. 54.

74 Operation Saigon Phase I, PIC Transcript, D J Price, 24 February 1999, p. 530.

75 Operation Saigon Phase I, PIC Transcript, C D Bruce, 17 February 1999, pp. 187-188.

Q. How big was the sheet of glass?
A. I'd be guessing. I'd say about 15 inches by 8 inches.

Q. How did you know it was cocaine?
A. I can't remember whether it was discussed prior to it, but it had the same effect on me as instances prior to that when I'd had cocaine.

…

Q. You said this sheet of glass was produced from under the driver's seat in Mr Binns' car?
A. Yes.

Q. Do you remember what sort of car it was?
A. I do because I drove it from the casino to Victoria Street. I'd only had two drinks at that stage. On that journey, whilst driving up King Street, another car ran into the side of ours and we had to stop and exchange particulars and so on and I had to fill out an accident report at a later date, and I remember that make of the car and the registration number from the accident report.

Q. What was it?
A. It was a silver Hyundai Excel, I believe.

3.52 Bruce also gave evidence that on or about 3 July 1998 he met Binns at the Sugareef Nightclub with Murrant and SA18. Bruce stated that after the nightclub closed Binns, Bruce, SA18 and a fourth man, a civilian, had a discussion in relation to purchasing cocaine. Bruce further gave evidence that he and Binns each gave $100 to SA18 to buy the drugs. He stated that the men agreed to meet at the Black Market Café, however, Binns decided to go home, and Binns' $100 was returned to him by Bruce at the Black Market Café.[76]

3.53 In his evidence before the Commission, Binns denied using prohibited drugs or seeing any other police officer use prohibited drugs. He told the Commission that Bruce was lying in his evidence in that respect.[77]

3.54 Binns did however concede that Bruce was correct in other aspects of his evidence, namely, about the evening they had an accident in Binns' car when Bruce was driving and that he (Binns) did have a pane of glass in his car in a wooden frame.

[76] Operation Saigon Phase I, PIC Transcript, C D Bruce, 17 February 1999, pp. 196-197.
[77] Operation Saigon Phase I, PIC Transcript, A M Binns, 18 February 1999, p. 240.

ASSESSMENT OF EVIDENCE OF SENIOR CONSTABLE ANTHONY BINNS' USE AND/OR SUPPLY OF PROHIBITED DRUGS AND ASSOCIATION WITH DRUG SUPPLIERS

3.55 There is a clear conflict between the evidence of Binns and Bruce. The Commission prefers the evidence of Bruce to that of Binns. Binns admitted elsewhere in his evidence that he had been untruthful to the Police Service and the Commission,[78] and this is relevant to the Commission's assessment of Binns' credibility.

3.56 There is listening device product that tends to confirm Binns' involvement in the use of prohibited drugs.[79] The Commission is of the opinion that Binns was involved in the use of prohibited drugs whilst a serving police officer and that he also had an improper relationship with Murrant.

SENIOR CONSTABLE MATTHEW CROTTY

3.57 Crotty appeared before the Commission on 16 February 1999. Crotty denied the use of prohibited drugs by himself or other police.[80]

3.58 Exhibit 12 was a tape recording of a telephone conversation between Murrant and Bruce on 26 September 1998. During the telephone conversation, the following exchange took place between Murrant and Bruce:[81]

PM = Peter Murrant
CB = Christan Bruce

PM: Is MATT with you?
CB: Yeah, he's here, but he's just cruising his (wd) off.
PM: He's what?
CB: He's just cruising.
PM: Just cruising?
CB: Yeah, Yeah.
PM: Yeah.
CB: Yeah. Oh, oh, I mentioned (wd) tonight, he said, oh, a dog's bark. I (wds) I said woof to him and he goes all excited. A little while ago, but, er, any way. Yeah, are you coming up with us, or what are you doing?

3.59 Exhibit 69 contained the following extract of a telephone conversation between Murrant and Crotty regarding a party to be held at Murrant's home:[82]

MC: And do we have to bring anything?

---

78 Operation Saigon Phase I, PIC Transcript, A M Binns, 18 February 1999, p. 239; Operation Saigon Phase I, PIC Transcript, A M Binns, 22 February 1999, pp. 309, 314.

79 Operation Saigon Phase I, PIC Exhibit 28, barcode 5180384.

80 Operation Saigon Phase I, PIC Transcript, M J Crotty, 16 February 1999, p. 136.

81 Operation Saigon Phase I, PIC Exhibit 12, barcode 5450434.

82 Operation Saigon Phase I, PIC Exhibit 69, barcode 5180507.

PM: Yeah, its BYO grog.
MC: Is it? OK.
PM: Yep:
MC: BYO drink, whatever that may be.
PM: Yeah, yep. Yeah.
MC: Yeah some, iced water.
PM: Yeah *(laughing)*. Mate, (ui) a little stash of long necks just for you and me bro.
(Laughing)
PM: Because you, because you're my favourite.
(Laughing)
MC: Oh (ui) bring a tear to my eye.

3.60 In the Commission's opinion, the content of the conversations in Exhibits 12 and 69 is suggestive of Crotty's involvement in the use of cocaine and ecstasy.

ASSESSMENT OF EVIDENCE OF CONSTABLE MATTHEW CROTTY'S USE AND/OR SUPPLY OF PROHIBITED DRUGS AND ASSOCIATION WITH DRUG SUPPLIERS

3.61 Crotty regularly resorted to the expression 'I don't recall' in order to avoid giving a direct answer and his evidence generally was unimpressive. The Commission prefers the evidence of Bruce and is of the opinion that Crotty was involved in the use of prohibited drugs and had an improper association with Murrant.

RELEASE OF CONFIDENTIAL POLICE INFORMATION

3.62 As mentioned above, Bruce gave evidence that on 11 December 1998 he was tasked to participate in a police air wing operation in relation to Murrant's home address and business premises. It was Bruce's understanding that search warrants were to be executed later that day. The intention of the search warrants was to find prohibited substances, namely cocaine and/or ecstasy.[83] Bruce admitted in evidence that when he became aware of a possible search of Murrant's premises for cocaine and ecstasy, he felt that it was his duty to ring him and let him know something was going to happen. Bruce admitted that he made about seven calls to Murrant leaving messages in his voicemail and mobile telephone. During those conversations he used the codeword 'low maintenance' for ecstasy and 'high maintenance' for cocaine.[84]

3.63 Bruce gave evidence that he warned Murrant because he suspected that he, Murrant, may have had illegal drugs in one or both of his premises, as he knew that Murrant had illegal drugs at one of these premises before.[85]

---

[83] Operation Saigon Phase I, PIC Transcript, C D Bruce, 16 February 1999, pp. 165-166.

[84] Operation Saigon Phase I, PIC Transcript, C D Bruce, 16 February 1999, p. 167; Operation Saigon Phase I, PIC Transcript, P J Murrant, 16 February 1999, p. 154.

[85] Operation Saigon Phase I, PIC Transcript, C D Bruce, 24 February 1999, p. 479.

3.64 Nine days later, Bruce went to Murrant's house and passed him a note saying that they were under surveillance.[86]

3.65 On 17 December 1998 Crotty rang Bruce at 3.00am and asked to meet him in a park. According to Bruce, Crotty told Bruce that he was wrong about the search warrants (for Murrant's premises).[87] Bruce gave evidence that he gleaned from the conversation that Crotty had made covert inquiries at Kings Cross Police Station about the search warrants for Murrant's premises.[88] Crotty agreed that he met with Bruce in a park one morning. Crotty could not recall looking at records at Kings Cross before meeting Bruce. His explanation for the meeting was that he was perplexed by Bruce's recent behaviour.[89]

ASSESSMENT OF EVIDENCE OF CROTTY AND BRUCE RELEASING CONFIDENTIAL INFORMATION

3.66 The Commission is of the view that Crotty's explanation for the meeting in the park lacks credibility.

3.67 The Commission is of the opinion that Bruce released confidential police information to Murrant on 11 December 1998 and again nine days later.

3.68 The Commission is also of the opinion that Crotty released confidential police information to Bruce on 17 December 1998.

3.69 Clauses 55 and 56 of the Police Service Regulation 1990 apply to all police officers. Those clauses stipulate that police officers must not release confidential information without proper authority. Every police officer is required to sign a Statement of Responsibility, wherein that particular officer recognises his or her obligations with respect to the unauthorised release of confidential information. The provisions of the current *Police Service Handbook* also apply to all police officers. Chapter 'R' reminds officers that they are not to release confidential information.[90] Keeping in mind the above regulations, the Commissioner of Police submitted to the Commission that the prohibitions against releasing confidential information are already comprehensively covered by the Police Service in its different policies and guidelines, and by the criminal law. The Commissioner of Police therefore submitted that no recommendations pursuant to section 14(c) of the Act should be made by the Commission in this regard.[91] The Commission is of the opinion that the current policies and guidelines in this respect are adequate.

---

86 Operation Saigon Phase I, PIC Transcript, C D Bruce, 17 February 1999, p. 207.

87 Operation Saigon Phase I, PIC Transcript, C D Bruce, 17 February 1999, p. 207.

88 Operation Saigon Phase I, PIC Transcript, C D Bruce, 24 February 1999, p. 488.

89 Operation Saigon Phase I, PIC Transcript, M J Crotty, 25 February 1999, pp. 568-569.

90 PIC Exhibit 96, barcode 5713406.

91 PIC Exhibit 96, barcode 5713406.

UNAUTHORISED SECONDARY EMPLOYMENT

3.70 During the course of the Saigon I hearings, the Commission heard evidence that members of the Police Service were engaged in unauthorised secondary employment, namely security work, contrary to the *Commissioner's Instructions*.

3.71 This section of the Report focuses on evidence heard by the Commission with respect to unauthorised secondary employment.

SENIOR CONSTABLE ANTHONY BINNS

3.72 The Police Service investigated Senior Constable Anthony Binns in December 1998 for engaging in secondary employment as a security guard on 13 November 1998 without approval.

3.73 Binns told the Police Service internal investigators, Detective Sergeant Petith and Senior Sergeant Thompson, that he had worked on the night in question as a favour for the security company, Blue Falcon Security Pty Ltd ('Blue Falcon'), and had never worked for the company before or since. He said he had not been approached at any time by anyone from Blue Falcon to work security for the company and was not paid for working on 13 November 1998.[92]

3.74 Binns told the Commission that prior to the interview by Petith and Thompson, he had made up his mind as to what he would tell them about his working for Blue Falcon. He went on to tell the Commission that he was happy with the way the interview went; he had worked out a plausible explanation as to why he had been working as a security officer on 13 November 1998, and the internal investigators did not test him about it. Counsel Assisting the Commission, Mr Patrick Barrett questioned Binns in relation to the interview with Petith and Thompson:[93]

> Q. You told us before that you made up your mind as to what you were going to tell the investigators about you working for Blue Falcon?
> A. Yes.
>
> Q. And you were going to confine it to a favour that had been done at the spur of the moment?
> A. Yes.
>
> …

[92] PIC Exhibit 97, barcode 5400237.

[93] Operation Saigon Phase I, PIC Transcript, A M Binns, 22 February 1999, p. 304.

Q. Would it be fair to say that you were happy with the interview that took place?
A. After it was completed?

Q. Yes.
A. Yes, I gave the answers that – or I was able to just tell the story that I had made up in my mind that I was going to tell.

3.75 When questioned by Counsel for the Commissioner of Police, Binns admitted to lying to the internal investigators concerning his unauthorised secondary employment:[94]

Q. And I take it you were happy with the interview, as you just said to Mr Barrett, because you'd lied to the investigators and got away with it?
A. I was put in a difficult position, so –

Q. No, perhaps you might just answer that question. You had lied to the investigators and got away with it?
A. I knew that I was in trouble and I was happy with the interview at the end of the day. There has been some – it's quite obvious there has been some untruthfulness in that interview.

Q. You had lied, hadn't you?
A. If you want to put it that way.

Q. The answer is yes, isn't it?
A. Yes.

3.76 When giving evidence before the Commission Binns frequently answered that he could not recall:[95]

Q. On this occasion that you went to the dance party, was there any arrangement made for you to work there before your arrival there?
A. Not that I recall

…

Q. Did you go there with the intention that you might be able to be employed there?
A. No.

Q. Had you any discussions with anyone about being employed there?
A. Not that I recall.

…

94 Operation Saigon Phase I, PIC Transcript, A M Binns, 22 February 1999, p. 309.
95 Operation Saigon Phase I, PIC Transcript, A M Binns, 16 February 1999, pp. 114-131.

Q. Did you have a discussion with him [Murrant] about what had happened at the dance party before you went for this interview?
A. Not to my recollection.

Q. Did you have any discussion with him about what Mr King had told Thomson and Petith about you working at the dance party?
A. I don't believe so.

…

Q. Do you still maintain that you didn't go there pursuant to a prearranged plan for you to work there that night?
A. Not that I recall.

Q. Do you maintain still that the reason you worked there that night was because you happened to be there and somebody else didn't turn up?
A. That's what I believed.

Q. That's what you believed?
A. That's what I said.

Q. Is that what you say is the situation?
A. My primary reason was to go there and then to go out with Richard after.

Q. Did you have a secondary reason to work there before you went out?
A. Not that I recall.

3.77 One of the directors of Blue Falcon was former Senior Constable Peter Murrant. During Binns' evidence to the Commission, tapes of intercepted conversations between himself and Murrant were played. After Binns heard the tapes of the telephone conversations between himself and Murrant leading up to the dance party,[96] Binns conceded that it was not the case that he had attended the dance party just to meet his friend Richard and go out with him afterwards, as originally alleged.[97]

3.78 Binns went on to tell the Commission that he had worked for Murrant's company prior to the dance party,[98] and a number of times since the dance party.[99] This was at odds with the information he supplied to the internal investigators in December 1998.[100] Binns admitted to the Commission that he had lied in the internal interview.[101]

---

96 Operation Saigon Phase I, PIC Exhibit 8, barcode 5180376; PIC Exhibit 9, barcode 5180377; PIC Exhibit 10, barcode 5180378.

97 Operation Saigon Phase I, PIC Transcript, A M Binns, 18 February 1999, p. 240.

98 Operation Saigon Phase I, PIC Transcript, A M Binns, 16 February 1999, p. 116.

99 Operation Saigon Phase I, PIC Transcript, A M Binns, 16 February 1999, p. 123.

100 Operation Saigon Phase I, PIC Exhibit 97, barcode 5400237.

101 Operation Saigon Phase I, PIC Transcript, A M Binns, 22 February 1999, pp. 309, 314.

3.79 Binns maintained in evidence to the Commission that he was not paid directly for the dance party job but that he had been out with Murrant on occasions when Murrant had bought him drinks so he was happy to do him a favour.[102] He admitted however, that the majority of times he was paid $16 per hour for the work he did for Murrant.[103]

3.80 Murrant confirmed that Binns had worked for Blue Falcon on a number of occasions apart from 13 November 1998. Murrant stated that Binns was paid cash for the dance party on 13 November 1998 and other nights he worked.[104]

3.81 As with Binns, Murrant's initial evidence to the Commission was that Binns was asked to work on 13 November 1998 because he turned up with Richard and they were short staffed.[105]

3.82 The taped telephone conversations comprising Exhibits 8, 9 and 10 were played to Murrant. Exhibit 8 was a taped telephone conversation between Murrant and an employee at Blue Falcon making arrangements for the employee to contact Binns about working at the 'Botany job' on Friday night. Exhibits 9 and 10 were taped conversations between Binns and Murrant making arrangements for Binns to work on Friday night. Once these taped conversations were played to Murrant, he conceded that there was a prior arrangement in place for Binns to work on 13 November 1998.[106]

ASSESSMENT OF EVIDENCE OF SENIOR CONSTABLE ANTHONY BINNS' INVOLVEMENT IN UNAUTHORISED SECONDARY EMPLOYMENT

3.83 The Commission is of the opinion that Binns engaged in unauthorised secondary employment and was untruthful in his internal interview with Petith and Thompson when he stated that he did not receive payment for the work performed on 13 November 1998 and had not worked for Blue Falcon on any other occasion.

3.84 The Commission is also of the opinion that Binns was untruthful in his evidence to the Commission that there was no prior arrangement for Binns to work at the dance party on 13 November 1998.

FORMER SENIOR CONSTABLE PETER MURRANT

3.85 Murrant resigned from the Police Service on 25 September 1998. Whilst he was still a serving police officer, he was investigated for unauthorised secondary

---

102 Operation Saigon Phase I, PIC Transcript, A M Binns, 16 February 1999, pp. 128-129.

103 Operation Saigon Phase I, PIC Transcript, A M Binns, 18 February 1999, p. 244.

104 Operation Saigon Phase I, PIC Transcript, P J Murrant, 16 February 1999, p. 96.

105 Operation Saigon Phase I, PIC Transcript, P J Murrant, 16 February 1999, pp. 95, 139.

106 Operation Saigon Phase I, PIC Transcript, P J Murrant, 16 February 1999, p. 146; Operation Saigon Phase I, PIC Exhibits 8, 9 and 10.

employment and was aware that police needed approval to engage in secondary employment in the security industry.

3.86 Murrant had been a registered director of Blue Falcon since 7 January 1998. On 15 February 1999 Murrant gave evidence to the Commission that he had been a director since that date.[107] His directorship of that company whilst still a serving police officer was clearly in breach of the Police Service secondary employment policy.[108]

3.87 When the internal police investigation in relation to Binns' secondary employment took place in December 1998, Murrant, (although out of the Police Service by that time) and King (a director of Blue Falcon) described Murrant's role in the company as a 'consultant'. When King was asked by Petith and Thompson who the directors of Blue Falcon were, he omitted to mention Murrant, although Murrant was a director at that time.

ASSESSMENT OF EVIDENCE OF FORMER SENIOR CONSTABLE PETER MURRANT'S INVOLVEMENT IN UNAUTHORISED SECONDARY EMPLOYMENT

3.88 The Commission is of the opinion that Murrant engaged in unauthorised secondary employment as a director of a security company while a serving police officer.

3.89 The Commission is also of the opinion that Murrant colluded with King in the Binns investigation to misrepresent Murrant's role in the company at that time.

THE INVESTIGATION BY PETITH AND THOMPSON INTO BINNS' UNAUTHORISED SECONDARY EMPLOYMENT IN THE SECURITY INDUSTRY

3.90 On 3 December 1998, Detective Inspector Moore asked Petith and Thompson to conduct the investigation into whether Binns engaged in secondary employment in the security industry on 13 November 1998.[109]

3.91 On 7 December 1998 Petith and Thompson expressed their concerns to Moore that the investigation might be compromised, because of their friendship with Murrant and his association with Blue Falcon. This was formally communicated to Moore by memorandum on 7 December 1998.[110] Notwithstanding their concerns, Moore directed them to carry out the investigation.

---

107 Operation Saigon Phase I, PIC Transcript, P J Murrant, 15 February 1999, p. 86.

108 Operation Saigon Phase I, PIC Exhibit 73, barcodes 5421428-5421438.

109 Operation Saigon Phase I, PIC Transcript, J R Thompson, 15 February 1999, p. 6.

110 Operation Saigon Phase I, Exhibit 3, barcode 5400280-5400282.

3.92 Petith and Thompson duly carried out the investigation. Both gave evidence to the Commission that they had carried out the investigation diligently and openly, and with integrity.[111] Thompson also stated that he had been impartial and independent. However, in evidence, Thompson agreed that in their final report to Inspector Moore dated 17 December 1998, they had not mentioned any involvement of Murrant in the incident because he was not the subject of the investigation.[112]

3.93 Counsel for the Commissioner of Police submitted that in police jargon, it appears that this investigation was a 'non-investigation', for the following reasons:[113]

(a) Binns was interviewed and readily conceded that he had worked on 13 November 1998. Binns stated in evidence before the Commission that he was not pressed on any point, and that he was able to give the information just as he wished in the interview. No questions were asked of him by Petith and Thompson about his working in the security industry generally on other occasions, or any other work carried out by him for Blue Falcon.

(b) Thompson and Petith interviewed King on 10 December 1998. Peter Murrant was present to advise on legal and company matters.[114] King was a director of Blue Falcon. Murrant was present at the interview to observe only, however, his presence there as an observer is questionable. He was apparently there at the request of King for the purpose of giving him advice. It must be pointed out that there was no information given to Petith and Thompson by King that was not readily available by other objective means. Thompson in his evidence said that King told them that Binns had been employed on the relevant date, and handed over pay sheets. However Binns had already admitted that he had been so employed or that he had worked on that night; the pay sheet was for the week ending 22 November 1998, which was the wrong week, as this was for the week after the day in question.[115]

(c) Neither Petith nor Thompson obtained proper source documents. There was no search performed with the Australian Securities and Investments Commission for Blue Falcon Agency Pty Ltd.[116] Thompson attempted to blame the State Intelligence Group ('SIG') and a young Constable who had apparently been asked to obtain these documents. Thompson was shown the company search of Blue Falcon Agency Pty Ltd in cross-examination; this showed that Murrant was a director of Blue Falcon Agency

---

111 Operation Saigon Phase I, PIC Transcript, P J Petith, 15 February 1999, p. 29; Operation Saigon Phase I, PIC Transcript, J R Thompson, 15 February 1999, p. 12.

112 Operation Saigon Phase I, PIC Transcript, J R Thompson, 22 February 1999, pp. 316-317.

113 PIC Exhibit 96, barcode 5713406.

114 Operation Saigon Phase I, PIC Transcript, J R Thompson, 15 February 1999, pp. 15-16.

115 Operation Saigon Phase I, PIC Transcript, J R Thompson, 22 February 1999, pp. 347-348.

116 Operation Saigon Phase I, PIC Transcript, J R Thompson, 22 February 1999, p. 349.

Pty Ltd from 7 January 1998.[117] As at 7 January 1998, Murrant was still a serving police officer. Consequently at that stage he was also in breach of the *Commissioner's Instructions* regarding secondary employment in the security industry.

3.94 Thompson stated in evidence that he did not have a personal relationship with Murrant.[118] However, he accompanied him to the Endeavour Room at the Sydney Casino and watched him gamble, before Murrant's resignation from the Police Service; he also interceded on Murrant's behalf with the State Rail Authority to try to place security work with Murrant's company.[119] He originally denied contacting anyone at the State Rail Authority for Murrant, however, when a taped conversation was played to him, he said that it jogged his memory.[120]

3.95 In submissions made on behalf of the Commissioner of Police, it was noted that the Commissioner of Police still favours a total ban on secondary employment and agrees with Recommendations 50-52, made by Justice Wood in the Royal Commission.[121] The Commissioner of Police stated that he has not been able to adopt such a policy because of the intransigence of the NSW Police Association ('the Police Association'). However, notwithstanding this restriction, there has been a review of the Policy, and a further secondary employment policy was adopted in November 1999. The circumstances in which secondary employment is available to police officers have now been further restricted, and the level of authorisation required to undertake secondary employment in high risk industries has been significantly increased; the approval of the officer's Region Commander is now required, and a probity assessment and risk/conflict analysis by Internal Affairs is required.

SERGEANT PAUL PETITH

3.96 Petith had been the subject of departmental charges in 1995 for unauthorised secondary employment in a family security company, Leson Pty Ltd. He resigned his directorship of that company as a result. The Commission is of the view that his prior involvement in unauthorised secondary employment and the disciplinary action taken against him would leave no doubt that he understood the Police Service policy and guidelines in relation to secondary employment.

3.97 Petith gave evidence before the Commission on 15 February 1999. As at that date he was a Detective Sergeant, attached to the City Central Local Area Command, on secondment to the City East Region, Internal Affairs.

---

117 Operation Saigon Phase I, Exhibit 47, barcode 5180481.

118 Operation Saigon Phase I, PIC Transcript, J R Thompson, 22 February 1999, p. 344.

119 Operation Saigon Phase I, PIC Transcript, J R Thompson, 22 February 1999, pp. 338-340.

120 Operation Saigon Phase I, PIC Exhibit 45, barcode 5180452; Operation Saigon Phase I, PIC Transcript, J R Thompson, 22 February 1999, pp. 338-340.

121 Operation Saigon Phase I, PIC Exhibit 96, barcode 5713406.

3.98 Petith was tasked with Thompson on Thursday 3 December 1998 to conduct the investigation into Binns' unauthorised secondary employment. Petith submitted a memo the following Monday to Inspector Moore, stating that over the weekend he had become aware that Murrant, a mutual friend of his and Thompson's, was linked with the company Blue Falcon and that he and Thompson were in Murrant's company on a semi-regular basis.[122]

3.99 Petith initially told the Commission that he did not have any business dealings with Murrant.[123]

3.100 After listening to an intercepted telephone conversation between himself and Murrant on 3 December 1998,[124] Petith admitted to the Commission that he had discussed with Murrant the question of work for employees of Leson Pty Ltd,[125] and that his disclosure to Moore about his relationship with Murrant was incomplete. The conversation included the following exchange:[126]

PM = Peter Murrant
PP = Paul Petith
(ui) = unintelligible

PM: (ui), did you come um to some um, did you think (ui)?
PP: Yeah, well, what um, what I think Ann wants to do is she wants to um ah um more or less I think she wants to sub contract to you.
PM: Yeah.
PP: So she'll supply the people but she will take on the insurances and all that sort of stuff.
PM: Yep. Yep.

…

PM: But I am just um wondering because Saturday night I am a bit short.

…

PP: Mate, she'd be more than happy to help you.

…

PP: (ui) certainly, so, I'll get you, now I told Tim um that you were going to give her a call, that you, he was going you were going to give him a call at some stage.
PM: Yep.

…

122 Operation Saigon Phase I, PIC Exhibit 97, barcode, 5400237.
123 Operation Saigon Phase I, PIC Transcript, P J Petith, 15 February 1999, p. 42.
124 Operation Phase I, PIC Exhibit 71, barcode 5180447.
125 Operation Saigon Phase I, PIC Transcript, P J Petith, 25 February 1999, pp. 589-590.
126 Operation Phase I, PIC Exhibit 71, barcode 5180447.

PP: So you don't need to discuss um, so you can tell him that you're discussing the finances with Annie, that's not a problem.
PM: Yep.
PP: Just tell him what you need in relation to people.
PM: Yep. OK. What's the …
PP: And he'll start doing the ring around and ah …

…

PP: And I'll get Ann to do the paperwork and fax it through to you tonight.

3.101 Petith agreed that he did not want his dealings with Murrant to come out in the Binns investigation because it might suggest he had a greater involvement in his wife's security company, Leson Pty Ltd, than was the case.[127]

3.102 Petith did not have approval to engage in secondary employment. He conceded in evidence that he may have contacted somebody for his wife while he was at work. He also said that he might have edited a file for her while he was at work.[128] Petith had a Leson Pty Ltd directory in his hard drive at work, and admitted that he created and updated documents while at work.[129]

3.103 Petith admitted in evidence that he was engaging in activity that required permission under the secondary employment policy.[130]

ASSESSMENT OF EVIDENCE OF SERGEANT PAUL PETITH'S INVOLVEMENT IN UNAUTHORISED SECONDARY EMPLOYMENT

3.104 The Commission is of the opinion that prior to 3 December 1998 Petith engaged in secondary employment in a security company without Police Service approval.

3.105 The Commission is also of the opinion that Petith was untruthful to Moore and untruthful in his evidence to the Commission about his relationship with Murrant.

ASSESSMENT OF EVIDENCE OF FORMER SENIOR CONSTABLE PETER MURRANT'S BREACHES OF THE SECURITY INDUSTRY ACT 1997

3.106 Murrant's evidence about his role in the security industry appeared to be evasive. He claimed that he only formally learned at the time of the Commission hearings in February 1999 that he had been registered as a director of Blue Falcon Security Pty Ltd since January 1998. He maintained that he had not engaged in

127 Operation Saigon Phase I, PIC Transcript, P J Petith, 25 February 1999, p. 594.
128 Operation Saigon Phase I, PIC Transcript, P J Petith, 15 February 1999, p. 47.
129 Operation Saigon Phase I, PIC Transcript, P J Petith, 25 February 1999, p. 603.
130 Operation Saigon Phase I, PIC Transcript, P J Petith, 25 February 1999, p. 620.

security duties until presented with evidence that depicted him performing such duties.[131] He then agreed that he had performed security duties and had helped out on the door at the dance party on 13 November 1998.[132] It was obvious from Murrant's evidence that he was aware his lack of a security licence under the *Security Industry Act 1997* meant he was unlicensed to perform the security duties in question.[133]

3.107 Further, a recorded telephone conversation between Murrant and one of his co-directors, Graham Edwards, on 31 December 1998,[134] indicated that Murrant had reason to hide from the licensing police while working at the Greenwood Hotel that night. Murrant's evidence confirmed that he did perform duties of a security nature that evening.[135]

3.108 The Commission is of the opinion that Murrant did engage in security duties whilst unlicensed to do so and that he was untruthful in his evidence to the Commission in relation thereto.

DUTY BOOKS

3.109 Duty books are issued to designated detectives, plain clothes police, trainee detectives and some other police officers of senior rank, for the purpose of recording their duty on a daily basis. Those books are used as a management tool to record hours and the place of duty and to record such things as overtime and shift allowances, as well as recording rest days and periods of leave. Duty books are an accountable record and they are issued to the individual police officer concerned. Each book carries its own individual identification number for accountability purposes. There is a requirement for police officers to return those duty books to the station of issue once completed.

3.110 Duty books can be used as an aid to a police officer in the preparation of statements for court proceedings and as an aid to the police officer in giving evidence in court. As such, they are very important documents and it is expected that an officer's duty book will adequately and accurately reflect duty carried out by that officer.

3.111 Thompson joined the Police Service as a cadet in 1962. He was promoted to Sergeant in 1979, and to Senior Sergeant in 1988. As at 15 February 1999 he was attached to the Internal Affairs Investigation Section of the City East Region. At the end of 1998 both he and Petith were seconded to Task Force Hessan.

---

131 Operation Saigon Phase I, PIC Exhibit 7, barcode 5393909.

132 Operation Saigon Phase I, PIC Transcript, P J Murrant, 16 February 1999, pp. 138-139, 214.

133 Operation Saigon Phase I, PIC Transcript, P J Murrant, 15 February 1999, p. 89; 16 February 1999, pp. 214, 216-218, 221-222.

134 Operation Saigon Phase I, PIC Exhibit 26, barcode 5180389.

135 Operation Saigon Phase I, PIC Transcript, P J Murrant, 17 February 1999, pp. 225, 228.

3.112 Counsel Assisting questioned Thompson in relation to his duty book. Thompson admitted that his duty book was sometimes left for days or weeks without being filled in, notwithstanding the *Commissioner's Instructions* that the duty books were to provide a contemporaneous record:[136]

> Q. Is it normal for a duty book to be checked once a month?
> A. It can be so, yes.
>
> …
>
> Q. What's the requirement of the Police Service? Is there one?
> A. I think it's supposed to be done on a regular basis, but I'm not certain of that fact.
>
> …
>
> Q. You are supposed to fill it in each day; is that right?
> A. Supposed to, yes.
>
> Q. Your practice has been sometimes to leave it longer than that, sometimes days or even a week, without filling it in?
> A. Yes, I just can't recall how long. But I have left it. I shouldn't have, but I have.
>
> …
>
> Q. Senior Sergeant, on this duty book question, is it not the Commissioner's instructions that duty books be checked weekly?
> A. Yes, that could be so.
>
> Q. So far as your duty book is concerned, was that checked weekly?
> A. No.
>
> Q. Was it checked fortnightly?
> A. I don't think so.
>
> Q. How often was it checked?
> A. I think about a month or so. I'm not certain.

3.113 On or about 11 February 1999 Thompson was served with a Notice to Produce (documents) from the Commission. Thompson went on leave in December 1998, and returned from leave on or about 18 January 1999. As at the date he returned from leave, 18 January 1999, his duty book had not been filled in since 25 November 1998.

---

[136] Operation Saigon Phase I, PIC Transcript, J R Thompson, 22 February 1999, pp. 319-323.

3.114 Thompson was shown photographs of his duty book, which were taken covertly on 14 January 1999. The photographs showed that his entry of 25 November 1998 was not completed,[137] and as at 14 January 1999, it was blank from 25 November 1998.[138] It appears that after he was served with the Notice to Produce (documents) from the Commission, he brought his duty book up to date to cover the period from 18 January to 11 February 1999.[139]

3.115 Another matter of concern was the fact that Thompson did not know the Police Service requirement regarding checking of duty books.[140] The *Commissioner's Instructions* provided that duty books were to be checked weekly. As outlined above in the extract of Thompson's evidence, Thompson's duty books were not checked weekly, and he was not even certain if they were checked on a monthly basis.[141]

3.116 Thompson conceded that prior to his going on leave, he could not remember how long his duty book was behind, that is, for what period of time it had not been completed. He made the following concession when questioned by Counsel Assisting:[142]

> Q. Mr Thompson, could it be that your duty book has been filled in and checked, subsequently checked, on dates after the dates where the checking signatures appear?
> A. Yes, it could be ...

3.117 Petith in his evidence stated that he could have been a week behind in completing his duty books. However, he agreed that when he received the Notice to Produce the books to the Commission, he brought the duty books up to date and he and Thompson cross-checked each other's books.[143] Petith also admitted that he had endorsed in Thomson's duty books a '... number of checkings that weren't done on the day that appears'.[144]

3.118 Petith also conceded that his checking of Thompson's duty book gave the appearance of it having been done in accordance with the *Commissioner's Instructions*, and that it could be misleading, although he stated that was not his intention.[145]

---

137 PIC Exhibit 44C, barcode 5180448.
138 Operation Saigon Phase I, PIC Transcript, J R Thompson, 22 February 1999, pp. 335-337.
139 Operation Saigon Phase I, PIC Transcript, A M Binns, 22 February 1999, p. 329.
140 Operation Saigon Phase I, PIC Transcript, J R Thompson, 22 February 1999, pp. 319-321.
141 Operation Saigon Phase I, PIC Transcript, J R Thompson, 22 February 1999, pp. 323-324.
142 Operation Saigon Phase I, PIC Transcript, J R Thompson, 22 February 1999, p. 331.
143 Operation Saigon Phase I, PIC Transcript, P J Petith, 25 February 1999, p. 571.
144 Operation Saigon Phase I, PIC Transcript, P J Petith, 25 February 1999, p. 573.
145 Operation Saigon Phase I, PIC Transcript, P J Petith, 25 February 1999, p. 577.

3.119 Both Thompson and Petith were of the view that when a senior officer checked a duty book, it was really a formality, and the purpose was to check starting time, finishing time and meal times. Petith agreed that it would be a good thing for senior officers to check the veracity of entries on a random basis.

3.120 As far as the Commissioner of Police is concerned, supervisors should always check duty books. This may be done on a random basis or in a targeted manner. Consequently, Counsel for the Commissioner of Police submitted that there is no necessity for the Commission to make any recommendation pursuant to section 14(c) of the *Police Integrity Commission Act 1996*.

3.121 This is an area of concern that has been identified by the Commission in previous hearings and Reports. It is noted in the Commission's Report on Operation Belfast that:[146]

> While other record sources may contain detailed information about particular events, the duty book remains the one record of the activities of a particular officer over a set period of time and retains a unique importance.

3.122 Duty books are meant to be a contemporaneous record. 'Back filling' of duty books places their accuracy under question. While the Commission is unable to comment on how widespread the practice of back filling duty books is, or indeed how often supervisors check duty books, it is troubling that this issue has been identified in two separate and unrelated Commission hearings.

[146] Police Integrity Commission, *Report to Parliament Operation Belfast*, October 2000, p. 145.

4. SAIGON PHASE II

BACKGROUND TO SAIGON PHASE II

4.1 On 1 November 1999 the Commission commenced its hearing relating to Operation Saigon II.

4.2 At the commencement of Saigon II public hearings, Commissioner Urquhart announced the general scope and purpose of the hearing was to investigate:[147]

> (i) allegations concerning the involvement of current and former members of the New South Wales Police Service in the use and supply of prohibited drugs;
>
> (ii) allegations that Rodney Podesta and Anthony Dilorenzo were affected by drugs and/or alcohol at the time they were involved in the fatal shooting of Roni Levi at Bondi Beach on 28 June 1997;
>
> (iii) allegations of corruption or misconduct by members of the New South Wales Police Service in the investigation of the fatal shooting of Roni Levi at Bondi Beach on 28 June 1997; and
>
> (iv) allegations that members of the New South Wales Police Service are associating with suppliers of prohibited drugs and releasing information regarding police methodologies and investigations.

4.3 The Saigon II public hearings focused primarily on paragraphs (i) and (ii) and to a lesser extent, paragraph (iv) of the general scope and purpose. For the purpose of Saigon II, paragraph (i) of the general scope and purpose involved an investigation of allegations of the use and supply of prohibited drugs by Rodney Podesta and Anthony Dilorenzo. Paragraph (ii) of the general scope and purpose involved the investigation of allegations that Podesta and Dilorenzo, who were at that time serving police officers, were affected by drugs and/or alcohol at the time they were involved in the fatal shooting of Roni Levi on Bondi Beach on 28 June 1997. Paragraph (iv) of the general scope and purpose touched upon certain associations of Podesta and Dilorenzo with other persons.

[147] Operation Saigon Phase II, PIC Transcript, Commissioner Urquhart, 30 September 1999, p. 2.

USE AND/OR SUPPLY OF PROHIBITED DRUGS AND ASSOCIATION WITH DRUG SUPPLIERS

CONSTABLE RODNEY PODESTA

4.4 Podesta joined the Police Service in May 1995 and resigned from the Police Service in March 1998.[148] Consideration of paragraphs (i) and (iv) of the general scope and purpose with respect to Podesta involves an examination of his relevant conduct between May 1995 and March 1998. Paragraph (ii) of the general scope and purpose involves a more specific inquiry concerning the relevant activities of Podesta approximate to 28 June 1997.

4.5 In this section of the Report, attention will be given to the evidence alleging the use and supply of prohibited drugs by Podesta between May 1995 and March 1998 and evidence alleging associations between Podesta and suppliers of prohibited drugs in that period.

4.6 Podesta gave evidence in Saigon I and II concerning his use of prohibited drugs. He admitted the use of cannabis as a teenager with his last use at about 20 years of age.[149] He admitted to the use of cocaine and ecstasy commencing around November or December 1997.[150] With respect to the supply of prohibited drugs, Podesta admitted in Saigon I that he agreed on 28 February 1998 to purchase 3.5 grams of cocaine from Easton James for the purpose of cutting it and supplying it to SA14. On 9 December 1999, Podesta was sentenced to four months imprisonment to be served by way of periodic detention following his plea of guilty to a charge of supply prohibited drug arising from the events of 28 February 1998.

4.7 Podesta denied the use and supply of prohibited drugs beyond the conduct admitted by him in evidence before the Commission. There was a body of evidence before the Commission, going far and beyond that admitted by Podesta in evidence, alleging the use and supply of prohibited drugs by Podesta whilst he was a serving police officer. It is necessary to examine the evidence of use and supply of drugs by Podesta.

4.8 This evidence falls into four different categories, each of which is capable of throwing light upon other categories:

i. Podesta's drug use prior to joining the Police Service in 1995;

---

148 Operation Saigon Phase II, PIC Transcript, R J W Podesta, 1 November 1999, p. 5.

149 Operation Saigon Phase II, PIC Transcript, R J W Podesta, 1 November 1999, pp. 34-35.

150 Operation Saigon Phase II, PIC Transcript, R J W Podesta, 1 November 1999, pp. 12, 35-36; Operation Saigon Phase II, PIC Transcript, R J W Podesta, 15 November 1999, pp.594-595.

ii. Podesta's use and supply of prohibited drugs between May 1995 and 27 June 1997;

iii. Podesta's use and supply of prohibited drugs after 28 June 1997: and

iv. Podesta's association with drug suppliers.

DRUG USE BY PODESTA BEFORE JOINING THE POLICE SERVICE IN 1995

4.9 Evidence was given by codenamed witnesses SA9 and SA12 concerning drug use by Podesta before he joined the Police Service in 1995. SA9 said that Podesta and he might have smoked a (cannabis) joint together in their youth.[151] When SA9 learned that Podesta was to join the Police Service, he gave him some 'friendly advice' that he would have to make a 'turnaround in [his] lifestyle'.[152] The Commission is of the opinion that SA9 sought to play down the reason for him giving such advice to Podesta in 1995, but the clearly available inference is that Podesta's lifestyle at that time required significant alteration if he was to fulfill the duties of a law-abiding police officer.

4.10 SA12 met Podesta in about 1992 whilst she was working at the Cauldron Nightclub.[153] Thereafter, she and Podesta became friends. Prior to his joining the Police Service, SA12 was aware that Podesta was using cocaine and ecstasy.[154] She admitted using cocaine in Podesta's presence prior to him joining the Police Service. He used cocaine in her presence once or twice in that period.[155] SA12 did not see Podesta take ecstasy in her presence prior to him joining the Police Service, but she was aware that he was affected by the drug while he was in her presence.[156] When Podesta told her that he was joining the Police Service, he told her that 'he didn't want to take drugs' and that he wanted to do the right thing and be able to help people instead.[157] SA12 agreed that she had told Commission investigators in September 1999 that when she heard he was joining the Police Service, 'I sort of hoped it'd straighten him out a little bit more than anything. He yeah he needed a kick up the arse and I though this might be good for him so I wished him good luck'.[158]

---

151 Operation Saigon Phase II, PIC Transcript, SA9, 3 November 1999, p. 233.
152 Operation Saigon Phase II, PIC Transcript, SA9, 3 November 1999, pp. 235-236.
153 Operation Saigon Phase II, PIC Transcript, SA12, 10 November 1999, p. 317.
154 Operation Saigon Phase II, PIC Transcript, SA12, 10 November 1999, p. 318.
155 Operation Saigon Phase II, PIC Transcript, SA12, 10 November 1999, pp. 318-319.
156 Operation Saigon Phase II, PIC Transcript, SA12, 10 November 1999, p. 319.
157 Operation Saigon Phase II, PIC Transcript, SA12, 10 November 1999, p. 319.
158 Operation Saigon Phase II, PIC Transcript, SA12, 10 November 1999, pp. 329-330.

4.11 Submissions were made on behalf of Podesta which were critical of the evidence of SA12. Regard has been had to those submissions, however, the Commission is of the opinion that SA12 provided credible and reliable evidence indicating cocaine and ecstasy use by Podesta prior to his joining the Police Service in May 1995.

4.12 Although SA9 maintains that Podesta had, to his knowledge, only used cannabis in earlier years, SA9 proffered advice to Podesta in about 1995 concerning his need to change his lifestyle given his intention to join the Police Service. The evidence of SA12 and SA9 suggests a lifestyle involving prohibited drug use by Podesta prior to his joining the Police Service.

4.13 It is noteworthy that Detective Inspector Jones, whilst giving evidence in Saigon III, referred to inadequate checks being made in connection with Podesta's application to join the Police Service. This related to his employment at the Piccolo Bar at Kings Cross, an establishment regarded as high risk with respect to criminal and drug activity.[159] Podesta maintained that he had not observed the use or supply of prohibited drugs at the Piccolo Bar although he understood that drug use and supply took place there.[160]

USE AND SUPPLY OF PROHIBITED DRUGS BY PODESTA BETWEEN MAY 1995 AND 27 JUNE 1997

4.14 As mentioned previously, Podesta denied altogether the use and supply of prohibited drugs in this period. There is substantial evidence before the Commission that Podesta's lifestyle, in particular in the first half of 1997, involved regular attendances at nightclubs where prohibited drug use was common. It is, of course, not unlawful for an off-duty police officer to attend nightclubs. However, regular attendance at nightclubs where prohibited drug use is common may give rise to certain inferences concerning the actions and intentions of those attending. The evidence may also serve to fortify and place in context other direct evidence of prohibited drug use by Podesta in this period. It should also be observed that regular attendances by off-duty police officers at premises believed to be used for the supply and use of prohibited drugs gives rise to particular difficulties for police. This was recognised in this case when Chief Inspector Baker barred off-duty police officers from the Bondi Patrol attending the Liberty Lunch in April 1997.[161]

4.15 The Commission is of the opinion that evidence of Podesta's lifestyle whilst a serving police officer and before the shooting generally supports other direct evidence of prohibited drug use by him in that period. That direct evidence will be referred to below. For present purposes, it is appropriate to note that the

---

[159] Operation Saigon Phase III, PIC Transcript, P D Jones, 21 February 2000, p. 43.

[160] Operation Saigon Phase II, PIC Transcript, R J W Podesta, 2 November 1999, p. 91.

[161] Operation Saigon Phase II, PIC Transcript, R R Baker, 4 November 1999, p. 250.

evidence reveals that Podesta attended, in the first half of 1997, nightclubs including the Liberty Lunch, Byblos and the Black Market Nightclub. Podesta said that he 'wouldn't know' about drug use at these nightclubs in the period up to mid-1997 and that he 'never saw anything' there.[162] The Commission heard evidence from a number of persons that Podesta's circle of friends included users of cocaine and ecstasy. The circle of friends included Ronald Quin, codenamed witnesses SA2, SA10, SA11, SA16 and Mark Dilorenzo (Anthony Dilorenzo's brother, who is also sometimes known as Mark Lorenzo). Podesta said that he did not know or suspect that any of these persons were prohibited drug users in late 1996 and in the first half of 1997.[163] The Commission has considered Podesta's associates and the places frequented by him in the period late 1996 to mid-1997 for the purpose of assessing evidence concerning his alleged drug use and supply. The Commission is of the opinion that Podesta's evidence strains credibility when he stated that he did not know of or suspect prohibited drug use by his friends nor suspect prohibited drug use at the nightclubs he frequented.

4.16 It is instructive to examine Podesta's association with the Liberty Lunch. SA13 said that Podesta was one of about six customers who were trusted by management to have a bar tab without a credit card swipe.[164] SA13 described regular drug use at the Liberty Lunch,[165] and said that when the Liberty Lunch was owned by Kieran O'Connor, 'it attracted energetic people, people who had a lust for life'.[166] SA12 spoke of drug use at the Liberty Lunch stating that 'everybody else did pretty much that was there'.[167] Renee Robertshaw, Ronald Quin's girlfriend and a friend of Podesta's, gave evidence of cocaine and ecstasy use at the Liberty Lunch.[168] James referred to cocaine use on the premises.[169] SA15 said that customers told him that cocaine was used on the premises.[170] O'Connor believed that there was drug taking on the premises.[171] The then Patrol Commander at Bondi, Chief Inspector Baker, spoke to Podesta on 21 April 1997 and instructed him not to attend the Liberty Lunch unless on duty as it was believed that the restaurant was 'trading in drug activities'.[172] The evidence before the Commission reveals a substantial foundation for Baker's belief concerning drug activity at the Liberty Lunch. Podesta's close association with the Liberty Lunch and its management, James in particular, makes his asserted ignorance of drug activities difficult to accept.

---

162 Operation Saigon Phase II, PIC Transcript, R J W Podesta, 16 November 1999, pp. 623-624.
163 Operation Saigon Phase II, PIC Transcript, R J W Podesta, 16 November 1999, p. 623.
164 Operation Saigon Phase II, PIC Transcript, SA13, 11 November 1999, p. 428.
165 Operation Saigon Phase II, PIC Transcript, SA13, 11 November 1999, pp. 426-427.
166 Operation Saigon Phase II, PIC Transcript, SA13, 11 November 1999, p. 437.
167 Operation Saigon Phase II, PIC Transcript, SA12, 10 November 1999, p. 322.
168 Operation Saigon Phase II, PIC Transcript, R R Robertshaw, 2 November 1999, pp. 141-142.
169 Operation Saigon Phase II, PIC Transcript, E B James, 4 November 1999, pp. 276-277.
170 Operation Saigon Phase II, PIC Transcript, SA15, 11 November 1999, p. 399.
171 Operation Saigon Phase II, PIC Transcript, K B O'Connor, 4 November 1999, p. 302.
172 Operation Saigon Phase II, PIC Transcript, R R Baker, 4 November 1999, pp. 256-257.

4.17 It is appropriate now to turn to the direct evidence of use and supply of prohibited drugs by Podesta during this period. SA10 told the Commission that he, Podesta and James used cocaine in the upstairs office at the Liberty Lunch in about February or March 1997:[173]

> Q. Did you ever see Rodney Podesta use prohibited drugs?
> A. Yes.
>
> Q. What drugs did you see him use?
> A. Cocaine and ecstasy.
>
> Q. Did you see him use cocaine in the first half of 1997?
> A. Yes.
>
> Q. When was it that you first saw him use cocaine?
> A. Probably about February, March.
>
> Q. Where was it that you saw him use cocaine on that occasion?
> A. At a restaurant in Bondi called Liberty Lunch.
>
> Q. What part of Liberty Lunch was he in when you saw him use cocaine?
> A. The upstairs office.
>
> …
>
> Q. Did James use cocaine on that occasion as well, to your observation?
> A. Yes.
>
> Q. Did you use cocaine on that occasion?
> A. Yes.

4.18 James said that this may have been possible but he could not recall it, although he later suggested that if it occurred, it would have been after the Levi shooting.[174] Between February-March and the end of June 1997, SA10 saw Podesta use cocaine on about half a dozen to a dozen occasions at a number of locations, including the Liberty Lunch, Byblos nightclub and Kieran O'Connor's residence in Darlinghurst.[175] SA10 said that he had seen Podesta using ecstasy at the Liberty Lunch and the Byblos nightclub in the first half of 1997, although he had never seen Podesta supply prohibited drugs,[176] apart from Podesta giving cocaine to SA10.[177]

---

[173] Operation Saigon Phase II, PIC Transcript, SA10, 3 November 1999, pp. 184-185.
[174] Operation Saigon Phase II, PIC Transcript, E B James, 4 November 1999, pp. 285-286.
[175] Operation Saigon Phase II, PIC Transcript, SA10, 3 November 1999, p. 186.
[176] Operation Saigon Phase II, PIC Transcript, SA10, 3 November 1999, p. 187.
[177] Operation Saigon Phase II, PIC Transcript, SA10, 3 November 1999, p. 198.

4.19 SA2 provided information to the Commission, in effect, by way of induced examination by video link that was not sworn or affirmed for jurisdictional reasons.[178] The Commission is not bound by the rules of evidence and can inform itself on any matter in such a manner as it considers appropriate.[179] SA2 told the Commission that she had met Podesta in early 1997 at the Liberty Lunch, and that they went out for a time and frequented the Liberty Lunch and other clubs including Byblos and Sugareef.[180] According to SA2, Podesta provided her with cocaine and used it himself at Byblos, and Sugareef Nightclub and the Liberty Lunch Café.[181] SA2 told the Commission that she had seen Podesta sell cocaine to persons at the Liberty Lunch.[182] Podesta denied allegations of SA2 that he had used and supplied prohibited drugs. He asserted that he had a 'one night stand' with SA2 but that there was no ongoing relationship with her. Podesta said that she was telling persons that he was her boyfriend and that in his view she was 'a stalker'.[183]

4.20 Podesta was taken to the records of telephone calls made by him to SA2 in the first half of 1997.[184] The Commission is of the view that the pattern of calls made by Podesta to SA2 revealed in Exhibits 20C-23C supports SA2's description of the relationship with Podesta. Podesta rang SA2 13 times in February 1997 and six times in March 1997. The Commission is of the opinion that, despite Podesta's assertion to the contrary,[185] the calls indicate that Podesta and SA2 had a relationship involving regular contact for about a month in February 1997 and early March 1997 with occasional contact thereafter. This is quite inconsistent with the scenario suggested by Podesta of a one-night stand followed by SA2 'stalking' him. Records of calls made by SA2 to Podesta during this period,[186] do not detract from this view. They show a pattern of calls from SA2 to Podesta in the period of February and March 19997 with a significantly lesser number of calls from her to him in April and May 1997. In assessing any criticisms to be made of information provided by SA2, it is necessary to bear in mind other evidence before the Commission that bears upon the probability of her account being correct. Reference has already been made to some evidence that fits into this category.

4.21 The evidence of SA11 also sheds light on this topic. SA11 met Podesta about two months before the shooting of Mr Levi on 28 June 1997.[187] At that time, SA11 was sharing a flat with SA16 who, to SA11's knowledge, was involved in the use and supply of prohibited drugs.[188] SA11 met Podesta when his

---

178 Operation Saigon Phase II, PIC Transcript, SA2, 10 November 1999, p. 335.

179 Section 20(1) *Police Integrity Commission Act 1996*.

180 Operation Saigon Phase II, PIC Transcript, SA2, 10 November 1999, pp. 339-341.

181 Operation Saigon Phase II, PIC Transcript, SA2, 10 November 1999, pp. 341-342.

182 Operation Saigon Phase II, PIC Transcript, SA2, 10 November 1999, p. 342.

183 Operation Saigon Phase II, PIC Transcript, R J W Podesta, 16 November 1999, p. 610.

184 Operation Saigon Phase II, PIC Transcript, R J W Podesta, 16 November 1999, pp. 610-617.

185 Operation Saigon Phase II, PIC Transcript, R J W Podesta, 16 November 1999, pp. 614-617.

186 Operation Saigon Phase II, PIC Exhibits 88C & 89C.

187 Operation Saigon Phase II, PIC Transcript, SA11, 3 November 1999, pp. 222-223.

188 Operation Saigon Phase II, PIC Transcript, SA11, 3 November 1999, p. 223.

flatmate, SA16, invited Podesta over to the flat.[189] SA11 had seen Podesta at Byblos and the Black Market clubs prior to the fatal shooting.[190] SA11 also saw Podesta at the Liberty Lunch, Dancers and the Q Bar although he was uncertain as to whether these occasions were before or after the shooting in June 1997.[191] SA11 described an occasion when he and Podesta went to a party at Darling Point following attendance at the Black Market.[192] Cocaine was being used openly at the party at Darling Point, despite the presence of a police officer (Podesta).[193] As SA11 stated, 'he [Podesta] wasn't in police mode, he was definitely in human mode'.[194] SA11 said that he was under the impression that Podesta was a user of prohibited drugs at the time of the party in Darling Point. This impression was based upon the fact that Podesta was at the Black Market Nightclub and the company he was with.[195] SA11 said that he could not specifically remember Podesta using cocaine at the Darling Point party, but 'if there was one [line of cocaine] being offered to him, he would have taken it'.[196]

4.22 The evidence of SA11 supports a finding that Podesta was a user of prohibited drugs in the months prior to the shooting of Mr Levi on 28 June 1997. SA11 was a good friend of Podesta at the time he gave evidence before the Commission.[197] SA11's evidence fortifies the opinion of the Commission, as mentioned previously, concerning Podesta's lifestyle involving a drug-using circle of friends and the frequenting of nightclubs where prohibited drug use was common.

4.23 SA17 gave evidence of an incident at the Soho Bar, which, from other evidence,[198] appears to have occurred in early to mid-May 1997. SA17, a former police officer, knew Anthony Dilorenzo. Whilst doing security work at the Soho Bar, SA17 encountered three persons in a cubicle in the male toilets. There had been drug use previously in the toilet cubicles at the Soho Bar. SA17 had encountered several persons in a toilet using drugs prior to this incident.[199] On the night of the incident, SA17 instructed the persons to come out of the cubicle. The three men came out and mentioned that they were the police and a police badge was shown.[200] SA17 believed that one of the men was Podesta. One of the other men spoke with an American or Canadian accent and SA17 considered that he might have been Anthony Dilorenzo's

189 Operation Saigon Phase II, PIC Transcript, SA11, 3 November 1999, p. 223.
190 Operation Saigon Phase II, PIC Transcript, SA11, 3 November 1999, p. 224.
191 Operation Saigon Phase II, PIC Transcript, SA11, 3 November 1999, p. 225.
192 Operation Saigon Phase II, PIC Transcript, SA11, 3 November 1999, p. 226, Operation Saigon Phase II, PIC Transcript, SA11, 11 November 1999, p. 445.
193 Operation Saigon Phase II, PIC Transcript, SA11, 11 November 1999, pp. 446-447.
194 Operation Saigon Phase II, PIC Transcript, SA11, 11 November 1999, p. 447.
195 Operation Saigon Phase II, PIC Transcript, SA11, 11 November 1999, p. 448.
196 Operation Saigon Phase II, PIC Transcript, SA11, 11 November 1999, p. 448.
197 Operation Saigon Phase II, PIC Transcript, SA11, 3 November 1999, p. 230.
198 Operation Saigon Phase III, PIC Exhibit 1C.
199 Operation Saigon Phase II, PIC Transcript, SA17, 10 November 1999, p. 379.
200 Operation Saigon Phase II, PIC Transcript, SA17, 10 November 1999, p. 378.

brother.[201] Anthony Dilorenzo was in the bar outside and the men who emerged from the toilet walked up to him.[202] SA17 mentioned this incident to the owners of the Soho Bar. The incident came to the attention of Chief Inspector Baker and Senior Constable Cooper of Bondi Police who reported it to Mr Richmond of Internal Affairs on 27 May 1997.[203] Although SA17 does not make a certain identification of Podesta as one of the men in the Soho Bar toilets, the surrounding evidence supports the conclusion that Podesta was in fact there on that occasion. The evidence points to Mark Dilorenzo being the man in the cubicle with the American or Canadian accent. SA17's evidence provides further support for a finding that Podesta was a user of prohibited drugs in the first half of 1997.

4.24 Events that occurred between mid-May 1997 and 27 June 1997 shed further light on the Soho Bar incident and the evidence of SA17. Detective Tchakalian of Internal Affairs contacted SA17 on 17 June 1997 to discuss the Soho Bar incident.[204] At 4.44pm on 21 June 1997, Anthony Dilorenzo rang SA17 and had a conversation that lasted for five minutes and 23 seconds. SA17 said that he advised Anthony Dilorenzo that the incident at the Soho Bar was 'a stupid thing to do'. According to SA17, Anthony Dilorenzo knew what he was talking about and said that he was not involved in the situation.[205] SA17 said that he could have told Dilorenzo in this telephone conversation that he had been spoken to by an Internal Affairs officer about the Soho Bar matter but could not recall if he had done so.[206] Dilorenzo was vague in his evidence about this call.[207] Dilorenzo, however, asserted that SA17 did not tell him that Internal Affairs were investigating any incident at the Soho Bar.[208] The inference is available, however, that SA17 did tell Dilorenzo of the Internal Affairs Investigation.

4.25 On 26 June 1997, a function took place at the Coogee Legion Club to mark the closure of the Bondi Patrol. The restructuring of the Police Service from 1 July 1997 was to see Bondi being absorbed into the Waverley Patrol. The function was organised by then Senior Constable Michael Cooper.[209] A large number of police who had served at Bondi attended the function, including Podesta, Dilorenzo and Constable Patrick Brown. Brown said that the function was called 'the Bondi wake'.[210] Cooper gave evidence of a conversation at the Coogee Legion Club involving Podesta, Dilorenzo, Brown and himself. Cooper said that Podesta appeared upset and was 'quite incensed' that Internal

---

201 Operation Saigon Phase II, PIC Transcript, SA17, 10 November 1999, p. 378.

202 Operation Saigon Phase II, PIC Transcript, SA17, 10 November 1999, p. 379.

203 Operation Saigon Phase III, PIC Exhibit 1C.

204 Operation Saigon Phase II, PIC Transcript, SA17, 10 November 1999, p. 381; Operation Saigon Phase III, PIC Transcript, C P Keen, 22 February 2000, pp. 80-81.

205 Operation Saigon Phase II, PIC Transcript, SA17, 10 November 1999, p. 383.

206 Operation Saigon Phase II, PIC Transcript, SA17, 10 November 1999, p. 383.

207 Operation Saigon Phase III, PIC Transcript, A S Dilorenzo, 1 March 2000, pp. 530-531.

208 Operation Saigon Phase III, PIC Transcript, A S Dilorenzo, 1 March 2000, p. 531.

209 Operation Saigon Phase III, PIC Transcript, M J Cooper, 24 February 2000, pp. 262-263.

210 Operation Saigon Phase III, PIC Transcript, P E Brown, 24 February 2000, p. 226.

Security were making inquiries at the Liberty Lunch 'as to whether he [Podesta] was involved in the sale and supply of drugs from that restaurant'.[211] According to Cooper, Dilorenzo said to Podesta, 'shut up Rod, I told you, we're not going to talk about this'. Podesta said to Cooper, 'Why are they doing it? What information have they got?' Cooper said, 'I don't know, I don't know'. Dilorenzo said 'Fuck em, let em prove it'.[212]

4.26 According to Cooper, Podesta said that before he had learned of the Internal Affairs inquiries he had been contacted by an old girlfriend and she had organised a meeting with Podesta and Dilorenzo. During the meeting, the former girlfriend placed a mobile phone on the table and moved it towards Podesta or Dilorenzo depending upon who was talking at the time. Podesta said that he thought this was odd behaviour and was at a loss to understand why the girl had contacted him.[213]

4.27 Brown said in evidence that it was possible that such a conversation took place at the Bondi wake on 26 June 1997 although he could not recall it.[214] Podesta denied that such a conversation ever occurred.[215] Podesta acknowledged that he had a meeting with an ex-girlfriend, but that he could not recall when it took place. Podesta also said that Dilorenzo was not present at the meeting with the ex-girlfriend.[216] Dilorenzo could not recall a conversation to that effect at the function on 26 June 1997.[217]

ASSESSMENT OF THE EVIDENCE OF THE USE AND SUPPLY OF PROHIBITED DRUGS BY PODESTA BETWEEN MAY 1995 AND 27 JUNE 1997

4.28 The Commission accepts the evidence of Cooper with respect to this conversation. Cooper was an impressive witness. He retired from the Police Service on 28 June 1997. A number of matters arise from a finding that such a conversation occurred. Firstly, it is the case that Podesta and Dilorenzo were aware by 26 June 1997 that an Internal Affairs investigation was underway with respect to Podesta and the supply and use of drugs at the Liberty Lunch. The telephone communication between SA17 and Dilorenzo on 21 June 1997 suggests that Dilorenzo was probably aware of the Soho Bar Internal Affairs investigation as well. Secondly, it is noteworthy that Podesta referred in the conversation to a recent meeting with an ex-girlfriend in the context of an Internal Affairs investigation of his activities at the Liberty Lunch. As has been seen, SA2 clearly linked Podesta to the supply and use of prohibited drugs at the

---

211 Operation Saigon Phase III, PIC Transcript, M J Cooper, 24 February 2000, pp. 263-4.
212 Operation Saigon Phase III, PIC Transcript, M J Cooper, 24 February 2000, p. 264.
213 Operation Saigon Phase III, PIC Transcript, M J Cooper, 24 February 2000, p. 264.
214 Operation Saigon Phase III, PIC Transcript, P E Brown, 24 February 2000, pp. 229-231.
215 Operation Saigon Phase III, PIC Transcript, R J W Podesta, 29 February 2000, pp. 413-415.
216 Operation Saigon Phase III, PIC Transcript, R J W Podesta, 29 February 2000, pp. 415-416.
217 Operation Saigon Phase III, PIC Transcript, A S Dilorenzo, 1 March 2000, pp. 528-529.

Liberty Lunch. Thirdly, the emphatic comment by Dilorenzo throws some light upon his state of mind at the time. This will be addressed in further detail in the section relating to Dilorenzo.

4.29 Submissions were made on behalf of Podesta and the Commissioner of Police which were critical of aspects of the evidence of SA2, SA10 and SA11. The Commission has had regard to those submissions but is of the opinion that there is a substantial and cogent body of evidence that Podesta was a regular user of prohibited drugs, in particular cocaine, in the months prior to the shooting of Mr Levi.

PODESTA'S USE AND SUPPLY OF PROHIBITED DRUGS AFTER 28 JUNE 1997

4.30 As previously stated, Podesta told the Commission that he did not use ecstasy or cocaine until November-December 1997. Evidence has been given before the Commission, however, of prohibited drugs use by Podesta between 28 June 1997 and November 1997. SA11 gave evidence of an occasion when he, Podesta, Anthony Dilorenzo, Mark Dilorenzo and others were at Dancers a week to a month after the shooting. It was a Thursday night and Podesta and Anthony Dilorenzo were on stress leave. SA11 used ecstasy that evening and gave some to Podesta at Podesta's request.[218] SA11 gave Podesta one ecstasy tablet. Podesta returned and asked for another one saying 'he wanted to give it to Tony because he never has any' and 'he wanted to cheer him up'.[219] SA11 gave Podesta another ecstasy tablet but did not see what he did with it.[220] The inference is clearly available that Podesta obtained a second ecstasy tablet for Anthony Dilorenzo.

4.31 SA11 gave evidence that in the period of three months after the shooting, he saw Podesta at various nightclubs including Byblos, Dancers and the Black Market. He said that Podesta was using cocaine at these clubs in this period, as was SA11.[221] SA10 said that he saw Podesta using cocaine on occasions after the shooting.[222]

ASSESSMENT OF THE EVIDENCE OF PODESTA'S USE AND SUPPLY OF PROHIBITED DRUGS AFTER 28 JUNE 1997

4.32 The Commission accepts the evidence of SA11 and SA10 in relation to prohibited drug use by Podesta in the period between July and November 1997. SA11 was in a position to observe Podesta's conduct on these occasions.

---

218 Operation Saigon Phase II, PIC Transcript, SA11, 11 November 1999, pp. 450-451.
219 Operation Saigon Phase II, PIC Transcript, SA11, 11 November 1999, p 451.
220 Operation Saigon Phase II, PIC Transcript, SA11, 11 November 1999, p. 451.
221 Operation Saigon Phase II, PIC Transcript, SA11, 11 November 1999, p. 451.
222 Operation Saigon Phase II, PIC Transcript, SA10, 3 November 1999, p. 202.

Even allowing for some approximation as to dates, the period specified by SA11 is soon after 28 June 1997 and well before November 1997. Further, there is cogent evidence that Podesta had been using prohibited drugs between 1995 and June 1997.

PODESTA'S ASSOCIATION WITH DRUG SUPPLIERS

4.33 The evidence obtained by the Commission reveals a close association between Podesta and Mark Dilorenzo. Mark Dilorenzo had served a substantial term of imprisonment for supplying drugs. Podesta understood that Mark Dilorenzo 'had a grave distrust and dislike of police'.[223] Nevertheless, he had a close association with Podesta and Podesta with him. The telephone records reveal very frequent telephone contact in the first half of 1997. They socialised together including the frequenting of nightclubs.

4.34 Mark Dilorenzo pleaded guilty to a charge of supplying heroin, and on 26 August 1993 appeared before his Honour Judge J B Phelan and was sentenced to imprisonment for four years comprising a minimum term of two years with an additional term of two years. He was released from custody in August 1995.[224] During evidence before the Commission, Mark Dilorenzo said, 'I don't like police at all, and I want to make that clear straight away, so they are not friends of mine'.[225] Despite this attitude towards police, it is clear that Mark Dilorenzo formed a close personal relationship with Podesta.

4.35 In the first half of 1997, Mark Dilorenzo attended the Cauldron, Rogues, Sugareef, Byblos, Dancers and the Liberty Lunch.[226] He said that it was possible that he was using cocaine in the first half of 1997 but that he never purchased it, it was always offered to him by different people at the clubs.[227] Despite asserting that the passage of time presented a difficulty in recalling events in the first half of 1997, Mark Dilorenzo categorically denied that he had ever been to the Soho Bar and that he had ever utilised a toilet for the purpose of using drugs.[228] This specific denial, designed to counter SA17's evidence, may be contrasted with his generally vague evidence blamed on the passage of time.

4.36 Telephone records disclosed that calls were made from Podesta's telephone to Mark Dilorenzo's telephone on 18 occasions in January 1997, on 10 occasions in February 1997, on 24 occasions in March 1997, on 44 occasions in April 1997, on 46 occasions in May 1997 and on 19 occasions in June 1997.[229] Despite the frequency of these calls, Mark Dilorenzo denied that it indicated a

---

223 Operation Saigon Phase II, PIC Transcript, R J W Podesta, 15 November 1999, p. 594.
224 Operation Saigon Phase II, PIC Transcript, M A Dilorenzo, 15 November 1999, p. 560.
225 Operation Saigon Phase II, PIC Transcript, M A Dilorenzo, 15 November 1999, p. 562.
226 Operation Saigon Phase II, PIC Transcript, M A Dilorenzo, 15 November 1999, pp. 564-565.
227 Operation Saigon Phase II, PIC Transcript, M A Dilorenzo, 15 November 1999, p. 564.
228 Operation Saigon Phase II, PIC Transcript, M A Dilorenzo, 15 November 1999, pp. 568-570.
229 Operation Saigon Phase II, PIC Transcript, M A Dilorenzo, 15 November 1999, p. 572.

regular and close association between Podesta and himself.[230] Many of the calls from Podesta's telephone to Mark Dilorenzo's telephone were made at times between midnight and dawn, but Dilorenzo could offer no satisfactory explanation for these calls.[231] The Commission considers the evidence given by Mark Dilorenzo in relation to his income and lifestyle in the first half of 1997 to be unconvincing. By that time, he had been out of prison for 16 months. He painted a picture of persons shouting him drinks at nightclubs and of him dining out each week at the Liberty Lunch and being offered cocaine in nightclubs, as he put it, 'it's like somebody offering you a drink from the bar, the same sort of scenario'.[232] According to Mark Dilorenzo, he knew a lot of people and they knew what hardship he had endured and they returned the favour by buying him a drink.[233] The hardship he referred to was his time in prison until August 1995. He asserted that he was not dealing in drugs in the first half of 1997.

4.37 Mark Dilorenzo said that he spoke to Podesta regularly about Podesta's father's illness.[234] Following this evidence being given on 15 November 1999, Podesta himself asserted that he made several phone calls to Mark Dilorenzo when he was having difficulties with his ill father.[235] However, when examined two weeks before concerning his frequent phone calls to Mark Dilorenzo in the first half of 1997, Podesta at no time asserted that the reason for his calls was his father's health.[236] If this was the true position, it might reasonably have been expected that Podesta would have volunteered this explanation on 1 November 1999 when given several opportunities to do so. This is particularly so if his association with Mark Dilorenzo was one of acquaintanceship only and not close friendship. It might reasonably be expected that Podesta would recall unusual circumstances in which he spoke to a convicted drug dealer about a matter of close personal interest to him. Instead, it was not until after 15 November 1999, and after Mark Dilorenzo had raised this explanation for the telephone calls, that Podesta himself grasped it in an attempt to explain an intensive pattern of telephone contact that reflected adversely upon the propriety of his association with Mark Dilorenzo.

ASSESSMENT OF THE EVIDENCE OF PODESTA'S ASSOCIATION WITH DRUG SUPPLIERS

4.38 The Commission is of the opinion that Podesta's raising of this explanation for the first time on 15 November 1999 is indicative of recent invention on his part.[237] A significant issue arises concerning the propriety of the association

---

230 Operation Saigon Phase II, PIC Transcript, M A Dilorenzo, 15 November 1999, p. 573.
231 Operation Saigon Phase II, PIC Transcript, M A Dilorenzo, 15 November 1999, pp. 574-575.
232 Operation Saigon Phase II, PIC Transcript, M A Dilorenzo, 15 November 1999, p. 577.
233 Operation Saigon Phase II, PIC Transcript, M A Dilorenzo, 15 November 1999, p. 580.
234 Operation Saigon Phase II, PIC Transcript, M A Dilorenzo, 15 November 1999, p. 582.
235 Operation Saigon Phase II, PIC Transcript, R J W Podesta, 15 November 1999, p. 588.
236 Operation Saigon Phase II, PIC Transcript, R J W Podesta, 1 November 1999, pp. 25-32.
237 Operation Saigon Phase II, PIC Transcript, R J W Podesta, 16 November 1999, p. 625.

between Mark Dilorenzo, a convicted drug supplier, and Podesta, a then-serving police officer, in the first half of 1997.

PODESTA – CONCLUSIONS CONCERNING PARAGRAPHS (I) AND (IV) OF THE GENERAL SCOPE AND PURPOSE

4.39 The Commission is of the opinion that Podesta engaged in police misconduct and other misconduct in the following respects:

(a) Podesta used prohibited drugs including cocaine, ecstasy and cannabis prior to his joining the Police Service in 1995;

(b) Podesta continued to use prohibited drugs, in particular cocaine, on a regular basis whilst a serving police officer between May 1995 and 27 June 1997;

(c) Podesta continued to use prohibited drugs, in particular cocaine and ecstasy, in the period between 28 June 1997 and November 1997;

(d) Podesta used cocaine and ecstasy regularly in the period November 1997 to March 1998;

(e) Podesta supplied cocaine to other persons on several occasions; and

(f) Podesta engaged in an improper association with Mark Dilorenzo, a convicted drug supplier, in particular in the period January to June 1997 when Podesta was a serving police officer.

ANTHONY DILORENZO – USE AND SUPPLY OF PROHIBITED DRUGS

4.40 Dilorenzo joined the Police Service in May 1988 and was dismissed from the Police Service in May 1999 pursuant to section 181D of the *Police Service Act 1990*, on the grounds that the Commissioner of Police no longer had confidence in his suitability to continue as a police officer. On 2 November 1999, Dilorenzo denied that he had ever used a prohibited drug.[238] On 15 November 1999, he corrected this evidence and said that he had used cannabis a couple of times when he was about 15 years old.[239]

4.41 SA2 told the Commission that she had seen Dilorenzo use cocaine at the Sugareef nightclub a short time after meeting Podesta in early 1997.[240] She also saw Dilorenzo using cocaine at Podesta's home.[241]

---

238 Operation Saigon Phase II, PIC Transcript, A S Dilorenzo, 2 November 1999, p. 176.
239 Operation Saigon Phase II, PIC Transcript, A S Dilorenzo, 15 November 1999, p. 512.
240 Operation Saigon Phase II, PIC Transcript, SA2, 10 November 1999, pp. 342-343.
241 Operation Saigon Phase II, PIC Transcript, SA2, 10 November 1999, pp. 353-354.

4.42 As mentioned previously, SA11 gave evidence of an occasion when he, Podesta, Anthony Dilorenzo, Mark Dilorenzo and others were at Dancers a week to a month after the shooting. SA11 gave Podesta an ecstasy tablet. Podesta returned and asked for another one saying 'he wanted to give it to Tony because he never has any' and 'he wanted to cheer him [Tony] up'. SA11 gave Podesta another ecstasy tablet but did not see what he did with it.[242] An inference is clearly available that Podesta obtained a second ecstasy tablet on this occasion for Anthony Dilorenzo, although there is no direct evidence that Podesta provided it to Anthony Dilorenzo.

4.43 As indicated previously, SA17 gave evidence of an incident at the Soho Bar in May 1997. Although SA17's evidence points to prohibited drug use by Podesta and Mark Dilorenzo, it does not allege such use by Anthony Dilorenzo. However, it might be concluded from SA17's evidence concerning the Soho Bar incident and his telephone conversation with Anthony Dilorenzo on 21 June 1997, that Anthony Dilorenzo was aware of prohibited drug use by others, including Podesta, that night.

4.44 The evidence of Michael Cooper concerning the conversation at the Bondi wake on 26 June 1997 suggests, at the least, a level of knowledge on Anthony Dilorenzo's part of allegations concerning the use and supply of drugs by Podesta and the Liberty Lunch. Cooper stated that Dilorenzo said verbatim, 'Fuck em, let em prove it'.[243] As has been noted previously, Cooper's evidence is accepted regarding that conversation.

ASSESSMENT OF EVIDENCE OF ANTHONY DILORENZO'S USE AND SUPPLY OF PROHIBITED DRUGS AND IMPROPER ASSOCIATION WITH SUPPLIERS OF PROHIBITED DRUGS

4.45 The Commission is of the opinion that Anthony Dilorenzo did use the prohibited substance, cocaine, on the occasions referred to by SA2. Given the absence of direct evidence that the ecstasy tablet supplied to Podesta by SA11, which was intended for 'Tony' was supplied to Anthony Dilorenzo, the evidence does not support a finding that Anthony Dilorenzo came into possession of that ecstasy or that he used it.

4.46 Submissions were made to the Commission concerning the inappropriate association between Podesta and Mark Dilorenzo. Given that Anthony and Mark Dilorenzo are brothers, no adverse conclusion has been reached arising from the continued association between those two persons in the period up to June 1997. However, it should be noted that the Commission was of the opinion, in relation to Saigon I, that Anthony Dilorenzo was involved in the use

[242] Operation Saigon Phase II, PIC Transcript, SA11, 11 November 1999, p. 451.

[243] Operation Saigon Phase III, PIC Transcript, M J Cooper, 24 February 2000, p. 264.

of prohibited drugs and had an improper association with Easton James in early 1998.[244]

WHETHER PODESTA AND/OR DILORENZO WERE AFFECTED BY DRUGS AND/OR ALCOHOL AT THE TIME OF THE SHOOTING ON 28 JUNE 1997

4.47 It is a fact that Podesta and Dilorenzo were not subject to blood, urine or breath tests following the fatal shooting of Roni Levi on 28 June 1997 to determine whether there were drugs or alcohol in their systems. The relevant statutory provisions in relation to drug and alcohol testing and their legislative policy history will be referred to in more detail later in this Report. Section 211A of the *Police Service Act 1990* had commenced on 1 January 1997. The power to conduct random or targeted drug testing was on the statute books. However, in circumstances which should not attract criticism, a three phase program for introduction of drug and alcohol testing was implemented. The first phase provided for an extensive six month drug and alcohol education program between March and September 1997. This phase was on foot at the time of the shooting of Mr Levi on 28 June 1997. During this phase, random and targeted testing procedures were not conducted. Accordingly, consideration of paragraph (ii) of the general scope and purpose requires a review of the evidence given before the Commission alleging that Podesta and/or Dilorenzo used drugs and/or alcohol around the time of the shooting.

RODNEY WALTER PODESTA

4.48 Previously in this Report, the Commission has expressed the opinion that Podesta was a regular user of prohibited drugs, in particular cocaine, in the months prior to the shooting of Mr Levi. It is necessary, however, to examine evidence of drug or alcohol consumption by Podesta in the period close to the fatal shooting.

4.49 SA2 told the Commission that she saw Podesta late in the evening, around 10.00pm, on 27 June 1997. He visited her home and remained for about 15 to 30 minutes. He was dressed in uniform. He looked very agitated, couldn't sit still and it appeared to SA2 that he was 'high on cocaine'.[245] He told her that he had been using cocaine.[246]

4.50 As mentioned earlier, SA2's information was received by way of live video link and was subjected to cross examination. Submissions on behalf of the Commissioner of Police and Podesta were critical of SA2. Due to the volume of evidence that contradicts SA2's evidence on this aspect, the Commission is

[244] See Chapter 3 – Assessment of Dilorenzo's association with suppliers of prohibited drugs.

[245] Operation Saigon Phase II, PIC Transcript, SA2, 10 November 1999, p. 348.

[246] Operation Saigon Phase II, PIC Transcript, SA2, 10 November 1999, p. 350.

of the view that the events described by her, although they probably occurred, took place on a date other than 27 June 1997.

4.51 Podesta told the Commission that he finished his shift at the Bondi Police Station at about 7.00pm on Friday, 27 June 1997.[247] He went to the 'Terrific Thai' restaurant in Curlewis Street, Bondi, dressed partially in uniform with his police trousers on and a T-shirt.[248] He met Ronald Quin and Renee Robertshaw shortly after 7.00pm, and they had dinner.[249] The dinner was to celebrate Podesta's birthday on 30 June 1997. A birthday celebration was planned for the weekend but Robertshaw could not attend the celebration, as she was working over the weekend. Podesta could not recall if alcohol was consumed with dinner.[250] He said that he sat down for dinner between 7.00pm and 7.45pm and was seated in the restaurant for 'maybe an hour or two'. He thought that he had a 'beer or two'.[251] Quin or Robertshaw paid for the dinner. Podesta thought that they left the restaurant between 9.00pm and 9.30pm. Podesta drove home from the restaurant after dinner. He had a cake which Quin and Robertshaw had taken to the restaurant. He got home before 10.00pm, and he showed the cake to his mother and father, who were still up when he arrived home. He went to bed before 11.00pm as he had a 12-hour shift commencing early on Saturday morning. He denied having any other alcohol on the night of 27 June 1997 and denied using any prohibited drug on the night of 27 June 1997, and the morning of 28 June 1997.[252]

4.52 Quin and Robertshaw gave evidence that they had dined with Podesta on the evening of 27 June 1997. Quin said that they had met Podesta at the 'Terrific Thai' restaurant between 7.30pm and 8.00pm. He could have had a six-pack of beer with him. Quin paid the bill in cash. Quin said that, after dinner, the three of them went to the upstairs bar of the Beach Road Hotel where they had a game of pool and a beer. Podesta left the hotel first, about five or 10 minutes before Quin and Robertshaw. Quin and Robertshaw left the hotel before 10.00pm.[253]

4.53 Robertshaw said that she and Quin arrived at the 'Terrific Thai' restaurant at around 6.00pm or 7.00pm on 27 June 1997. They met Podesta at the restaurant around 7.00pm. They remained at the restaurant for about one and a half to two hours.[254] There may have been a six-pack of beer consumed with dinner. They left the restaurant about 9.00pm – 9.30pm and went to the Pavilion Hotel. Podesta, Quin and Robertshaw remained at the Pavilion Hotel for less than half an hour. Podesta left first and said that he was going home.[255]

---

247 Operation Saigon Phase II, PIC Transcript, R J W Podesta, 1 November 1999, p. 42.
248 Operation Saigon Phase II, PIC Transcript, R J W Podesta, 1 November 1999, pp. 42-43.
249 Operation Saigon Phase II, PIC Transcript, R J W Podesta, 1 November 1999, pp. 42-43.
250 Operation Saigon Phase II, PIC Transcript, R J W Podesta, 1 November 1999, p. 44.
251 Operation Saigon Phase II, PIC Transcript, R J W Podesta, 1 November 1999, p. 46.
252 Operation Saigon Phase II, PIC Transcript, R J W Podesta, 1 November 1999, pp. 46-48.
253 Operation Saigon Phase II, PIC Transcript, R J Quin, 2 November 1999, pp. 125-127.
254 Operation Saigon Phase II, PIC Transcript, R R Robertshaw, 2 November 1999, pp. 146-147.
255 Operation Saigon Phase II, PIC Transcript, R R Robertshaw, 2 November 1999, pp. 149-150.

4.54 A curious feature concerning the evidence of Podesta, Quin and Robertshaw about events of the evening of 27 June 1997 relates to a phone call made at about 9.10pm that evening. At that time, a call was made from Podesta's mobile phone to a mobile phone owned by Terry Voto who was sharing accommodation with Quin at the time. Voto gave evidence that he would receive incoming calls on his mobile phone for Quin from persons including Podesta.[256] Voto was not a friend of Podesta himself. There does not appear to be any reason why Podesta would wish to ring Voto at a time when Podesta was in the company of Quin and Robertshaw. It is possible that the making of this call suggests that Podesta was not in the company of Quin and Robertshaw at 9.10pm on 27 June 1997. It may be the case that Podesta was ringing Quin on Voto's mobile telephone at that time, thereby evidencing that they were not in each others company. Although this is possible, the other evidence does not support such a scenario.

4.55 It is clear that Podesta rang Voto's mobile telephone at 8.15am on 28 June 1997 to speak to Quin after the fatal shooting.[257] This demonstrates the use of this line of communication from Podesta to Quin. Podesta throws little light on the 9.10pm phone call on 27 June 1997. He said that he might have been on his way home or he might still have been in the restaurant.[258] Quin said that he could have been trying to call Voto at that time although he did not know if this was the case and there was not anything he wanted to talk to Voto about that night.[259]

4.56 Robertshaw raised the same possibility, namely that Quin may have rung Voto. It appears that Robertshaw owned a mobile phone at that time. She could not recall if she had it with her on the evening of 27 June 1997.[260] Records demonstrated that a call had been made from Robertshaw's telephone to Podesta's telephone at 1.54am on 26 June 1997. This indicates that Robertshaw's telephone was being used in late June 1997 as a means of contact with Podesta.

4.57 It is not possible to finally resolve the reason for the 9.10pm call on Podesta's telephone to Voto's telephone. It may be that Podesta was not in the company of Quin at the time and was ringing him. Alternatively, it may be that Quin used Podesta's telephone to make a call to Voto although no person positively asserts that this did occur. On the evidence, the Commission cannot be comfortably satisfied that the first supposition is the correct one.

4.58 Mrs Charmaine Podesta, Rodney Podesta's mother, gave evidence that she saw Podesta very close to 10.00pm on 27 June 1997 at their home in

---

256 Operation Saigon Phase II, PIC Transcript, T Voto, 2 November 1999, pp. 99-100.

257 Operation Saigon Phase II, PIC Transcript, R J W Podesta, 1 November 1999, p. 69.

258 Operation Saigon Phase II, PIC Transcript, R J W Podesta, 1 November 1999, p. 49.

259 Operation Saigon Phase II, PIC Transcript, R J Quin, 2 November 1999, p. 129.

260 Operation Saigon Phase II, PIC Transcript, R R Robertshaw, 2 November 1999, p. 151.

Matraville.[261] He said that he had been to dinner with Quin and Robertshaw and he was carrying a cake, which he had been given for his birthday.[262] Podesta told his mother that he was going to bed about 10.30pm. She next saw him at about 6.40am on 28 June 1997.[263] Mrs Podesta said that she would have heard the sounds of her son leaving the house if he had done so in the late evening of 27 June 1997 or the early hours of 28 June 1997.[264]

4.59 Senior Sergeant McDougall gave evidence of seeing Podesta shortly after arriving at Bondi Police Station at about 10.30am on 28 June 1997.[265] Although he was not there for the purpose of assessing sobriety, McDougall said that he would have picked up any outward signs of drug or alcohol intoxication in Podesta and he did not see any.[266] This is inconclusive as far as the Commission is concerned. It is noted that Associate Professor Starmer gave evidence that observation of a person will not necessarily reveal prior drug use.[267]

4.60 SA10 said that the last time he saw Podesta before the shooting was at the Liberty Lunch. SA10 said it 'could possibly have been the evening before' the shooting, but he could not be specific.[268] He thought it was around 10.00pm to 10.30pm. In any event, SA10 said that he did not see Podesta use any drugs on this occasion.[269] The evidence of SA10 concerning this sighting of Podesta is sufficiently uncertain that it cannot be safely relied upon for any finding.

4.61 Information of a hearsay nature also came to the attention of Internal Affairs officers after the shooting alleging that Podesta and/or Dilorenzo were affected by alcohol and/or drugs the evening before the shooting. Information of this type was provided by SA1, SA3, SA5, SA6 and SA8. In the Saigon III hearing, the Commission examined the investigative steps taken by the Police Service with respect to this information. As will be seen, there was a significant failure on the part of Internal Affairs officers to pass this information to the shooting investigation team headed by Detective Senior Sergeant McDougall. Investigatory opportunities were lost with respect to some of this information. These circumstances served to kindle legitimate concerns that a proper investigation of the shooting had not been undertaken. However such investigation as the Commission has been able to undertake concerning the hearsay information has not disclosed any further admissible evidence of drug or alcohol intoxication of Podesta or Dilorenzo on the evening before the shooting.

---

261 Operation Saigon Phase II, PIC Transcript, C J Podesta, 12 November 1999, pp. 485-486.
262 Operation Saigon Phase II, PIC Transcript, C J Podesta, 12 November 1999, p. 486.
263 Operation Saigon Phase II, PIC Transcript, C J Podesta, 12 November 1999, p. 487.
264 Operation Saigon Phase II, PIC Transcript, C J Podesta, 12 November 1999, pp. 487-488.
265 Operation Saigon Phase III, PIC Transcript, R N McDougall, 28 February 2000, pp. 278-279.
266 Operation Saigon Phase III, PIC Transcript, R N McDougall, 28 February 2000, pp. 280-281.
267 Operation Saigon Phase III, PIC Transcript, G A Starmer, 2 March 2000, pp. 632-633, 641.
268 Operation Saigon Phase II, PIC Transcript, SA10, 3 November 1999, pp. 191-192.
269 Operation Saigon Phase II, PIC Transcript, SA10, 3 November 1999, p. 192.

4.62 It is possible that Podesta could have dined with Quin and Robertshaw, visited SA2 and then returned home to his parents house at Matraville. However, the only evidence pointing to drug use by Podesta on the evening of 27 June 1997 was from SA2. The accounts of Podesta, Quin and Robertshaw concerning events of that night are not entirely consistent. Quin and Robertshaw mentioned a visit to a hotel after the restaurant, but Podesta does not refer to this. Mrs Podesta, however, gave evidence that her son mentioned that he had dined with Quin and Robertshaw that evening.

4.63 Reference has been made earlier to the conversation between Cooper, Brown, Podesta and Dilorenzo at the Coogee Legion Club on the evening of 26 June 1997. Podesta denies that such a conversation took place. Ironically, if such a conversation took place (and the Commission is of the opinion that it did), it might assist him on this issue. The Commission is of the opinion that it is reasonable to assume that Podesta would modify his behaviour patterns after 26 June 1997 to take account of his knowledge of the then current Internal Affairs investigation of him. He may reasonably have anticipated that he would be placed under surveillance. It would be less likely that he would be using drugs on the evening of 27 June 1997 in these circumstances. Accordingly, the Commission has taken this factor into account in assessing the likelihood of Podesta using prohibited drugs in circumstances where there was a heightened risk of detection of such conduct.

4.64 But even if the account of SA2 is accepted in its entirety, concerning drug use by Podesta on the evening of 27 June 1997, this does not give rise to a finding that Podesta was affected by cocaine at the time of the shooting of Mr Levi at about 7.30am on 28 June 1997. Associate Professor Starmer expressed the opinion that a person who had used cocaine some nine and a half hours before a stressful incident involving the possible use of a firearm would not be subject to an acute effect because the cocaine would have largely gone. If anything, there would be some slight depressive effect and it would be unlikely that the person would be in an excitable state after that length of time.[270]

4.65 Having regard to the totality of the evidence given concerning Podesta's movements and actions between sunset on 27 June 1997 and the morning of 28 June 1997, the Commission is not comfortably satisfied that the account of SA2 is correct. But even if SA2's account was accepted in its entirety, the evidence of Associate Professor Starmer is such that the Commission could not conclude that Podesta was affected by cocaine at the time of the fatal shooting of Mr Levi on 28 June 1997. There is no evidence of consumption of any other prohibited drug by Podesta at a time proximate to the shooting.

4.66 There is evidence that Podesta probably consumed a moderate amount of beer at the dinner on 27 June 1997. There is no evidence of any other alcohol

[270] Operation Saigon Phase III, PIC Transcript, G A Starmer, 2 March 2000, pp. 633-634, 641.

consumption by him at a time proximate to the shooting. There is evidence of significant alcohol consumption by Podesta and others at the Coogee Legion Club on the evening of 26 June 1997,[271] but that alcohol consumption appears to be too remote from the time of the shooting to be taken into account for present purposes.

ANTHONY DILORENZO

4.67 Dilorenzo gave evidence that he finished work at about 4.00pm on 27 June 1997 and arrived home at about 4.30pm. He had a shower and watched television.[272] Present at his house were John and Nola Preston, Barry Rutter, Angelo Astudillo, and his wife Annabelle Dilorenzo, and their daughter. They had a fish dinner and the Prestons left at about 8.30pm with Astudillo leaving shortly after that. Dilorenzo went to bed at about 8.45pm – 9.00pm that night.[273] He said that he had not consumed alcohol on the evening of 27 June 1997 at dinner or otherwise.[274]

4.68 John Preston gave evidence of dining with the Dilorenzo family on the evening of 27 June 1997. He said that Angelo Astudillo was present that night. Preston and his wife left at about 8.00pm and Dilorenzo was watching television at that time.[275] Mr Preston said that Dilorenzo was not a drinker and he did not think that he had ever seen him drink alcohol. Nola Preston said that she had dined with the Dilorenzo family on the evening of 27 June 1997 and that a person named 'Chill' (a nickname for Angelo Astudillo) was present. She and her husband left between 8.00pm and 8.45pm.[276]

4.69 Annabelle Dilorenzo said that her husband dined at home on the evening of 27 June 1997 with others being present including Angelo Astudillo. She said that Angelo Astudillo left at about 9.00pm to 9.30pm that night.[277] Her husband went to bed about 9.30pm and got up around 6.00am on 28 June 1997. He had been asleep in bed all night.[278] Mrs Dilorenzo said that the Friday night fish dinner usually ended with people leaving at about 9.00pm – 9.30pm and that occasionally, but not often, her husband would go out on a Friday night.[279] She said that in the first half of 1997, her husband occasionally drank alcohol, but that 'he doesn't drink a lot'.[280]

---

271 Operation Saigon Phase III, PIC Transcript, P E Brown, 24 February 2000, p. 236; M J Cooper, 24 February 2000, p. 265; R J W Podesta, 29 February 2000, p. 413.

272 Operation Saigon Phase II, PIC Transcript, A S Dilorenzo, 2 November 1999, p. 175.

273 Operation Saigon Phase II, PIC Transcript, A S Dilorenzo, 2 November 1999, p. 176.

274 Operation Saigon Phase II, PIC Transcript, A S Dilorenzo, 15 November 1999, p. 551.

275 Operation Saigon Phase II, PIC Transcript, JK Preston, 2 November 1999, pp. 159-161.

276 Operation Saigon Phase II, PIC Transcript, N Preston, 2 November 1999, pp. 164-165.

277 Operation Saigon Phase II, PIC Transcript, A J Dilorenzo, 12 November 1999, p. 494.

278 Operation Saigon Phase II, PIC Transcript, A J Dilorenzo, 12 November 1999, pp. 494-495.

279 Operation Saigon Phase II, PIC Transcript, A J Dilorenzo, 12 November 1999, p. 495-496.

280 Operation Saigon Phase II, PIC Transcript, A J Dilorenzo, 12 November 1999, p. 497.

4.70 Angelo Astudillo gave evidence that he was not at the Dilorenzo house on the evening of 27 June 1997.[281] It was his practise to go to the Dilorenzo house on Friday nights for dinner, but he did not do so that evening.[282] He was at his own home that evening.[283] The evidence of Mr Astudillo suggests that the evidence of the Prestons and Mrs Dilorenzo concerning the Friday night dinner on 27 June 1997 was based upon the usual practice rather than specific recollections of that night. All persons asserted that Astudillo was at the Dilorenzo house that night for dinner when Astudillo said that he was not. There is no reason to doubt Astudillo in this respect. There was nothing to suggest that he was not doing his best to give truthful evidence to the Commission.

4.71 There is another aspect of the evidence of Astudillo that assumes some significance. Dilorenzo asserted that he drank alcohol rarely and sparingly. For example, he said that he may have had one drink of alcohol at the Soho Bar in the early hours of Saturday 10 May 1997. He said that he was 'not much of a drinker' and that was the reason why he declined to go to police functions a lot of the time.[284] He said that on the night of 28 June 1997 after the shooting, he did drink excessively but that was 'to forget about what happened that day'.[285] Astudillo gave evidence of visiting Byblos and DCM with Dilorenzo on occasions before the shooting in June 1997. On these occasions, Dilorenzo drank 'heaps' of alcohol including 'all different sorts of stuff, ranging from beer to Jack Daniels and VB's'. In the first half of 1997, Astudillo saw Dilorenzo socially at his home and would go with him to the Bondi Hotel from time to time. When they went to the Bondi Hotel, Dilorenzo would drink alcohol 'to get pissed' as did Astudillo.[286] In the first half of 1997, Astudillo visited Dilorenzo's house on occasions on Friday nights and Sundays. He saw Dilorenzo drinking beer on these occasions, 'between probably three to six beers on average – maybe more, maybe less'.[287] Astudillo said that he had seen Dilorenzo drunk a dozen times, maybe more, maybe less, in the period during which he had known him.[288] Astudillo's evidence suggests that Dilorenzo consumed alcohol more regularly and in greater quantities than he was prepared to concede in evidence before the Commission. There is no reason to doubt the accuracy of Astudillo's evidence. The Commission concludes that Dilorenzo considered it to be in his best interest to understate the frequency and volume of his alcohol intake in the months prior to the shooting.

---

281 Operation Saigon Phase II, PIC Transcript, A O Astudillo, 15 November 1999, p. 504.
282 Operation Saigon Phase II, PIC Transcript, A O Astudillo, 15 November 1999, pp. 502-503.
283 Operation Saigon Phase II, PIC Transcript, A O Astudillo, 15 November 1999, p. 504.
284 Operation Saigon Phase II, PIC Transcript, A S Dilorenzo, 2 November 1999, p. 173.
285 Operation Saigon Phase II, PIC Transcript, A S Dilorenzo, 2 November 1999, p. 178.
286 Operation Saigon Phase II, PIC Transcript, A O Astudillo, 15 November 1999, p. 502.
287 Operation Saigon Phase II, PIC Transcript, A O Astudillo, 15 November 1999, pp. 502-503.
288 Operation Saigon Phase II, PIC Transcript, A O Astudillo, 15 November 1999, p. 505.

4.72 However, there is no evidence that Dilorenzo consumed alcohol or any prohibited drugs on the evening of 27 June 1997 or on the morning of 28 June 1997. Further, Senior Constable Jones gave evidence that, on the morning of 28 June 1997, he considered Dilorenzo was totally unaffected by alcohol or drugs. Jones travelled with Dilorenzo in the police vehicle to Mr Levi's flat. They entered the premises with firearms drawn. Jones said that if he had any concerns about Dilorenzo's sobriety at that time, he would have called for backup and would not have entered the premises with him.[289]

4.73 Senior Sergeant McDougall did not observe any signs of intoxication by drugs or alcohol in Dilorenzo in his conversations with him on 28 June 1997.[290]

4.74 The Commission is of the opinion that there is no evidence that could support a conclusion that Dilorenzo was affected by alcohol and/or drugs at the time of the fatal shooting of Mr Levi on Bondi Beach on 28 June 1997.

[289] Operation Saigon Phase III, PIC Transcript, J L Jones, 29 February 2000, p. 361.

[290] Operation Saigon Phase III, PIC Transcript, R N McDougall, 28 February 2000, pp. 279-281.

5. SAIGON PHASE III

BACKGROUND TO SAIGON PHASE III

5.1 As discussed in the previous chapter, at the commencement of Saigon II public hearings on 1 November 1999, Commissioner Urquhart announced the general scope and purpose of the hearing was to investigate:[291]

> (i) allegations concerning the involvement of current and former members of the New South Wales Police Service in the use and supply of prohibited drugs;
>
> (ii) allegations that Rodney Podesta and Anthony Dilorenzo were affected by drugs and/or alcohol at the time they were involved in the fatal shooting of Roni Levi at Bondi Beach on 28 June 1997;
>
> (iii) allegations of corruption or misconduct by members of the New South Wales Police Service in the investigation of the fatal shooting of Roni Levi at Bondi Beach on 28 June 1997; and
>
> (iv) allegations that members of the New South Wales Police Service are associating with suppliers of prohibited drugs and releasing information regarding police methodologies and investigations.

5.2 The Saigon III public hearings commenced on 24 February 2000. The focus of attention of the Saigon III hearings was paragraph (iii) of the general scope and purpose. In addition some evidence was led in Saigon III that related to paragraphs (i) and (ii) of the general scope and purpose. Evidence was also taken in Saigon III concerning policy issues, including random and targeted drug testing of police officers and the investigation of shootings by police officers.

ALLEGATIONS OF CORRUPTION OR MISCONDUCT BY MEMBERS OF THE POLICE SERVICE IN THE INVESTIGATION OF THE FATAL SHOOTING OF RONI LEVI ON 28 JUNE 1997

5.3 The fatal shooting of Mr Levi by police officers Rodney Podesta and Anthony Dilorenzo on Bondi Beach on 28 June 1997 attracted a great deal of public attention. In part, much of this public attention stemmed from the fact that French photographer Jean-Pierre Brantanoff-Fergoff captured the events before and after the shooting of Mr Levi by way of still photography. Those photographs of the moments preceding the shooting appeared in national and international media reports within a day of the incident.

---

[291] Operation Saigon Phase II, PIC Transcript, Commissioner Urquhart, 30 September 1999, p. 2.

5.4 An investigation of the shooting was undertaken between June 1997 and February 1998. In February-March 1998 an inquest was held before the then State Coroner, Mr D W Hand. On 6 March 1998, the State Coroner terminated the inquest pursuant to the then provisions contained in section 19 of the *Coroners Act 1980* upon the basis that a prima facie case existed against known persons. On 11 March 1998, the State Coroner proceeded to make a number of recommendations arising from the evidence given at the inquest.

5.5 In July 1998, the DPP determined not to file an ex officio indictment against Rodney Podesta or Anthony Dilorenzo alleging any criminal offence arising from the shooting of Mr Levi.

5.6 Following the fatal shooting of Mr Levi, suggestions were made that Rodney Podesta and/or Anthony Dilorenzo were affected by alcohol or drugs at the time of the shooting of Mr Levi. Where suggestions of this type are made in the context of a fatal shooting by police officers, it is clearly in the public interest that police officers investigating the shooting examine them exhaustively to determine whether evidence does or does not exist to support them. The most effective method to determine the presence of alcohol or drugs in police officers involved in such an incident is scientific testing, preferably of blood samples taken from the officers shortly after the incident. As mentioned in paragraph 4.47 of this Report, the statutory power to conduct a random or targeted drug test existed as at 28 June 1997, but the testing power was not being exercised because of a phased introduction program. Further reference will be made to this statutory power later in this Report. The present case is a powerful example of the necessity for an effective system of drug and alcohol testing of police officers involved in a critical incident such as this. If the test is negative, it will serve to clear the air where suggestions of drug or alcohol intoxication have been made. If the test is positive, it should provide an objective foundation to assess impairment of the officer at the time of the incident. Effective testing serves the interests of the officers in question, the Police Service and, most importantly, the community.

5.7 In accordance with then Police Service procedures,[292] a Shooting Investigation Team was formed on the morning of 28 June 1997 to examine the shooting of Mr Levi. Detective Senior Sergeant McDougall was the officer in charge of that team.[293] Inspector Fitzpatrick of Internal Affairs, South Region, acted as the Internal Affairs review officer.[294] Aspects of the Police Service investigation which were examined by the Commission included the following:

(a) the extent to which the Shooting Investigation Team was informed of the Internal Affairs investigations of Podesta and Dilorenzo which were current as at 28 June 1997;

---

[292] Saigon Phase III, PIC Exhibit 11, barcode 5588916.

[293] Operation Saigon Phase III, PIC Transcript, R N McDougall, 28 February 2000, p. 275.

[294] Operation Saigon Phase III, PIC Transcript, P T Fitzpatrick, 23 February 2000, p. 186.

(b) the extent to which Internal Affairs provided to the Shooting Investigation Team after 28 June 1997 information alleging drug or alcohol use by Podesta and/or Dilorenzo on the evening prior to the shooting;

(c) the involvement of Bondi police officers in the investigation of the shooting on and after 28 June 1997; and

(d) the effectiveness or otherwise of Police Service procedures current in June 1997 involving an Internal Affairs officer as review officer.

INFORMATION HELD BY INTERNAL AFFAIRS CONCERNING PODESTA AND DILORENZO BEFORE 28 JUNE 1997

5.8 The evidence establishes that, by 28 June 1997, Internal Affairs had established investigations with respect to Podesta (Operation Borden) and Dilorenzo (Operation Addlestone). Operation Addlestone had been on foot since May 1996 and Operation Borden since May 1997.[295] Both investigations involved drug allegations. As has been noted above with respect to Saigon II, the Commission concluded that Podesta and Dilorenzo were aware prior to 28 June 1997 that they were the subjects of an Internal Affairs investigation. The conversation with Cooper at the Coogee Legion Club on 26 June 1997, and the telephone conversation between Dilorenzo and SA17 on 21 June 1997, supports this conclusion.

5.9 It was the evidence of Inspector Jones,[296] and Inspector Keen,[297] that physical surveillance was not undertaken until September 1997. There were competing investigations and limited surveillance resources at that time. Richmond said that the only surveillance undertaken by 28 June 1997 was for the purpose of obtaining a photograph of Podesta for identification purposes.[298] According to Richmond, there was some discussion in the period after the fatal shooting in which Internal Affairs investigators expressed frustration that Podesta had not been under surveillance on the evening before the shooting.[299]

WHAT DID INTERNAL AFFAIRS TELL THE SHOOTING INVESTIGATION TEAM ABOUT PODESTA AND DILORENZO?

5.10 McDougall said that he had no knowledge at all that Podesta and Dilorenzo were under investigation by Internal Affairs with respect to allegations of drug use and supply as at 28 June 1997. McDougall said that, if he had known this, he would have asked the two officers to provide samples for the purpose of

---

295 Operation Saigon Phase III, PIC Transcript, P D Jones, 21 February 2000, pp. 9-10; C P Keen, 21 February 2000, p. 66.

296 Operation Saigon Phase III, PIC Transcript, P D Jones, 21 February 2000, pp. 14, 46.

297 Operation Saigon Phase III, PIC Transcript, C P Keen, 21 February 2000, p. 67.

298 Operation Saigon Phase III, Exhibit 82B, p. 14.

299 Operation Saigon Phase III, Exhibit 82B, pp. 15-16.

testing.[300] McDougall did not consider that there was a statutory power to require samples from an officer at that time. As noted above in paragraph 4.47, the Act authorised a random or targeted test but testing was not being undertaken at that time. In any event, McDougall saw nothing in the demeanour or appearance of either officer to suggest that either was affected by alcohol or drugs.[301]

5.11 In May 1997, Commander Brammer was the Commander of Internal Affairs and the head of the Professional Responsibility Command.[302] Gary Richmond, who was not a sworn officer, was appointed in May 1997 to head the investigations unit within the Professional Integrity Branch ('PIB').[303] The line of command proceeded from Brammer to Richmond and then to the team leaders, including Jones.[304] Inspector Martin was the legal review officer,[305] and played a part in the line of command as well.[306] It was 'never quite clear' to Brammer how to define Martin's role at that time. Because of the past relationship between PIB staff and Martin, it appeared that staff went to Martin for advice more so than Richmond.[307] Richmond said there was some evolution of his position due to the opposition to his appointment because he was not a sworn officer.[308] He said that he was 'uncomfortable' with the fact that he was going to the PIB to lead the investigations unit and yet people reported direct to Brammer.[309] This uncertainty concerning the line of command and understanding of functions appears to have contributed to a breakdown in effective communications between Internal Affairs and the Shooting Investigation Team on significant issues relating to the investigation.

5.12 Within two to three days after the incident, Keen learned that Podesta and Dilorenzo had been involved in the Levi shooting.[310] Jones heard within a week that Podesta was involved in the shooting. However, Jones was attending a course at the Academy at the time and did not return to duty at Internal Affairs until late July or early August 1997.[311]

5.13 According to Jones, there were no procedural guidelines in June 1997 requiring Internal Affairs officers to consider providing information to a Shooting Investigation Team about officers involved in a police shooting. It was a discretionary matter for individual officers to determine whether to disseminate

---

300 Operation Saigon Phase III, PIC Transcript, R N McDougall, 28 February 2000, pp. 282-283.
301 Operation Saigon Phase III, PIC Transcript, R N McDougall, 28 February 2000, pp. 279-281.
302 Operation Saigon Phase III, PIC Transcript, M J Brammer, 22 February 2000, pp. 129-130.
303 Operation Saigon Phase III, Exhibit 82B, p. 6.
304 Operation Saigon Phase III, PIC Transcript, M J Brammer, 22 February 2000, p. 130.
305 Operation Saigon Phase III, PIC Transcript, R I Martin, 24 February 2000, p. 208.
306 Operation Saigon Phase III, PIC Transcript, M J Brammer, 22 February 2000, p. 130.
307 Operation Saigon Phase III, PIC Transcript, M J Brammer, 22 February 2000, p. 130.
308 Operation Saigon Phase III, PIC Exhibit 82B, p. 6.
309 Operation Saigon Phase III, PIC Exhibit 82B, p. 27.
310 Operation Saigon Phase III, PIC Transcript, C P Keen, 2 February 2000, p. 68.
311 Operation Saigon Phase III, PIC Transcript, P D Jones, 21 February 2000, pp. 15-16.

information.[312] Brammer confirmed that there was no such procedure in 1997. He asserted an assumption that Chief Inspector Baker, the then Patrol Commander of Bondi Police Station, may have shared information with the Shooting Investigation Team although he acknowledged that he did not check with Baker if he had done so.[313] It is unlikely that Baker would have considered himself at liberty to share with the Shooting Investigation Team the information that had been passed on confidentially to Internal Affairs by him and Cooper on 27 May 1997. Brammer agreed that this was likely to be Baker's approach.[314]

5.14 Richmond said this was the first time he had been in an 'us-and-them scenario' in his policing history.[315] The Commission is of the opinion that this is a somewhat unusual term to use to describe two investigations being carried out by the one Police Service. It is apparent that there was no effective procedure in 1997, for Internal Affairs to assess whether information should be disseminated. There appears to have been a prima facie reluctance to share information with, at best, an ad hoc process for deciding if information should be passed on. As will be seen, some information was passed on (in whole or part), some was withheld by Internal Affairs and some was effectively lost.

THE INFORMATION FROM SA1 AND SA3

5.15 In mid-September 1997, information was received by Keen from SA1 alleging that an officer involved in the shooting had been drinking the night before the shooting and up to 3.00am on 28 June 1997. SA1 stated that SA3 was the source of the information. Keen considered that this information should be passed on to the Shooting Investigation Team.[316] There was some contact made by Keen to McDougall on 18 September 1997[317] but, by the time they came to speak, Brammer had issued a directive that the investigators should not pass this information on.[318] Brammer gave consideration to the appropriate way of dealing with the matter. On 19 September 1997, Brammer requested Chief Inspector McSorley to provide McDougall with information concerning the SA1 information held by Internal Affairs. McSorley spoke to McDougall about this but did not reveal the identity of SA1 or SA3.[319] Thereafter, it was determined that the best way forward was that a meeting be held with the State Coroner and others to allow some discussion with respect to these matters.[320] Brammer acknowledged that there was a failure in communication from him to

312 Operation Saigon Phase III, PIC Transcript, P D Jones, 21 February 2000, p. 16.

313 Operation Saigon Phase III, PIC Transcript, M J Brammer, 22 February 2000, pp. 132-134.

314 Operation Saigon Phase III, PIC Transcript, M J Brammer, 23 February 2000, p. 183.

315 Operation Saigon Phase III, PIC Exhibit 82B, p. 23.

316 Operation Saigon Phase III, PIC Transcript, P D Jones, 21 February 2000, pp. 19-20; C P Keen 22 February 2000, p. 74.

317 Operation Saigon Phase III, PIC Transcript, C P Keen, 22 February 2000, p. 77.

318 Operation Saigon Phase III, PIC Transcript, M J Brammer, 22 February 2000, p. 137.

319 Operation Saigon Phase III, PIC Transcript, B R McSorley, 22 February 2000, pp. 124-4; R N McDougall 28 February 2000, p. 297.

320 Operation Saigon Phase III, PIC Transcript, M J Brammer, 22 February 2000, pp. 138-139.

Internal Affairs officers concerning what was required.[321] It is apparent that Keen and Jones considered that Brammer's temporary prohibition upon the provision of information directly to the Shooting Investigation Team remained on foot from September 1997 to February 1998. Richmond said that he had a 'general impression' that the investigators were speaking directly to McDougall prior to 17 October 1997.[322]

5.16 On 17 October 1997, a meeting took place at the Coroner's Court at Glebe, between, amongst others, Mr D W Hand, the State Coroner, Mr Cowan, Counsel Assisting the Coroner, Mr Tim Sage, Assistant Commissioner of the Police Integrity Commission, Brammer, Richmond and McDougall. The meeting was told that Internal Affairs had a proactive inquiry afoot with respect to Podesta and Dilorenzo concerning allegations of drug use and supply.[323] Mr Cowan told the meeting of the hearsay information he had received from Robert Bromwich, a barrister with the Commonwealth Director of Public Prosecutions, that the officers involved in the shooting had been seen drinking in a Bondi establishment until 3.00am on the day of the shooting.[324] Richmond told the meeting of information received by Internal Affairs alleging that the officers had been intoxicated the night before the shooting.[325] The names of SA1 or SA3 were not mentioned at the meeting.[326] Richmond said that there was no discussion between Brammer and himself before the meeting as to the purpose of the meeting. Richmond thought that he was there as an 'after thought'.[327]

5.17 At the end of the meeting, it is now clear that misunderstanding and confusion existed as to who was to investigate what. Brammer said that the demarcation line between the two investigations was 'surrounded by misunderstanding'.[328] Brammer assumed that McDougall would investigate all information alleging that the officers were intoxicated by alcohol or drugs at a time proximate to and shortly before the shooting.[329] According to Keen and Jones (who were not at the meeting), a similar assumption was made, although they believed that McDougall had been provided with the names of SA1 and SA3 at the meeting of 17 October 1997.[330] This was not the case. Richmond assumed that McDougall would contact the Internal Affairs investigators and be given

---

321 Operation Saigon Phase III, PIC Transcript, M J Brammer, 22 February 2000, p. 138.

322 Operation Saigon Phase III, PIC Exhibit 82B, p. 19.

323 Operation Saigon Phase III, PIC Transcript, M J Brammer, 22 February 2000, pp. 139-140; Operation Saigon Phase III, PIC Exhibit 82B, p. 21.

324 Operation Saigon Phase III, PIC Transcript, R N McDougall, 28 February 2000, p. 304.

325 Operation Saigon Phase III, PIC Transcript, M J Brammer, 22 February 2000, p. 139; R N McDougall, 28 February 2000, p. 303; Operation Saigon Phase III, PIC Exhibit 82B, pp. 21-22.

326 Operation Saigon Phase III, PIC Transcript, M J Brammer, 22 February 2000, p. 140; R N McDougall, 28 February 2000, p. 304; Operation Saigon Phase III, PIC Exhibit 82B, p. 22.

327 Operation Saigon Phase III, PIC Exhibit 82B, p. 21.

328 Operation Saigon Phase III, PIC Transcript, M J Brammer, 2 March 2000, p. 603.

329 Operation Saigon Phase III, PIC Transcript, M J Brammer, 22 February 2000, p. 141.

330 Operation Saigon Phase III, PIC Transcript, P D Jones, 21 February 2000, pp. 21-22; C P Keen, 22 February 2000, p. 82.

'whatever we had with the exception of anything to do with the undercover operatives'.[331] McDougall says that he believed that he was to investigate allegations that the officers were intoxicated by alcohol prior to the shooting but that Internal Affairs would investigate any allegations that the officers were affected by drugs prior to the shooting.[332]

5.18 After 17 October 1997, McDougall proceeded to investigate the Bromwich material and this led him to an interview with Easton James in November 1997.[333] Internal Affairs did not investigate further the SA1/SA3 material. Nor did McDougall. There was no interaction between Internal Affairs and the Shooting Investigation Team between 17 October 1997 and 2 February 1998.[334]

5.19 Detective Inspector Keen gave evidence that on 2 February 1998, the identity of SA1 and SA3 was provided to McDougall by Inspector Martin.[335] This information had not been passed on prior to that time. There was a suggestion in the evidence that McDougall knew the identity of SA3 prior to 2 February 1998. Martin gave evidence before the Commission of a conversation with McDougall in which McDougall said that he was already aware of the identity of SA3.[336] Keen was asked about a running sheet entry to similar effect.[337] McDougall was adamant that he was not given the name of SA3 until 2 February 1998.[338]

ASSESSMENT OF THE EVIDENCE CONCERNING THE INFORMATION FROM SA1 AND SA3

5.20 The Commission accepts McDougall's evidence, that he was not aware of the identity of SA3 prior to 2 February 1998, and is of the opinion that the evidence of Keen and Martin on this aspect is mistaken. McDougall complained on 4 February 1998 about the late provision of this information.[339] Keen's written reply to issues raised in McDougall's complaint did not assert that McDougall knew the identity of SA3 prior to 2 February 1998.[340] Within a short time after 2 February 1998, McDougall was able to identify SA3 and he was spoken to without useful information being provided.[341]

---

331 Operation Saigon Phase III, Exhibit 82B, p. 31.

332 Operation Saigon Phase III, PIC Transcript, R N McDougall, 28 February 2000, pp. 305, 324.

333 Operation Saigon Phase III, PIC Transcript, R N McDougall, 28 February 2000, pp. 307, 310.

334 Operation Saigon Phase III, PIC Transcript, C P Keen, 22 February 2000, p. 94.

335 Operation Saigon Phase III, PIC Transcript, C P Keen, 22 February 2000, p. 88; R N McDougall, 28 February 2000, pp. 312-313.

336 Operation Saigon Phase III, PIC Transcript, R I Martin, 22 February 2000, pp. 218-219.

337 Operation Saigon Phase III, PIC Transcript, C P Keen, 22 February 2000, pp. 98, 107-110.

338 Operation Saigon Phase III, PIC Transcript, R N McDougall, 28 February 2000, pp. 312, 316.

339 Operation Saigon Phase III, PIC Exhibit 25C.

340 Operation Saigon Phase III, PIC Transcript, C P Keen, 22 February 2000, pp. 107-110.

341 Operation Saigon Phase III, PIC Transcript, R N McDougall, 28 February 2000, pp. 319-320.

5.21 The Commission is of the view that the failure to disclose the identity of SA3 was the product of confusion and misunderstanding between the two investigations and an excessive degree of secrecy on the part of Internal Affairs with respect to its information. Brammer explained that a critical factor affecting the secrecy of Internal Affairs investigations was that 'there be no whales in the bay'[342] (the term 'whale in the bay' was identified by the Royal Commission as part of the language of the Police Service and is readily understood as an alert for the existence of an Internal Affairs inquiry).[343] A paramount consideration was that the targets of an investigation should not learn that they were under investigation.[344] This is not without irony in the present case. The evidence of Cooper, which is accepted by the Commission, reveals that Podesta and Dilorenzo were aware on 26 June 1997 that they were under Internal Affairs investigation. There is no evidence that they had learned this through an Internal Affairs leak. It is noteworthy, however, that the secretive approach of Internal Affairs concerning dissemination of information was intended to guard against an event which had already occurred in this case.

5.22 Mr Brammer readily conceded that, as at June 1997 there were no procedures in place for the Internal Affairs command to pass on information to any Shooting Investigation Team. In any event, as he stated, his priority was security and he admitted that '… maybe I did drive very hard when I came into the command about the level of security and also the consequences of the breach of security …'.[345]

5.23 Brammer acknowledged that the misunderstanding after the 17 October 1997 meeting could have been avoided if a document had been prepared and provided to the investigators canvassing the issues raised and steps to be taken.[346]

5.24 The Commissioner of Police accepts that there may have been some misunderstanding, however he rejects Counsel Assisting's submission that there was an excessive degree of secrecy. The submissions on behalf of the Commissioner of Police state that Counsel Assisting's submission in this respect '… may well connote something sinister on the part of members of Internal Affairs. There can be no suggestion of any such sinister or corrupt conduct on the part of the members of the Internal Affairs Command'.[347] The Commission does not accept this submission on behalf of the Commissioner of Police and adopts the submission of Counsel Assisting in this respect. As expressed elsewhere in this Report, a finding that there was an excessive degree of secrecy does not, however, indicate sinister or corrupt conduct on the part of Internal Affairs officers.

---

342 Operation Saigon Phase III, PIC Transcript, M J Brammer, 22 February 2000, p. 133.

343 Royal Commission into the NSW Police Service, *Final Report Volume I: Corruption*, May 1997, p. 193.

344 Operation Saigon Phase III, PIC Transcript, M J Brammer, 23 February 2000, pp. 170-171.

345 Operation Saigon Phase III, PIC Transcript, M J Brammer, 22 February 2000, pp. 132-133.

346 Operation Saigon Phase III, PIC Transcript, M J Brammer, 22 February 2000, p. 138; M J Brammer, 2 March 2000, pp. 604-605; Operation Saigon Phase III, PIC Exhibit 25C, barcode 5269912.

347 PIC Exhibit 98, barcode 5767608.

THE INFORMATION FROM SA2

5.25 The evidence before the Commission indicated that the information from SA2 first came to the attention of the Police Service on 30 July 1998 with Jones receiving it on 4 August 1998.[348] By this time, the inquest was over and the DPP had determined not to prosecute Podesta and Dilorenzo. Internal Affairs passed some of the information from SA2 on to McDougall in August 1998.[349] Jones did not contact McDougall again regarding SA2's information, as she had gone into hiding and had not attended arranged meetings.[350] McDougall acknowledged that there was contact by Internal Affairs after the inquest with further information but there was not documentary follow-up. He considered that his role in the investigation was at an end by then.[351]

THE INFORMATION FROM SA5

5.26 On 31 October 1997, SA5 provided information to Internal Affairs alleging that Podesta had been observed under the influence of something the night before the shooting. The information was hearsay but the names of sources were provided.[352] The Internal Affairs running sheet indicated that this information needed to be investigated.[353] The information was not passed on to McDougall,[354] nor did Internal Affairs investigate it. Jones was unaware whether any person within Internal Affairs grappled with the question as to whether the information should be disseminated to the Shooting Investigation Team.[355]

5.27 Both Jones and Keen mentioned in evidence that covert and proactive investigations were underway in Operation Borden at that time and that no step should have been taken which might have jeopardised that investigation.[356] However, the Commission is of the opinion that it was clearly appropriate that some part of the Police Service investigate the SA5 information so that any evidence, which might be forthcoming, could be provided to the Coroner. Keen agreed that Internal Affairs could have checked with the Shooting Investigation Team concerning the progress of their enquiries without interfering with the proactive investigation.[357] The information was not investigated at all by the

---

348 Operation Saigon Phase III, PIC Transcript, P D Jones, 21 February 2000, p. 33.

349 Operation Saigon Phase III, PIC Transcript, P D Jones, 21 February 2000, pp. 35-36.

350 Operation Saigon Phase III, PIC Transcript, P D Jones, 21 February 2000, p. 37.

351 Operation Saigon Phase III, PIC Transcript, R N McDougall, 28 February 2000, pp. 328-329.

352 Operation Saigon Phase III, PIC Transcript, C P Keen, 22 February 2000, p. 107.

353 Operation Saigon Phase III, PIC Transcript, C P Keen, 22 February 2000, p. 84.

354 Operation Saigon Phase III, PIC Transcript, C P Keen, 22 February 2000, p. 85; R N McDougall, 28 February 2000, p. 327.

355 Operation Saigon Phase III, PIC Transcript, P D Jones, 21 February 2000, pp. 27-28.

356 Operation Saigon Phase III, PIC Transcript, P D Jones, 21 February 2000, p. 29; C P Keen, 22 February 2000, p. 84.

357 Operation Saigon Phase III, PIC Transcript, C P Keen, 22 February 2000, pp. 93-94.

Police Service. Commission officers investigated the matter in 1999 and no evidence was forthcoming.[358]

THE INFORMATION PROVIDED BY SA6

5.28 On 4 March 1998, SA6 provided information to the Customer Assistance Unit of the Police Service that was then provided to the Internal Affairs Assessment Unit the next day.[359] SA6 alleged that one or more of the officers involved in the shooting were intoxicated the night before the shooting. Although this information was directed to Inspector Jones, Jones gave evidence before the Commission that the information did not reach him. Indeed, Inspector Jones did not become aware of its existence until June 1999.[360] The inquest was still continuing as at 5 March 1998.

5.29 The information should have been provided to McDougall immediately, however, it was not. McDougall said that he would have investigated this information without delay.[361] SA6's source died on 1 January 1999,[362] therefore the opportunity to investigate the information received from SA6 was lost. It is not possible to surmise now whether a prompt investigation of such information in March 1998 would have produced any evidence.

5.30 Jones advised the Commission that procedural changes would avoid a repetition of this. He said that the activity of the Operations Review Committee, which vets investigations, would guard against the prospect of information being filed and forgotten.[363] Brammer was confident that these new procedures would prevent a repetition of problems arising in relation to the handling of the SA6 information. Brammer referred to other procedural changes, including the maintenance of a chronological record of events and the introduction of the '*E@gle.i*' investigation management system, which would guard against the communication failures identified in the Saigon III hearings.[364] It is critical for the effective operation of the Police Service that information is promptly investigated and not merely 'pigeon-holed'.

THE INFORMATION PROVIDED BY SA8

5.31 Internal Affairs received hearsay information on 31 March 1998 from SA8 alleging that Podesta had been using drugs on the night before the shooting.[365]

---

358 Operation Saigon Phase III, Exhibit 90C.

359 Operation Saigon Phase III, PIC Transcript, P D Jones, 21 February 2000, pp. 29-30.

360 Operation Saigon Phase III, PIC Transcript, P D Jones, 21 February 2000, pp. 29-31.

361 Operation Saigon Phase III, PIC Transcript, R N McDougall, 28 February 2000, p. 327.

362 Operation Saigon Phase III, PIC Transcript, M J Brammer, 2 March 2000, p. 602; Operation Saigon Phase III, Exhibit 90C.

363 Operation Saigon Phase III, PIC Transcript, P D Jones, 21 February 2000, p. 54.

364 Operation Saigon Phase III, PIC Transcript, M J Brammer, 23 February 2000, p. 177.

365 Operation Saigon Phase III, PIC Transcript, P D Jones, 21 February 2000, p. 38.

Internal Affairs did conduct certain inquiries with respect to this information and elicited no evidence adverse to Podesta. This information was passed on to McDougall.[366] Keen explained that Internal Affairs had followed up the SA8 information because it was thought that the investigation might assist the proactive investigation.[367]

ASSESSMENT OF THE FLOW OF INFORMATION FROM ONE PART OF THE POLICE SERVICE TO ANOTHER

5.32 The Police Service accepts that there may have been some confusion and misunderstanding in relation to the flow of information on some occasions, however it denies the assertion that the major difficulty in this case flowed from the undue secrecy of Internal Affairs in relation to the information it held, and the failure to provide the information to the Shooting Investigation Team. The Police Service submits that there was no undue secrecy on the part of members of Internal Affairs, and that, as stated by Brammer during evidence, a very high level of security is required within Internal Affairs.[368]

5.33 Mr Brammer gave evidence that his command was in a state of change during the period in question.[369] The Commissioner of Police had put him in charge of a difficult command, with the brief to develop it. It was a time of flux and change for the Internal Affairs command. Mr Brammer said that he, at all relevant times, was doing his best to change procedures and attitudes, and to deal with what he called the 'whale in the bay' situation. Submissions on behalf of the Commissioner of Police state that Brammer and his command had to be flexible and make discrete decisions, and respond to circumstances as they arose.[370]

5.34 While the Police Service, through Mr Brammer, accepts that what happened after 17 October 1997 was a 'communications problem',[371] the Service has submitted that it does not accept that 'there appears to have been a prima facie reluctance to share information'.

5.35 The Commission is of the opinion that there were major deficiencies in the passing of information from one part of the Police Service to another in the investigation of allegations that Podesta and/or Dilorenzo were affected by alcohol

366 Operation Saigon Phase III, PIC Transcript, C P Keen, 22 February 2000, pp. 102-103.

367 Operation Saigon Phase III, PIC Transcript, C P Keen, 22 February 2000, p. 113.

368 PIC Exhibit 98, barcode 5767608.

369 Operation Saigon Phase III, PIC Transcript, M J Brammer, 22 February 2000, pp. 130-131.

370 PIC Exhibit 98, barcode 5767608.

371 Operation Saigon Phase III, PIC Transcript, M J Brammer, 2 March 2000, p. 604.

or drugs at the time of the shooting. Factors contributing to these failures included the following:

(a) the unclear line of command within Internal Affairs from Brammer to Richmond to the team leaders with occasional involvement of Martin;

(b) the absence of procedural guidelines requiring Internal Affairs to give consideration to the dissemination of information to the Shooting Investigation Team;

(c) the failure of Internal Affairs officers to give sensible consideration to dissemination of information supplied to and held by the command which was clearly relevant to the coronial investigations being carried out by the Shooting Investigation Team;

(d) the absence of any effective system within Internal Affairs to ensure that information received (such as the SA6 information) was brought to the attention of the relevant Internal Affairs team leader; and

(e) the failure of Brammer and Richmond, following the 17 October 1997 meeting, to clearly communicate to Internal Affairs officers the steps to be taken by those officers for the purpose of liaising with the Shooting Investigation Team.

5.36 The Commission is of the opinion that the deficiencies listed above stemmed from confusion and misunderstanding rather than corruption or misconduct. There is certainly no evidence that any failure to pass on information was intended to protect Podesta and Dilorenzo, or in some way assist them. The Commission is of the opinion that both Internal Affairs and McDougall intended to undertake their own separate investigations of Podesta and Dilorenzo properly, and that the major difficulty in this case flowed from the undue secrecy of Internal Affairs with respect to information held by it and the failure to appropriately provide information to a most important police investigation being undertaken for the purpose of the coronial inquiry.

THE INVESTIGATION ON 28 JUNE 1997

5.37 It does not appear that any orderly and structured control was taken of the scene of the shooting immediately after it occurred on the morning of 28 June 1997. The area was cordoned off, but as Detective Sergeant Purcell saw it, when he arrived at the beach at about 8.00am no one appeared to be in charge.[372] Bondi Detectives commenced to undertake a range of investigative activities that morning. McDougall did indicate that there were resource difficulties

[372] Operation Saigon Phase III, PIC Transcript, A M Purcell, 29 February 2000, p. 438.

at that time, given the number of eyewitnesses, and that Bondi officers were needed to perform duties.[373] However, the evidence of Purcell and Detective Senior Constable Wilson suggests that they took no statements from any eyewitnesses on 28 June 1997. They spent the day attending to exhibits and visiting St Vincent's Hospital for a range of purposes including interviewing nurses concerning Mr Levi's history and mental state.[374]

5.38 Inspector Fitzpatrick attended on 28 June 1997, as he was the weekend call-out officer for Internal Affairs Region South. He did not know what his functions as review officer were under Police Service procedures and took no steps to find out. He had not performed this function before.[375] Nor did he have knowledge of the required procedures to be undertaken by a Shooting Investigation Team under Police Service procedures. His evidence was that he was there to ensure the integrity of the investigation.[376] However, he stated in evidence that he was not in a position to determine whether the investigation was conducted in accordance with the *Commissioner's Instructions*, because he was not aware of what the instructions said.[377] He was not from the Professional Responsibility Command and had no knowledge of the covert investigations concerning Podesta and Dilorenzo.[378] The Commission is of the opinion that Fitzpatrick did not have any useful input at Bondi on the day of the shooting, other than making some observations concerning the testing of weapons. His contribution that day illustrates a significant deficiency in the procedures at that time with respect to the investigation of police shootings. Fitzpatrick ceased to be the review officer for the investigation on 23 July 1997.[379]

INVOLVEMENT OF BONDI POLICE IN THE INVESTIGATION

5.39 Following the Inquest into the death of Roni Levi, the Coroner commented as follows:[380]

> The incident on Bondi Beach on the morning of the 28th June, 1997, resulting in the death of Roni Levi at the hands of police officers was in my opinion one of the most serious events involving police that I have encountered. It was to be expected that the Police Service would make available to the officer in charge of the investigation all necessary resources to properly investigate the incident in accordance with the Commissioner's instructions. Notwithstanding the best endeavours

---

373 Operation Saigon Phase III, PIC Transcript, R N McDougall, 28 February 2000, pp. 283-284.

374 Operation Saigon Phase III, PIC Transcript, M J Wilson, 29 February 2000, pp. 388-389; A M Purcell, 29 February 2000, pp. 441-443.

375 Operation Saigon Phase III, PIC Transcript, P T Fitzpatrick, 23 February 2000, pp. 186-187.

376 Operation Saigon Phase III, PIC Transcript, P T Fitzpatrick, 23 February 2000, pp. 187, 192.

377 Operation Saigon Phase III, PIC Transcript, P T Fitzpatrick, 23 February 2000, p. 202.

378 Operation Saigon Phase III, PIC Transcript, P T Fitzpatrick, 23 February 2000, p. 186.

379 Operation Saigon Phase III, PIC Transcript, P T Fitzpatrick, 23 February 2000, p. 195.

380 PIC Exhibit 117.

> of Acting Inspector Robert McDougall, the Officer in Charge of the investigation, he was unable to secure the immediate assistance of investigators from a Region other than the one encompassing Bondi and was obliged to utilise the assistance of officers attached to Bondi Police Station.

5.40 The Commission concurs with the Coroner and is of the view that whatever the exigencies were on 28 June 1997, it is fair to say that the Police Service must have been in a position to provide adequate staff and resources to enable all investigative aspects on and after 29 June 1997 to be undertaken by officers other than Bondi police.[381]

5.41 The evidence of Purcell and Wilson, however, indicates that they were taking statements from witnesses on 29 and 30 June 1997 and 2 July 1997. Although there is no evidence of impropriety on their part in their continuing role in the investigation on those days, there is a clear systemic failure by the Police Service to comply with the then procedures with the real risk of important investigations being carried out by officers who might be perceived as not being at arm's length from Podesta and Dilorenzo. Although Purcell and Wilson did not have close social contacts with Podesta and Dilorenzo on the evidence, they had worked with them from time to time including on an undercover operation in the first half of 1997, after which they went for drinks at the Liberty Lunch. Wilson gave evidence that he attended Podesta's birthday function for about 20 minutes on the evening of 28 June 1997.[382] He said that he attended 'owing to the days events to show a bit of support' for 'Rod and Tony's pretty horrific ordeal'.[383] Further, Wilson rang Podesta at 9.25pm on 28 June 1997, apparently to see where they were going for dinner.[384] It is the Commission's opinion that Purcell and Wilson should not have been placed in the position where they were performing any investigative role after 28 June 1997 even if the practical demands of the Saturday required some actions to be taken by them at that time.

5.42 Wilson took a statement from Witness H on 30 June 1997.[385] Witness H had spoken to a television reporter soon after the shooting on 28 June 1997 and, in answer to a question, had said that he was not sure if Mr Levi had lunged at the officers before the shooting.[386] Witness H saw Chief Inspector Baker make his press statement that day on television news. When he came to make a statement, he said that Mr Levi had lunged at the police before the shooting. The evidence of Witness H at the inquest suggests that his perception of events,

---

381 PIC Exhibit 95, barcode 5767533.

382 Operation Saigon Phase III, PIC Transcript, M J Wilson, 29 February 2000, pp. 383-384, 393.

383 Operation Saigon Phase III, PIC Transcript, M J Wilson, 29 February 2000, pp. 393-394.

384 Operation Saigon Phase III, PIC Transcript, M J Wilson, 29 February 2000, p. 405.

385 Operation Saigon Phase III, PIC Transcript, M J Wilson, 29 February 2000, p. 399.

386 Operation Saigon Phase III, PIC Transcript, M J Wilson, 29 February 2000, p. 401.

and certainly description of events, was in some way contaminated by the media coverage of the incident. There is no evidence that Wilson urged Witness H to take a 'pro-police' stance at the time he made his statement. Nor is there evidence that Wilson urged Witness H to insert the word 'lunged' in his statement, although it is notable that Wilson himself had used the word in the P79A Report of Death to Coroner Form, which he completed at the City Morgue on 28 June 1997. What all this illustrates, however, is that the use of a local officer such as Wilson to take a statement from a man like Witness H exposes the investigation to suspicion of bias. Likewise with the statement taken by Purcell from Witness S on 2 July 1997.

5.43 The statements of Witness H and Witness S contain strong pro-police opinions. Purcell gave evidence that as the statements were for coronial proceedings, they should have included facts and opinions that the witnesses were able to give.[387] McDougall said that he instructed investigators to include everything in the statements as it was a coronial matter.[388] In the case of Witness S, his statement suggested that he was a person with extensive experience in the areas of firearms, crowd control and security matters, thus equipping him to express valuable opinions concerning the events he observed on the beach. His statement concluded that the police had 'acted professionally' in the events leading up to the fatal shooting of Mr Levi.

5.44 When called at the inquest in February 1998, it became apparent that Witness S was not capable of giving sensible coherent evidence.[389] Purcell maintained that he had no recollection of Witness S displaying any unusual or disordered mental state. Indeed, he said he had no real recollection of taking the statement from Witness S.[390]

ASSESSMENT OF THE EVIDENCE OF THE INVOLVEMENT OF BONDI POLICE IN THE INVESTIGATION

5.45 The Commission is of the opinion that the evidence does not support a finding that Purcell fabricated any evidence from Witness S or put words into his mouth. However, the very fact that a local officer such as Purcell was taking a statement from someone where difficulties of this type arose demonstrates the unacceptable nature of local officers continuing to play an important investigative role as late as 2 July 1997.

---

387 Operation Saigon Phase III, PIC Transcript, A M Purcell, 28 February 2000, p. 451.

388 Operation Saigon Phase III, PIC Transcript, R N McDougall, 28 February 2000, p. 291.

389 Operation Saigon Phase III, PIC Transcript, A M Purcell, 28 February 2000, pp. 452-453; Operation Saigon Phase III, PIC Exhibit 62.

390 Operation Saigon Phase III, PIC Transcript, A M Purcell, 28 February 2000, p. 453.

5.46 Submissions on behalf of the Commissioner of Police emphasised the following points to explain the failure of the Police Service to adhere to the then Guidelines with respect to Shooting Investigation Teams:[391]

a. The shooting investigation team was not a standing investigation team, it was formed in response to a specific incident, the shooting of Roni Levi on Bondi Beach. One must remember that at that stage, at the end of June 1997, the whole Police Service was in a state of flux and change; the Service was being restructured.

b. This incident happened in the early hours of Saturday morning, and it was not easy for McDougall to contact police officers and have them work in his team.

c. McDougall gave evidence both in the Coroner's Inquest and in this Commission as to why he used local police officers in the Shooting Investigation Team. Adam Purcell and Murray Wilson were local police officers who helped in the investigation.

d. There is no evidence to suggest that the investigation was compromised because of the use of local police officers; nor indeed was there any cross-examination to that effect.

5.47 As stated previously, the Commission is not of the view that there is evidence of impropriety with respect to Purcell and Wilson's continuing role in the investigation. However, it is clear that there was a systemic failure to comply with the then procedures, and a real risk of such an important investigation being carried out by officers who might be perceived as not being at arm's length from Podesta and Dilorenzo.

ASSESSMENT OF THE POLICE INVESTIGATION OF THE SHOOTING OF RONI LEVI

5.48 Submissions were received from the Newcastle Legal Centre, on behalf of Mr Levi's widow, Melinda Dundas, which stated that the Commission should take into account the approach to police corruption and misconduct suggested by the Royal Commission. The Newcastle Legal Centre submitted that the Commission should consider not only whether or not any action or inaction on the part of individual police officers amounts to corrupt conduct or misconduct, but also:[392]

- whether a pattern of individual actions or inactions is apparent which may properly be regarded as corruption or misconduct;

[391] PIC Exhibit 98, barcode 5767608.

[392] PIC Exhibit 103, barcode 5767658.

- the reasons for the emergence of any individual misconduct or corruption or pattern of corruption or misconduct; and

- any system or supervisory failure which may have facilitated any such misconduct or corruption.

5.49 The Newcastle Legal Centre submitted that the Commission should consider any form of process or 'police culture' corruption or misconduct, including that arising from any partial exercise of police discretion in the supervision and execution of the investigation of the shooting.[393]

5.50 The Newcastle Legal Centre further submitted that the Commission should make it clear that: [394]

> … the effect of the police investigative failures in relation to the fatal shooting of Roni Levi was to protect police under investigation for the fatal shooting of a civilian from accountability to the law.

5.51 They further submitted:[395]

> … that the Commission should find that the investigations carried out by the New South Wales Police Service relating to the fatal shooting of Roni Levi were seriously flawed by a series of fundamental failures that could and should have been avoided … The Commission should also find that, in the circumstances, the impartiality and effectiveness of investigations by the New South Wales Police Service into matters involving the conduct of its own officers is seriously wanting and, as a consequence, its integrity compromised.

5.52 The Commission is of the opinion that both Internal Affairs and the Shooting Investigation Team intended to undertake their respective investigations of Podesta and Dilorenzo properly. The Commission is not of the opinion that the deficiencies in the investigations of McDougall or Internal Affairs stemmed from corruption or misconduct. As previously stated, the Commission is of the view that the confusion and major difficulty in the police investigation of this case flowed from the undue secrecy of Internal Affairs with respect to information held by it and the failure to appropriately provide information to a highly important police investigation being undertaken for the purpose of the coronial inquiry.

---

393 PIC Exhibit 103, barcode 5767658.

394 PIC Exhibit 103, barcode 5767658.

395 PIC Exhibit 103, barcode 5767658.

THE CORONIAL INQUEST

5.53 Written submissions made on behalf of Podesta and Dilorenzo[396] and Melinda Dundas[397] sought to criticise aspects of the coronial inquiry into the death of Mr Levi. In particular, some criticism was directed at meetings between the then State Coroner, police officers and others on 17 October 1997 and 4 March 1998. Submissions in reply were made on behalf of the Attorney-General[398] and the Commissioner of Police[399] with respect to these matters.

5.54 The submissions of the Attorney-General point, accurately, to the limited purpose of the Commission's investigation. The Commission is investigating, in various respects, the conduct of police officers. The Commission is not investigating the conduct of the inquest by the then State Coroner or those assisting him. The submissions made on behalf of the Attorney-General emphasise the broad investigatory function of the Coroner. The Coroner is not presiding as a judicial officer determining contested adversarial litigation. The Attorney-General submitted that there was no impropriety in the State Coroner being a party to the meetings in question, nor was there any duty upon him to disclose what information was raised at those meetings to persons who were not present at them. The Commission agrees with this submission. Likewise, the Commission considers that no legitimate criticism can be directed at the police officers who attended these meetings. The submissions made on behalf of the Attorney-General concerning the coronial function are relevant to this issue as well.

5.55 It was for the then State Coroner to have regard to the provisions of section 19 of the *Coroners Act 1980* (as it then stood) for the purpose of determining whether the inquest should be terminated. Section 19 then provided that an inquest must be terminated where there was a prima facie case of an indictable offence against a known person relating to the death. From the submissions made to the then State Coroner, it is clear what the evidentiary material was and what the issues were which gave rise to the section 19 termination. Indeed, having regard to the provisions of section 19 as it then stood, it may fairly be said that his Worship was left with no alternative but to terminate the inquest. Section 19 has been amended since then to provide for a more flexible test similar to that available to a magistrate in committal proceedings under section 41 of the *Justices Act 1902*. There is simply no evidence that the meeting of 4 March 1998 between the then State Coroner and police officers affected the termination of the inquest under section 19 of the *Coroners Act 1980*.

396 PIC Exhibit 102, barcode 5767644.
397 PIC Exhibit 103, barcode 5767658.
398 PIC Exhibit 110, barcode 5726081.
399 PIC Exhibit 112, barcode 5726400.

OTHER ISSUES RAISED IN SUBMISSIONS OF MS DUNDAS

5.56 A variety of issues are raised in the written submissions made on behalf of Ms Dundas which do not arise from the evidence before the Commission in Operation Saigon. The Commission, of course, is exercising its powers and functions under the *Police Integrity Commission Act 1996*, in the context of the general scope and purpose of the hearings announced with respect to Operation Saigon. The submissions in reply on behalf of the Attorney-General and Commissioner of Police point to the fact that much that is contained in the submissions of Ms Dundas lies outside the scope and purpose of the Operation Saigon hearings. The Commission agrees with these submissions and has confined its assessments, opinions and recommendations, and reasons therefore, to those matters which were investigated during the Operation Saigon hearings.

6. AFFECTED PERSONS

6.1 Persons against whom, in the Commission's opinion, substantial allegations have been made in the course of, or in connection with, an investigation, are 'affected persons' for the purposes of a Report to Parliament by the Commission.

6.2 The Report to Parliament must comply with section 97(2) of the *Police Integrity Commission Act 1996*. That section provides that:

> (2) The report must include, in respect of each 'affected person', a statement as to whether or not in all the circumstances the Commission is of the opinion that consideration should be given to the following:
>
> (a) the prosecution of a person for a specified criminal offence;
>
> (b) the taking of action against the person for a specified disciplinary offence;
>
> (c) the taking of action (including the making of an order under section 181D of the *Police Service 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 Service Act 1990* against the person as a police officer.

6.3 In discharging its functions under section 97(2) the Commission is mindful of the provision of section 40 of the *Police Integrity Commission Act 1996*. In particular, 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 subsequent criminal or civil proceedings, except for proceedings for an offence against the *Police Integrity Commission Act 1996* or proceedings for contempt under that Act; section 40(3). Even if the objection is taken, however, such material is available to the Commissioner of Police in considering whether to make an order under section 173 or section 181D of the *Police Service Act 1990*. Such material is also admissible in proceedings under Division 1A or 1C of Part 9 of the *Police Service Act 1990* and any disciplinary proceedings; section 40(3).

6.4 Accordingly, the Commission must give due attention to the admissibility of evidence in considering what statements ought to be made in the Report to Parliament pursuant to section 97(2) of the *Police Integrity Commission Act 1996*.

SAIGON PHASE I

6.5 The following persons are or were 'affected persons' for the purposes of section 97(3) of the *Police Integrity Commission Act 1996*:

- Christan Bruce;
- Peter Murrant;
- Lenin Lambert;
- Lisa Troost;
- Rodney Podesta;
- Easton James;
- SA19;
- Anthony Dilorenzo;
- David Price;
- Anthony Binns;
- Matthew Crotty; and
- Paul Petith.

CHRISTAN DAVID BRUCE

6.6 Bruce is an 'affected person' because he is the subject of a number of substantial allegations, namely:

- using prohibited drugs;
- associating with a supplier of prohibited drugs; and
- releasing confidential police information.

6.7 Bruce's admissions of drug use cannot be used against him. Self administration of a prohibited drug is a summary offence under section 12 of the *Drug Misuse and Trafficking Act 1985*. Such an offence shall be prosecuted summarily

before a Local Court constituted by a Magistrate sitting alone.[400] The *Drug Misuse and Trafficking Act 1985* does not prescribe a limitation period for summary prosecution under that Act. Accordingly, section 56 of the *Justices Act 1902* applies. Any prosecution of an offence under section 12 must be commenced within six months from the time of the offence. Accordingly, for the purpose of section 97(2)(a) of the *Police Integrity Commission Act 1996* the Commission is of the opinion that consideration **should not** be given to the prosecution of Bruce for the offence of self administration of prohibited drugs.

6.8 On 8 March 1999 Bruce was charged with 'Hinder Investigation for Serious Criminal Offence' pursuant to section 315 of the *Crimes Act 1900*, in relation to his warning to Murrant on 11 December 1998. Bruce was discharged at committal with respect to that charge and following a submission by the NSW Director of Public Prosecutions Bruce was committed for trial on the alternate charge of Commit Act with Intent to Pervert the Course of Justice, pursuant to section 319 of the *Crimes Act 1900*.

6.9 On 22 March 2001 Bruce entered a guilty plea in the District Court to the charge of Commit Act with Intent to Pervert the Course of Justice. He was sentenced on 11 May 2001 by Judge Gribson QC to a term of imprisonment of twelve months.

6.10 Bruce was dismissed from the Police Service on 8 March 2000 pursuant to section 181D of the *Police Service Act 1990* on the grounds that the Commissioner of Police no longer had confidence in his suitability to continue as a police officer. As Bruce is no longer a serving police officer, the Commission states pursuant to section 97(2) of the *Police Integrity Commission Act 1996* that it of the opinion that consideration **should not** be given to the taking of action against Bruce pursuant to section 97(2)(b), (c) or (d) of that Act.

PETER JOHN MURRANT

6.11 Murrant is an 'affected person' because he is the subject of a number of substantial allegations, namely:

- that he used prohibited drugs whilst a serving police officer and after he left the Police Service;
- that he supplied prohibited drugs to a number of serving police officers;
- that he engaged in security work for which he was unlicensed;
- that he gave false evidence to the Commission when he stated that he did not perform security work for which he was unlicensed; and

[400] Section 9 of the *Drug Misuse and Trafficking Act 1985*.

- that he gave false evidence to the Commission when he stated that the arrangement for Binns to perform security work on the night of the dance party was not made until that night.

6.12 For the reasons stated above, the limitation period for the prosecution of Murrant for any offences of self administration of prohibited drugs revealed in the evidence before the Commission has long since passed. Accordingly, for the purpose of section 97(2)(a) of the *Police Integrity Commission Act 1996*, the Commission is of the opinion that consideration **should not** be given to the prosecution of Murrant for offences of self administration of prohibited drugs.

6.13 The offence of supplying a prohibited drug is an indictable offence under section 25 of the *Drug Misuse and Trafficking Act 1985*. The limitation provisions in section 56 of the *Justices Act 1902* do not apply to the prosecution of indictable offences.[401] Accordingly there is no limitation period with respect to the offence of supplying a prohibited drug that would bar the prosecution of Murrant for such an offence. A prosecution for supply prohibited drug based on the evidence of Bruce would not involve any substance that would be available for analysis. The absence of such evidence does not necessarily prevent prosecution of a person for supplying a prohibited drug. The prosecution would, however, require evidence of familiarity with the substance supplied to provide evidence that it was, in fact, cocaine. The evidence of Bruce contains prima facie evidence of familiarity by him with prohibited drugs that would provide such evidence at a prima facie level. Accordingly, for the purpose of section 97(2)(a) of the *Police Integrity Commission Act 1996*, the Commission is of the opinion that consideration **should** be given to the prosecution of Murrant for the offences of supplying prohibited drugs.

6.14 On 30 January 1999 Murrant applied for Class 1A, 1B and 1C licences under the *Security Industry Act 1997*. Those applications were refused on 6 January 2000.

6.15 Murrant was charged with one count of 'Knowingly Give False Evidence' pursuant to section 107 of the *Police Integrity Commission Act 1996* in relation to the existence of a prior arrangement with Binns for Binns to perform security work at the Botany Dance Party on 13 November 1998. Murrant was discharged at committal before the Local Court on 29 September 1999 and Murrant was then ex officio indicted on the same one count of 'Knowingly Give False Evidence'. He was convicted at Sydney District Court on 9 May 2000 and sentenced to 12 months periodic detention.

6.16 The Commission is of the opinion that consideration **should** be given to the prosecution of Murrant for 'Knowingly Give False Evidence' to the Commission in relation to his evidence concerning the performance by him of security work on 13 November 1998.

---

[401] Section 22(2) of the *Drug Misuse and Trafficking Act 1985*.

6.17 Murrant resigned from the Police Service in September 1998. Accordingly, pursuant to section 97(2) of the *Police Integrity Commission Act 1996*, the Commission is of the opinion that consideration **should not** be given to the taking of action against Murrant pursuant to section 97(2)(b), (c), or (d) of that Act.

LENIN MARX LAMBERT

6.18 Lambert is an 'affected person' because he is the subject of a number of substantial allegations, namely:

- that he used prohibited drugs;
- that he supplied prohibited drugs to SA18; and
- that he was in possession of 84 grams of cocaine found in the clothes dryer at the apartment of Lisa Troost on 20 August 1998.

6.19 For the reasons stated above, the limitation period for the prosecution of Lambert for any offences of self administration of prohibited drugs revealed in the evidence before the Commission has long since passed. His admissions of drug use would not be admissible against him. Accordingly, for the purpose of section 97(2)(a) of the *Police Integrity Commission Act 1996*, the Commission is of the opinion that consideration **should not** be given to the prosecution of Lambert for offences of self administration of prohibited drugs.

6.20 The offence of supplying a prohibited drug is an indictable offence under section 25 of the *Drug Misuse and Trafficking Act 1985*. As stated above, the limitation provisions in section 56 of the *Justices Act 1902* do not apply to the prosecution of indictable offences. Accordingly there is no limitation period with respect to the offence of supplying a prohibited drug that would bar the prosecution of Lambert for such an offence.

6.21 Lambert was charged on 18 February 1999 with five counts of Supply Prohibited Drugs and two counts of Possess Prohibited Drugs. He was committed for trial on 16 March 2000 on four counts of supply including the 84 grams found in the clothes dryer.

6.22 On 23 November 2000 a plea of guilty was entered in the District Court by Lenin Lambert in relation to the supply of prohibited drugs. Lambert was subsequently given a suspended sentence of 15 months by Judge Greg Woods QC.

6.23 As Lambert was not a police officer nor the holder of any relevant office, no occasion arises for consideration to be given to action under section 97(2)(b), (c), or (d) of the *Police Integrity Commission Act 1996*.

LISA JANE TROOST

6.24 Troost is an 'affected person' because she is the subject of a number of substantial allegations, namely:

- using prohibited drugs; and
- possession of prohibited drugs.

6.25 Troost was charged on 18 February 1999 with one count of Possess Prohibited Drug and one count of Supply Prohibited Drug. She was discharged in November 2000 in respect of those charges.

6.26 For the reasons stated previously, the limitation period for the prosecution of Troost for any offences of self administration of prohibited drugs revealed in the evidence before the Commission has long since passed. Her admissions of drug use would not be admissible against her. Accordingly, for the purpose of section 97(2)(a) of the *Police Integrity Commission Act 1996*, the Commission is of the opinion that consideration **should not** be given to the prosecution of Troost for any further criminal offences.

6.27 As Troost was not a police officer nor the holder of any relevant office, no occasion arises for consideration to be given to action under section 97(2)(b), (c), or (d) of the *Police Integrity Commission Act 1996*.

RODNEY JOSEPH WALTER PODESTA

6.28 Podesta is an 'affected person' because he is the subject of a number of substantial allegations, namely:

- using prohibited drugs;
- agreeing to supply prohibited drug; and
- associating with a supplier of prohibited drugs.

6.29 As stated previously, the limitation period for the prosecution of Podesta for any offences of self administration of prohibited drugs revealed in the evidence before the Commission has long since passed. His admissions of drug use would not be admissible against him. Accordingly, for the purpose of section 97(2)(a) of the *Police Integrity Commission Act 1996*, the Commission is **not** of the opinion that consideration should be given to the prosecution of Podesta for offences of self administration of prohibited drugs.

6.30 Podesta was charged on 24 May 1999 with 'Supply Prohibited Drug' (attempt to receive for the purposes of supply) pursuant to section 25(1) of the *Drug Misuse and Trafficking Act 1985*. This related to his agreement with James on 25 February 1998 to buy cocaine in order to supply to SA14. Podesta pleaded guilty and was sentenced on 9 December 1999 to four months imprisonment to be served by way of periodic detention.

6.31 Pursuant to section 97(2) of the *Police Integrity Commission Act 1996*, the Commission is of the opinion that consideration **should not** be given to the prosecution of Podesta for any further criminal offences arising from Saigon I.

6.32 Podesta resigned from the Police Service in March 1998. As he is no longer a serving police officer, the Commission is of the opinion that consideration **should not** be given to the taking of action against Podesta pursuant to section 97(2)(b), (c), or (d) of the *Police Integrity Commission Act 1996*.

EASTON BARRINGTON JAMES

6.33 James is an 'affected person' because he is the subject of a number of substantial allegations, namely:

- using prohibited drugs;
- agreeing to supply cocaine to Podesta on 28 February 1998; and
- supplying cocaine to SA19 on 7 April 1998.

6.34 For the reasons stated above, the limitation period for the prosecution of James for any offences of self administration of prohibited drugs revealed in the evidence before the Commission has long since passed.

6.35 James was charged with two counts of Supply Prohibited Drug, based on the agreement to supply Podesta on 28 February 1998 and the supply to SA19 on 7 April 1998. James was acquitted of the charge involving Podesta and convicted of the charge involving SA19. On 12 May 2000 James was sentenced to a fixed term of six months imprisonment.

6.36 The Commission is of the opinion that consideration **should not** be given to the prosecution of James for any further criminal offences arising from Saigon I.

6.37 As James was not a police officer nor the holder of any relevant office, no occasion arises for consideration to be given to action under section 97(2)(b), (c), or (d) of the *Police Integrity Commission Act 1996*.

SA19

6.38 SA19 died in March 1999 following the completion of the Saigon I hearings. Prior to his death SA19 was an 'affected person' for the purposes of section 97(2) of the *Police Integrity Commission Act 1996* because he was the subject of a number of substantial allegations, namely:

- using prohibited drugs; and
- associating with a supplier of prohibited drugs.

6.39 Given that SA19 died prior to the completion of this Report, he is no longer an 'affected person' in relation to whom an opinion must be expressed for the purposes of section 97(2) of that Act.

ANTHONY STEPHEN DILORENZO

6.40 Dilorenzo is an 'affected person' because he is the subject of a number of substantial allegations, namely:

- using prohibited drugs; and
- associating with a supplier of prohibited drugs.

6.41 As stated above, the limitation period for the prosecution of Dilorenzo for any offences of self administration of prohibited drugs revealed in the evidence before the Commission has long since passed. Accordingly the Commission states that, pursuant to section 97(2) of the *Police Integrity Commission Act 1996*, it is of the opinion that consideration **should not** be given to the prosecution of Dilorenzo for any criminal offences.

6.42 Dilorenzo was dismissed from the Police Service on 29 June 1999 pursuant to section 181D of the *Police Service Act 1990*, on the grounds that the Commissioner of Police no longer had confidence in his suitability to continue as a police officer. Accordingly, pursuant to section 97(2) of the *Police Integrity Commission Act 1996*, the Commission is of the opinion that consideration **should not** be given to the taking of action against Dilorenzo pursuant to section 97(2)(b), (c) or (d) of that Act.

DAVID JEFFREY PRICE

6.43 Price is an 'affected person' because he is the subject of substantial allegations, namely:

- using prohibited drugs;

- associating with a supplier of prohibited drugs; and

- submitting misleading information in order to obtain multiple share allocations.

6.44 For the reasons stated above, the limitation period for the prosecution of Price for any offences of self administration of prohibited drugs revealed in the evidence before the Commission has long since passed.

6.45 In relation to the multiple share applications the Commission is of the opinion that consideration **should** be given to the prosecution of Price for the offences of:

(a) Obtain Valuable Thing or Financial Advantage by False or Misleading Statement pursuant to section 178BB of the *Crimes Act 1900*; and/or

(b) Make False or Misleading Statement in Relation to Securities pursuant to section 999 of the *Corporations Law*; and/or

(c) False Representation to the Commonwealth in relation to the Telstra shares, pursuant to section 29B of the *Commonwealth Crimes Act 1914*.

6.46 Price resigned from the Police Service in 1999. As he is no longer a serving police officer the Commission is of the opinion that consideration **should not** be given to the taking of action against Price pursuant to section 97(2)(b), (c), or (d) of the *Police Integrity Commission Act 1996*.

ANTHONY MICHAEL BINNS

6.47 Anthony Binns is an 'affected person' because he is the subject of a number of substantial allegations, namely:

- using prohibited drugs;

- associating with a supplier of prohibited drugs;

- engaging in secondary employment without permission whilst a serving police officer;

- untruthfulness in an internal police investigation in December 1998; and

- giving false evidence to the Police Integrity Commission in relation to his secondary employment.

6.48 The limitation period for the prosecution of Binns for any offences of self administration of prohibited drugs revealed in the evidence before the Commission has long since passed.

6.49 Accordingly for the purpose of section 97(2)(a) of the *Police Integrity Commission Act 1996*, the Commission is of the opinion that consideration **should not** be given to the prosecution of Binns for the offence of self administration of a prohibited drug.

6.50 Binns was charged with 'Knowingly Give False Evidence' to the Commission pursuant to section 107 of the *Police Integrity Commission Act 1996*. Binns was discharged at committal on 25 February 2000 on the basis that the evidence in question was not considered to be of a material particular to the Commission's investigation. The Commission recommends that consideration **should** be given to the prosecution ex officio of Binns for 'Knowingly Give False Evidence' to the Commission in relation to his secondary employment on 13 November 1998.

6.51 In relation to section 97(2) (b), (c) and (d) of the *Police Integrity Commission Act 1996* the Commission recommends that:

(c) consideration **should not** be given to the prosecution of Binns for a specified disciplinary offence;

(d) consideration **should** be given to the taking of action (including the making of an order under section 181D of the *Police Service Act 1990*) against Binns as a police officer, with a view to dismissing, dispensing with the services of otherwise terminating the services of Binns;

(e) if action is not taken in accordance with paragraph (b) above, consideration **should** be given to the taking of reviewable action within the meaning of section 173 of the *Police Service Act 1990* against Binns.

MATTHEW JAMES CROTTY

6.52 Crotty is an 'affected person' because he is the subject of a number of substantial allegations, namely:

- using prohibited drugs;
- associating with a supplier of prohibited drugs; and
- releasing confidential police information.

6.53 For the reasons stated above in relation to Binns, the limitation period for the prosecution of Crotty for any offences of self administration of prohibited drugs revealed in the evidence before the Commission has long since passed.

6.54 Pursuant to section 97(2) of the *Police Integrity Commission Act 1996* the Commission is of the opinion that:

(a) consideration **should not** be given to the prosecution of Crotty for any criminal offences;

(b) consideration **should not** be given to the prosecution of Crotty for a specified disciplinary offence;

(c) consideration **should** be given to the taking of action (including the making of an order under section 181D of the *Police Service Act 1990*) against Crotty, with a view to dismissing, dispensing with the services of otherwise terminating the services of Crotty; and

(d) if action is not taken in accordance with paragraph (c) above, consideration **should** be given to the taking of reviewable action within the meaning of section 173 of the *Police Service Act 1990* against Crotty.

PAUL JAMES PETITH

6.55 Petith is an 'affected person' because he is the subject of a number of substantial allegations, namely:

- engaging in unauthorised secondary employment whilst a serving police officer;
- untruthfulness to Inspector Moore regarding his relationship with Murrant; and
- giving false evidence at the Police Integrity Commission regarding his relationship with Murrant.

6.56 Petith was charged on 25 February 1999 with 'Knowingly Give False Evidence' to the Commission pursuant to section 107 of the *Police Integrity Commission Act 1996*. He was found Not Guilty at Penrith District Court on 20 April 2000.

6.57 The Commission is of the opinion, pursuant to section 97(2) of the *Police Integrity Commission Act 1996*, that:

(a) consideration **should not** be given to the prosecution of Petith for any criminal offences;

(b) consideration **should not** be given to the prosecution of Petith for a specified disciplinary offence;

(c) consideration **should** be given to the taking of action (including the making of an order under section 181D of the *Police Service Act 1990*) against Petith, with a view to dismissing, dispensing with the services or otherwise terminating the services of Petith, on the grounds that the Commissioner of Police would be entitled to form an opinion that he no longer has confidence in the suitability of Petith to continue as a police officer; and

(d) in the event that action is not taken in accordance with paragraph (c) above, consideration **should** be given to the taking of reviewable action within the meaning of section 173 of the *Police Service Act 1990* against Petith.

SAIGON PHASE II

6.58 The following persons are or were 'affected persons' for the purposes of section 97(3) of the *Police Integrity Commission Act 1996*:

- Rodney Podesta;
- Anthony Dilorenzo;
- Ronald Quin;
- Renee Robertshaw;
- Terry Voto;
- SA10;
- SA11;
- SA9;
- Easton James;
- Kieran O'Connor;
- SA12;
- SA2;
- SA15;

- SA13; and
- Mark Dilorenzo.

RODNEY JOSEPH WALTER PODESTA

6.59 Podesta is an 'affected person' because he is the subject of a number of substantial allegations, namely:

(a) Podesta used prohibited drugs including cocaine, ecstasy and cannabis prior to his joining the Police Service in 1995;

(b) Podesta continued to use prohibited drugs, in particular, cocaine, on a regular basis whilst a serving police officer between May 1995 and 27 June 1997;

(c) Podesta continued to use prohibited drugs, in particular cocaine and ecstasy, in the period between 28 June 1997 and November 1997;

(d) Podesta used cocaine and ecstasy regularly in the period November 1997 to March 1998;

(e) Podesta supplied cocaine to other persons on several occasions; and

(f) Podesta engaged in an improper association with Mark Dilorenzo, a convicted drug supplier, in particular in the period January 1997 to June 1997 when Podesta was a serving police officer.

6.60 Given the limitation period with respect to the offence of self administration of a prohibited drug, any prosecution of Podesta for this offence would be barred. He gave evidence with the benefit of a declaration under section 41 of the *Police Integrity Commission Act 1996*. In these circumstances, the Commission is of the opinion that consideration **should not** be given to the prosecution of Podesta for the offence of self administration of a prohibited drug.

6.61 SA10 said in evidence that he had never seen Podesta supply prohibited drugs,[402] although Podesta had provided cocaine to SA10.[403] The offence of supplying a prohibited drug is an indictable offence under section 25 of the *Drug Misuse and Trafficking Act 1985.* The limitation provisions in section 56 of the *Justices Act 1902* do not apply to the prosecution of indictable offences.[404] Accordingly, there is no limitation period with respect to the offence

[402] Operation Saigon Phase II, PIC Transcript, SA10, 3 November 1999, p. 187.
[403] Operation Saigon Phase II, PIC Transcript, SA10, 3 November 1999, p. 198.
[404] Section 22(2) *Drug Misuse and Trafficking Act 1985.*

of supplying a prohibited drug that would bar the prosecution of Podesta for such an offence. A prosecution for supply prohibited drug based on the evidence of SA10 would not involve any substance that would be available for analysis to prove that it was cocaine. The absence of such evidence does not necessarily prevent prosecution of a person for supplying a prohibited drug. The prosecution would, however, require evidence of familiarity with the substance supplied to provide evidence that it was, in fact, cocaine. The evidence of SA10 contains evidence of familiarity by him with prohibited drugs that would provide such evidence at a prima facie level. However, SA10 died after the hearings conducted by the Commission. Any opinion under section 97(2) of the *Police Integrity Commission Act 1996* must now be formed without regard to the evidence of SA10.

6.62 SA2 alleges that Podesta supplied her with cocaine in early 1997, which she used in the toilets at the Liberty Lunch.[405] SA2 also alleges that she had seen Podesta sell cocaine to persons at the Liberty Lunch in the same period.[406] Again, there is no substance for analysis. However, SA2 would be able to give evidence with respect to the substance having regard to her own familiarity with the drug cocaine, and such evidence could constitute prima facie evidence of the identity of the drug.

6.63 Based on the matters alleged by SA2, the Commission states, pursuant to section 97(2)(a) of the *Police Integrity Commission Act 1996*, that consideration **should** be given to the prosecution of Podesta for the offences of supplying a prohibited drug, cocaine, contrary to section 25 of the *Drug Misuse and Trafficking Act 1985*.

6.64 Podesta resigned from the Police Service in March 1998. If he remained a member of the Police Service at the present time, it would be open to the Commission to state for the purpose of section 97(2)(b), (c), or (d) of the *Police Integrity Commission Act 1996* that consideration should be given to taking action against Podesta having regard to evidence concerning his use and supply of prohibited drugs and his improper association with Mark Dilorenzo. However, as Podesta is no longer a police officer, the Commission states pursuant to section 97(2) of that Act, that it is of the opinion that consideration **should not** be given to the taking of action against Podesta pursuant to section 97(2)(b), (c), or (d) of that Act.

ANTHONY STEPHEN DILORENZO

6.65 SA2 gave evidence to the Commission that she had seen Anthony Dilorenzo use cocaine on occasions in early 1997.[407] Having regard to the limitation

[405] Operation Saigon Phase II, PIC Transcript, SA2, 10 November 1999, p. 340.
[406] Operation Saigon Phase II, PIC Transcript, SA2, 10 November 1999, p. 342.
[407] Operation Saigon Phase II, PIC Transcript, SA2, 10 November 1999, pp 342-343.

period for prosecution of offences of self administration of a prohibited drug, the Commission states that, pursuant to section 97(2) of the *Police Integrity Commission Act 1996*, consideration **should not** be given to the prosecution of Anthony Dilorenzo for the offence of self administration of a prohibited drug.

6.66 Anthony Dilorenzo was dismissed from the Police Service on 29 June 1999 pursuant to section 181D of the *Police Service Act 1990*, on the grounds that the Commissioner of Police no longer had confidence in his suitability to continue as a police officer. If Anthony Dilorenzo remained a police officer, it would have been necessary for the Commission to determine whether it should state the opinion, for the purpose of section 97(2)(b), (c) or (d) of the *Police Integrity Commission Act 1996*, that consideration should be given to the taking of action against Anthony Dilorenzo in regard to the allegations of use of prohibited drugs made against him by SA2. Given that Anthony Dilorenzo is no longer a police officer, pursuant to section 97(2) of that Act, the Commission is of the opinion consideration **should not** be given to the taking of action against Anthony Dilorenzo pursuant to section 97(2)(b), (c) or (d) of that Act.

RONALD JAMES QUIN

6.67 Quin admitted in evidence that he was a user of cocaine and ecstasy.[408] However, any prosecution of Quin for offences of self administration of a prohibited drug would be barred by the limitation period referred to above. Further, Quin gave evidence with the benefit of a declaration under section 41 of the *Police Integrity Commission Act 1996*. Accordingly, the Commission is of the opinion, pursuant to section 97(2)(a) of that Act, that consideration **should not** be given to the prosecution of Quin for any offence of self administration of a prohibited drug. As Quin was not a police officer, nor the holder of any relevant office, no occasion arises for consideration to be given to action under section 97(2)(b), (c), or (d) of that Act.

RENEE ROSE ROBERTSHAW

6.68 Robertshaw admitted that she had used marijuana, cocaine and ecstasy.[409] The limitation period for any prosecution for self administration of a prohibited drug against Robertshaw has expired. Further, Robertshaw gave evidence with the benefit of a declaration under section 41 of the *Police Integrity Commission Act 1996*. Accordingly, the Commission is of the opinion, pursuant to section 97(2)(a) of that Act, that consideration **should not** be given to the prosecution of Robertshaw for any offence of self administration of a prohibited drug. As Robertshaw was not a police officer, nor the holder of any relevant office, no occasion arises for consideration to be given to action under section 97(2)(b), (c), or (d) of that Act.

---

[408] Operation Saigon Phase II, PIC Transcript, R J Quin, 2 November 1999, pp. 115-119.

[409] Operation Saigon Phase II, PIC Transcript, R R Robertshaw, 2 November 1999, p. 144.

TERRY VOTO

6.69 Voto admitted to using ecstasy, cocaine and marijuana.[410] Any prosecution of Voto for self administration of a prohibited drug would be barred because of the expiration of the limitation period. Further, Voto gave evidence with the benefit of a declaration under section 41 of the *Police Integrity Commission Act 1996*. Accordingly, the Commission is of the opinion, pursuant to section 97(2)(a) of that Act, that consideration **should not** be given to the prosecution of Voto for any offence of self administration of a prohibited drug. As Voto was not a police officer, nor the holder of any relevant office, no occasion arises for consideration to be given to action under section 97(2)(b), (c), or (d) of that Act.

SA10

6.70 SA10 died in October 2000 following the completion of the Saigon hearings. SA10 was an 'affected person' for the purposes of section 97(2) of the *Police Integrity Commission Act 1996* because he was the subject of a number of substantial allegations, namely; self administration of a prohibited drug and supply prohibited drug. Given that SA10 died prior to completion of this report, he is no longer an 'affected person' in relation to whom an opinion must be expressed for the purpose of section 97(2) of that Act.

SA11

6.71 SA11 admitted to using ecstasy, cocaine and amphetamines.[411] SA11 also admitted to supplying ecstasy to Podesta.[412] Any prosecution of SA11 for self administration of a prohibited drug would be barred because of the expiration of the limitation period. SA11 gave evidence with the benefit of a declaration under section 41 of the *Police Integrity Commission Act 1996*. His admissions to supplying ecstasy to Podesta would not be admissible against him in any prosecution for supplying a prohibited drug. There is no other evidence that he supplied a prohibited drug. In these circumstances the Commission is of the opinion, pursuant to section 97(2)(a) of that Act, that consideration **should not** be given to the prosecution of SA11 for any offence of self administration of a prohibited drug. As SA11 was not a police officer, nor the holder of any relevant office, no occasion arises for consideration to be given to action under section 97(2)(b), (c), or (d) of that Act.

---

410 Operation Saigon Phase II, PIC Transcript, T Voto, 2 November 1999, p. 104.

411 Operation Saigon Phase II, PIC Transcript, SA11, 3 November 1999, pp. 223; SA11, 11 November 1999, pp. 447-448.

412 Operation Saigon Phase II, PIC Transcript, SA11, 11 November 1999, pp. 450-451.

SA9

6.72 SA9 admitted in evidence to the use of cannabis and cocaine.[413] Given the limitation period with respect to the offence of self administration of a prohibited drug, any prosecution of SA9 for this offence would be barred. He gave evidence with the benefit of a declaration under section 41 of the *Police Integrity Commission Act 1996*. In these circumstances, the Commission is of the opinion that consideration **should not** be given to the prosecution of SA9 for the offence of self administration of a prohibited drug. As SA9 was not a police officer or the holder of any other relevant office, no occasion arises for consideration of action under section 97(2)(b), (c), or (d) of that Act.

EASTON BARRINGTON JAMES

6.73 James admitted to the use of cocaine and ecstasy,[414] and SA10 said that James had used cocaine in his presence.[415] James gave evidence with the benefit of a declaration under section 41 of the *Police Integrity Commission Act 1996*. Any prosecution for self administration of a prohibited drug would be barred because of the expiration of the relevant limitation period. In these circumstances, the Commission is of the opinion that consideration **should not** be given to the prosecution of James for self administration of a prohibited drug.

6.74 SA10 gave evidence that James supplied cocaine to him at the Liberty Lunch in the first half of 1997.[416] SA10 is now deceased and his evidence should be excluded from consideration for the purpose of any opinion under section 97(2) of the *Police Integrity Commission Act 1996*. SA2 said that she obtained cocaine from a person she knew as 'TC' (James' nickname) in early 1997.[417] There is no limitation period for a prosecution of supplying a prohibited drug contrary to section 25 of the *Drug Misuse and Trafficking Act 1985*. If James were prosecuted for supply a prohibited drug, namely cocaine, to SA2, there would be no substance available for analysis. The absence of such evidence does not necessarily prevent prosecution of a person for supplying a prohibited drug. The prosecution would, however, require evidence of familiarity with the substance supplied to provide evidence that it was, in fact, cocaine. The evidence of SA2 indicates familiarity with prohibited drugs that would provide such evidence at a prima facie level. Based upon the matters alleged by SA2, the Commission is of the opinion that consideration **should** be given to the prosecution of James for the offence of supplying a prohibited drug, cocaine, contrary to section 25 of the *Drug Misuse and Trafficking Act 1985*.

---

413 Operation Saigon Phase II, PIC Transcript, SA9, 3 November 1999, pp. 233-236, 238, 245.

414 Operation Saigon Phase II, PIC Transcript, E B James, 4 November 1999, pp. 279-280, 283-286.

415 Operation Saigon Phase II, PIC Transcript, SA10, 3 November 1999, pp. 184-185.

416 Operation Saigon Phase II, PIC Transcript, SA10, 3 November 1999, p. 193.

417 Operation Saigon Phase II, PIC Transcript, SA2, 10 November 1999, pp. 337-338.

6.75 As James was not a police officer or the holder of any relevant office, no occasion arises for consideration of action under section 97(2)(b), (c), or (d) of the *Police Integrity Commission Act 1996*.

KIERAN BRIAN O'CONNOR

6.76 Initially, in evidence before the Commission, O'Connor denied that he had ever used cocaine or ecstasy.[418] A little later however, O'Connor admitted that he had tried cocaine at a party in 1996 or 1997, although denying that he had ever used it at his own residential premises.[419] SA2 said that she saw O'Connor using cocaine at the Liberty Lunch in early 1997.[420] SA10 gave evidence that he had seen O'Connor using cocaine at the Liberty Lunch and at O'Connor's residence in the first half of 1997.[421] O'Connor gave evidence with the benefit of a declaration under section 41 of the *Police Integrity Commission Act 1996*. Any prosecution for self administration of a prohibited drug would be barred by the relevant limitation period. In these circumstances, the Commission is of the opinion that consideration **should not** be given to the prosecution of O'Connor for the offence of self administration of a prohibited drug.

6.77 O'Connor admitted that cocaine had been used at his residential premises.[422] In the somewhat dramatic and contrived tone and manner that marked O'Connor's evidence, he related the discovery that SA10 had used cocaine on his premises.[423] It is clear that O'Connor harbours ill feeling towards SA10, and O'Connor admitted as much in evidence.[424] However, it is not only SA10 who said that cocaine was used at O'Connor's residential premises. James said that he had used cocaine at O'Connor's place in the first half of 1997 on one or two occasions.[425] When he was asked where he got the cocaine from that he used on these occasions, James said '… there was always people there and it was there somewhere'.[426] He thought he got some off SA10.[427] SA13 said that he went to O'Connor's home on two or three occasions, and that he had used cocaine on a couple of occasions at O'Connor's place. When he was asked where the cocaine that he had used at O'Connor's place came from, he said '… somebody would have just handed it to me, asked me politely if I wanted some and I would say yes'.[428] He said that he had used cocaine in the bathroom at O'Connor's place.[429] The evidence strongly indicates that

---

418 Operation Saigon Phase II, PIC Transcript, K B O'Connor, 4 November 1999, pp. 301-302.
419 Operation Saigon Phase II, PIC Transcript, K B O'Connor, 4 November 1999, pp. 303-304.
420 Operation Saigon Phase II, PIC Transcript, SA2, 10 November 1999, p. 338.
421 Operation Saigon Phase II, PIC Transcript, SA10, 3 November 1999, pp. 188-189.
422 Operation Saigon Phase II, PIC Transcript, K B O'Connor, 4 November 1999, p. 304.
423 Operation Saigon Phase II, PIC Transcript, K B O'Connor, 4 November 1999, p. 304.
424 Operation Saigon Phase II, PIC Transcript, K B O'Connor, 4 November 1999, pp. 311-312.
425 Operation Saigon Phase II, PIC Transcript, E B James, 4 November 1999, p. 280.
426 Operation Saigon Phase II, PIC Transcript, E B James, 4 November 1999, p. 280.
427 Operation Saigon Phase II, PIC Transcript, E B James, 4 November 1999, pp. 280-281.
428 Operation Saigon Phase II, PIC Transcript, SA13, 11 November 1999, p. 431.
429 Operation Saigon Phase II, PIC Transcript, SA13, 11 November 1999, p. 431.

O'Connor was more closely associated with the use of cocaine than he is prepared to admit. Evidence of cocaine use at his residential premises indicates preparedness on O'Connor's part to permit the use of cocaine on his premises.

6.78 The view that O'Connor was more heavily involved with prohibited drug use than he was prepared to concede is fortified by a further piece of evidence. O'Connor was taken to the transcript of a recorded conversation between Podesta and Paul Robertson on 31 January 1998 in which reference was made to 'tickets' being wanted and Podesta saying a little later 'get together some pills and drop them up to Kieran and then we can get them to rack us up'.[430] O'Connor asserted that his knowledge of the term 'racking up' encompassed games of pool and backgammon.[431] SA13 gave evidence that the terms 'tickets' and 'pills' were used to describe ecstasy and the term 'racking up' means to 'line up cocaine'.[432] SA2 ascribed a similar meaning to the term 'racking up'.[433] O'Connor denied that in January 1998 his association with Podesta was such that he was involved in drug usage with him or obtained drugs from him.[434] There is grave reason to doubt the accuracy of O'Connor's evidence in this respect.

6.79 Section 19 of the *Drug Misuse and Trafficking Act 1985* provides for an offence of aiding, abetting, counselling, procuring, soliciting or inciting commission of a summary offence under that Act which would include the offence of self administration of a prohibited drug. However, any prosecution of O'Connor for an offence under section 19 would be barred by the expiration of the limitation period. It would be necessary for the prosecution to prove knowledge on the part of O'Connor with respect to the conduct said to have been aided and abetted.[435] The evidence of SA10 that he had seen O'Connor using cocaine at O'Connor's residence could constitute evidence of knowledge. However, this issue is academic given the limitation period applicable to any prosecution. Further, SA10 is now deceased. In these circumstances, the Commission states pursuant to section 97(2)(a) of the *Police Integrity Commission Act 1996* that it is of the opinion that consideration **should not** be given to the prosecution of O'Connor for the offence of aiding and abetting the self administration of a prohibited drug.

6.80 As O'Connor was not a police officer or the holder of any other relevant office, no occasion arises for consideration of action under section 97(2)(b), (c), or (d) of the *Police Integrity Commission Act 1996*.

---

430 Operation Saigon Phase II, PIC Transcript, K B O'Connor, 4 November 1999, pp. 308-310.

431 Operation Saigon Phase II, PIC Transcript, K B O'Connor, 4 November 1999, pp. 301, 310.

432 Operation Saigon Phase II, PIC Transcript, SA13, 11 November 1999, pp. 437-438.

433 Operation Saigon Phase II, PIC Transcript, SA2, 10 November 1999, p. 346.

434 Operation Saigon Phase II, PIC Transcript, K B O'Connor, 4 November 1999, pp. 310-311.

435 *Giorgianni v The Queen* (1985) 156 CLR 473.

SA12

6.81 SA12 admitted to the use of cocaine, ecstasy and marijuana, and admitted to using cocaine and ecstasy at the Liberty Lunch in the first half of 1997.[436] SA12 gave evidence with the benefit of a declaration under section 41 of the *Police Integrity Commission Act 1996*. Any prosecution for self administration of a prohibited drug would be barred by the relevant limitation period. In these circumstances, the Commission is of the opinion that consideration **should not** be given to the prosecution of SA12 for the offence of self administration of a prohibited drug. As SA12 was not a police officer or the holder of any other relevant office, no occasion arises for consideration of action under section (7(2)(b), (c), or (d) of that Act.

SA2

6.82 SA2 admitted the use of cocaine and ecstasy.[437] Any prosecution for self administration of a prohibited drug would be barred given the expiration of the relevant limitation period. Further, SA2 was examined at the Commission following the giving of an inducement that answers made would not be used in evidence against her in any criminal proceedings. In these circumstances the Commission is of the opinion, pursuant to section 97(2)(a) of the *Police Integrity Commission Act 1996*, that consideration **should not** be given to the prosecution of SA2 for any offence of self administration of a prohibited drug. As SA2 was not a police officer, nor the holder of any relevant office, no occasion arises for consideration to be given to action under section 97(2)(b), (c), or (d) of that Act.

SA15

6.83 SA15 admitted to the use of cocaine some 10 years ago in Italy, but denied having used it since.[438] He denied the use of ecstasy.[439] SA12 said that SA15 used prohibited drugs at the Liberty Lunch.[440] SA2 said that she saw SA15 using prohibited drugs at the Liberty Lunch as well as at home.[441] Any prosecution of SA15 for self administration of a prohibited drug would be barred because of the expiration of the relevant limitation period. In these circumstances, the Commission is of the opinion that consideration **should not** be given to the prosecution of SA15 for self administration of a prohibited drug.

---

436 Operation Saigon Phase II, PIC Transcript, SA12, 10 November 1999, pp. 318-320, 334.
437 Operation Saigon Phase II, PIC Transcript, SA2, 10 November 1999, pp. 337, 340-341.
438 Operation Saigon Phase II, PIC Transcript, SA15, 11 November 1999, pp. 400-401.
439 Operation Saigon Phase II, PIC Transcript, SA15, 11 November 1999, p. 401.
440 Operation Saigon Phase II, PIC Transcript, SA12, 10 November 1999, p. 322.
441 Operation Saigon Phase II, PIC Transcript, SA2, 10 November 1999, pp. 345-346.

6.84 SA2 alleged that she had obtained cocaine from [SA15's first name] who was 'the manager' at the Liberty Lunch in early 1997.[442] It seems clear that this is a reference to SA15. Based on the matters alleged by SA2, the Commission is of the opinion that consideration **should** be given to the prosecution of SA15 for the offence of supplying a prohibited drug, cocaine, contrary to section 25 of the *Drug Misuse and Trafficking Act 1985*.

6.85 As SA15 was not a police officer or the holder of any other relevant office, no occasion arises for consideration of action under section 97(2)(b), (c), or (d) of the *Police Integrity Commission Act 1996*.

SA13

6.86 SA13 admitted the use of cocaine at the Liberty Lunch premises when they were owned by O'Connor,[443] and at O'Connor's home.[444] He also admitted to the use of ecstasy at nightclubs other than the Liberty Lunch.[445] SA13 gave evidence with the benefit of a declaration under section 41 of the *Police Integrity Commission Act 1996.* Any prosecution for self administration of a prohibited drug would be barred because of the expiration of the relevant limitation period. In these circumstances, the Commission is of the opinion that consideration **should not** be given to the prosecution of SA13 for self administration of a prohibited drug. As SA13 was not a police officer or the holder of any relevant office, no occasion arises for consideration of action under section 97(2)(b), (c), or (d) of that Act.

MARK ALAN DILORENZO

6.87 Mark Dilorenzo admitted in evidence before the Commission to using cocaine and ecstasy.[446] SA2 said that she observed Mark Dilorenzo using cocaine at the Sugareef and at Mark Dilorenzo's home.[447] Mark Dilorenzo gave evidence with the benefit of a section 41 declaration. Any prosecutions for self administration of prohibited drugs would be barred by operation of the relevant limitation period. In these circumstances, pursuant to section 97(2)(a) of the *Police Integrity Commission Act 1996*, the Commission is of the opinion that consideration **should not** be given to the prosecution of Mark Dilorenzo for self administration of a prohibited drug.

---

442 Operation Saigon Phase II, PIC Transcript, SA2, 10 November 1999, p. 338.
443 Operation Saigon Phase II, PIC Transcript, SA13, 11 November 1999, pp. 426-427.
444 Operation Saigon Phase II, PIC Transcript, SA13, 11 November 1999, pp. 430-431.
445 Operation Saigon Phase II, PIC Transcript, SA13, 11 November 1999, pp. 431-432.
446 Operation Saigon Phase II, PIC Transcript, M A Dilorenzo, 15 November 1999, pp. 564-567, 581.
447 Operation Saigon Phase II, PIC Transcript, SA2, 10 November 1999, pp. 344-345.

SAIGON PHASE III

6.88 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.[448]

6.89 The conduct of a number of persons has been examined during the course of the Saigon III hearing. This was for the purpose of investigating allegations of corruption or misconduct by members of the Police Service in the investigation of the fatal shooting of Mr Levi on 28 June 1997. The investigation revealed a number of deficiencies in the investigation with the most significant being the failure to disseminate Internal Affairs information to the Shooting Investigation Team with respect to allegations that Podesta and/or Dilorenzo were affected by alcohol or drugs at the time of the shooting.

6.90 The Commission is of the opinion that, while the investigation identified systemic failures and omissions, **there are no 'affected persons' within the meaning of the *Police Integrity Commission Act 1996* for Saigon III.**

6.91 Brammer attempted to bring Internal Affairs officers and McDougall together at the 17 October 1997 meeting for the purpose of the sharing of information. The difficulty was, however, that there was no effective procedure in place or put in place to ensure that information was shared appropriately between the two investigations.

6.92 Richmond attended the 17 October 1997 meeting, provided certain information to that meeting and assumed that there would be ongoing contact between Internal Affairs investigators and McDougall. Richmond had taken up his position in May 1997 and it seems clear that some uncertainty surrounded his role and function at that time.

6.93 Jones and Keen, regrettably, were not asked to attend the 17 October 1997 meeting. Their focus was on the Internal Affairs proactive investigation. Belated contact was made with McDougall on 2 February 1998 to ensure that the Shooting Investigation Team had certain information.

6.94 McDougall was provided with certain limited information at the 17 October 1997 meeting but was not provided with other important information relevant to his inquiry. He was in no position to control the flow of information from Internal Affairs to the Shooting Investigation Team. He investigated such information as had been provided to him. He demonstrated understandable frustration when he was provided with further information on 2 February 1998 immediately prior to the commencement of the Inquest.

---

[448] Section 97(3) *Police Integrity Commission Act 1996*.

6.95 Fitzpatrick made little contribution on 28 June 1997 when called upon to act as review officer. However, he was unaware of the covert investigations of Podesta and Dilorenzo that were progressing at that time, and Police Service procedures in place at that time did not require or entitle him to enquire of the PIB in this respect.

6.96 Purcell and Wilson became involved in the investigation of 28 June 1997 in circumstances explained by McDougall. They should not have been involved but there is no evidence of any wrong doing on their part with respect to their roles in the investigation.

6.97 It is clear that there are lessons to be learned from the investigation of the shooting of Mr Levi. This was acknowledged by a number of witnesses, including Commander Brammer and Inspector Jones. Although criticisms are directed at certain individuals in these submissions and at Police Service procedures that were current at the time, the Commission is of the view that there are no persons who can be characterised as 'affected persons' in the Saigon III segment of the investigation.

7. ASSESSMENTS AND CONCLUSIONS CONCERNING ISSUES OF POLICY AND PROCEDURE

INVESTIGATIONS OF SHOOTINGS BY POLICE OFFICERS

7.1 A number of significant deficiencies have been identified in Police Service procedures relating to the investigation of police shootings in 1997. One area of concern was the purely formal and ineffective role of the Internal Affairs review officer.

7.2 Inspector Jones gave evidence of his own performance of the Internal Affairs review function with respect to the death of Rachel Wilson at Ermington in September 1999 and the death of Rayden Stephens at Bondi in February 2000.[449] He said that the guidelines at that time did not require the Internal Affairs review officer to check whether the officers involved in a critical incident or in the Critical Incident Investigation Team were the subject of Internal Affairs investigations. Despite the absence of such a procedure in the guidelines, Jones checked these matters.[450] Given that he was stationed within the central Internal Affairs Command, he was in a position to check the complaints index with respect to any officer. He said that, if such a check gave rise to concern on his part, he would bring it to the attention of the senior investigator in the Critical Incident Investigation Team. A risk assessment would be necessary to determine the possible consequences flowing from a leak of the information.[451]

7.3 Brammer gave evidence of further developments in Police Shooting Procedures with respect to investigations of police shootings. He stated that:[452]

> There is a review going on which will be taking in a lot of the lessons that have been learnt from the 10 shootings we've attended since 1998, and incorporated there to make sure that, in future, people know exactly what's required …

7.4 The Commission is of the opinion that developments in this area have been carried out in a somewhat ad hoc way. Consideration of the guidelines was in a state of flux, even when Brammer gave evidence on 22 February 2000, and a further review was being undertaken at that time.[453]

---

449 Operation Saigon Phase III, PIC Transcript, P D Jones, 21 February 2000, p. 39.

450 Operation Saigon Phase III, PIC Transcript, P D Jones, 21 February 2000, pp. 41-42.

451 Operation Saigon Phase III, PIC Transcript, P D Jones, 21 February 2000, p. 42.

452 Operation Saigon Phase III, PIC Transcript, M J Brammer, 22 February 2000, pp. 149-150.

453 Operation Saigon Phase III, PIC Transcript, M J Brammer, 22 February 2000, pp. 149-150.

7.5 Brammer was examined further concerning this review when he returned to the witness box on 2 March 2000.[454] A draft policy dated 10 May 2000 was provided to the Commission on 18 May 2000.[455] A further draft policy dated 27 October 2000 was provided to the Commission on 2 November 2000.[456] The Police Service have advised that the draft policy is intended to supplement the existing policy, not replace it. Section 2 of the draft policy included as a function of the Internal Review Officer, the complaints profile checking function (referred to above in paragraph 7.2), which was informally carried out by Jones in the past. The Commission is of the opinion that this is a sensible and long overdue development.

7.6 The October 2000 draft policy proposes new procedures with respect to certain categories of deaths and serious injuries. The procedures create a class of deaths and serious injuries comprising death or injury resulting from the discharge of a police firearm, death or serious injury resulting from the use of other police issue appointments and death of a police officer resulting from the execution of duty. In the case of death, the draft policy proposes that the Homicide and Serial Violent Crime Unit ('Homicide Unit') will investigate. In the case of serious injury, the policy proposes that the Homicide Unit will be given first option, with a regional Critical Incident Investigation Team taking up the investigations if the Homicide Unit does not wish to do so. Other incidents are to be investigated in accordance with existing procedures. The Commission is of the view that there is a real risk of confusion and uncertainty where procedures allow a choice of options in circumstances where a swift and decisive response is needed. There does not appear to be any good policy reason for distinguishing between different categories of deaths that occur in police custody or as a result of the use of lethal force by police officers.

7.7 The draft policy also provides for some overlap or duplication of functions between officers. The Commission is of the view that this is unsatisfactory and may serve to obfuscate the division of responsibilities between officers, and that it would be preferable for clear and specific responsibilities to be accorded to individual officers. In submissions on behalf of the Commissioner of Police, it was submitted that 'any duplication of functions may ensure further probity in the management of police shootings'.[457]

7.8 It is highly desirable that a single clear and succinct policy be developed in respect of all deaths in police custody and deaths occurring in the course of police operations. The Commissioner of Police accepts that it would be desirable for a clear and succinct policy to be put in place, and stated in submissions that a further policy has been prepared and is 'still the subject of negotiations between all relevant stakeholders, particularly the State Coroner'.[458] The Commission

---

454 Operation Saigon Phase III, PIC Transcript, M J Brammer, 2 March 2000, pp. 595-601.

455 Operation Saigon Phase III, PIC Exhibit 93C.

456 Operation Saigon Phase III, PIC Exhibit 115C.

457 PIC Exhibit 98, barcode 5767608.

458 PIC Exhibit 98, barcode 5767608.

has been advised that this policy is still in draft form as at May 2001. Considering the time that has elapsed since the death of Mr Levi and the Commission hearings, the Commission is of the view that the policy should be finalised without further delay. It is clearly contrary to the public interest that policy and procedural reform in this critical area appears to have drifted over many months, even years.

DRUG AND ALCOHOL TESTING OF POLICE OFFICERS

7.9 During the Royal Commission, it became apparent that some police officers were in the habit of using recreational drugs. This was an area where the Police Service had no clear policy or guidelines, and was uncertain whether to deal with such officers in a disciplinary manner, or as officers suitable for rehabilitation. The Police Service did not have a rehabilitation program at that time, and there was little or no incentive for an officer faced with a substance abuse problem to seek assistance.[459]

7.10 In February 1996, the Interim Report of the Royal Commission stated that the occasion arose for an examination of the introduction of random and targeted drug and alcohol testing for police officers. The Royal Commission Report observed that the issue was important having regard to the incompatibility between the use of substances which can impair judgement and coordination on the one hand, and duties which call on an officer to drive a motor vehicle, to respond to emergencies and possibly to handle weapons.[460] The November 1996 Immediate Measures Report of the Royal Commission noted that drug testing issues had been the subject of a review by the Drug and Alcohol Testing Working Party and were the subject of a draft bill. The Royal Commission believed that a bill along the lines of the draft bill should be proceeded with as a matter of urgency.[461]

7.11 Section 211A was inserted into the *Police Service Act 1990* by the *Police Legislation Further Amendment Act 1996* which commenced on 1 January 1997. This Act provided for random and targeted alcohol and drug testing. In the Second Reading Speech, Mr Whelan, the Minister for Police said:[462]

> The duties of police officers require them to exercise extensive powers and discretion, and to have control of vehicles and weapons. The community expects that these duties will be undertaken in a clear-headed way. It is also entitled to insist that they not be undertaken while an officer is under the influence of either drugs or alcohol …

---

459 Royal Commission into the NSW Police Service, *Final Report Volume I: Corruption*, May 1997, p. 97.
460 Royal Commission into the NSW Police Service, *Interim Report*, February 1996, pp.129-130.
461 Royal Commission into the NSW Police Service, *Second Interim Report*, November 1996, pp.15-16.
462 Hansard, Legislative Assembly, 13 November 1996, p. 5909 at 5912.

7.12 The Commission is of the view that it is apparent from this extract, that the purpose or object of this legislation was not confined to testing for integrity or probity purposes only. It is clear that testing for the presence of alcohol or drugs had an impairment aspect as well.

PHASED INTRODUCTION OF DRUG AND ALCOHOL TESTING

7.13 The Police Service did not commence to test in accordance with Section 211A from 1 January 1997. The drug and alcohol policy of the Police Service, introduced in March 1997, provided for a three-phase introduction of drug and alcohol testing. Gary Jackel was involved in the preparation of this policy from October 1996.[463] Mr Jackel is the manager of the Healthy Lifestyles Branch of the Police Service, which was established in March 1997.

7.14 The Healthy Lifestyles Branch contains three units – a drug and alcohol testing unit, a drug and alcohol counselling unit and a health and fitness unit.[464] In addition to the enactment of section 211A, the Police Service Regulation 1990 was amended by the insertion of Part 5A which commenced on 7 April 1997.[465]

7.15 The first phase provided for an extensive six month drug and alcohol education programme to take place between March and September 1997.[466] During this programme, random and targeted testing procedures were not conducted.

7.16 The second phase involved the introduction of random and targeted alcohol testing. This occurred in September 1997.[467] Testing for prohibited drugs during this phase was to be conducted only as part of independent research to be commissioned to examine the extent of illicit drug usage within the Police Service. According to the drug and alcohol policy,[468] 'the outcome of this research will determine whether drug testing should be introduced on a random or a targeted basis'.

7.17 The third phase was to involve the formal evaluation of the effectiveness of the drug and alcohol testing protocols to be conducted twelve months after full implementation.

THE WESTMEAD STUDY – OCTOBER 1998

7.18 Research was carried out by the University of Sydney and Westmead Hospital leading to a report in October 1998 entitled "*An Independent Research Study*

---

463 Operation Saigon Phase III, PIC Transcript, G N Jackel, 2 March 2000, p. 536.
464 Operation Saigon Phase III, PIC Transcript, G N Jackel, 2 March 2000, p. 536.
465 Operation Saigon Phase III, PIC Transcript, G N Jackel, 2 March 2000, p. 540.
466 Operation Saigon Phase III, PIC Transcript, G N Jackel, 2 March 2000, p. 538.
467 Operation Saigon Phase III, PIC Transcript, G N Jackel, 2 March 2000, p. 539.
468 Operation Saigon Phase III, PIC Exhibit 26, barcode 5450337, p. 14.

of Prohibited Drug Use Within the New South Wales Police Service".[469] That study involved non-voluntary urine testing of 1,036 officers covering all ranks and duty types and a voluntary survey completed by 988 of the 1,036 officers undergoing drug testing. In summary, of the 1,036 urine drug tests, only four were confirmed positive for prohibited drugs, in all cases cannabis. In addition, 16 officers were confirmed positive for the legally obtainable opiate codeine, and 21 were confirmed positive for legally obtainable sympathomimetic amines.[470]

7.19 The survey showed that there remained a significant problem with alcohol abuse. Eight percent of males and 15.6 percent of females reported an alcohol intake considered hazardous to health. Also 12.1 percent of officers reported using drugs, including prescription drugs, at some time for stress relief. Only one officer admitted to the use of anabolic steroids or other bodybuilding drugs, but 7 percent of officers said they were aware of other police using these drugs.[471]

7.20 A total of 988 officers responded to the survey. Of those officers who responded, 788 officers considered that random testing of NSW police officers for illicit drugs would be either of some use or very useful. That is, more than 80 percent of NSW police officers were in favour of random drug testing. Significantly, as Mr Jackel observed, this high level of support for random drug testing came from a group of officers who had just been subjected to the indignity of a drug test.[472]

7.21 The Westmead study indicated that the prevalence of prohibited drug use, as determined by both urine drug testing and self-administered survey, is lower within the Police Service than for Australian society in general. In this setting, the authors stated that targeted rather than random testing was more likely to return positive results. However, the authors also said that restricting tests to higher risk groups only would miss approximately half of those using prohibited drugs of abuse. Further, defining a narrow set of trigger factors for testing would result in predictability that largely negates the preventative aspect of drug testing. The authors considered that a broader based testing programme would be useful, in that ongoing surveillance of drug use prevalence would be in place and the preventative aspect would be strengthened.

7.22 The authors of the Westmead study took account of practical factors in making recommendations. They considered that, because of the need for trained collectors and the wide geographic distribution of the Police Service, true random testing was not cost effective. The approach used in the study, to test all individuals on duty at a particular site, was considered more efficient, at least in

---

469 Operation Saigon Phase III, PIC Exhibit 74, barcode 5590614.

470 Operation Saigon Phase III, PIC Transcript, G N Jackel, 2 March 2000, pp. 544-545.

471 Operation Saigon Phase III, PIC Transcript, G N Jackel, 2 March 2000, p. 545.

472 Operation Saigon Phase III, PIC Transcript, G N Jackel, 2 March 2000, p. 546.

terms of cost per sample obtained, yet still provided a method for widespread testing to occur, reinforcing the preventative aspect.[473]

7.23 In summary, the Westmead report recommended that the Police Service undertake a programme of targeted testing combined with a more broad-based programme covering all ranks and duty types.

TARGETED DRUG TESTS

7.24 The Police Service commenced to undertake targeted drug tests in November 1998 following the release of the Westmead study. Between November 1998 and 1 March 2000, 57 targeted drug tests had been undertaken.[474] Of these 57 tests, 15 officers showed the presence of prohibited drugs in their system. Five of these officers had levels of prohibited drugs below the cut-off level in the Australian Standard 4308-1995.[475] Cannabis was the predominant drug detected although two officers tested positive to amphetamines, ecstasy and cocaine.[476] Forty one officers returned negative tests and one test was awaiting results.[477] Eight officers had been nominated for removal under section 181D of the *Police Service Act 1990* and two had resigned prior to the Commissioner's confidence power being invoked. Two officers had been dismissed.[478]

7.25 All drug testing undertaken has been by way of urine samples collected in accordance with Australian Standard 4308-1995. The Police Service has not undertaken any hair testing, as there was no Australian Standard for hair testing.[479] Mr Jackel said that drugs other than prohibited drugs have been detected in the course of targeted drug testing.[480]

7.26 Mr Jackel gave evidence that when a targeted test for a prohibited drug shows a positive result, the analyst's report is referred to the Internal Affairs command and an automatic process is put in place under section 181D of the *Police Service Act 1990*.[481] Where the test comes back negative for a prohibited drug, but positive for a drug of abuse within the Australian Standard, it was Mr Jackel's expectation that the officer being tested would have already told the testing officer that he or she was on prescribed medication at the time of the test.[482] It is the Commission's view that it is unrealistic to expect that this will

---

473 Operation Saigon Phase III, PIC Transcript, G N Jackel, 2 March 2000, pp. 546-547.
474 Operation Saigon Phase III, PIC Transcript, G N Jackel, 2 March 2000, p. 567.
475 Operation Saigon Phase III, PIC Exhibit 73; Operation Saigon Phase III, PIC Transcript, G N Jackel, 2 March 2000, pp. 548-549, 567.
476 Operation Saigon Phase III, PIC Transcript, G N Jackel, 2 March 2000, p. 549.
477 Operation Saigon Phase III, PIC Transcript, G N Jackel, 2 March 2000, p. 567.
478 Operation Saigon Phase III, PIC Transcript, G N Jackel, 2 March 2000, p. 567.
479 Operation Saigon Phase III, PIC Transcript, G N Jackel, 2 March 2000, pp. 548-549.
480 Operation Saigon Phase III, PIC Transcript, G N Jackel, 2 March 2000, p. 549.
481 Operation Saigon Phase III, PIC Transcript, G N Jackel, 2 March 2000, p. 549.
482 Operation Saigon Phase III, PIC Transcript, G N Jackel, 2 March 2000, pp. 549-550.

always occur. There have been occasions where prescribed drugs have been detected, the use of which was not volunteered at the time of testing. If it was considered necessary, the officer may be referred to counsellors within the Healthy Lifestyles Branch for advice and guidance.[483]

RANDOM AND TARGETED ALCOHOL TESTS

7.27 Mr Jackel gave evidence before the Commission that between September 1997 and January 2000, a total of 16,378 random alcohol tests were conducted on police officers, and 27 targeted alcohol tests were conducted in the same period. Of these tests, a total 27 officers tested positive in that they had a blood alcohol concentration in excess of 0.02. Mr Jackel was not able to advise how many of the positive results were from targeted tests, and how many were from random tests.[484]

POLICE SERVICE RESPONSE TO THE WESTMEAD STUDY

7.28 In November 1998, targeted drug testing commenced. In February-March 1999, the Commissioner of Police endorsed the commencement of a random drug testing programme.[485] In May 1999, the Commissioner of Police informed the Police Association of his intention to implement the final phase of the Police Service Drug and Alcohol Testing Programme in the form of random drug testing by way of a limited number of broad-based random tests. The Police Association expressed its opposition to this step, asserting that the Westmead study did not demonstrate a need for random testing.[486]

7.29 The Commissioner of Police took the view that the Westmead study recommended the introduction of broad-based testing of a random type and that the Service was implementing the recommendations of the Westmead study in adopting this approach.[487] The Police Association has maintained its opposition to random drug testing since May 1999 and that remains its present position. It has not been prepared to entertain minor but significant amendments to the drug testing legislation because of the broader dispute concerning the introduction of random drug testing.[488] These minor but significant amendments involve the power to recall an officer to duty for the purpose of a targeted drug test and the power to take a blood sample from an officer incapacitated in hospital following a critical incident.[489]

---

483 Operation Saigon Phase III, PIC Transcript, G N Jackel, 2 March 2000, p. 550.

484 Operation Saigon Phase III, PIC Transcript, G N Jackel, 2 March 2000, p. 550.

485 Operation Saigon Phase III, PIC Transcript, G N Jackel, 2 March 2000, p. 557.

486 Operation Saigon Phase III, PIC Transcript, G N Jackel, 2 March 2000, p. 558-559.

487 Operation Saigon Phase III, PIC Transcript, G N Jackel, 2 March 2000, p. 559.

488 Operation Saigon Phase III, PIC Transcript, G N Jackel, 2 March 2000, pp. 560-561.

489 Operation Saigon Phase III, PIC Transcript, M J Brammer, 22 February 2000, pp. 152-153; G N Jackel, 2 March 2000, p. 560.

7.30 In September 1999, the Minister for Police indicated that he would like the Drug and Alcohol Policy Evaluation Committee, which includes Police Association members, to consult and, if possible, reach a consensus opinion on random drug testing.[490] The committee met on two occasions, with the Police Service and the Police Association maintaining their differing views on the issue. In November 1999, a submission was directed to the Minister seeking a formal direction on where to go from there. There had been no response to the submission by 2 March 2000.[491] The Commission has been advised that there has been no response from the Minister on this matter as at May 2001. The delay in progress in this most important area is a matter of concern. Prompt action on this issue is clearly in the public interest.

7.31 The Commissioner of Police has submitted to the Commission that, to date, the Police Service's drug and alcohol testing programme has had a demonstrable and positive impact on the culture of the Police Service, and cited as evidence thereof the following evidence given by Mr Jackel:[492]

(a) The relatively low incidence of officers returning positive readings in random and targeted alcohol testing programme – 27 positive readings from 16,378 random and targeted alcohol tests conducted between September 1997 and January 2000.[493]

(b) There have been 75 critical incidents since 1 July 1998 up until the end of January 2000. There have been 223 officers tested as a result of these critical incidents. Of these 223 officers, none tested positive to alcohol, one tested positive to a prohibited drug (cannabis), and one tested positive to a restricted substance (morphine).[494]

(c) There has been a substantial increase in the number of officers voluntarily coming forward for drug and alcohol counselling. Following the commencement of the Policy, there was a 63 percent increase in referrals. Current referrals are still running 20 percent higher than immediately before the commencement of the policy.[495]

(d) As at 2 March 2000 no police officer has refused to submit to a breath test or analysis, or give a urine sample.

(e) Independent research suggests the number of officers who drink to harmful or hazardous levels has substantially reduced since the introduction of the

---

490 Operation Saigon Phase III, PIC Transcript, G N Jackel, 2 March 2000, pp. 558, 561-562.

491 Operation Saigon Phase III, PIC Transcript, M J Brammer, 22 February 2000, p. 151; G N Jackel, 2 March 2000, p. 558.

492 PIC Exhibit 98, barcode 5767608.

493 Operation Saigon Phase III, PIC Transcript, G N Jackel, 2 March 2000, p. 550.

494 Operation Saigon Phase III, PIC Transcript, G N Jackel, 2 March 2000, p. 551.

495 Operation Saigon Phase III, PIC Transcript, G N Jackel, 2 March 2000, pp. 574-575.

Policy. During 1995/1996, research conducted by St Vincent's Hospital found that 48 percent of police drank at harmful levels. In 1997/1998, Westmead Hospital's research showed that 27 percent of police drank at harmful levels.[496]

TESTING OF OFFICERS INVOLVED IN CRITICAL INCIDENTS

7.32 Following the recommendations of the State Coroner in the Levi inquest made in March 1998,[497] section 211A(2A) was inserted in the *Police Service Act 1990* effective from 1 July 1998 allowing for a power to test officers involved in critical incidents causing death or serious injury. As with the general power under section 211A(1), the drug testing power is confined to the taking of a sample of urine or hair for the purpose of testing for the presence of prohibited drugs. The term "*prohibited drug*" is defined as having the same meaning as "*prohibited drug*" under Schedule 1 of the *Drug Misuse and Trafficking Act 1985*.

7.33 In the course of introducing the 1998 amendment, the Minister for Police, Mr Whelan, said in his Second Reading Speech:[498]

> This recommendation is intended to remove one cause of doubt as to the exercise of a police officer's judgement if such incidents arise in the future. … The addition of mandatory testing is a commitment to protecting public safety as well as the safety and wellbeing of police officers. … This bill demonstrates the Government's commitment to the safety of the people of New South Wales, and to police officers who must deal with dangerous situations.

7.34 Again, it is apparent that the purpose or object of the drug and alcohol testing power in the case of critical incidents involves a strong element of impairment testing as well as integrity or probity testing. Indeed, the very circumstances giving rise to critical incident testing would suggest that impairment testing is the dominant purpose for such a test to be carried out. If the test is negative, the air is cleared and a police officer will not be subjected to allegations or suspicions that are incapable of being objectively tested. On the other hand, if the test is positive, it will then be necessary as part of the investigation for a coronial inquest, or indeed a criminal prosecution, for an opinion to be expressed, if at all possible, as to the degree of impairment affecting an officer at the time of the critical incident.

7.35 Between July 1998 and January 2000, the Healthy Lifestyles Branch responded to 75 critical incidents and tested 223 officers for alcohol and drugs. No officer has tested positive to alcohol and two officers have tested positive to drugs,

---

496 Operation Saigon Phase III, PIC Transcript, G N Jackel, 2 March 2000, pp. 573-574.

497 PIC Exhibit 118.

498 Hansard, Legislative Assembly, 27 May 1998, p. 5328.

one for cannabis and one for morphine.[499] Mr Jackel said that an officer who had been tested following a fatal shooting had returned a positive result for phentermine.[500] Although not a prohibited drug, phentermine may impair the ability to perform activities requiring mental alertness including driving.

7.36 Despite the abovementioned statutory objects, the Police Service has adopted the view that all drug testing is integrity or probity-related only (as opposed to alcohol testing where the Police Service view is that alcohol testing is undertaken for probity and impairment reasons).[501] The view has been taken that drug testing is not for the purpose of identifying and measuring impairment, even in the critical incident context. Jackel gave evidence to this effect,[502] as did Brammer.[503] It was substantially for this reason that the Police Service was content to rely upon urine testing.[504] Despite this view, it is interesting to note that Dr Judith Perl, a Police Service pharmacologist, was called upon by the Police Service in February 1999 to express an opinion concerning impairment of an officer involved in a fatal shooting who returned a positive urine test for cannabis. Dr Perl said, 'the only reliable way in which performance impairment can be determined is by analysis of a blood sample for the active tetrahydrocannabinol ('THC)' and the metabolite THC acid'.[505] This illustrates the limitations arising where drug testing is confined to the determination of probity issues only and urine sampling is the only method of testing in use.

7.37 Associate Professor Starmer gave evidence that, for the purpose of testing for impairment, blood was the best sample to be taken.[506] Dr Perl and Dr Moynham, the Police Service experts, have been pressing strongly for the introduction of blood testing of police officers.[507] As observed previously, Dr Perl has emphasised the importance of blood testing to allow an assessment of performance impairment. Associate Professor Starmer identified the advantages and disadvantages of blood, urine, hair and saliva for the purpose of drug testing.[508]

7.38 Submissions were received on behalf of the Police Association and the Commissioner of Police, opposing the use of mandatory blood testing of police officers in critical incidents or otherwise. The Commissioner of Police relied upon a letter dated 25 March 2000 from Associate Professor Liddle in opposing the use of blood testing.[509] The Police Association relied upon the same letter

499 Operation Saigon Phase III, PIC Transcript, G N Jackel, 2 March 2000, pp. 550-551.
500 Operation Saigon Phase III, PIC Transcript, G N Jackel, 2 March 2000, p. 555.
501 Operation Saigon Phase III, PIC Transcript, M J Brammer, 22 February 2000, p. 153.
502 Operation Saigon Phase III, PIC Transcript, G N Jackel, 2 March 2000, pp. 551, 564-565.
503 Operation Saigon Phase III, PIC Transcript, M J Brammer, 22 February 2000, pp. 153-154.
504 Operation Saigon Phase III, PIC Transcript, G N Jackel, 2 March 2000, p. 565.
505 Operation Saigon Phase III, PIC Exhibit 92C.
506 Operation Saigon Phase III, PIC Transcript, G A Starmer, 2 March 2000, p. 624.
507 Operation Saigon Phase III, PIC Transcript, G N Jackel, 2 March 2000, p. 552.
508 Operation Saigon Phase III, PIC Transcript, G A Starmer, 2 March 2000, pp. 624-626.
509 Operation Saigon Phase III, PIC Exhibit 98, barcode 5767608.

from Associate Professor Liddle for opposing the use of mandatory blood testing in critical incidents.

7.39 In effect, the letter of Associate Professor Liddle constitutes a submission advancing the arguments in opposition to the use of blood testing for drugs.

7.40 Associate Professor Liddle seeks to place practical hurdles in the path of the use of blood testing as a means of assessing the degree of impairment of an individual through ingestion of a drug or drugs. He speaks of what may occur in a 'perfect world' but suggests that assessment of impairment by way of blood testing for drugs is difficult.[510]

7.41 The submission fails to take into account issues that are called upon to be determined by criminal courts in this State every day. Persons are charged with dangerous driving occasioning death or grievous bodily harm under section 52A of the *Crimes Act 1900*. A person may be guilty of such an offence if the prosecution can prove beyond reasonable doubt that, at the time of the impact, the person was driving a vehicle '*under the influence of intoxicating liquor or of a drug*'.[511] Section 52A(2) and (4) provides for the offences of aggravated dangerous driving occasioning death or grievous bodily harm. A circumstance of aggravation exists when, at the time of the collision occasioning death or grievous bodily harm, [512]

> … the accused's ability to drive was very substantially impaired by the fact that the accused was under the influence of a drug (other than intoxicating liquor) or a combination of drugs (whether or not intoxicating liquor was part of that combination.

7.42 Section 52A(9) of the *Crimes Act 1900* provides that the word 'drug' in section 52A has the same meaning as it has in the *Road Transport (Safety and Traffic Management) Act 1999*. As was observed earlier, this definition includes 'prohibited drugs' and substances prescribed as drugs under the regulations.

7.43 Apart from prosecutions for dangerous driving occasioning death or grievous bodily harm under section 52A of the *Crimes Act 1900*, prosecutions are brought from time to time for the summary offence of driving a vehicle 'while under the influence of alcohol or any other drug' contrary to section 12(1) of the *Road Transport (Safety and Traffic Management) Act 1999*.

7.44 In prosecutions for offences of these types, it is necessary for the prosecution to prove beyond reasonable doubt that the accused person was driving under the influence of a drug and (where it is alleged under section 52A(7)(d) of the

---

510 Operation Saigon Phase III, Exhibit 99, barcode 5713428.

511 Sections 52A(1)(a), 52A(3)(a) of the *Crimes Act 1900*.

512 Section 52A(7)(d) of the *Crimes Act 1900*.

Crimes Act 1900) that the accused's ability to drive was 'very substantially impaired by the fact that the accused was under the influence of a drug'. Dr Perl or Dr Moynham are frequently called by the Crown to give opinion evidence concerning the degree of impairment of an accused person having regard to the presence of drugs established through blood analysis.

7.45 Associate Professor Starmer is frequently called as a defence witness in such criminal proceedings. In his evidence before the Commission, he acknowledged that additional information is necessary to assist the interpretation of drug results in blood. However, this process is regularly undertaken in the criminal courts concerning blood analysis in the light of other available information. According to Associate Professor Liddle, 'police officers with positive drug tests have usually not been forthcoming with detailed information concerning the nature and history of their illicit drug use'.[513] The same might be said about accused persons before the criminal courts, but expert evidence is still given based on available information.

7.46 Dr Perl and Dr Moynham have been pressing strongly for the introduction of blood testing of police officers.[514] Dr Perl has emphasised the importance of blood testing to allow an assessment of performance impairment. Associate Professor Starmer has indicated that blood testing is the preferable method for assessing impairment.[515]

7.47 With this background in mind, the issues raised by Associate Professor Liddle concerning impairment assessment may be largely put to one side. The issues raised by him are confronted daily in the criminal courts where juries, judges and magistrates make decisions based upon expert evidence concerning impairment by drugs.

7.48 Associate Professor Liddle agrees with Associate Professor Starmer that, all other things being equal, 'the blood concentration of a drug will have a closer relationship to the effect of the drug than the concentration in urine'. He states, however, that 'other factors are inevitably not equal and are complex'.[516] This reflects an acceptance, in principle, by Associate Professor Liddle that blood testing is superior to urine testing for the purpose of impairment assessment. The 'other factors' raised by him are confronted and dealt with daily in the criminal courts in prosecutions of the type referred to above.

---

513 Operation Saigon Phase III, PIC Exhibit 99, barcode 5713430.

514 Operation Saigon Phase III, PIC Transcript, G N Jackel, 2 March 2000, pp. 552-553.

515 Operation Saigon Phase III, PIC Transcript, G A Starmer, 2 March 2000, p. 624.

516 Operation Saigon Phase III, PIC Exhibit 99, barcode 5713430.

7.49 Insofar as Associate Professor Liddle observes that blood samples are technically more difficult to handle and extract, especially compared to urine,[517] it is appropriate to observe that a statutory regime for the taking and storage of blood samples is provided for in the road and traffic legislation. That statutory model may be considered appropriate for the taking and storage of blood samples in the present context. It should be noted that trained nurses presently obtain urine samples from police officers following critical incidents. Nurses have the necessary skill and experience to obtain blood samples from police officers in the same circumstances.

7.50 Associate Professor Liddle expresses the opinion that drug testing is for probity testing purposes only.[518] The legislative purpose identified in relevant extrinsic material for existing statutory provisions suggests an impairment assessment function as well as probity testing.

7.51 The number of mandatory blood tests in a critical incident setting will not be great. Even if mandatory blood testing were used for random drug testing purposes, the number per year would be contained.

7.52 The Commissioner of Police, in his submissions, stated that the voluntary collection of blood rather than urine samples from officers who have been hospitalised as a result of a critical incident has obvious advantages. However, it is the Police Service's view that it would be inappropriate to compulsorily extend this procedure to all officers involved in critical incidents. The Commissioner of Police cites Associate Professor Liddle's view '… that the misguiding use of blood testing performed with the aim of calculating an individual's impairment will involve the Service in a long and costly litigation…'.[519]

7.53 It is the view of the Police Service that the legislation should be amended to enable blood samples to be obtained for drug testing purposes. However, it is submitted that this provision should only be used on a voluntary basis. The Police Service remains of the view that urine is still the most acceptable sample for workplace drug testing purposes and that drug impairment cannot be adequately measured by either blood or urine.

7.54 The Police Association has stated that the only circumstances in which the Police Association would be prepared to consider the introduction of blood testing on any basis, is if it was a secondary test only after a urine sample taken as a result of a critical incident had returned a positive result. Then, and only then, is there any possible justification for requiring police to submit to a blood

[517] Operation Saigon Phase III, PIC Exhibit 99, barcode 5713431.
[518] Operation Saigon Phase III, PIC Exhibit 99, barcode 5713428.
[519] PIC Exhibit 98, barcode 5767608.

test.[520] The Police Association cites the following evidence given by Professor Starmer in relation to this matter:[521]

> Q. Now, on the targeted or random drug testing side, not critical incident – and I'm conscious there are questions of policy here that others decide as to what the purpose of such testing is – but do you see that urine testing alone can play a useful role in that type of testing?
> A. Yes, I can. But with urine alone relying on urine alone, I have some disquiet about the specificity of the tests and the possibility of wrongly accusing somebody of being a drug user. There are new immunological methods for testing urines that are intended to be used at the roadside. There is one system which has been developed by the University of Glasgow which will give you an answer within minutes. Perhaps it might be appropriate for a blood sample to be taken if a positive urine result was obtained by such a method. It strikes me as being worthy of consideration.
>
> Q. From your last answer, are you suggesting that it may be in the interests of the officer being tested to have either this screening mechanism, or, if not that, blood rather than urine in the interests of the accuracy of the test?
> A. It would be my feeling, but whether it's a practicable proposition is another matter. The idea of a rapid screen – of a sequential approach involving rapid screening of urine and perhaps taking a blood sample if a positive result was obtained, that might work and be cheaper.

7.55 In relation to the above evidence by Professor Starmer, the Commission is mindful that Professor Starmer was giving this evidence in relation to a question asked of him of the validity of urine testing for random or targeted testing, not for critical incident testing.

7.56 The Commission is of the view that none of the matters raised by Associate Professor Liddle, or in the submissions made on behalf of the Commissioner of Police or the Police Association militate against the introduction of mandatory blood testing following critical incidents with an impairment assessment function.

RECALL TO DUTY FOR DRUG TESTING PURPOSES

7.57 Mr Jackel gave evidence that it has been the Police Service's view for some time that governing legislation should enable the Police Service to recall officers to duty for the purpose of undergoing a drug test. This would strengthen the Police Service's ability to provide a workplace that is free of prohibited drug use.[522]

---

[520] PIC Exhibit 101, barcode 5668677.

[521] Operation Saigon Phase III, PIC Transcript, G A Starmer, 2 March 2000, pp. 631-632.

[522] Operation Saigon Phase III, PIC Transcript, G N Jackel, 2 March 2000, p. 560.

7.58 To this end, Mr Jackel put in a submission to the Minister that was endorsed by Cabinet to this effect.[523] The Police Association has opposed this amendment.[524]

RECOMMENDATIONS

RANDOM DRUG TESTING

7.59 There are powerful reasons why random drug testing should proceed in New South Wales. The Commissioner of Police supports this view.[525] The power has been on the statute books since 1 January 1997. Although there was a procedural expectation that a phased implementation process permitted examination as to its utility, that process has been complete since October 1998. That process recommended a limited form of random testing in the form of the broad-based testing described in the Westmead study. That study recognised that there did not appear to be, upon the basis of the 1,036 officers tested, a then existing prohibited drug use problem. In recognition of that factor, the study did not recommend the introduction of random drug testing upon the scale undertaken with random alcohol testing. There are practical and cost factors which bear upon this issue as well. Mr Jackel expected that about 500 random drug tests would occur per year.[526]

7.60 The position of the Police Association opposing the introduction of random drug testing does not appear to be reasonable. It is not a tenable approach to rely upon a partial reading of the Westmead study to support opposition to random testing, at the same time ignoring the recommendations of the study itself. Nor is it reasonable to ignore the result of the survey suggesting that more than 80 percent of the police responding saw some use in random drug testing of police officers. **The Commission recommends that random drug testing should proceed without further delay.**

7.61 It has been observed above that section 211A of the *Police Service Act 1990* in its original form, envisaged that targeted and random drug and alcohol testing be undertaken for both probity and impairment reasons. The power was not confined to probity testing only. The evidence reveals that blood testing is the best method of assessing drug impairment (see paragraphs 7.33 and 7.44 above). **The Commission recommends that the legislation should provide for blood testing as a method of undertaking random and targeted drug testing.** It is expected that about 500 random drug tests would be carried out

523 Operation Saigon Phase III, PIC Transcript, G N Jackel, 2 March 2000, p. 570.

524 Operation Saigon Phase III, PIC Exhibit 76.

525 PIC Exhibit 98, barcode 5767608.

526 Operation Saigon Phase III, PIC Transcript, G N Jackel, 2 March 2000, pp. 571-572.

each year.[527] Given that only 57 targeted drug tests have been undertaken between November 1998 and 1 March 2000,[528] it may be anticipated that targeted drug testing in the future will involve a similarly manageable number of tests. Given the larger number of tests to be undertaken as part of random and targeted drug testing (as opposed to critical incident testing), there are practical and cost factors which may point to the retention of urine testing only. However, any decision as to the method of testing for the purpose of random and targeted drug testing must be made against the background that blood testing is the clearly preferable method of sampling.

BLOOD TESTS IN CRITICAL INCIDENTS

7.62 There is a powerful case for amendment to the provisions allowing for critical incident testing. The evidence of Mr Jackel suggests that there are a limited number of tests to be carried out pursuant to this power.[529] Bearing in mind the clear statutory purpose involving impairment testing as well as integrity testing, the legislation should provide for both blood and urine samples to be taken from all officers involved in critical incidents.

7.63 Mr Jackel gave evidence that Dr Perl and Dr Moynham of the Police Service had been pressing strongly for the introduction of blood testing of police officers. It appears that Dr Perl and Dr Moynham have taken this view because of their own frequent experience in being called upon to express opinions concerning the effect of alcohol and/or drugs upon a driver at the time of an accident.[530] Dr Perl and Dr Moynham and also Associate Professor Starmer commonly give this evidence in culpable driving trials.[531] It is the type of evidence that might reasonably be expected to be given in criminal prosecutions or at inquests arising from critical police incidents involving death or injury.

7.64 Associate Professor Starmer gave evidence of the optimum position where the urine sample could be tested for screening purposes with analysis of an available blood sample then being a consequential step if the urine test returned a positive result. The evidence of Mr Jackel indicates that blood samples have been requested and provided voluntarily in a number of cases already by officers at hospital following critical incidents.[532] There are strong reasons why blood testing should be carried out for this purpose. Although, as Mr Jackel argued, blood testing is a more invasive testing mechanism than urine testing, it is a method used under traffic legislation with respect to motorists.[533] That legislation

---

527 Operation Saigon Phase III, PIC Transcript, G N Jackel, 2 March 2000, p. 571.
528 Operation Saigon Phase III, PIC Transcript, G N Jackel, 2 March 2000, p. 567.
529 Operation Saigon Phase III, PIC Transcript, G N Jackel, 2 March 2000, p. 564.
530 Operation Saigon Phase III, PIC Transcript, G N Jackel, 2 March 2000, p. 552.
531 Operation Saigon Phase III, PIC Transcript, G A Starmer, 2 March 2000, pp. 623-624.
532 Operation Saigon Phase III, PIC Transcript, G N Jackel, 2 March 2000, p. 562.
533 Operation Saigon Phase III, PIC Transcript, G N Jackel, 2 March 2000, pp. 562-563.

constitutes practical acknowledgement that blood testing is the most effective sample to be used for this purpose. **The Commission recommends that the law should allow for, and require the obtaining of the best evidence for the purpose of drug and alcohol testing of a police officer after a critical incident, namely blood testing.**

RANGE OF DRUGS – CRITICAL INCIDENT TESTING

7.65 Mr Jackel[534] and Associate Professor Starmer[535] gave evidence concerning a category of drugs prescribed for the purpose of the Road Transport (Safety and Traffic Management) (Road Rules) Regulations 1999. The term 'drug' is defined in section 4 of the *Road Transport (Safety and Traffic Management) Act 1999* as meaning alcohol, a 'prohibited drug' as defined by the *Drug Misuse and Trafficking Act 1985* and any other substance prescribed as a drug. Clause 127 of the Regulations prescribes as drugs substances listed in Schedule 4 of the Regulations.[536] That Schedule lists some 70 substances. It is apparent that these substances are considered to be ones that are capable of affecting or impairing a driver's ability to control a vehicle. For that reason, it is an offence to drive under the influence of alcohol, a prohibited drug or one or more of these substances prescribed under Schedule 4.

7.66 In the submissions on behalf of the Commissioner of Police it was put forward that the Police Service holds significant concerns about the possible expansion of the mandatory drug testing programme to include prescribed medications. At any time a percentage of officers will be taking some form of legally obtainable medication. This medication may impair the performance of some officers. However, as Associate Professor Starmer stated, the presence of this medication is just as likely to optimise an individual's performance rather than reduce it.[537]

7.67 In his submissions, the Commissioner of Police provides the following extracts from the Police Service's Drug and Alcohol Policy and the Code of Conduct and Ethics in relation to police officers and prescription medication:[538]

> You must not perform your job, remain at work or undertake any Police Service related activity if you are impaired by alcohol or other drugs including drugs prescribed by your doctor. This includes training functions and seminars. If you are off duty and impaired, you are not permitted to visit the workplace. If you are taking prescribed drugs and have any doubt about your ability to perform any or all of your normal duties, you should consult your medical practitioner and discuss alternative work options with your supervisor.[539]

---

534 Operation Saigon Phase III, PIC Transcript, G N Jackel, 2 March 2000, pp. 555-556.

535 Operation Saigon Phase III, PIC Transcript, G A Starmer, 2 March 2000, pp. 627-628.

536 Operation Saigon Phase III, PIC Exhibit 75.

537 Operation Saigon Phase III, PIC Transcript, G A Starmer, 2 March 2000, p. 628.

538 PIC Exhibit 98, barcode 5767608.

539 Police Service Drug and Alcohol Policy, p. 6.

> If medication carries a warning that it has the potential to impair functioning, you must inform your supervisor about the warning if your duties require you to drive, operate heavy machinery, or carry a gun.[540]

7.68 The Commissioner of Police submits that the range of drugs to be tested does not need to be extended. The Commissioner of Police is satisfied that mandatory requirements in the Drug and Alcohol Policy and the Code of Conduct, are sufficient to address the issue. To test for the presence of legally obtainable medications would not only place additional pressures on police involved in critical incidents, but would also lead to an inevitable and substantial increase in sick leave from officers who would otherwise be gainfully employed.[541]

7.69 It is apparent that a dominant purpose for critical incident testing is to determine whether the judgement of an officer involved in a critical incident was impaired in some way by alcohol and/or drugs. The Commission is of the view that there is no good reason for restricting the drugs under consideration for that purpose to prohibited drugs. **The Commission therefore recommends that the range of drugs to be tested for be extended to a broader category such as that encompassed by the traffic legislation. The types of considerations, which have seen the 70 drugs included in Schedule 4 to the traffic legislation, would appear to be equally applicable to the critical incident testing power under the *Police Service Act 1990*.**

REFUSAL TO SUBMIT TO A TEST

7.70 Clause 66D(5) of the Police Service Regulation 1990 provided that a police officer must not, when required under the Act or the Regulations to do so, refuse or fail to provide a sample of urine or hair in accordance with a direction given by an authorised person. Mr Jackel and Mr Brammer confirmed that a refusal or failure to provide a sample for drug testing may constitute a disciplinary offence or grounds for action under section 181D of the *Police Service Act 1990*, but does not constitute a criminal offence. Clause 49(5) of the Police Service Regulation 2000, which came into effect after the Commission's public hearings, is in similar terms to repealed clause 66D(5) of the 1990 Regulation. Somewhat curiously, however, clause 57(1)(d) of the 2000 Regulation provides for the refusal to provide a sample of urine or hair as a breach of the code of behaviour but is silent with respect to the failure to provide such a sample. Clause 57(2) of the 2000 Regulation provides that the Commissioner may make a section 173 order or section 181D order in relation to the breach of the code of behaviour by any such police officer. However, such a breach appears to be confined to a refusal, but not a failure, to provide a urine or hair sample.

---

[540] Code of Conduct and Ethics.

[541] PIC Exhibit 98, barcode 5767608.

7.71 In submissions on behalf of the Commissioner of Police, it is submitted that the nomination for loss of Commissioner's Confidence under section 181D of the *Police Service Act 1990*, is a sufficient sanction for refusing to submit to a drug test.[542]

7.72 Under the traffic legislation, it is a criminal offence for a driver to refuse or fail to submit to a breath test, breath analysis or to provide a blood sample.[543] There does not appear to be any good reason why a refusal or failure to provide a sample for the purpose of drug or alcohol testing under section 211A of the *Police Service Act 1990*, should not constitute a criminal offence. Without a sanction of that type, it might be considered that the drug and alcohol testing powers contained in the legislation are not sufficiently strong. **The Commission therefore recommends that failure or refusal to provide a sample for drug testing should constitute a criminal offence.**

OTHER MATTERS ARISING FROM THE PUBLIC HEARINGS

DRUG AND ALCOHOL EDUCATION PROGRAMS AT THE ACADEMY LEVEL

7.73 The Royal Commission undertook a detailed examination of the problem of drug use amongst members of the Police Service, and found, among other things, that:[544]

> … insufficient training had been given, at the Police Academy or elsewhere, as to what was expected of police in relation to their association with recreational drugs.

7.74 The police officers involved in the Saigon hearings gave evidence of witnessing widespread recreational drug use amongst their friends at parties and nightclubs. It is noted that the Saigon hearings focused on a small number of police officers whose experience with prohibited drugs cannot be said to be indicative of the Police Service's as a whole. However, it is a matter of concern that the officers involved viewed recreational drug use as acceptable, and failed to take any action against people using prohibited drugs as they were 'off-duty' at the time.

7.75 It may be necessary to introduce greater education and training with respect to recreational drug use at an Academy level so that the implications of police involvement in recreational drug use may be more fully understood by young officers.

---

542 PIC Exhibit 98, barcode 5767608.

543 Sections 15(4), 22(2), 29(2) of the *Road Transport (Safety and Traffic Management) Act 1999*.

544 Royal Commission into the NSW Police Service, *Final Report Volume I: Corruption*, May 1997, p. 100.

7.76 The issue of insufficient training with respect to recreational drug use was canvassed with Christan Bruce during the Saigon hearings.

7.77 On 24 February 1999, the following exchange took place between Christan Bruce and Ms Stenmark:[545]

> Q. … Is there anything that you could suggest that may be helpful to the Commissioner and/or to the Police Service to help the Service deal with police officers who use and/or supply drugs?
> A. When I was a student police officer at the academy, a gentleman who was an ex-police officer came and gave us a talk – I think it was in our first week there – on corruption and the effects of taking bribes or doing the wrong thing by the Police Service. He was doing - he was an inmate at Berrima prison at the time, and it was quite an effective talk because he'd already been there, and I think I could probably do something along the same lines and give some sort of lecture to the student police officers at the academy regarding corruption and its effects on your career and your family and so on.
>
> Q. But you just said that this man talked to you about corruption and doing the wrong thing by the Police Service and you said it had an effect on you, but that's what you've done though?
> A. It had an effect on me at the time, which was seven years ago, and what he was mainly talking about was taking bribes and hurting the community in that way. Whereas what I've done is – although I may have hurt the community in some ways, it was more so something that was detrimental to my health and my colleagues' health, and I didn't really appreciate the ramifications each time that I took drugs.
>
> Q. And you condoned drug dealing?
> A. Yes.
>
> …
>
> Q. So you think that what should happen is that someone who has actually been in the position who has had first hand experience should come along and give some lectures to people at the academy?
> A. That's right, yes. I think when someone is actually telling how it happened, rather than in theory from reading books, it has more of an effect on a group of people, especially when they are impressionable in their first couple of weeks at the academy.

7.78 The Police Service may wish to consider their education program at Academy level with respect to police officers and their association with recreational drugs. However, it is important that police officers receive ongoing education and training with respect to drug and alcohol abuse which is an area in which the Healthy Lifestyles Branch is currently active.

---

[545] Operation Saigon Phase I, PIC Transcript, C D Bruce, 24 February 1999, pp. 488-489.

ADEQUACY OF CHECKS PERFORMED PRIOR TO JOINING THE POLICE SERVICE

7.79 During the course of the Saigon hearings, the Commission heard evidence from SA12 and SA9 that suggested Podesta was involved in significant prohibited drug use prior to his joining the Police Service. It is noteworthy that Detective Inspector Jones, whilst giving evidence in Saigon III, referred to inadequate checks being made in connection with Podesta's application to join the Police Service. This related to his employment at the Piccolo Bar at Kings Cross, an establishment regarded as high risk with respect to criminal and drug activity.[546] While Podesta maintained that he had not observed the use or supply of prohibited drugs at the Piccolo Bar, he said that he understood that drug use and supply took place there.[547]

7.80 If thorough background checks were performed prior to his joining the Police Service, Podesta may not have been considered as an appropriate candidate for the Police Service. It may be necessary for the Police Service to reconsider their screening processes for candidates for the Police Service.

[546] Operation Saigon Phase III, PIC Transcript, P D Jones, 21 February 2000, p. 43.

[547] Operation Saigon Phase II, PIC Transcript, R J W Podesta, 2 November 1999, p. 91.

APPENDIX

The following is a list of witnesses appearing before the Commission in public hearings in relation to this matter:

SAIGON PHASE I

- SA19
- Anthony Michael Binns
- Christan David Bruce
- Matthew James Crotty
- Anthony Stephen Dilorenzo
- Easton Barrington James
- Andrew Mychael King
- Lenin Marx Lambert
- Peter John Murrant
- Paul James Petith
- Rodney Joseph Walter Podesta
- David Jeffrey Price
- John Ross Thompson
- Lisa Jane Troost

SAIGON PHASE II

- SA2
- SA7
- SA8

- SA9
- SA10
- SA11
- SA12
- SA13
- SA15
- SA17
- SA20
- Angelo Osvaldo Astudillo
- Richard Raymond Baker
- Annabelle Jane Dilorenzo
- Mark Alan Dilorenzo
- Anthony Stephen Dilorenzo
- Stanley Victor Dowse
- Easton Barrington James
- Kieran Brian O'Connor
- Charmaine Julie Podesta
- Rodney Joseph Walter Podesta
- John Kevin Preston
- Nola Preston
- Ronald James Quin
- Renee Rose Robertshaw

- Terry Voto

SAIGON PHASE III

- Malcolm James Brammer
- Patrick Eduardo Brown
- Michael John Cooper
- Anthony Stephen Dilorenzo
- Peter Thomas Fitzpatrick
- Gary Neil Jackel
- John Lewis Jones
- Paul Douglas Jones
- Christopher Patrick Keen
- Thomas William John Lupton
- Robert Ian Martin
- Robert Norman McDougall
- Bernard Roy McSorley
- Rodney Joseph Walter Podesta
- Adam Michael Purcell
- Gary Richmond
- Graham Alexander Starmer
- Murray James Wilson


POLICE INTEGRITY
COMMISSION