LECC
Law Enforcement Conduct Commission

# Operation Somnus: fabrication and tampering of evidence, deficient police investigation

## What is Operation Somnus?

Operation Somnus investigated an allegation that NSW Police Force officers had assaulted a man in custody. The investigation then considered allegations that the officers:

- attempted to destroy a video recording made by the man in custody
- copied one another's statements,
- included untruthful evidence in their own statements, and
- were untruthful in the evidence they gave to the Local Court.

The investigation also considered flaws with the NSW Police investigation of these allegations.

## The Commission's oversight function

After a Local Court Magistrate raised concerns about the truthfulness of two police officers' evidence, the NSW Police Force undertook their own investigation.

The Commission reviewed the NSW Police Force investigation. We found evidence that several officers had engaged in serious misconduct and criminal offences and began our own investigation.

Operation Somnus highlights the importance of effective oversight of police complaint handling.

## Wood Royal Commission

Justice Wood, in his final report, discussed the impact of process corruption:

*This is the kind of corruption whereby police powers are abused; evidence is fabricated or tampered with. It is often directed at those members of the community who are least likely or least able to complain and is justified by police on the basis of procuring the conviction of persons suspected of criminal or antisocial conduct, or in order to exercise control over sections of the community.*

## What were the Commission's findings?

The Commission made a number of findings:

1. That the arrest of the civilian was unlawful
2. An NSW Police Force officer choked the civilian in the corridor of the police station.
3. An NSW Police Force officer took the civilian's mobile phone and deleted the recording of the incident. The officer then purposely omitted 6 seconds of police station CCTV footage from the brief of evidence to conceal the fact that he had deleted the mobile phone recording
4. An NSW Police Force officer fabricated statements in the Facts Sheet in support of the offences the civilian was charged with.

Read the full report here

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5. Two NSW Police Force officers fabricated evidence in their statements with an intention to mislead a judicial tribunal, providing an entirely false narrative of events relating to the civilian's arrest.

6. Two NSW Police Force officers gave false evidence in the Local Court under oath in the civilian's prosecution in relation to matters material to the proceedings.

7. The internal police investigation into the conduct of the 2 officers was deficient.

## Commission findings on process corruption

Operation Somnus identified issues similar to those discussed in the Wood Royal Commission.

The Commission emphasised that police officers' statements should only contain information that the officer knows and believes to be true. Relying on another officer's statement gives rise to a suspicion of collusion and can lead to criminal charges against the officer.

However, without corroborative evidence, it is very difficult for defendants to prove that a police statement is false or misleading.

Accurate police statements are fundamental to the proper working of the criminal justice system, and to public trust in the NSW Police Force.

## Recommendations

The Commission made a finding of serious misconduct against 2 officers and recommended the Commissioner of Police consider action to dismiss those officers pursuant to s181D of the *Police Act 1990* (Police Act).

The Commission will also refer briefs of evidence to the Director of Public Prosecutions (DPP) to seek her advice with respect to the prosecution of the officers for a number of criminal offences.

The Commission recommended that the officer who conducted the internal police investigation be subject to non-reviewable action under s173 of the Police Act.

### General recommendations

The Commission also made general recommendations as to the content of the police statement template.

The Commission also reiterated the recommendations made in its *Review of NSW Police Force responses to failed prosecutions* including ensuring that officers responsible for the quality review of briefs of evidence have the necessary skills, time and resources to review the brief thoroughly, and for the NSW Police Force to conduct a yearly review of the reasons why costs are awarded against the NSW Police Force.

Read the full report here