



NEW SOUTH WALES

***Inspector
of the
Police Integrity Commission***

19 October 2011

The Hon Don Harwin MLC
President of the Legislative Council
Parliament of NSW
Parliament House
Macquarie Street
SYDNEY NSW 2000

The Hon Shelley Hancock MP
Speaker, Legislative Assembly
Parliament of NSW
Parliament House
Macquarie Street
SYDNEY NSW 2000

Dear Mr President & Madam Speaker,

Pursuant to Section 101 of the *Police Integrity Commission Act 1996*, I hereby furnish to each of you for presentation to Parliament a *Special Report* of the Inspector of the Police Integrity Commission dealing with certain matters affecting the Police Integrity Commission.

The Report has been prepared in accordance with the requirements of the *Police Integrity Commission Act 1996* ("the Act").

Pursuant to Section 103(2) of the Act, I recommend that the *Special Report* be made public forthwith.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Peter J. Moss'.

The Hon P J Moss, QC
Inspector of the Police Integrity Commission



*Inspector
of the
Police Integrity Commission*

**SPECIAL REPORT OF
THE INSPECTOR OF THE
POLICE INTEGRITY COMMISSION**

PURSUANT TO SECTION 101 OF THE
POLICE INTEGRITY COMMISSION ACT 1996

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Special Report

SCHEDULE

PIC letter dated 28 September 2011

Inspector's letter dated 7 October 2011



Inspector of the Police Integrity Commission

- 1) The purpose of this Special Report made by me, as Inspector of the Police Integrity Commission, to the Presiding Officer of each House of the New South Wales Parliament, pursuant to Section 101 of the *Police Integrity Commission Act*, is to report on significant matters affecting the Police Integrity Commission and to report in respect of certain procedures and practices adopted by that Commission in conducting their investigations their public hearings and in making their Reports to the Parliament.
- 2) These significant matters affecting the Police Integrity Commission (the “PIC”), in this instance, came to my attention as a result of my investigation, pursuant to Section 89 of that legislation, of serious complaints against the PIC made to my office by **Detective Inspector Paul Jacob** of NSW Police.
- 3) Section 89(1) enacts that it is a principal function of the Inspector to deal with by reports and recommendations complaints of abuse of power, impropriety and other forms of misconduct on the part of the Commission or officers of the Commission.
- 4) My Report of the investigation dealing with the complaints of DI Jacob, in effect, constitutes this Special Report.
- 5) Briefly, my office received a number of serious complaints from DI Jacob in February 2011 essentially arising out of what was published concerning DI Jacob in the PIC’s *Rani* Report presented to the Parliament in December 2007.
- 6) The *Rani* Report in effect recommended to the NSW Commissioner of Police that DI Jacob be dismissed from NSW Police forthwith and expressed the opinion that he was unfit to remain a member of NSW Police.
- 7) That Report also recommended to the NSW Police Commissioner that **Detective Senior Constable Sim** be dismissed from NSW Police forthwith. For reasons explained in my Report, I also examined the basis for the PIC recommendations concerning DSC Sim.

- 8) In October 2008, the Police Commissioner sought and obtained in effect a Review by Senior Counsel of the *Rani* Report and its recommendations concerning DI Jacob and DSC Sim.
- 9) I have included a copy of that Review in the *Schedule* to my Report dealing with the complaints made by DI Jacob.
- 10) That Review concluded that none of the specific adverse findings in the *Rani* Report against either DI Jacob or DSC Sim was justified and that neither of those Officers had engaged in police misconduct.
- 11) Apparently in the light of that Review by Senior Counsel and in reliance upon the opinions contained therein, the Police Commissioner did not accept the PIC's recommendations in respect of DI Jacob or DSC Sim.
- 12) My Report sets out the matters examined by me in the course of my investigation, and the bases for my conclusion that *none of the serious allegations "made" by the PIC against either of these Officers or the PIC's findings of serious and intentional misconduct were supported or justified* by the evidence before the PIC.
- 13) Consequent upon my conclusions I made the recommendations set out in my Report.
- 14) By letters dated 16 August 2011, I provided copies of my Draft Report in this matter to the PIC, DI Jacob and DS Sim, respectively, so as to provide each with an opportunity to comment on my Draft Report prior to my finalising that Report.
- 15) By letter dated 28 September 2011, the PIC provided me with the Commission's response to my Draft Report.
- 16) In that letter the Acting Commissioner informed me that: "Despite the further information brought forward since the publication of the Rani Report and the opinions offered in the Taylor advice and your draft report, I do not consider that any of the steps suggested in the conclusion of your draft report are called for."
- 17) I have included in the *Schedule* to this Report the full text of the Commission's letter dated 28 September 2011 referred to above, and my letter in response dated 7 October 2011.
- 18) This is not the first occasion on which I have found it necessary to prepare and make a Report pursuant to Section 101 dealing with systemic abuses of power, impropriety and misconduct on the part of the PIC.
- 19) On 2 April 2009 I made such a Report at the request of the *Committee on the Office of the Ombudsman and the Police Integrity Commission*. I respectfully

request that that Special Report be read with this Special Report as though that Special Report were incorporated herein.

- 20) In the Schedule to that earlier Special Report I included the text of a letter dated 26 March 2009 from the Chair of that Committee “urging” me to make that Special Report, expressing the concerns of the Committee in relation to the conduct of the PIC referred to in that letter, and informing me that the Committee was “strongly of the view that evidence of systemic problems within the PIC” was “properly the subject of a Special Report under Section 101.”
- 21) In my opinion the concerns and opinions expressed by the Committee in that letter are just as relevant and valid if applied to the serious and systemic misconduct of the Commission revealed in this, my second, Special Report.

A handwritten signature in black ink, appearing to read 'Peter Moss'.

The Hon P J Moss, QC
Inspector of the Police Integrity Commission

14 October 2011



*Inspector
of the
Police Integrity Commission*

INSPECTOR'S REPORT

PURSUANT TO SECTION 89(1)(b) OF THE
POLICE INTEGRITY COMMISSION ACT 1996

**DEALING WITH
COMPLAINTS MADE BY
DETECTIVE INSPECTOR JACOB
AND
AN INVESTIGATION OF PIC RECOMMENDATIONS CONCERNING
DSC SIM
ARISING OUT OF THE
POLICE INTEGRITY COMMISSION'S RANI REPORT**

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OVERVIEW

- 1) The disappearance, and suspected murder, of Janine Vaughan, 31 years of age, and a resident of Bathurst, NSW, at the time, remains an unsolved crime. She was last seen entering a motor vehicle at approximately 4 am on 7 December 2001, after leaving a nearby nightclub in Bathurst with a group of friends. Neither the motor vehicle nor the driver thereof has ever been identified.
- 2) The crime was investigated by a NSW Police Task Force, “Toko”, set up for that purpose, headed by Detective Inspector Jacob, an experienced and highly regarded police officer based in Sydney.
- 3) Initially, and for a brief period, that Task Force had included Detective Sergeant Hosemans, according to the evidence a competent police officer, who was also at the time the Deputy-Mayor of Bathurst.
- 4) That dual role, coupled with the fact he had been acquitted in July 2002 by a Local Court of charges arising out of an apparently drunken gathering at a local golf club, and that, according to the evidence, he was unmarried, and apparently involved in personal relationships from time to time with a number of the town’s female residents, gave rise to a great deal of rumour and innuendo concerning his alleged relationship with the missing woman.
- 5) Because of that rumour and innuendo, his high-profile in the Bathurst community, and the fact he was a police officer, Hosemans became the subject of a distracting and time-consuming investigation by the Task Force. That investigation concluded that, despite the rumours and innuendo to the contrary, he had never had any contact of any kind with the missing woman and was not implicated in any way in her disappearance.
- 6) The Task Force’s conclusions, apparently, were not sufficient to quell the local gossip concerning Mr Hosemans and the missing woman, which was still rife when the PIC arrived on the scene some years later.
- 7) Although he was eventually acquitted of the charges relating to the golf club incident by a Local Court, DS Hosemans was later dismissed from NSW Police apparently as a result, at least in part, of the widespread publicity given to the incident by local newspapers.
- 8) In 2005, some two years after the police investigation into the disappearance of the woman had been suspended due to lack of fresh evidence, an anonymous allegation was received by NSW Police alleging that the former DS Hosemans had, in effect, abducted and, by implication, murdered the missing woman.
- 9) The anonymous allegation was referred by NSWP to DI Jacob who assessed it as having come from the same source as prior anonymous allegations, couched as it was, in similar style and content in respect of DS Hosemans, which had been investigated by Professional Standards Command (NSW Police) and found to be without foundation.
- 10) There, it must have seemed, the investigation into the baffling and unsolved disappearance of the missing woman ended, in the absence of new evidence.
- 11) However, notwithstanding that the anonymous allegation had been assessed and dealt with in the manner referred to above, and that no new evidence had come to light, the Police Integrity Commission made the decision to conduct a full-scale investigation into the anonymous allegations.

- 12) That amounted to an investigation into the allegation that the former DS Hosemans was the culprit. That investigation “into the anonymous allegations”, according to the Commission, “formally commenced” on 26 September 2005.
- 13) Thereupon the PIC not only conducted many months of investigations into these anonymous allegations, previously assessed by NSW Police as baseless, interviewing well over 200 persons in that particular process, but also retained a barrister as Counsel Assisting, and, accompanied by intense media speculation, from time to time, conducted private and public hearings, and interviewed witnesses.
- 14) These hearings in effect went over the same ground as that covered by the NSW Police Task Force led by DI Jacob some years previously.
- 15) More than two years later, in December 2007, the Commission produced a public Report to the NSW Parliament (the *Rani Report*).
- 16) The Rani Report, shorn of its superfluous excrescences, discussed in detail later in this Report, in effect reached the same conclusions as the police Task Force. That two-year investigation had not unearthed a shred of credible evidence that implicated the former DS Hosemans in the disappearance of the woman.
- 17) The anonymous allegation which had initiated the investigation was found by the PIC to be wholly without substance. Despite this, the Commission published the terms of that allegation in the Rani Report.
- 18) Thus, the crime remained (and remains) unsolved.
- 19) That Report, conceivably, might have taken the form of briefly reporting those results of the Commission’s two-year investigations. A frank Report would have acknowledged the investigation as a misconceived operation, with a public apology to Hosemans, perhaps, for having subjected him to such a public and unnecessary ordeal.
- 20) Instead, what was produced was a lengthy Report at least half of which referred to evidence or comments relating to Hosemans the effect of which was to continue to cast suspicion upon him, and to present him in such a negative and adverse mould as to be disparaging of his integrity and character notwithstanding that the Commission had been unable to unearth a shred of evidence implicating him in the crime, or, indeed, any criminal behaviour, and that the anonymous allegation, which had initiated the long and futile investigations, had been found by the PIC to be baseless.
- 21) In particular, although the Commission was well aware when it came to write the Rani Report that the evidence established that Hosemans, as he had steadfastly maintained throughout, had never met the missing woman or had had any contact with her of any kind, and was not implicated at all in her disappearance, devoted pages and pages of the Rani Report to material which might give the false impression that there *was* credible evidence of a “link” or “association” between Hosemans and Vaughan. See, for example, *Section 3, 3.1-3.32*, and *Section 4, 4.1-4.47*.
- 22) In similar vein, the Commission filled many pages of its Report with references to whether or not Hosemans had an “*alibi*”. Despite the pejorative implications inherent in the use of that term, the credible evidence, and the PIC’s own conclusions, clearly excluded Hosemans as a suspect in respect of the unsolved crime.
- 23) In a statement made to NSWP some 12 months after the woman disappeared, and in reliance on seemingly reliable financial records, accepted by NSWP as such, Hosemans stated that he believed he had returned to Bathurst (after spending a few days at his mother’s residence in

Newcastle) on 7 December 2001. No opinion was expressed by the Commission in the Rani Report that it was unreasonable of Hosemans to place reliance on those records, or that he did not believe that he had returned to Bathurst on that date at the time he made his statement.

- 24) Subsequently, NSW Police obtained Hosemans' Call Charge Records relating to his mobile phone for the relevant period, which, assuming their reliability as an indication of his phone's location at the time, appeared to indicate that he had in fact returned to Bathurst on the evening of 6 December 2001, rather than the 7th.
- 25) However, these CCRs were not put to Hosemans until he gave evidence to the Commission on 5 and 7 June 2006. At that time he produced to the Commission a petrol receipt which indicated he had in fact returned to Bathurst on the 6th and not the 7th. In the light of the CCRs and the petrol receipt, Hosemans readily conceded that it appeared he had in fact returned on the 6th.
- 26) The fact that he had returned on that date did not, of course, implicate him in the disappearance of the woman. The PIC never suggested to him that the date of his return implicated him in the woman's disappearance.
- 27) Despite this being the situation, the Commission's Report is replete with references to Hosemans' "*alibi*", and the apparent inconsistency between the financial records originally relied upon, and the subsequent CCRs. These references insinuate, time and time again, that it was a significant matter on which of the two dates he had returned to Bathurst.
- 28) Such repeated insinuations were included in the Report notwithstanding that the Commission ultimately accepted that the evidence (which included the fact of his return to Bathurst on the 6th) established he was not implicated in the crime, and had never had any contact with the missing woman.
- 29) The Commission's motive and purpose in including in its Report such obviously irrelevant, and distracting, material, and according it considerable space and prominence, may be a matter that requires further investigation. There can be no doubt that the inclusion of this material had very serious and far-reaching consequences, in particular, in respect of each of the five persons named in the Commission's Report as "affected persons."
- 30) There is an inescapable appearance that early in its investigation, if not at the outset, the Commission became imbued with the notion that it had solved the mystery of the disappearance of the woman, and that Hosemans was the culprit.
- 31) The persistent adherence to such a notion appears to explain the Commission's lengthy investigation of the anonymous and baseless allegation concerning him, the continuing focus upon him throughout the Commission's investigation, the strident animosity towards him as evidenced throughout the Rani Report, and the extraordinary amount of space in that Report devoted to him.
- 32) In addition, there is evidence referred to later in my Report, which in my opinion shows that the Commission placed reliance on statements from witnesses whose accounts indicated some form of direct contact between Hosemans and Vaughan. These witnesses had previously been assessed by DI Jacob as unreliable. Moreover those accounts were not adhered to when these witnesses gave sworn evidence to the Commission. The Commission has failed to reveal that fact in the Rani Report.
- 33) Despite all the false trails explored by the Commission, not revealed in the Rani Report, and the total absence of credible evidence implicating Hosemans in the unsolved crime it further appears that the Commission was not prepared to, and did not, resile from its initial notion that he was the culprit.

- 34) Much of the balance of the Rani Report was given over to criticisms of the manner in which DI Jacob and the Task Force had conducted its investigation. This was despite his unequivocal and clearly stated conclusion that Hosemans was not implicated in the crime, and that the anonymous allegation was baseless and apparently malicious. That conclusion was not challenged by the PIC, either in the Rani Report or subsequently.
- 35) In fact, DI Jacob became the principal target of the Commission's adverse and damning opinions and recommendations in the Rani Report: according to the Commission three so-called "*substantial allegations*" against DI Jacob were made during the Commission's investigation. Each of these concerned Hosemans, despite the latter's exculpation by both NSW Police, and the Commission, of any involvement in the crime.
- 36) These allegations were assessed by the Commission, individually, and together, as justifying a recommendation to the Commissioner of Police that he be *dismissed* forthwith from NSW Police.
- 37) A similar recommendation was made by the Commission in respect of *DSC Sim* (as to which, see later in this Report).
- 38) The Commission took the additional, and unprecedented, step, of declaring, in effect, that in its opinion DI Jacob was *unfit* to remain a member of NSW Police. The PIC published that opinion in the Rani Report.
- 39) The effect of declaring in a public Report to Parliament that DI Jacob was unfit to remain a member of the NSW Police Force, was virtually to pre-empt the Police Commissioner's function. It was for the Police Commissioner to decide whether or not to act upon that recommendation, but, obviously, it would have been difficult to either challenge or disregard the PIC's decision.
- 40) Simply to disregard the PIC's recommendation was hardly an option given the Commission's public declaration as to unfitness. As will appear, the Police Commissioner did in fact take steps to challenge the relevant opinions of the Commission concerning DI Jacob, and DSC Sim, and, consequently, the Commission's declaration as to DI Jacob's unfitness to remain a member of the NSW Police Force, by seeking a review of the Commission's conclusions and recommendations from Mr Taylor SC.
- 41) Five persons in all, including DI Jacob, DSC Sim, DS McFawn and the former DS Hosemans, were identified in the Rani Report as "affected persons".
- 42) This meant that the Commission had expressed opinions in that Report that so-called "substantial allegations" had been made against them in the course of the Commission's investigations. Accordingly, the legislation required the Commission, in respect of each of those persons, to include in its Report to Parliament whether or not it was of the opinion, in particular, that consideration should be given [by the NSW Director of Public Prosecutions] to the prosecution of each of those persons for a specified criminal offence.
- 43) No such opinion as to prosecution for a criminal offence was expressed in the Rani Report in respect of any of these five persons, with the exception of Ms Stephanie Young. Ms Young was the most marginally relevant of the five nominated persons. She came to the Commission's notice only during the Commission's public hearings, because of the fact she had sent a particular SMS communication to Hosemans, after and in respect of his appearance before the Commission. The Commission had intercepted that communication. The Commission opined that consideration should be given to prosecuting her for allegedly knowingly giving false or misleading evidence. I note that subsequently the DPP, having reviewed the evidence, declined to prosecute any such proceedings against Ms Young.

- 44) Two of these “affected persons”, namely, Mr Hosemans himself, and Ms Stephanie Young, subsequently made complaints to my office of bias and unfairness against the Commission, arising out of what was published concerning them in the Rani Report. After investigating each of those complaints, I published Reports upholding such complaints, and made significant criticism of the Commission’s practices and procedures: *see* www.inspectorpic.nsw.gov.au.

COMPLAINTS MADE TO THE INSPECTOR BY DI JACOB

- 45) On 14 February 2011, Detective Inspector Jacob made a number of written complaints (*listed below*) to my office, arising out of what was published concerning him in the Rani Report, which, in due course, I provided to the PIC for their comment. I also commenced an investigation over several months into those complaints. This Report is the result of that investigation, and includes a detailed analysis of the Rani Report relevant to those complaints, and the evidence on which that Report was based, together with my opinions, conclusions and recommendations arising from that investigation.
- 46) For reasons explained later in this Report, I also conducted an examination of the Commission's adverse opinions and recommendations concerning *DSC Sim*.
- 47) It should be understood that the Inspector in making such a Report, is limited to the making of recommendations to the PIC, but that neither the Inspector's opinions nor recommendations are binding on the PIC, or third parties who may be referred to in those opinions or recommendations.
- 48) The assumption has been made by me that persons with an interest in reading, and understanding, this Report, would have online access to the Commission's *Rani Report* www.pic.nsw.gov.au and to my two earlier Reports details of which have been provided above. It would also be advantageous for such persons to have access to a *Memorandum of Advice*, dated 8 October 2008 (see *Schedule* hereto), sought by and provided to NSWP by *Mr Peter Taylor*, of Senior Counsel, as a result of the Commission's adverse opinions and recommendations published in the Rani Report relating to DI Jacob and DSC Sim.
- 49) That Advice, after reviewing the Rani Report, concluded that *none of the specific adverse findings or recommendations* made in the Rani Report against either DI Jacob or the other police officer *was justified*.
- 50) I have assessed Complaints **1-6, 8, 14** and **15**, as relating, specifically to particular aspects of the Commission's investigation, the treatment of witnesses including DI Jacob who appeared as such during the Commission's hearings, and the adverse opinions and comments concerning him in the Rani Report. The balance of the complaints, namely, **9, 10, 11, 12, 13** and **16**, I have assessed as falling outside that description. I have therefore attempted to deal first with Complaints 1-6, 8, 14 and 15, as a whole, and later in this Report with the second group separately.

Complaint 1:

The Police Integrity Commission (PIC) failed to properly assess and give the appropriate weight to the totality of the evidence in their custody when making the three findings and associated comments concerning JACOB. In doing so JACOB was denied natural justice and procedural fairness;

Complaint 2:

PIC FINDING: *That he (Jacob) failed to act upon and thoroughly investigate, whether or not police were deliberately leaving out of statements information that suggested an association between former Detective Sergeant Hoseman's and Ms Vaughan.*

The PIC failed to identify specific allegations of what Jacob failed to act upon, drew unreasonable conclusions to the exclusion of other reasonable hypothesis.

The PIC Rani Report did not 'find' evidence of any specific instance. The totality of the evidence relied upon by the PIC was in one imprecise notation generated by Jacob in his day book.

Complaint 3:

(Rani Report at 10.17) On his own admission Jacob failed to act on information that suggested an association between Hoseman's and Ms Vaughan, It is difficult to accept that such information would be ignored or forgotten by an officer of Jacob's experience and reputation.

The PIC failed to take into account the overwhelming attention (reflected in the [e@gle.i](#) investigation record, statements, reports, assessments, investigation logs and other material) completed by Jacob and Strike Force Toko into the Hoseman's issue. Nor did the PIC reflect that work completed by the Strike Force Toko investigation in the Rani Report.

Complaint 4:

PIC FINDING: He prepared a deliberately misleading report to Acting Assistant Commissioner Kuiters in response to the request for a report in relation to the matters raised in the anonymous complaint to the Commissioner of Police in June 2005.

(Rani Report at 10.18) In relation to the second allegation the Commission also finds it difficult to accept Jacob's evidence that the inconsistency between the telephone records and Hosemans' alibi was of such limited significance that he did not think it was necessary to include it in his report to Kuiters.

The PIC failed to properly assess the evidence, came to flawed and imprecise conclusions, and used language designed to undermine the credibility of JACOB.

Complaint 5 and 6:

PIC FINDING: He prepared a deliberately false and misleading report in response to the questions raised by the NSW Ombudsman after that office's review of the report Jacob prepared for Acting Assistance Commissioner Kuiters.

(Rani Report at 10.19) In relation to the third allegation it is difficult to resist the conclusion that the report prepared by Jacob dealing with the questions raised by the Ombudsman was a deliberately misleading report. It was designed to suggest that Hosemans' asserted alibi had been investigated and had been shown to be supported by relevant documentary material, when

clearly it had not been fully investigated and Jacob knew that the alibi was not so supported by the information that had been obtained during the investigation.

Again the PIC failed to properly assess the evidence, came to flawed and imprecise conclusions and used language designed to undermine the credibility of JACOB.

Again the PIC either; incompetently investigated; deliberately failed to investigate or illegally suppressed, evidence that existed on the genesis and circumstances of the preparation of this document by JACOB.

Complaint 8:

(Rani Report at 10.21) The PIC found, “in the opinion of the Commission that the actions taken by Jacob, both individually and as a whole, are such that he should not remain a member of the NSW Police Force.”

This is a clear finding of misconduct and possible criminal behaviour. This is beyond a recommendation for consideration of the laying of charges or action under a disciplinary regime. It is an inappropriate finding of fact, which together with the flawed content of the Rani Report, has seriously damaged Jacob’s reputation (which continues) and impacted on his rights to fairness and just process.

Complaint 9:

That the actions of the PIC conduct in Operation Rani has the potential to adversely affect the administration of justice in future judicial proceedings concerning the suspected murder of Janine Vaughan, in at least two significant ways;

- a. The failure to categorically eliminate Hoseman’s as a possible suspect in the disappearance and suspected murder of Janine Vaughan; and
- b. Doing so with the force of a ‘standing Royal Commission’ Public Report.
- c. By the public release of the flawed ‘evidence’ of RA1 into the public domain.

Complaint 10:

That the urgency shown by the PIC in the timing of the advertising of public hearings, the conduct of those public hearings and findings of fact against Jacob had the potential to adversely affect the administration of justice in a high profile murder committal and later trial (R –v- Gordon Eric Wood). Jacob was the very public officer in charge of that investigation.

Complaint 11:

That the PIC inappropriately used the media concerning their Operation Rani investigations;

- e. By issuing a Media Release and making public transcripts of the 'flawed evidence' of RA1 on the evening of 23 August 2006 which resulted in wide media attention on the morning of the 24 August 2006. Which was the very day the senior members of the PIC, senior police and others were appearing at the Parliamentary Oversight Committee of the Ombudsman and PIC.*
- f. (Most likely) inappropriately released details of the future Rani findings to a Sun Herald journalist, John Kidman, who on the 17 June 2007, reported 'Inquiry recommends sacking of homicide cop'. This full page report appeared at the end of second (of three) week committal hearing of R –v- Wood and immediately before Jacob was to appear in the witness box.*
- g. By the public release of the Operation Rani Report 2 hours after the public release of separate PIC Operation Mallard Report concerning substantial allegations against another officer (Supt Purcell) on Wednesday the 19 December 2007 the effect being;*

*To 'link' the two investigations publically
Give greater weight to the Rani allegations*

Complaint 12:

That the Presiding Commissioner Griffin did not write the final Operation Rani Report, (had apparently retired). Therefore no independent assessment/treatment of the evidence was possible and the final report appears simply a reflection of the counsel assisting Buscombe assertions and flawed reasoning.

Complaint 13:

That the PIC adversely affected public confidence in the NSWPF ability to investigate homicide and by failing to address issues raised and publically disclosing the content of anonymous information concerning Hoseman's, (See Rani Report 1.7) did nothing to allay public disquiet of those issues in the Bathurst area.

Complaint 14:

The failure to properly investigate the circumstances surrounding the Jacob's writing of the report (subject to adverse findings two and three) is in stark contrast to the efforts expended by the PIC in interviewing in excess of 180 nurses at Bathurst on the strength of the anonymous information particularised at the start of the Rani

Report. A further demonstration of the inappropriate and bias focus.

Complaint 15:

That the PIC motivation for their Operation Rani Investigation and hearings was to 'solve' the murder of Janine Vaughan, by showing at least in the court of public opinion, that Bradley Hoseman's was the killer. In so doing set themselves up for failure leading them to a skewed focus, suppression and/or disregard of relevant evidence, and finally to a biased, flawed and erroneous investigation and published findings, motivated by a desire to justify their attention.

Complaint 16:

That the PIC does not acknowledge the significance and complete rejection, of the two independent investigations into their findings in their continuing public references to Operation Rani (see page 50 PIC 2010 Annual Report – tracking the Commission's Recommendations). Leaving a casual observer to hypothesis that the NSWPF have protected Jacob and Sim.

INDEPENDENT REVIEW REFUTING THE RELEVANT CONCLUSIONS IN THE RANI REPORT

- 51) As mentioned above, this document is dated 8 October 2008, and is reproduced in the *Schedule* hereto.
- 52) As recorded in that document, although the Commissioner of Police was not compelled to adopt and implement the PIC recommendations, it had nevertheless been the ordinary practice of NSWSP to adopt such recommendations and give effect to them.
- 53) However, for reasons explained in that document, the PIC recommendations were referred for review to Professional Standards Command (NSWP) which conducted an investigation into the evidence relied upon by the PIC, and some additional material, and concluded there was no proper evidentiary basis for the PIC recommendations.
- 54) Again, according to that document, at that stage NSWSP sought the advice of Mr Taylor, SC, including a review by him of both the PIC's findings and those of the PSC. That Review concluded that none of the specific adverse findings or recommendations made in the Rani Report against either DI Jacob or DSC Sim were justified.
- 55) Although it appears that thereupon the Commissioner of Police rejected the PIC's conclusions and recommendations and refused to act on them in the light of the Review, its the existence was *not* made public by NSWSP, despite the fact that the Rani Report *was* a public document posted by the PIC on its website and thus available to all and sundry.
- 56) Indeed, that most unsatisfactory situation prevailed until, for the purposes of this Report, and in the public interest, and the interests of fairness and justice to DI Jacob and DSC Sim, in particular, I requested and received permission from NSWSP, to refer to that Memorandum of Advice in my Report. (See *Schedule* hereto.)
- 57) The PIC obtained access to that Review, albeit on a confidential basis, from NSWSP shortly after the date of the Advice.
- 58) As a result of an oblique reference which I noticed in a Sydney newspaper, I learnt in that way of the existence of that document, ascertained from the PIC that it was not only aware of it, but was in possession of a copy of it, and thereafter obtained a copy from NSWSP, also on a confidential basis.

THE COMMISSION'S MODUS OPERANDI

- 59) In order to understand the nature and context of DI Jacob's complaints (listed above), and my Report dealing with them, it is necessary and desirable that I include a summary and explanation of significant aspects of the Commission's typical procedures adopted by it in conducting hearings, and thereafter in notifying witnesses that they have been nominated by the Commission, at that stage, as "affected persons". I have also summarised the subsequent steps leading to the release of a public report such as the Rani Report.
- 60) In my previous Reports, upholding complaints against the Commission, access to which is available via the Inspector's website, I have had cause to criticise aspects of these procedures on the grounds of unfairness to witnesses, and lack of accountability. These procedures seem to me to have been adopted principally for the convenience of the Commission, and without sufficient regard to their consequences. The following is a summary of those procedures, and my criticisms concerning them.

The hearings

- 61) Usually, each witness of significance required to give evidence at a public (or private) hearing is permitted legal representation by the Commission.
- 62) Even a witness who is legally represented before the Commission may unfairly suffer adverse consequences. The PIC should be alert to ensure this does not happen.
- 63) In this context, the role of *Counsel Assisting* is crucial. I have attempted to summarise that role in my Report dealing with Mr *Hosemans'* complaints at paragraphs 99-102 of that Report. If Counsel Assisting is not assiduous in discharging the onerous obligations entailed, in particular, in ensuring that witnesses are treated with scrupulous fairness, there is a real risk not just of a denial of procedural fairness to witnesses, but also of a consequently unfair, biased and unreliable Report.
- 64) The barrister appointed as Counsel Assisting the Commission has the role of soberly outlining such of the facts as are reasonably clear, outlining the procedure to be adopted and then allowing the evidence to unfold. He or she is bound by certain of the *NSW Barristers' Rules*, which require Counsel Assisting to fairly assist the Tribunal to arrive at the truth, ensuring that the whole of the relevant evidence is placed intelligibly before the Tribunal.
- 65) Counsel Assisting must assist the Tribunal with adequate submissions of law having regard to the particular facts, and must not by language or other conduct risk compromising the fairness and effectiveness of the PIC's important functions.
- 66) The PIC's long-term effectiveness and utility in serving the public interest demand scrupulous adherence by the PIC to fair, temperate and rigorously analytical procedures, and the PIC must ensure that Counsel Assisting in discharging that role reflects the same values.
- 67) The gatekeepers of the evidence in an inquiry such as that conducted by the Commission are Counsel Assisting and the presiding Commissioner.
- 68) In previous Reports upholding complaints I have expressed my concern that the Commission appears reluctant to *re-call* witnesses so that they may be made aware of and given the opportunity to respond to later evidence which the Commission proposes to rely on for adverse opinions and recommendations against them and which has never been put to them. In my opinion, in the present case, both DI Jacob, and Mr Hosemans, fall into this category of witness.

- 69) This apparent reluctance by the PIC is particularly concerning in the present matter because each of these witnesses was informed by the presiding PIC Commissioner at the conclusion of the evidence they each gave to the Commission, that they would be re-called to give further evidence, and therefore left the witness box in that expectation, but neither was, yet neither was informed when that decision was made, or the reasons for it, even though, as it turned out, they were each to be nominated as “affected persons.”
- 70) There is no indication in the Rani Report to explain why these witnesses were not re-called or why such a desirable procedure not followed.

The service by the Commission of Counsel Assisting’s written submissions on “affected persons”

- 71) This particular procedure, in my opinion, is the most unsatisfactory of those typically adopted by the Commission in each case where there has been a public hearing (or, it would appear, a private hearing). I drew attention to problems with this procedure in Mr *Hosemans*’ Report at paragraphs 36-45. To describe the document served by the Commission as simply “submissions” is a grave misnomer, as the content of the “submissions” served by the Commission in the present case amply demonstrates.
- 72) Such “submissions” are in practice a template for the Commission to adopt as its Report, and in every case I have looked at that has been the case, that is to say, the Commission has substantially adopted those submissions, which thereupon are presented as the Commission’s Report.
- 73) This procedure, for reasons indicated below, is inherently unfair, and places the witness, and the witness’ legal representative, at a decided disadvantage in attempting to dissuade the Commission from the adverse opinions firmly and forcefully expressed in the “submissions.”
- 74) Such submissions are usually not served until many months after the witness has given evidence, in the present case almost 12 months after DI Jacob had given his evidence. The Commission as a matter of practice omits to inform the witness, during that evidence that the witness is, or even, may be, in the opinion of the Commission an “affected person” against whom so-called “substantial allegations” have been made, allegations not even formulated at that time.
- 75) The lapse of such a long period of time since the particular witness gave evidence, the length of the “submissions” (164 numbered paragraphs in the instant case, without any table of contents or index), and as the present case exemplifies, often lacking orderly or rational progression, together with the fact that access to the transcript of numerous witnesses would be necessary in order to permit an adequate response, not to mention the time that it would be necessary to expend on such a task at that late stage by the legal representative often leads, consequently, to what appears to be a perfunctory response, which is far from adequate.
- 76) Not only do such “submissions” virtually select the only evidence that will be referred to in the subsequent Report, but by so doing exclude all other evidence from further consideration, unless submissions in response specifically refer to other evidence in detail, something which does not usually happen owing to the perfunctory responses referred to above in the instances I have observed.
- 77) The “submissions” go far beyond merely making formal submissions as to the evidence, and include firmly expressed prejudgments, disparaging, subjective, assessments of witnesses, and unequivocally expressed conclusions, for example, as to the witness’ credit, and as to the conclusions and recommendations that should be made in the Commission’s forthcoming Report, and which, almost invariably, are in fact made, the present case being no exception:

the conclusions and recommendations in the Rani Report in respect of DI Jacob and DSC Sim had their genesis in the written submissions of Counsel Assisting.

- 78) In my opinion, the fact that the “submissions” are served by the Commission, and a response invited, is an unequivocal representation that the Commission is aware of the content of the submissions, and, at that stage is in considered agreement with them, otherwise there would be no justification for the Commission’s decision to serve them on the “affected persons”.
- 79) The submissions served by the Commission on the five “affected persons” in the present case, each of whom became, as a direct result, publicly identified as such in the Commission’s subsequent Rani Report, provide a graphic example, in my opinion, of the foreordained effect of the service by the Commission of such submissions, and the mischief inherent in this procedure.
- 80) Any suggestion that such submissions are not binding on the Commission, while literally correct, is of little consequence when considered in the light of the Commission’s practice of substantially adopting them in every case. This practice highlights two very important matters. The first is that it underscores the fundamental importance of ensuring Counsel Assisting is committed to, and scrupulously observes, the values necessary for the Commission’s long-term effectiveness. The second is that it raises a serious question whether the presiding Commissioner who follows such a practice, has, in practical effect, derogated his responsibilities to Counsel Assisting.
- 81) Despite the fact that such “submissions” are described by the Commission as such, and not as the Commission’s Draft Report (a more accurate description in my opinion), and often contain disparaging, embarrassing and defamatory material in respect of the particular witness, the “submissions” are served by the Commission on all persons nominated therein as “affected persons, as well as the other witnesses who gave evidence, even though they are usually irrelevant except in the case of the particular witness.
- 82) They may also be served on third parties, as happened in the present case, in which they were served on NSW. This is a further indication that the “submissions” are viewed by the Commission more as a Draft Report, and that there is unlikely to be any significant change in the conclusion and recommendations as contained in that document.
- 83) The extent to which the submissions *in response* once received by the Commission on behalf of “affected persons” are assessed, and by whom, is far from transparent. Typically, the responses are not referred to Counsel Assisting, despite the fact that the latter is the author of the submissions being responded to. It follows that author does *not* have the opportunity of reconsidering those submissions in the light of the responses.
- 84) Nor are these responsive submissions acknowledged by the Commission, let alone replied to, so that the witness has no idea whether or to what extent they have been taken into account, or whether they have been accepted or rejected. Which officer within the Commission decides to accept or reject the submissions in response, is as unknowable as the grounds on which such decisions are made.
- 85) Finally, which is not to suggest it is the least of the examples of the Commission’s questionable practices in relation to the use of this procedure, reference should be made to the Commission’s not uncommon practice of amending the “submissions”, after they have been served by the Commission and been responded to, and without further notice, acknowledgment or explanation, by including pejorative or other material capable of having a material effect, adverse to the witness, on the text, eg, as to the nature of the misconduct as described, or the content of the “substantial allegations”.

- 86) Later in this Report I will refer to specific instances of this practice in the case of DI Jacob. The result is that the witness can have no idea of, and is therefore denied the opportunity to respond to, these material alterations thus effected by the Commission. Indeed until the Report is released as a public document, which might be months later, the witness continues in total ignorance of the fact that adverse material concerning the witness has been added to the Report, assuming, of course, the matter is ever drawn to the witness' attention once the Report is published.

The notification of "substantial allegations" made against "affected persons"

- 87) None of the five "affected persons" named as such in the Rani Report was informed by the Commission during the evidence given by the particular witness that the Commission was intending to or was even contemplating nominating that witness as an "affected person."
- 88) The present case provides a typical example of the Commission's practice of first notifying such witnesses, many months later, that "substantial allegations have been made against them". It is only when Counsel Assisting's written "submissions" are served on such witnesses by the Commission that these allegations are notified as having been "made", and that the nature of the allegations are disclosed.
- 89) I have drawn attention to manifest problems with this practice in terms of unfairness and lack of accountability on the part of the Commission in previous Reports posted on the Inspector's website, in particular, in Mr *Hosemans' Report* at paragraph 64 and at length in the *Schedule* to that Report at paragraphs 31-39. Those comments apply with equal force to the instant case. For convenience, I have reproduced portion of them hereunder:

[From paragraph 64 of the Hosemans' Report]

- 64) *On what basis the Commission ultimately forms the opinion that a particular allegation is in fact "made in the course of or in connection with" a relevant investigation, and meets the criteria inherent in the term "substantial allegation" as that expression is used in Section 97 (3), the only provision in the Act to contain that expression, as far as I am aware, is not the subject of any discussion in the Rani Report. Indeed, I am not aware of any relevant Report of the Commission's where there has been any discussion which might throw light on the procedures followed by the Commission and the criteria to which regard is had in forming this significant opinion. The initial decision seems to be made by whoever happens to be occupying the role of Counsel Assisting and the particular "substantial allegations" first appear, as such, in the latter's written submissions at the conclusion of the evidence, which are then served on the "affected persons", without any explanation in the submissions as to how that opinion was arrived at, and without the correctness of that opinion being open to argument by any person to whom the allegation is directed. Such opinions simply appear as a "given" in the written submissions of Counsel Assisting, and are typically adopted as such in the Commission's subsequent Report, without any discussion as to the basis for that adoption. Sometimes, it might be thought, the nature of the allegation is such that the basis is obvious, but in my opinion, it is by no means always obvious. . . .*

[From the Schedule to the Hosemans' Report]

- 35) *It might thus be thought that, typically, in considering whether the nature of a relevant allegation is capable of being categorised, in the Commission's opinion, as a "substantial allegation", careful regard would be had as to whether the allegation asserted police misconduct involving serious police corruption and/or the commission of a serious criminal offence. Assuming that in a particular investigation the Commission formed the opinion that a relevant allegation in respect of that investigation was an allegation capable of being considered as "substantial" in terms of the seriousness of the allegation, the Commission would then be required to form a further opinion as whether there was any evidence to support it, as distinct from it being a mere, of bare, allegation, and whether any such evidence justified the Commission in categorising the allegation as a "substantial allegation" for the purposes, and within the meaning, of Section 97(3).*
- 36) *Given the likely consequences to reputation of the publication of the Commission's opinion that a person was in the Commission's opinion the subject of "substantial allegations" investigated, or to be investigated by the Commission, such an opinion ought not to be lightly arrived at. Relevant allegations may derive from at least two sources: they may be made as a result of or arise from the Commission's investigation, or they might be made by a specific person, prior to the Commission's investigation, in either case being seen to be 'made in or in connection with' the investigation. Although at that stage of the proceedings the "substantial allegation" may not be being "made" by the Commission, nevertheless where the Commission has categorised the allegation as "substantial", the Commission has identified it as one that cannot be dismissed out of hand and which appears to be supported by evidence sufficient to justify the categorisation as a substantial allegation involving the particular person.*
- 37) *Relevant contextual provisions in the legislation would obviously include the requirement that the Commission must include in a Report to Parliament the specified information in respect of "affected persons", Section 97; the examples given of "police misconduct" in Section 5, the "principal functions" of the Commission referred to in Section 13(1), and the requirement that the Commission is required, as far as practicable, to turn its attention principally to serious police misconduct. The words "substantial allegations" viewed in such a context surely suggest that that alleged conduct which might constitute "substantial allegations" would be likely to involve serious criminal and corrupt conduct, especially by NSW police officers, of such significance that it should not simply be referred to the Director of Public Prosecutions, but be reported by the Commission to the NSW Parliament. The fact that an allegation is not such as to found an opinion by the Commission that any recommendation should be made pursuant to Section 97(2) (a)-(d), should be a clear*

indication, in my opinion, that it is unlikely to satisfy the criteria for a “substantial allegation” within the meaning of Section 97(2) and (3).

- 38) *The fact that it is solely the Commission’s opinion that is required in order to satisfy the terms of Section 97 (3) as to the existence of “substantial allegations” does not mean that the Commission is authorised to ignore context and nominate conduct clearly incapable of constituting “substantial allegations” in the context of the legislation referred to above....*

ABOUT THE INSPECTOR'S REPORTS DEALING WITH COMPLAINTS

90) Section 89 of the *Police Integrity Commission Act* is in the following terms:---

1) *The principal functions of the Inspector are:*

- (a) to audit the operations of the Commission for the purpose of monitoring compliance with the law of the State, and*
- (b) to deal with (by reports and recommendations) complaints of **abuse of power, impropriety** and other forms of **misconduct** on the part of the Commission or officers of the Commission, and*
- (c) to assess the effectiveness and appropriateness of the procedures of the Commission relating to the legality or propriety of its activities.*

2) *The functions of the Inspector may be exercised on the Inspector's own initiative, at the request of the Minister, in response to a complaint made to the Inspector or in response to a reference by the Ombudsman, the ICAC, the New South Wales Crime Commission, the Joint Committee or any other agency.*

3) *The Inspector is not subject to the Commission in any respect.*

- 91) Section 89(1)(b) authorises the Inspector to deal with complaints of relevant misconduct, including, but not limited to, complaints alleging *abuse of power* and *impropriety*. The latter expression would appear to go beyond the concept of abuse of power; the Shorter OED defines "impropriety" as including "improper conduct" and "inappropriateness." Section 89(1)(c), again picks up the notions of "propriety" and "appropriateness", so that a further principal function of the Inspector is to assess the effectiveness and appropriateness of the procedures of the Commission relating to the legality or propriety of its activities. Thus, unlike the Inspector's "audit" functions under Section 89(1)(a), Section 89(1)(c) is not confined to assessing the lawfulness of the Commission's relevant procedures, but extends to the effectiveness and appropriateness of those procedures.
- 92) It is also important to notice limitations within the Inspector's functions in respect of the formation of opinions and recommendations by the Commission contained in the reports of the Commission published pursuant to Section 96 of the Act.
- 93) For example, it seems clear, the functions of the Inspector do not include a "merits review" of the opinions and assessments of the Commission come to as a result of an investigation by the Commission.
- 94) From this it seems to follow that the relevant functions of the Inspector are concerned primarily with how the Commission exercises its powers under the Act rather than what opinions and conclusions the Commission forms or reaches in the exercise of those powers.
- 95) However, a failure to consider relevant evidence by the Commission, or a failure to accord procedural fairness to a witness, may have a bearing as to the opinions formed by the Commission which may not have been so formed had the omission not occurred. Such a case would fall within Section 89(1)(a)(c) and also within Section 89(1)(b).

DI JACOB'S COMPLAINTS 1-6, 8, 14 AND 15

- 96) The Commission included in its Report the serious assertion that *three* so-called “substantial allegations” against DI Jacob had been made during its investigation and expressed the adverse opinion that he had “*engaged in*” unspecified “*police misconduct in relation to the three allegations*” (**10.16**). It declared him unfit to remain a member of NSWMP and recommended his dismissal forthwith.
- 97) The following paragraphs contain an examination and analysis of each of those allegations, the evidence the Commission purported to rely on as supporting those allegations, whether or not the adverse conclusions and recommendations of the Commission on that evidence could on any reasonable basis be justified, and whether or not there is evidence of an appearance of bias and unfairness by the Commission's towards DI Jacob in the manner of his treatment as a witness, and in respect of what was published concerning him in the Rani Report.
- 98) The numerals hereafter in bold type are references to the paragraphs in the Rani Report which bear that particular numerical identification. For example, **10.15**, refers to paragraph 10.15 in the Rani Report.
- 99) In my analysis (below) of the material relevant to the *first* of those “substantial allegations”, for more abundant caution I have included the whole of paragraphs **3.1-4.47** of the Rani Report as being relevant, although some of that material may appear at best to be no more than marginally relevant.

10.15: THE FIRST “SUBSTANTIAL ALLEGATION”

That Jacob failed to act upon, and thoroughly investigate, whether or not Police were deliberately leaving out of statements information that suggested an association between Hosemans and Ms Vaughn;

- 100) The form of this allegation in the submissions served by the Commission on DI Jacob was as follows: *“The failure to immediately act upon, and thoroughly investigate, whether or not police were leaving out of statements and investigatory records, information that suggested an association between Hosemans and Ms Vaughan, when a complaint to that effect had been received by him in March 2002.”*
- 101) The reference to a complaint having been received in March 2002, would appear to be a reference to DI Jacob’s note of the Cranston interview, which, as explained below, was the subject of a crucial error by the Commission.
- 102) However, the words underlined have been *deleted* from **10.15** of the Rani Report, without notice to DI Jacob, and without explanation.
- 103) In addition the word “deliberately” has been *added* to the from of the allegation, again without notice to DI Jacob, or without explanation.
- 104) Quite apart from the unfairness to DI Jacob of the addition, without prior notice, of the word “deliberately”, thereby suggesting intentional and conscious wrongdoing, previously absent from this “substantial allegation”, the implication of intentional and conscious wrongdoing appears to be conceptually inconsistent with the opinion expressed at **3.19** that the information was allegedly being left out of statements “for whatever reason, by those involved in the investigation.”
- 105) No explanation is offered in the Rani Report for the unilateral removal without notice of the wording that had appeared, as part of the first “substantial allegation”, in the submissions which the Commission served on DI Jacob, namely, *when a complaint to that effect had been received by him in March 2002.*
- 106) However, in my opinion, the removal of those words, in the circumstances, engendered uncertainty as to whether the deleted wording was nevertheless to be implied in that “substantial allegation”.
- 107) If, as appears to be the case, that allegation was based on the crucial error as to the date of DI Jacob’s note of the Cranston interview, that would appear sufficient to invalidate the Commission’s reasoning that there was any basis for such an allegation.
- 108) In **10.17** the following sentence has been included: “On his own admission Jacob failed to act upon information that suggested an association between Hosemans and Ms Vaughan.” Once again, the reference to “information” would appear to be a reference to the Cranston interview, and therefore, as explained above, was based upon a crucial error by the Commission as to the date of that interview. “On his own admission” has been *added* to the final version of the Rani Report, again without notice, and without any indication of the evidence relied upon for such a serious assertion.
- 109) The following further observations seem pertinent: the allegation is merely that there was an omission to “*thoroughly*” investigate, as distinct from an allegation of failure to investigate; “*whether or not*” suggests PIC had not formed an opinion one way or the other about the matter.

- 110) Entirely absent is any opinion that the “information” was in any way *material* to the police investigation which had concluded there was no evidence of any association between Hosemans and the missing woman.
- 111) The Commission’s own conclusion in the Rani Report was the same: that there was in fact no evidence of any association.
- 112) **3.1** is in the following terms: “Very early in the police investigation Hosemans was named by a number of people as having shown an interest in Ms Vaughan. However this information was not always included in the initial statements prepared by police.”
- 113) The first occasion when such information was provided to Police was on 2 January 2002 (T59) and was provided by members of Ms Vaughan’s family, and properly recorded by Police (**3.20-3.21**). Thereafter several witnesses, eg, Murphy, Green, provided the same information in their written statements to police, which information was to the effect that Hosemans sometimes walked past the shop where the woman was employed and on one occasions had engaged in some innocuous conversation concerning Ms Vaughan with Ms Green (**4.9**).
- 114) This information was, in any event included in Hosemans’ own statement to police (**4.24**), and never challenged on the two occasions on which he gave evidence. There is no opinion expressed in the Report that Hosemans’ statement was other than accurate, except as to his recollection of when he returned to Bathurst from Newcastle.
- 115) The first witness mentioned in this context is *De Souza*: see **3.2** and **3.3**. In fact, the attributes appearing in **3.2** allegedly mentioned in Ms Vaughan’s telephone calls to this witness were such as to quite clearly *exclude* Hosemans; the latter was not an “ex-copper” at the time and there was no evidence that he had either “bought flowers” for or “made phone calls” to Ms Vaughan at any time. Nor did the Commission find to the contrary.
- 116) It also appears from De Souza’s evidence (given on 6 June 2006)) that the conversation with Ms Vaughan included a reference to the fact that the person referred to had “gone on a date” with Ms Vaughn. Once again this clearly *excludes* Hosemans as the person involved (De Souza said she asked Ms Vaughan “how her date went” T191 23/24). (In a statement taken from her by the Commission on 21 March 2006, evidence excluding Hosemans as the person being referred to is made even clearer; however, that statement was not put to her by the Commission when she gave her evidence.)
- 117) **3.4-3.7** is significantly misleading. **3.4** clearly suggests that De Souza’s evidence was that she mentioned the content of the telephone calls with Ms Vaughan to the Police when they took her statement. However, a reference to the transcript of the evidence shows that this is quite incorrect.
- 118) De Souza’s evidence was that shortly after the disappearance she went to Bathurst and made a written statement dated 11 December 2001 to Police. That statement was in evidence. Later she drove out to Ms Vaughan’s home with the Police and met up with relatives of Ms Vaughan there. Initially, she could not recall whether it was when she made the written statement or subsequently at the Vaughan household that she mentioned this information. T192, 193. She could not identify which Police took her written statement or were present at the Vaughan household.
- 119) She made her written statement first at Bathurst Police Station, and then went to the Vaughan household. T193.

- 120) The evidence was left in this state until Counsel for Mr Hosemans examined the witness. She agreed that the information in question “must have” been given “verbally at the house”. T195 46/47, subsequent to the making of her statement. **3.4** is misleading in that the impression is given that the information was mentioned at the time the written statement was made, whereas the witness’s evidence was to the contrary.
- 121) The second sentence of **3.4** is also misleading as the evidence of the witness made no reference to any such information as to the staff diary having been provided by her to the Police. **3.6** is also misleading in that there is no reference to the fact that the Commission did not put to the Police who were present at the Vaughan household at the relevant time, the information allegedly mentioned by this witness on that occasion.
- 122) It further emerged from that evidence that “this year” (in fact on 21 March 2006) the witness had been interviewed by two named Commission investigators and that was the first time that she told anyone that she had given the relevant information to Police.
- 123) The presiding Commissioner appears to have completely overlooked the relevance of this examination by Mr Hosemans’ counsel: T199 8/10.
- 124) In the light of the whole of that evidence **3.4** is misleading. It gives the impression that this information was omitted from the witness’s statement. On the contrary, she did not give the information at the time she made her statement at Bathurst Police Station.
- 125) Similarly, at **3.7**, there is a reference to an interview with the statement-taker who was not called to give evidence (Officer Phillips, Exhibit 131C). This reference does not include any indication that that interview did not take place until 3 August 2006, ie, well after De Souza had given her evidence in cross-examination to Hosemans’ Counsel. As noted in **3.7**, that Officer was adamant that she had not omitted from that statement any information provided to her by the witness. There is no opinion expressed by the Commission in the Report that that officer’s statement was not accepted.
- 126) The content of **3.8** is also misleading in that it suggests the witness gave evidence that she told the Police about the work diary. She was neither asked by Counsel Assisting nor gave evidence that she had informed Police as to the existence and relevance of the work diary (T194). Not mentioned, though obviously relevant, is the evidence of DS McFawn that, in any event, he attempted, unsuccessfully, to ascertain the whereabouts of the work diary (T267).

Daniel Murphy (3.9-3.11; 4.7)

- 127) At **3.10** and **3.11** the Commission refers to “the connection” and “a connection”, respectively, between Hosemans and Ms Vaughan allegedly arising from the evidence of this witness.
- 128) What the witness actually said (at T242) was “that Mr Hosemans had come past the store and Janine had spoken of him ...”. His statement did not indicate, to any competent and fair investigator, any “connection” between Hosemans and Vaughan
- 129) It was therefore misleading to suggest that that evidence pointed to “a *connection*” between Hosemans and Ms Vaughan. The Commission’s statement was inappropriate unless the evidence established a relevant meaningful connection. In fact the evidence did not. This same vague expression in this context is scattered throughout the Commission’s Report, without any discussion as to the meaning the Commission sought to place upon it, or the relevance of evidence, not denied by Hosemans, that from time to time he had walked past the shop where Ms Vaughan was employed and had made an enquiry concerning her consistent with the statements of Ms Green (**4.9**) and Ms Larkin (**4.6**).

- 130) Hosemans' statement of 19 December 2002, paragraphs 3-5 (**4.24**), had dealt in detail with this matter. It was not challenged by the Commission on the occasions when he gave evidence. Nor did the Commission express an opinion or make a finding anywhere in the Rani Report contrary to the import of those paragraphs.
- 131) Further, that same evidence had already been recorded by investigating Police who had interviewed members of the Vaughan household: see e.g. **3.20** and **3.21**. Consequently these paragraphs do not appear to reflect competent, fair and accurate analysis. The report certainly does not explain their relevance.
- 132) Furthermore, at **4.17** of the Rani Report the PIC positively concluded that there was no relevant connection: [there was] "no evidence of contact, either in person or by telephone," between Hosemans and Vaughan.
- 133) Thus, the relevance of these paragraphs is not made clear, and, contrary to the final sentence in **3.11**, there is no discussion of Murphy's second written statement at **4.7**, nor an explanation of the inclusion of the first paragraph thereof (numbered "10"). The latter could not conceivably be taken as a reference to Hosemans.
- 134) In this same context, the relevance of **3.31-2**, purporting to deal with a statement by *Gibson* is far from clear. That statement amounted to nothing more than a hearsay account of Murphy's evidence at **3.9-11**. Moreover, there is no reference to *Waterman's* evidence (T72-3) that Gibson was himself a suspect and that that was the reason he was interviewed by police. The implications in **3.32**, that Gibson gave information that had not previously been known to and properly recorded by police and which should have acted as a "catalyst", and the extended comments in **4.3**, were therefore contrary to the evidence before the Commission. That material should not have appeared in any competently prepared and fair Report.

3.23-3.25

- 135) **3.23** states that the relevant e@gle.1 summary did not contain a reference to the information in **3.22** that Hosemans had walked past the shop. However, this information had already been provided and properly recorded: see **3.21**.
- 136) A similar observation might be made as to the content of **3.25**, and in particular, the comment that the entry did not identify the local Police officer by name.
- 137) The inclusion of these comments in the Report appears to reflect a distinct lack of balanced assessment by the Commission not only of the totality of the information that had been acquired in the original police investigation, but also of the actual evidence before the Commission.

Detective Sergeant McFawn: no justification for serious allegation made against this officer

- 138) At (**10.6 and**) **10.22** of the Rani Report the following appears (emphasis added) –

"[Sergeant] McFawn is an affected person because he is the subject of the substantial allegation that he deliberately omitted information, which suggested there was an association between Hosemans and Ms Vaughan, from Symington's statement." [dated 17/12/01]

At **10.23**: The Commission considers that the evidence does not meet the requisite standard [of proof] to enable a finding of police misconduct to be made....

- 139) A reference to the transcript of the evidence of this witness given on 5 and 7 June 2006 reveals that nothing was put to him to suggest that he had omitted information as alleged at **10.22**, let alone that he had deliberately omitted such information. On the contrary see 3.19: “information was apparently left out of the statement[s] of ... Symington . . . for whatever reason”
- 140) If DS McFawn was the subject of a substantial allegation of this kind it was the Commission’s function to investigate it fully and fairly – unless it had independently come to the conclusion that the allegation was groundless. The Commission’s own statement negates that possibility. Consequently, the Commission could not have discharged its function properly without putting McFawn on notice of the allegation. It never did.
- 141) At **3.17** of the Rani Report the assertion is made by the Commission that: “McFawn’s failure to record, either in Symington’s statement or on e@gle.1, the information provided by her concerning what Ms Vaughan had said about Hosemans was a significant omission.” However, as Symington’s evidence makes clear, he could not have recorded the information in the statement, not only because he was not the statement-taker, and was not present, but, as the witness explained, she did not provide that information to police when she made her statement.
- 142) The final two sentences in **3.17** were not included in the written submissions served on McFawn by the Commission and have, it follows, been added, *without notice*, or acknowledgment by the Commission to the Report. The inclusion of this deeply flawed material in the final version of the Rani Report reflects adversely both on the fairness of the Commission’s procedures and on its competence.
- 143) I have identified several more examples of the unacceptable and unfair practice by the Commission in the paragraphs below.
- 144) As Ms Symington’s evidence (given on 6 June 2006) reveals she made a written statement to Police dated 17 December 2001 which was completed and signed by her on that date. That statement was taken at Muswellbrook Police Station apparently by Detective *Alderson* (not called as a witness, and not interviewed by PIC).
- 145) The witness gave evidence that the reason she went to Muswellbrook Police Station was that the “night before” she had received “phone calls” and that because of the “nature of the phone calls” she had been asked to attend urgently.
- 146) Her evidence was that in making that statement dated 17 December 2001, she did not provide to police any information of a conversation with Ms Vaughan. There is thus no question of any information being omitted by any police officer from that statement.
- 147) According to her evidence, some weeks after making that statement McFawn came to Muswellbrook Police Station and went through her written statement with her. It is on that occasion that she claims to have said something to McFawn about a conversation she had with Ms Vaughan.
- 148) In examination by Senior Counsel for McFawn (T211) she said that the conversation with Ms Vaughan could have been “two months before” Ms Vaughn disappeared, and that what she had told McFawn was that Hosemans had asked some mutual acquaintance questions concerning Ms Vaughan and had walked past the shop. McFawn had given evidence that prior to his taking Symington through her statement, he had taken statements from Ms Vaughan’s family members, and had then been provided with similar information by them: see **3.17** and **3.20**.

- 149) There is no discussion in the Rani Report (or in Counsel Assisting's written submissions) as to why, assuming Symington had mentioned that information to him, he ought to have recorded it given that that information appeared to be subsumed in the information already recorded by him. Nor is there any discussion of the basis on which an omission to do so could be seen to be a matter of any significance to the quality, or proper assessment, of the totality of the information that had been acquired in the police investigation.
- 150) Symington also gave evidence that the first time she had told anyone in authority of this conversation with McFawn was when she spoke to Police Integrity Commission investigators (T212).
- 151) It was therefore misleading for the Commission to state in **3.12** that "there is no reference in the statement" to the information provided to McFawn, as the information was not provided by her when she made her statement. **3.14** is again misleading. It states that the relevant information had not been "captured in the investigation holdings". Whilst that statement was literally true it distorts the true position: that similar information had been earlier provided by members of Ms Vaughan's family and had been properly recorded: see **3.21** and **3.22**.
- 152) It is also misleading to include in this context in **3.16** a reference to McFawn's duty book as recording "re further information and concerns re telephone calls" as this, according to the evidence, refers to an unrelated matter which occurred the night before she made her statement, and had nothing to do with Ms Vaughan's conversation.
- 153) The reference in **3.19** to "*a complaint conveyed to Jacob on 3 March 2002*", and its suggested relevance, is in fact based on significant error by the Commission in relation to a notation by DI Jacob in respect of that matter, as to which see below.
- 154) In my opinion there was no justification for the Commission's serious assertion that a "substantial allegation" had been made against Sergeant McFawn in the terms set out above. The fact that the Commission expressed a contrary opinion, apparently based on the flawed matter I have examined, raises real doubts that the Commission's analysis was carried out with the level of competence its important functions demand.

PIC's findings as to first substantial allegation not sustained, and contradicted by the evidence

- 155) As demonstrated by the above analysis, the evidence before the Commission did *not* suggest, let alone establish, that police "were deliberately" leaving out of statements taken by police, information that "suggested an association between Hosemans and Ms Vaughan".
- 156) In this regard it is noteworthy that there is no reference to the unchallenged evidence of DI Waterman on 5 June 2006 (T76) to the effect that the evidence in fact established the converse, namely, that officers were including such material in the statements taken by them.
- 157) In these circumstances, the presentation of the evidence by the Commission in the Rani Report was significantly misleading. It reflected an unbalanced and unacceptable analysis.
- 158) In relation to the relevant evidence discussed above of De Souza and Symington, respectively, it noteworthy that in each case, a written statement was taken by police, which made no mention of information alleged to have been provided to police by these witnesses concerning Hosemans and Vaughan. In neither case was the police statement-taker called to give evidence.
- 159) Contrary to the impression given in the Commission's Report, as identified above, when the evidence is examined it reveals that neither witness' evidence supports any suggestion that these statement-takers had omitted the relevant information. The plain facts are that the

information in question was not provided by the witnesses on the occasion they made their statements.

- 160) In each case, these claims as to the provision of this information by these witnesses, referred to above, only came to light when the witnesses were interviewed years later by Commission investigators, and had never been raised with police previously by either witness. The Commission should have acknowledged that fact, presented it accurately and taken it fully into account. It did none of these things.
- 161) Despite all the evidence referred to in the Rani Report, including in the paragraphs identified above, there was no credible evidence to contradict the statement of Hosemans referred to above, in which he stated categorically that he had never had any contact with the missing woman, and refuted other hearsay evidence (eg, **4.7** (13)) relating to that subject. As already observed the Commission expressed no opinion or made any finding contrary to the relevant material in Hosemans' statement.
- 162) Nor did the Commission express an opinion or make a finding that the police statement-takers had omitted, deliberately or otherwise, relevant information from those statements at the time they were taken.
- 163) The absence of an explicit finding on this matter is deeply disturbing. The allegation, which the Commission apparently took seriously (*see* **10.6** and **10.22**) strikes directly at the competency and integrity of the investigating Police. The public interest demanded that the Commission investigate the matter and come to a conclusion about it. The Commission did not squarely address and did not properly analyse the evidence that was available to it. Had it done so it would have made an explicit finding that the allegation was not only unsubstantiated but actually contradicted by the available evidence. The Commission's failure to make that position clear is a significant departure from the proper discharge of its functions.

A crucial error: Jacob's notebook and evidence: 3.27-3.32

- 164) Whether or not the relevant entry in DI Jacob's notebook appeared to be "dated **5 March 2002**" (as stated in **3.27**), it ought to have been patently obvious to the Commission, and Counsel Assisting, from the content of the note itself, and other evidence in possession of the Commission, that that note could not possibly have been created on that date. It referred to events that took place some 3 months later. It could not have been created before the events to which it related took place. They took place in June 2002, some three months after the date the Commission wrongly attributed to it.
- 165) The "name suppressed" at **3.27** (without explanation, in the Report, but revealed in Counsel Assisting's written submissions) is "Barry Cranston." As the material then in possession of the Commission established beyond any doubt, that individual was not interviewed by DI Jacob and DI Waterman until 4 June 2002. (DI Waterman had referred to this interview in his evidence on 5 June 2006 (T78) but was asked no questions concerning it.)
- 166) Thus the note could not have been created before 4 June 2002. Despite the Commission's stated opinion (at **3.28**) that the entry was "of considerable significance", Cranston was not called to give evidence in relation to it, even though he had been interviewed by Commission investigators on 9 March 2006, three months before DI Jacob gave evidence, a matter not disclosed by the Commission when DI Jacob gave evidence, and omitted from the Rani Report. (In the record of that interview by PIC investigators, there is only passing reference to the 4 June 2002 interview and no reference to DI Jacob's note or any mention of "statement takers.")

- 167) The content of the 4 June 2002 interview with Cranston explains the inclusion in the note of “Gerard Martin—Local Member”, although it also makes clear that that referred to a claim by Cranston irrelevant to the disappearance of Ms Vaughan. There is also a reference to “bought her flowers.” But this 4 June 2002 interview was not put to DI Jacob by the Commission when he gave evidence about that entry (despite the fact that it was raised with him later in his evidence that day: see T115-117).
- 168) At **4.12**, the reference to “4/6/02” in DI Jacob’s report there under discussion, may have been a reference to the Cranston interview of that date, but, if so, the significance of that date in relation to the entry in DI Jacob’s notebook has obviously been overlooked by the Commission.
- 169) This crucial error by the Commission in attributing the writing in DI Jacob’s notebook to 5 March instead of 4 June, is perpetuated in various passages in the Report. It therefore appears to undermine, or cast grave doubt upon, adverse opinions and comments directed to DI Jacob and his investigation: see, eg, **3.29, 3.30, 3.31, 3.32, 4.1** and **4.16**.
- 170) It appears to be an error of basic competence, attributable either to a failure to have regard to material evidence or to appreciate its real significance. The fact that the Commission made such a fundamental error, and persisted in it right up to the publication of its Report, with its very serious recommendation for the dismissal of DI Jacob, is alarming. It calls into question not only the Commission’s basic analytical competence, but also whether it has in place, and actually applies, appropriate quality control procedures.

Evidence not revealed: the omission of evidence relating to RA2: 4.2-4; and to Jordan Morris

- 171) *Jordan Morris* gave evidence twice: once in public on 7 June 2006 in Orange; again in private on 14 June 2006 in Sydney. Apart from a brief reference to the fact he had witnessed the missing woman enter the unidentified vehicle on the night she disappeared (page 8), no mention of other evidence given by him appears in the Rani Report, despite its obvious significance.
- 172) That evidence first given on 7 June 2006 in the public hearing related to a record of interview with Commission investigators on 6 April 2006 in which he had stated that Vaughan in a conversation with him had made reference to her having had direct contact with Hosemans. However, the effect of his sworn evidence in public was to withdraw those statements. The document containing his interview was neither put to him nor tendered on that occasion.
- 173) When he gave evidence in private on 14 June 2006, he was shown a transcript of that interview with Commission investigators. He was also referred to the content of a conversation he had had on 5 June 2002 with Messrs Jacob and Waterman in which he had made similar statements, although there was no mention of these in a number of earlier statements he had made to police. The effect of his evidence in private was to resile from his statements as contained in his conversation on 5 June 2002, and, once again, his interview on 6 April 2006. There was no tender of the document containing his record of interview with Commission investigators, or of the record of the conversation of 5 June 2002 (created by DI Waterman).
- 174) In the case of the witness *RA2*, he *is* referred to in the Rani Report at **4.1-4.5**, under the sub-heading “Further Evidence of Connection”. This person is another of the persons mentioned in the Report for the purpose of suggesting a “connection” between Hosemans and Vaughan. Once again, an examination of the whole of the relevant material reveals further significant misrepresentations of and omission of relevant evidence by the Commission. In paragraphs **4.3** and **4.5** of the Report statements are reproduced attributed to RA2 that Vaughan had told

him “she had received telephone calls” from Hosemans and that he had been “ringing her up at night” shortly before her disappearance.

- 175) What is *not revealed* is that RA2 gave sworn evidence to the Commission on 14 June 2006 in a private hearing in Sydney which excluded not only the public but all legal representatives except Counsel Assisting and RA2’s legal representative.
- 176) That evidence clearly indicated that RA2’s statements produced in the Rani Report were *unreliable* and required significant re-evaluation in the light of his sworn evidence. RA2 gave evidence that in fact, and *contrary* to his statements, Vaughan had not made those statements to him, but had said that she did *not* know the identity of the person making the telephone calls (T8: “I don’t even know whether she actually told me it was actually him...”. T9: she never worked out who it was), and that he was having difficulty distinguishing the “rumours” and what his friends had told him, from his own recollection of relevant events (T14).
- 177) The significance of the evidence of these witnesses is that the Commission clearly placed considerable reliance upon the statements each of them had made. Those statements appeared to directly contradict the categorical assertion of Hosemans that he had had no contact of any kind at any stage with Vaughan. Accordingly, the Commission’s reliance on those statements appears to shed light on its assumption, implicit throughout the Rani Report, that Hosemans was implicated in the disappearance of Vaughan.
- 178) However, the statements made by *Morris* and the fact that he resiled from those statements in his sworn evidence are *not* revealed in the Rani Report. In the case of RA2 the statements previously made by him are accorded prominence in the Rani Report *without it being revealed* that he had contradicted those statements in his sworn evidence.
- 179) This apparently selective publication of adverse evidence, and the apparently deliberate withholding of its detraction or discrediting, is a matter of grave concern. The Commission simply does not serve its public interest function by engaging in this kind of selective reporting. If the Commission thinks this kind of publication is acceptable, it misconceives its function.

A want of fairness: Comments by the Magistrate: 2.13, 4.14, 4.15, 4.35

- 180) These highly prejudicial and disparaging comments, concerning Hosemans, by the Magistrate who *acquitted* Hosemans of charges relating to an incident at the local Golf Club are referred to in the Commission’s Report, although never put to Hosemans on either of the two occasions when he gave evidence to the Commission. *Criticism* is levelled at DI Jacob based on these comments made by the Magistrate, on the basis there is no reference to them in one of his reports, even though there was no evidence DI Jacob was aware of such comments at the time (**4.15**). Despite this lack of evidence the implication in the final sentence of **4.35** is that he deliberately omitted a reference to such comments in his report.
- 181) The use of this material by the Commission is, in my opinion, highly questionable, even more so the way it has been presented in the Commission’s Report. The publication of this material is not consistent with an informed, conscientious and balanced discharge by the Commission of its statutory functions.
- 182) At **2.13** the Commission noted that on 19 July 2002 Hosemans had been acquitted of the relevant charges, and stated that the “*reasons*” for the Magistrate’s decision would be referred to later in the Report (the reader was then referred to **4.14-15**). However, there is no attempt in those paragraphs to refer to or examine the “reasons” for the acquittal. Instead a passage from “page 42” of the Magistrate’s reasons is set out (**4.14**), in which the only reference to Hosemans is found in the second sentence thereof in which after clarifying that an earlier reference to untruthful witnesses was *not* intended to include Hosemans, then added, in effect,

that Hosemans “ was not to be believed” on his oath. This opinion is thereafter wrongly categorised as “findings”, rather than the bare opinion of the Magistrate absent any explanation as to the basis for that damning opinion.

- 183) The Commission’s motive for the inclusion of the final sentence in the passage quoted: “Throughout these proceedings there has been the permeating odour or undercurrent of cover up and deceit”, is also highly questionable. Those proceedings were in no sense Hosemans’ proceedings, nor does that sentence expressly, or necessarily, implicate Hosemans, yet the inclusion of it in the Commission’s Report can only be understood as inviting the reader to draw that unwarranted inference.
- 184) On what basis DI Jacob, in the unlikely event he had sought out and had had access to the Magistrate’s reasons, and had trawled through them to page 42 (as the Commission had apparently done) and found the sentence referred to above, could or should have referred to that opinion in his report is far from clear. Even less clear is why, having regard to the acquittal, either the Commission or DI Jacob would have concerned themselves with that statement by the Magistrate.
- 185) Those and similar remarks of the Magistrate concerning Hosemans and other witnesses in the proceedings, did not pass without criticism when proceedings in respect of the dismissal of Hosemans from the NSW police force came before the Industrial Relations Commission [2005] NSW IR 161 (Boland J). The presiding Justice (at 184) made plain his disapproval of the “extreme language” of the Magistrate and “question[ed] the basis on which he indulged himself” in that regard, and referred to a failure on the part of the Magistrate to raise such matters with the witnesses when they gave their evidence.
- 186) Boland J’s comments merely record the dictates of basic fairness. They prescribe a standard of behaviour which the public is entitled to expect of the Commission, and which it must observe if it is to achieve its statutory functions. The Commission’s behaviour, at least in relation to this aspect of its Report, appears to evidence at least an ignorant disregard of proper standards. It is a matter that should cause the Commission fundamental disquiet.

THE PIC'S PRESENTATION OF DI JACOB'S PROGRESS REPORTS: PROGRESS REPORT (29 JULY 2002): 4.12-4.19

- 187) As the ellipsics “...” in **4.12** might indicate to the attentive reader, portions of this Progress Report have been omitted from what is reproduced in these paragraphs. For example, there is a reference in the Progress Report to limitations placed on the Vaughan investigation by reason of investigations being conducted into unrelated matters. There is a paragraph detailing the nature of the charges of which Hosemans was acquitted on 19 July 2002. There is also a reference to the Task Force's previous visit in early June 2002, and that their current visit was for the period 30 June to 6 July.
- 188) What may not be sufficiently appreciated by the content of those paragraphs, is that subject to the comments in **4.16** and **4.17** (as the which see below), no issue was taken by the Commission with any of the assessments and opinions referred to in the Progress Report. In particular, as already pointed out above, there is an *acknowledgment* in **4.17** that there was *no evidence of any contact, direct or indirect, between Hosemans and the missing woman*.
- 189) There are criticisms of the Progress Report in **4.16** and **4.17**, but an examination of the Progress Report as reproduced in those paragraphs suggests that such criticisms are unfounded.
- 190) First, the Progress Report did not “wrongly” state that the particular contact evidence referred to therein (“telephone contacts, visits to her shop, request of her for a date”) “was first provided on 4 June 2002”, but rather that that particular allegation arose for consideration during the reporting period in question. This may be a reference to the Cranston interview of 4 June 2002, discussed above. The nature of the earlier-provided evidence of “connection”, between these parties and its recording by police is discussed at length above.
- 191) The Commission's comment that the Progress Report was “misleading” in this regard (**4.16**) was the result of an unjustified misreading of the Progress Report by the Commission. The significant error, discussed above, as to DI Jacob's note, is again reflected in **4.16**. Nor was there any basis for the comment (**4.17**) that the Report was “inaccurate”: the fact that Hosemans had walked past the shop, where the missing woman had worked, on many occasions and his conversation with Ms Green was never an issue as is clear from Hosemans' statement referred to in **4.24**.

Three further progress reports by DI Jacob

- 192) These Progress Reports are for the periods ending 17 December 2002 (Exhibit 45), 14 January 2003 (Exhibit 46B) and 18 February 2003 (Exhibit 47), respectively. They are referred to, but not reproduced, in **4.18-4.45**.
- 193) These limited references omit details which seem to be of importance in giving a perspective to the progress of the police investigation, and the difficulties under which that investigation laboured. Those difficulties were due to demands placed on staff to attend to other investigations, and other restrictions, which appear to have had a considerable bearing on the ability of the Task Force to operate satisfactorily, and, in particular, to return to Bathurst from time to time to continue and complete aspects of the investigation.
- 194) For example, in the Progress Report for the period ending 17 December 2002 (Exhibit 45), which recorded the arrival of the strike force on 15 December, it was noted that there had been “little progress” since the previous July due to the restrictions placed on the members of the investigation, and the enforced cancellation of a proposed visit to Bathurst in November. Another matter omitted from these limited references to the Progress Reports was the

observation in each one that close contact was being maintained with the family of the missing woman.

- 195) At **4.28-4.29**, there are references to a police analyst, *Alana Sullivan*, and to DI Jacob's evidence in relation to her proposed involvement in the investigation. Once again, when the evidence available to the Commission about that is reviewed, the negative impression conveyed by those paragraphs implying that DI Jacob's evidence as to her proposed involvement was questionable, and that she had in fact not been made aware of the proposed review by her of the evidence concerning Hosemans, is shown to be quite unjustified.
- 196) First, the reference to the interview conducted by Commission investigators with Ms Sullivan (**4.29**) does not reveal that she was not interviewed until 23 February 2007 (Exhibit 128C), ie, more than six months after DI Jacob had given his evidence concerning her proposed involvement in the investigation.
- 197) Second, what is made clear from that interview is that her other commitments made it impossible for her to conduct the proposed analysis of evidence, although it appears the proposal to do so had been discussed with her by DI Jacob. The existence of these difficulties in obtaining the services of this analyst and the impact on the investigation are in fact made abundantly clear in the Progress Reports themselves: for example, there are references to her inability to attend to the investigation in Exhibits 45 and 46B, but these are not referred to in the above paragraphs of the Rani Report, and their omission gives rise to the misleading impression referred to above.

Progress report for period ending 14 January 2003 (Exhibit 46B)

- 198) **4.30-4.37**. I have identified above what appears to be a significant misreading by the Commission of an earlier Progress Report (Exhibit 43). There appears to have been another such misreading by the Commission in respect of Exhibit 46B.
- 199) Part of the problem with the Commission's Report stems from the inappropriately selective reproduction of the evidence.
- 200) For example, on the second page of this Exhibit (46B), DI Jacob has set out the gist of eleven comments allegedly made by Ms Vaughan to various persons concerning conduct attributed to Mr Hosemans, such as his telephoning her, sending flowers, and other conduct, over and above the undisputed enquiry made by Hosemans on one occasion to Ms Green concerning Ms Vaughan.
- 201) These have been omitted from **4.30**, as has the statement: "*A thorough investigation has been conducted into these claims, all persons identified as having some knowledge of these issues have been interviewed and statements obtained. As a result I am able to say*". Then follows: "*On evidence of suspect behaviour:*" which has been misquoted in **4.30** despite the fact that the misquotation has been placed in quotes and italicised. Then follows (in the Progress Report) the list of claimed behaviours on the part of Hosemans which appears in **4.30**.
- 202) In **4.31** there appears to be an obvious misreading of the Progress Report: in the extract quoted: "*There is no evidence that those closest to Janine Vaughan were told about any of these issues*", the reference to "these issues" in the Progress Report would appear to be a reference to those claims of direct contact, such as listed in the eleven examples not reproduced in **4.30**, and those preceding the quoted comment appearing in **4.30**.
- 203) In other words, an obvious distinction was being drawn between the innocuous enquiry made of Ms Green by Mr Hosemans, which was not in dispute, on the one hand, and the claims of direct contact (eg, telephone calls, sending flowers) as to which, as the Commission itself

acknowledged there was not a shred of evidence, on the other. This misreading is then reflected in 4.32 and 4.33.

- 204) What is also omitted from this and other Progress Reports is the observation that Hosemans, because of his prominent position in the country town, had been the subject of “a great deal of rumour and innuendo”, and that this fact had been made clear to DI Jacob from material examined and referred to in the Progress Reports; and also that Hosemans had previously been the subject of “vexatious complaints”. These observations would appear to provide an important context in which to view and assess the unsupported claims in respect of his alleged contact with Ms Vaughan, but the Commission has omitted all reference to these matters from the Rani Report, and, in so doing, in my opinion, has failed to present the Progress Reports, and the police investigation to which they related, in a fair and balanced light.
- 205) The seemingly gratuitous criticisms of DI Jacob in 4.34-4.35 are further examples, in my opinion, of the use of selective presentation of part only of the material in the Progress Report on which the criticised comments were based. I have already remarked on the unfairness of the final sentence in 4.35.

Further selective reporting of the evidence: Hosemans’ alibi inconsistent with other evidence: 4.38-4.47

- 206) This Section of the Rani Report, its subject-matter, the prominence accorded to it, and the sub-heading selected to introduce it, are in my opinion, instructive in providing a means to assess the logic, balance and relevance inherent in the Commission’s approach to this aspect of its investigation. This is because the Commission appears to have seen it as central.
- 207) The overall question which arises, it seems to me, is whether the conflicting objective evidence that Hosemans had returned to Bathurst by the evening of 6 December 2001, the resolution of that conflict, and the criticisms of the way such evidence was dealt with by DI Jacob, were found by the Commission to be of significance to the 2002 police investigation or the Commission’s own investigation.
- 208) In my opinion it would be difficult to overstate the overarching importance, in reading the Rani Report, of bearing in mind that the Commission ultimately concluded that there was not a shred of credible evidence to implicate Hosemans in the disappearance of the missing woman, and that that evidence included the evidence which placed him back in Bathurst on the evening of 6 December 2001. This was the same conclusion firmly expressed by DI Jacob both in his Progress Reports at the time of his 2002 investigation, and when he gave his evidence to the Commission some years later.
- 209) Even if the criticisms made in the abovementioned paragraphs of the Rani Report concerning DI Jacob in relation to his handling of this apparent conflict of evidence, and the omission to make the further enquiries suggested by the Commission in relation to clarifying the apparent conflict, had been valid, they are irrelevant unless significant consequences flowed from such criticism. None are suggested in the Rani Report. On the contrary, as has been pointed out above, the Commission eventually came to the same conclusion in respect of Hosemans’ non-involvement in the woman’s disappearance. Consequently, such criticisms must be seen as fundamentally irrelevant.
- 210) The Commission did not express an opinion that it was unreasonable of Hosemans, or for that matter the police, to accept the documentation mentioned in 4.42 and 4.43, as evidence, in the absence of other evidence, that Hosemans had not returned to Bathurst on the evening of 6 December 2001. It was in fact Hosemans himself who produced a petrol receipt to the Commission when he gave evidence which cast doubt on the accuracy of the earlier documentary evidence on which he said he had relied. The apparent conflict with that earlier

documentation when compared with the CCR records had been known to police since December 2003 (4.40).

- 211) As the evidence of DI Jacob made clear he was aware of and accepted that evidence, but remained of the view, ultimately shared by the Commission, that it did not in any way implicate Hosemans in the disappearance of the missing woman. Nor was it put to Hosemans by the Commission when he gave evidence, that the fact that it appeared he had returned to Bathurst by the evening of 6 December 2001 suggested that he was in any way implicated in the disappearance of Ms Vaughan.
- 212) The particular criticisms of DI Jacob contained in 4.45 provide a further example of the Commission's selective, and, in my opinion, distinctly unfair, use of part only of the relevant material, in this case that Progress Report, as appearing to support a particular criticism, in circumstances where exculpatory material, which might be seen to undermine the basis for such criticism, and explain the conduct criticised, is omitted: 4.45 refers to a "heading" in the Progress Report, namely, "Future Directions" and then refers to a particular matter, involving Hosemans, listed in the Progress Report under that "heading", as one to be "finalised." The criticism is then implied that the matter never was finalised and that there is no explanation for that apparent fact.
- 213) However, what the Commission has omitted is that the heading referred to is immediately expressed as being "*Subject to being resourced*" (italicised and underlined in the Progress Report). This is obviously a reference to the numerous statements in the Progress Reports, again omitted from the Commission's Report, of the impact that lack of funds had had, and was having on the Strike Force's investigation. There was no evidence adduced from DI Jacob by the Commission as to whether the relevant resources were in fact forthcoming.
- 214) Paragraphs 4.46 and 4.47, it might be noted, were not included in the written submissions of Counsel Assisting served by the Commission on those witnesses nominated as "affected persons", so that, it follows, no prior notice was given to those persons of the opinions and comments contained therein. Given that DI Jacob had concluded at an early stage of his investigation, rightly according to the Commission, that Hosemans was not implicated in the disappearance of Ms Vaughan, it is difficult to see how the further enquiries which the Commission suggested should have been made could have been justified, or, if made, would have affected the conclusion come to that Hosemans was not relevantly implicated.
- 215) Nevertheless the evidence that Hosemans had returned to Bathurst by the evening of 6 December 2001, despite its ultimate irrelevance to DI Jacob's conclusion, or the outcome of the investigation, or, indeed, the Commission's same conclusion, appears to form the basis of the next Section, Section 5, of the Rani Report, and of the criticisms therein made concerning DI Jacob.

10.15: THE SECOND “SUBSTANTIAL ALLEGATION”

He prepared a deliberately misleading report to [Superintendent] Kuiters regarding the matters raised in the anonymous complaint to the Commissioner of Police in June 2005;

10.18: *In relation to the second allegation the Commission finds it difficult to accept Jacob’s evidence that the inconsistency between the telephone records and Hosemans’ alibi was of such limited significance that he did not think it was necessary to include it in his report to [Superintendent] Kuiters.*

DI Jacob’s response to Assistant-Commissioner Kuiters

- 216) **5.1-5.11.** In my opinion, the Commission in dealing with the evidence relevant to this topic has failed to put the matter into perspective, has omitted relevant evidence from its Report, and ignored the context in which Superintendent Kuiters sought the particular response from DI Jacob.
- 217) The event which led to the request from Superintendent Kuiters to DI Jacob was the receipt of the anonymous allegation, the terms of which are set out at **1.7** of the Rani Report. It was solely because of and in the light of the receipt of that anonymous allegation that the enquiry was made of DI Jacob. That communication requested DI Jacob’s response to two matters, one factual, and the other his “confidential views” on the investigation which had concluded some two years previously. He was not asked for a full report on the investigation, which was available to Superintendent Kuiters in any event from his numerous Progress Reports. Indeed, it is obvious that the document DI Jacob prepared as a response to Superintendent Kuiters request was substantially a copy and paste selection from his Progress Reports during the investigation.
- 218) In particular, and contrary to the implication inherent in the form of the “substantial allegation” set out above, he was *not* asked to investigate the anonymous allegation. Understood in this context, his response could *not* have deliberately misled his superior “regarding the matters raised in the anonymous complaint” because his response was not primarily directed to “the matters raised in the anonymous complaint”, although he did deal with that anonymous allegation, correctly, by placing it in a context ignored by the Commission in the Rani Report. This crucial misconception seems to underlie the adverse opinions expressed or implied in these paragraphs in the Rani Report: note, in particular, in **5.10** the reference to “the anonymous complaint Jacob was investigating”, and in **5.11**: the reference to “the focus and subject matter” of DI Jacob’s response.
- 219) What he *was* asked to do in the light of that anonymous allegation was to provide his superior officer with his confidential views as to the investigation which had taken place some years previously. Clearly implied in that request, in my opinion, was whether in the light of that anonymous allegation DI Jacob stood by his earlier assessment that Hosemans was not implicated in any way in the missing woman’s disappearance.
- 220) On the first page of his response (Exhibit 51B) there is set out what appears to be a summary of the “confidential views” sought by Superintendent Kuiters, but this material does *not* appear in the Rani Report. That material was in the following terms: “*It is my opinion that Mr Hosemans has no involvement in the suspected death of Janine Vaughan. Further during the course of our investigation in Bathurst I had occasion to liaise with the Professional Standards Unit, Western Region on the issue of Mr Hosemans and my investigation into the death of Janine Vaughan. It was apparent that there were a number of vexatious complaints*

centred on Mr Hosemans. It appears that the document received by the Commissioner's Office is very similar in content, style and nature to those previously dealt with by Professional Standards Command. . . ."

- 221) It would seem that the views thus expressed were formed in part by the fact that the anonymous allegation appeared to have come from the same source as the previous anonymous allegations referred to, and which had been dealt with by Professional Standard Command, and, by implication, should accordingly be discounted.
- 222) In my opinion, to omit this significant material from a consideration of DI Jacob's response was inherently likely to distort the overall effect of the response. The omission of this significant information is inconsistent with the proper and competent discharge of the Commission's functions. The anonymous allegation was in fact investigated by the Commission, apparently at some length, and found to be baseless, although this information, too, has been omitted from the Rani Report. Thus, DI Jacob's assessment of the anonymous allegation was not in issue.
- 223) **5.7** refers to an interpretation that some hypothetical "reader" might, according to the Commission, place on DI Jacob's response, and then adds the damaging, and, in my opinion, unwarranted, opinion: "In that respect the report was significantly misleading." This seems to overlook the fact that DI Jacob was expressing his confidential views to his superior officer, and the response was to be assessed in that context only.
- 224) Indeed, this basic fact seems to have been lost sight of by the Commission: Superintendent Kuiters, according to his evidence, was himself a detective of some 25 years' experience, and was seeking the "confidential views" of DI Jacob, also a detective of considerable experience, and, it would appear, highly regarded by his superiors. Provided the latter stated his "confidential views" on the investigation honestly, his response was beyond relevant criticism. The Commission expressed no opinion that the "confidential views" conveyed to Superintendent Kuiters were other than DI Jacob's long-held, and very firm, opinion, that Hosemans was in no way implicated in the disappearance of the missing woman, a conclusion belatedly arrived at by the Commission.
- 225) **5.8** in my opinion, in particular, the assertion in first sentence thereof: "Kuiters gave evidence that suggested he was misled by the report." (even leaving aside the equivocation inherent in the word "suggested"), does not present a fair and balanced reading of the effect of the relevant evidence of Superintendent Kuiters. In particular the following evidence should be set out verbatim:

21 Q. Did you at some point come to hear that there were
22 call charge records that placed Mr Hosemans back in
23 Bathurst on the night of Ms Vaughan's disappearance?
24 A. The best of my recollection was that was at the
25 hearings in Orange, which I was made privy of that.
26
27 Q. Do you accept the proposition that it would appear
28 that you were misled by that document, that being the case?
29 A. I think "misled" has a connotation of willfulness to
30 mislead. Whilst it's not in that document, I don't know if
31 I was intentionally misled.
32
33 Q. All right. Obviously you can't speak about the
34 author's intent --
35 A. No.
36
37 Q. -- but in terms of your understanding of what the
38 position was with Mr Hosemans, you were, on the face of it,
39 misled, but you can't, in answering that question, comment
40 on the deliberateness or otherwise of the person who made
41 the statement?
42 A. That is correct, and I'd say that I wasn't fully
43 informed of all the available facts.

- 226) A fair reading of that evidence, in particular, having regard to the dual proposition contained in the final question in the extract set out above, is that the witness did *not* give evidence that he was misled, but rather that not all the relevant facts had been included. As observed above, DI Jacob had not been requested to provide a report of “all the available facts.” In any event, the information omitted was of no consequence because it was taken into account by DI Jacob in his assessment, the correctness of which was never suggested to him by the Commission to be in issue, that there was no evidence whatsoever to implicate Hosemans in the disappearance of the missing woman.
- 227) This evidence by Superintendent Kuiters was never put to DI Jacob by the Commission, thus depriving him of the opportunity, which procedural fairness mandated, to refute the adverse interpretation concerning him sought to be placed upon it by the Commission. This is an example of the Commission’s failure to *re-call* a witness so that the latter could thereby be provided with the opportunity to refute later evidence, which might be construed as adverse in respect of that witness, upon which the Commission intends to place reliance.
- 228) In the light of this analysis, the opinions expressed in **5.10** are quite *unjustified*, in my opinion. As DI Jacob’s confidential views clearly implied, the anonymous allegation was as baseless as the like anonymous allegations concerning Hosemans previously investigated.
- 229) The Commission’s statement in that paragraph that Hosemans’ mobile telephone records, which indicated no more than that he had made his way from Newcastle to Bathurst on 6 December 2001, were capable of adding any weight, let alone “considerable weight”, to this baseless, and therefore, malicious, allegation, was grossly unfair to Hosemans. Much more significantly, as an indictment of the Commission’s own conduct and competence, that statement was *patently untrue*.

10.15: THE THIRD “SUBSTANTIAL ALLEGATION”

He prepared a deliberately false and misleading report [to Nash] in response to questions raised by the NSW Ombudsman after that office’s review of the report Jacob prepared for Kuiters.

10.19: *In relation to the third allegation it is difficult to resist the conclusion that the report prepared by Jacob dealing with the questions raised by the Ombudsman was a deliberately misleading report. It was designed to suggest that Hosemans’ asserted alibi had been investigated and had been shown to be supported by relevant documentary material, when clearly it had not been fully investigated and Jacob knew that the alibi was not so supported by the information that had been obtained during the investigation.*

DI Jacob’s response to DI Nash (Professional Standards Manager, Western Region)

- 230) This material appears in the Rani Report under the sub-heading “*Jacob’s response to NSW Ombudsman*” suggesting that DI Jacob was responding directly to the Ombudsman, which, in my opinion, was a misdescription of the document in question, namely, a document responding to a communication from DI Nash. In the written submissions of Counsel Assisting served on DI Jacob, this so-called “substantial allegation” included the words “*to Nash*”, as indicated above. Those words have been deleted by the Commission from the Rani Report, without notice to DI Jacob, and without acknowledgment.
- 231) In fact there was no evidence before the Commission as to whether or not DI Jacob’s response was in fact sent by DI Nash to the Ombudsman, or, if it was, whether as amended by DI Nash or otherwise, because the latter was never called as a witness by the Commission. Nor, it should be observed, was the relevant officer from the Ombudsman’s office called to give evidence.
- 232) As with the Commission’s treatment of the response by DI Jacob to Mr Kuiters (above), similar deficiencies appear to attend the Commission’s approach to this material, and the conclusions drawn in relation to it. That is to say, there appears to be a lack of perspective and a disregard of context, an unfair presentation of the evidence, a failure to refer to relevant evidence, and, in this case, a failure to call relevant witnesses, namely the two identified above.
- 233) By a document dated 12 August 2005 addressed to DI Jacob (PIC Exhibit 52), DI Nash referred to what followed in that document as “a cut and paste” extract from the Ombudsman’s office in relation to the anonymous allegation referred to above, and requested DI Jacob to provide him with “any comments you think appropriate.”
- 234) Then followed a number of matters each one concerning Hosemans only some of which are referred to in the Rani Report (at **5.12-5.13**).
- 235) The material thus omitted was in my opinion not without significance in assessing the effect of the content of the document as a whole.
- 236) As has been observed in a similar context in relation to DI Jacob’s response to Mr Kuiters, any assessment of DI Jacob’s response to DI Nash (PIC Exhibit 53B) ought to be assessed solely in the context of DI Jacob’s responding to his superior, who had had access to his numerous reports of this investigation (indeed, DI Jacob’s comments made specific reference

to his previous report to Mr Kuiters, and to his “original report”, a clear indication that his superior was assumed to be across those reports).

- 237) How, or whether, the recipient in fact used the comments received from DI Jacob, as has been mentioned, was not the subject of evidence, because the Commission did not call DI Nash to give evidence. It follows that there was no evidence that DI Nash (or for that matter, the Ombudsman’s office) was in fact misled or would have viewed the comments as “deliberately false” in any respect. *Nor did the Commission express any such opinion in the Rani Report.*
- 238) Despite the absence of any opinion by the Commission that either DI Nash or the officer from the Ombudsman’s office was in fact misled, at **10.19** of the Rani Report the Commission did express the tentative assertion that it was “difficult to resist the conclusion” that DI Jacob’s comments amounted to a “deliberately misleading report.” However, that interpretation, despite its damaging implications, uninformed as it was by any evidence from either DI Nash or the officer from the Ombudsman’s office, and in the absence of any opinion expressed by the Commission that either DI Nash or the Ombudsman’s office was in fact misled, was not reasonably open to the Commission on the evidence.
- 239) How that ambiguously-expressed statement could have been rationally made by the Commission in the absence of the evidence referred to above, and disregarding the context in which the comments were sought in the first place, is not the subject of consideration, let alone explanation, in the Rani Report. The Commission’s failure to appreciate that the proper discharge of its functions demanded such an explanation is an indictment of its competence and objectivity.
- 240) Not only has the Commission selectively reproduced part only of DI Jacob’s comments, but there appears to have been a misreading by the Commission of aspects of the comments reproduced, or at least an absence of any acknowledgment that there existed a different interpretation to that seized upon to by the Commission.
- 241) For example, in **5.12** the quoted material from the communication from DI Nash includes the wording “*Hosemans whereabouts at the relevant time.*” A reasonable interpretation of “the relevant time” would appear to be to regard them as a reference to the point in time on 7 December 2001 when the missing woman was observed to enter the relevant motor vehicle, after which she was never seen again, which, according to the evidence, was approximately 4 am on that day.
- 242) In fact, DI Jacob’s comments included a succinct summary of the exhaustive investigation that had been carried out by his Task Force which had identified all persons who were in close contact with the missing woman on the night she disappeared, and “all persons [numbering 70-80] who were at the venues she attended”, that that investigation had included relevant CCTV footage which had been extensively examined including by video experts, and that none of that critical evidence identified Hosemans as among those present on that night but, on the contrary, excluded him as being present.
- 243) This material, never challenged by the Commission, has been completely omitted from DI Jacob’s comments as reported the Rani Report.
- 244) What has also been omitted by the Commission from the Rani Report is the conclusion expressed by DI Jacob in his comments that, in the light of the whole of this evidence, he held “*the strong and informed view that Hosemans is not involved in any way with the disappearance*” of the missing woman, and that therefore the mere fact that Hosemans was in residence in Bathurst at the time did not add to, alter, or detract from, the effect of the totality of the evidence.

- 245) As has been observed previously by me on more than one occasion, the significance of which cannot be overstated, this assessment was precisely the same as that arrived at, belatedly, some years later by the Commission.
- 246) In the light of this crucial conclusion, based on the totality of the evidence, first, by the police Task Force led by DI Jacob, and subsequently, the Commission, the latter having apparently itself carried out an investigation of the same evidence, but also of the anonymous allegation, despite that having been rightly discounted by DI Jacob, for the reasons mentioned above, the criticisms levelled by the Commission at DI Jacob's reports and his investigation, appear to be irrelevant, and, accordingly, unwarranted.
- 247) The Rani Report (at **5.14, 5.18**) was also critical of the fact that DI Jacob had included in his comments, and could not recall, when he gave his evidence, the basis on which he had done so, the following sentence: "*It is not uncommon for cell sites to be inaccurate and it would be unwise to rely on this type of evidence.*" The clear implication was that in the opinion of the Commission such a proposition was untenable, and that therefore the reason for its inclusion in the comments was questionable.
- 248) In fact there was evidence before the Commission that it was regular police practice, before placing reliance on CCRs to establish conclusively mobile phone location, especially where, as in this case, there existed apparently contradictory evidence, to make further enquiries by speaking to technicians at the particular Carrier in order to confirm the correctness of the interpretation of the CCRs in that regard.
- 249) That evidence had been given by DSC Sim (T 289) and by Mr Kuiters (T 341), in each case on 21 August 2006, more than two months after DI Jacob had given his evidence about the matter. Nor should it pass without comment that that evidence was given despite Counsel Assisting's question to each of those witnesses being couched in terms conducive to the production of a negative answer ("You don't subscribe to the view...." And "You wouldn't agree with this statement", respectively). Not only has the Commission omitted any reference to this evidence, but it has misrepresented DSC Sim's evidence in the Rani Report by suggesting it was confined to affirming that such evidence was regularly relied on by police and prosecutors in criminal prosecutions (at **5.17**).
- 250) Whether or not DI Jacob could recollect, when he gave his evidence, the basis for the inclusion of the wording in question, there was in fact support (quite apart from the evidence referred to above) provided in the case-law and in the literature on this subject for the proposition that conclusive reliance ought not be placed on such evidence to establish location without calling in aid technical or expert evidence as to the correct interpretation of the CCRs (as distinct from details of calls/SMS made/sent). The Rani Report makes no reference to the existence of such supporting material, and called no technical evidence in respect of the use of the CCR evidence as evidence of location.
- 251) Further, as has been disclosed by the *Taylor* Review, as a result of material provided for that purpose by DI Nash, it appears that the latter had had a considerable input into the production of the final form of the comments attributed to DI Jacob, including, in particular, the insertion of the wording referred to above in relation to the not uncommon inaccuracy of cell sites, thus making it clear beyond doubt that DI Jacob *could* not have had any intention to mislead DI Nash, and that the latter *could* not have been misled by the comments because he had, in effect, co-authored the document in question. That this evidence was not adduced by the Commission can be attributed to the fact that the Commission failed to call DI Nash to give evidence, or even interview him.

FAILURE TO APPLY REQUISITE STANDARD OF PROOF: SECTION 10 OF THE RANI REPORT

- 252) Section 10 of the Rani Report is headed “Affected Persons” and purports to deal, in particular, with the three “substantial allegations” against DI Jacob which, according to the Commission, were “made in this investigation” (**10.6**), and to explain the basis for the recommendations made to the Police Commissioner for the dismissal of DI Jacob (and DSC Sim) from NSW.
- 253) The earlier Sections of the Rani Report did not disclose whom among the witnesses were to be identified by the Commission as “affected persons”, or that “substantial allegations had been made against” them, or the nature of those allegations.
- 254) Those earlier Sections did not contain any opinion that any of those allegations had been established to the Commission’s satisfaction.
- 255) Before the Commission was entitled to form any opinion that any of those allegations was established or substantiated, the Commission was under an obligation to satisfy itself on the balance of probabilities that the evidence supported and justified the formation of such opinions, having regard to the very serious consequences that would result for DI Jacob.
- 256) This fundamental obligation was expressly acknowledged by the Commission in the Rani Report: “Before expressing any opinion that [police] misconduct may have occurred . . . the Commission should be comfortably satisfied of the relevant facts...” (**10.9**). The Commission accepted that: “In such matters, ‘reasonable satisfaction’ should not be produced by inexact proofs, indefinite testimony, or indirect inferences.”
- 257) In fact, the Commission, in Section 10, simply asserted that particular “substantial allegations” were “made in this investigation” without providing any information as to when they were made (**10.6**). There is no suggestion that those “substantial allegations” were made by a particular person or by any outside law enforcement agency. This is because to the extent they were “made” at all, it is the Commission that has “made” them.
- 258) In fact they had their genesis in the written submissions of Counsel Assisting, and were then adopted as such by the Commission.
- 259) In the preceding paragraphs of my Report I have examined the evidence on which the Commission purported to “make” these allegations, and the Commission’s apparent conclusions and recommendations in respect of those allegations, and for the reasons explained concluded that the allegations were not supported by the evidence and that the conclusions of the Commission in respect of each of those allegations were unsustainable.
- 260) Nevertheless, in my opinion, it is instructive to pay close attention as to whether and to what extent there is contained in Section 10 opinions necessary in order to make the recommendations published in the Rani Report concerning DI Jacob.
- 261) In **10.16**, absent any opinion that any of the three allegations had been “proved” or substantiated to the requisite satisfaction of the Commission, the opinion is expressed that “The Commission *considers* that DI Jacob engaged in police misconduct *in relation to the three allegations*”. There was no attempt to narrow the disparate meaning of “police misconduct” as defined in the legislation (as to which see **10.4** and Appendix 1 (pages 85 and 86)) of the Rani Report.
- 262) In **10.17**, **10.18** and **10.19**, respectively, appear the only indication of any attempt by the Commission to satisfy itself that any of the “substantial allegations” had been substantiated.

- 263) However, no more is vouchsafed in those paragraphs other than that in respect of the *first* “substantial allegation” the Commission found it “difficult to accept” a particular aspect of DI Jacob’s evidence; that in respect of the *second* the Commission once again found it “difficult to accept” a particular aspect of DI Jacob’s evidence; and that in respect of the *third* it was “difficult to resist” the particular conclusion referred to.
- 264) These are not expressions of concluded opinion that the Commission was satisfied to the requisite standard of proof that any of these allegations was substantiated. There is thus no opinion expressed in the Rani Report that the Commission did in fact form any such concluded opinions.
- 265) There is no explanation in the Rani Report for the absence of such concluded opinions and the consequent breach of that fundamental obligation acknowledged as such by the Commission.
- 266) The Commission, without further explanation, and, it might be added, without precedent, then expressed the devastating opinion destructive of DI Jacob’s character and integrity that “*the actions taken by Jacob, both individually and as a whole, are such that he should not remain a member of the NSW Police Force*” (10.21).
- 267) As noted earlier, the effect of the unprecedented step of declaring in a public Report to Parliament that DI Jacob was unfit to remain a member of the NSW Police Force, was virtually to pre-empt the Police Commissioner’s function as to whether or not to act upon that recommendation, unless the Commission’s declaration and recommendation were to be disregarded, or challenged.
- 268) The Police Commissioner did in fact take steps to challenge the relevant opinions of the Commission concerning DI Jacob, and, consequently, the Commission’s declaration as to his unfitness to remain a member of the NSW Police Force, by seeking a review of the Commission’s opinions and recommendations from Mr Taylor SC.

DI JACOB'S COMPLAINTS 9, 10, 11, 12, 13 AND 16

Complaint 9:

That the actions of the PIC conduct in Operation Rani has the potential to adversely affect the administration of justice in future judicial proceedings concerning the suspected murder of Janine Vaughan, in at least two significant ways;

- a. The failure to categorically eliminate Hoseman's as a possible suspect in the disappearance and suspected murder of Janine Vaughan; and*
- b. Doing so with the force of a 'standing Royal Commission' Public Report.*
- c. By the public release of the flawed 'evidence' of RA1 into the public domain.*

Complaint 10:

That the urgency shown by the PIC in the timing of the advertising of public hearings, the conduct of those public hearings and findings of fact against Jacob had the potential to adversely affect the administration of justice in a high profile murder committal and later trial (R –v- Gordon Eric Wood). Jacob was the very public officer in charge of that investigation.

Complaint 11:

That the PIC inappropriately used the media concerning their Operation Rani investigations;

- e. By issuing a Media Release and making public transcripts of the 'flawed evidence' of RA1 on the evening of 23 August 2006 which resulted in wide media attention on the morning of the 24 August 2006. Which was the very day the senior members of the PIC, senior police and others were appearing at the Parliamentary Oversight Committee of the Ombudsman and PIC.*
- f. (Most likely) inappropriately released details of the future Rani findings to a Sun Herald journalist, John Kidman, who on the 17 June 2007, reported 'Inquiry recommends sacking of homicide cop'. This full page report appeared at the end of second (of three) week committal hearing of R –v- Wood and immediately before Jacob was to appear in the witness box.*
- g. By the public release of the Operation Rani Report 2 hours after the public release of separate PIC Operation Mallard Report concerning substantial allegations against another officer (Supt Purcell) on Wednesday the 19 December 2007 the effect being;*

*To 'link' the two investigations publically
Give greater weight to the Rani allegations*

Complaint 12:

That the Presiding Commissioner Griffin did not write the final Operation Rani Report, (had apparently retired). Therefore no independent assessment/treatment of the evidence was possible and the final report appears simply a reflection of the counsel assisting Buscombe assertions and flawed reasoning.

Complaint 13:

That the PIC adversely affected public confidence in the NSWPF ability to investigate homicide and by failing to address issues raised and publicly disclosing the content of anonymous information concerning Hosemans, (See Rani Report 1.7) did nothing to allay public disquiet of those issues in the Bathurst area.

Complaint 16:

That the PIC does not acknowledge the significance and complete rejection, of the two independent investigations into their findings in their continuing public references to Operation Rani (see page 50 PIC 2010 Annual Report – tracking the Commission's Recommendations). Leaving a casual observer to hypothesis that the NSWPF have protected Jacob and Sim.

- 269) As noted earlier, these particular complaints appear to fall outside the ambit of DI Jacob's complaints dealt with above in that they primarily relate to matters other than the content of the Rani Report or the evidence before the Commission.
- 270) Complaints **9** and **10** seem to me contain a common basis. As to Complaint **9**: I have taken the view that that subject matter is not within the Inspector's jurisdiction. An allegation that the Commission's actions have interfered with the administration of Justice is obviously a matter for the Courts to deal with, in the event such an allegation were to arise in relation to relevant judicial proceedings.
- 271) However, I have previously expressed my strongest disapproval in relation to the Commission's conduct, which I regard as reprehensible, in releasing as a media release the sensational, uncorroborated, and unreliable evidence of RA1, despite the fact Mr Hosemans had never been given the opportunity by the Commission to refute it. The extent of the irremediable damage caused to Mr Hosemans' reputation by the public release of that material, made worse by being re-published in the Rani Report, would be difficult to overstate. As to this, see my Report in *Hosemans* -- www.inspectorpic.nsw.gov.au.
- 272) As to Complaint **10**: for similar reasons I have taken the view that that subject matter is not one within the Inspector's jurisdiction.
- 273) As to Complaint **13**: apart from noting that I have already expressed my strong disapproval of what I regard as the gross unfairness to Mr Hosemans by reason of the Commission's publishing the anonymous allegation, which it had found to be totally baseless, in the Rani

Report (see my Report in *Hosemans*), I have taken the view that this subject matter is not within the Inspector's jurisdiction.

- 274) As to DI Jacob's Complaint **11**, relating to the Commission's alleged *misuse of the media* in relation to the Rani Report and the investigation leading up to the publication of that Report, apart from noting the inferences DI Jacob apparently seeks to draw from **11(e)** and **(g)**, I do not propose to say more concerning those particular matters, because I am not in a position to do so. I am not aware any evidence to support those inferences.

PIC'S failure to investigate leak of confidential information

- 275) However, his Complaint **11(f)**, relating to the publication of the article referred to concerning him, which appeared in the *Sun Herald* on 17 June 2007, 6 months prior to the publication of the Rani Report, in my opinion raises a *significant matter* as it appears to represent a serious leak of highly confidential PIC information, with the potential to cause considerable damage and embarrassment to DI Jacob, particularly having regard to the fact that at that stage he had only just been notified by the Commission that serious allegations were being made against him by the Commission.
- 276) The inference that DI Jacob not unreasonably, in my opinion, seeks to draw from the publication of that article in the circumstances, is that the release of that confidential information to the journalist in question may have come from an officer or officers of the PIC.
- 277) Such conduct would, in my opinion, if proved, be likely to be a breach of Section 56 of the *Police Integrity Commission Act*, and therefore a criminal offence.
- 278) The article referred to the subsequent recommendation of the Commission, not published until 6 months later in the Rani Report, that DI Jacob be dismissed from NSWSP, and stated that that such material was "in the hands of the [then] Police Commissioner."
- 279) It cannot be ruled out that the motive for the release of this confidential information, given its controversial and therefore newsworthy content, 6 months in advance of the Rani Report, was to garner publicity for the Commission's forthcoming Report by anticipating its recommendations for the dismissal of DI Jacob from NSWSP.
- 280) Accordingly, I wrote to the Commission seeking an explanation for the apparent leak of this confidential information, whether the Commission had at the time carried out an internal investigation with a view to establishing the source of the leak, in particular, whether that source was an officer of the Commission, and whether the Commission had taken any step to correct the import of the article that the Commission had then formed the opinions and made the recommendation referred to in the article.
- 281) It appears from the Commission's response that there is no reference in its records to the article and no evidence of the Commission's having taken any step in response to the publication of the article. However, it may be safely assumed, given the prominence and content of the article, which contained a large photograph of DI Jacob, that the Commission would have been well aware of the publication of that article at the time.
- 282) The unauthorised release of that confidential information to the journalist, in my opinion, ought to have raised the most serious questions as to the integrity of the Commission's processes then in place to safeguard confidential information, and resulted in an urgent appraisal of those processes and an investigation as to the source of the leak by the Commission.
- 283) At the time when that confidential information was leaked, the submissions in response on behalf of DI Jacob had not been received by the Commission.

- 284) The failure by the Commission to investigate the leak or to take any step to deplore the use made of that material by the journalist, or to correct it, for example by means of a Press release, leaves open the inference that without awaiting the receipt of the submissions in response, and regardless of their content, the Commission had already determined to make the recommendation for the dismissal of DI Jacob.
- 285) Such failure to investigate also does little to dispel the suspicion that the unauthorised disclosure may have emanated from the Commission itself.
- 286) The Commission adopted its usual, inexplicable, procedure of distributing the whole of the written submissions of Counsel Assisting, which included the material later appearing in the Rani Report as adverse opinions, findings and recommendations, in respect of DI Jacob, to the legal representatives of *each* of the “affected persons”, as well as to others who had represented witnesses who had appeared at the hearing but were *not* among the “affected persons”, and to NSW Police.
- 287) This was despite the fact that at that time DI Jacob’s submissions in response had not been received, let alone considered.
- 288) In my opinion this amounted to irresponsible conduct on the part of the Commission which only served to increase the likelihood of that highly sensitive, grossly defamatory, material being leaked, as ought to have been obvious to the Commission.
- 289) The result was to place DI Jacob in the intolerable position, and to leave him in that position for a further six months, of being required to carry out his heavy responsibilities in NSW while at the same time labouring under the uncertainty, and damage to reputation, caused by the unauthorised release of the confidential material appearing in the article.
- 290) The unexplained failure by the Commission to investigate this leak of confidential information amounted to a conscious disregard of its ethical and legal duty to investigate a serious breach of security involving the integrity of its own processes.
- 291) As to Complaint **12**: essentially, this complaint arises out of the circumstance that the term of the Commissioner who presided in 2006 over the Rani Hearings expired on 14 October 2006.
- 292) On 16 October 2006 the term of the newly-appointed Commissioner commenced. The Rani Report was not presented to the NSW Parliament, and made a public document, until some 15 months later, in December 2007.
- 293) The Commissioner who heard and saw the relevant witnesses give evidence, including DI Jacob and DSC Sim, respectively, had the crucial advantage of forming impressions as to the credibility of those witnesses based on his observations of them, and their demeanour, when they gave their evidence.
- 294) Presumably, the opinions of the Commission as to the credibility of these witnesses reflected in the Rani Report derived from or were consistent with the views of the presiding Commissioner who formed such opinions having taken into account the impressions implanted as a result of hearing and seeing the witnesses give their evidence.
- 295) Such opinions as to credibility would appear to have been formed, on a firm, if not a final, basis, by the presiding Commissioner prior to his departure from the Commission, and were presumably reflected in the written submissions served on “affected persons” by the Commission in May 2007 which were later substantially adopted by the Commission and which contained material that on being adopted by the Commission became adverse findings including as to credibility.

- 296) The newly-appointed Commissioner had no such advantage. He did not see or hear the witnesses give their evidence (with the immaterial exception of two witnesses who gave evidence in November 2006) and was therefore not in a position to form any views as to credibility based on his impressions of the witnesses as they gave their evidence.
- 297) It is this circumstance which gives rise to Complaint **12**: In practical terms the issue seems to raise the question of what steps, if any, the Commission was required to take, after the term of the newly-appointed Commissioner commenced, to address the problems created by the circumstances adverted to above.
- 298) An analogous situation occurred in respect of proceedings before the ICAC in an investigation into allegations against a member of the NSW Parliament: see ICAC Report December 1998.
- 299) In that case the incoming Commissioner (the “ICAC Commissioner”) immediately upon his appointment called all relevant parties before him and sought submissions as to what steps should be taken to overcome the problem arising from the fact that he had not heard any of the evidence which had all but been completed in public hearings presided over by a different Commissioner approximately 3 months prior to his appointment.
- 300) The ICAC Commissioner noted that he had available a transcript of the evidence in question, and had also had the advantage of viewing a video tape record of each witness as that witness gave evidence.
- 301) However, he stressed the need for him “to be very cautious about coming to any view of the credibility of any person on the basis only of that material”.
- 302) The ICAC Commissioner accepted that there was a further requirement “to see and hear personally any witness whose credit is in issue or whose conduct is impugned.”
- 303) Accordingly, the ICAC Commissioner held that in respect of “any party against whom an adverse finding might ultimately be made” including an adverse finding as to credibility, such party should have the opportunity to give evidence in person before the ICAC Commissioner.
- 304) It is noteworthy that whereas the ICAC Report gave prominence in the Report to the situation that had arisen, acknowledged and identified the steps required to be taken to overcome the problem, and made clear that such steps had been taken, the PIC’s Rani Report gave no indication that the situation described above had arisen, or that the Commission was aware that that created a problem that required to be addressed in similar manner to that spelled out by the ICAC’s Report.
- 305) It seems not unreasonable to attribute this same lack of awareness to the legal representatives of the relevant witnesses, on the basis that none appears to have raised the matter with the Commission, or to have taken any objection based on the circumstances referred to above.
- 306) As to Complaint **16**, based on the Commission’s failure to respond to the Taylor Review: see below.

PIC'S FINDINGS AND RECOMMENDATIONS CONCERNING DSC SIM

- 307) Of my own initiative, I made the decision, in the course of investigating DI Jacob's complaints, to investigate also the Commission's findings and recommendations in respect of DSC Sim, and to include the results of that investigation in this Report, having regard to two matters, in particular.
- 308) The first was the fact that Mr Taylor's Review had also examined these findings and recommendations and had concluded that those findings and recommendations were unjustified.
- 309) The second was the fact that on 23 December 2010, and 30 March 2011, respectively, DSC Sim had written to my office stating in effect that he wished to make a complaint and foreshadowing that it was his intention to provide me, in due course, with particulars of that complaint arising out of the publication of the matters concerning him in the Rani Report, although that documentation did not in fact materialise.
- 310) In the circumstances, it seemed to me reasonable to take the course indicated above, especially as the content of the Rani Report relevant to DSC Sim appeared to fall within a narrow compass.

SUBSTANTIAL ALLEGATION AGAINST DSC SIM

10.6 (h): that Sim deliberately misled the Coroner and [Sergeant] Norton when he stated to them that a police officer had been a person of interest in relation to Vaughan's disappearance, had given an alibi and that the alibi had been investigated and confirmed.

10.26: When Sim met with the Coroner and Norton he knew that telephone records placed Hosemans in the Bathurst area at the time of Vaughan's disappearance. Given Sim's knowledge of the telephone records, and the inconsistency between those records and the banking records, it is implausible that the statement made to the Coroner, that Hosemans had provided an alibi and had been confirmed, was not intended to be deliberately false and misleading. 10.25: The Commission considers that Sim engaged in police misconduct in relation to the allegation.

- 311) From this material it would appear that the statement in question was an oral statement which, according to the Commission, DSC Sim made to two persons, namely, Sergeant Norton, who was called as a witness, and a (Deputy) Coroner who was not called as a witness. Not specified is the occasion when this oral statement was made: the evidence was that after he provided a brief to the Coroner DSC Sim had met with Sergeant Norton on three occasions, and with the (Deputy) Coroner twice).
- 312) It would seem from the fact that the word "*confirmed*", in relation to the word "alibi", is present in both **10.6 (h)** and **10.26**, that it was that word, in the statement attributed to DSC Sim, which the Commission saw as justifying the serious allegation that "*Sim deliberately misled the Coroner and [Sergeant] Norton*".
- 313) However, there was *no opinion* expressed by the Commission as to how the making of such an oral statement, if made, was *capable* of misleading either of these two persons having regard to the whole of the evidence.
- 314) Further, there is *no opinion* expressed by the Commission that either of those persons was in fact misled by such oral statement.
- 315) There is *no opinion* expressed that DSC Sim did not believe that oral statement to be correct at the time he made it.
- 316) There is *no opinion* expressed that the Commission disbelieved any of the evidence given by DSC Sim.
- 317) As already noted, the (Deputy) Coroner was not called to give evidence so that there was thus no evidence from him that he was or could have been misled if such an oral statement had been made to him by DSC Sim.
- 318) There is no explanation in the Rani Report for the omission to call the Deputy Coroner to give evidence about the matter if the Commission was otherwise justified in investigating the issue of whether the DSC Sim had misled the deputy Coroner.
- 319) It was never put by the Commission to Sergeant Norton when she gave her evidence that such an oral statement had been made to her by DSC Sim and that she had been misled by it; nor did she give any evidence that she had been misled by such an oral statement made by DSC Sim.

- 320) It was not put by the Commission to DSC Sim when he gave his evidence that he had misled, let alone deliberately misled, either the (Deputy) Coroner or Sergeant Norton by the making of such an oral statement to either of them.
- 321) The Commission asserted as mentioned above that the it was “*implausible*” that the statement attributed to DSC Sim was not intended to be deliberately false and misleading but there was no indication in the Rani Report that the Commission had observed the fundamental obligation before expressing any opinion of misconduct (10.9) to consider whether it was “comfortably” satisfied of the relevant facts necessary to substantiate such a serious allegation, and there was *no opinion* expressed that it was in fact so satisfied.
- 322) In my opinion, the necessary consequence of these crucial deficiencies in the Commission’s procedures and in the evidence upon which the Commission purported to rely in support of the adverse opinions expressed by the Commission concerning DSC Sim, and in those opinions themselves as expressed by the Commission, is that there was *no justification* for such adverse opinions, and that they were not supported by the evidence on which the Commission purported to rely. Equally, there was no justification for the making of such a serious allegation.
- 323) However, quite apart from these deficiencies in the evidence and Commission’s lack of justification for the adverse opinions as discussed above, when regard is had to the whole of the relevant evidence, once again a *significantly different picture emerges* from that presented by the Commission in these paragraphs in the Rani Report.
- 324) The evidence referred to by the Commission is limited to that referred to in paragraphs 6.1-6.23, which appears under the heading “*The provision of a brief to the Coroner.*” Included in these paragraphs are 6.15-6.23, which appear under the sub-heading “*Sim’s evidence.*” As mentioned above, no opinion was expressed by the Commission that it disbelieved any of the evidence given by DSC Sim therein referred to.
- 325) In fact the evidence before the Commission included evidence from which it could be reasonably inferred that DSC Sim had approached his task of briefing the Coroner with diligence: as mentioned above after providing a brief to the Coroner he had initiated three meetings with Sergeant Norton (who was assisting the Coroner) and two meetings with the Coroner himself, with Sergeant Norton also being present, and at those meetings had sought directions and advice from the Coroner as to how to proceed and what further interviews needed to be done, which resulted in directions from the Coroner that a further statement be obtained from DI Jacob, and a record of interview be conducted with Hosemans (282, 291, 313).
- 326) That indeed was the reason he had arranged those meetings, having regard to the fact that the matter involved a current police investigation. (280).
- 327) According to Sergeant Norton’s evidence the fact that DSC Sim arranged these meetings with the Coroner was entirely at his initiative, and was over and above the usual procedure followed, in that the officer in charge did not usually take the course of attending on the Coroner when an inquest was to be listed for hearing (320).
- 328) There is no indication in the Rani Report that the Commission had regard to or placed any significance on the fact that this initiative was taken by DSC Sim, or that to do so appeared to be inconsistent with any intention to mislead the Coroner.
- 329) On the contrary, to take the step of initiating such meetings with the Deputy Coroner and Sergeant Norton was likely to assist the Deputy Coroner by providing the latter with the

opportunity to raise requisitions such as were in fact raised by him, and thus to determine the final content of the brief.

- 330) As a result of these meetings with the Coroner the latter had raised with DSC Sim further requisitions including as mentioned above that he should conduct a record of interview with Hosemans.
- 331) DSC Sim gave evidence that he inferred from the fact that that requisition was made that he had informed the Coroner of what he described as an “anomaly” in Hosemans’ CCRs, when compared to the Bank documentation (279, 286, 292), that his having raised the “anomaly” explained the Coroner’s requisition (313), and that he intended to raise the “anomaly” in the further interview with Hosemans required by the Coroner (288, 297).
- 332) That DSC Sim had discussed with the Coroner omissions from the brief, the existence of Hosemans’ CCRs, and the petrol receipt which indicated Hosemans had returned to Bathurst on the 6th rather than 7th December 2001, was confirmed by Sergeant Norton (320), as was his evidence that as a result of his discussions with the Coroner the latter requested that DSC Sim conduct a record of interview with Hosemans and obtain a further statement from DI Jacob (322, 325).
- 333) However, according to his evidence, he had been prevented from carrying out those further requisitions of the Coroner’s because of directions requiring NSWSP to cease its Strike Force Toko investigations, and that was the reason he had not, at the time he gave his evidence, conducted the record of interview with Hosemans. (279, 293).
- 334) How these directions came about was not the subject of evidence. The fact that that evidence was not challenged by either Counsel Assisting or the presiding Commissioner suggests each was aware of those directions.
- 335) There is no reference in the Rani Report to those directions and their effect of preventing DSC Sim from carrying out the Coroner’s requisitions. There is no indication that the Commission took that evidence into account in making the serious allegation against DSC Sim.
- 336) This evidence of course would appear highly relevant to any suggestion that DSC Sim had misled the Coroner, because its effect was that the brief which had been placed by DSC Sim before the Coroner was still a work in progress, and that accordingly no assessment could be made as to its sufficiency until such time as the gathering of the further information was completed in accordance with the Coroner’s requisitions.
- 337) DSC Sim’s evidence as to what he told the Coroner concerning the apparent “anomaly” between the Bank records which indicated Hosemans had not returned to Bathurst on 6 December 2001, on the one hand, and the CCRs which appeared to indicate he had, on the other, was that having regard to the totality of the evidence, which included “CCTV footage” of the scene at the time Vaughan disappeared, it was “not a major issue” (290, 309-10). His evidence was that at the time he met with the Coroner he accepted the position as apparently indicated by the Bank records that Hosemans had not returned to Bathurst on 6 December 2001, although he was aware of what he described as the “anomaly” in the CCRs, which in his view was not uncommon with CCRs, and therefore required confirmation as to reliability in establishing location from the telecommunications carrier (288, 289).
- 338) Thus when the whole of DSC Sim’s evidence is reviewed and fairly assessed, he appears to have approached his role of briefing the Coroner by organising two meetings with the latter, explaining to the Coroner the evidence he had produced in the brief at that stage, and sought and received directions from the Coroner as to what further steps the latter wished to be taken in supplementing the brief as provided, which included obtaining a further statement from DI

Jacob in respect of Hosemans, and a record of interview with the latter to be conducted by DSC Sim.

- 339) Implementing the Coroner's requisitions was prevented by the directions to NSW Police restricting aspects of their investigation referred to above.
- 340) By email communication from DSC Sim to my office dated 3 August 2011, the latter forwarded the text of two emails dated 8 May 2006, one from DI Coman of NSW Police to the Deputy Coroner, and the other being the latter's response to the former.
- 341) The following is the text of the email containing DI Coman's enquiry addressed to the Deputy Coroner:

Further to our meeting this morning it would be appreciated if you could send an email confirming that it would be prudent for DSC Simm [sic] to cease all active investigations concerning the suspected murder of Janine Vaughan until the outcomes of the PIC investigation / hearings are known.

Moreover, do you have any objections to DSC Simm [sic] completing outstanding administrative tasks and his comprehensive statement?

I will forward your response through our chain of command so they can be apprised."

- 342) The following is the Deputy Coroner's response to DI Coman:

"Brett, As discussed this morning and in view of the PIC public hearings and [sic] I am of the view that any additional investigation into the Janine Vaughan case should be suspended awaiting the outcome of the PIC Inquiry. I have no objection to DSC Simm [sic] completing outstanding requisitions and ensuring the integrity of the brief, however, I do not want any further active investigation undertaken at this stage. Implicitly, I do not want former Police Officer Houseman [sic] interviewed at this stage."

- 343) In correspondence with the PIC in the course of my investigation, I brought these email communications to their attention, noting in that correspondence that the Commission had advised me that Commission officers were in contact with the Deputy Coroner both before and after 8 May 2006, and were aware that the Deputy Coroner had met with DI Coman as indicated in the email communications referred to above.
- 344) It seems clear from those email communications and their timing that those Commission officers had informed the Deputy Coroner of the Commission's jaundiced views as to the investigation carried out by DI Jacob and Strike Force Toko into the disappearance of Ms Vaughan.
- 345) The result seems to be that although the direction referred to above in the Deputy Coroner's email has come from the latter, it was motivated by and simply reflected the views of the PIC as conveyed to the Deputy Coroner.
- 346) None of this information appears in the Rani Report.
- 347) The content of these email communications, in particular, the Deputy Coroner's statement that he had "no objection to DSC Sim completing outstanding requisitions and ensuring the integrity of the brief" would appear to be directly relevant to and inconsistent with the

Commission's allegation that DSC Sim was intending to mislead the Deputy Coroner in the information he had provided to the latter.

- 348) On the contrary, that statement by the Deputy Coroner appears to indicate the latter's opinion that the completion of the outstanding requisitions would have had the effect of "ensuring the integrity of the brief."
- 349) This evidence, apparently directly relevant to the issue, does not appear in the Rani Report. As noted above the Commission failed to call the Deputy Coroner to give evidence.
- 350) It is thus *inconceivable* that a fair assessment of this evidence could have allowed the Commission to form the opinion that DSC Sim intended to mislead the Coroner in any way, or in averring that the evidence supported such a serious allegation.
- 351) In fact, the evidence when fairly viewed as a whole contradicted any suggestion that DSC Sim had any intention to mislead the Coroner.

THE REVIEW BY MR TAYLOR, SC

- 352) Reference has already been made to this Review in the preceding paragraphs (and see *Schedule* hereto). However, in order to appreciate its significance in the context of DI Jacob's Complaint 16 it is necessary to refer briefly to its effect and the opinions expressed therein. Unless otherwise specified, I will confine my examination to that content which is based on exactly the same material (transcripts of evidence and documents) available to the PIC during the Rani Hearings.
- 353) In *Complaint 16* (above) DI Jacob is in fact referring to this Review, when he refers therein to "the two independent investigations", that being a reference to the investigation by Professional Standards Command (NSWP), and the subsequent review of that investigation, as well as the PIC's Rani Report, by Mr Taylor SC, at the request of the Police Commissioner.
- 354) In particular, the complaint is that the Commission, although in possession of a copy of that Review from shortly after the time when it was provided to the Commissioner of Police in October 2008, *failed to take any step to revise* the relevant adverse opinions, *or to acknowledge*, publicly, its existence, despite the fact that that it unequivocally refuted the adverse opinions expressed by the Commission in the Rani Report concerning DI Jacob and DSC Sim, and revealed major flaws and omissions in the Commission's treatment of the evidence and its relevant conclusions.
- 355) I have, of course, read that document. With respect, it appears to me to be a meticulous and balanced examination of the evidence on which the Rani Report, so far as relevant, purported to be based, and the adverse opinions expressed by the Commission concerning DI Jacob and DSC Sim. The conclusions expressed in that document are carefully, fairly and clearly explained and seem to me firmly underpinned by the reasoning which supports them.
- 356) Those conclusions have never been challenged or called into question as far as I am aware. It is therefore not surprising that the Police Commissioner apparently saw fit to act on that Review in rejecting the relevant adverse opinions and recommendations published in the Rani Report, or that DI Jacob, likewise, seeks to place considerable reliance thereon.
- 357) However, to state the position in those terms necessarily raises for consideration *significant legal and ethical issues* as to what was required of the Commission by way of a response on being made aware of that Review and the fact that its effect was to refute the damaging opinions expressed in the Rani Report, and to expose serious flaws in the Commission's reasoning.
- 358) In fact the Commission took no steps to revise or re-consider its relevant opinions or to acknowledge the existence of that Review. It follows it did not challenge or call in question the Review's conclusions or the reasoning underpinning those conclusions. It simply made the decision to *ignore* and to continue to ignore the existence of that document.
- 359) Despite having adopted this position, the Commission continued to display the Rani Report on its website thereby appearing to indicate by such a public statement the maintenance of the damning opinions concerning DI Jacob and DSC Sim, and, in particular, its assessment that the former was unfit to be a member of NSW.
- 360) In the Commission's *2010 Annual Report* (page 50) there is a reference to the Commission's recommendations to the Police Commissioner in the Rani Report that these two officers should be dismissed from NSWP. Then follows: "The NSWP subsequently advised the Commission that after conducting its own investigation into the matters discussed in the Rani Report it had decided to take no action in relation to either officer."

- 361) Bearing in mind that that Annual Report was a Report to the NSW Parliament, that notation, in my opinion, falls far short of the frankness expected of the Commission when purporting to disclose to Parliament details relevant to its previous public Reports.
- 362) The effect of this notation was to *re-publish* the Commission's recommendations for the dismissal of the two officers, and thus imply the Commission's adherence to the recommendations and the justification for those recommendations, and make it plain that they were not resiled from.
- 363) The notation appears designed to prevent public awareness that the Commission's findings and recommendations had been independently reviewed by Senior Counsel and found unjustified and should therefore be treated with considerable caution, if not disregarded.
- 364) The statement that NSWSP had conducted "*its own investigation*" is particularly objectionable.
- 365) That statement may well give the false impression it was a case of the police investigating the police, rather than that the review had been conducted by an independent Senior Counsel at the request of the Police Commissioner precisely to avoid any such implication, and that the correctness of that review had never been challenged by the Commission.
- 366) The Commission was aware that the Police Commissioner had rejected its recommendations, in reliance on the Review, and that the two officers continued to hold their rank and station in NSWSP, and to discharge the important duties such rank necessarily entails.
- 367) The fact that the Commission apparently received its copy of the Review on a confidential basis from NSWSP, did not, of course, prevent it from revising its relevant opinions in the Rani Report in the light of the opinions expressed in that document, nor did that fact impede the Commission from resiling from or amending its relevant opinions in the Rani Report if it appeared proper to do so having regard to the errors and omissions identified in the Review, and notifying the Police Commissioner forthwith.
- 368) It was open to the Commission, in the event that it were to concede any of its adverse opinions were flawed and unreliable, to make a new public Report to Parliament in effect withdrawing or overriding those adverse recommendations and opinions. Indeed, it would be duty-bound to do so.
- 369) Quite apart from the exculpatory conclusions in the Review, there were specific errors and omissions identified, which did not depend on mere subjective opinion, and therefore could not simply be ignored by the Commission.
- 370) Fairness to DI Jacob and DSC Sim, and, indeed, NSWSP, required that as soon as the Commission became aware that there existed Senior Counsel's Advice, obtained and acted upon by the Police Commissioner in response to the Commission's recommendations, which appeared to cast serious doubts on the validity of the Commission's opinions, it should reconsider those opinions.
- 371) In the event that the Commission was or ought to have been persuaded that serious doubts had indeed been cast on its opinions or any of them, it would be bound to make that concession and bring that to the attention of the Police Commissioner forthwith, and to withdraw the Rani Report from the Commission's website.
- 372) Over and above these issues of fairness and honesty on the part of the Commission, there was also involved the *public interest*.

- 373) This arose by reason of the obvious necessity for complete frankness and openness by the Commission in a situation where the Commission had publicly declared DI Jacob unfit to remain a member of NSW P and recommended his and DSC Sim's dismissal, on the one hand, and on the other where the Police Commissioner could be perceived not to have acted on the Commission's recommendations, without apparent explanation, which may have given rise to the highly undesirable public perception that those two officers had, somehow, perhaps unjustly, avoided the dismissal so forcefully and publicly recommended by the Commission, or, as expressed in DI Jacob's Complaint 16, that NSW P had protected them.
- 374) The Commission's decision to ignore that Review and make no reference to it, had the inevitable and obviously intended consequence that readers of the Commission's Rani Report, notwithstanding its continuing exposure by reason of its placement on the Commission's public website, were not informed of the fact that an independent Review had severely criticised the reasoning in that Report and found the relevant findings to be unjustified, and that the Commission had taken no step to re-examine its findings or challenge the Review's conclusions.
- 375) The serious effects of that non-disclosure on the reputations of these two police officers were exacerbated by the Commission's notation in its *2010 Annual Report* discussed above.

CONCLUSIONS AND RECOMMENDATIONS

- 376) The analysis of the Commission's investigation and Report conducted in the preceding pages of my Report has uncovered a situation so serious and so far removed from what is expected of a law enforcement body invested with very considerable resources and the powers of a Royal Commission as to be well-nigh incomprehensible.
- 377) What has been revealed is a systematic skewing of the evidence, and a persistent pattern of omitting relevant evidence and failing to have regard to the whole of the evidence so as to present that evidence fairly and intelligibly.
- 378) The Commission's Rani Report which resulted from this reprehensible course of conduct is, consequently, replete with significant misrepresentations of the evidence, and contains unjustified findings of serious misconduct and intentional wrongdoing by witnesses, in particular DI Jacob and DSC Sim, whose reputations have undoubtedly suffered severe and continuing damage as a consequence.
- 379) That damage has been caused not only by the publication of the Rani Report, and the attendant wide-spread media coverage, but also by the Commission's conduct in maintaining that Report on its public website, even in the face of the grave doubts cast on the reliability and validity of that Report by the review conducted in 2008 at the behest of the Police Commissioner.
- 380) The content of the Commission's notation in its *2010 Annual Report*, which re-published the recommendations but failed to disclose the existence and effect of that review, only served to continue and exacerbate that damage.
- 381) The existence of such a discreditable state of affairs calls for an explanation as to why the Commission, in the course of its investigation and reporting over a period in excess of two years, abrogated its responsibilities to conduct a fair, objective and impartial investigation, conscious of its high public profile, and the necessity for the publication of a scrupulously fair and balanced Report.
- 382) The explanation appears to be that encapsulated in DI Jacobs Complaint 15: that early in its investigation, if not at the outset, the Commission became imbued with the notion that it had solved the mystery of the disappearance of the woman, and that Mr Hosemans was the culprit.
- 383) Although, significantly, not disclosed in its Report, there seems no doubt it placed considerable reliance upon, and spent an enormous amount of time and resources investigating, the sensational claims comprised in the June 2005 anonymous allegation, disregarding and failing to report evidence that similar allegations concerning Mr Hosemans had previously been noted, investigated and dismissed as groundless by NSW Police.
- 384) The Commission published the terms of that anonymous allegation in the Rani Report despite its investigation of that allegation and its conclusion that it was in fact baseless.
- 385) It also gave credence to gossip and rumours concerning Mr Hosemans and the missing woman apparently generated by animosity and resentment because of Mr Hosemans' high profile in that country town. These had also been investigated and discarded by the police Task Force as is made plain by DI Jacob's Progress Reports all of which formed part of the evidence before the Commission.
- 386) It appears to have been this presumption of the involvement of Mr Hosemans in the disappearance of the woman which led the Commission, despite his categorical assurance to the contrary, previously confirmed by DI Jacob's own assessments contained in his Progress

Reports, to investigate any and every suggestion of contact between the two, regardless of reliability, only to conclude, belatedly, that there was in fact no such evidence.

- 387) In particular, the Commission placed reliance on statements made by two witnesses (identified earlier in this Report) suggesting there had been contact between Mr Hosemans and the woman each of whom resiled from, or cast serious doubt on the reliability of, those statements when later called to give sworn evidence. The Commission failed to disclose that evidence in its Report.
- 388) The Commission nevertheless accorded such discredited and irrelevant material much space and prominence in the Rani Report.
- 389) This pernicious attitude on the part of the Commission is tellingly exemplified by the fact that it gave uncritical acceptance to the evidence of the witness RA1, despite its complete lack of corroboration and bizarre content, and took the unprecedented step of releasing that evidence publicly in August 2005 as a media release, without even providing Mr Hosemans with the opportunity to enter the witness box and refute it.
- 390) That witness was later acknowledged by the Commission in the Rani Report to be an unreliable witness. The Commission nevertheless published the evidence of that discredited witness in the Rani Report.
- 391) Such an entrenched and debilitating bias on the part of the Commission appears to have deeply coloured and influenced not only the Commission's investigation, but the conduct of the hearings, and the content of the Report.
- 392) This inevitably resulted in an unfair, unbalanced perception by the Commission, not only towards Mr Hosemans, but also in respect of other witnesses, in particular, DI Jacob, DSC Sim and DS McFawn.
- 393) However indefensible the Commission's gullibility in giving such credence to the anonymous allegation and the evidence of the witness RA1, in my opinion the real mischief lay in the Commission's apparent refusal to resile from its egregious error, once that ought to, indeed, must have, become apparent, and publicly and unequivocally acknowledge that it had embarked on an futile and lengthy wild-goose chase.
- 394) The Commission made allegations of a most serious nature, each described as "substantial", against DI Jacob, DSC Sim and DS McFawn, and findings of serious and intentional misconduct against DI Jacob and DSC Sim, and recommendations for their dismissal from NSW Police, not supported or justified by the evidence, but which had the effect of lending credibility to the Commission's investigation, thereby distracting attention from the Commission's folly in having embarked on that investigation in the first place.
- 395) In considering what recommendations I should make in the light of these conclusions I am confined, of course, to making recommendations with a view to limiting the continuing effect of the damage already caused to reputations and careers by the publication of the Rani Report in December 2007. Nothing can expunge the damage done by the publication of those unjustified findings and the recommendations for dismissal from NSWP.
- 396) However it seems to me that the following **recommendations** if acted upon by the Commission forthwith would bring about some measure of amelioration of the damage already done: (i) the immediate withdrawal of the Rani Report from the Commission's website; (ii) the making of an unreserved public apology to the two officers concerned for the publication of the unjustified findings and recommendations; (iii) the making of a new Report to Parliament in effect over-riding and replacing the unjustified findings and recommendations in the Rani Report.

- 397) I would **recommend** that an independent Assistant Commissioner be appointed to the Commission to conduct any investigation necessary to facilitate the issue of such new Report and that, subject to the discretion of that Assistant Commissioner, the material to be considered by such enquiry be confined, if practical, to the evidence that was before the Commission during its investigation, the Review conducted by Mr Taylor, SC, and my Report herein, together with such other material as the Assistant Commissioner might decide, without the necessity to re-call either of these officers to give further evidence.

A handwritten signature in black ink, appearing to read 'P J Moss'.

The Hon P J Moss, QC
Inspector of the Police Integrity Commission

14 October 2011

SCHEDULE TO IPIC REPORT re DI JACOB and DSC SIM

MEMORANDUM OF ADVICE

of

MR PETER TAYLOR S.C.

NSW POLICE SERVICE

RE OPERATION OGILVY // OPERATION RANI

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Re Strike Force Ogilvy // Operation Rani

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NSW Police Service

Re Operation Ogilvy // Operation Rani

Memorandum of Advice

Operation Rani

1. In December 2007 the Police Integrity Commission furnished its Report to Parliament regarding Operation Rani. The report concerned a New South Wales Police Force investigation into the disappearance of Ms Janine Vaughan at Bathurst in the early morning of 7 December 2001. That investigation was known initially as Operation Toko, and later as Strike Force Toko.
2. The Operation Rani report made adverse findings against two police officers who had commanded Strike Force Toko. Those officers were
 - 2.1 Detective Inspector Paul Jacob (the Strike Force Toko commander from 16 December 2001 until 10 May 2004) - the 3 adverse findings set out in paragraph 17 below
 - 2.2 Detective Senior Constable Ritchie Sim (the Strike Force Toko commander after 10 May 2004) - the adverse finding set out in paragraph 149 below.
3. The PIC Operation Rani report recommended consideration of action under Part 9 of the Police Act 1990 against both DI Jacob and DSC Sim. Under Part 9 of the Police Act the Commissioner of Police may take various kinds of action, including removal from the NSW Police and disciplinary penalties, in relation to misconduct or unsatisfactory performance by police officers. The PIC recommendations included consideration of either removal action or disciplinary action against both Jacob and Sim.

Police misconduct - PIC and NSWPF functions

4. The Police Integrity Commission has statutory functions to detect, investigate and prevent police misconduct and, in particular, "serious police misconduct": *Police Integrity Commission Act 1996* ss 13 & 67 . In the discharge of that function the PIC may recommend consideration of the following kinds of action
 - 4.1 the prosecution of particular persons
 - 4.2 the taking of the disciplinary or removal action against particular police officers under Part 9 of the Police Act 1990
 - 4.3 the taking of any other action it considers appropriate in relation to its assessments, opinions or investigations: *Police Integrity Commission Act 1996* s 16.
5. No provision of the Police Integrity Commission Act 1996 obliges the Commissioner of Police to follow PIC recommendations. Nevertheless the ordinary practice of the New South Wales Police Force had been to follow those recommendations. I am instructed that the practice has altered as a result of two matters
 - 5.1 criticism, of the Police Integrity Commission Report and Findings in Operation Whistler, by the Inspector of the Police Integrity Commission
 - 5.2 evidentiary difficulties encountered by the Commissioner of Police in proceedings in the Industrial Relations Commission where the Commissioner has sought to rely on Police Integrity Commission findings and recommendations.
6. Under its altered practice the New South Wales Police Force's current procedure is to register Police Integrity Commission report recommendations as a complaint under Part 8A of the Police Act 1990. The Commissioner of Police then causes the complaint to be investigated under the provisions of the Police Act. Those provisions include notification of the investigation, and provision of a report, to the Ombudsman. The Ombudsman may monitor the investigation, request further information, a further investigation, review of any decision on the investigation. The Ombudsman may make any complaint the subject of an investigation under the Ombudsman Act 1974: see Police Act 1990 s 139, 146, 151, 153 - 156.

NSW Police - Operation Ogilvy

7. The New South Wales Police Force applied its altered procedure to the Police Integrity Commission's Operation Rani Report. The investigation under Part 8A of the Police Act 1990 was conducted under the name Strike Force Ogilvy.
8. The Strike Force Ogilvy investigation was carried out by the New South Wales Police Force Professional Standards Command, Complaints Management Team. The Strike Force Ogilvy investigation reviewed all of the evidence relied on in the Operation Rani report. It also obtained some additional information. The Strike Force Ogilvy Investigator's Report, dated 15 September 2008, was compiled by Detective Inspector MJ Cook, Investigations Unit, Professional Standards Command. The Strike Force Ogilvy Report concluded the PIC's Operation Rani findings and recommendations concerning Detective Inspector Jacob and Detective Sergeant Sim ought not to be accepted. The Report concluded that there was no proper evidentiary basis for the Commissioner to act upon the PIC's recommendations concerning those officers.

The matter for advice

9. I am asked to
 - 9.1 review the evidence relating to Operation Rani and Strike Force Ogilvy
 - 9.2 advise on the Operation Rani findings and recommendations by the Police Integrity Commission
 - 9.3 advise on the Strike Force Ogilvy findings and recommendations.
10. In particular, I am asked to advise on the following matters
 - 10.1 whether DI Jacob and DSC Sim engaged in misconduct
 - 10.2 whether there is sufficient evidence for the Commissioner to take removal action, or reviewable action, under Part 8A of the Police Act 1990 against either of those officers.

The material briefed

11. I have been provided with the following material

- 11.1 Police Integrity Commission, Report to Parliament, Operation Rani dated December 2007 - the report comprises 89 pages.
- 11.2 Investigator's Report: Strike Force Ogilvy dated 15 September 2008 - the report comprises 80 pages.
- 11.3 The 70 documents referred to in the Strike Force Ogilvy Investigator's Report. These documents are listed in the Attachment to this Memorandum. (I will refer to them collectively as the Strike Force Ogilvy documents. I will refer to individual documents by their listed number in the Attachment.)
- 11.4 The additional information I refer to in paragraph 33 below.

12. The Strike Force Ogilvy documents include the transcripts of evidence given by various witnesses in the course of the PIC Operation Rani hearings. The names of those witnesses can be derived from the Attachment to this Memorandum. I note specifically that they included DI Jacob and DSC Sim. The Strike Force Ogilvy documents also include many of the primary records and statements that were generated or obtained during the course of the original investigation into Ms Vaughan's disappearance. It is apparent from the Operation Rani report, and the PIC transcripts, that all of these documents were also available to the Operation Rani investigators.

13. There are some references in the PIC transcripts to documents that I have not been able to identify amongst the Strike Force Ogilvy documents. In some instances it is very obvious from the context in which particular documents have been referred to in the PIC transcripts that they are unlikely to be material to the matters on which I have been asked to advise. In other instances the contents of documents have not been sufficiently disclosed in the PIC transcript to demonstrate their likely materiality. In the remaining instances the PIC transcript references indicate the materiality of the documents. Those documents all appear to have been included in the Strike Force Ogilvy documents. Subject to one qualification, in preparing this Memorandum I am not aware of any document, apparently material to the relevant PIC Operation Rani findings and recommendations, that has not been included in

the Strike Force Ogilvy documents. The qualification I referred to in the preceding sentence is that the Strike Force Ogilvy documents do not include the evidence of DI Phillip Waterman. Waterman was a Detective Sergeant attached to Strike Force Toko in 2002 and worked closely with DI Jacob. In particular he was present at the Cranston meeting on 4 June 2002, to which I refer in paragraph 31 below. There is a possibility that Waterman may be able to provide evidence relevant to the contents of DI Jacob's contentious note - to which I refer in paragraph 26 below. This possibility appears not to have been addressed in either the Operation Rani report or the Strike Force Ogilvy investigation.

14. The Strike Force Ogilvy documents include some that existed as at December 2007 but were not referred to in either the Operation Rani transcripts or report. I have assumed that they were not known to the PIC in the course of its Operation Rani investigation. These documents include those listed as items 45, 46, 47, 48 and 50 in the Attachment to this Memorandum.
15. The Strike Force Ogilvy documents include some that were created after the December 2007 Operation Rani report. These include those listed as items 1, 3, 4, 5, 65, 65, and 66 in the Attachment.

Discussion of the material briefed

16. I will assume all intended readers of this Memorandum are aware of the background to Operation Rani and Strike Force Ogilvy. I will also assume intended readers will access the Operation Rani report, and the material briefed, to the extent that is necessary to understand the matters to which I refer and to evaluate the views I express. I will therefore dispense with any background narrative, including any explanation of the many people involved in Toko, Rani and Ogilvy. In addition, so far as is practicable and convenient, I will merely refer to supporting material, rather than reproduce or paraphrase it in this Memorandum.

Rani findings concerning Jacob - summary

17. The PIC findings and recommendation in relation to Detective Inspector Jacob were set out on page (ii) of the Operation Rani report and, rather more elaborately, in paragraphs 10.15 - 10.19. These passages were in the following terms:

(at page ii)

Pursuant to subsection 16(1)(a) of the Act the Commission considers that Jacob engaged in police misconduct because:

- he failed to act upon (sic), and thoroughly investigate, whether or not police were deliberately leaving out of statements information that suggested an association between (former Detective Sergeant) Hosemans and Ms Vaughan
- he prepared a deliberately misleading report to (Acting Assistant Commissioner) Kuiters in response to the request for a report in relation to the matters raised in the anonymous complaint to the Commissioner of Police in June 2005; and
- he prepared a deliberately false and misleading report in response to the questions raised by the NSW Ombudsman after that office's review of the report Jacob prepared for (Acting Assistant Commissioner) Kuiters.

The Commission is of the opinion that consideration **should not** be given to the prosecution of Jacob for any criminal offences. However, the Commission believes that the evidence supports the opinion that consideration **should** be given to the taking of action against Jacob pursuant to subsection 97(2)(c) of the Act, or alternatively subsection 97(2)(d).

...

(at page 74)

10.15 Jacob is an affected person because he is the subject of the substantial allegations that

- he failed to act upon (sic), and thoroughly investigate, whether or not police were deliberately leaving out of statements information that suggested an association between (former Detective Sergeant) Hosemans and Ms Vaughan
- he prepared a deliberately misleading report to (Acting Assistant Commissioner) Kuiters in response to the request for a report in relation to the matters raised in the anonymous complaint to the Commissioner of Police in June 2005; and
- he prepared a deliberately false and misleading report in response to the questions raised by the NSW Ombudsman after that office's review of the report Jacob prepared for (Acting Assistant Commissioner) Kuiters.

10.16 Jacob is a serving NSW police force officer. The Commission considers that Jacob engaged in police misconduct in relation to the three allegations set out above: subsection 16(1)(a) of the Act.

10.17 The evidence in relation to each of these three allegations was reviewed in Chapters 3-5 of this Report. On his own admission Jacob failed to act on information that suggested an association between Hoseman's and Ms Vaughan. It is difficult to accept that such information would be ignored or forgotten by an officer of Jacob's experience and reputation.

- 10.18 In relation to the second allegation the Commission also finds it difficult to accept Jacob's evidence that the inconsistency between the telephone records and Hosemans' alibi was of such limited significance that he did not think it was necessary to include it in his report to Kuiters.
- 10.19 In relation to the third allegation it is difficult to resist the conclusion that the report prepared by Jacob dealing with the questions raised by the Ombudsman was a deliberately misleading report. It was designed to suggest that Hosemans' asserted alibi had been investigated and had been shown to be supported by relevant documentary material, when clearly it had not been fully investigated and Jacob knew that the alibi was not so supported by the information that had been obtained during the investigation.

18. Four aspects of the PIC findings merit comment. They are as follows.

- 18.1 The first finding does not expressly say what it was that DI Jacob "failed to act upon". The context suggests that police were "deliberately leaving out" information from statements. However the PIC Report did not expressly find that this had occurred - merely "that information was apparently left out" of three statements (Operation Rani report paragraph 3.19). The actual wording of the PIC finding simply does not identify what precise event or knowledge that Jacob "failed to act upon".
- 18.2 The second finding does not expressly identify what misleading fact or opinion was communicated by DI Jacob's report to Kuiters. It does not contain a finding that Kuiters was in fact misled. Nor does it contain a finding that the "inconsistency" to which it refers was in fact material to the investigation.
- 18.3 The second finding is expressed in terms that DI Jacob's evidence was "difficult to accept". This is not expressed as a specific and reasoned rejection of DI Jacob's evidence. Nor does it use language that gives confidence the PIC properly understood and applied the standard and onus of proof it was required to apply.
- 18.4 The third finding, whilst it does make an express finding about why the report was misleading, again uses the expression that the adverse conclusion was "difficult to resist". This language again suggests a misapplication of the required standard and onus of proof.

Rani finding 1: Jacob's failure to investigate omissions from statements

- "apparent" omissions from statements

19. The Operation Rani report discussed various witnesses who gave evidence they had disclosed to Strike Force Toko investigators information that DS Hosemans had "shown an interest" in Ms Vaughan before her disappearance. In some cases these witnesses' initial Toko statements did refer to Hosemans' reputed interest. In other cases they did not. Three witnesses gave evidence at the Operation Rani hearing that they had in fact reported Hosemans' interest to the Toko investigators, but that information had not been included in their subsequent initial statements.
20. I have prepared a Table that lists details of the statements provided by various witnesses. That Table is attached to this Memorandum and includes the three witnesses - De Souza, Symington and Murphy - specifically referred to in the Operation Rani report. As can be seen, and as the Operation Rani report itself noted, DS Hosemans' "interest" in Ms Vaughan was reported by her mother and sister, and included in their initial statements.
21. In relation to Ms De Souza's initial statement (dated 11 December 2001) the PIC Operation Rani report
 - 21.1 noted that she could not identify the particular occasion of, nor the officer to whom she had made, her disclosure
 - 21.2 noted that Ms De Souza's statement was taken by DSC Phillips
 - 21.3 noted that DSC Phillips had no recollection of Ms De Souza's claimed disclosure, but was certain she would have either reported it or included it in the statement
 - 21.4 noted that there was no evidence of any report by DSC Phillips
 - 21.5 did not resolve the conflict between De Souza and DSC Phillips.
22. In relation to Ms Symington's initial statement (dated 17 December 2001) the PIC Operation Rani report
 - 22.1 noted that Symington claimed to have told DS McFawn that Hosemans had shown interest in Vaughan, and that she had concerns about becoming involved with him,

- because he was a police officer and because of his reputation (apparently as a womaniser)
- 22.2 noted that McFawn vaguely recalled a conversation with Symington about Hosemans
- 22.3 noted McFawn claimed he had no knowledge of any suggested association between Hosemans and Symington until Jennifer Vaughan's statement dated 2 January 2002
- 22.4 did not resolve the conflict between Symington and McFawn.
23. In relation to Mr Murphy's initial statement (dated 8 January 2002) the PIC Operation Rani report
- 23.1 noted he made his disclosure when making his initial statement
- 23.2 noted that Murphy claimed he had been told (apparently by the interviewing police officer) that the Hosemans' connection had been "exhausted".
- 23.3 noted that Mr Murphy's statement was taken by SC Drady.
- 23.4 noted that Drady had no recollection of taking the statement.
- 23.5 did not make any specific finding on Mr Murphy's claim.
24. The evidence referred to in the Operation Report does not justify a positive finding that material information about DS Hosemans had been omitted from these particular witness statements. Consistent with that view the PIC concluded only that information was "apparently left out of the statements". That "appearance" only exists if one accepts the contested evidence of the three witnesses to whom the PIC expressly referred.
25. Despite the inconclusive evidence referred to above, the PIC considered that the apparent omission of information relating to DS Hosemans was significant. The PIC considered it "provides support to a complaint conveyed to Jacob on 3 March 2002" that information to the same effect was not being recorded by investigators. (Operation Rani report paragraph 3.19)

- omission "complaint" conveyed to Jacob

26. The PIC's reference to a complaint conveyed to Jacob "on 3 March 2002" was to the content of a handwritten note in DI Jacob's day book. The note was as follows

Barry CRANSTON

Gerard MARTIN - Local Member

Local Member

- Flowers & chocolates in weeks leading up to disappearance
- Brad scene (sic)

Statement takers left out issue with Brad

27. This particular note was itself undated. It follows a page that bears a(n) (altered) date "5/3/02". Most of the entries on that preceding page, certainly two of the entries on the same page as the note, and an entry on the following page, relate to a Strike Force Toko "team meeting" that is recorded in the Investigation Log for 5 March 2002: *see Attachment 22 pages 68-69*. That positioning of the note in the day book does suggest that the note itself was written around about 5 March 2002. That is the assumption on which the PIC operated in the Operation Rani report.

28. However the content of the note, read in the light of other circumstances, provides considerable reason to doubt that the note in fact records information known to Jacob on 5 March 2002. The relevant considerations that generate the doubt are

- 28.1 DI Jacob had no recollection of the circumstances in which he made the note
- 28.2 the 5 March 2002 Progress Report includes details that correspond with the day book entries - except for the details in the contentious handwritten note
- 28.3 the note starts with a reference to Barry Cranston - but there is no reference to Cranston in the 5 March 2002 Progress Report
- 28.4 Gerard Martin is referred to in the note - but not the March 2002 Progress Report
- 28.5 Gerard Martin is referred to in Jacob's note of interview with Cranston on 4 June 2002 (*Attachment 32*)
- 28.6 flowers and chocolates are referred to in the note - but not in the Progress Report
- 28.7 flowers bought by Hosemans are referred to in Jacob's note of interview with Cranston on 4 June 2002 (*Attachment 32*)

- 28.8 the details in the handwritten note, in so far as they suggest a material connection between DS Hosemans and Ms Vaughan, are so significant that it is "indeed difficult to accept that such information would be ignored or forgotten by an officer of Jacob's experience" (see Operation Rani report paragraph 10.17 - as set out in paragraph 17 above).
29. The fact that the note starts with a reference to Barry Cranston, and then records the other details, has a particular significance in questioning the likely date of the contentious note. Mr Cranston was a taxi driver who saw Ms Vaughan on the night of her disappearance. As the attached Table records, he provided two statements to the Strike Force Toko investigators. The first was dated 13 December 2001. The second was dated 5 July 2002. The second statement was completed after an interview with DI Jacob and Waterman on 4 June 2002.
30. In his 13 December 2001 statement (Attachment 10) Mr Cranston said
- 30.1 he had known Ms Vaughan for two years
 - 30.2 he did not know her well, "but good enough to talk to her in the cab or when he saw her"
 - 30.3 nothing about any connection between Ms Vaughan and DS Hosemans.
31. According to the Strike Force Ogilvy documents, Jacob and Waterman contacted Cranston on 4 June 2002 to seek his assistance with viewing security film. During that meeting Cranston volunteered information about Hosemans: (*see Attachments 32 & 33*). In his interview with DI Jacob and Waterman on 4 June 2002, and in his 5 July 2002 statement, Mr Cranston said
- 31.1 he knew Ms Vaughan and her friend Ms Brady very well
 - 31.2 that around October and November 2001 Ms Vaughan had spoken to him every day about Hosemans
 - 31.3 that Hosemans had been annoying Ms Vaughan daily, attending her work, asking her out (up to 8 times a day)
 - 31.4 that he had five or six conversations with Ms Vaughan about Hosemans up until the week before she disappeared
 - 31.5 that Hosemans had bought Ms Vaughan flowers

- 31.6 that there were other girls where Hosemans had done the same thing
 - 31.7 referred to his local member, Mr Gerard Martin, as a person who was looking into his complaints that uniformed Bathurst police were harassing him.
32. The Operation Rani report does not appear to refer either to Jacob and Waterman's interview with Mr Cranston on 4 June 2002 or to his 5 July 2002 statement. The Operation Rani report certainly does not address the possible relevance of the contents of the interview or the statement to the details recorded in DI Jacob's contentious note.
33. In the absence of any specific discussion in the Operation Rani report of the contents of the contentious note I was not able to establish that DI Jacob had been in contact with Cranston prior to 4 June 2002. Neither was I able to establish that the possible connection between Mr Cranston and the contents of the note had ever been previously considered. In order to clarify the situation I addressed specific written questions to DI Cook. He responded by providing the original DI Jacob's day book and the following additional information.
- 33.1 DI Jacob was not recorded as having had any direct contact with Cranston before 4 June 2002.
 - 33.2 There is no reference to Mr Martin in the Toko investigation records, other than in DI Jacob's contentious note and during Mr Cranston's interview on 4 June 2002.
 - 33.3 Mr Gibson's statement of 28 December 2001 and Mrs Vaughan's statement of 2 January 2002, both referred to flowers being left anonymously for Ms Vaughan. But both of these accounts appeared to refer to events years before her disappearance and in neither case were the flowers linked to DS Hosemans. The first recorded reference to Hosemans sending flowers to Ms Vaughan was during Mr Cranston's interview on 4 June 2002.
 - 33.4 Mr Cranston had been spoken to by Toko investigators on 7 and 8 January 2002. On 7 January 2002 he said he had previously supplied information (apparently in relation to another taxi fare) that he thought was relevant but had been dismissed by police. He provided further information on 8 January 2002.
 - 33.5 Despite the police contact with Mr Cranston on 13 December 2001, 7 & 8 January 2002, and the elliptical reference to additional information on 7 January 2002, there is no record of Mr Cranston supplying information about DS Hosemans prior to 4 June 2002.

- 33.6 The question of a possible connection between the contentious note and the meeting with Cranston on 4 June 2002 has not previously been addressed by either Operation Rani or Strike Force Ogilvy.
34. There is a very stark contrast between Mr Crantson's 13 December 2001 statement, with its absence of any reference to DS Hosemans, and his 4 June 2002 interview, with its express claims that Ms Vaughan had reported to him a continuing concern about Hosemans' persistent and unwanted attention. The contrast is so stark that it prompts an obvious enquiry as to whether he had previously disclosed this information. If, as appears likely, DI Jacob and DS Waterman were first made aware of Crantson's claims at the meeting on 4 June 2002, they are likely to have wanted to test the apparent reliability of his claims. Such a test would be very likely to have involved an enquiry as to whether he had previously reported this information - because he clearly had had ample opportunity to so do.
35. In the light of the observations in the immediately preceding paragraphs neither the date, nor the meaning, nor the significance of Jacob's contentious handwritten note are as clear as the Operation Rani report assumed. That uncertainty was not relevantly clarified by my own examination of the original day book. Whilst I have endeavoured to avoid drawing any conclusions from my own examination I do record that there was no dated note in the day book of DI Jacob's meeting with Mr Cranston on 4 June 2002. This is so despite (i) DI Jacob's detailed "Investigators Note" (see Attachment 32) and (ii) that the day book does contain a note dated 4 June 2002 recording a meeting or discussion at 4pm that day with another person.
36. DI Jacob's evidence to the PIC was that he had no recollection of the contentious day book entry. He could not recall the circumstances in which it was made, although he agreed that it looked like a note that someone was going to come and speak to him about a particular issue. He also noted that it referred to Mr Cranston, and his recollection was that he had spoken to Mr Cranston much later than March 2002. The only recollection he had of any problem relating to statements was that people who had been interviewed by DS Hosemans in the early stages of Operation Toko had not raised with him the matter of his possible connection with Ms Vaughan. Because he had no other recollection of the note, its significance, or when it was made, DI Jacob was unable to say what action he had taken in relation to the

note. This was particularly the case in relation to the note that "statement takers left out issue with Brad".

37. Given the poverty of DI Jacob's recollection, and its own uncritical assumption about the date of DI Jacob's contentious note, the Operation Rani report proceeded to express significant criticism of Jacob. This appeared in the following paragraphs of the report.

3.30 The evidence given by Jacob concerning this entry in his notebook acknowledged the significance of the information that he had recorded. Taken together with other evidence referred to earlier the note infers that the police under his command, who were taking statements from relevant witnesses, were leaving out matters concerning Hosemans. This should have been a matter of great concern to Jacob and clearly warranted immediate steps being taken to speak with those who had been involved in taking statements at that point in time.

...

3.32 The evidence before the Commission suggest that no action at all was taken in relation to the information that was provided to Jacob. Jacob in his evidence suggested that there was in fact a review done of the alleged connection between Ms Vaughan and Hosemans. While that is true, the review did not occur until June/July 2002 and the catalyst for the review was not the information contained in Jacob's notebook entry of 5 March 2002 or provided by Gibson. In addition the review that occurred did not involve the questioning of the statement takers to ascertain if they had left out details concerning Hosemans and their reasons for doing so. The information conveyed to Jacob on 5 March 2002 suggested that there were gaps in the investigation which required attention.

38. The reference to Gibson in paragraph 3.32 of the Operation Rani report is to three questions and answers in a record of interview conducted by DI Jacob and DS Waterman on 9 March 2002 with Shane Gibson. He was then a person of significant interest in the Strike Force Toko investigation. Both Waterman and Jacob were cross-examined about this aspect of the interview with Shane Gibson. Both of them said they did not accord it any significance at the time, their interest being primarily directed towards Gibson himself. In any event, Gibson's information about Hosemans was not only limited but it was also second-hand information he attributed to something "one of the girls in the shop next door" had told Daniel Murphy. The "girls in the shop next door" were presumably Ms Rachel Green / Rich,

Ms Nicole Nolan or Ms Rebecca Medhurst. Murphy had already provided a statement on 8 January 2002. It did not refer to any contact between DS Hosemans and Ms Vaughan.

39. In fact, apart from DI Jacob's contentious note there is no record of any complaint about information having been omitted from statements by police officers. And apart from Gibson's indirect hearsay, neither is there any record of specific significant information suggesting contact between Hosemans and Ms Vaughan, until the contact between DSC McWhirter and DS Waterman on 29 April 2002. In that contact McWhirter relayed information concerning a Mr Michael Coote. The details of this information appear to be set out in paragraph 4.3 - 4.5 of the Operation Rani report - where Mr Coote is referred to as "RA2". The effect of this information was as follows.

39.1 Two to three weeks before her disappearance Ms Vaughan complained to Coote about

- (a) receiving persistent telephone calls from Hosemans
- (b) being annoyed and hassled by him
- (c) Hosemans visiting Ms Vaughan at work and asking her out
- (d) being worried, but not scared, by Hosemans unwanted attention

39.2 Coote had previously provided a statement dated 2 January 2002, but Hosemans had himself taken that statement and Coote had not wanted to disclose the information to Hosemans himself. (The witness statement summary contained in the table attached to this Memorandum records that Mr Coote's 2 January 2002 statement was indeed taken by DS Hosemans. Attachment 16 appears also to record that Mr Coote had been re-interviewed on 27 January 2002 by DS Hopper.)

40. Shortly after he was contacted by McWhirter, Waterman telephoned Coote and arranged to interview him. That interview occurred on 4 June 2002. The explanation attributed to Coote in paragraph 39.2 above coincides with DI Jacob's limited recollection - as referred to in paragraph 36 above. Since Jacob was on leave for almost the whole period from 20 April 2002 until 19 May 2002, he could not have been told this directly by Coote himself. But the very fact that Jacob was aware of the substance of Coote's explanation points to the likelihood that DS Waterman conveyed Coote's information about Hosemans to DI Jacob. Consistent with that suggestion, the Operation Rani report notes (in paragraph 4.8) that DS Waterman believed he kept Jacob fully informed of the information that was provided to him about the possible connection with Hosemans. However Coote's unwillingness to speak

candidly to Hosemans, at the time of his 2 January 2002 statement does not justify any apprehension that police officers were themselves leaving information out of statements. It is unlikely, therefore, that the reference to that matter, in DI Jacob's contentious note, relates to anything conveyed to him by Watermans concerning Coote.

41. Late in the morning on 3 June 2002 the Homicide unit received an anonymous telephone call from a male person. The caller suggested that DI Jacob investigate DS Hosemans. The caller asserted that DS Hosemans knew more than what he was saying. The caller also said that the description that had been given (presumably of the car in which Ms Vaughan was last seen when she disappeared) was incorrect.
42. The anonymous caller's information was conveyed to DS Waterman. He in turn briefed DI Jacob early on the morning of 4 June 2002. That was shortly before they visited Mr Cranston, and obtained the information to which I have already referred in paragraph 31 above. Immediately after the interview with Cranston, arrangements were made to obtain telephone call records for Ms Vaughan's home, work and mobile telephones. In addition, all material relating to the possible connection between Ms Vaughan and DS Hosemans was subject to "caveat", with access being restricted to Jacob, Waterman and McFawn. Arrangements were made to interview a number of witnesses to further investigate the possible social connection between Ms Vaughan and DS Hosemans. (At least some of those witnesses, and the dates of their interviews and statements, are recorded on the attached Table.)
43. The principal bases for Operation Rani's criticism of DI Jacob were the dual assumptions that
- 43.1 the details in the contentious handwritten note was information that had been provided to him by 5 March 2002
 - 43.2 the information that "statement takers left out issue with Brad" recorded a complaint that had been made to Jacob about the conduct of investigating police officers.
44. It will be apparent from what I have said above about the actual content of the note, and particularly its reference to matters involving Mr Cranston, that the first of these assumptions

is highly questionable. The assumption has some apparent justification having regard to the note's location within Jacob's day book. But, and to my mind much more significantly, the actual content of the note more directly and more explicably relates to events that occurred and information that was obtained in early June 2002. Certainly the references in the note to Cranston, Martin and flowers are much more likely to relate to information that was obtained in June 2002 than they are to March 2002.

45. Similarly, it is not at all clear that the "statement takers left out issue with Brad" is a complaint about deliberate misconduct by investigating police. Despite the poverty of his recollection, DI Jacob's belief was that the only complaint he had received was in connection with statements taken by DS Hosemans, and even then it related to non-disclosure by the witness, rather than omission of the information by Hosemans.

46. There is yet another possibility, which to my mind does merit consideration. The information Mr Cranston provided on 4 June 2002 was remarkable for both its content and its omission from his earlier statement. If Jacob and Waterman had been mindful of Cranston's previous statement, which seems likely, they are likely to have been curious about why this information had not been contained in Cranston's earlier statement. It is not inconceivable that the comment relating to "statement takers" reflects Mr Cranston's explanation for the lateness of his disclosure. However this is essentially a matter of speculation because there is nothing in the material briefed that touches on the point.

- *"other evidence" indicating omissions from statements*

47. The reasoning expressed in paragraph 3.30 of the Operation Rani report also relies on the "other evidence referred to earlier" to conclude that DI Jacob's contentious note "infers" that police were leaving out information relating to Hosemans from their recorded investigations. The difficulty with this aspect of the reasoning is that it assumes the "other evidence" was available and known to DI Jacob at the time. In fact it is quite impermissible to combine the "note" and the other evidence, in a way that is adverse to DI Jacob, unless one makes an explicit finding that the significance of the "other evidence" was, or ought reasonably to have been apparent to him at the relevant time.

48. This latter point is simply not addressed in the Operation Rani report. The omission is a significant flaw in the Report's reasoning. But the absence of an express finding is factually unsurprising, in the light of the Commission's own inconclusive review of the evidence of De Souza, Murphy and Symington. (I noted the Operation Rani finding in paragraph 24 above.) Moreover, even if one was to accept the later evidence of those witnesses about what they disclosed to the statement takers, there is simply no factual basis for a further conclusion that the hypothesised omissions were, or ought reasonably have been, known to DI Jacob in March 2002.
49. A further point to be made involves the Operation Rani view that the contentious note "infers" that statement takers had left out details relating to Hosemans. That is certainly one possible interpretation of the note. But it is far from the only one. There are at least two other possibilities. The first is Jacob's recollection that the only difficulty he can recall about statements related to non-disclosure by witness(es) to Hosemans himself - rather than to omissions by the statement takers. The second is that the supposed omission by statement takers related to the Cranston statement, and the Cranston statement alone. Mr Cranston was, after all, the only "witness" actually referred to in the contentious note.

- failure to question statement takers

50. The finding in paragraph 3.32 of the Operation Rani report criticised DI Jacob on the basis that the June / July 2002 review of DS Hosemans' possible involvement did not involve questioning of the police statement takers in order to determine whether or not they had in fact omitted details concerning DS Hosemans' involvement with Ms Vaughan. This criticism is, in my opinion, unjustified.
51. Before it would be proper to postulate that there was a relevant investigation failure on DI Jacob's part, it is fundamentally necessary to consider, and make specific findings about, the quality of the supposed complaint about omissions, and the nature of the information available to DI Jacob at the relevant time. It will be apparent from what I have already said that I do not consider Operation Rani made a specific finding about that matter. In so far as Operation Rani treated the contentious note as sufficient to require DI Jacob to have embarked upon such a course of investigating the statement takers, I regard the Operation

Rani assumptions about both the date, and the significance, of the contentious note as too questionable to justify the criticism that was expressed.

52. The primary task of the Strike Force Toko investigation was to identify persons of interest in Ms Vaughan's disappearance, gather information concerning them and then assess that information. I consider it was entirely proper to accord that task priority in relation to the investigation of DS Hosemans. Without specific information about (i) what information had supposedly been left out and (ii) from whose statements the information had been omitted, it is not likely that any meaningful "investigation" could have been carried out. The activity undertaken in June and July 2002, involving statements being obtained from people with apparently close connections with Ms Vaughan, appears to have been undertaken by DS Waterman and not, it will be noted, the original statement takers. (This detail is apparent from the attached Table.) So far as I am aware, none of the information DS Waterman obtained in this review process revealed any information that witnesses reported had been omitted by police investigators from their previous statements.
53. So far as appears, the contents of DI Jacob's contentious note is the only information that suggested in 2002 omissions by investigating police from statements. More specifically, that information, given the context of the note rather than its assumed date, suggested an omission in connection with Mr Cranston's statement. The review DS Waterman undertook failed to reveal any justification for Mr Cranston's June and July 2002 claims. DI Jacob came to that view by the end of July 2002, and the basis for it would probably have been apparent to him once DS Waterman had obtained many of the review statements by early July 2002.
54. Viewed objectively the circumstances apparent at the time of the contentious note (even assuming that is the whole of the time between March and June 2002) show merely
- 54.1 an imprecise assumed or supposed complaint about omissions from statements
 - 54.2 no specific complaint by any witness / statement provider (with the possible exception of Cranston)
 - 54.3 no additional information obtained during the Waterman review that suggested material information had been disclosed to, but omitted by, investigating police

- 54.4 a review process that produced no information supporting the reliability or credibility of Cranston's June / July claims.
55. In my opinion the suggestion that police statement takers had omitted information relating to DS Hosemans from witness statements was too imprecise to require a conclusion that DI Jacob engaged in misconduct if he did not question all statement takers in the manner, and for the purpose, indicated in paragraph 3.32 of the Operation Rani report. The decision whether to embark on such an investigation of the investigators would, as it appears to me, be both a significant step and one that could not meaningfully be progressed (if the hypothesis was one of deliberate dishonest omission) without specific information about the instances where non-disclosure had occurred. In my opinion no such specific information was known to DI Jacob. Proper conduct did not, in my opinion, require DI Jacob to undertake the investigation suggested by the Operation Rani report if the only information about supposed omissions that was available to him was that contained in the contentious note.

Rani finding 2: Jacob's deliberately misleading report to Kuiters

56. On 2 June 2005 the Commissioner of Police received an anonymous complaint concerning Detective Sergeant Hosemans. The complaint asserted DS Hosemans was responsible for Ms Vaughan's disappearance. A specific allegation relating to Ms Vaughan was that DS Hosemans had "tried to fuck her and she knocked him back even on the night she went missing". The complaint also asserted that "everyone knows about it and you do too". The complaint asserted that "other cops here know about him and ... just cover up".
57. On 7 June 2005 Acting Assistant Commissioner Kuiters requested DI Jacob to "advise in writing if Mr Hosemans was interviewed or not and your Confidential views on this investigation".
58. DI Jacob provided a response dated 5 July 2005. It consisted of the following documents
- 58.1 a single page summary
 - outlining the background of the 2 June 2005 complaint, describing 4 attachments, and containing DI Jacob's opinions that
 - (i) DS Hosemans had no involvement in Ms Vaughan's suspected death
 - (ii) the complaint was similar to previous vexatious complaints that had been made against DS Hosemans
 - 58.2 an 8 page detailed report (Attachment 43)
 - outlining the nature and extent of the investigation of DS Hosemans' claimed involvement in Ms Vaughan's disappearance
 - 58.3 a copy of DS Hosemans 20 December 2002 statement
 - in which he denied any relevant involvement with Ms Vaughan and asserted that he had been at his mother's house in Newcastle from 3 December 2001 until returning to Bathurst on the afternoon of 7 December 2001
 - 58.4 a copy of a 22 August 2001 email from Assistant Commissioner Morgan
 - disclosing that DS Hosemans was his nephew.
59. In December 2003 Strike Force Toko investigators had obtained call charge records for DS Hosemans' mobile phone. These revealed a number of telephone calls that were inconsistent

with DS Hosemans claim that he had returned to Bathurst only on the afternoon of 7 December 2001 (ie, after Ms Vaughan's disappearance). These calls were as follows

- 59.1 6 December 2001 - 1139 - North Sydney
- 59.2 6 December 2001 - 1547 - Wentworth Falls
- 59.3 6 December 2001 - 1548 - Wentworth Falls
- 59.4 6 December 2001 - 1712 - Medlow Flat
- 59.5 7 December 2001 - 1036 - Bathurst.

- 60. DI Jacob became aware of the call charge records, and the contradiction which the preceding entries revealed, shortly after the charge records had been obtained. He appreciated their significance and formed the opinion that DS Hosemans had probably been in Bathurst on the evening of Ms Vaughan's disappearance.
- 61. In his 8 page detailed report of 5 July 2005 DI Jacob
 - 61.1 stated that DS Hosemans did not conduct any work with Strike Force Toko after April 2002 (page 1)
 - 61.2 summarised information that had been obtained about DS Hosemans connection with Ms Vaughan during the "highly protected" phase of Strike Force Toko's investigation following the anonymous complaint of 3 June 2002 and the information provided by Mr Cranston on 4 June 2002 (page 2)
 - 61.3 summarised his opinion on the result of the investigation: that there was no evidence of any contact, either in person or by telephone, between DS Hosemans and Ms Vaughan (pages 3, 4 & 7)
 - 61.4 opined that in the absence of direct evidence of contact by DS Hosemans with Ms Vaughan, the contrary claims attributed to her by some friends and acquaintances may have been mere embellishments made in the course of exaggerated social intercourse (page 4)
 - 61.5 explained the circumstances in which DS Hosemans had been asked to respond to a list of written questions, rather than submitted to formal interview (pages 4 and 5) (The circumstances included concern about DS Hoseman's 's distress at having recently been served with a notice under s 181D of the Police Act 1990. I understand that notice related to matters other than the Strike Force Toko investigation.)

- 61.6 summarised the substance of DS Hosemans 20 December 2002 statement, including the claim that he was away from Bathurst on the evening of Ms Vaughan's disappearance on 6 December 2001 (page 6).
62. Neither in his single page summary, nor in the 8 page detailed report, did DI Jacob refer to the call charge records obtained in December 2003. Consequently his July 2005 response did not refer to the telephone records' apparent contradiction of DS Hosemans claim that he had been in Newcastle at the time of Ms Vaughan's disappearance. There was a reference to call charge records on page 3 of the detailed report, but the context suggests it referred to records that were obtained in mid 2002, not those obtained in December 2003.
63. In contrast to the absence of any specific reference to the call charge records obtained in December 2003, DI Jacob's 8 page detailed report included the following paragraph in relation to DS Hosemans (on page 6).
- As indicated although I believe it is unnecessary, prior to making the final determination in relation to this matter I have sought some further material, copies of rosters / duty books etc re alibi. None of this material raises issues of any further concern.
64. By July 2005 DI Jacobs was no longer the commander of Strike Force Toko. I assume, therefore, that he had no function or responsibility for any "final determination" at that time. The apparent explanation for at least part of the wording in DI Jacob's 8 page report of 5 July 2005 is that it was substantially copied from his Progress Report for the period ended 14 January 2003. (*Attachment 39*) This is the last of DI Jacob's Progress Reports concerning S/F Toko. Its contents indicate he intended to hand over command of S/F Toko to DSC Sim, on the latter's return from annual leave. (Sim did not in fact take over until May 2004. I am not aware whether the apparent delay has any significance.)
65. The fact of the copying from the 14 January 2003 Progress Report is particularly evident in the content of the pages of the detailed report that precede the passage set out in paragraph 63 above. It is also evident from the following paragraph in the 14 January 2003 report,

which appears immediately after the summary of DS Hosemans 20 December 2002 statement.

As indicated although I believe it is unnecessary, prior to making the final determination in relation to this matter I have sought some further material, copies of rosters / duty books etc re alibi. Given that this was a shortened trip it simply was not possible to complete these enquiries in the time frames

66. The expression "as indicated" appears in both of the passages set out in paragraphs 63 and 65 above. In the 5 July 2005 report there is not in fact any earlier passage that properly matches the description of a prior relevant "indication". However there is such a prior indication in the 14 January 2003 report. It appears on page 2 of that report and is contained in the following passage

... in brief there is no evidence of improper, criminal or corrupt conduct by Detective Sergeant HOSEMANS in relation to S/F TOKO'S investigations. There is some final record/alibi evidence to be looked at and collected before this phase can be finalised, but it is anticipated that this will have no impact on the ultimate conclusion. ...

67. The contents of DI Jacob's 5 July 2005 report very clearly indicate that they were substantially derived from his 14 January 2003 Progress Report. Indeed, in many instances the wording is identical. Furthermore, although the 14 January 2003 Progress Report certainly refers to the need to "Finalise alibi/records re Det Sgt Hosemans" it does not specifically refer to call charge records in relation to DS Hosemans' movements on 6 and 7 December 2001. As I indicated above, those records were not obtained until December 2003.

68. DI Jacobs was cross examined in the Operation Rani hearings about the fact that his July 2005 response did not refer to the call charge records he had obtained in December 2003. More particularly he was challenged about the last sentence in the passage in paragraph 63 above. There he had said "None of this material raised issues of any further concern". It was emphatically suggested to DI Jacob that the contradiction (of DS Hosemans' "alibi" claim) revealed by the call charge records did in fact raise a matter of further concern.

69. In his evidence to the PIC DI Jacob was unable to recall or explain why he had not specifically disclosed in the July 2005 response that Hosemans's claim alibi had been discredited. He maintained that the discredited alibi information alone did not escalate Hosemans to a position where he remained as a person of interest in the Strike Force Toko investigation. DI Jacob said that there was no other credible information that established any contact between DS Hosemans and Ms Vaughan. It was both express and implicit in DI Jacob's evidence to the PIC that the additional information had not in fact caused him any further concern about the likelihood of DS Hosemans' involvement in Ms Vaughan's disappearance.
70. Fundamental to any assessment of the propriety of DI Jacob's 5 July 2005 report, is the intended meaning of the statement that "*None of this material raises issues of any further concern.*" On one view the statement could be interpreted as a factual statement that none of the additional material contained information relevant to the question of DS Hoseman's possible involvement in Ms Vaughan's disappearance. The other view is that the statement was merely DI Jacob's subjective opinion that the additional material did not lead him to have any further concern about DS Hosemans' possible involvement.
71. As a matter of objective fact the statement that none of the material raised issues of further concern was not completely accurate. Whilst the call charge records established that DS Hosemans had gone to Newcastle, as he had claimed, they also placed him back in Bathurst on the evening before Ms Vaughan's disappearance. If that error in his alibi / account was merely a mistake, it had no significance. On the other hand if Hosemans' claim, that he did not return to Bathurst until the afternoon of 7 December 2001, was deliberately false, the fact that he made such a claim might betray a consciousness of wrongdoing in relation to her disappearance.
72. In its evaluation in Operation Rani the PIC regarded the call charge records, and the inconsistency they revealed, as raising concern. In particular, in paragraph 5.6 of the Operation Rani Report, the PIC characterised DI Jacob's statement as conveying "the clear impression that Hosemans' alibi had been investigated and that no issues surrounding it had been raised". More specifically, in paragraph 5.7, the Operation Rani report concluded the statement that the material "gave rise to no matters of concern, leads a reader inevitably to

conclude that Hosemans' alibi was not contradicted by other information then available. In that respect the report was significantly misleading."

73. The PIC also formed the view that DI Jacob's had in fact entertained a subjective concern about DS Hosemans' alibi. Paragraphs 4.26, 4.28, 4.30, 4.36 and 4.45 of the Operation Rani report referred to passages in DI Jacob's 14 January 2003 Progress Report where he had addressed the issue of DS Hosemans' alibi. In particular, in paragraphs 4.36 and 4.37 the Operation Rani report interpreted DI Jacob's 14 January Progress Report as indicating his view that it would be necessary to "reconsider the significance of Hosemans to the investigation" if the additional records did not support the alibi claim.
74. The PIC Operation Rani report (in paragraphs 5.9 - 5.11)
- 74.1 noted DI Jacob's inability to explain why he had not referred to the call charge records in his 5 July 2005 report
 - 74.2 noted DI Jacob's claim that it was merely an omission
 - 74.3 noted his denial that the 5 July 2005 report was intended to mislead
 - 74.4 noted his belief that he did not consider it necessary to refer to the call charge records in the report
 - 74.5 opined that the inconsistency in the call charge records "added considerable weight to the anonymous complaint" of 2 June 2005 (referred to in paragraph 56 above)
 - 74.6 suggested that disclosure of the call charge records, along with the fact that Hosemans had not been further interviewed, would have raised serious questions about the Strike Force Toko investigation of Hosemans' involvement
 - 74.7 opined that it was "difficult to accept" DI Jacob's explanation that he did not think it was necessary to include the specific information about the call charge records.
75. Three aspects of the Operation Rani report reasoning are, in my opinion, flawed. The first is the opinion that the call charge records added "considerable" weight to the anonymous complaint. The essence of the 2 June 2005 complaint, indeed the specific issues that it raised, were (i) that DS Hosemans had "tried to fuck her and she knocked him back even on the night she went missing" and (ii) that "everyone" knew about it. The call charge records did not in fact bear directly on those issues at all. The plain and simple fact is that despite all of the enquiries that had been made, and all the statements that had been obtained, there was

no credible or reliable evidence of any direct contact, in person or by telephone, between DS Hosemans and Ms Vaughan. There was certainly no evidence of any contact between them on the evening of 6 / 7 December 2001. The only thing that the call charge records established was that DS Hosemans had been in Bathurst on the evening of 6 December 2001. Operation Rani's opinion that the call charge records added "considerable weight" to the anonymous complaint is quite specious. It would have been accurate to say that the call charge records did not contradict the anonymous claim. It was not at all accurate to say that they added "weight". It was certainly inaccurate to say that the call charge records added "considerable weight" to the anonymous complaint.

76. The second flaw in the Operation Rani reasoning is its opinion that disclosure of the content of the call charge records would have raised serious questions about the Strike Force Toko investigation of Hosemans' supposed involvement with Ms Vaughan's disappearance. The call charge records established that DS Hosemans was in Bathurst on the evening of Ms Vaughan's disappearance. That perhaps invited some further explanation from him about the reason for the inaccuracy of his claim that he had not returned until the afternoon of 7 December 2001. But it is a criticism of another order to say that the call charge records (with or without the background of the anonymous complaint) raised "very serious concerns" about the adequacy of the investigation into Hosemans' involvement. They did not. No such criticism was justified.
77. It is plain from earlier sections of the Operation Rani report that the PIC did not agree with DI Jacob's views about the quality and significance of the material supposed to suggest DS Hosemans had some involvement with Ms Vaughan. DI Jacobs had addressed this material in his 14 January 2003 report and concluded (amongst other things)
- 77.1 that there was "no evidence that those closest to Janine Vaughan were told about any of these issues"
- 77.2 that there was no evidence Ms Vaughan had told the people who knew DS Hosemans (ie Green and Nolan) "about her claims of his ongoing interest/ attention".
78. The PIC's own view about the material DI Jacobs regarded as providing "no evidence" was set out in paragraphs 4.31 - 4.32 of the Operation Rani report. In those paragraphs, after setting out relevant parts of DI Jacobs 14 January 2003 report, the PIC

- 78.1 said that Ms Vaughan “had mentioned” to her mother and sister “Hosemans’ apparent interest in her”
- 78.2 said it was not accurate to say Ms Vaughan had not told Green and Nolan about Hosemans ongoing interest/ attention”
- 78.3 dismissed, as the expected inaccuracies of “casual informal conversations” inconsistencies in the statements other people had attributed to Ms Vaughan about DS Hosemans.
79. These paragraphs appear to have formed a significant part of the basis of the PIC’s criticism of DI Jacob’s investigation of DS Hoseman’s suspected involvement. They seem to underlie the PIC’s view that there were “serious concerns” about that investigation. In truth, as it seems to me, they each involve an inaccuracy, or distortion, and are actually inconsistent with the PIC’s own conclusion - that there was “no ... evidence (other than the rejected evidence of RA1) ... to implicate Hosemans’ in the disappearance of Ms Vaughan. (Operation Rani report paragraph 10.13). They provide no proper basis for criticism of DI Jacob’s reasoning or opinion. This is so because
- 79.1 whilst MS Vaughan had “mentioned” DS Hosemans to her mother and sister, that “mention” was only that he had (i) enquired about her (ii) sometimes walked past her shop and (iii) waved at her when he walked past
- 79.2 whilst both Ms Green and Ms Nolan had both reported DS Hosemans’ interest to Ms Vaughan neither of them described any actual contact between Ms Vaughan and DS Hosemans and nor attributed to her any complaint or concern about his conduct
- 79.3 the fact of Ms Vaughan’s “mentions” of these innocuous matters to her mother, sister Ms Green and Ms Nolan stands in stark contrast to the complaints Ms Vaughan supposedly made to others about DS Hosemans annoying and harassing her
- 79.4 the PIC did not identify what it was referring to when it said (in paragraph 4.32 of the Operation Rani report) “there may be some inconsistencies in the versions of what Ms Vaughan said to others about Hosemans”
- 79.5 I cannot identify, in the Operation Rani report, any discussion or identification of “inconsistencies” in the versions of Ms Vaughan’s accounts to others
- 79.6 I have identified in the attached table those witnesses whose evidence is discussed in the PIC Report. Of those various witnesses referred to by the PIC only Coote and De Souza reported any actual contact between Hosemans and Ms Vaughan. Both of them claimed that DS Hosemans was persistently telephoning Ms Vaughan. De Souza’s claims were only made in the course of the PIC hearing, and were not known

to DI Jacob during the course of his involvement with S/F Toko. DI Jacob did not know of Cranston's similar claims - that Hosemans had been visiting Ms Vaughan at work and annoying her. But none of these various witnesses claims and accounts gave rise to "inconsistencies" as such. The important point was that Coote, Cranston and (later) De Souza were claiming actual contact between Hosemans and Vaughan. This was not evidenced - either by objective records or by the eyewitness accounts of the people who worked with or near Ms Vaughan.

80. I note at this point that although the PIC said that the call charge records raised "very serious concerns" about the adequacy of the Strike Force Toko investigation, it did not proceed to identify those concerns. Perhaps the intention was to allude to the suggestion, with which I have previously dealt, that police had deliberately omitted information from statements. But the call charge records did not bear on that issue - except to substantiate that there was no evidence of contact between DS Hosemans and Ms Vaughan.
81. Furthermore although the Operation Rani report considered, and discounted, evidence of "RAI" that implicated DS Hosemans, it did not carry out any further investigations into DS Hoseman's involvement. Neither did it suggest that an further investigation be carried out.
82. DS Hosemans gave evidence to the PIC, agreed that he had probably returned to Bathurst on the evening of 6 December 2001, and denied that he had given a deliberately false alibi claim to DI Jacob in his 20 December 2002 statement. The PIC, in findings that I regard as either inconsistent or conceptually flawed, said that
- 82.1 Hosemans had engaged in police misconduct in that he deliberately provided Jacob with a false statement in relation to his whereabouts
- 82.2 given the delay in obtaining his statement, and in the face of his denial that the statement was deliberately false, Hosemans should not be prosecuted for any criminal offence arising out of the provision of "the false statement".
83. The PIC did not explain what relevance it thought delay had to the truthfulness of DS Hosemans' December 2002 statement. It seems to me that it could only be relevant as tending to accept the possible infirmity of his recollection, and justifying acceptance of his

claim that his 20 December 2002 statement was not deliberately false. But if that was the PIC's reasoning in relation to the second finding, it provides a telling basis to contradict any suggestion of dishonesty in relation to the first finding. This apparent inconsistency in the PIC's reasoning may simply mean that the PIC was persuaded of DS Hosemans' dishonesty on the balance of probabilities, but not beyond reasonable doubt. If that was so, it would have been better for that conclusion to have been stated precisely. As the PIC's first finding was expressed one is left with the very uncomfortable ambiguity that the PIC regarded police misconduct as including the provision of a statement that was objectively inaccurate, even if the maker actually believed it to be true.

84. The present relevance of the PIC's treatment of DS Hosemans' honesty in relation to his 20 December 2002 statement concerns its ultimate conclusion about his likely involvement in Ms Vaughan's disappearance. As I have described above, apart from (rejected) evidence of RA1, and its own "misconduct" finding against Hosemans, the PIC had not obtained any significant information relating to Hosemans that had not been known to Strike Force Toko. Nevertheless, the PIC positively concluded that "there is no reliable evidence linking Hosemans to the disappearance of Ms Vaughan" (Operation Rani report page (ii) and paragraphs 10.10 - 10.12). It seems to me that this ultimate conclusion makes quite academic the Operation Rani's earlier, and poorly justified, criticisms of the Strike Force Toko investigation relating to DS Hosemans. As I would interpret the Operation Rani conclusion, it was to precisely the same effect as the views expressed by DI Jacob in July 2002 and, more definitely, in January 2003.
85. The third flaw in the Operation Rani reasoning concerns its view that it was "difficult to accept" DI Jacob's explanation that he did not think it necessary to include reference to the telephone call charge records in his July 2005 response to Kuiters. It is one thing to opine that such an explanation is "difficult to accept" it is quite another to conclude, as the PIC ultimately did, that DI Jacob had deliberately submitted a misleading report. The important point is that an issue such as this fundamentally impugns the honesty of a person. An analysis that is ultimately based on a characterisation of the person's explanation as one that is "difficult to accept" is very likely to involve not only a reversal of the relevant onus of proof, and but also a failure to apply the required standard of proof.

86. The reality of the matter is that (i) no matter how "difficult" the PIC thought it was to accept his explanation, DI Jacob had dismissed DS Hosemans as a person of real interest in the disappearance of Ms Vaughan, and (ii) the PIC ultimately came to precisely the same conclusion - on immaterially different information. DI Jacob's reasons for his assessment of DS Hosemans were apparent in his July 2002 report, and did not really change thereafter. Furthermore, although DI Jacob did pursue the investigation to the stage of obtaining both a statement from DS Hosemans, his telephone records and his banking and transaction records, it is equally evident that DI Jacob's contemporaneous views, at least by the beginning of 2003, was that these further enquiries were not really necessary.
87. The report DI Jacobs provided to Kuiters in July 2005 was a response to his request for Jacob's "confidential views on this investigation". It was fundamentally an expression of opinion by Jacobs about the adequacy of that aspect of the Strike Force Toko investigation. It was not something he had been requested to provide as a detailed account of, and explanation for, all the steps that had been taken. It was not even a response to a request for a specific explanation about the S/F Toko reasoning in relation to its investigation and treatment of DI Jacobs.
88. Against this background the matters referred to in the Operation Rani report are, in my opinion, quite inadequate to justify a conclusion that DI Jacob submitted a deliberately misleading report to Kuiters. In expressing that view I am primarily influenced by the consistency of, and the apparent justification for, DI Jacob's view that there was no significant objective or credible evidence of any contact between DS Hosemans and Ms Vaughan. Without evidence of that kind it would, in my opinion, be impossible to justify reasonable suspicion of DS Hosemans in relation to Ms Vaughan's disappearance.
89. A significant matter that also influences me is the fact that DI Jacob's 5 July 2005 report does refer to the additional alibi material that had been obtained. The fact this material is referred to seems to involve some incongruity with the hypothesis that DI Jacob deliberately mislead Kuiters. The incongruity arises because of the deliberate dishonesty that the finding requires, and yet the inclusion in the report of reference to the existence of the very material that would tend to establish that dishonesty.

90. In order to sustain such a finding of the kind that the PIC made against DI Jacob it would be necessary to be satisfied that at the time he wrote his report in July 2005 DI Jacob
- 90.1 had actually been mindful of the call charge records
 - 90.2 was aware of the contradiction they contained
 - 90.3 did believe that the call charge record contradiction gave rise to a matter of concern about DS Hosemans' involvement.

But if that was truly DI Jacob's state of mind when he wrote his July 2005 report, and his intention had been to deflect any criticism of the adequacy of the Toko investigation into DS Hosemans, he is unlikely to have provided an explanation that both pointed to the call charge records and was capable of being contradicted by them. It is far more probable that if he had been intentionally dishonest, in the way the PIC attributed to him, he would not have written what actually appears in his July 2005 report. Rather his supposed dishonest purpose would have been adequately met, and less readily detected, had his July 2005 report either

- (a) made no reference at all to the further material or
- (b) specifically explained that, despite their apparent contradiction, DI Jacob did not believe DS Hosemans' alibi claim or movements required further investigation.

91. In the light of the matters I have discussed, I do not consider that the Operatoin Rani finding against DI Jacob on this issue was justified. I do not consider that the evidence establishes that DI Jacob intentionally misled Kuiters.

Rani finding 3: Jacob's deliberately false and misleading report

92. The Ombudsman's office raised a number of specific queries in relation to DI Jacob's 5 July 2005 report to Mr Kuiters. These included the following
- 92.1 whether any attempt had been made to verify the information about Hosemans' whereabouts at the relevant time
 - 92.2 whether there was a need to do so
 - 92.3 whether there was a final outcome on call charge records
 - 92.4 whether the material in relation to Hosemans would be included in a brief prepared to the Coroner.
93. These further enquiries were communicated to DI Jacob on 16 August 2005. His six page response was dated 27 November 2005. In response to the enquiry about verification of information about Hosemans' whereabouts the report included the following passages. (I have added emphasis to the parts impugned in the Operation Rani report.)

Was there any attempt to verify the information given in relation to former officer Hosemans' whereabouts at the relevant time? Is there a need to do so now?

Yes all efforts to independently verify the information provided were made. Mr Hosemans was interviewed on this matter over a year after the disappearance of Janine Vaughan and at that time indicated that he returned to Bathurst from his mother's in Newcastle on the afternoon of the 7 December 2001.

Visa card EFTPOS transaction records obtained showed that Mr Hosemans used his card Newcastle (sic) at Lowes Manhattan Pty Ltd (shop 40 The Hunter SC) on the 5/12/2001. That same card was used on the 7/12/01 at the Caltex Service Station Wyong South however we are unable to say what time the card was used. ~~This later usage cannot be taken any further.~~

Having regard to the length of time between the disappearance of Ms Vaughan and the information sort (sic) from Mr Hosemans on this movement, together with our ability to seek that information from other records, I considered it unnecessary to interview Mr Hosemans mother, although he was supportive of me doing so. As previously stated I am of the informed view that sufficient explanation has been provided regarding Hosemans whereabouts and I stand by my decision to not interview Hosemans mother.

The report of Jacob does not appear to give a final outcome on CCR's. Is this now available?

CCR records obtained on Mr Hosemans mobile telephone also support the fact that Mr Hosemans travelled to the Newcastle area on the 3/12/2001. However, those CCR records also indicate that Mr Hosemans travelled back towards the Bathurst area on the 6/12/01. There are entries for calls received through the Wentworth

Falls cell site about 3:47 p.m. and 3:48 p.m. that date, followed by a call received through the Meadow Flat cell site about 5:12 p.m., a call was then received through the Bathurst cell site about 10:36 a.m. on 7/12/01.

These records are in apparent conflict with Mr Hosemans Visa charge records. This conflict is a matter that cannot be resolved on the evidence available. Mr Hosemans believes that he returned to Bathurst on the afternoon of 7/12/01, his CCR mobile records indicate that he came back into Bathurst on the 6/12/01. It is not uncommon for cell sites to be inaccurate and it would be unwise to rely on this type of evidence.

94. The Operation Rani report findings in relation to this explanation are contained in paragraphs 5.14 - 5.17 and 10.19. (I have set out the contents of paragraph 10.19 in paragraph 17 above.) The essence of these findings was as follows.
- 94.1 The “only conclusion available” from DI Jacob’s 27 November 2005 response was that he believed Hosemans’ alibi, and believed the call charge records could not be relied on to conclude otherwise. (Operation Rani Report paragraph 5.15)
- 94.2 DI Jacob in fact believed that the call charge records were reliable and contradicted Hosemans’ alibi claim. (Operation Rani Report paragraph 5.16)
- 94.3 The explanation was deliberately designed to show that Hosemans’ asserted alibi had been investigated and shown to be supported by relevant documentary material. (Operation Rani Report paragraph 10.19)
95. The Operation Rani report finding (in paragraph 5.15) that the “only conclusion available” was that DI Jacob believed DS Hoseman’s alibi was true, attributes to DI Jacob’s report a certainty of meaning and intention that would rarely be justified by anything other than a very explicit statement. There is no such statement in DI Jacob’s November 2005 report. Indeed the report actually highlights the discrepancy between the call charge records and the credit card charge records. The report then contains the explicit statement that the “conflict is a matter that cannot be resolved on the evidence available.” That statement is followed by a recital of DS Hoseman’s belief about the date of his return. It does not contain an express statement of DI Jacob’s belief, one way or the other, about Hosemans’ actual whereabouts on the evening of 6 December 2001.
96. Given that explicit statement in the November 2005 report, and the express reference to the apparent alibi contradictions in the call charge records, the report provides no contextual justification for the PIC’s opinion that “the only conclusion available” is that DI Jacob

accepted DS Hosemans' alibi. In my opinion, the November 2005 report certainly does not convey that information or belief as its only available conclusion. It is, at best, a possible interpretation of DI Jacob's report. In fact, I consider that a fair and objective reading of the November 2005 report would not convey the impression that DI Jacob believed in the truth of DS Hosemans' particular claim that he did not return to Bathurst until the afternoon of 7 December 2001. More specifically, I consider that such a fair reading of the report would tend to convey rather the opposite conclusion. This is because (i) the call charge records give the most precise indication of time and date (ii) the available credit card records did not record the actual transaction times and (iii) the reservation expressed in the last sentence of the extract set out above refers to the "provable reliability" of the call charge records (implicitly to the required criminal standard) rather than to their probable reliability. When it is properly and fairly understood, I do not consider the November 2005 report conveys anything more about DI Jacob's "belief" in DS Hosemans' "alibi" than (i) the apparent contradiction provided by the call charge records and (ii) that the apparent contradiction had not been further investigated or resolved. In my opinion the misleading character that the PIC attributed to DI Jacob's November 2005 report (in paragraph 10.19 of the Operation Rani report) was simply wrong.

97. In the first part of the passages I set out in paragraph 93 above, DI Jacobs stated his "informed view that sufficient explanation has been provided regarding Hosemans' whereabouts and I stand by my decision to not interview Hosemans' mother". It is a conceivable interpretation of that statement, when read with the following passage dealing with the call charge records, that DI Jacob believed in the truth of DS Hosemans' alibi claim. But such an interpretation is neither a fair nor correct reading of DI Jacob's report. The particular statement actually refers back to earlier parts of the report. In the immediately preceding part of the report DI Jacob had recorded his belief that there was no evidence of any association or contact between DS Hosemans and MS Vaughan. Then he went on to declare his "informed view" that there was no benefit in any further clarification of the supposed relationship between them. In a still earlier part of the report DI Jacob opined that Hosemans had been discounted as a person of interest as a result of an extensive and thorough investigation. That investigation process had involved interviewing "every person identified as in anyway associated with Ms Vaughan". When the totality of the report is taken into account, DI Jacob's statement that "sufficient explanation" had been provided of DS Hosemans whereabouts was more a dismissal of Hosemans as a "person of interest" than

a positive assertion of belief that he had not been in Bathurst on the night of Ms Vaughan's disappearance.

98. The Operation Rani report relied on two additional matters to conclude that DI Jacob's November 2005 report was misleading. These were DI Jacob's statements that
- 98.1 the credit card usage reported at Wyong South on 7 December 2001 "cannot be taken any further" (Operation Rani paragraphs 5.19 - 5.21)
 - 98.2 it was "not uncommon for cell sites to be inaccurate and it would be unwise to rely on this type of evidence." (Operation Rani paragraphs 5.16 - 5.17).
99. The Operation Rani report's particular complaint about the credit card usage was that "it was misleading for Jacob to assert in the report that the police could not take the usage of the card further when in fact no cheques were undertaken to determine if the bank could in fact provide further information about the date and time the card was used". (Operation Rani report paragraphs 5.19 - 5.21). It is evident from this finding, because it does not use the actual words in DI Jacob's report, that the PIC interpreted DI Jacob's statement as an absolute categorical statement that no further records existed or could be found - no matter what enquiries were, or had been, initiated.
100. I would agree that the PIC's interpretation of DI Jacob's statement is a possible one. On the other hand, objective considerations rather suggest the contrary. First of all there is no reference in the report to further enquiries having been undertaken, and having proved futile. Second there is the inherent probability (indeed, as I would have thought, the practical commercial inevitability) that some primary banking records would exist to underlie the EFTPOS credit card transaction. That inherent probability would make such an extravagant claim, as the one interpreted by the PIC, rather unlikely to have been intended. Third there is the consideration that, in the second part of the passage set out in paragraph 93 above, DI Jacob refers to the "evidence available". That reference most naturally refers to the "evidence presently to hand" rather than to "the additional evidence that might be obtainable". Fourth, there is the reality, to which I referred in paragraph 97 above, that DI Jacob had emphatically declared earlier in the report that he regarded further enquiry into DS Hosemans as unnecessary. When all of these considerations are taken into account I consider

the Operation Rani's interpretation of DI Jacob's statement is rather unlikely. It is much more likely that the intention underlying the statement was

100.1 merely to emphasise that DI Jacob had no actual information about the time of the credit card transaction

100.2 that in the absence of specific evidence of the actual transaction time the credit card transaction could not be relied on to verify the Hosemans' alibi.

And if that interpretation of DI Jacob's statement is correct, then there was nothing misleading about it, and certainly nothing that could properly be characterised as deliberately misleading.

101. I pointed out in paragraph 90 above the state of mindfulness that would be necessary to establish a finding that DI Jacob deliberately provided a misleading report. Similar considerations apply to criticism of DI Jacob's statement that the credit card usage "could not be taken further". The totality of DI Jacob's November 2005 report conveyed (i) the discrepancy in the records relating to DS Hosemans' alibi claim, (ii) the inadequacy of the available information to establish the true position in relation to Hoseman's whereabouts on the evening of 6 December 2001, (iii) DI Jacob's considered view that there no objective or credible evidence establishing any real connection between DS Hosemans and Ms Vaughan. Against this background, and the actual terms of DI Jacob's November 2005, I consider it is quite fanciful to suppose, let alone to find, that DI Jacob was deliberately intending to convey that DS Hosemans' alibi had been investigated and had been shown to be supported. At most DI Jacob's report conveyed that whilst DS Hosemans' alibi claim was partly supported by available records, it also contained an anomaly, but was not conclusively disproved by the available evidence.

102. The Operation Rani report was also highly critical of DI Jacob's statement in his November 2005 report that "It is not uncommon for cell sites to be inaccurate and it would be unwise to rely on this type of evidence." The PIC emphasised DI Jacob's evidence that he in fact relied on the accuracy of call charge records "all the time" and that he had in fact assumed the accuracy of the call charge records that were obtained in December 2003. (Operation Rani report paragraphs 5.15 & 5.16) The PIC observed that the statement in the November 2005 report "did not sit well" with DI Jacob's evidence.

103. DI Jacob was not able to explain to the PIC the reasoning that led him to include in his November 2005 explanation a reference to the possible inaccuracy of the call charge records. Without such an explanation it is right to acknowledge that the statement in the report, and DI Jacob's view about the general reliability of the records, do not "sit well" together. But it is entirely another matter to then embrace the conclusion that DI Jacob's statement was deliberately misleading. After all, the statement was an understated negative generality and it was obviously not based on any particular investigations carried out by S/F Toko. Moreover it was in a response directed to an experienced superior and, ultimately, the Ombudsman. It was a general proposition, intended to indicate a general reservation about information of this type, and it was general information that DI Jacob could reasonably expect would be either consistent with the knowledge of other informed people or, if not, would be readily contradicted. General information or beliefs of this character may often be mistaken and ill-informed, but they are inherently unlikely to be dishonestly conveyed, and certainly not so conveyed to informed superiors and critical supervisors.
104. The actual circumstances in which the particular statement was included in DI Jacob's November 2005 Report were investigated by Strike Force Ogilvy. That investigation established that the specific statement was actually suggested to DI Jacob by Inspector Nash. He did so, in the course of reviewing DI Jacob's draft, and for the purpose of assisting him in providing an appropriate response. Inspector Nash's suggestion came from his own understanding of the effect of investigations that had been carried out in another matter. The evidence gathered by Strike Force Ogilvy comfortably establishes that Inspector Nash made the suggestion, unprompted by anything from DI Jacob. Nash's view may, in reality, have been mistaken, as the Operation Rani report suggested, but the fact that the suggestion came from Inspector Nash established its credibility to DI Jacob, and he included it on that basis.
105. In the totality of the circumstances I have addressed, it is highly unlikely that there was any proper basis for the Operation Rani finding (in paragraph 10.19) that DI Jacob deliberately prepared a misleading report designed to suggest that Hosemans' alibi had been investigated and had been shown to be supported by relevant material. I certainly do not consider that such a finding was justified.

Ogilvy findings concerning Jacob - summary

106. The Strike Force Ogilvy investigation and report identified four issues, and made related findings, concerning Detective Inspector Jacob arising out of the Police Integrity Commission's Operation Rani report. The identified issues, and the related Strike Force Ogilvy finding were as follows.
- 106.1 Issue: that Detective Inspector Jacob failed to report suspected or alleged misconduct in regard to whether or not police were deliberately leaving out of statements information that suggested an association between former Detective Sergeant Bradley Hosemans and Janine Vaughan
(a) Finding: Not Sustained
- 106.2 Issue: that Detective Inspector Jacob lied to Acting Assistant Commissioner Kuiters when stating that there were no issues of concern in regard to the alibi provided by former Detective Sergeant Bradley Hosemans
(a) Finding: Not Sustained
- 106.3 Issue: that Detective Inspector Jacob lied to Detective Inspector Nash who was making enquiries in response to questions raised by the NSW Ombudsman after that office's review of the report Jacob prepared for Acting Assistant Commissioner Kuiters by indicating that all attempts had been made to verify the whereabouts of former Detective Sergeant Bradley Hosemans at the time of the disappearance of Janine Vaughan
(a) Finding: Not Sustained
- 106.4 Issue: that Detective Inspector Jacob failed to adequately and impartially investigate the allegations of an association between former Detective Sergeant Bradley Hosemans at the time of the disappearance of Janine Vaughan.
(a) Finding: Sustained.

Ogilvy issue 1: did Jacob fail to report police omissions from statements

107. The Strike Force Ogilvy Investigators report reviewed the statements of all of the witnesses referred to in the Operation Rani report. Those statements are identified in the Table attached to this Memorandum. (The Ogilvy document attachment number is listed in the last column of the Table.) The Ogilvy Investigator concluded that there was no evidence, apart from the contents of DI Jacob's contentious note, that he ever became aware of any information suggesting that police statement takers were omitting material suggesting a connection between Ms Vaughan and DS Hosemans. The investigator noted, in relation to Ms Symington, that whilst DSC McWhirter gave evidence to the PIC that Ms Symington had mentioned DS Hosemans to him, he had not discussed that topic with DI Jacob.
108. The Operation Ogilvy report reveals (on page 37) that it proceeded on the basis of an instruction that the issue of the contentious note had been fully explored at Operation Rani and that DI Jacob should only be offered the opportunity to comment by way of explanation. It will be apparent from what I have said about the contents of the contentious note (in paragraphs 28 to 35 above) that I do not regard Operation Rani's assumption about the date of the note as satisfactory. Whilst it may be reasonable to assume that the location of the note within DI Jacob's day book indicates the date it was made, the actual contents of the note, their apparent significance, and the absence of any reference to them in the 5 March 2002 Progress Report, at least merit further critical examination. According to the information conveyed to me by DI Cook (see paragraph 33 above) that critical examination has simply never occurred.
109. Despite the instruction referred to in the preceding paragraph, the Ogilvy Investigator's report did speculate that the contents of the contentious note might be partly attributable to information provided by Cranston and perhaps indirectly from the witness Gibson. The later possibility was thought to arise because (i) Gibson knew something about flowers being left for Ms Vaughan (ii) in his 9 March 2002 interview Gibson related DS Hosemans' interest in Ms Vaughan (iii) Gibson had spoken to Mrs Vaughan on 28 February 2002 and (iv) DI Jacob telephoned Mrs Vaughan, about her contact with Gibson, on 5 March 2002 (that telephone contact is recorded in DI Jacob's day book at the top of the page immediately after the contentious note). This is a conceivable explanation for part of the note. But it seems to me a very unlikely explanation. This is because

- 109.1 Gibson does not appear to have ever linked DS Hosemans to any gift of flowers
 - 109.2 I am not aware of any information to suggest that either Gibson complained, or it has ever been established, that anything had been left out of his initial statement
 - 109.3 the speculation about what Gibson might have told Mrs Vaughan, and the further speculation about what she might have told DI Jacob, simply cannot explain the references to Cranston and Martin in the contentious note.
110. The fundamental difficulty with the contentious note is the source and significance of the supposed complaint that "statement takers left out issue with Brad". In paragraph 49 above I pointed out the ambiguity as to whether the note referred to "statement takers" generally or whether it related (as the context perhaps suggests) to Mr Cranston's statement alone. There is the further possible ambiguity, to which the Ogilvy Investigator's report refers (on page 38) about what is meant by the "issue" with Brad. If it refers to the "interest" (by DS Hosemans in Ms Vaughan) described in the statements from Mrs and Ms Vaughan, that "issue" had certainly not been "left out" from their statements. And if that was the only "issue" with Brad, it is to my mind unlikely to be a matter of significance if information to the same effect had not been included in other statements. On the other hand, if the "issue" with Brad was in fact the apparently more sinister details revealed by Mr Coote (at the earliest on 29 April 2002) and by Mr Cranston (on 4 June 2006) there is simply no evidence to explain how a complaint to that effect was or could have been communicated to DI Jacob on or around 5 March 2002.
111. Operation Ogilvy interviewed DI Jacob about the contentious note. But it did so subject to the instruction to which I have referred above and, therefore, without investigating the various matters to which I have drawn attention. DI Jacob was still unable to recall or explain the circumstances in which he made the note. However he regarded as "offensive" the suggestion that he intentionally failed to investigate the possibility of misconduct by other officers in relation to the possible involvement of DS Hosemans in Ms Vaughan's appearance. He was well aware of the procedures for pursuing such a complaint - by referral to a Complaints Management Team - and he claimed he would have had no hesitation in invoking that process if he had thought it was warranted at the time.

112. Ultimately the Ogilvy Investigator's report found that no complaint could be sustained against DI Jacob because the Investigator was not satisfied the evidence established that DI Jacob had an actual belief that other police had engaged in misconduct. It will be apparent from what I have said that I do not regard the contentious note as itself sufficient to establish such a belief. I certainly do not regard the note as sufficient, given the uncertainties to which I have referred, to indicate that DI Jacob had such a belief in March 2002.
113. The suggestion that police officers were deliberately omitting apparently material information from statements that were being obtained in the investigation of matter such as that involved in Strike Force Toko is a matter of real concern. But the really striking aspect of that concern in the present case is that the only evidence that pointed to such a concern at the time is contained in DI Jacob's contentious note. If the note does in fact relate to information conveyed to DI Jacob on or about 5 March 2002, it must have been conveyed to him by someone. And if the information was conveyed to him in the sequence in which it appears in his notebook, it must have been conveyed either at the Strike Force Toko meeting at 3:20pm on 5 March 2002 or immediately after, and before his telephone conversation with Mrs Vaughan at 4:45pm that same day. The officers present at the Strike Force Toko meeting (as recorded in the Progress Report - see Attachment 22 at page 68) were Waterman, Hosemans, Dickinson, McFawn, McWhirter and Booth. It seems to me an almost irresistible conclusion, if the hypothesised complaint or concern really existed at that time, that one or other of those officers would have been aware of the matter, and likely to have communicated it to DI Jacob. Yet I am unaware that this aspect of the matter has ever been considered - either in the course of Operation Rani or Operation Ogilvy.
114. Because of the matters I have highlighted I do not consider that either Operation Rani or Operation Ogilvy has adequately investigated the date of the contentious note and the circumstances in which it was created. However, on the currently available information I do not consider the evidence justifies any adverse finding against DI Jacob.

Ogilvy issue 2: did Jacob lie to Kuiters in relation to Hosemans' alibi

115. The issue identified by Operation Ogilvy was whether DI Jacob lied to Acting Assistant Commissioner Kuiters when he stated (in his 5 July 2005 response) that there were no issues of concern in regard to the alibi provided by former Detective Sergeant Bradley Hosemans.
116. In its investigation Operation Ogilvy interviewed DI Jacob. He was specifically asked whether he was aware of the call charge records at the time he compiled his July 2005 response. The relevant part of the interview was as follows;

Q68 Were you were aware at the time you wrote this report that there were anomalies between information provided by HOSEMANS as to his whereabouts on the evening of the 6th of December, 2001 and the early hours of the morning of the 7th of December, 2001 in information contained in call charge records sourced by Strike Force TOKO?

A I was certainly not aware of it, it was not in the forefront of my mind. Upon reflection now, and with the benefit of all this hindsight and the raising of these issues on a pedestal, I'm clearly aware that at a point I was aware there was a conflict with the CCR's. At the time I drew together this document I did not have it at the forefront. It was certainly not an attempt to mislead, it was something that was left out due to that passage of time and "it" not being a focus of the documents I used to bring that together. Does that make sense?

Q69 Yeah

A And um, because this is very important. Had that issue been there and been available to lead the creation of this document I would have dealt with it in that document. He will see in a supplementary report for which I received some criticism, I talk about those CCR's at length. I talk about the conflict of them and would have quite happily done so had it been there in the forefront of my mind. I point to the fact that this document was created above everything else I was doing at the time. I was extremely busy and I know a lot of people are busy, but you, I recall having to bring this together outside of the normal hours, just so I could bring it together. The same with the supplementary report, I'd actually been transferred by the time I'd got to that second document, so, you know, I stress most positively, had this been an issue that was available to me in the documents that I used to bring it together, I would have dealt with it, and its absence I reject as a position that puts me to deliberately mislead anyone. That's certainly not the case.

117. The answers DI Jacob gave to Q94 and Q95 in his Ogilvy interview are to substantially similar effect. They are set out on pages 45 and 46 of the Ogilvy Investigator' report. It is unnecessary to reproduce them here.

118. It is certainly appropriate to evaluate these later explanations by DI Jacob with sceptical care, indeed it would be naive not to do, given the seriousness of the issue and DI Jacob's obvious self interest. Nevertheless, his explanation substantially accords with the matters I addressed, and the views I expressed, earlier in this Memorandum in my review of the Operation Rani findings. In particular I highlighted (i) the extent to which the material contents of the 5 July 2005 report had been apparently copied from DI Jacob's 14 January 2003 Progress report and (ii) the fact that DI Jacob had clearly recorded his view, in the Progress Report, that he did not consider further investigation of DI Hosemans was really required. In particular, I noted that the January Progress Report did not specifically refer to the relevant call charge records. I also expressed the view that the mere fact that DI Jacob's 5 July 2005 report referred to the "further material", and then opined that none of it "raised issues of further concern", was more consistent with an honest expression of opinion than a deliberate intention to mislead - see paragraphs 89 and 90 above.
119. It might be thought that both my acceptance, and the Operation Ogilvy acceptance, of DI Jacob's explanation is unduly favourable to him. I should therefore explain the process I undertook in preparing this Memorandum. I did read both the Operation Rani report and the Ogilvy Investigator's report before I began to prepare this Memorandum. I was therefore aware of the basic thrust of DI Jacob's explanation. I was aware that when he prepared his 5 July 2005 report he had long since ceased direct involvement with Strike Force Toko. I was also aware of his claim that at the time of preparing his July 2005 report he was overburdened by other matters. Nevertheless in my review and analysis of the Operation Rani report, for the purposes of this Memorandum, I endeavoured to confine my analysis to the actual contents of the Operation Rani report, and the evidence it considered. I was particularly concerned to analyse the precise findings that Operation Rani made, and to review them in the light of a balanced and objective assessment of the material as I considered it should have appeared to the PIC itself. I have consciously attempted, in my review of the Operation Rani findings not to be unduly influenced by subsequent explanations offered by DI Jacob. (The obvious, and necessary, exception to this approach concerns the additional information provided by DI Nash - and to which I referred in paragraph 104 above.)

120. In my opinion the available evidence does not justify an adverse finding against DI Jacobs on this issue.

Ogilvy issue 3: did Jacob lie to Nash in relation to verification of Hosemans alibi

121. The issue identified by Operation Ogilvy was whether DI Jacob lied to Detective Inspector Nash, by indicating that all attempts had been made to verify the whereabouts of former Detective Sergeant Bradley Hosemans at the time of the disappearance of Janine Vaughan.
122. In its investigation of this issue Operation Ogilvy considered additional material that was not available to Operation Rani. This included
 - 122.1 DI Jacob's draft response, dated 20 September 2005, to DI Nash (Ogilvy Attachment 47)
 - 122.2 DI Nash's handwritten amendments / suggestions on the September 2005 draft (Ogilvy Attachment 47)
 - 122.3 an interview with DI Nash on 23 April 2008 (Ogilvy Attachment 64).
123. The material referred to in the preceding paragraph comfortably establishes the following matters.
 - 123.1 DI Nash was the Professional Standards Manager, Western Region.
 - 123.2 DI Nash reviewed DI Jacob's draft response, as part of what he regarded as his ordinary PSM functions, for the purpose of providing independent quality control to ensure that the Ombudsman's queries were satisfactorily answered.
 - 123.3 The draft response did not include any statement about the time that the credit card had been used at Wyong on 7 December 2001, and DI Nash had made a specific enquiry about the time (by notation on the draft).
 - 123.4 The draft response did not include the statement that it was not uncommon for telephone call cell site records to be inaccurate - DI Nash (by notation) suggested an insertion to that effect.
 - 123.5 DI Nash made that suggestion based on his understanding of information that had been derived as a result of a review of Strike Force GAP and had been related to him by more senior police.
 - 123.6 The draft response included an additional paragraph in which DI Jacob specifically addressed the conflict between the call charge records and the credit card records. In

that paragraph he opined that the conflict was insignificant having regard to the totality of the evidence.

123.7 DI Nash (by notation) queried the reference to "conflict" in the additional paragraph.

123.8 After reviewing the draft response, DI Nash believed he spoke to DI Jacob on the telephone, and discussed with him his various suggestions and amendments in relation to the content of the report.

123.9 In fact DI Nash actually sent DI Jacob an email with specific textual suggestions. One of those suggestions actually included the very sentence about the inaccuracy of cell sites that appears in the November 2005 report.

123.10 In the final report DI Nash included the text referring to the absence of information about the time of the credit card transaction.

123.11 In the final report DI Jacob altered and repositioned the additional paragraph referred to in paragraph 123.6 above. The altered paragraph appeared at the end of the 27 November 2005 report. It removed the reference to "conflict" (which had appeared in the draft and been queried by DI Nash). Instead the additional paragraph now concluded with an unambiguous statement of opinion that DS Hosemans had not been involved in Ms Vaughan's disappearance.

124. In my opinion the totality of this information, especially a comparison of the draft response with the final response, quite precludes any finding of misconduct on the part of DI Jacob. With due respect to DI Nash, and fully acknowledging the spirit and purpose of his suggested amendments, the fact is that DI Jacob's draft response was quite free of the specific text that has subsequently come to provide the basis for the suggestion that DI Jacob provided a deliberately misleading response. It was DI Jacob's final draft, prompted by the suggestions DI Nash had made, that included the details to which so much criticism has been directed.

125. It may be fairly said that DI Jacob was the actual author of the final November 2005 response. He was. It can also fairly be said that he has to take the ultimate responsibility for the actual content of the final report. He must. But accepting responsibility is one thing. Finding that the responsibility includes a culpable intention to mislead is quite another.

126. Such a finding is particularly inappropriate in relation to the reference in the November 2005 report to the possible inaccuracy of cell sites and it being "unwise to rely on this type of

evidence". The inclusion of that comment was the result of DI Nash's specific suggestion. Apparently it was based on information that he thought reliable, apt and accurate. He certainly intended that DI Jacob should understand the suggestion in that way, and act on it. Furthermore, the draft report, and particularly the additional paragraph I referred to in paragraph 123.6 above, makes it abundantly clear that DI Jacob was fully aware of the "apparent conflict" between DS Hosemans' alibi claim and the call charge records. In the draft, far from dismissing the accuracy of the call charge records, he expressed the clear and emphatic opinion that the conflict was not significant, and did not merit further examination, in the totality of the information that had been gathered and assessed.

- 127. The Ogilvy Investigator's report concluded that no adverse finding should be made against DI Jacob in relation to the November 2005 report's treatment of the call charge records. I completely agree with that finding - both for the reasons discussed above in relation to DI Nash's involvement, and my earlier analysis of the Operation Rani findings.
128. The Ogilvy Investigator's report opined that some criticism of DI Jacob might be appropriate in relation to the assertion in the November 2005 report that the credit card usage at Wyong South "cannot be taken any further". The Operation Ogilvy report queried whether DI Jacob could accurately and honestly have held that view. However it noted that he had not been asked, during the Operation Rani hearing, what experience he had in relation to tracing or investigating EFTPOS records. In the absence of evidence of that kind, the Operation Ogilvy Investigator considered that no adverse finding could be made against DI Jacob.
- 129. I have a difficulty with the Operation Ogilvy reasoning on this point, although I do not differ in the ultimate result. If the question of DI Jacob's misleading intention on this particular point really depended on his knowledge or experience in relation to credit card and EFTPOS transactions, then that matter should have been clarified in the Operation Ogilvy interview with DI Jacob. I have not been able to see where the enquiry was made and dealt with, either in the Investigator's Report or the interview with DI Jacob. But I disagree that this enquiry is the critical matter. I very much doubt that an experienced senior Detective would entertain a belief that credit card transaction details could not be examined further than the customer's bank statement in which they were ultimately recorded. As I said in paragraph 100 above,

there is a commercial necessity in being able to trace and substantiate transactions of this kind.

130. However, as I also said in paragraph 100 above, I also doubt that DI Jacob's statement that the credit card usage "cannot be taken any further" was really intended to convey the extravagant meaning attributed to it in the Operation Rani hearing. It is far more likely that DI Jacob was referring to the limitations of the material that existed and was known to him at the time he wrote his November 2005 report. That likelihood is made even more probable when account is taken of the September 2005 draft report, and DI Nash's specific query about the time of the credit card transaction. That background rather strongly suggests to me that DI Jacob was merely trying to explain that he did not have any information about the actual transaction time, rather than that none could ever be obtained. The final matter that re-inforces the propriety of that conclusion is the impression, very strongly conveyed by DI Jacob's September 2005, that he regarded any further enquiry into DS Hosemans' whereabouts as completely unnecessary and a waste of time and effort. Having expressed that view so emphatically, it is really quite improbable that he was also intending to convey, particularly on a detail such as this, that absolutely no further information could ever be obtained.
131. In my opinion no adverse finding should be made against DI Jacob on the issue I have addressed in this section of the Memorandum.

Ogilvy issue 4: did Jacob fail to investigate the alleged association between Hosemans and Ms Vaughan.

132. The issue identified by Operation Ogilvy was whether DI Jacob failed to adequately and impartially investigate the allegations of an association between former Detective Sergeant Bradley Hosemans at the time of the disappearance of Janine Vaughan. The Investigator's report concluded that this issue should be determined adversely to DI Jacob.

133. The precise nature and the basis for the Operation Ogilvy finding is not, in my opinion, adequately explained in the Investigator's report. The report identifies a number of aspects of the Toko investigation into the connection between DS Hosemans and Ms Vaughan. These included

133.1 the references to DS Hosemans in the January 2002 statements from Mrs and Ms Vaughan

133.2 the reference to Hosemans in the course of the Gibson interview on 9 March 2002

133.3 Coote's information about Hosemans - first conveyed to DS Waterman on 29 April 2002

133.4 the information obtained in June and July 2002 (initially from the anonymous complaint and Cranston)

133.5 the delay in interviewing DS Hosemans until December 2002

133.6 the fact that DS Hosemans was given a list of questions to respond to, rather than being formally interviewed.

134. The specific criticisms that the Ogilvy Investigator's report directed at DI Jacob were as follows.

134.1 The Vaughan and Gibson information should have been a "catalyst for an enquiry" by DI Jacob of Hosemans, and a review of the Strike Force records. This would have protected the Toko team from any allegations of conflict of interest. (page 60)

134.2 Hosemans could have been more promptly interviewed and it was "imprudent" to disregard him as a relevant "person of interest" until he had been asked to disclose his whereabouts at the time of Ms Vaughan's disappearance. (page 63)

134.3 The delay in interviewing Hosemans, and the circumstances in which it occurred indicated a lack of impartiality in the treatment of Hosemans. (page 64)

- 134.4 DI Jacob should have known that his decisions in relation to DS Hosemans would be subjected to a level of scrutiny not necessarily applied to the investigation of persons who were not police officers. (page 65)
135. I understand the concerns expressed by the Operation Ogilvy Investigator. Both the actuality and the appearance of impartiality and conscientious endeavour in police investigations are important, very important, standards to maintain. But it is also important to evaluate conduct from the perspective of the circumstances as they appeared, or should have been understood at the time. It is also necessary to understand that most circumstances permit a range of different conduct within the scope of reasonable proper judgment and conduct. With that general comment, I will address each of the Ogilvy criticisms.
136. The information contained in the two Vaughan statements in fact contradicted the likelihood of any contact between Hosemans and Ms Vaughan. Mrs Vaughan's information was that, so far as she knew, Ms Vaughan had expressed interest in Hosemans, but she had never actually spoken to him. So far as appears there was no further suggestion, at any rate to DI Jacob, of any contact between Hosemans and Ms Vaughan, until the contentious note and the interview with Gibson on 9 March 2001. The Operation Ogilvy report does not discuss the contentious note in relation to this issue. I agree with that approach, in the light of what I have said earlier in this Memorandum about the uncertain date and significance of the note. The Ogilvy report refers to the claims Gibson made and says that those claims, should have been a catalyst for DI Jacob to enquire of Hosemans and record his investigation plan in relation to the issue.
137. It seems to me that this criticism is over educated by hindsight. When one looks at the "information" provided by Gibson it was rather indirect and general. It involved 6 questions and answers in an 1150 question interview. Those 6 questions and answers revealed
- 137.1 that "the girls next door" had told Murphy, who had told Gibson that 3 months before Hosemans had come into the shop and spoken to Janine, trying to chat her up
 - 137.2 he never actually spoke to Ms Vaughan about it
 - 137.3 he had never raised Hosemans supposed interest with her.

138. Before this interview occurred SF Toko already had the information from the Vaughans (which rather contradicted the fact of any contact between Hosemans and Ms Vaughan). They also had Mr Gibson's 28 December 2001 statement, in which he claimed to be "good friends" with Ms Vaughan, in very regular social contact with her, and someone who knew a lot of her male friends. He had not mentioned any contact between Ms Vaughan and DS Hosemans in that statement. Toko also had Ms Larkin's statement. She worked at Ms Vaughan's store, and was specifically referred to in Gibson's December statement. Ms Larkin's statement did not refer to contact with DS Hosemans. Toko also had Ms Medhurst's statement. Ms Medhurst in fact worked in the shop next door to Ms Vaughan. Her statement of 18 January 2002 was comparatively long. It included her responses to specific questions about Ms Vaughan's associates and whether she had been receiving any threats or whether any strange males had been hanging around. Significantly Ms Medhurst did not include DS Hosemans in response to these questions. What she did say was that Ms Vaughan had reported Hosemans going past the shop a few times and that he had winked and waved at her. But even though she spoke about this to Ms Vaughan only the day before she disappeared, Ms Vaughan did not say anything to suggest that she had actually spoken to Hosemans.
139. It is also relevant to note, and this is readily apparent from the DI Jacob's log, that Gibson was himself a person of interest in the early stages of the investigation. He was contacting Mrs Vaughan and that contact was causing both her and DI Jacob some concern. The very fact that Gibson was the subject of such a long interview on 9 March 2002 rather suggests the interest that he was to the investigation. It also provides a background from which to assess the significance that might reasonably have been placed on his second hand hearsay information - information suggesting a level of contact that was not supported by, and indeed apparently not consistent with, other available information.
140. In my opinion, the totality of the information available to Strike Force Toko, at least the information known to DI Jacob, as at 9 March 2002 did not require him to take the steps posited by the Ogilvy Investigator. In hindsight they may well have been prudent steps to take. But hindsight educated prudence is not the appropriate standard by which such conduct should be assessed. Apart from Gibson's questionable hearsay assertion there was no evidence or suggestion known to DI Jacob of any contact between DS Hosemans and Ms Vaughan. I consider that it would impose too exacting a standard to direct criticism to DI

Jacob based on his failure to attribute significance to Mr Gibson's hearsay claims - claims made in the midst of a long interview being conducted for a purpose in which DS Hosemans was far from a matter of significant enquiry.

141. The delay in requiring DS Hosemans to provide a statement of his whereabouts on the evening of 6 December 2002 does appear to be considerable. But the reality of the matter is that by the end of July 2002 DI Jacob had conducted an urgent, and so far as appears, thorough review of the available material. He had established, to his own satisfaction that DS Hosemans had no contact with Ms Vaughan. It is quite true, of course, that DI Jacob was of the view that further investigation was required and that, as indicated in his 29 July 2002 progress report, he contemplated interviewing DS Hosemans. But it is also true that he considered the investigation of the issue of DS Hosemans supposed involvement had been detrimental to other, more significant investigative issues (last page of the 29 July 2002 Progress Report). Furthermore, as the Ogilvy Investigator's report note, the Strike Force Toko investigators did not visit Bathurst after 6 July 2002 until December 2002.
142. The reason for the apparent inactivity on the Strike Force Toko investigation between July and December 2002 is not readily apparent from the material briefed. DI Jacob said in his evidence in the Operation Rani hearing that there were a number of organisational constraints and that there were a number of factors impacting on the operation of the strike force team. The precise nature of those matters was not pursued, so far as I am aware, either in the Operation Rani report or in the Strike Force Ogilvy interview with DI Jacob. However I have reviewed DI Jacob's Investigation Log for the period from July to December 2002. The entries prior to his return to Bathurst in December 2002 appear to reflect episodic attention to particular issues that occasionally arose. The Log conveys to me the impression that DI Jacob was likely to have been occupied on other matters and that the Toko investigation was not involved in effective ongoing activity in that period.
143. The ultimate basis of the Ogilvy criticism of DI Jacob in relation to the delay in approaching DS Hosemans was that the approach did not need to occur in Bathurst. Some other more convenient suitable location could have been agreed in the interim. This may or may not be the case. The more important point is that the matter has not been addressed or investigated. The mere possibility, even the probability, that altered priorities might have resulted in an

earlier approach to DS Hosemans does not itself justify criticism of DI Jacob. If that criticism is to be advanced it must be on more substantial material than has been presented in the Ogilvy report and the other information presented to me.

144. The Ogilvy Investigator's report next found that the circumstances of, and the apparent delay in, DI Jacob's approach to DS Hosemans "describes a lack of partiality on the part of Jacob". (page 64) I am not sure what is intended to be conveyed by the use of the verb describes. If it was intended to convey that DI Jacob was partial in his investigation of DS Hosemans, I do not agree with that conclusion. The basis for it is not made clear in the Ogilvy report. Perhaps the view is influenced by the impression that DI Jacob should have acted to investigate DS Hosemans much earlier than June / July 2002. If that is the implied basis for the criticism, I disagree with it - for the reasons I have stated earlier in this section of the advice. If it refers to the apparent delay after July 2002, I disagree with it - for the reason I have stated in the immediately preceding paragraph. If it is based on the fact that DI Jacob merely gave DS Hosemans a letter and did not formally interview him, I again disagree with the criticism. DI Jacob explained the circumstances of his approach to DS Hosemans in his July 2005 report (Ogilvy Attachment 43) and again in his November report (Ogilvy Attachment 49). It is plain from this material that by December 2002 DI Jacob had already established, from other investigations, that there was no reliable information to implicate DS Hosemans. The Ogilvy report opines there was an element of leniency in the way DI Jacob approached DS Hosemans. In particular, the Ogilvy report suggests that DI Jacob's letter (i) conveyed to DS Hosemans "all the information ... that supported the association" with Ms Vaughan and (ii) "telegraphed" any further lines of enquiry. I do not agree that either of these matters has any substance. The fact is that Toko had no credible or reliable information of any association between Hosemans and Toko. Thus the first criticism is, to my mind, entirely without foundation. As to the supposed lines of enquiry, the only lines of enquiry contemplated by DI Jacob, apart from the specific factual questions he put to DS Hosemans, were (i) to obtain Hosemans's account of his whereabouts and (ii) to obtain his duty books, roster books and call charge records. I simply do not understand what difference it makes whether DI Jacob asked Hosemans for his whereabouts in a prior letter, or in an unexpected interview. Neither do I understand how one could ask for whereabouts without "telegraphing" that appropriate supporting enquiries would be made to check.

145. In the light of the matters discussed in the preceding paragraph I do not agree with this aspect of the Operation Ogilvy report criticism of DI Jacob. Any leniency in the circumstances of DI Jacob's approach to DS Hosemans in December 2002 was not any indication of partiality. It was a reflection of a considered investigator's view, based on a thorough examination of the available information, that Hosemans was very unlikely to have any involvement with Ms Vaughan's disappearance. If it appeared otherwise, that appearance was not based on a proper and fair understanding of the full scope of DI Jacob's conduct.
146. The final basis of the Ogilvy Investigator's criticism of DI Jacob was that he would have known that his conduct in relation to Hosemans would be subjected to a level of scrutiny not necessarily applied to persons who were not police officers. This criticism is expressed after acknowledging that DI Jacob had "clearly removed Hosemans as a person of interest in the perspective of Jacob". Then the Ogilvy report continues that this "may have been accurate, but steps may have been taken to apply a degree of transparency" to the dealings between DI Jacob and Hosemans.
147. I have a fundamental difficulty and disagreement with these criticisms in the Ogilvy report. The proposition that DI Jacob's assessment of Hosemans "may have been correct" is a grudging, but unfair and inaccurate, recognition of the quality and accuracy of DI Jacob's assessment. The fact is that, on the information available, there is no evidence to link Hosemans with Ms Vaughan. That is the view to which DI Jacob came. It is a view that has been endorsed, in effect, by Operation Rani. Whether or not that view remains accurate after the conclusion of Mountbatten is an uncertain future development. On the presently known information DI Jacob's assessment was objectively correct. Given the apparent objective adequacy of DI Jacob's investigation it is difficult to see what the Ogilvy report meant by the reference to "steps" that "may have been taken". They are not identified. Unless they are identified one cannot meaningfully advance a principled criticism of DI Jacob's conduct. Even though the Ogilvy report did not specify the particular steps that might have been taken the context suggests that they are steps that would have applied "a degree of transparency" to the dealings between DI Jacob and Hosemans. This is a somewhat fashionable metaphor. But unlike many metaphors it conveys no precise meaning. So far as I am aware DI Jacob's only dealing with DS Hosemans in relation to his suspected involvement with Ms Vaughan's disappearance was to request his response to the 19 December 2002 letter. Hosemans' response was in writing. All DI Jacob's other investigations were carried out either without

reference to DS Hosemans, or involved Hosemans providing documents (such as his credit card records). The Investigation Log records that those investigations (especially during mid 2002) were the subject of a "caveat" within the Toko investigation records. If "transparency" requires objective recording of information and dealings, DI Jacob's dealings with DS Hosemans appear to satisfy any reasonable requirement of transparency.

148. In the light of the matters I have analysed in this section of the Memorandum it is my opinion that there is no evidence to justify a finding that DI Jacob failed adequately and impartially to investigate the association between DS Hosemans and Ms Vaughan.

Rani finding concerning Sim

149. The PIC finding in relation to Detective Sergeant Sim was set out on page (iii) of the Operation Rani report. It was in the following terms:

Pursuant to subsection 16(1)(a) of the Act the Commission considers that Sim engaged in police misconduct because he deliberately misled the Coroner and Sergeant Norton, the Senior Coronial Advocate, when he stated to them that a police officer had been a person of interest in relation to Ms Vaughan's disappearance, had given an alibi and that the alibi had been investigated and confirmed. The Commission is of the opinion that consideration **should not** be given to the prosecution of SIM for any criminal offences. However the Commission believes that the evidence supports the opinion that consideration should be given to the taking of action against Sim pursuant to subsections 97(2)(c) or (d) of the Act.

150. The specific basis for the PIC's finding that DS Sim "deliberately misled" the Coroner and Sergeant Norton was (i) his acknowledgement that he was aware of the anomaly in the call charge records and (ii) the view "it was implausible" that the statement Hosemans had provided an alibi and the alibi had been confirmed, was not intended to be deliberately false and misleading.
151. The evidence that DS Sim had in fact made the statement the PIC finding attributed to him was
- 151.1 his evidence that he had told the Coroner the Hosemans alibi appeared to be correct (although Sim denied using the expression that it "checked out")
 - 151.2 Sim's evidence that he had provided the Coroner with Jacob's July 2005 Report
 - 151.3 Sim's concession that he may have told members of the Vaughan family that the police were satisfied DS Hosemans had not been in the Bathurst area when Ms Vaughan disappeared
 - 151.4 the evidence of Sergeant Tara Norton about a meeting with Sim on 24 March 2006.
152. The only people present at the meeting on 24 March 2006 were Sim, Norton and the Deputy State Coroner. Only Sim and Norton gave evidence to the PIC. Sergeant Norton said she had little real recollection of the content of the conversation. After the meeting she had

made a brief note of what had been discussed. Her evidence to Operation Rani was little more than agreement with the contents of her note. Her evidence was in the following terms. (I have emphasised a particularly relevant passage.):

- Q. There was a meeting organised, as you have told us, and did you make a note of what occurred at the meeting between Detective Constable Sim and the Deputy State coroner and yourself?
- A. Was that conference 24 March?
- Q. Yes
- A. Yes, I did make a note, I think my date at the top of that was the 23rd, which is an error on my part.
- ...
- Q. Does it indicate there was a conference with Detective Senior Constable Sim - does the L stand for leading
- A. It should be Detective Leading Senior Constable, so yes.
- Q. and the DSC is Deputy State Coroner; is that right?
- A. Yes that's correct
- Q. "to the list inquest"?
- A. Yes
- Q. : *"Sim informed us PIC involved. Investigating sacked police officer mentioned at some stage of investigation as a suspect".*
Have I read that correctly?
- A. Yes, that's correct.
- Q. Told alibi checked out. The reference to "hold", that's something that you and the Deputy State Coroner were told in that conference by Detective Senior Constable Sim is that right?
- A. Yes. The wording, of course, is mine, but, from memory, and by looking at that note, we were told that the alibi had been - had checked out, basically.
- ...
- Q. You'd been told something about there had been a sacked or a former police officer mentioned that some stage of the investigation as a suspect; is that right?
- A. Yes, that's correct.
- Q. And there was some mentioned that that person had provided an alibi; is that right?
- A. Yes
- Q. And you'd been told that the alibi had, in effect, been verified or checked out; is that what you were told?
- A. Yes.
- Q. Doing the best you can.
- A** I recall Detective Sim giving us an explanation of the former police officer being in Newcastle. There was talk of call charge records and possibly even a petrol voucher, from memory. I specifically recall the call charge records, but from what we were then told that the alibi had been verified, or words to that effect. My words, when I recorded it later after the conference, was that the alibi checked out.
- Q. You were told something about a petrol voucher, you were told something about call charge records; is that fair?
- A. Yes.
- Q. And you've recorded what you were told, in effect, that the alibi checked out or had been verified; is that right?
- A. Yes.
- Q. And you've got:

Coroner stated need to be transparent. Want Jacob to provide a statement re enquiries with ex-police officer. Also requested interview with ex-police officer re his involvement. Matter listed for inquest.

So the matter was in fact listed on that day; is that right?

A That's correct.

153. A little later in her evidence to the PIC Sgt Norton was taken back to the answer I have marked "A**" in the extract set out above. That answer was read to her and then the following is recorded in the transcript

Q ... You mentioned, in giving that evidence, a petrol voucher. Doing the best you can now what can you recall, if anything, about a reference to a petrol voucher?

A I don't recall anything specific about it. It wasn't until I heard the evidence from Detective Sim today that jogged my memory that we had discussed something along those lines, but I don't recall what the context of the conversation was.

154. The evidence makes very clear that DSC Sim discussed at the meeting with Sergeant Norton the fact of DS Hosemans' alibi claim. That much is recorded in her note "Told alibi checked out." But it is also clear that DSC Sim also told her, and the Deputy State Coroner, about the call charge records and the petrol voucher. Neither of those matters was recorded in her note. But what is recorded in her note is that the Coroner wanted further evidence, specifically a statement from DI Jacob. Consistent with that note, Sgt Norton added DI Jacob's name to the list of witnesses for the proposed inquest. She also made a note of a later telephone call from Sim, in which he reported that DI Jacob would be unable to do a statement until the week of 19 April 2006.

155. Sgt Norton received an email from DSC Sim on 24 March 2006. The following transcript exchange occurred in relation to that email.

Q It's confirmation of the fact he had contacted Detective Inspector Jacob and that he had chased him for the statement as soon as possible. He says there that he will inform him of everything Mr Milovanovich had requested. What were the other things that were requested that you can recall?

A There was the interview with Hosemans, the statement from Jacob - off the top of my head I can't recall anything else. I did write notes on that day.

...

Q ... Is that the note that you were referring to?

A Yes. That's right.

- Q In terms of the outstanding matters, it was "Consider calling Hosemans, call PIC, speak with D/Isp Jacob, speak to family representative, statement Isp Jacob?"
- A That's correct.

156. Properly considered the totality of this evidence comfortably conveys that the meeting on 24 March 2006, referred to DS Hosemans as a person who had been a person of interest in the Strike / Force Toko investigation. It also involved some discussion of his alibi claim. That discussion had obviously highlighted the call charge records and the credit card records. The discussion at least implicitly conveyed the information that the investigators no longer considered Hosemans as a person of interest. However, the information discussed at the meeting also conveyed the desirability of an explanatory statement from DI Jacobs and a further statement or an interview with DS Hosemans.
157. The fact that this occurred, apparently in the context of some discussion about the call charge records, and the credit card records appears to me to be quite inconsistent with the likely correctness of the PIC finding that DSC Sim "deliberately misled" the Coroner and Norton. If Sim had merely conveyed to them that DS Hoseman's alibi had been checked out - in the sense that it had been investigated and verified - it is improbable that the Coroner would have identified the need for a statement from Jacob. It is even less probable that the Coroner would have required DS Hosemans should be interviewed.
158. The fact that this further information was required by the Coroner, and apparently as a result of the information conveyed at the 24 March 2006 meeting, is far more likely to indicate that DSC Sim had not misled them at all. Rather it more likely suggests that he in fact correctly informed the Coroner, and Sergeant Norton, about the apparent anomaly that had been revealed by the call charge and credit card records. That apparent anomaly is likely to have provided the very reason why the Coroner required a statement from DI Jacob, and also required an interview with DS Hosemans. Both of those matters were in fact discussed at the 24 March 2006 meeting - as Sergeant Norton's evidence clearly established.
159. The reality of this aspect of the matter is that the evidence was wholly inadequate to justify a finding that DSC Sim deliberately lied to the Coroner and Sergeant Norton. It was inadequate for the following reasons

- 159.1 Sergeant Norton's note was itself ambiguous. Its relevant text was "Told alibi checked out." This is clearly a summary and, as Sergeant Norton said, made after the meeting. It was not a contemporaneous account of DS Sim's actual words. As a summary it was equally apt to convey that the alibi "had been checked out" as it was to convey that "the alibi checked out". Indeed, it might equally well convey that the alibi "checked out" in the sense that (i) there was no direct evidence linking Hosemans with Vaughan (ii) he had gone to Newcastle as he claimed but (iii) there was a problem about when exactly he had returned.
- 159.2 Sergeant Norton's evidence was elicited in the form of a comment on her note. Even then her initial comment / answer embraced the very ambiguity as to whether the alibi "had been checked out" or simply that it "checked out".
- 159.3 Sergeant Norton was then asked the further, and ambiguous question, whether she had been told "that the alibi had, in effect been verified or checked out". She responded to this ambiguous question by referring to the call charge and credit card records. Then she said "her words ... later after the conference was that the alibi checked out". Plainly she was giving her interpretative recollection of the effect of what DSC Sim had said, not his actual words.
- 159.4 The conceded recollection of Sergeant Norton, and DSC Sim's own recollection, was that the conference resulted in agreement on further enquiries to be made of both DI Jacob and DS Hosemans.
160. The PIC's adverse finding against DSC Sim appears to have been principally based on what it regarded as his concession that he had told the Coroner Hoseman's alibi "appeared to be correct" (see Operation Rani paragraph 6.15). DSC Sim did make such a concession, but the circumstances in which it was made are really quite revealing. When first asked he said he did not recall saying "those exact words" - that Hosemans' alibi had "checked out". What he said was that he may have told the Coroner that DS Hosemans' statement appeared to be correct. (And that statement, of course, covered more than merely the alibi question.) Immediately he gave that answer DS Sim was chided by the Commissioner "Lets not quibble about semantics. You need to address your mind to that general question about, in this case, an alibi. You need to address your mind to that general question. There's no trick in the precise words". DS Sim's concession, that he "believed he told the Coroner that Mr Hoseman's alibi appeared to be true, or words to that effect", immediately followed that intervention from the Commissioner.

161. This was a very unfortunate intervention, especially given both the obvious ambiguity of Sergeant Norton's note and also the care that DSC Sim was attempting to take in distinguishing between DS Hosemans complete statement and the alibi claim that formed part of it. It was a doubly unfortunate intervention when this concession, having been specifically encouraged by the suggestion that the precise words did not matter and were merely semantics, was then used to form the basis of a finding that DS Sim deliberately misled the Coroner. It is even more unfortunate that the concession by DS Sim, in the circumstances in which it occurred, was apparently accorded such significance when later in his evidence DS Sim contradicted the concession. At page 290 (in a passage not cited in the Operation Rani footnotes) DSC Sim denied that he had said the alibi was correct. What he believed he had said to the Coroner was that, although there was an anomaly in the call charge records, the totality of the information in relation to the investigation made Hosemans' involvement unlikely. He stressed a number of matters that suggested the improbability he either had, or was conceding that he had, misled the Coroner. Those matters included that (i) Sims did regard the call charge records as substantially corroborating Hosemans claim that he had gone to Newcastle, (ii) that he was aware of the call charge record anomalies concerning Hosemans' return to Bathurst (iii) that he believed he had raised those anomalies with the Coroner - because of the Coroner's request to interview Hosemans.
162. DSC Sim did concede that he may have told people and the Coroner that the Police were satisfied Hosemans was not in the Bathurst area at the time of Ms Vaughan's disappearance. But despite making this qualified concession, DSC Sim said he had no recollection of actually having made such statements. Having regard to the totality of the evidence of both DSC Sim and Sergeant Norton, as well as the content of Sergeant Norton's note of the 24 March 2006 meeting, this qualified concession does not justify the Operation Rani finding. It amounted to no more than the concession of a conceivable possibility. It cannot properly form the basis for the serious finding of dishonesty that the Operation Rani report made against DSC Sim.

Ogilvy finding concerning Sim

163. The Strike Force Ogilvy investigation and report identified a single issue concerning Detective Sergeant Sim. That issue, and the related Strike Force Ogilvy finding, was as follows:

Issue: that Detective Sergeant Sim lied to the Coroner and Sergeant Tara Norton, the Senior Coronial Advocate by indicating that the alibi of former Detective Sergeant Bradley Hosemans had been verified when the alibi had been found to be inaccurate
Finding: Not Sustained.

164. The Strike Force Ogilvy report identified a number of considerations that it regarded as tending to contradict the Operation Rani finding that DSC Sim had deliberately misled the Coroner and Sergeant Norton. These were that
- 164.1 Sim indicated he knew there were anomalies in the alibi provided by Hosemans that were disclosed through the call charge records
- 164.2 Sim was aware that DI Jacob knew of these anomalies
165. Sim informed the Coroner and Norton that Hosemans had been a person of interest in Strike Force Toko
166. Sim provided seven statements to the Coroner that disclosed a suggested association between Hosemans and Vaughan which would have been capable of forming in the mind of the reader that Hosemans was a person of interest
167. Sim conferred with the Coroner and Norton for Jacob to provide a statement in regard to Hosemans involvement as a person of interest
168. Jacobs's name was added to the inquest witness list by Norton
169. the Coroner requested Sim conduct an ERISP with Hosemans.
170. These considerations are substantially similar to those which I took into account in my discussion of the Operation Rani findings above. There is nothing in the Strike Force Ogilvy Investigator's report that requires me to alter the view I there expressed. The evidence does not justify any adverse misconduct finding against DSC Sim.

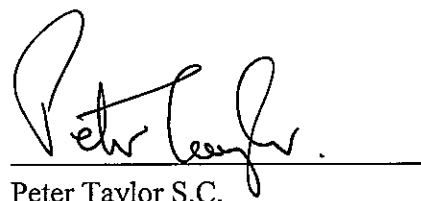
Specific answers to the matters for advice

171. My specific answers to the matters posed for my advice are as follows.

- 171.1 None of the specific adverse findings made in the Operation Rani report against either DI Jacob or DSC Sim were justified.
- 171.2 The favourable findings made in the Ogilvy Investigator's report were justified.
- 171.3 The adverse finding made in the Ogilvy Investigator's report against DI Jacob was not justified.
- 171.4 Neither DI Jacob nor DSC Sim engaged in misconduct, based on the material briefed.
- 171.5 The material briefed does not disclose evidence to justify action against either DI Jacob or DSC Sim under Part 8A of the Police Act.

172. I have qualified some of my specific answers by limiting them to the material briefed. That qualification is a specific reference to DI Jacob's contentious day book note. In the detailed discussion in the Memorandum I have highlighted the uncertainties about the actual date and significance of the note. I have expressed the view that the probable circumstances of its creation have not been fully investigated. If such an investigation is capable of being carried out, and in fact demonstrated that the contentious note was written on 5 March 2002, that result would materially affect my answers to the questions asked - so far as they relate to DI Jacob.

13 St James Hall
8 October 2008



Peter Taylor S.C.
Ph: 9223 0115

Note: *Liability limited by a scheme approved under Professional Standards Legislation.*

SCHEDULE TO IPIC SPECIAL REPORT TO NSW PARLIAMENT

FULL TEXT OF PIC LETTER DATED 28 SEPTEMBER 2011

Dear Inspector

Re: DI Jacob and ors.

Receipt of your letter dated 23 September 2011 is acknowledged. You have extended the time for the Commission's reply to your draft report to Wednesday 28 September 2011.

The draft report is 397 paragraphs in length. There seems little value in attempting to respond to each paragraph, as the draft report consists, for the most part, of the publication of your personal opinions as to how the evidence gathered by the Commission in its investigation should have been interpreted and presented.

Whilst there will always be scope in the conduct of such investigations for differing views on the question of how an agency should conduct a particular investigation, particularly when public hearings and serious allegations are involved, you have come to the view, some 5 years after the hearings in question, that the Commission has engaged in a "*reprehensible course of conduct*",... "*replete with significant misrepresentations of the evidence*" and "*entrenched and debilitating bias*".

I was not involved in the investigation in question but I have spent considerable time reviewing the Rani Report and the opinion obtained by the NSWPF from Mr Peter Taylor SC and I do not consider that there is any basis for such criticisms of the Commission. I have also seen the correspondence which has been exchanged between your office and the Commission in relation to this complaint and the earlier complaints by the witnesses Hosemans and Young arising out of the same investigation. Not only have the earlier submissions of the Commission had no effect in modifying your extreme views but neither have two advices obtained and furnished to you in each case from a Queens Counsel experienced in the conduct of investigative inquiries. The first of those advices was obtained by the Commission at your request but appears to have been ignored by you because it concluded that the Commission's practices and procedures were appropriate. The numerous references by you in your current draft report to your earlier Hosemans and Young reports contain no acknowledgement of the two advices relating thereto yet you have taken the unusual step of attaching to your current report the advice obtained by the NSWPF for its own internal purposes which the NSWPF itself has chosen not to publish.

Accordingly I see no value in engaging in a lengthy exercise to try and dissuade you from your views. Where your draft report contains factual mistakes or omits relevant material this will be brought to your attention. I will also make some observations about the supposed "*crucial error*" made by the Commission concerning the entry dated 5 March 2002 in DI Jacob's notebook, and the significance accorded to in the Taylor Advice and subsequently your draft report.

The entry dated 5 March 2002 in DI Jacob's notebook

Exhibit 33 in the Rani hearing was an extract from DI Jacob's notebook dated 5 March 2002. The contents of one entry on the second page of the extract were significant. The entry indicated that [in the context of the investigation into the disappearance of Janine Vaughan] DI Jacob had received information from a Barry Cranston which included an allegation of statement takers leaving out an issue re Brad Hosemans. Jacob was examined about the entry and agreed with its significance when he gave evidence to the Commission in June 2006. He agreed that the entry was in his handwriting. It was not suggested by Jacob during his evidence in 2006 that the entry was made by him on a date other than the one written on the preceding page, ie 5 March 2002. (The following page had the date 7 March written on it).

SCHEDULE TO IPIC SPECIAL REPORT TO NSW PARLIAMENT

Nor was it suggested in the submissions in reply served on DI Jacob's behalf in 2007 that the Commission would be in error in assuming the entry was made on the date written in Jacob's handwriting on the page.

Nor was it suggested by DI Jacob when he was subsequently interviewed about the entry by Professional Standards investigators in May 2008 that the date appearing on the relevant page was an error. At all times the Commission, DI Jacob and NSWPF were aware that the recorded source of the allegation, Mr Barry Cranston, had been in contact with police investigators in December 2001, January 2002 and again in June 2002, when DI Jacob and DI Waterman interviewed him. It was not in issue that when DI Jacob and DI Waterman interviewed Mr Cranston in June 2002 he spoke about the matters mentioned in the Jacob notebook entry of March 2002.

The report of the Professional Standards investigators completed in 2008, (the "Ogilvy Report") accepted that the entry was made by DI Jacob on 5 March 2002 but suggested that because DI Jacob was already aware of statements containing information about an association between Hosemans and Vaughan *"this knowledge would have prevented DI Jacob from forming a "sincere belief" that a criminal offence of misconduct was being committed by investigators under his control"*. Accordingly, the allegation against Jacob of failing to report this issue was found Not Sustained (Strike Force Ogilvy Report, p40).

The Strike Force Ogilvy Report found the three issues identified in the Rani Report not sustained but made criticisms of DI Jacob about some issues.

Following completion of the Strike Force Ogilvy Report the NSWPF retained Mr Peter Taylor SC to review the Rani Report and the Ogilvy Report and advise whether there was sufficient evidence for the NSWPF to take removal or reviewable action against officers Jacob or Sim.

Mr Taylor was not given all the documents referred to in the PIC transcripts. Mr Taylor requested further information about DI Jacob's contact with Mr Cranston and the 5 March 2002 notebook entry. When instructed that there was no other evidence of DI Jacob having direct contact with Mr Cranston before their meeting in June 2002 and that a Progress Report dated 5 March 2002 contained no reference to the Cranston allegations, Mr Taylor expressed the opinion that *"neither the date, nor the meaning nor the significance of Jacob's handwritten note are as clear as the Rani Report assumed"* (Taylor Advice paragraph 35).

Mr Taylor had no evidence to disprove that the notebook entry was made on 5 March 2002, merely an absence of any other corroborative record. It would have been quite remarkable if Mr Taylor had gone further and suggested that, because the information given by Mr Cranston in his interview in June 2002 corroborated what appeared in the notebook entry then the notebook entry should be assumed to have been made in June, not March. Such a suggestion would fly in the face of the objective evidence. Mr Cranston had already been in contact with the investigating police on one occasion in December 2001 and two occasions in 2002. It is entirely plausible that he passed the further information to DI Jacob in March 2002 and DI Jacob noted it but overlooked doing anything about it until it was raised again by Mr Cranston in June 2002.

Although the doubt cast by Mr Taylor on the reliability of the March 2002 notebook entry has been readily embraced by you and elevated to a *"crucial error"* on the part of the Commission, it is worth noting that the opinion provided to NSWPF by Mr Taylor was qualified in significant respects in its last two paragraphs:

171. My specific answers to the matters posed for my advice are as follows.

- 171.1 None of the specific adverse findings made in the Operation Rani report against either DI Jacob or DCS Sim were justified.**
- 171.2 The favourable findings made in the Ogilvy Investigator's report were justified.**
- 171.3 The adverse finding made in the Ogilvy Investigator's report against DI Jacob was not justified.**

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171.4 Neither DI Jacob nor DSC Sim engaged in misconduct, based on the material briefed.

171.5 The material briefed does not disclose evidence to justify action against either DI Jacob or DCS Sim under Part 8A of the Police Act.

172. I have qualified some of my specific answers by limiting them to the material briefed. That qualification is a specific reference to DI Jacob's contentious day book note. In the detailed discussion in the Memorandum I have highlighted the uncertainties about the actual date and significance of the note. I have expressed the view that the probable circumstances of its creation have not been fully investigated. If such an investigation is capable of being carried out, and in fact demonstrated that the contentious note was written 5 March 2002, that result would materially affect my answers to the questions asked – so far as they relate to DI Jacob.

Upon receipt of the Taylor advice the NSWPF Professional Standards Command determined at a meeting of the Complaint Management Team on 13 October 2008 that there were no lines of inquiry that could take the issue further and accepted the opinions of Mr Taylor. All issues were found not sustained against DI Jacob and DS Sim.

In the Commission's view no further investigation into the notebook entry could be usefully conducted because the records speak for themselves. There is no basis made out in either the Taylor advice or your draft report as to why the most logical conclusion regarding the notebook entry dated 5 March 2002 is not still the most plausible, namely, that entry was made on the date written by the author at the time it was made.

There is accordingly no basis for the opinion repeated a number of times in your draft report that the Commission made a "*crucial error*" in proceeding on the basis that DI Jacob made the notebook entry on 5 March 2002.

NSWPF Investigation of allegations against Jacob - Strike Force Ogilvy

As stated above, Mr Taylor SC was retained by NSWPF after an internal investigation conducted by the Professional Standards Command found the issues in the Rani Report concerning DI Jacob not sustained but made other criticisms of DI Jacob. Although paragraph 53 of your draft report refers to that investigation in the following terms:

the PIC recommendations were referred for review to Professional Standards Command (NSWP) which conducted an investigation into the evidence relied upon by the PIC, and some additional material, and concluded there was no proper evidentiary basis for the PIC recommendations

no mention is made by you of the fact that the internal report made the following sustained finding at page 2:

That Detective Inspector Paul Jacob failed to adequately and impartially investigate the allegation of an association between former Detective Sergeant Bradley Hosemans and Janine Vaughan

The Ogilvy Report also made criticism of DI Jacob in the course of examining DI Jacob's report dated 27 November 2005 (Exhibit 53) which was provided to DI Nash in response to the queries raised by the Ombudsman. In the course of the Ogilvy investigation DI Jacob produced a series of emails between himself and DI Nash regarding the response DI Jacob should make to the queries raised by the Ombudsman. DI Jacob told the Ogilvy investigators that the comment about call charge records being unreliable was included in his report at DI Nash's suggestion. This was confirmed by DI Nash. This information had not been given to the Commission by DI Jacob. The

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Ogilvy Report, although declining to make a sustained finding against DI Jacob, contained the following observation at page 57:

The response to the Ombudsman that call charge records were unreliable was based on a suggestion made by Nash which was not discounted by Jacob who in actual fact held a contrary view.

In hindsight, a more critical evaluation of this suggestion should have been made by Jacob, but this did not occur and the information was forwarded to the Ombudsman as it stood. The information regarding call charge records had been provided by Nash in good faith based on knowledge and upon his past experience as an investigator and intelligence analyst, flawed as this view may have been.

It is not possible to find that Jacob lied through Nash to the Ombudsman when in fact this information was provided by Nash in the form of opinion only and not of as fact.

The above conclusion by the Ogilvy Report was exceedingly generous to DI Jacob. Not only was he an experienced criminal investigator of equal rank to DI Nash but he signed a report containing an opinion that he did not believe, knowing that the report would be passed to the Ombudsman. Had DI Jacob given evidence during the Rani investigation about the contribution made by DI Nash to the report submitted by DI Jacob it is unlikely in my view that the Commission would have come to a different view. Similarly I do not consider that the calling of the Ombudsman or DI Nash to give evidence would have made any difference. The issue here was the report written and signed by DI Jacob.

No Formal Response by the Commission to the Taylor Advice

The Taylor Advice was provided to the Commission by NSWPF on the basis that it was the subject of legal professional privilege and was not to be further released. Subsequently the NSWPF agreed to provide a copy of the advice to you.

The Commission advised you in writing on 25 May 2010 that it had considered the advice and adhered to the opinions and recommendations contained in the Rani Report (Commission letter 21370/32).

As I stated at the start of this letter, minds may differ as to how an investigation by an agency such as this ought to be conducted. Evidence will often be capable of more than one interpretation. Although you appear to believe that, because the Commission's inquiries found no credible evidence to link Mr Hosemans with the disappearance of Ms Vaughan, (a fact which the Commission readily acknowledged), and because DI Jacob had already come to the same conclusion before the Commission's investigation even commenced, then the Commission's criticisms of DI Jacob's investigation were "*fundamentally irrelevant*", I do not share that view. It diminishes the significance of the numerous irregularities in the actions of the investigating police regarding Hosemans which called for investigation. In my view the lines of inquiry pursued by the Commission in relation to both Mr Hosemans and the police investigators were appropriate.

The Commission published certain opinions after giving notice to the officers involved and the NSWPF obtained independent advice about those opinions. The independent advice was qualified but nevertheless it was followed by NSWPF. The Commission accepted the entitlement of the NSWPF to do so and did not offer any further views. It reported on the outcome as it is required to do in its Annual Report. The process has run its course.

Despite the further information brought forward since the publication of the Rani Report and the opinions offered in the Taylor advice and your draft report, I do not consider that any of the steps suggested in the conclusion of your draft report are called for.

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FULL TEXT OF INSPECTOR'S LETTER DATED 7 OCTOBER 2011

Dear Acting Commissioner,

Re: DI Jacob and Ors

- 1) I acknowledge receipt of your letter dated 28 September 2011 in respect of this matter which I note is the Commission's response to my Draft Report forwarded to you on 16 August 2011 for the purpose of providing the Commission the opportunity to comment thereon prior to the Report being finalised.
- 2) However, apart from the matters dealt with below, your response is limited to the sweeping generalisation in the second paragraph of your letter which is not only unfair, but quite undeserved. Its purpose can only be an attempt to distract from the paucity of your response in terms of specific criticisms of the Draft Report.
- 3) The fourth paragraph of your letter, referring to the two Opinions the Commission obtained from Counsel, contains significant factual errors which I find inexcusable.
- 4) It is simply untrue that the first of those Opinions was obtained by the Commission at my request.
- 5) It is also demonstrably untrue that I ignored that Opinion.
- 6) It is equally demonstrably untrue that I ignored the second Opinion to which you refer.
- 7) In paragraph 101 of the Inspector's Report in the matter of Ms Young's complaints against the PIC, complaints which I upheld, the following recommendation appeared: "I further recommend to the Commission that it forthwith seek written advice from Senior Counsel, in the light of this Report, as to the appropriateness of the Commission's relevant practices and procedures, and as to whether in the light of this report changes should be made to such practices and procedures, and, if so, what changes."
- 8) The Commission deliberately disregarded that recommendation and instead sought and obtained an Opinion from Counsel, dated 25 May 2009, as to the merits of the Inspector's Report in the matter of Young.
- 9) I conveyed my objection to the Commission's conduct in this regard in subsequent correspondence, and in any event provided a detailed written analysis of Counsel's opinion to the Commission dated 2 June 2009.
- 10) For the reasons set out in that written analysis I advised the Commission that in my opinion Counsel's opinion was defective and wrong in fact and in law.
- 11) It is therefore not correct to suggest that Counsel's opinion was obtained at my *request*, and then was *ignored* by me.
- 12) The second opinion from the same Counsel was sought and obtained by the Commission in relation to the Inspector's Report upholding the complaints by Mr Hosemans against the Commission.
- 13) This opinion was also analysed by me and a copy of that analysis was provided to the Commission.

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- 14) I provided you with my analysis of that second opinion by letters dated 8 March 2011 and 11 March 2011, respectively. You have never attempted to refute that analysis by a detailed response. For the reasons set out in that analysis I concluded that Counsel's opinion was significantly defective and should not be relied upon.
- 15) Once again, therefore, there is no basis for the assertion that I *ignored* that Opinion.
- 16) Without providing me with the opportunity to respond to that Opinion before you placed reliance upon it, you advised me by your letter dated 4 March 2010 that the Commission had adopted that opinion and that without prior notice to me you had added a notation to the Commission's website drawing attention to that Opinion, and the earlier Opinion by the same Counsel.
- 17) Yet you have made no notation on the Commission's website acknowledging the existence and effect of my response to those Opinions.
- 18) Given the significance I have attached to the existence and content of Mr. Taylor's review of the relevant findings in Rani I fail to see that annexing a copy to my Report for the benefit of those reading my Report could be seen as "unusual", rather than a logical step to take.

The entry in DI Jacob's notebook: paragraphs 164-170 of Draft Report:

- 19) In your criticisms of the conclusion in the Draft Report that there has occurred a crucial error in respect of the above, you appear to make a number of assumptions.
- 20) One is that the entry in the notebook should be viewed as "significant" (as stated in the Rani Report), despite the vagueness of the wording of the notebook entry. Another is as to the precise meaning of that entry (as to this, see Taylor review 110). In my opinion neither of those conclusions ought or could be drawn at least in the absence of evidence from Cranston about the matter.
- 21) As noted in the Draft Report (166) Cranston was not called despite having been interviewed by the Commission three months prior to DI Jacob's giving evidence. On the evidence available to the Commission at the time (some of which is referred to by Mr Taylor) Cranston may well have turned out to be an unreliable witness.
- 22) If the statement in the Draft Report that "the note could not have been created before the events to which it related took place. They took place in June 2002", (at 164) is consistent with the available evidence, and if it is clear there was in fact no other evidence to contradict the available evidence, then your opinion that "the most logical conclusion" is that the entry was made in March 2002, cannot be correct.
- 23) In your letter you say: "It was not in issue that when DI Jacob and DI Waterman interviewed Cranston in June 2002 he spoke about the matters mentioned in the Jacob entry of March 2002." That concession does not appear in the Rani Report.
- 24) There is no evidence that DI Jacob interviewed Cranston at any time prior to 4 June 2002, or that Cranston had supplied that information to any other police officer at some earlier time.
- 25) If there was any doubt about there being a complete absence of such evidence, the position seems to have been made abundantly clear by the results of the further enquiries initiated at the request of Mr Taylor (review 33).

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- 26) Yet in the absence of any evidence to support it you express the opinion that it “is entirely plausible that he [Cranston] passed the further information to DI Jacob in March 2002 and DI Jacob noted it but overlooked doing anything about it until it was raised again by Mr. Cranston in June 2002.”
- 27) Your letter also refers to various passages in Mr Taylor’s review, omitting others of particular relevance to the subject matter.
- 28) In the review at 13, there is a reference to the fact that DS Waterman who was present at the Cranston June interview might have been able to provide relevant evidence. But as noted in Draft Report 165, when giving evidence on 5 June 2006 he was asked no questions concerning it.
- 29) The review, at 28, notes circumstances that provide “considerable reason to doubt that the note in fact records information known to Jacob on 5 March 2002.” At 34 of the review, Mr Taylor further noted that it appeared “likely DI Jacob and DS Waterman were first made aware of Cranston’s claims at the meeting on 4 June....” See also 113.
- 30) An additional circumstance not available to Mr Taylor was that Cranston had been interviewed by the Commission. As noted at Draft Report 166, in that interview there was only passing reference to the 4 June interview, no reference to the DI Jacob note, and no reference to “statement takers.”
- 31) It is also obvious that Mr Taylor had regard to the evidence of RA2 as represented in the Rani Report. (see 39, 110, of the review.) However, as revealed in Draft Report 174-176, that evidence was in fact unreliable.
- 32) Your letter also makes reference to the Ogilvy investigation, but not to the following matters concerning the limitations of that investigation.
- 33) At 108, 111, of the review, it is noted that while Ogilvy interviewed DI Jacob about the contentious note, it did not investigate any of the various matters noted in the review making it unlikely the note was made in March 2002, and placed restrictions upon the scope of comment permitted to DI Jacob.

Criticism of the Commission’s conduct vis a vis the Taylor review:

- 34) I have had regard to your comments as contained in your letter in respect of this subject matter. However, in my view the position as stated in 352-375 of the Draft Report remains valid and no amendment is called for in the light of your comments.
- 35) Your views as stated in the final two sentences of the third last paragraph are noted. However, in my view, the opinion of the independent review about that matter (at 84) is clearly to be preferred, namely, that the PIC had not obtained any information relating to Hosemans that had not been known to Strike Force Toko, and that the ultimate (and belated) conclusion expressed in the Rani Report that there was no reliable evidence of any involvement of Hosemans in the disappearance of Ms Vaughan, “makes quite academic . . . the poorly justified criticisms of the Strike force Toko investigation relating to DS Hosemans.”
- 36) Recent correspondence from DI Jacob informs me that neither he nor DS Sim requests any amendments or additions to the Draft Report.
- 37) Accordingly, it is my intention, in due course, to present my Report to Parliament.