REPORT TO PARLIAMENT

OPERATION FLORIDA

VOLUME 1

REPORT TO PARLIAMENT OPERATION FLORIDA
JUNE 2004

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The Hon Dr Meredith Burgmann MLC
President
Legislative Council
Parliament House
SYDNEY NSW 2000

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

Dear Madam President and Mr Speaker

In accordance with section 96(2) of the *Police Integrity Commission Act 1996*, the Commission hereby furnishes to you a Report regarding Operation Florida, being a Report in relation to a matter as to which the Commission has conducted a public hearing.

I draw your attention to section 103(2) of the *Police Integrity Commission Act 1996*, pursuant to which I recommend that this Report be made public forthwith.

Yours faithfully

T P Griffin
Commissioner

June 2004

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EXECUTIVE SUMMARY

BACKGROUND TO FLORIDA

The Commission's Operation Florida investigation arose from a joint NSW Crime Commission / NSW Police investigation codenamed "Mascot", which commenced early in 1999. The Commission joined the investigation in July 2000, by which time a substantial body of evidence of serious police corruption had been gathered by the officers from the NSW Crime Commission and the NSW Police Special Crime Unit. The collection of information and evidence continued, and in October 2001 the investigation was revealed in a public hearing at the Police Integrity Commission.

THE PUBLIC HEARINGS

The first day of public hearings was 8 October 2001. Those hearings continued over the next 14 months, during which seven separate "segments" of evidence were presented. Each segment examined a particularly serious area of corruption uncovered during the investigation. Each segment is discussed in a separate chapter of this Report.

There were a total of 78 days of public hearings. In addition, the investigation included a number of private hearings, the last day of private hearings being 27 August 2003. A total of 99 witnesses gave evidence, 95 in public hearings and four in private hearings, the evidence from which was later released as evidence in the public proceedings. Of the 99 witnesses, 32 were serving NSW police officers at the time they gave evidence, 31 were former officers and 36 were civilians. Fourteen of the 32 serving officers have since left NSW Police, eleven of those as a direct result of this investigation.

The evidence presented in the public hearings revealed a range of corrupt conduct, including the following:

- Soliciting and receiving bribes from drug dealers
- Organising or "greenlighting" drug trafficking
- Stealing cash and property
- Reducing charges in return for payment
- Perverting the course of justice
- Assaulting suspects
- "Verballing" suspects
- "Loading" suspects
- Organising or "greenlighting" break and enter offences

The conduct in question was committed by officers attached to a number of different commands within NSW Police. It spanned a period dating from the late 1980s until 2001. In total, the investigation identified 418 incidents of police corruption or misconduct. Twenty-nine of those incidents were the subject of examination in the hearings. A Task Force set up by NSW Police investigated the balance of the matters. The Commission oversighted the NSW Police investigation of those matters.

The Commission wishes to formally acknowledge the excellent investigative work by the officers from NSW Police and the NSW Crime Commission. In particular, the work undertaken by those two agencies during the covert period of the investigation, between January 1999 and the start of public hearings in October 2001 produced startling evidence of police corruption over a lengthy period. The success of Operation Florida must be attributed to the work of those two agencies during that period.

Of the matters examined by the Commission in hearings, a number of serving and former police were involved in more than one incident. Those police were called to give evidence in each segment in which they were named.

THE EVIDENCE

NORTHERN BEACHES SEGMENT

The first segment of evidence concerned the conduct of detectives from the Northern Beaches of Sydney, particularly the Manly / Davidson Local Area Command. The corrupt conduct arose primarily from dealings between drug offenders and police, and featured routine thieving by police while executing search warrants, and the reduction of charges in return for cash and drugs stolen by police. Some drug dealers were required to pay a weekly or monthly payment to the police in order to continue their drug dealing without police interference. Most of the conduct examined in this segment occurred during 2000 and 2001.

Nine civilians gave evidence, as codenamed witnesses, about the searches in which they were the victims of corrupt conduct by police. Two other civilians also gave evidence of being "greenlighted" by police officers from Manly. One was a drug dealer and the other committed a number of break, enter and steal offences.

During the course of the Northern Beaches investigation a number of integrity tests were conducted on police officers, with significant results. Integrity testing of suspected corrupt police had been recommended by the Royal Commission into the New South Wales Police Service (the Royal Commission) in its final report published in May 1997. Following that recommendation, section 207A was inserted into the *Police Act 1990* to enable conduct, which would otherwise be unlawful, to be deemed lawful for the purposes of authorised integrity testing programs.

The segment featured a significant amount of electronic evidence, including listening device and telephone intercept recordings, and revealed the assistance of two covert

operatives: a serving NSW police officer codenamed M5, and a civilian, Luke Michael Benbow.[1]

In addition to exposing numerous instances of criminal activity and serious police misconduct, this segment also examined supervision and management issues at the Local Area Command level, in an attempt to determine why such blatant instances of impropriety had been able to continue undetected.

As a result of this investigation six (now former) police officers were found to have engaged in police misconduct. They were all criminally prosecuted and received custodial sentences arising out of matters revealed during the hearings. Those persons are:

Davidson, Shaun Andrew - charged with four counts of accepting bribes pursuant to section 200(1) of the *Police Act 1990*. Davidson pleaded guilty on all counts and was sentenced to 18 months imprisonment concurrent on each, with a non-parole period of 12 months. He appealed to the District Court, which confirmed the sentence on 3 October 2002, but reduced the non-parole period to nine months.

Davidson was suspended with pay from NSW Police on 8 October 2001 and without pay on 20 December 2001. He resigned on 14 January 2002.

In May 2002 the Commission commenced proceedings in the Supreme Court of New South Wales under the *Criminal Assets Recovery Act 1990* against Davidson. On 27 May 2002 the Supreme Court ordered that Davidson pay the Treasurer the sum of $1,100. The money was paid on 30 May 2002.

Hill, David Marshall - charged with receiving a corrupt reward pursuant to section 249B of the *Crimes Act 1900*. Hill pleaded not guilty but was convicted and on 3 April 2003 was sentenced to eight months imprisonment with a non-parole period of six months.

Hill was suspended with pay from NSW Police on 8 October 2001 and without pay on 20 December 2001. He was nominated for action pursuant to section 181D of the *Police Act 1990* on 6 December 2001. He resigned on 25 March 2002 after being required to show cause why he should not be dismissed pursuant to section 181D of the *Police Act 1990.*

Jasper, Matthew John - charged and pleaded guilty to the following on indictment:

- five counts of perverting the course of justice pursuant to section 319 of the *Crimes Act 1900*;
- four counts of receiving / giving corrupt rewards pursuant to section 249B of the *Crimes Act 1900*;
- three counts of receiving a bribe pursuant to section 200(1) of the *Police Act 1990*; and
- one count of being an accessory before the fact to a break, enter and steal.

[1] This witness was originally codenamed B5. The non-publication order on Benbow's name was lifted on 8 May 2002.

A further 13 offences were taken into account on sentence.

Jasper received a sentence of seven years imprisonment with a non-parole period of five years. Assistance to authorities was taken into account on sentence. An appeal on the basis of inadequacy of sentence is pending in the Court of Criminal Appeal.

Jasper was tried separately in relation to one charge of permitting the supply of a prohibited drug (heroin) pursuant to subsection 25(1) of the *Drug Misuse and Trafficking Act 1985*. He pleaded guilty and on 11 March 2004 was sentenced in the Supreme Court of New South Wales to five years imprisonment with a non-parole period of three years. The sentence will be served concurrently with his earlier sentence so will not increase Jasper's overall time in gaol.

Jasper was suspended from NSW Police on 8 October 2001 and resigned on 23 October 2001.

In October 2001 the Commission commenced proceedings in the Supreme Court of New South Wales under the *Criminal Assets Recovery Act 1990* against Jasper. On 15 April 2002 the Supreme Court ordered that Jasper pay the Treasurer the sum of $39,517. The money was paid on 10 August 2002.

Messenger, Mark William - charged on 22 February 2002 with four counts of receiving corrupt rewards pursuant to section 249B of the *Crimes Act 1900*, and one count of giving false or misleading evidence pursuant to section 107 of the *Police Integrity Commission Act 1996* (the Act). He pleaded guilty and was sentenced on 25 October 2002 to a total of five years and two months imprisonment with a non-parole period of three years and two months.

Messenger was suspended with pay from NSW Police on 8 October 2001, suspended without pay on 20 December 2001 and resigned on 18 September 2002.

In August 2002 the Commission commenced proceedings in the Supreme Court of New South Wales under the *Criminal Assets Recovery Act 1990* against Messenger. On 19 August 2002 the Supreme Court ordered that Messenger pay the Treasurer the sum of $1,500. The money was paid on 20 August 2002.

Patison, David Phillip - charged and pleaded guilty to ten offences on indictment:

- three counts of perverting the course of justice pursuant to section 319 of the *Crimes Act 1900*;
- two counts of receiving corrupt rewards pursuant to section 249B of the *Crimes Act 1900*;
- one count of permitting the supply of a prohibited drug (heroin) pursuant to section 25(1) of the *Drug Misuse and Trafficking Act 1985*;
- three counts of receiving a bribe pursuant to section 200(1) of the *Police Act 1990*; and
- one count of knowingly take part in the supply of a prohibited drug (cannabis) pursuant to section 25(1) of the *Drug Misuse and Trafficking Act 1985*.

A further 12 corruption based offences were taken into account on sentence.

Patison was sentenced in the Supreme Court of New South Wales on 2 December 2002 to seven years imprisonment with a non-parole period of five years. Assistance to authorities was taken into account on sentence. An appeal by the Director of Public Prosecutions against the inadequacy of sentence was dismissed by the Court of Criminal Appeal.

Patison was suspended from NSW Police on 8 October 2001 and resigned on 8 February 2002.

In October 2001 the Commission commenced proceedings in the Supreme Court of New South Wales under the *Criminal Assets Recovery Act 1990* against Patison. On 6 May 2002 the Supreme Court ordered that Patison pay the Treasurer the sum of $58,675. The money was paid on 1 August 2002.

Peattie, Raymond John - charged with four counts of accepting bribes pursuant to subsection 200(1) of the *Police Act 1990*. He pleaded guilty and on 3 May 2002 was sentenced to three years and two months imprisonment with a non-parole period of one year. Significant issues of assistance and contrition were taken into account on sentence.

Peattie was suspended from NSW Police on 8 October 2001 and resigned on 31 October 2001.

In May 2002 the Commission commenced proceedings in the Supreme Court of New South Wales under the *Criminal Assets Recovery Act 1990* against Peattie. On 27 May 2002 the Supreme Court ordered that Peattie pay the Treasurer the sum of $2,500. The money was paid on 8 April 2003.

In addition to the abovenamed police, the following civilians are, in the opinion of the Commission, "affected" persons pursuant to subsection 97(2) of the Act.

Benbow, Luke Michael - Benbow pleaded guilty to two counts of supplying cannabis pursuant to section 25(1) of the *Drug Misuse and Trafficking Act 1985.* A further charge of supplying cannabis pursuant to section 25(1) of the *Drug Misuse and Trafficking Act 1985* and two counts of goods in custody were taken into account on sentencing. He was sentenced on 21 March 2002 and received a two year suspended sentence.

Caccamo, Vincent - Caccamo was charged with a number of drug related offences and eventually pleaded guilty to two counts of supplying heroin pursuant to subsection 25(2) of the *Drug Misuse and Trafficking Act 1985* and one charge of supplying cannabis pursuant to subsection 25(1) of the *Drug Misuse and Trafficking Act 1985.* Three further charges were taken into account on sentencing: two charges of supplying heroin pursuant to subsection 25(1) of the *Drug Misuse and Trafficking Act 1985* and a charge of receiving stolen property pursuant to section 188 of the *Crimes Act 1900.* He was sentenced on 30 May 2002 to eight years imprisonment with a non-parole period of five years. Caccamo received a significant discount on his sentence for the assistance he provided. The Judge indicated that but for his assistance he would have received 15 years imprisonment.

Green, Martin Geoffrey - was charged and faced trial for the following three matters – count 1) Incitement of Benbow to bribe Patison and counts 2) and 3) Act with intent to pervert the course of justice. Green pleaded not guilty on each count.

A jury in the District Court at Sydney returned a verdict of "Not Guilty" on each count on the indictment in April 2003.

The Law Society of New South Wales cancelled Green's practising certificate as a solicitor. The Supreme Court of New South Wales refused an application for a stay of the cancellation pending an appeal. The appeal was later dismissed. The Law Society has advised the Commission that Green does not hold a current practising certificate.

GUNS SEGMENT

The Guns segment examined the activities of the Armed Hold-Up Unit or Squad (AHU) attached to the Major Crime Squad North (MCSN), particularly in relation to a collection or "stash" of weapons retained by members of the AHU for the apparent purpose of improperly using them to "load" suspects and/or otherwise strengthen the prospects of success of prosecution.

The hearings commenced on 3 June 2002 with sixteen witnesses giving evidence over 11 hearings days. There was a considerable amount of electronic evidence used in this segment including surveillance film and conversations recorded by listening device. The segment also utilised the assistance of the covert operative, M5 together with two other former police officers who gave evidence under the code names N1 and F7.

The activities examined in this segment dated from the time of the relocation of the MCSN to Chatswood in about 1985-1986 until the alleged dumping of the stash of firearms in the Hawkesbury River during the Royal Commission in 1995-1996. The principal personnel involved in this segment were former and/or current detectives who served within the AHU when it was attached to MCSN and based at Chatswood.

The structure of the AHU during the years 1987 until 1997, comprised a Team Leader, who was a Senior Sergeant, and two teams of three or four officers each. The members of the teams varied both in personnel and rank. Membership of the teams was loosely based on the geographical location of the officers however the teams were not precisely defined and throughout the relevant period there was regular interaction amongst the individual officers.

The colloquial terms "load" and "verbal" were used frequently in the evidence during this segment. For the purposes of the hearing and this Report, the terms were generally accepted as having the following meanings:

Load – Suspect charged with offence/s based wholly or in part on false evidence as to the finding of a weapon (or other items) in the possession of the suspect and / or related false admissions.

Verbal – False evidence by police that a suspect has confessed or made inculpatory remarks at arrest or interview.

The initial focus of this segment was on the dumping of a stash of weapons by members of MCSN during the Royal Commission some time in 1995-1996. The

evidence was that as the Royal Commission progressed, officers of MCSN became concerned about the retention of the stash. Two officers, Kim Dowding and M5, undertook the task of disposal and borrowed a boat belonging to their Inspector, Ronald Smith, to do so. They collected the firearms in carry bags and then proceeded to the Hawkesbury River near Brooklyn where they dumped the weapons. They broke up many of the weapons, both at MCSN offices, and in the boat, prior to dumping them.

In 2001-2002, after some weapons were recovered from the Hawkesbury River concern developed amongst those involved in the collection and subsequent dumping of the weapons as to the possible identification of weapons, through serial numbers, which would enable the weapons to be traced to a particular police operation and / or personnel. The recovery of the weapons generated considerable conversation between the involved officers and M5, in relation to the recovery and the risk of discovery. Some of the conversations were captured by listening device. The recordings of those conversations, which were tendered as exhibits in the hearing, demonstrated an awareness of the stash, and the dumping of the stash, by the former members of the AHU.

The segment also examined the reasons why police would retain such a stash of weapons and what use, if any, was made of them. Evidence was adduced in relation to two specific operations involving officers from the AHU. The first of the operations had been named by the involved police as the "Wogs Out of Work" Operation. It involved a number of civilians who were arrested in 1990 and charged by officers from MCSN. Two of those civilians, codenamed M11 and P2,[2] gave evidence to the Commission. They had both maintained from the date of their arrest that they were "loaded" with firearms and "verballed" as to related admissions. The second operation occurred in 1994 and involved the arrest and charging of a person codenamed A2, who subsequently died in 1999. This operation also involved an alleged load and related verbal.

The operations involving these civilians were identified as being representative of the type of practice implemented on occasions by officers of the AHU. The evidence of the civilian witnesses, and that of the codenamed police officers, together with the exhibits and surveillance material, portrayed serious police misconduct deliberately directed to perverting the course of justice.

As a result of this investigation nine former police officers were found to have engaged in police misconduct. Those officers are:

- Dowding, Kim
- Ehsman, Peter
- F7
- King, James Justin
- M5

[2] P2 is now deceased. He died in September 2003.

- N1
- O'Toole, Dennis Peter
- Smith, Ronald Bruce
- Vicary, Greig Robert

LET'S DANCE SEGMENT

This segment examined a police operation called "Let's Dance" which was conducted by Manly Detectives and the Major Crime Squad North (MCSN) over a period of two days in February 1992. The Commission hearing was held over 16 days, commencing on 12 November 2001, and continuing in December 2001, and April and May 2002. Twenty-one witnesses gave evidence, some of them on more than one occasion.

During the two-day "Let's Dance" Operation, two offenders, codenamed A1 and P1, were arrested and a large quantity of money and drugs, mainly ecstasy tablets, were found. The hearing examined allegations that police involved in the arrests of P1 and A1 had corruptly taken $85,500 / $86,000 found at the Manly Pacific Hotel and $25,000 found at A1's premises, and divided it amongst themselves (and other police who were not involved in the operation). A further allegation arose during the course of the hearing that documentation prepared by police for use in the prosecution of A1 and P1 deliberately understated the amount of money found by police at the time of the arrests.

Supporting the allegations were listening device recordings of conversations between the informant M5, who was a former member of the MCSN, and two other former members of that squad, N1 and F7. At the time of the recorded conversations neither N1 nor F7 knew that M5 was an informant and was recording their conversations.

When first called to give evidence at the hearing, N1 and F7 both denied that they had been involved in corrupt activity and suggested that the conversations were simply drunken talk. Subsequently, however, both indicated a desire to assist the Commission in its investigation. They were both recalled to give evidence and then confirmed the substance of the recorded conversations. They admitted to being involved in the stealing of money during Operation Let's Dance and implicated others in the corrupt taking, and receiving, of money seized during the course of the Operation.

As a result of this investigation one serving and seven former police officers were found to have engaged in police misconduct. Those officers are:

- F7
- Hulme, Paul
- Kendall, Glenn Wayne
- King, James Justin

- Monk, Robert John
- N1
- O'Toole, Dennis Peter
- Smith, Ronald Bruce

A further three serving and five former officers were named as persons against whom substantial allegations were made but against whom no finding of police misconduct has been made. They are:

- Adams, Miles Bradley
- Bridges, Stephen Anthony
- Crawford, Vivienne Alexa
- Gumley, Howard Robert
- Hagan, Michael Arthur
- Hollis, Wayne
- Nicholson, Ian Bruce
- St John, Stephen Anthony

LETTERS OF ASSISTANCE SEGMENT

This segment examined the creation of documentation by members of the former Drug Enforcement Agency of NSW Police, (DEA), which detailed assistance said to have been provided to police by two offenders, codenamed P4 and P6. The practice, in sentence proceedings, of tendering documents that detail assistance given by offenders, with a view to having the sentence reduced or discounted, is a long standing practice in criminal law, now enshrined in section 23 of the *Crimes (Sentencing Procedure) Act 1999*. The practice is of benefit to both offenders and law enforcement authorities. The offender has an incentive to cooperate with police and provide useful information if the sentence he or she receives is substantially discounted as a consequence of the assistance provided.

The allegation examined in this segment was that the documentation provided by police in relation to the assistance provided by P4 and P6 was incorrect, in that P4 and P6 had not provided the information and had allegedly paid large amounts of money to the police officers for the provision of the fraudulent documentation.

The Commission's hearing commenced on 8 April 2002 and continued over seven hearing days, the last being 29 April 2002. Fourteen witnesses gave evidence.

Some of the evidence given during the segment touched on evidence given in the Let's Dance segment. The Commission relied on the evidence given in the Let's Dance segment to establish that the documents detailing the supposed assistance to police by P4 and P6, in so far as that assistance was said to have had any bearing on

the arrest of the two drug dealers, P1 and A1, and the seizure of large quantities of drugs and cash associated with them, were objectively false.

In addition to allegations of police misconduct in relation to "letters of assistance", evidence was also adduced in this segment about allegations of other misconduct by members of the DEA, including stealing money from an offender and involvement in drug dealing.

As a result of this investigation the two former police officers were found to have engaged in police misconduct. Those officers are:

- Kempnich, Michael Scott
- Wilding, Guy John

NEWPORT SEGMENT

The Newport segment focused on the activities of members of NSW Police attached to the Major Crime Squad North Drug Unit based at Gosford Drug Unit (GDU) and North Sydney Drug Unit (NSDU) in relation to the execution of search warrants at West Ryde and Newport on 21 February 1992.

The segment commenced on 9 July 2002. There were six days of public hearings. After the public hearings two codenamed witnesses gave evidence in private hearings. One of those witnesses had also given evidence in the public hearings. Edited versions of the transcripts of evidence given at the private hearings were later tendered as exhibits in the public proceedings.

The impetus for this inquiry came from information provided by the informant M5, who had been attached to NSDU and participated in the execution of the search warrants. Information was also provided independently by L17 who had an association with both the premises that were searched.

During the execution of the search warrants on 21 February 1992, police located cannabis leaf and cannabis resin at both the West Ryde and the Newport addresses. L17 was arrested and charged with two counts of supply of a prohibited drug and three counts of possession of a prohibited drug. She was committed for trial on one supply charge and was eventually found not guilty of the supply charge.

Five allegations of misconduct were examined in this segment. They were that:

- police stole a small gold ingot from the Newport premises;
- police stole $10,000 in cash from the Newport premises;
- $10,000 stolen from the Newport premises was shared between the members of GDU and NSDU;
- police officers involved in the prosecution of L17 corruptly assisted L17 in relation to the charges brought against her; and

- members of GDU and NSDU shared $50,000 corruptly received following the arrest and charging of L17.

Although the evidence raised suspicions in relation to the conduct of police during the operation in 1992 the evidence was not such that the Commission could form an opinion, except in relation to the assistance given to L17, that misconduct had occurred as alleged.

As a result of this investigation two former officers, David Marshall Hill and M5, were found to have engaged in police misconduct.

Although named as "affected persons" the other involved officers, listed below, were not found to have engaged in police misconduct:

- Eade, Wayne James
- Ison, Ian Frederick
- Kerr-Thomson, Timothy Andrew
- McClelland, Stephen James
- Nield, Maurice Gilbert
- Ramaccia, Frank
- Walsh, Ronald

Two codenamed civilians, B11 and L17, were also named as "affected persons" pursuant to subsection 97(2) of the Act. No adverse finding was made against B11. The Commission is of the opinion however that consideration should be given to the prosecution of L17 for giving false or misleading evidence to the Commission pursuant to section 107 of the Act.

MAGNUM SEGMENT

The Magnum segment examined the conduct of NSW police officers attached to Task Force Magnum, which was established in 1991. The aim of the Task Force was to investigate the growing number of armed robberies on armoured vehicles occurring at that time. The Task Force investigated a number of matters and made a number of arrests however the Commission's hearing only examined the investigation, arrest and prosecution of two people, C11 and William Stanley Stuart, for the robbery of Danny's Seafood Restaurant at La Perouse on 16 February 1991.

The evidence was heard over nine days, commencing on 9 September 2002 and concluding on 14 October 2002. Fifteen witnesses gave evidence.

Early in the investigation of the 1991 robbery, C11 was identified by one of victims from a photograph shown to the victim by police. The victim later retracted that identification. Police formed the opinion that Stuart was also involved in the robbery. Search warrants were obtained for the residences of both C11 and Stuart.

Evidence was led that police fabricated evidence and admissions in relation to both C11 and Stuart. C11 and Stuart were both committed for trial but, after the identification evidence was withdrawn, C11's charges were dropped. Stuart was tried and found not guilty of the robbery.

C11 has always claimed, since the day of his arrest, that he was not guilty of the offence. After the charges against him were dropped he made a complaint to NSW Police about the investigation. The internal investigation of this complaint led to a charge of conspiracy to pervert the course of justice being laid against John Stuart Davidson, Robert James Irwin, Ian Grant Blake and N1. The officers were committed for trial. The trial was heard before a jury in the District Court at Sydney in 2000. The police officers were found not guilty of all charges.

N1, F7 and M5 were all involved in the execution of the search warrants, N1 in relation to C11, and F7 and M5 in relation to Stuart. They gave evidence to the Commission of their involvement, and the involvement of the other officers, in the fabrication of evidence against both C11 and Stuart. N1 also gave evidence that he, and the other officers charged with conspiracy to pervert the course of justice, had given false evidence at their trial.

As a result of this investigation the one serving and nine former police officers were found to have engaged in police misconduct. Those officers are:

- Bernasconi, Phillip Sydney
- Blake, Ian Grant
- Davidson, John Stuart
- Dowding, Kim
- F7
- Irwin, Robert James
- King, James Justin
- M5
- N1
- Wrice, Philip George

Lee Kevin Brown was also named as an "affected person" but the Commission did not make a finding that he had engaged in police misconduct.

KING SEGMENT

This segment examined four incidents involving former police officer James Justin King. The other officers involved in the incidents were attached to the former Major Crime Squad North (MCSN) at Chatswood, or Mona Vale Police Station.

The segment commenced in August 2002 and was completed in November 2002. There were a total of 12 hearings days and 13 witnesses gave evidence.

The first incident arose out of proceedings at the Downing Centre Local Court in 1994 against King for "Drive Under the Influence (of Intoxicating Liquor)" (DUI) in September 1993 at Mona Vale. The informant M5 provided information that he had conspired with other police, including King, to pervert the course of justice to assist King in those proceedings. In addition to M5, M13, a civilian and former registered informant, and S8, the station sergeant in charge of Mona Vale Police Station at the relevant time, gave evidence of their part in this conspiracy. Other police and former police also gave evidence but denied there was a conspiracy or that they had given false evidence in their statements, and during the court proceedings in 1994.

M5 gave evidence about another conspiracy to pervert the course of justice, this time in proceedings in Manly Local Court in 2001 against King for "(Drive with the) Prescribed Concentration of Alcohol (in Blood)" (PCA) in 2000 at Mona Vale. The evidence in relation to this second drink driving incident included a number of recorded conversations between M5 and King. Three civilian witnesses also gave evidence to the Commission.

The third incident related to the payment of a police informant, M13. M5 and M13 gave evidence about an allegation that King and Dennis Peter O'Toole entered into a corrupt arrangement with M13, in M13's capacity as a registered informant, to falsely claim a reward payment. The result of the corrupt arrangement was that O'Toole would keep most of the reward money that had been ostensibly paid to M13.

The fourth incident about which evidence was heard in this segment related to an arrangement entered into by King and M5 to launder some of M5's corruptly obtained money. M5 also gave evidence about this incident. His evidence included conversations with King and O'Toole that were recorded by listening device and telephone interception.

Substantial allegations were made against O'Toole in the course of the evidence.[3] O'Toole did not, however, appear in answer to a summons to give evidence to the Commission in this segment. The inability of O'Toole to appear in this segment and give evidence formed the basis of separate inquiries by the Commission (see below).

As a result of the King segment one serving police officer and five former officers were found to have engaged in police misconduct. Those officers are:

- King, James Justin
- M5
- McDougall, Roslyn Gwen
- Moore (Butt), Clare Margaret

[3] Section 97(3) *Police Integrity Commission Act 1996*

- O'Toole, Dennis Peter
- S8

The civilian M13 is, in the opinion of the Commission, also an "affected person" pursuant to subsection 97(2) of the Act.

O'TOOLE SEGMENT

Dennis Peter O'Toole was named as a key player in three of the four matters about which evidence was given in the King segment. O'Toole's involvement in those matters was as follows:

- that O'Toole, together with King and other members of NSW Police, conspired to pervert the course of justice in proceedings arising out of King's arrest for DUI in 1993 at Mona Vale;
- that O'Toole was with King on the night he had the accident that resulted in King's arrest and charging for PCA in 2000 at Mona Vale;
- that King and O'Toole entered into a corrupt arrangement with M13, in M13's capacity as a registered informant, to falsely claim a reward payment.

O'Toole was represented at the King segment hearings but did not give evidence. He had previously given evidence in two other segments of the Operation Florida hearings: the Guns segment, and the Let's Dance segment (see Chapters 3 and 4 of this Report).

The inability of O'Toole to appear at the Commission's hearings in the King segment formed the basis of a separate inquiry by the Commission. The Commission is of the opinion that O'Toole did not have a bona fide medical condition sufficient to justify his non-appearance before the Commission to give evidence, and that consideration should be given to the prosecution of O'Toole for the offence of failing to attend before the Commission in accordance with a summons, pursuant to subsection 106(1)(a) of the Act.

RECOMMENDATIONS IN RELATION TO PROCEDURAL MATTERS

A number of procedural issues relevant to matters arising from the evidence are examined in the Report. The Report makes specific comment on the following matters:

- the execution of search warrants;
- supervision and management;
- letters of assistance; and
- the handling and storage of exhibits.

THE EXECUTION OF SEARCH WARRANTS

In relation to the execution of search warrants the evidence revealed a failure by officers to follow standard operating procedures, a failure of supervision and a lack of functioning equipment for use during searches.

This Report makes some recommendations for changes to the standard operating procedures, including improved supervision of officers during searches.

NSW Police has advised that a working party was set up to consider new standard operating procedures for search warrants but that the process had been held up by the delay in the commencement of the *Law Enforcement (Powers and Responsibilities) Act 2002*. The Commission has requested NSW Police to inform the Commission of the further developments as they occur.

SUPERVISION AND MANAGEMENT

Supervision or lack of it was an obvious issue in a number of the hearing segments. Unsurprisingly, it was shown that where a supervisor condones the corrupt actions of those he supervises, or takes part in them, corrupt activities will continue unchecked, whether corruption prevention plans are in force or not. The Commission considers that a high trust model of supervision is inadequate and inappropriate for corruption prevention, and that police officers at the operational level must take a greater responsibility for ensuring that corrupt officers are exposed.

Duty Officers

The position of Duty Officer was introduced in an attempt to address supervisory issues at an operational level. Evidence was heard that the introduction of this new position might not have achieved this aim. NSW Police undertook to conduct a review of the position and provided the Commission with the details of that review. The information provided to the Commission did not include any details about an evaluation of the position. The Commission recommends that NSW Police provides both a structure and a timetable for an evaluation of the position of Duty Officer so that the State wide effectiveness of the role can be determined and any difficulties uncovered and resolved.

Command Management Framework

NSW Police advised that in 2000 NSW Police commenced a change in direction from the external, and sometimes punitive, audits imposed on Local Area Commands, to a risk based self-assessment auditing process call the "Command Management Framework" (CMF). The CMF is also a corruption prevention system. NSW Police also intends to introduce an interactive intranet version of CMF, called iCMF.

The iCMF contains a tool that enables supervisors to evaluate the performance of individuals and teams. It will also enable supervisors to ensure that performance

reviews are updated regularly, allow access and audit by senior management and allow examination of trends and issues across the State. It is anticipated that this process will contribute to corruption prevention.

The Commission recommends that NSW Police put in place an evaluation timetable for the CMF, and the iCMF once it has been commenced.

LETTERS OF ASSISTANCE

The Commission considers that the current procedures in relation to letters of assistance are more thorough than the ad hoc procedures in place at the time of the matters examined in the Letters of Assistance segment. The requirement in the current procedures for a comprehensive report with all relevant documentation attached renders it difficult for the events that occurred in relation to P4 and P6 to recur.

Following the hearings NSW Police advised the Commission that the Informant Management Manual (IMM) has been reviewed and when fully implemented it will allow cross checking of the information held in relation to informants. As letters of assistance are most commonly written in relation to informants, this new system should assist in preventing police from abusing the system in the way they did in the case of P4 and P6, who were credited with providing information they did not actually provide.

HANDLING AND STORAGE OF EXHIBITS

Handling and storage of exhibits was an issue in the Guns segment. However NSW Police currently has, and had at the relevant time in the 1990s, specific procedures in place for the handling of property seized as an exhibit. The issue was one of failure by officers to comply with the procedures and a failure in the supervision of those officers.

THE POST-ROYAL COMMISSION ERA

The Commission acknowledges that NSW Police has undergone significant change in the last decade as a result of technological advances, and the implementation of recommendations made by the Royal Commission. Such changes mean that activities of the type that occurred at the Chatswood MCSN office, in relation to the handling of exhibits and the storage and use of weapons, are less likely to occur.

The evidence given in the Operation Florida investigation indicates however that there was not an instant transformation of the culture of NSW Police following the Royal Commission and that it will be difficult to bring about such a change. NSW Police must continue to actively embrace an ethos emphasising compliance with police procedures and the use of proper investigation methods, and include this emphasis in the training of officers, both on entry to NSW Police and on an ongoing basis. Such training must also be enforced and reinforced at the operational level by rigorous, involved supervision.

GLOSSARY

AHU	Armed Hold-Up Unit
CMF	Command Management Framework
COPS	Computerised Operational Policing System
DEA	Drug Enforcement Agency
DUI	Drive Under the Influence (of Intoxicating Liquor)
ERISP	Electronically Recorded Interview of Suspected Person
GDU	Gosford Drug Unit
iCMF	Interactive/Intranet version of CMF
IMM	Informant Management Manual
LAC	Local Area Command
MAC	Marine Area Command
MCSN	Major Crime Squad North
MCSS	Major Crime Squad South
NSDU	North Sydney Drug Unit
NSWCC	New South Wales Crime Commission
ODPP	Office of the Director of Public Prosecutions
PCA	(Drive with the) Prescribed Concentration of Alcohol (in Blood)
SCIA	Special Crime and Internal Affairs
SOPs	Standard Operating Procedures

1. INTRODUCTION

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BACKGROUND

1.1 In late 1998 a NSW police officer volunteered information to the NSW Crime Commission (NSWCC) about police corruption and criminal activity involving himself and a number of serving and former NSW police officers over a lengthy period. A detailed process of debriefing the informant commenced at the NSWCC and covert inquiries were initiated.

1.2 In February 1999 a reference was granted to the NSWCC in order that a full investigation could be conducted. The reference was codenamed "Mascot". Officers from the NSW Police Special Crime and Internal Affairs command (SCIA) were assigned to work with the NSWCC on the investigation.

1.3 In July 2000 the Police Integrity Commission joined the investigation. The Commissioners of the NSW Police, NSWCC and Police Integrity Commission signed a Memorandum of Understanding and the three organisations commenced working cooperatively to jointly pursue what was by that stage a large body of serious allegations against serving and former police.

1.4 The informant referred to above provided further assistance to the investigation by covertly gathering electronic evidence against other individuals. From the start of 1999 until mid 2001 the informant continued work as a serving detective while at the same time reporting to the NSWCC and gathering evidence by way of listening devices worn by him. In addition to hundreds of hours of recorded conversations obtained by the informant, the investigation was supplemented by the use of telephone intercepts, video surveillance and integrity tests. Much of this evidence was subsequently revealed in public hearings conducted by the Police Integrity Commission.

1.5 The Commission's hearing program, codenamed Operation Florida, commenced publicly on 8 October 2001. A number of private hearings had been held prior to the commencement of the public hearing. In addition, there had been two public hearings before October 2001, codenamed "Pelican" and "Jetz", which examined discrete areas of suspected police misconduct that came to light during the Mascot investigation.

1.6 Operation Pelican inquired into the police investigations into the death of Phillip Dilworth at Petersham in 1986, the shooting and wounding of Gary Mitchell at Concord in 1988 and the subsequent murder of Mitchell at Armidale in 1996. Public hearings commenced on 20 November 2000 and concluded in June 2001. A report to Parliament in Operation Pelican was presented in August 2001.

1.7 Operation Jetz was an investigation into alleged police misconduct in the NSW Police promotions system. The report to Parliament in Operation Jetz was presented in January 2003.

1.8 In addition to the matters examined in Pelican and Jetz, a total of 418 incidents of suspected corruption arose from the joint Mascot/Florida investigation. Not all of those matters were examined in the Commission's public hearings. The matters chosen for examination in the public hearings were selected after a rigorous selection process involving members of the Commission, the NSWCC and NSW Police. A special Task Force set up by NSW Police investigated the matters not examined in the public hearings. The Commission oversighted the NSW Police investigation of those matters.

1.9 The public hearings in Operation Florida commenced on 8 October 2001 and continued throughout 2002. Further inquiries and private hearings continued until late 2003. Twenty-nine incidents of corruption were examined in the Commission hearings. These were presented in seven separate segments over 78 days of public hearings. Numerous former and serving police officers were involved in more than one incident of corruption and were called as witnesses in more than one segment of evidence. One such witness gave evidence in a number of segments but did not answer a summons to give evidence in the last segment, because of a mental health condition. The Commission conducted inquiries, including private hearings, in relation to the circumstances surrounding that former officer's unfitness to give evidence and those inquiries are reported in Chapter 9 of this Report.

1.10 The corruption exposed in the Operation Florida hearings occurred over a period dating from the late 1980s to early 2001. Some of the incidents predated the commencement of the Royal Commission into the New South Wales Police Service (the Royal Commission) in 1994, however others exposed recent conduct, particularly relating to dealings between detectives and drug dealers on the Northern Beaches of Sydney. It was apparent that the type of corrupt conduct exposed during the Royal Commission continued unchecked amongst some members of NSW Police after the Royal Commission ended in 1997 despite the exposures of the Royal Commission and the reforms that were put in place thereafter to detect and prevent corruption.

1.11 The corruption uncovered in this investigation was not limited to a single command within NSW Police but occurred in a number of commands. The most recent corrupt activity took place amongst detectives stationed in the Manly / Davidson Local Area Command and specifically at Manly Police Station and Dee Why Police Station. Other sections of NSW Police where corrupt activity occurred during the 1990s included the Chatswood, North Sydney and Gosford Offices of Major Crime Squad North, and the former Drug Enforcement Agency of NSW Police.

1.12 The nature of the corrupt conduct revealed by the evidence included the "loading" and "verballing" of suspects. The "loading" was often achieved by way of police "planting" evidence and then later "discovering" that evidence during a search. The corrupt conduct also included stealing from suspects (usually cash and/or drugs) and preparing false documents for court, such as statements of facts, witness statements and letters of assistance.

1.13 Much of the corrupt conduct exposed during these hearings extended to the relevant supervisors in each unit. Predictably, the evidence showed that anti-corruption guidelines and other management tools were of little value in preventing police corruption if the supervisors were aware of the corruption and willingly participated in it or turned a blind eye. The final Chapter of this Report contains some recommendations for changes to be implemented to try and prevent the sort of corruption revealed in the Florida hearings.

THIS REPORT

1.14 In this Report, prepared and furnished pursuant to section 96 of the *Police Integrity Commission Act 1996* (the Act), the Commission examines the evidence heard during the public hearings. Evidence from private hearings is also discussed where it is relevant to matters considered in the public hearings. In those instances the private hearing transcripts became part of the evidence in the public hearings.

1.15 The Report contains the Commission's assessments and opinions and expresses a view as to whether or not police misconduct has occurred in relation to each matter examined. The Report also contains the Commission's recommendations in respect of those individuals who come within the definition of "affected person" in sub-section 97(3) of the Act.

1.16 At the commencement of the hearings and at the time of the events about which the evidence was given, the title of NSW Police was the "New South Wales Police Service". On 12 July 2002 the New South Wales Police Service became officially known as NSW Police. Throughout the Report the title "NSW Police" has been used to reflect the current name.

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

2. NORTHERN BEACHES SEGMENT

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INTRODUCTION

2.1 The public hearings in Operation Florida commenced with the Northern Beaches Segment. The evidence was heard over 17 days between 8 October 2001 and 31 January 2002. The scope and purpose of the segment was:[4]

> To investigate allegations of corruption and misconduct by members of the NSW Police Service attached to the Manly-Davidson and/or Northern Beaches local area commands.

2.2 Twenty-three witnesses gave evidence. In addition the evidence included a number of listening device and telephone intercept recordings and revealed the assistance of two covert operatives: a serving NSW police officer codenamed M5, and a civilian, Luke Michael Benbow.[5]

2.3 In addition to exposing numerous instances of criminal activity and serious police misconduct, the hearing also examined supervision and management issues at the local level, in an attempt to determine why such corruption had been able to continue undetected for as long as it did.

THE POLICE WITNESSES

2.4 The witnesses in this segment can be categorised into four groups. Evidence was heard from a number of codenamed civilians who were the subject of search warrants or were drug dealers who had been "green lighted" by the police. The next group were the involved police. These officers were (in alphabetical order) Shaun Davidson, David Hill, Matthew Jasper, Matthew Kehoe, Glenn McDougall, Mark Messenger, David Patison, and Raymond Peattie. The third group were the managers. Gary Raymond, the Superintendent of Manly Police Station, and Graeme Morgan, the former North Metropolitan Regional Commander, comprised this group. The fourth group comprised a single witness, Martin Green, a solicitor whom Benbow consulted on the advice of Patison. A short profile of each of the main police officers follows.

SHAUN ANDREW DAVIDSON

2.5 Prior to joining NSW Police Davidson was employed by the Transport Investigation Branch of the Transit Police. He became a member of NSW Police in 1995 when the Transit Police became part of NSW Police. In 2001 he held the rank of Senior Constable. He was transferred to Manly on general duties in November 1995. He was appointed to a permanent A-list position (plain clothes) in June 1998.[6]

2.6 On 9 October 2001, the day after the opening of the public hearings, Davidson participated in an interview with investigators and made admissions

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[4] PIC Transcript, 8 October 2001, p. 2
[5] Originally codenamed B5. The non-publication order on Benbow's name was lifted on 8 May 2002.
[6] PIC Exhibit 431B, PIC Transcript, SA Davidson, 12 December 2001, pp. 4-5

about his own involvement in various corrupt activities. Davidson subsequently gave evidence in a private hearing and his evidence was later made public. Davidson admitted his involvement in corruption during the execution of search warrants on five specific occasions. He identified those occasions by referring to entries in his duty book. He conceded that he had attended approximately ten searches with Detectives Jasper and Patison and indicated that he had varying roles at the searches.[7]

2.7 Whilst not a designated Detective, Davidson was permanently appointed to plain clothes duties and therefore assisted detectives at Manly. Due to his junior status he was generally allocated tasks such as being the Video or Exhibit Officer during the execution of search warrants. When operating the video he indicated that Patison or Jasper would either nod their heads to him or say *"stop the tape now"* to require him to switch the video off.[8] In his evidence he did not demonstrate any detailed knowledge of the Standard Operating Procedures relating to searches and more particularly, the role of Video Operator.

2.8 Davidson conceded having received at least $1,100 but less than $2,000 in corrupt payments. He succumbed to the corrupt conduct and received the corrupt payments with very little protestation. When asked for the primary reason as to why he involved himself in such corrupt activity he could not answer other than to say that they were his friends and he was introduced to it.[9]

2.9 He considered that there was little supervision and felt that it was a:[10]

> ... sink-or-swim situation where you were given jobs and to handle them and, you know, however many jobs you were given and there wasn't really much oversight unless you had something outstanding for a while that came to note, then they would point it to you, but there wasn't any supervision.

2.10 Davidson was asked why he did not report any of the misconduct that he had observed or become aware of. He said that it was because he considered the police officers to be his friends and peers and he wasn't sure what the repercussions to him would be if he reported the conduct.[11]

2.11 Davidson was suspended from duty on 8 October 2001 and resigned from NSW Police on 14 January 2002.

DAVID MARSHALL HILL

2.12 Hill gave evidence on 19 October 2001. In 2001 he held the rank of Sergeant.

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7 PIC Exhibit 431B, PIC Transcript, SA Davidson, 12 December 2001, pp. 6-7
8 PIC Exhibit 431B, PIC Transcript, SA Davidson, 12 December 2001, pp. 6-7
9 PIC Exhibit 431B, PIC Transcript, SA Davidson, 12 December 2001, p. 20
10 PIC Exhibit 431B, PIC Transcript, SA Davidson, 12 December 2001, p. 20
11 PIC Exhibit 431B, PIC Transcript, SA Davidson, 12 December 2001, p. 17

2.13 Hill joined NSW Police in September 1977. He initially worked in general duties at North Sydney Police Station for 6 years. He then commenced plain-clothes duties and in 1985 was transferred to Manly. In 1987 he was transferred to Dee Why. In 1988 he commenced duty at the Major Crime Squad North. In 1997 he transferred back to Manly as a uniformed sergeant. He was suspended from duty on 8 October 2001 and resigned on 25 March 2002.

MATTHEW JOHN JASPER

2.14 At the time of the investigation Jasper held the rank of Detective Senior Constable. He gave evidence over three days, 17-19 October 2001. After the opening of the hearing, Jasper assisted investigators and made admissions as to various corrupt activities in which he had been involved.

2.15 Jasper had been a police officer since 1989. His early years were spent performing General Duties and in about 1997 he commenced detective / plain clothes duties within the Manly Patrol. In January 1999 he obtained a permanent position as a Detective at Manly. He was suspended from duty in December 2000 after being criminally charged with a corruption offence. Jasper resigned from NSW Police on 23 October 2001.

MARK WILLIAM MESSENGER

2.16 Messenger joined NSW Police in 1976. In 2001 he held the rank of Detective Sergeant. His duties included a posting to 21 Division, the Armed Hold-up Squad at the CIB, Regional Crime Squad North Drug Unit, the Drug Enforcement Agency and Dee Why Police Station where he periodically acted as a Duty Officer / Inspector.

2.17 Messenger gave evidence over two days, 30-31 January 2002. He admitted that he had engaged in corrupt conduct by accepting money from M5 on four separate occasions. He denied that he had acted corruptly previously. His claim is difficult to accept in light of the readiness with which he joined in corrupt conduct, and the expertise with which he participated. He was suspended from duty on 8 October 2001 and resigned on 18 September 2002.

DAVID PHILLIP PATISON

2.18 At the time of the investigation Patison held the rank of Detective Senior Constable. Patison gave evidence over four days, 10-13 December 2001. Subsequent to the opening of the hearing on 8 October 2001, Patison cooperated with investigators and made admissions about various corrupt activities in which he had been involved.

2.19 Patison had been a police officer for almost 22 years at the time of the hearing. He served in uniform as a General Duties Officer for his first seven years of service and then commenced duties in plain clothes in about 1985.

In June 1996 Patison was transferred from the Major Crime Squad North Drug Unit to the Manly Local Area Command. He was suspended from duty in December 2000 after being criminally charged with a corruption offence. Patison resigned from NSW Police on 8 February 2002.

RAYMOND JOHN PEATTIE

2.20 At the time of the investigation Peattie held the rank of Detective Sergeant. He gave evidence over two days, 16-17 October 2001. Subsequent to the opening of the hearing, Peattie co-operated with investigators and made admissions about various corrupt activities in which he had been involved.

2.21 By 2001 Peattie had been a Police Officer for almost 25 years. Most of his career was served in plain clothes and / or as a detective. From 26 October 1999 he acted in the position of Crime Manager attached to Manly Police Station. He left work on sick leave, following the arrest of Patison and Jasper in December 2000, was suspended on 8 October 2001, and resigned on 31 October 2001.

2.22 At the commencement of his evidence, Peattie conceded that he had engaged in corrupt conduct. He admitted knowing that Patison, Jasper and Davidson had been acting corruptly whilst under his command at Manly.[12] In providing assistance to investigators, Peattie identified a series of incidents of corruption and serious misconduct in which he and others were involved. Peattie admitted his involvement in corrupt conduct with respect to a number of the incidents described by the codenamed witnesses B6, M3, G2 and B4. He generally conceded his involvement in corrupt conduct at searches but on occasions could not recall specifically whether he received money or not. He accepted the general proposition that he had received intermittent payments of cash.

THE SEARCHES

2.23 Evidence was given of a number of instances of opportunistic theft and dishonesty at individual searches. Nine civilians gave evidence, as codenamed witnesses, about the searches in which they were the victims of corrupt conduct by police. Benbow, under the codename B5, gave evidence on 9 October 2001 and B6, M1, F2, M3, G2, S1, L4, and B4 all gave evidence on 11 October 2001.

2.24 It appears that the corrupt police officers would assess the subject of the search warrant and the circumstances of the search to determine whether there was any prospect of stealing funds from the subject. The decision as to whether the search recipient was susceptible to theft and corruption apparently depended on the individual circumstances of the search, the officers present, whether cash was located at the scene and the likelihood of complaint. The possibility for corruption therefore remained fluid.

[12] PIC Transcript, RJ Peattie, 16 October 2001, pp. 217-218

SEARCH OF L4'S PREMISES, 12 APRIL 2000

2.25 L4 was subject to a search at her premises on 12 April 2000 by police including Jasper, Davidson and Constable Etheridge. Inspector Heath was also present as the Independent Officer. L4 told the Commission that approximately 180gms of cannabis was located together with $3,000 in cash. She was charged with possession of cannabis but there was no reference to the cash, which disappeared. L4 presumed the police took it. She identified Jasper as the searching officer.[13]

2.26 Jasper recalled the search. He volunteered that he found approximately $3,000 cash in a filing cabinet and put it in his pocket. He stated that he later gave M5 $1,500, retained $1,500 and gave part of it to Peattie. He could not recall whether he gave any money to Davidson but assumed M5 would have given part of his share to Davidson as he, Jasper, had given part to Peattie.[14]

2.27 With the assistance of his duty book Davidson recalled this search but said that at the time he was not aware of any impropriety. He thought he was the 'searching officer'. Davidson stated he found a departmental envelope containing cash in his pigeon hole the next day. He could not recall the amount of cash but did recall having a discussion with Jasper who said to him words to the effect that he *"ought just keep quiet about it and not worry about it"*.[15]

SEARCH OF M1'S PREMISES, 3 MAY 2000

2.28 M1 was a drug dealer whose premises at Harbord were the subject of a search on 3 May 2000. M1 gave evidence on 11 October 2001. He recalled the officers present at the search as being Jasper, M5, Detective Etheridge, Constable Taylor and an Independent Officer. That officer has been identified as an Inspector Clarke.

2.29 During the search police located an amount of cannabis, hydroponic items and $650-$700 cash. M1 attested that $1,000 cash was located in his safe and that after the search, arrest and charging, it had disappeared. He recalled that he had a conversation with Jasper to the effect that the $1,000 cash would disappear on the basis the drug charges against him would be reduced to being merely "possession" rather than "deemed supply".[16] In evidence Jasper confirmed the conversation, stating that after the other officers left he spoke to M1 in the presence of M5.[17] This conversation was recorded by listening device worn by M5. Part of the conversation was tendered as an exhibit in the hearing.[18]

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[13] PIC Transcript, L4, 11 October 2001, pp. 194-198
[14] PIC Transcript, MJ Jasper, 17 October, 2001 p. 375
[15] PIC Exhibit 431B, PIC Transcript, SA Davidson, 12 December 2001, pp. 8-10
[16] PIC Transcript, M1, 11 October 2001, p. 145
[17] PIC Transcript, MJ Jasper, 17 October 2001, p. 377; 18 October 2001, p. 509
[18] PIC Exhibits 30 & 31

2.30 The $1,000 cash was later shared. Patison, Jasper and M5 received $300 each and a further $100 given to Peattie. When asked why Patison received a share when he was not involved in the search Jasper stated that the arrangement was that the officers who were aware of, and participated in, corrupt conduct received some of the proceeds.[19]

2.31 In evidence Peattie agreed with the division of the $1,000 as described by Jasper. Whilst he did not recall receiving any specific explanation as to the source of the funds, he said he *"knew it was crook money"* and that he *"believed it would have been money taken from the search of a drug supplier or users' premises"*.[20]

FIRST SEARCH OF BENBOW'S PREMISES, 11 MAY 2000

2.32 A search of premises occupied by Benbow took place on 11 May 2000. Patison, Jasper and M5 together with Inspector Le Surf (Independent Officer) and Davidson (Video and Exhibit Officer) attended. Benbow told the Commission that before the police entered his premises he ran upstairs and threw four pounds of cannabis out the window and into a neighbour's property.[21] Benbow also conceded that he had another small amount of cannabis and some steroids in his room that were discovered by the police.

2.33 During the search Patison found $40,000 cash in a laundry bag. Benbow gave evidence that he had hidden the money in a dirty sock in the laundry basket and that he didn't think the police had discovered it.[22] While being taken back to the police station by Patison, Jasper and M5, Benbow said that Patison raised the matter of the cash with him and said:[23]

> We can either split the money four ways, you'll get some back or we can go back and you can – we can go – you can go and get arrested for the marijuana that's in your next door neighbour's yard.

2.34 Benbow agreed to this offer and was eventually charged with possessing a small amount of cannabis and steroids. There were no charges in respect of the larger quantity of cannabis or the money. Benbow said he was driven home from the police station by Patison and was then given back approximately $10,000 cash. He said that the police retained the balance.[24]

2.35 Patison admitted in evidence that he stole the $30,000 cash. On the way back to Manly Police Station he stopped off at his parent's home in Manly Vale and hid the cash. Later it was split in equal shares between himself, Jasper and M5.[25] He also agreed that he told Benbow they were retaining the money

[19] PIC Transcript, MJ Jasper, 17 October 2001, pp. 376-378
[20] PIC Transcript, RJ Peattie, 16 October 2001, pp. 219-220
[21] PIC Transcript, LM Benbow, 9 October 2001, pp. 48-49
[22] PIC Transcript, LM Benbow, 9 October 2001, p. 49
[23] PIC Transcript, LM Benbow, 9 October 2001, p. 51
[24] PIC Transcript, LM Benbow, 9 October 2001, pp. 51-52
[25] PIC Transcript, DP Patison, 11 December 2001, p. 1781

and would therefore turn a "blind-eye" to the cannabis he had seen thrown over the fence.[26]

2.36 At face value the search was conducted in accordance with set procedures. The Independent Officer Le Surf and Video Officer Davidson were present to scrutinise and video the search. As Exhibits Officer Davidson was also present to record all illicit material located and seized. However these officers did not carry out their duties in accordance with set procedures. Le Surf remained on the balcony with Benbow's brother and did not witness all of the conduct by his fellow officers. Davidson asserted that the battery was flat in the video camera and therefore no record was taken of the search activities. Benbow gave evidence that he recalled Patison having a video camera with him but that it was not used.[27] Davidson does not appear to have made any record of the drugs observed or located, or of the cash. Patison stated that neither Le Surf nor Davidson was aware of his corrupt activities during the search.[28]

2.37 Jasper gave evidence that he was present at the search of Benbow's premises on 11 May 2000. He stated that Patison and M5 conducted most of the search although he did find a small amount of cannabis and approximately $500 cash.[29] He did not recall any conversation between the police and Benbow during the journey to the police station however he said that while at the police station Patison indicated to him that he had located approximately $10,000 for each of them.[30] Jasper said that he, M5 and Patison drove Benbow back to his home and on the way Patison pointed to the floor of the car and told Benbow that there was something there for him. Jasper presumed this was some of the cash. He also recalled Patison telling Benbow that he ought to retrieve the cannabis from the neighbour's property. Jasper said that after dropping Benbow at his home the three officers then went to Patison's parent's house to get the cash. Patison gave them $10,000 each. Jasper said that he gave $1,000 to Peattie made up from money contributed by himself, Patison and M5.[31]

2.38 Peattie gave evidence that while he knew the name of Benbow he did not specifically recall receiving any cash from Benbow or from the search of Benbow's premises. He did however indicate that it was likely that he did receive a share of the money taken from Benbow.[32]

SEARCH OF F2'S PREMISES, 18 MAY 2000

2.39 F2 gave evidence that he was subject to a search of his shop premises and car on 18 May 2000. The officers who attended the search included Patison,

[26] PIC Transcript, DP Patison, 11 December 2001, p. 1781
[27] PIC Transcript, LM Benbow, 9 October 2001, p. 50
[28] PIC Transcript, DP Patison, 11 December 2001, p. 1781
[29] PIC Transcript, MJ Jasper, 17 October 2001, p. 379
[30] PIC Transcript, MJ Jasper, 17 October 2001, p. 380
[31] PIC Transcript, MJ Jasper, 17 October 2001, p. 381
[32] PIC Transcript, RJ Peattie, 16 October 2001, pp. 220-221

Puffett, Kehoe, M5 and Inspector Clarke. During the search cannabis, plastic bags and scales were located in the boot of F2's car.[33]

2.40 In a series of listening device recordings made by M5 at the time of the arrest, Patison could be heard negotiating with F2, including asking him to *"... fork out a few dollars ..."* so that his vehicle would not be mentioned as a part of an Asset Confiscation Order.[34] Patison was recorded telling F2 that if he was charged with supply cannabis and the police alleged that he was supplying from his vehicle then the vehicle would be subject to confiscation. Patison told F2 that they (the investigating police) were the ones who had the say on whether he had been selling drugs out of the car. He said to F2 *"... it's got to be worth a few bucks to you to fuckin' keep the car mate"*.[35]

2.41 Patison also insisted that if F2 wanted to do something about it then it had to be done that night.[36] Later in the conversation the price went up and Patison said *"... it's got to be fuckin' ten I won't do it for anything less than ten, alright"* and later *"... if you come up with that, we leave the car alone, but either way you've got to get it tonight, mate. You have to have it tonight"*.[37]

2.42 Patison continued negotiations despite F2's assertions that he would not be able to provide $10,000. There was further discussion between them in which Patison asserted F2 must be making at least $3,000 per week from his drug supply activities. F2 denied making any such profit.[38]

2.43 F2 told the Commission that Patison asked him how much he paid for the car and when he replied *"$26,000"* Patison said: *"You can have it back for $10,000"*. F2 said that he did not pay any money to any of the police and after being charged with supply and possession charges he pleaded guilty to the possession charge and received a bond. The supply charge did not proceed.[39]

2.44 Patison admitted that he did try to entice F2 to pay $10,000. He also agreed that he made suggestions to F2 that his car might be at risk of confiscation.[40]

2.45 Detective Senior Constable Matthew Kehoe was also present at this search. F2 made an allegation concerning a threatening approach to him by Kehoe after the arrest.

2.46 Kehoe told the Commission that he had heard from another person that F2 had stated that he had not been charged because he had paid police $10,000. Kehoe took exception to this and returned and spoke with F2 the next day. Kehoe told the Commission that he did not threaten or intimidate F2. He did

[33] PIC Transcript, F2, 11 October 2001, pp 153-154
[34] PIC Exhibit 79B, p. 2
[35] PIC Exhibit 79B, p. 3
[36] PIC Exhibit 81, p. 1
[37] PIC Exhibit 85, p. 2
[38] PIC Exhibit 87
[39] PIC Transcript, F2, 11 October 2001, p. 155
[40] PIC Transcript, DP Patison, 11 December 2001, p. 1793

say that he told F2 to speak to the other person again and tell that person the truth.[41]

2.47 There is no evidence that any other officer other than Patison and M5 were aware of the corrupt conduct in respect of the execution of this search warrant.

SEARCH OF G2'S PREMISES, 23 MAY 2000

2.48 G2 was subjected to a search of his premises on 23 May 2000. Patison, Jasper, Peattie and M5 conducted the search. G2 gave evidence that about one kilogram of cannabis was located in a cupbord at his premises.. He also stated that whilst the entire one kilogram was seized he was only charged with possession of 200 grams. He was not aware of any video camera being used at the search. He acknowledged that a large sum of cash was found in his boots and taken. He agreed that the cash was from the proceeds of selling cannabis. He also told the Commission that the Statement of Facts prepared by the police was incorrect in that it indicated that the cannabis in his possession was from a *"plant he had grown and that it was for his own personal use"*. G2 said this was a deliberately false statement by the police. He pleaded guilty to a relatively minor charge and was convicted and fined.[42]

2.49 G2 indicated that he had seen Jasper prior to the search when Jasper was with a female friend, Natasha. G2 knew Natasha and said she had been to G2's premises two days earlier and had seen the cannabis.[43]

2.50 The evidence regarding this search included some striking listening device recordings of discussions between police officers involved in the search. In particular, Exhibit 91 revealed the discovery by police of thousands of dollars in cash in G2's boots. That exhibit also revealed Patison negotiating with G2. During the conversation it was agreed that police would take most of the cash, reduce the potential charges to a summary level and dispose of the bulk of the cannabis.[44]

2.51 Further listening device evidence revealed a conversation between Patison, Jasper and M5 on 23 May 2000 during which they counted up and divided the cash. They did so with a great sense of celebration. They agreed to give Peattie $1,000 and keep approximately $3,350 each. Patison confirmed that he left about $2,000-$3,000 of the cash with G2 together with another $1,000 cash that was in G2's wallet. Jasper's final words on the recording were: *"No complaints. I think a good job. An easy job"*.[45]

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41 PIC Transcript, MJ Kehoe, 13 December 2001, pp. 1910-1911
42 PIC Transcript, G2, 11 October 2001, pp. 177-181
43 PIC Transcript, G2, 11 October 2001, pp. 181-182
44 PIC Exhibit 91
45 PIC Exhibit 93B

2.52 In evidence Patison admitted to stealing approximately $12,000 cash. He said that Jasper and M5 received about $4,000 each and that G2 was not correct in his evidence when he stated that they took about $3,000 in total.[46]

2.53 Jasper recalled the search and subsequent arrest and charging of G2. He confirmed that Patison, Peattie and M5 were with him at the search. He recalled an amount of cannabis being located within a shopping bag. He also agreed that he divided the $11,000 in cash with Patison and M5. His evidence was that they each retained $3,500 and they each contributed $200 for Peattie. He stated that he gave Peattie $400 cash that day and $200 on the following day. He agreed that he knew the woman Natasha, both as an "informal" informant and friend.[47]

2.54 Peattie indicated that he could not recall this search or whether he received $1,000 in cash. He stated: *"Once again, my memory is that I never got more than $500, but if I got $1,000 then I got 1,000. I'm not denying that I got 1,000 either, but I just don't remember it. It is probable"*. When asked again if he received $1,000 following the search of G2's premises he said: *"All I can say, sir, is that it is quite possible but I don't remember if I did or not"*.[48]

SECOND SEARCH OF BENBOW'S PREMISES, 24 AUGUST 2000

2.55 At this search police officers located approximately 475 grams of cannabis and $31,000 cash in Benbow's car. M5 was involved in this search but Patison and Jasper were not. The drugs and cash were seized, recorded and appropriate charges were subsequently preferred. In relation to the cash, Benbow was charged with Goods in Custody, on the basis that the money was the proceeds of drug sales.[49]

2.56 After Benbow was charged and released he was approached by M5 who suggested to Benbow that on payment of a "tax" he would be permitted to continue his drug supplying activities. Patison also made a similar approach to Benbow.[50] These approaches prompted Benbow and his solicitor to go the NSW Crime Commission. After discussions with officers at the NSW Crime Commission, Benbow agreed to assist in the investigation of Patison.

2.57 Patison said in evidence that he was reluctant to set up the proposed "green lighting" with Benbow as he had previously taken the $30,000 from him.[51] Nevertheless, Patison subsequently met with Benbow in late September 2000 at the Manly Swim Centre. At that meeting there was a discussion about Benbow making a lump sum payment of $15,000 to enable him to continue to supply drugs. Benbow objected to this amount so Patison suggested an alternative arrangement of the payment of a $2,000 monthly fee. When Benbow baulked at that figure Patison offered to assist by introducing him to

[46] PIC Transcript, DP Patison, 11 December 2001, p. 1796
[47] PIC Transcript, MJ Jasper, 17 October 2001, pp. 385-387
[48] PIC Transcript, RJ Peattie, 16 October 2001, p. 224
[49] PIC Transcript, LM Benbow, 9 October 2001, p. 54
[50] PIC Transcript, LM Benbow, 9 October 2001, p. 55
[51] PIC Transcript, DP Patison, 11 December 2001, p. 1783

another supplier who could provide him with one kilogram of hydroponically produced cannabis at a cost of $6,000 per kilogram. Patison later arranged for Benbow to meet Vince Caccamo, a known drug dealer. Benbow met with Caccamo and his assistant Anthony Markarian on 29 September 2000 and paid $2,650 for ten ounces of cannabis. During the meeting, which was recorded by listening device worn by Benbow, further evidence was obtained of the corrupt relationship between Caccamo, Patison and Jasper.[52]

2.58 At a meeting between Patison and Benbow on 18 October 2000 Patison suggested to Benbow that he approach the solicitor, Martin Green, for assistance in relation to the goods in custody charge. Patison said that Benbow might be able to get the $31,000 back by producing invoices to account for his holding the money in cash. The suggestion was that these invoices could then be "investigated" by the police, resulting in a recommendation that the related goods in custody charge be withdrawn and the money returned.[53]

2.59 Patison said he was concerned about Benbow reporting him and the other police for taking the original $30,000 and that was sufficient motivation for him to attempt to recover the second amount of $31,000 for Benbow.[54] The fact that Benbow told Patison that M5 had stolen one kilogram of cannabis from him was also a motivating factor for Patison to assist Benbow in trying to reclaim the $31,000.[55]

2.60 Benbow contacted the solicitor, Martin Green, as suggested, and during their meetings recorded their conversations.[56] Benbow took the invoices he had prepared to the meetings. Benbow told the Commission that at the second meeting on 5 December 2000 he told Green that the invoices were false. He left the invoices with Green. Events overtook the proposed scam. Benbow's evidence was that after Patison was arrested in December 2000 he did not hear from Patison or Green again, that the charges remained outstanding against him, that he intended to plead guilty in relation to them and abandon the plan to use the false invoices.[57] The relationship between Patison, Green and Benbow is discussed in detail later in this chapter.

SEARCH OF B4'S PREMISES, 18 SEPTEMBER 2000

2.61 B4 was subjected to a search of his premises on 18 September 2000. Jasper and Davidson were present at the search. B4 said that Jasper took him aside and asked B4 to show him anything he, Jasper, should know about. They went into B4's bedroom where B4 showed him approximately a pound of cannabis and $11,000 in cash. B4 also told Jasper that he had some ecstasy pills. He stated that Jasper then instructed him to count out $8,000 cash for him and retain $3,000 cash for himself. He stated Jasper then found another

[52] PIC Exhibits 13 & 14
[53] PIC Transcript, LM Benbow, 9 October 2001, p. 59
[54] PIC Transcript, DP Patison, 11 December 2001, p. 1783
[55] PIC Transcript, DP Patison, 11 December 2001, p. 1786
[56] PIC Exhibits 5 & 6, 64B & 65
[57] PIC Transcript, LM Benbow, 9 October 2001, pp. 63-64

$10,000 in another drawer and Jasper took $4,000 from it. B4 then said he went to put the balance back in the other drawer where the previous $3,000 was located and he found it was missing. B4 was told by Jasper that he would only be charged for under 300 grams rather than the full weight of the drugs located. No other officer was present in the bedroom when the cash was located and seized. The video camera was only operated in the other room.[58]

2.62 B4 stated that after he was charged Jasper contacted him. He later had a discussion with Jasper in which Jasper indicated that he had information that B4 was still supplying drugs and that if he was, then he (B4) could continue to do what he was doing *"... but you can't do nothing for nothing ..."*. B4 stated that he wanted no part of what Jasper was offering so rejected the offer.[59] At that time he had been dealing in drugs for about two years.

2.63 Jasper conceded his impropriety during the search of B4's premises. He admitted that he took $11,000 cash from him and charged B4 with a small amount of cannabis. The day after the search Jasper gave M5 a share of the money stolen. This was despite the fact that M5 had not participated in the search.[60]

2.64 Peattie recalled attending the search as the Independent Officer. It was suggested to him in evidence that he received approximately $1,000 from that search and again he indicated that he didn't remember receiving that amount. He did recall B4 having discussions with Jasper in a separate room behind a closed door. He accepted that such discussions were inappropriate and that at the time he knew it was a possibility that some impropriety was taking place. Peattie admitted that he should have gone into the room to stop any impropriety occurring.[61]

2.65 Davidson said that he was present at this search and was primarily involved with the arrest of a co-offender, whilst Jasper was the arresting officer responsible for B4. Davidson stated that he was not aware of any money being taken at the time of the execution of the search warrant and that Jasper gave him his share of the money either later that day or the next day. When asked how much money he received he said: *"I can't be sure. I know it was alleged that I received a lot more than what I actually did. I only received $400 or $500 - I'm not sure - around that amount"*. Davidson said he did not usually know how much money was taken on each occasion but *"... just kept very quiet and took my money and didn't say anything"*.[62]

SEARCH OF S1'S PREMISES, 21 SEPTEMBER 2000

2.66 On 21 September 2000 Jasper, Patison and M5 executed a search warrant at the premises of S1. They located a significant quantity of steroids and

[58] PIC Transcript, B4, 16 October 2001, pp. 203-206
[59] PIC Transcript, B4, 16 October 2001, pp. 207-208
[60] PIC Transcript, MJ Jasper, 17 October 2001, p. 396
[61] PIC Transcript, RJ Peattie, 16 October 2001, pp. 224-225; 17 October 2001, pp. 318-318
[62] PIC Exhibit 431B, PIC Transcript, SA Davidson, 12 December 2001, pp. 13-14

approximately $35,000 in cash. The police stole approximately two-thirds of the cash.[63] S1 was charged with a number of lesser offences, all of which were dealt with summarily. A conversation between Patison and S1, recorded by listening device and played at the hearing corroborated this instance of corrupt conduct.[64]

2.67 S1 told the Commission that during the search a quantity of anabolic steroids was located together with at least $35,000 in cash. He did not recall anything being said to him about charges being laid or the cash being stolen. Despite the conversation recorded on listening device[65] S1 said he did not understand that the charges against him were to be reduced as a result of an arrangement with the police whereby they kept the money. He did agree that he was charged with "possession of restricted substances" rather than "supply". He later pleaded guilty to the charge of "possession", was convicted and received a bond. He stated that the restricted substances were returned to him by police.[66] He suggested only $23,000 in cash was taken and said he did not know why the money was taken.[67]

2.68 Patison recalled the S1 search. He stated that he found some steroids, other drugs, and a large amount of money in a drawer in S1's wardrobe. He stated he left the money in the wardrobe because he didn't think he could get the money out of the premises without being observed. Patison was concerned other police including the Independent Officer, Inspector Asser, might have seen him taking the money.[68]

2.69 On the way to the police station Patison told S1 that he was aware that there was a large amount of money in his bedroom. Patison arranged with him that in return for not charging him with the full amount of the drugs found the police would drop him back at his home and take a share of the cash. The conversation between Patison and S1 was recorded by a listening device worn by M5.[69] S1 was subsequently charged with a lesser amount, bailed, and driven by Patison and M5 back to his home. Patison said that once at the house he took about two-thirds of the cash, which amounted to $24,000. When asked with whom the money was shared he stated: *"It was - I'm sure it was just - well, I know my share was only between Jasper and M5 and I don't - don't know if they gave any to any others, sir"*. He agreed that it was represented to S1 that the charges would be reduced as a result of the money being taken from him.[70]

2.70 Jasper stated that, although he was present at S1's house, Patison and M5 conducted the search. He said that a number of steroids were located during the search. Once the search at the house had been completed Jasper and another officer left to do other duties. Jasper did not take part in the charging

[63] PIC Transcript, DP Patison, 12 December 2001, pp. 1821-1822
[64] PIC Exhibits 32 & 33
[65] PIC Exhibits 32 & 33
[66] PIC Transcript, S1, 11 October 2001, pp. 186-190
[67] PIC Transcript, S1, 11 October 2001, pp. 191-192
[68] PIC Transcript, DP Patison, 12 December 2001, pp. 1820-1821
[69] PIC Exhibit 33
[70] PIC Transcript, DP Patison, 12 December 2001, pp. 1821-1822

process. Patison later gave him an envelope containing $7,200 cash. Jasper stated: *"... I didn't ask him any questions. I obviously assumed it came from that search warrant and I took it"*.[71]

2.71 Peattie recalled the search and volunteered in evidence that he probably did receive $400 cash as a result of money being taken from S1 although, as with other similar incidents, he could not remember the exact details. Peattie said that he had no idea that sums of up to $30,000 were being located and stolen at searches. He never asked but assumed, from the amounts he was getting, that the sums were around $3,000-$4,000.[72]

SEARCH OF M3'S PREMISES, 9 OCTOBER 2000

2.72 On 9 October 2000 Patison, Jasper, Peattie and Constable Pickering executed a search warrant at premises occupied by M3. M3 gave evidence that police operated a video camera at the search and found approximately two grams of cannabis together with a bong. He also attested that he had two replica / ornamental pistols, one of which fired plastic pellets. He stated that Jasper confiscated them. He received no receipt for the pistols nor was he charged for possession of the cannabis or any other offence.[73]

2.73 Patison recalled the search and in particular, the replica guns being taken without charges being laid. He recalled that there was a tiny amount of cannabis / mould found but not taken. Patison said that the replica pistols were toy-like but he acknowledged that they were *"very real looking guns"* and that if you found someone with them under different circumstances you would definitely charge them *"... but I didn't think it worthwhile"*. He stated that Jasper wanted to take them. He advised him to not bother and that he was only asking for trouble if he did so. He did not know what Jasper did with the guns but thought he had kept them.[74]

2.74 Jasper said that he attended on the search with the other officers but was unsure whether Patison was present. He thought there were three or four toy guns, two of which were replica pistols. He stated that he *"... Seized them and took them from the address for no other reason than so he didn't do anything stupid with them"*.[75]

2.75 Jasper stated that M5 later asked him if he could keep one of them but he had already broken them up and thrown them in the rubbish bin. Jasper said that they weren't kept at the police station but were destroyed as M3 had a record and was not the type of person who should have possession of such guns. Jasper took them and destroyed them rather than charge M3 with a minor offence. He acknowledged that no receipt was given to M3 for the seizure.[76]

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[71] PIC Transcript, MJ Jasper, 17 October 2001, p. 399
[72] PIC Transcript, RJ Peattie, 16 October 2001, p. 226
[73] PIC Transcript, M3, 11 October 2001, pp. 170-171
[74] PIC Transcript, DP Patison, 12 December 2001, p. 1838
[75] PIC Transcript, MJ Jasper, 17 October 2001, p. 400
[76] PIC Transcript, MJ Jasper, 17 October 2001, pp. 400-401

2.76 Peattie could not recall the search or the seizure of the replica pistols.[77]

SEARCH OF B6'S PREMISES, 15 DECEMBER 2000

2.77 B6 said that during the execution of a search warrant on 15 December 2000 drugs, including cannabis, ecstasy and speed, were located at his premises. Peattie, who was acting as the Independent Officer, did not supervise the search nor did he witness the locating or seizure of drugs. He was on the balcony talking to the brother of B6 during the search. Later Jasper and Patison spoke with B6 at another location and allegedly offered to reduce the relevant criminal charges, subject to B6 paying a sum of $20,000 cash. B6 said there was $20,000 cash hidden in a jacket at the premises and when he returned from the police station, having been charged and bailed, the money was missing.

2.78 B6 complained to NSW Police about what had gone on during the search and subsequently agreed to assist NSW Police. After being fitted with a listening device he again spoke with Patison and gave him some money, as had been arranged.[78] This led to the arrest of Patison and Jasper and their suspension from duty.

2.79 Patison and Jasper were criminally charged in respect of this matter in December 2000. Limited evidence was adduced about the matter at the Commission hearing because at that time the criminal proceedings had not been concluded.

2.80 Peattie admitted that he was the Independent Officer at this search. He denied that he was out on the balcony during most of the search and said that he had only gone onto the balcony for a brief period to speak to B6's brother and later during the search he had gone outside for a cigarette. He stated that he did not know $20,000 cash was stolen at the time although he agreed that the next day Internal Affairs Investigators told him B6 had alleged that approximately $12,000-$18,000 was stolen. Peattie later conceded that on the afternoon of the search he became aware that Patison and Jasper had stolen money because he was handed $200 by one of them.[79]

2.81 Davidson recalled this search and said he was aware at the time of the search that improper conduct had occurred. Davidson was the Video Operator and when some drugs were located in a bag he went to get the video camera to record the finding of the drugs. Upon his return, Patison and Jasper were there and the bag was empty. The officer who found the drugs told Davidson that Patison and Jasper had taken them. Davidson later questioned them about the drugs and was told not to worry about it. He was later told by

[77] PIC Transcript, RJ Peattie, 16 October 2001, p. 230
[78] PIC Transcript, B6, 11 October 2001, pp. 132-140
[79] PIC Transcript, RJ Peattie, 16 October 2001, p. 251

Jasper that they had reduced the amount of drugs and possibly that they had given some of them back to the offender.[80]

INTEGRITY TESTS

2.82 Integrity testing of suspected corrupt police officers was recommended by the Royal Commission into the New South Wales Police Service in its final report published in May 1997. Following that recommendation, section 207 was inserted into the *Police Act 1990* to enable certain conduct, which would otherwise be unlawful, to be deemed lawful for the purposes of authorised integrity testing programs. During the course of this investigation a number of integrity tests were conducted on police officers with significant results.

INTEGRITY TEST, SEARCH AT MANLY, 15 JUNE 2000

2.83 On 15 June 2000 an integrity test was conducted at an apartment at Manly. The test was designed to test the integrity of Patison, Davidson and Hill. The premises, which had been set up specifically for the purpose of the test, were equipped with a number of "props" including $8,400 in cash, two DVD players, a glass bong, a quantity of empty resealable bags and three resealable plastic bags containing 99 grams of green vegetable matter. A female undercover police officer occupied the apartment and played the part of the girlfriend of a fictitious male who rented the premises and who was suspected of being involved in drug trafficking activities. A fictitious report was created, M5 obtained a search warrant, and M5, Patison, Hill and Davidson attended the apartment to execute the search warrant. Hill acted as the Independent Officer.

2.84 During the search Patison stole $6,000 of $8,400 cash that had been placed within the premises. A covert video camera recorded Patison taking the cash and concealing it in his shorts. The balance of the money was left and subsequently booked up as being located during the search. A small amount of cannabis, some drug related paraphernalia and the two DVD players were located and seized by police. No one was charged as a result of the search.

2.85 The search was not videoed by the Manly officers. The hidden surveillance camera recorded the Manly officers merely placing their video camera on the kitchen table and leaving it there, un-used.[81] Listening device recordings revealed discussions about the stolen cash between Patison and M5 as they drove away from the premises. There were further recorded discussions about the division of the money after the officers returned to the police station.[82] The cash was divided between Patison, M5, Davidson and Hill.

2.86 The listening device recordings also revealed a dispute between the police, in that M5 alleged to Hill that Patison only revealed taking $4,000 and not the $6,000 that had actually been stolen. This discussion revealed an implied

[80] PIC Exhibit 431B, PIC Transcript SA Davidson, 12 December 2001 pp. 14-15
[81] PIC Exhibits 34 & 35
[82] PIC Exhibits 36 & 37, 38 & 39, 40 & 41

code of conduct amongst the corrupt officers to the effect that whatever cash was illegally obtained was to be shared amongst them in equal portions, even if one of them was not present at the search.[83]

2.87 The scales, a small amount of drugs, the DVD players and a small amount of cash were recorded in exhibit books at the Manly Police Station. The DVD players later became the subject of a further integrity test (see paragraphs 2.102 - 2.103 below).

2.88 Hill was the Independent Officer at the search. He admitted being given $300 cash by M5 following the search but said he did not see any money being taken during the search. He also recalled Patison searching with his back towards him. He recalled Davidson being present with the video camera however said Davidson told him that the battery was flat. He did not check the camera himself. Whilst Hill volunteered some explanations as to the impracticability of using video cameras during the execution of search warrants, he could not provide any explanation to the Commission as to why a designated Video Officer would bring along a video camera with a flat battery. He did however agree that if there was no intention whatsoever of filming, then it would be quite convenient bringing along a camera that had a flat battery.[84]

2.89 Hill also admitted that after Jasper and Patison had been arrested in December 2000, he was interviewed by Internal Affairs Investigators and volunteered that he had been present during a search of premises when Patison and Jasper were present. In particular, when asked if there was anything that occurred during the search that raised questions about the integrity of the officers present, he said to the investigators:[85]

> No, in fact, they did it basically by the book - one searching officer, which was Patison, while M5 stood there and spoke, while I watched and the other person was videoing.

2.90 Hill agreed that the covert surveillance film of the search clearly demonstrated that the video camera brought by the police sat unused on the kitchen table throughout the search. He claimed that the version he gave to the Internal Affairs investigators was according to his memory at the time and he was only reminded that the camera could not be used, due to a flat battery, at a meeting with Davidson several days before giving evidence to the Commission. This seems unlikely, although Hill stated that he had not intended to mislead the Internal Affairs investigation, rather, that he had forgotten about the flat battery when he gave that answer to the Internal Affairs investigators. Whilst he agreed that his answer appeared to be a lie, he said *"... that was my memory at the time"*.[86]

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[83] PIC Exhibits 40 & 41
[84] PIC Transcript, DM Hill, 19 October 2001, pp. 554-556
[85] PIC Transcript, DM Hill, 19 October 2001, p. 557
[86] PIC Transcript, DM Hill, 19 October 2001, pp. 557-558

2.91 Patison admitted that he failed the integrity test. He said:[87]

> ... I was probably the main instigator in looking for money. It was just something that just switched off in my brain that whenever I'd go for a search warrant I'd look for money. With the video working and that sort of thing, it really meant nothing even if that video had been going that night, you know there probably would have been another way that I would have taken the money.

2.92 Patison admitted that he took $6,000 but represented to M5 that he had taken $4,000. He said the $4,000 was then divided between himself, Jasper and M5. Patison said he did this as a way of getting back at M5 as he didn't like the way M5 was operating at the time. He said that M5 wanted to involve everyone by giving them all money and that that was why Davidson and Hill were given a share of the money. Patison said that he did not want to involve the others, and particularly Hill, in the corruption.[88]

2.93 With regard to the video cameras Patison told the Commission that a practice had developed whereby the video was only turned on in the event of something being located, so as to record those items being taken from where they were found. This practice had developed because of the difficulties and impracticality of videoing entire searches.[89]

2.94 Davidson recalled the search.[90] He agreed he was the Video and Exhibit Officer and that he had not used the video camera during this search. He said that a practice had developed that he did not operate the camera unless the senior officer told him to do so. He said he was unaware at the time of the search that money had been taken. He admitted receiving $200 from M5 after the search. He could offer no reasonable explanation as to why he accepted the money. He said:[91]

> He just handed it to me as I came out of the toilet, sort of thing, and he just said it was from Patison and it was out of his hands, sir. I just said, "Okay," and just sort of stood there and he walked away.

INTEGRITY TEST, SEARCH AT COLLAROY, 29 JUNE 2000

2.95 On 29 June 2000 an integrity test was conducted at Collaroy. M5 was provided with information concerning a suspected drug dealer, codenamed W4, and obtained a search warrant. The test was aimed at Patison and Messenger. Detective Senior Constable Richard Puffett also attended the execution of the search warrant. M5 contacted Messenger to arrange for him to attend at the search as the Independent Officer. As they were driving towards the premises M5 contacted Messenger and told him he would call him after they had entered the premises. The searching police entered the premises at approximately 11.00am. Shortly after entering, M5 contacted Messenger and requested he attend. Messenger did not arrive until 11.13am

[87] PIC Transcript, DP Patison, 11 December 2001, p. 1804
[88] PIC Transcript, DP Patison, 11 December 2001, pp. 1802-1803
[89] PIC Transcript, DP Patison, 11 December 2001, pp. 1804-1805
[90] PIC Exhibits 431B, PIC Transcript, SA Davidson, 12 December 2001, pp. 11-12
[91] PIC Exhibits 431B, PIC Transcript, SA Davidson, 12 December 2001, p. 12

by which time the searching activity had already taken place.[92] This was contrary to the Standard Operating Procedures relating to searches. The Independent Officer, for obvious reasons, is supposed to be present during the entire search.[93] Later, when Messenger attended at the search, M5 located cash and showed it to Patison and Messenger, indicating he had just located it. Patison then said they would *"negotiate with the offender"*. Apparently Messenger laughed and left the room.[94] Police stole the cash. At the police station, M5 divided the stolen $1,200 cash by giving $500 to Patison, $200 to Messenger and retaining $500 for himself.

2.96 Messenger agreed that he had been late attending the premises, claiming that investigators from this Commission had switched the power off in the building to prevent the lifts from working. The covert video surveillance film of the arrival of the police does not support this explanation.[95] The search party entered the premises at 11.00am and Messenger did not reach the building until 11.13am, by which time the search had already commenced. Messenger was then delayed in entering the building and was not present to witness the commencement of the search. He said that this was not unusual as it was often inappropriate to have the uniformed Independent Officer present upon entry because that might remove the element of surprise. Whatever the merit of that claim, it is not an explanation that is appropriate in this case because Messenger did not arrive at the premises until after the searching activity had been completed. There was then no prospect of him being able to discharge his duties in an appropriate manner.[96]

2.97 This search became the subject of further attention by Messenger in that he later advised M5 that, because his statement, which M5 had drafted for him, made no reference to certain items that had been located and seized, there was a possibility of him being criticised for not being present as the Independent Officer at the time the items were located. On a handwritten note Messenger said he would amend his statement to suggest he was present for the entire search.[97] This was to deflect any criticism as to his late attendance. The clear inference from the note was that Messenger re-worded his statement to give an incorrect impression that he had been present at all times during the search. The differences between an unwitnessed version of a statement by Messenger[98] and a signed and witnessed version,[99] both of which were placed before the Commission, are consistent with that interpretation of the events. The new version was clearly untrue. It also falsely implied that Messenger had actually complied with the requirements for Independent Officers pursuant to Standard Operating Procedures relating to searches.

92 PIC Transcript, 8 October 2001, p. 30
93 PIC Transcript, MW Messenger, 31 January 2002, p. 2183
94 PIC Transcript, 8 October 2001, p. 31
95 PIC Exhibits 42
96 PIC Transcript, MW Messenger, 30 January 2002, pp. 2078-2089
97 PIC Exhibits 235B; PIC Transcript, 8 October 2001, p. 32
98 PIC Exhibit 237
99 PIC Exhibit 236B

2.98 The matter was the subject of a discussion, recorded by listening device,[100] between M5 and Messenger on 1 February 2001. This followed the arrest of Patison and Jasper on 15 December 2000 which led to an Internal Affairs investigation at Manly Police Station into all matters involving Patison and Jasper. In the conversation Messenger appears to be proposing a version of events, he called it a *"plan of attack",* to be used if they are interviewed about the matter. The discussion included a story that the search party could not get into the premises and could hear the toilet flush when a radio message was sent to Messenger to come. Messenger had arrived by the time they gained access to the premises, observed the drugs on the floor, and the search was commenced. There was discussion about the possibility that a video of the search may exist. They also proposed saying that Patison had been left on his own which in turn would explain Patison taking the money, apparently without their knowledge.

2.99 The Internal Affairs investigation was also discussed in a recorded conversation between M5 and Messenger on 22 February 2001. In that conversation they agreed to use a formal code to arrange meetings.[101]

2.100 Messenger agreed in evidence that he was given $200 by M5, and that he knew the money had been stolen by M5 during the search. He admitted that he took the money from M5 without comment or persuasion. His explanation for his conduct was that he was depressed at the time.[102]

2.101 Patison said that it was M5's idea to identify the unit to be searched before calling Messenger to attend. This was so that the person to be searched would not be alerted to the search and was a not uncommon practice. The search however commenced before Messenger arrived. Patison said that he attempted to negotiate with W4 to pay a fee so that the charges in relation to the cannabis leaf found would be reduced but W4 *"... didn't seem to know what we were talking about, sir, so I left it"*. Patison agreed that Messenger was in the lounge room when the drugs were found in the bedroom. He was not aware of anything untoward occurring in relation to Messenger's statement about the matter.[103]

INTEGRITY TEST, DVD PLAYERS

2.102 Consequent upon the seizure of the DVD players during the search at Manly on 15 June 2000,[104] a further integrity test was devised and implemented. It was suggested to Jasper by M5 that one of the DVD players seized during the search could be taken from police custody and retained by Jasper. Jasper agreed to this suggestion so they prepared appropriate (but false) documentation acknowledging the return of the DVD players to the owner. One of the DVD players was then given by M5 to Jasper. Jasper gave the DVD player to his girlfriend. Subsequent telephone intercept recordings

[100] PIC Exhibits 233 & 234
[101] PIC Exhibits 238 & 239
[102] PIC Transcript, MW Messenger, 30 January 2002, p. 2101
[103] PIC Transcript, DP Patison, 11 December 2001, pp. 1808-1809
[104] See paragraph 2.87

played to the Commission revealed conversations between Jasper and his girlfriend concerning the DVD player and Jasper's attempts to deflect any specific enquiries from her as to its source and lack of operating instructions.[105]

2.103 Jasper admitted his participation in preparing the false documentation and receiving the DVD player. He agreed that he falsified the signature of the owner on the NSW Police Property Receipt to obtain the release of both DVD players.[106]

INTEGRITY TEST, MEETING AT JACKA PARK, HARBORD

2.104 This integrity test was directed specifically towards the conduct of Messenger. The scenario constructed was that Messenger would be approached for information concerning the status of Benbow, in particular, whether he was under investigation by another police officer. On 22 August 2000 M5 approached Messenger at Dee Why Police Station and asked him if he could find out the status of Benbow and whether he was in danger of further investigation and/or arrest. The conversation was recorded by listening device.[107] During the conversation Messenger was told by M5 that there would be "*a little sweetener"* in it for him. There was also discussion about the difficulties Messenger might have in approaching the officer concerned to obtain the information. It was clear that Messenger was aware that Benbow was a drug supplier. Messenger later volunteered to M5 that he had checked a number of issues and obtained a negative result.[108]

2.105 M5 and Messenger later met at Jacka Park, Harbord, where video surveillance and audio recordings recorded Messenger providing further information to M5 about the prospect of any further investigation of Benbow by the other police officer. M5 then handed over $500 cash concealed in a newspaper. The video surveillance captured the handover.[109]

2.106 Messenger admitted that he received $500 in cash from M5 when he and M5 met in Jacka Park at Harbord on 1 September 2000. Messenger claimed that he had been pestered into assisting M5 who was acting strangely, and claimed that he lied to M5, instead of providing him with genuine assistance for Benbow. He admitted that he and M5 were long time friends and said that he planned to deceive him because he thought he was out of control.[110]

2.107 Messenger's evidence is not borne out by the terms of the covertly recorded conversations between himself and M5. When the matter was first raised by M5 with Messenger on 22 August 2000, there was no indication of any pressure from M5 and Messenger agreed immediately to make enquiries in relation to the status of Benbow. Messenger discussed with M5 the possible

[105] PIC Exhibits 48 & 49
[106] PIC Transcript, MJ Jasper, 11 December 2001, pp. 391-393
[107] PIC Exhibits 248 & 249
[108] PIC Exhibits 252 & 253
[109] PIC Exhibits 50 & 51
[110] PIC Transcript, MW Messenger, 30 January 2002, pp. 2120-2125

approach to the investigator concerned and the theme of corrupt conduct continued later in the conversation when Messenger referred to money that had been stolen during the execution of a search warrant a few days earlier. The conversation ended with Messenger apparently enthusiastically agreeing to make an approach to the officer involved in order to ascertain the position.[111]

2.108 Messenger conceded in evidence that he had failed the integrity test. He said that he became involved *"reluctantly to get him off my back"* but had lied to M5 because he had not obtained the information that had been requested.[112] The information, however, was substantially correct in that the officer likely to be investigating the activities of Benbow was engaged in the Olympics and was not involved in pursuing the investigation of the Benbow.

INTEGRITY TEST, MEETING AT MANLY POOL CAR PARK

2.109 Another integrity test targeting Messenger was conducted on 6 September 2000. Again, M5 sought information from Messenger concerning his knowledge of a suspected Manly drug dealer, S3 and any potential briefs of evidence against him. Messenger agreed to make enquiries.

2.110 On 26 October 2000 Messenger met with M5 at Manly Pool car park. This meeting was subject to video and audio surveillance.[113] Messenger admitted to the Commission that he had received cash from M5 as a result of being asked to ascertain whether the drug dealer, S3, was under investigation and whether another offender who had been arrested had named him. Messenger indicated that he could not find a brief but provided M5 with a copy of a facts sheet taken from the COPS system. He was then paid the sum of $500 in cash by M5. Again, Messenger claimed that in doing what he did he was trying to get M5 off his back. He stated that he had lied to M5 and he claimed that the information he provided was false in that the facts sheet had not revealed whether S3 had been talking to police off the record or not. He agreed that it was improper to give the facts sheet to M5 on the understanding that it was to be given to a suspect. [114]

2.111 The recordings of the conversation between M5 and Messenger in relation to this matter are also contrary to the claims made by Messenger. In a conversation on 26 October 2000, when the matter was first raised by M5, Messenger was not under any pressure or obligation to assist but offered to do so without hesitation or persuasion.[115]

2.112 The matter was discussed later in a recorded conversation on 16 March 2001, after the arrest of Patison and Jasper on 15 December 2000 and when Internal Affairs had commenced investigating all matters involving Patison and Jasper at Manly Police Station. During that conversation Messenger cautioned M5

[111] PIC Exhibits 248 & 249
[112] PIC Transcript, MW Messenger, 30 January 2002, p. 2120
[113] PIC Exhibits 52 & 53
[114] PIC Transcript, MW Messenger, 30 January 2002, pp. 2137-2157
[115] PIC Exhibit 259B

about mentioning names on the telephone and checked that M5 had shredded the facts sheet he had previously provided to him. Messenger assured M5 that any records within the computer system of him obtaining the facts sheet would not be a problem, because his practice was to take documents from pigeonholes rather than operating the computer system that would leave a trail.[116]

VINCENT CACCAMO

2.113 Caccamo gave evidence before the Commission on 10 October 2001. He admitted to having used heroin since about 1985. He commenced dealing in drugs in the late 1980s - early 1990s and stated this was primarily to sell enough to support his own habit.[117]

2.114 At the time of giving evidence, Caccamo was in custody for a charge of supplying 1.5 kilograms of heroin. He indicated that he understood he would also be charged with two counts of supplying cannabis in respect of the drug transactions with Benbow referred to earlier in this Chapter.[118]

2.115 Caccamo said that his dealings with Patison and Jasper commenced in January 2000. A search warrant had been executed at his premises in his absence in May 1999. From that date he remained "underground" for about nine months to evade police. He knew that he was facing "supply" charges, as there was a large amount of heroin at his premises at the time of the search in May 1999.[119]

2.116 On 20 January 2000 Caccamo was attending to some drug dealing business at premises in Campsie when Patison and Jasper attended. Although they didn't have a search warrant with them they searched the premises. Caccamo stated that there was about $32,000 cash on the premises at the time of the search. That money went missing.[120] When the search had finished Caccamo left the premises in company with Patison and Jasper, under arrest on the charge of "supply heroin" arising from the search nine months earlier in May 1999.

2.117 According to Caccamo, on the way back to Manly Police Station Patison and Jasper stopped the vehicle at the Spit Bridge and discussed the prospect of Caccamo obtaining bail on the basis that he pay them $10,000 cash. They also suggested that he would have a better chance of obtaining bail if he handed himself in. He was then driven to Manly near the Police Station. Jasper left the car and entered the Police Station. About ten minutes later Caccamo went into the Police Station. By arrangement he asked to see Jasper. Later that night he was granted bail and his mother attended to pay the cash security of $10,000. Upon being released on bail, Caccamo met Patison at the Warringah Mall car park and gave him $5,000 cash. He said

[116] PIC Exhibits 261 & 262
[117] PIC Transcript, V Caccamo, 10 October 2001, pp. 119-120
[118] PIC Transcript, V Caccamo, 10 October 2001, p. 124, see paragraph 2.57
[119] PIC Transcript, V Caccamo, 10 October 2001, p. 99
[120] PIC Transcript, V Caccamo, 10 October 2001, pp. 100-102

that he only had that amount available that night. He paid the balance over the next two weeks.[121]

2.118 A few days later Patison and Jasper went to Caccamo's house and told him that for $80,000 the charges could be dropped. He agreed to do this because he did not want to go to gaol.[122] During the discussion they also said he could continue to sell heroin but only on the basis that he pay them $1,000 per week. Caccamo agreed to do this and commenced to pay them $1,000 per week on Wednesdays. The meetings to make the payments were either at the Harbord Diggers Club car park or at Target, Warringah Mall. On the first two occasions he met to pay the $1,000 he also paid the balance of the money owing for the bail arrangements, in instalments of $2,000 and $3,000. Caccamo said they allowed him some time to arrange the $80,000 payment because he told them that he had to try and sell some property overseas.[123]

2.119 Caccamo stated that he made regular weekly payments although he indicated that the amount would be sometimes $100 short of the $1,000. The payments continued on a weekly basis until Patison and Jasper were arrested in December 2000. Caccamo calculated the period over which he made payments as being one week short of 11 months and, including the other monies paid, the amount he had paid them totalled approximately $92,000.[124]

2.120 Caccamo was referred to the covertly recorded conversation with Benbow on 4 June 2000.[125] He confirmed that he had dealings with both Patison and Jasper and that he had attempted to re-negotiate the $1,000 weekly fee with Jasper because he was not selling enough drugs to make the required amount of money. He was shown video surveillance footage of his meeting with Patison on 10 June 2002.[126] Prior to giving evidence Caccamo had been shown video footage of another meeting with Patison on 24 April 2000. He confirmed that at both these meetings he handed Patison approximately $1,000. Caccamo was also asked about footage of Jasper at the meeting place on 10 July 2000 but said he didn't turn up to the meeting that day, as he did not have all the money. He admitted having Jasper's phone number in his mobile telephone directory.[127]

2.121 Patison agreed that he and Jasper arrested Caccamo at Campsie on 20 January 2000. At the time they also searched a car and stole cash that was under the front seat. He said that whilst driving back to Manly Police Station he and Jasper stopped with Caccamo at the Spit and came to an arrangement that Caccamo would pay $5,000 cash to them to get bail. He agreed that they dropped him off outside Manly Police Station and that he was later granted bail. He said he and Jasper then met Caccamo at Warringah Mall car park

[121] PIC Transcript, V Caccamo, 10 October 2001, pp. 103-104
[122] PIC Transcript, V Caccamo, 10 October 2001, p. 105
[123] PIC Transcript, V Caccamo, 10 October 2001, pp. 106-107
[124] PIC Transcript, V Caccamo, 10 October 2001, pp. 108-109
[125] PIC Exhibits 27 & 28
[126] PIC Exhibit 29
[127] PIC Transcript, V Caccamo, 10 October 2001, pp.112-115, 125

and he gave them $5,000. He thought Jasper had retained $5,000 from the car at Campsie and he, Patison, kept the subsequent sum of $5,000.[128]

2.122 With respect to the supply charges against Caccamo, Patison said that he thought Caccamo offered $80,000 to beat the charges. He thought that it was finally agreed that the sum would be $50,000. In addition to this amount he also said that he had discussions with Caccamo where he, Patison, proposed Caccamo pay $1,000 per week to be permitted to continue selling heroin. He said Caccamo was reluctant to pay that much money but that he eventually agreed to do so. He said that Caccamo was unreliable and that payments were irregular. He did say, however, that Caccamo made payments on average every three weeks from January until December 2000. The payments varied from $300 to $500 but he rarely received $1,000 per week. Patison disagreed that he was being paid on a weekly basis.[129]

2.123 Jasper agreed that he participated in the operation to arrest Caccamo at Campsie and that he found a large amount of money in a small red car at the scene. He was later instructed by Patison to count out $2,000 and leave it at the house. He initially thought he had found $7,000 but after counting out the $2,000 he was only left with $4,000. He said therefore that he must have only found $6,000.[130]

2.124 Jasper said that whilst Caccamo was being conveyed back to Manly Police Station, Caccamo sought to make a deal with them. He would not talk to them in the car so they stopped at the Spit Reserve. Caccamo and Patison had a discussion, which Jasper did not hear, after which Patison came back to him and discussed the possibility of Caccamo being granted bail. Caccamo was prepared to pay $5,000 to get bail. Jasper dropped Caccamo and Patison off at Manly and he returned to the police station. A little later Caccamo attended the police station and handed himself in. Jasper then arrested him and initiated the charging procedures. A solicitor later attended and an application for bail was made before the Bail Sergeant. Jasper confirmed that he presented the facts to the Bail Sergeant on the basis that Caccamo had surrendered himself and so did not oppose bail. He recalled bail was granted conditional upon the lodging of $10,000 surety together with Caccamo complying with various reporting conditions.[131]

2.125 Later that evening he and Patison attended the car park at Warringah Mall where Caccamo met with Patison. Jasper assumed Caccamo had given Patison money:[132]

> I lost sight of them then. There was obviously a transaction - had taken place, that is; Vince had given him some money. There was a pylon and 2 cars in the way, so I didn't see. ...
>
> ... Patison came back to where I was sitting. He said, "Are you right?" … I said "Yeah" presuming I was happy with what I had in my pocket. I

[128] PIC Transcript, DP Patison, 11 December 2001, pp.1748-1751
[129] PIC Transcript, DP Patison, 11 December 2001, pp. 1755-1757, 1767-1769
[130] PIC Transcript, MJ Jasper, 17 October 2001, pp. 356-358
[131] PIC Transcript, MJ Jasper, 17 October 2001, pp. 358-359
[132] PIC Transcript, MJ Jasper, 17 October 2001, p. 360

> thought it was $5,000 I had in my pocket at that stage. I didn't know it was only four. He said, "I am." I was presuming that he'd got $5,000 from Vince.

2.126 Jasper rejected the suggestion by Caccamo that $24,000 had been stolen from the car.[133]

2.127 Jasper said that a short time after Caccamo's arrest and release on bail, he and Patison visited him at his home. Jasper said that Patison did most, if not all, of the talking during the visit. Patison told Caccamo that they could assist him with his brief but that their assistance would not be cheap. Caccamo offered $80,000 and Patison seemed to agree with him. Jasper said he thought this was a ridiculous amount because he assumed Caccamo would not have that amount of money. Jasper said however, that Caccamo agreed to make regular payments and that these payments formed a part of the $80,000 offer. Jasper agreed that he subsequently received a payment of $1,000 and that was the largest amount he ever received from Caccamo.[134]

2.128 Jasper estimated that he met Caccamo and received payments from him on approximately 10 to 15 occasions. He thought Patison did the same. Both Patison and Jasper shared the money they received from Caccamo with each other. Jasper believed the payments were to assist Caccamo in so far as the brief of evidence was concerned. He refuted any suggestion that the payments were made by Caccamo to allow him to continue his drug trafficking activities. Jasper did however agree that he knew the money he received from Caccamo was the product of drug trafficking.[135]

2.129 When questioned a second time on this topic Jasper denied any "green lighting" of Caccamo to continue his drug dealing activities. He maintained his claim that he was receiving money from Caccamo in return for assistance in respect of the pending brief of evidence. Jasper also denied that he had, on any occasion, effected an introduction of one drug dealer to another to enable one to supply to the other.[136]

2.130 Peattie said that he had been present during the 1999 search and that during the time Caccamo was in hiding following that search, he made a number of inquiries as to his whereabouts. Peattie was unaware of the events surrounding Caccamo's arrest by Patison and Jasper in January 2000 and said that he thought Caccamo had handed himself in to the police station. Peattie said that he did not receive a share of the money taken by Patison and Jasper from Caccamo at the time of his arrest. He denied knowledge of the arrangement as to bail and / or the "greenlighting" of Caccamo by Patison and Jasper. Peattie also denied ever participating in arrangements with criminals wherein he would receive regular payments for those criminals to continue

[133] PIC Transcript, MJ Jasper, 17 October 2001, p. 361
[134] PIC Transcript, MJ Jasper, 17 October 2001, pp. 364-367, 369
[135] PIC Transcript, MJ Jasper, 17 October 2001, pp. 368-370
[136] PIC Transcript, MJ Jasper, 18 October 2001, pp. 407-408

unlawful activities. He said: *"Definitely not. I've – it is obvious here I'm no angel, but that's – that's another fence that I didn't jump"*.[137]

INTRODUCTION TO BENBOW

2.131 During the time Caccamo was "green lighted" by Patison and Jasper, it was also suggested by Patison that he assist another drug dealer, Benbow. Caccamo said that Patison provided Benbow's telephone number to him. Caccamo obtained two amounts of cannabis for Benbow, ten ounces and then one kilogram, and provided the two amounts to Benbow at two separate meetings. In relation to the ten-ounce deal Caccamo said that he received a $200 fee from the seller, Markarian, however he did not receive any fee for the one-kilogram deal. Caccamo said he bought the cannabis for $6,000 from a fellow named Tony at Chullora and then sold it to Benbow for $6,000.[138]

OTHER CORRUPT POLICE

2.132 Caccamo also gave evidence that Peattie and other police had corruptly taken money from him on four or five occasions, in the late 1980s and early 1990s, well before the arrangements with Patison and Jasper in 2000. He referred to a search at his parent's home by Peattie and a police officer codenamed M2. On that occasion police found three $50 deals and $2,700 in cash. As a result of that search Caccamo was charged with possessing the drugs, but not supply, and the cash was stolen.[139]

2.133 On a subsequent occasion Caccamo was approached by Peattie and M2 who, he said, accosted him and took $1,700-$1,800 from him. He had no drugs on him at the time. On another occasion Caccamo was at the Time and Tide Hotel where he was waiting to sell a half gram of heroin to another person. He was approached by police officers including Peattie, M2, C1 and another known as George. The half gram of heroin was taken from him together with all of the money he had in his possession. On yet another occasion he was accosted by Peattie and M2 in Harbord Road and on this occasion he was required to empty his pockets, revealing three deals and $1,600-$1,800 cash. He was again arrested, charged with possession and the money stolen. On each occasion he was merely charged with possession but always had the cash stolen. He stated his dealings with Peattie subsided once Peattie went back into uniform.[140]

2.134 Peattie responded to these allegations in general terms in that he agreed money was taken from Caccamo (and others) and the victim/s were then merely charged with "possession" rather than "supply". Peattie said that on most of these occasions there was not enough evidence to charge with supply but the police led Caccamo to think that there was so that he would accept the

[137] PIC Transcript, RJ Peattie, 16 October 2001, pp. 234-236
[138] PIC Transcript, V Caccamo, 10 October 2001, pp.109-110; see also paragraph 2.57
[139] PIC Transcript, V Caccamo, 10 October 2001, pp. 119-121
[140] PIC Transcript, V Caccamo, 10 October 2001, pp. 121-124

deal that was offered. On most occasions, on the evidence available, the charge would have been one of possession.[141]

2.135 In relation to the incident of the search at Caccamo's parent's home where Caccamo alleged that $2,700 cash was stolen Peattie conceded that he did take money from Caccamo but expressed doubt as to the figures suggested.[142] Peattie was taken to the other amounts specifically identified by Caccamo and he said that he did not recall the incidents. He did however say:[143]

> Look, he has probably got a better recollection of it than I and it could quite possibly be the amounts he is saying are the amounts we took, but, you know, without remembering it is hard for me to say what they were. I wouldn't trust him as far as I could kick him either, you know.

2.136 He agreed that he knew and worked with M2 and that M2 was a police officer who would have participated in these corrupt activities involving Caccamo. Peattie stated one of the officers mentioned in this context, C1, did not have any involvement in corrupt or unlawful activity.[144]

OTHER DEALERS

2.137 Caccamo also stated that whilst he had no corrupt relationship with Patison or Jasper prior to their approach to him on 20 January 2000, he was aware of another three drug dealers who were paying Patison in order to be allowed to deal in drugs. Caccamo wrote the names of these alleged drug dealers on a piece of paper that was tendered as exhibit 66C.[145]

2.138 Caccamo indicated that he also had an association with Mick Vanderlans. He described him as a 'runner'. He used to give Vanderlans a couple of grams of heroin a day to sell for him. He said that Patison warned Caccamo that Dee Why police were alert to Vanderlans selling drugs, and that he should change his car. Caccamo also stated that Patison told him Dee Why police had a sketch of Vanderlans and were suspicious that he had committed an armed robbery at the Quix Service Station at Dee Why.[146]

R1

2.139 R1 gave evidence on 18 October 2000. He said he had a number of convictions for break, enter and steal and knew Jasper from when Jasper was stationed at Mosman. In early 2000 he received a message to call Jasper. At that stage Jasper was stationed at Manly. R1 called Jasper and arranged to meet with him at the Roseville Bridge. Both Jasper and Patison attended that meeting. Prior to that meeting R1 had not met Patison. At the meeting Jasper asked R1 if he was still active and if so, they wanted *"a piece of the pie"*. R1 understood this to mean a pay-off. He said Jasper asked him for a payment of

[141] PIC Transcript, RJ Peattie, 16 October 2001, pp. 227-228
[142] PIC Transcript, RJ Peattie, 16 October 2001, pp. 231-232
[143] PIC Transcript, RJ Peattie, 16 October 2001, p. 232
[144] PIC Transcript, RJ Peattie, 16 October 2001, pp. 232-233
[145] PIC Transcript, V Caccamo, 10 October 2001, p. 116
[146] PIC Transcript, V Caccamo, 10 October 2001, pp. 125-126

$10,000 a week. He basically said he would think about it and get back to them.[147]

2.140 According to R1, following the first meeting he was again telephoned by Jasper. Jasper asked him if he had made up his mind to which R1 replied, *"What choice do I have?"*[148] Another meeting was arranged at the Roseville Bridge. On this occasion R1 met with Jasper only. Jasper indicated to him that he would have "*the greenlight*" to work on the Northern Beaches. R1 said that Jasper went on to explain that:[149]

> ... I would have the green light; he would tell me where special operations groups, anti-theft were working in certain areas. Also if I needed a hand with anything that they would look after me, and that was pretty much it ...

2.141 R1 said he had just been released from gaol and that at the time he was not active. He was reluctant to become active in the Northern Beaches area because he was concerned that if he was caught he would be sentenced for a lengthy gaol term. Even so, he agreed to participate and see how it went. They didn't make a specific arrangement as to the amount of the payments. R1 said that the figures Jasper was asking were too high and that he would not promise an amount that he could not give. Jasper agreed to settle the amount to be paid at a later time.[150] R1 said he gave Jasper a couple of hundred dollars *"... just to let him know that I appreciate it ..."*.[151]

2.142 He later met for the third time with Jasper and Patison at the Roseville Bridge and on this occasion he handed over $1,000 to Jasper. The money came from break and enters that he had committed in the Cremorne area.[152]

2.143 R1 told the Commission that he met with Jasper at the Roseville Bridge on a fourth occasion. At that meeting R1 gave Jasper $600 and Jasper referred him to an address at Killara:[153]

> ... he told me the street, the address, and it would be in my best interest to look at it ... he told me that there would be a motorbike in the garage with the door open, that nobody would be there and if there was a car in the driveway that they would be there, but there was no car and to go around the back and the door should open ... they were from another country ... they're not really security conscious ... he said they were just friends of a friend.

2.144 The next day R1 assessed the residence at Killara and having decided it was satisfactory to rob, he then did so. He stole cash and jewellery from the premises and after doing so rang Jasper. He disposed of the stolen goods and then met Jasper at the Manly Aquarium. He said he received a total of $1,000 for the jewellery and cash and he gave $500 of that to Jasper. At this meeting Jasper also identified other places at which R1 could carry out *"jobs"*. R1

[147] PIC Transcript, R1, 18 October 2001, pp. 456-457
[148] PIC Transcript, R1, 18 October 2001, p. 458
[149] PIC Transcript, R1, 18 October 2001, p. 459
[150] PIC Transcript, R1, 18 October 2001, p. 459
[151] PIC Transcript, R1, 18 October 2001, p. 460
[152] PIC Transcript, R1, 18 October 2001, pp. 461-462
[153] PIC Transcript, R1, 18 October 2001, p. 463

said Jasper pointed towards Balgowlah and also that Jasper and Patison were keen for R1 to have a look at *"... this dealer's place in Manly"*. He said Jasper told him the dealer kept money in a shoe and that he'd previously issued search warrants against him. R1 said that after receiving the information from Jasper he committed two break and enter offences in the Balgowlah Heights area.[154]

2.145 Earlier R1 had asked Jasper whether anything could be done to help B7, an associate of R1, who was facing a serious charge of robbery. B7 was waiting on a large compensation payout. Jasper had indicated he wanted to meet B7. The plan was that Jasper would help B7 in relation to his charges in return for a share of the compensation payout. R1 arranged the meeting between B7 and Jasper. That meeting took place at the Roseville Bridge. Jasper was busy and did not attend but Patison attended and introduced himself to B7. R1 also attended the meeting. Some figures were discussed at the meeting but nothing was settled because at that time B7 did not know how much compensation he would be getting. B7 gave $5,000 to Patison who told him they would look after him. R1 later received a telephone call from Jasper who said to him to thank B7 *"for the five ..."*.[155]

2.146 R1 said that during a telephone call with Jasper he discussed his concerns that he may have been under surveillance. Jasper told him that he, R1, wasn't, but that he (Jasper) was *"red hot"* and that he would tell him about it later.[156]

2.147 R1 later met with Jasper at the Manly Aquarium. This was his last meeting with Jasper. At the meeting R1 gave Jasper a diamond ring because Jasper had previously asked R1 to obtain a ring for him. R1 said he had a friend who ran a jewellery store and that he obtained two or three rings to show to Jasper, none of which he liked and then showed him one in particular that he chose. R1 obtained the ring for a wholesale price of $1,300-$1,400 and said he paid for it himself. R1 told the Commission he understood that the ring was part of his payment to Jasper instead of cash.[157] At the meeting Jasper told R1 that:[158]

> … things were a bit hot at the moment, "I think we should relax for a while, I'll give you a call when I need to and, if anyone asks, I'm just trying to get info out of you and I will jot it down in my police book.

R1 said that he understood from this that the green light had been *"turned off"* and that something was wrong.

2.148 Prior to R1 giving the above evidence at the Commission, Jasper was asked some general questions as to his involvement in other areas of criminality, such as encouraging or assisting another person to commit a criminal offence. He denied such activity and also indicated that he had never introduced any drug dealer to another drug dealer to enable one to supply to another nor had

[154] PIC Transcript, R1, 18 October 2001, pp. 466-471
[155] PIC Transcript, R1, 18 October 2001, pp. 464-465, 472-473
[156] PIC Transcript, R1, 18 October 2001, p. 475
[157] PIC Transcript, R1, 18 October 2001, pp. 476-477
[158] PIC Transcript, R1, 18 October 2001, p. 480

he ever provided information concerning possible targets for robberies or break and enter offences.[159] When asked about R1 Jasper said he knew him from having had dealings with him when he was attached to the Mosman Patrol. More recently he had bumped into R1 at a hotel in Cremorne.

2.149 Jasper told the Commission that he had previously charged a friend of R1's, named B7. R1 approached him to see if there were any favours that could be done in relation to the brief against B7. Jasper did not think he could do anything to assist R1 or B7 in respect of the brief but discussed the matter with Patison who suggested that there was something that they could do and that they ought to meet with R1. Jasper said he told Patison that he thought B7 would "be okay" as he thought the brief was *"a bit short"*. He said that he had obtained alibi statements from B7's family members and that the case against him was based solely on identification.[160]

2.150 Jasper said that he arranged a meeting with R1 at Roseville Bridge to discuss B7, at which it was arranged that they would be paid $5,000 to assist B7 with his brief. Patison did a lot of the talking at the meeting. Later Patison had another meeting with R1, during which R1 gave him $5,000. After the meeting Patison gave Jasper $2,500 and he assumed that money had been given to Patison by R1. Jasper did not attend the meeting as it occurred at the time he was obtaining the alibi statements. Jasper denied tailoring or modifying the alibi statements to improve B7's position. With respect to the alibi statements, Jasper later agreed that he had received payment prior to taking them from the various witnesses.[161]

2.151 According to Jasper he had another meeting with R1 at the Roseville Bridge to discuss B7's case. At the meeting R1 gave Jasper and Patison a small amount of money. Jasper and Patison spoke with R1 about B7's matter on one later occasion at Manly Court. There was a discussion about a variation to B7's bail conditions and R1 gave Jasper and Patison $200 each for their assistance to B7. This was despite the fact that Jasper said he told R1 that they hadn't done anything to assist B7. During that meeting R1 provided them with information concerning a male at Victoria Avenue, Chatswood who possessed a large amount of drugs and was apparently a *"protected species"*, that is, he was being looked after by someone, possibly a police officer. Jasper and Patison did not follow up this information because they heard later from R1 that the drugs had been disposed of.[162]

2.152 Jasper attended at the District Court of his own volition when B7's matter was heard. He wasn't called to give evidence but was prepared to, had he been called, despite the fact that he had received money to assist B7 not to be convicted. Jasper said that the fact that B7 was not convicted was not due to anything he, Jasper, had done.[163]

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[159] PIC Transcript, MJ Jasper, 18 October 2001, p. 408
[160] PIC Transcript, MJ Jasper, 18 October 2001, pp. 413-415
[161] PIC Transcript, MJ Jasper, 18 October 2001, pp. 415-419, 438
[162] PIC Transcript, MJ Jasper, 18 October 2001, pp. 420-421
[163] PIC Transcript, MJ Jasper, 18 October 2001, pp. 423-424

2.153 Jasper said he met with R1 at Manly Wharf on two occasions. On the first occasion R1 indicated he was concerned that B7 was a police informant. On the second occasion the meeting focused on obtaining alibi statements for B7 and another enquiry by R1 as to whether B7 was a police informant. Jasper told the Commission that he was using R1 as an informant. He also indicated that he was going to provide a letter of comfort for B7 by stating that he provided him with useful information. Essentially he was going to falsely state that the information supplied by R1 had actually come from B7.[164]

2.154 Jasper was aware that R1 had a criminal record and that his usual offences were robbery and/or break, enter and steal matters. Jasper was specifically asked whether when he spoke to R1 it was on the basis that he paid Jasper money to receive a "green light" to continue with his unlawful activities. Jasper denied this and indicated that the money he received was in relation to the brief concerning B7.[165]

2.155 Jasper also denied providing R1 with information relating to premises that might be suitable to be robbed.[166] Jasper was taken to a specific COPS entry relating to a robbery of premises at Killara on 23 November 2000, such premises being occupied by a friend of his girlfriend, but he denied directing R1 to the premises. Jasper said he spoke to R1 after the robbery with a view to him making enquiries as to who may have committed the robbery. Jasper was evasive about the incident and attempted to distinguish his admitted corruption with drug dealers from any criminal involvement with R1 in relation to this particular break and enter offence. He said he did not interview any other "informants" about the matter. He also said that he offered R1 a reward for information about the matter, however agreed that no such reward had been approved. Jasper nevertheless indicated that he would have put a recommendation in for R1 to receive a reward in return for information provided to the police.[167]

2.156 Jasper admitted that he liaised with R1 to obtain a diamond ring from him. R1 showed him a range of diamond rings and he eventually selected one for an agreed price of $1,500. R1 gave him the ring and Jasper was to pay R1 later, however he did not ever pay R1 as Jasper was arrested soon after being given the ring. Jasper said he had no suspicions as to the legitimate source of the ring despite the unfavourable reputation of R1. He accepted, however, that to obtain a ring in that way was unusual.[168]

2.157 Following the above account from Jasper, R1's evidence was taken and Jasper was subsequently recalled. Jasper abided by his earlier evidence and could not provide any other explanation as to the apparent coincidence that R1 was the person who committed the break and enter offence at the house at Killara that was occupied at the time by of a friend of Jasper's girlfriend.[169]

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[164] PIC Transcript, MJ Jasper, 18 October 2001, pp. 422-423
[165] PIC Transcript, MJ Jasper, 18 October 2001, pp 425-427
[166] PIC Transcript, MJ Jasper, 18 October 2001, p. 427
[167] PIC Transcript, MJ Jasper, 18 October 2001, pp 433-438
[168] PIC Transcript, MJ Jasper, 18 October 2001, pp 442-444
[169] PIC Transcript, MJ Jasper, 19 October 2001, p. 489

Jasper's explanation about this matter is not accepted. The Commission is of the opinion that that he was very much involved in the "green lighting" of R1 to commit offences and more specifically, assisted R1 by referring him to the Killara address and indeed other addresses for the commission of break, enter and steal offences (see the evidence of Patison below).

2.158 Patison acknowledged having corrupt dealings with R1. He recalled Jasper telling him that he had spoken to R1 and said:[170]

> I think that Jasper had put some proposition to him in regards to allowing him to continue his activity of break and enters for the payment of a fee, sir.

2.159 Patison agreed there was a meeting between Jasper, himself and R1 at the Roseville boat ramp and that whilst money was not paid at the first meeting R1 had agreed to pay money in the future. He thought they met again some weeks later and that he and Jasper received $4,000, which was divided between them. The money was received on the basis that Patison and Jasper were to provide R1 with protection. Patison told the Commission however that the reality was that he and Jasper did not have the sort of control needed to offer protection but because it was during the Olympic period the chance of R1 being caught was less than usual due to the large numbers of police engaged on Olympic duties. Patison told the Commission that they met on a number of other occasions with R1 and received more payments of around $400 and $200. He thought Jasper had seen R1 on other occasions without him. Patison denied giving R1 information to assist his criminal activities but said that to continue the deception that they were providing protection, he would convey to R1 vague propositions such as particular areas where there were no police working. Patison conceded that he had no control over where police worked and couldn't guarantee that there would be no police working in a particular area. He said that if R1 had been arrested there would have been nothing he or Jasper could have done about it.[171]

2.160 Patison confirmed that they gave R1 G2's address and indicated to him that G2 held money and was a person on whom they had already executed a search warrant.[172] He did not recall giving any other information to R1 about suspected drug dealers who might have cash. He did however remember referring R1 to another address at Pittwater Road where they had executed a search warrant that revealed no contraband. Patison indicated that he had no knowledge of Jasper providing R1 with an address in Killara or receiving the gold ring.[173]

2.161 Patison recalled R1 approaching Jasper and himself about assisting B7 in relation to charges B7 was facing. He thought Jasper was the officer who had charged B7 and said that, according to Jasper, the brief was weak. Patison said that they told B7 they would assist him but in fact there was nothing they could do. If B7 had won at court then Patison and Jasper would have claimed to have something to do with it and expected a financial reward. No amount

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[170] PIC Transcript, DP Patison, 11 December 2001, p. 1797
[171] PIC Transcript, DP Patison, 11 December 2001, pp. 1798-1799
[172] See paragraphs 2.48-2.54
[173] PIC Transcript, DP Patison, 11 December 2001, p. 1800

was set nor did they ever receive any money from either R1 or B7 in relation to B7.[174]

2.162 Patison also gave evidence about another incident with R1. He said that in 1994 he lost his police badge and wallet and thought they had been stolen. About two or three years later he found the badge and instead of handing it in to NSW Police, he kept it. Sometime later R1 asked Patison where he could get a police badge to take to rave parties. R1 wanted to use the badge to enable him to approach people, tell them he was police officer and confiscate their drugs and money. Patison agreed to sell the badge to R1 who paid around $2000 for it. Patison could not remember where the transaction took place but said the negotiations took place at Roseville. He said he did not tell Jasper, or anyone else, about the transaction.[175]

MARTIN GREEN

RELATIONSHIP BETWEEN PATISON AND GREEN

2.163 Green was admitted as a solicitor of the Supreme Court of New South Wales in 1993. Prior to his admission as a solicitor he had worked as a police officer in NSW from 1985. During this period Green spent time in the Prosecuting Branch, primarily at Manly, as a police prosecutor.[176] Green told the Commission that he met Patison when Green was first posted to Manly Police Station in 1985. By October 2000 Green had known Patison for almost 15 years. In that time they had become friends and would on occasions drink together in local hotels.[177]

2.164 In 2000 Green was a partner in the firm of solicitors, Stewart Green Mijovich, in Manly. A significant component of Green's work at that firm involved appearances in the Manly Local Court in criminal proceedings.[178]

2.165 As stated in paragraph 2.61 above, Benbow attended two conferences with Green that were recorded by way of a listening device. Telephone conversations between Green and Patison were also intercepted. In evidence before the Commission Green sought to explain his part in these conversations. The Commission is of the opinion that Green was not a credible witness when he sought to explain his involvement in the recorded conversations.

BENBOW'S ARREST AND HIS INTRODUCTION TO GREEN

2.166 As discussed in paragraphs 2.59 and 2.61 above, Benbow initially met with Patison in October 2000. Patison said he would introduce Benbow to a solicitor who was a mate of his and who would assist Benbow to reclaim the

[174] PIC Transcript, DP Patison, 11 December 2001, p. 1801
[175] PIC Transcript, DP Patison, 12 December 2001, p. 1823-1824
[176] PIC Transcript, MG Green, 7 December 2001, p. 1574
[177] PIC Transcript, MG Green, 7 December 2001, pp. 1576-1577
[178] PIC Transcript, MG Green, 7 December 2001, pp. 1573, 1575

money that had been seized by the police. At that meeting Patison gave Benbow Green's telephone number.[179] On 25 October 2000 Patison telephoned Green in relation to Benbow.[180] Their conversation as intercepted and played in the Commission's hearing. Apart from having received a message to ring Patison, this was the first contact Green had received concerning Benbow.[181]

2.167 There were some unusual aspects of this initial approach from Patison to Green. It is clear from the conversation that Patison was suggesting he would carry out some inquiries for Benbow once he had received representations on Benbow's behalf from Green. Patison also suggested that Green send the representations, that the charges not proceed, to Patison directly rather than to the Legal Services Branch of NSW Police, as was the usual practice.[182]

2.168 On 26 October 2000 Benbow contacted Green by telephone. In the conversation Green informed Benbow that he had been contacted by Patison about the matter and ascertained that the charges were next in court on 1 November 2000. Benbow confirmed to Green that he had invoices in relation to the $31,000 the subject of the "goods in custody" charge. In the course of the conversation Green said he would get the invoices from Benbow and put some representations together to give to Patison to try to get the "goods in custody" charge dropped.[183]

2.169 Benbow could not remember the exact date of his first meeting with Green however Green told the Commission that they met for the first time in his office on 1 November 2000.[184] According to Benbow, at that meeting Green indicated that if Benbow obtained the invoices and gave them to him he would pass them on to Patison.[185] The meeting was not recorded although Green kept a file note, dated 1 November 2000, of what he was told by Benbow at that meeting.[186] In the file note it is recorded that Benbow told Green that he was a plumber, that he was employed as a sub-contractor and that for 90 per cent of the time he did work for one contractor, V2. The only officer recorded in Green's file note as being involved in Benbow's arrest was M5.

2.170 Benbow and Green next met on 14 November 2000 in Green's office. The meeting was recorded.[187] A number of Green's contributions to the conversation give rise to an inference that he was either already involved in an improper and illegal arrangement with Patison, or that he was prepared to enter into an improper and illegal arrangement with Patison concerning Benbow.

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179 PIC Transcript, LM Benbow, 9 October 2001, p. 59
180 PIC Exhibits 178C, 179AC, 179B
181 PIC Transcript, MG Green, 7 December 2001, pp. 1587-1579
182 PIC Transcript, MG Green, 7 December 2001, pp. 1581-1582
183 PIC Exhibits 180C & 181B
184 PIC Transcript, MG Green, 7 December 2001, p. 1584
185 PIC Transcript, LM Benbow, 9 October 2001, pp. 60-61
186 PIC Exhibit 189C
187 PIC Exhibits 65, 64AC, 64B, 182

PROPOSED PAYMENT TO PATISON TO DISCONTINUE THE GOODS IN CUSTODY CHARGE

2.171 In the meeting on 14 November 2000[188] it was Benbow who first raised the topic of Patison wanting money in relation to the matter. When Green was first questioned about this part of the conversation, Green said he understood that Patison was seeking payment of some money to discontinue the goods in custody charge.[189]

2.172 Green's evidence establishes he understood that Benbow was discussing the making of a payment to a police officer to attempt to have a criminal charge discontinued. Green told the Commission that his view that Patison was seeking money was not based on anything that Patison had done, that he did not know why he had said that Patison was *"edging"* for such a payment, and that he had no other experience of police seeking similar payments in similar *"territory"*.[190] It is hard to understand why a solicitor of Green's background and experience would immediately discuss the payment of money to a police officer to have a criminal charge discontinued, when he had no such prior involvement with that police officer, or with any other police officer. The words used by Green give rise to an inference that he had previous experience of Patison and other police seeking similar payments.

2.173 During the conversation on 14 November 2000 Green told Benbow that he knew the reason Benbow had come to him. When questioned about this in evidence Green said that he didn't really know the reason Benbow had come to him but wanted to reassure Benbow.[191] Green's explanation that he was *"reassuring him"* supports the inference that Green was acknowledging to Benbow that he was someone who was prepared to facilitate an improper arrangement with Patison. Later on the first day of his evidence, Green asserted that he understood that Benbow was discussing with him the fact that the payment to Patison was for him to investigate exculpatory material in relation to the goods in custody charge.[192]

2.174 The conversation on 14 November 2000 contains a statement by Green that he did not *"actively"* get involved in arrangements such as that being discussed and that he would not *"broach"* the matter with Patison. Green proceeded, however, to give advice to Benbow that appeared to relate to how to go about raising with Patison the issue of payment of money to Patison.[193]

2.175 Green agreed that such advice was *"... poor judgment and it was improper ..."* to have offered such advice to Benbow.[194] Green denied that his advice to Benbow on the best way of approaching the issue of payment to Patison was based on past experience. He said that he was making up the advice as

[188] PIC Exhibits 65, 64AC, 64B, 182
[189] PIC Transcript, MG Green, 7 December 2001, p. 1588
[190] PIC Transcript, MG Green, 7 December 2001, pp. 1589-1590
[191] PIC Transcript, MG Green, 7 December 2001, p. 1593
[192] PIC Transcript, MG Green, 7 December 2001, p. 1598
[193] PIC Exhibits 65, 64AC, 64B, 182
[194] PIC Transcript, MG Green, 7 December 2001, pp. 1593, 1594

he went along.[195] Green also said that he suggested to Benbow that Patison might want payment for assistance because he thought this was what Benbow wanted to hear.[196]

2.176 Green's explanation that he understood that any payment that was to be made to Patison was simply for Patison to investigate exculpatory material is not believable, if what Green was suggesting was that he understood Patison would carry out a proper investigation. The conversation makes more sense if it is concluded that Green always believed that the proposed payment to Patison was to ensure that no proper investigation of the invoices would be carried out. Payment of money is not required for police to carry out a proper investigation where a person is charged with Goods in Custody and submits invoices / receipts suggesting a lawful source for the cash that is the subject of the charge. Investigating police have an obligation to carry out such investigations in accordance with their normal duties. Green acknowledged as much during the course of his evidence before the Commission.[197]

2.177 An inference can be drawn from both Patison's conversation with Green on 25 October, and from the 14 November conference, that, at least initially, it was not intended that any representations were to be submitted to NSW Police and dealt with in the normal way, which would involve them either being dealt with by the Legal Services Branch of NSW Police or by the Director of Public Prosecutions. It is also significant that in the conversation on 14 November, Green said to Benbow that the money would come back to him by way of cash and that he, Green, could *"run"* his fees against the money coming back to Benbow. In evidence Green agreed that this would not happen in the ordinary course of events.[198]

A "TOTALLY OFF THE RECORD" CONVERSATION

2.178 During the course of the conference with Benbow on 14 November, Green raised a concern as to whether or not the cash that was the subject of the charge, was to be paid to another person, (implying that the cash may not have been Benbow's legitimate earnings). Green began the relevant exchange by saying *"... oh, just totally off the record here"*.[199] When asked by the Commission to explain what he meant by "a totally off the record" conversation with a client charged with criminal offences Green said it was just a *"one-liner"*, that it had no substance and was used to make Benbow feel comfortable and that the conversation was not "off the record as such".[200]

2.179 Conversations between legal practitioners and clients are usually the subject of legal professional privilege. In the normal course there should, therefore, be no need for a solicitor to have an "off the record" conversation with a client. Green conceded in his evidence that what he was endeavouring to do

[195] PIC Transcript, MG Green, 7 December 2001, p. 1595
[196] PIC Transcript, MG Green, 7 December 2001, p. 1601
[197] PIC Transcript, MG Green, 7 December 2000, pp. 1636, 1637
[198] PIC Transcript, MG Green, 7 December 2001, p. 1641
[199] PIC Exhibits 65, 64AC, 64B, 182, p. 4
[200] PIC Transcript, MG Green, 7 December 2001, pp. 1601-1604

in this part of the conversation was to ascertain whether or not one of Benbow's "drug connections" wanted to get the cash back.[201] The inference is open that Green was indicating to Benbow that if he told him the true source of the cash, he would not be bound by those instructions, as the conversation had been "totally off the record".

TAXATION ISSUES

2.180 At one point in the conversation Benbow indicated to Green that he was worried about his invoices showing the payment of money because he had not paid tax on the money he had received. Green indicated that Patison was not concerned with that issue.[202]

2.181 In the conversation Green proposed an arrangement that had as its purpose the defrauding of the Commissioner of Taxation on two bases. The first was that GST would not be charged on the legal services provided to Benbow. The second was that the fees paid by Benbow to Green's firm, would not be disclosed as income to the Commissioner of Taxation.[203]

2.182 In his evidence before the Commission, Green agreed that he was suggesting to Benbow in the conversation that it *"might be the case"* that he would not raise a bill for the legal fees and that no GST would be charged. Green told the Commission that he was simply *"building up some empathy"* with his client by saying what he thought the client wanted to hear. He admitted that he was suggesting that he might be prepared to be party to an agreement to defraud the Commissioner of Taxation.[204]

2.183 Irrespective of whether at the initial conference there had been some discussion of Benbow paying Green's fees by way of cash, the proposal by Green that he not charge GST and that he not render a bill, with the clear stated purpose being to defraud the taxation authorities, was clearly improper conduct by Green in his capacity as a solicitor. (Green ultimately rendered a bill on 8 May 2001.)[205]

OBTAINING INSTRUCTIONS FROM BENBOW AS TO SOURCE OF CASH

2.184 A considerable part of the conversation on 14 November 2000 concerned the source of the cash seized and the reason why the cash came to be found by the police in the glove box of Benbow's vehicle on the day of his arrest. The recording indicates that rather than Green soliciting instructions from Benbow, it was Green who was suggesting to Benbow a possible innocent explanation as to how the cash came to be in the glove box.[206] The sequence of events suggested by Green was adopted by Benbow to explain how it was that the cash came to be in the glove box on the day that the police arrived.

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[201] PIC Transcript, MG Green, 7 December 2001, p. 1603
[202] PIC Exhibits 65, pp. 4-5, 182, p. 5
[203] PIC Exhibit 182, pp. 6 & 7
[204] PIC Transcript, MG Green, 7 December 2001, p. 1607
[205] Part of PIC Exhibit 230C
[206] PIC Exhibit 182, pp. 9, 11, 12, 15, 16

Green denied that he suggested an explanation as to the location of the seized cash to his client. He said he was simply confirming instructions that Benbow had given him at a previous conference although his notes of that conference did not contain any reference to this issue. Green said he had made notes of most but not all of the significant matters relating to his client's defence and then confirmed the instructions in the conversation on 14 November.[207] Given the terms of the conversation and the lack of any file note reference, the Commission does not accept Green's evidence that he was confirming instructions given to him earlier and not suggesting a scenario to Benbow.

2.185 Benbow told Green that he was having trouble getting more invoices to justify the cash the subject of the charge. The comments by Green indicate he was not concerned that the invoices the client was providing to him might not be for the money that was actually the subject of the charge.[208] Green made it clear that as long as the amounts shown on the invoices came to at least the amount of cash found by the police, the invoices could be used. He was not concerned to be satisfied that the money that had been seized by the police was directly related to the invoices / receipts that the client was providing. Although Green denied it was the case, this appears to indicate an intention to be party to, at the least, the misleading of police as to the source of the cash the subject of the charge.[209]

HOW MUCH MONEY PATISON AND BENBOW WOULD EACH RECEIVE

2.186 In the conversation on 14 November 2000, Green and Benbow discuss how much Patison was likely to keep and how much Benbow was likely to receive back at the end of the day. Green indicated that Patison would probably keep approximately 30 per cent and that Benbow could expect to get back approximately $20,000.[210]

2.187 Green's evidence before the Commission concerning this part of the conversation was that he did not know if Patison would take any money, and that his estimate of how much Patison would take and how much Benbow would get back was not based on any prior knowledge of Patison. According to Green, he was simply reassuring the client by telling him what he wanted to hear.[211]

THE APPROACH TO PATISON

2.188 In the recording of their conversation on 14 November 2000[212] Green told Benbow not to approach Patison until he, Green, had spoken to him. In evidence however Green said that it was never his intention to talk with Patison about payment of any money and that he was just telling Benbow

[207] PIC Transcript, MG Green, 7 December 2001, p. 1622
[208] PIC Exhibit 182, pp. 9 & 15
[209] PIC Transcript, MG Green, 7 December 2001, p. 1624
[210] PIC Exhibit 182, pp. 8,9
[211] PIC Transcript, MG Green, 7 December 2001, p. 1614
[212] PIC Exhibit 182, pp. 17-18

what he wanted to hear to give him the impression that everything was under control. Later he agreed that when he said that to Benbow he was lying to him.[213]

2.189 It is difficult to understand why Green would lie to Benbow on that issue. According to Green he lied to *"keep the client"*. He said he didn't have any intention of speaking to Patison but by telling Benbow that he would speak to Patison he gave himself some *"breathing space"* which enabled him to get on with the matter and to keep the client. Green said he *"honestly thought"* that the representations were going nowhere.[214]

2.190 During the conference on 14 November 2000 Benbow provided Green with a number of invoices. Those invoices were faxed by Green to Patison at Manly Detectives on 21 November 2000. The invoices were from Benbow Plumbing and were all billed to V2.[215]

TELEPHONE CONVERSATION AND CONFERENCE, 5 DECEMBER 2000

2.191 Green and Benbow had a further conference on 5 December 2000. That conference was also covertly recorded by Benbow.[216] During the conference Green had a telephone conversation with Patison that was recorded by way of telephone intercept.[217]

2.192 It is significant that the telephone conversation occurred after Green had been told by his client that Patison was looking to be paid money in relation to the Goods in Custody charge and, on Green's own evidence, to investigate the invoices. Despite the fact that Patison said to Green that he had not done any work in investigating the invoices, Green indicated to Patison, during the telephone call, that he would *"owe him a beer"* in relation to the matter. That remark suggested that Green well knew what the outcome of any investigation by Patison would be and that it would result in the return of the money to Benbow. Green rejected this suggestion when it was put to him in evidence.[218]

2.193 It is difficult, given the contents of the conference with Benbow, to accept Green's evidence, that he was thanking Patison for referring Benbow to him. Green had spoken to Patison a *"couple of times"*[219] between 25 October and 5 December and would have had a number of opportunities to thank him.

2.194 After the telephone conversation with Patison, the conference with Benbow continued on 5 December. During the course of this meeting, Benbow again raised with Green concerns he had about the acceptability of the invoices he had provided to justify the source of the cash seized by the police. Green

[213] PIC Transcript, MG Green, 7 December 2000, pp. 1626, 1630
[214] PIC Transcript, MG Green, 7 December 2000, p. 1632
[215] Part of PIC Exhibit 230C
[216] PIC Exhibits 5 & 6
[217] PIC Exhibits 187C, 188AC, 188B
[218] PIC Transcript, MG Green, 7 December 2000, p. 1651
[219] PIC Transcript, MG Green, 7 December 2000, p. 1651

discussed with Benbow what he understood was to be the scope of the inquiries that Patison would make in relation to the invoices that had been provided.[220]

2.195 Green indicated that Benbow need not be concerned that some of the invoices *"mightn't hold up"* as long as V2 was *"tuned"* to say that the jobs were done. He told Benbow that Patison was not going to investigate the invoices in *"any great depth"* because it would not serve Patison, Green or Benbow well for him to do so. This exchange, in light of the earlier conversation about the invoices in the conference of 14 November, clearly establishes that Green understood that Benbow was telling him that some of the invoices were false, and that Green was telling Benbow he need not worry because Patison's investigation of the invoices would be cursory.

2.196 When asked in evidence to explain this conversation Green said that Benbow's concerns related to taxation considerations and he reassured him that Patison wouldn't be investigating the invoices in terms of taxation. According to Green the reference to V2 being *"tuned"* was Green *"talking the talk"* and related to checking that Benbow was confident that V2 would be able to verify the invoices.[221]

2.197 The Commission rejects the explanation advanced by Green that he believed that Benbow was referring to taxation implications associated with the invoices. There is nothing in the context of the conversation that in anyway supports a belief that it was taxation implications that were being discussed. When the issue had been raised in the previous conference, Green had dismissed Benbow's concerns immediately. If what was being discussed was the taxation implications, there was no need for V2 to be *"tuned"* about anything. A reading of the evidence given by Green[222] demonstrates that even on his own evidence he understood Benbow to be saying that the invoices did not accurately reflect the amounts of money he had been paid for particular jobs.

2.198 Green was asked to explain how he knew that *"Dave's not going to go into it in any great depth"*. He said that he didn't really know. He was however fairly sure that Patison was only concerned that the invoices reflected sufficient money to equate with the amount Benbow had been charged with and that he wasn't concerned about whether tax had been paid appropriately. Green later also said that he was just reassuring his client by telling him what he wanted to hear.[223] This evidence indicates that Green did know that there would be nothing more than a cursory investigation of the invoices.

2.199 Later in the conference on 5 December the discussion returned to the topic of the extent of Patison's investigation of the invoices.[224] It is clear from this part of the conversation that Benbow indicated to Green that some of the

[220] PIC Exhibits 5 & 6, p. 3
[221] PIC Transcript, MG Green, 7 December 2001, pp. 1652-1654
[222] PIC Transcript, MG Green, 7 December 2001, pp. 1654-1656
[223] PIC Transcript, MG Green, 7 December 2001, pp. 1656-1659
[224] PIC Exhibits 5 & 6, pp. 7-8, 10-11

invoices were not genuine and that he was worried that Patison might go through all of them with V2. Green in the conversation, acknowledged this through the use of the expression *"there might be a couple there that might go through to the keeper"*. What is being referred to in the conversation is clearly not a taxation problem with the invoices, but that some of the invoices were not genuine, and that V2 might say that to Patison. Green appeared to direct Benbow what to tell V2 to say if Patison spoke to V2 about the invoices.

2.200 In his evidence concerning that part of the conversation, Green expressed similar explanations to those advanced to explain the earlier part of the conversation on these topics.[225] The Commission rejects these explanations. They are not consistent with the content of the conversation and lack credibility.

2.201 In the conference of 5 December 2000 the topic of how much Patison was to receive and Benbow was to get back was again discussed between Green and Benbow.[226] Green provided Benbow with an estimate of what he was likely to have returned to him. When asked, in evidence, what this estimate was based on Green said he just *"grabbed it out of the sky"*, that it was based on nothing, and he was once again telling his client what he wanted to hear.[227]

2.202 It is clear from Green's evidence,[228] together with his conversations with Benbow on both 14 November and 5 December 2000, that, by the time of the second conference, Green understood that it was proposed a payment would be made so that Patison would not conduct a proper investigation and would take steps to ensure that the Goods in Custody charge not proceed. That would probably be done by way of a report indicating that invoices establishing a legitimate source for the cash had been provided.

FORMAL REPRESENTATIONS TO COURT & LEGAL SERVICES, NSW POLICE

2.203 On 8 March 2001, Green made written representations to the Court and Legal Services Branch of NSW Police that all of the charges against Benbow not proceed. In relation to the Goods in Custody charge the representations contained the following:[229]

> Our client has disclosed to arresting police a number of invoices between the dates of 6 April 2000 and 28 June 2000 from a Mr [V2], Builder, made out to Luke Benbow Plumbing. The amount disclosed on the invoices would more than adequately cover the amount subject to the charge of Goods in Custody …
>
> Our submissions in these representations relate to the defence open to our client pursuant to Section 527C(2) in that the cash was legitimately part of his earnings as a plumber.

[225] PIC Transcript, MG Green, 17 December 2001, pp. 1937-1947
[226] PIC Exhibits 5 & 6, pp. 5-6
[227] PIC Transcript, MG Green, 7 December 2001, p. 1663
[228] PIC Transcript, MG Green, 17 December 2001, pp. 1948, 1949, 1950
[229] Part PIC Exhibit 230C

ASSESSMENT OF GREEN'S CREDIT

2.204 The Commission considers that Green was a witness who was evasive in the witness box, and whose evidence in many respects was implausible. Many of the answers he gave in endeavouring to explain what, on their face were incriminating comments by him during the meetings with Benbow on 14 November and 5 December 2000, were not in keeping with the terms of the conversations, and were not credible. Frequently, when confronted with incriminating words spoken by him he gave responses along the lines of: he was just making it up as he went along; telling the client what he wanted to hear; a throw away line; and assertions that he was lying to the client.

2.205 Even on his own account of his understanding of what was being said to him and by him during the two conferences with Benbow, Green admitted, at the very least, to improper conduct as a solicitor of the Supreme Court of New South Wales. Those admissions related to discussions with Benbow concerning the proposal to pay money to Patison, and proposals to defraud the Commissioner of Taxation. The fact that Green was prepared to suggest a willingness to be involved in such criminal and dishonest conduct with a client charged with serious criminal offences, is a matter that weighs heavily against him in the assessment of the credibility of his evidence. It is also not without significance that his file notes of the conference on 1 November 2000 contain almost no reference to matters that he referred to in his evidence, and which, on his account, were significant matters that he claimed had been said to him. In relation to the conference on 5 December 2000, he made a short note of the phone call with Patison, and no note at all of the things said in conference that day by Benbow, despite the significant matters discussed that day, as evidenced by the listening device recording of the conference.

2.206 For the above reasons, and taking into account the demeanour of Green during the course of his evidence, Green's evidence concerning his understanding of what was being said to him by Benbow in the conferences, and his explanation for words said by him in those conferences, to the extent that he purported to explain away the incriminating nature of such comments, is rejected.

EVIDENCE OF PATISON

2.207 Patison gave evidence, concerning his relationships with Green and with Benbow on 11 December 2001. According to Patison, in an early meeting with Benbow he told him; *"If you can get some receipts together and you can show that that money is legitimate"* and if the receipts were sent to Patison, he would investigate them and the money would go back to Benbow.[230] Patison conceded that he *"probably sewed* [sic] *the seed in his mind if he could come up with some dodgy receipts"*.[231] Patison also gave evidence that he had *"lined him* [Benbow] *up"* with Green as a solicitor.

[230] PIC Transcript, DP Patison, 11 December 2001, p. 1786
[231] PIC Transcript, DP Patison, 11 December 2001, p. 1787

2.208 According to Patison he had known Green for some time through the police and they were good friends. He claimed he referred Benbow to Green because *"I probably didn't think of anyone else at the time. It could have been anyone ... I never did anything or never indicated to Martin that there was something funny going on"*.[232] He repeated his assertions that he had not indicated to Green, that he, Patison, was to receive a payment from Benbow. Patison did however acknowledge that he had arranged with Benbow that he, Patison, would receive a payment.[233]

> As I say, I've known Martin for a long time and I probably believe that Martin thought that I was a pretty honest bloke. I never publicised the fact that I was doing wrong things.
>
> So I never – I don't believe I ever gave him the impression that I, for one, was ever going to get a dollar out of those receipts. I think the arrangement, or the understanding, of it was that if [Benbow] got the money back, then he was going to give me some, but I didn't ask for any and I didn't ask for any amount.

2.209 The Commission does not accept Patison's assertions that he had not told Green of his corrupt arrangement with Benbow. The fact that Patison had engaged in extensive corrupt practices, and in particular corrupt practices involving Benbow, adversely impacts upon any assessment that is to be made of the evidence he gave concerning his arrangements with Benbow and Green's involvement in them. Patison's assertions are inconsistent with the inferences that arise from the words spoken by Green on the listening device and telephone intercept recordings. The words used by Green give rise to a clear inference that he was aware of, and was part of, the improper arrangement between Patison and Benbow. At the very least he was prepared to facilitate the arrangement and saw a benefit to himself in doing so.

OTHER INCIDENTS OF CORRUPTION

PATISON

2.210 With the use of his duty book, Patison identified a number of incidents of corruption and serious misconduct in which he and others were involved in addition to those discussed in detail above. These additional incidents included those set out following.

H1 - Patison Duty Book Entry for 13 January 1987[234]

2.211 Patison identified a foot patrol he had done with Hill in which $200 was stolen from the suspect H1 after he was spoken to and searched. The $200 was shared equally between Patison and Hill. Hill was senior in rank to Patison and a good friend. Patison indicated that H1 had complained and that

[232] PIC Transcript, DP Patison, 11 December 2001, pp. 1787-1788
[233] PIC Transcript, DP Patison, 11 December 2001, pp. 1788-1790
[234] PIC Exhibit 191B

he, Patison, had denied the allegations when questioned by Internal Affairs investigators.[235]

S6 and W5 - Falsified Records of Interview

2.212 Patison indicated that in 1996-1997 when he was first stationed at Manly Detectives office, he and Peattie falsified S6's and W5's records of interview. Both the questions and answers of the interviews were typed by Patison and Peattie without being put to, or answered by, the defendants. Patison said that this practice was at the initiative of Peattie.[236]

D6 – 15 August 1990

2.213 A defendant, D6, was assaulted by Patison and King during Patison's time attached to the Armed Holdup Squad. This apparently resulted in D6 signing a confession in Patison's notebook.[237] Patison told the Commission:[238]

> ... during one of the interviews with D6 he was assaulted during the interview ... by King and myself ... pushed, slapped, I think he was pushed off the chair and - to try to get him to confess to that matter

2.214 Patison agreed that the charges were defended by D6 and that he probably gave untruthful evidence so as to sustain the interview and to deny the assault. He also believed King would have given a similarly untruthful version.[239]

C3 - 2 August, 1990

2.215 During Patison's time at the Regional Crime Squad North a suspect, C3 was arrested and charged. A gun was located during the arrest. Another officer suggested that they say that there was a bullet in the chamber when the gun was located. This falsehood was promoted and the interview of the suspect C3 was conducted on the basis that he admitted that there was a bullet found in the chamber.[240]

2.216 C3 was interviewed by way of notebook interview and a number of questions referred to firearms and whether there were rounds in the chamber or not. Patison agreed that these questions and answers constituted a "verbal" in that C3 did not give the answers as recorded.[241]

Search - S5 - 24 March 1994

2.217 Patison recalled that during a search of S5's premises money was stolen by police although he was not aware at the time of the search that money had

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[235] PIC Transcript, DP Patison, 10 December 2001, pp. 1678-1680
[236] PIC Transcript, DP Patison, 10 December 2001, pp. 1681-1682
[237] PIC Transcript, DP Patison, 10 December 2001, p. 1685; PIC Exhibits 194B & 192B
[238] PIC Transcript, DP Patison, 10 December 2001, p. 1684
[239] PIC Transcript, DP Patison, 10 December 2001, p. 1687
[240] PIC Transcript, DP Patison, 10 December 2001, pp. 1688-1692
[241] PIC Transcript, DP Patison, 10 December 2001, pp. 1690-1692; PIC Exhibits 193B, 194B

been taken. Following the search he attended Pittwater RSL and was given money. He could not remember the exact amount but suggested that it was around $500-$800. There were about four or five other police around at the time. He did not know whether the money was stolen from S5 or whether it was extracted in return for a favour. He said he didn't ask any questions.[242]

M10 - Payments - "Green Lighting"

2.218 Patison revealed that around the same time as the S5 search and prior to him transferring to Manly, he had an arrangement with M10, a drug dealer, that M10 was to pay him $1,000 a week. He understood he was paid this money to *"turn a blind eye to S5"*. M10 was unreliable in his payments and probably averaged $800 each payment with delays of three to four weeks between payments. The payments stopped when Patison transferred to Manly. Patison also said that during the time he received money from M10 he did not do anything to benefit S5 or M10.[243]

2.219 There was also an occasion when M10 wanted a police shirt or police gear to use as fancy dress. Patison admitted giving him a fluorescent coloured police vest. Patison denied knowledge of any subsequent charging of M10 concerning a home invasion in which it was alleged that one of the participants was wearing a police jacket.[244]

V3 - 13 August 1994

2.220 Whilst attached to the North Sydney Drug Squad Patison admitted that he and Messenger, upon the arresting and charging of V3 and another suspect, stole $7,000 of $11,000 cash that had been located. He recalled halving the money with Messenger.[245]

Search – Concord / Strathfield – 28 March 1995

2.221 Patison recalled an ongoing operation during which premises were searched at Concord and $15,000 cash was located.[246] Patison took the cash and later divided it equally between Messenger, himself and another police officer who was involved in the operation. Some cash was left on the premises for the occupant. Messenger was on leave and not present when this search occurred. Patison retained the money to give to Messenger upon his return because it was a part of the culture to include officers who, even though not at the search, were involved in that kind of behaviour.[247]

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[242] PIC Transcript, DP Patison, 10 December 2001, pp. 1700-1702
[243] PIC Transcript, DP Patison, 10 December 2001, pp. 1704-1705
[244] PIC Transcript, DP Patison, 10 December 2001, pp. 1706-1707
[245] PIC Transcript, DP Patison, 10 December 2001, pp. 1707-1710; PIC Exhibit 197B
[246] Patison later confirmed that this incident had occurred at an address in Strathfield; PIC Exhibit 201B; PIC Transcript, DP Patison, 10 December 2001, p. 1714
[247] PIC Transcript, DP Patison, 10 December 2001, pp. 1710-1712

Selling Drugs

2.222 Patison said that during the search, referred to at 2.219 above, he located three grams of heroin in the drawer where the money was located. He took the heroin and did not charge the occupant with that offence. He later sold that heroin to M10 for about $500.[248]

Payment for Bail

2.223 There was another incident in about 1994-1995 when Patison assisted members of the Gosford Drug Unit in an operation in the Top Ryde area. Following an undercover operation a male was arrested and charged in relation to amphetamines. When the paperwork was finished the police officers went to a restaurant in Lane Cove for a meal. During the meal Patison went to the toilet and on his return there was about $500-$600 under his plate. Patison did not know who the money had come from or who had given it to him but later found out that the male they had arrested earlier had paid $10,000 to get bail. Patison said he just took the money and didn't ask any questions.[249]

Search - M9 - 13 June 1993

2.224 While attached to the North Sydney Drug Squad, Patison attended at a search of premises occupied by M9. On 13 June 1993 $1,500 cash was located in clothing in a wardrobe and stolen. Patison later shared the money with Hill. M9 complained about the theft of the cash. There is a relevant entry as to the complaint in Patison's duty book dated 15 June 1993.[250] Patison specifically recalled the complaint because M9 alleged there was twice as much money stolen than was actually the case. Patison said that when he was interviewed about the complaint he denied the allegation.[251]

Search - S4 - 7 December 1993

2.225 Patison recalled the circumstances of a search of premises occupied by S4 on 7 December 1993 where $1,500 cash was located in a cushion. Whilst he did not independently recall the division of the cash, he asserted that it would have been split in equal shares between those present at the search i.e. himself, Hill, and another officer.[252]

Load Up - K4

2.226 Patison admitted he had "loaded" a suspected drug dealer, K4, with a small amount of heroin. Patison obtained the heroin (0.1 grams) from M10,[253] located K4, planted the drugs on him, and then charged him with

[248] PIC Transcript, DP Patison, 10 December 2001, pp. 1712-1713
[249] PIC Transcript, DP Patison, 10 December 2001, pp. 1715-1717
[250] PIC Exhibit 198B
[251] PIC Transcript, DP Patison, 10 December 2001, pp. 1717-1720
[252] PIC Transcript, DP Patison, 10 December 2001, pp. 1720-1722; PIC Exhibit 199B
[253] See discussion of Patison's relationship with M10 at paragraph 2.218-2.219

"possession". He justified this by saying M10 had provided information about K4 being a substantial supplier however attempts to catch him engaged in any illegal activities had been unsuccessful. Accordingly Patison just sought him out and arrested and charged him with the "loaded up" offence.[254]

Patison's Transfer to Manly

2.227 Patison transferred from the Major Crime Squad North to the Manly Patrol on 16 June 1996. Patison claimed that he did not immediately revert to his corrupt activities upon his return to Manly. He stated his reversion was due to ever increasing bitterness with the way he had been treated by NSW Police. His frustration arose after he had taken stress leave, been unsuccessful in attempts to transfer and felt generally unsupported by NSW Police.[255]

2.228 In 1998 he was also under threat of dismissal pursuant to section 181D of the *Police Act 1990*. He successfully resisted this nomination and was instead placed under strict supervision with restricted duties that specifically excluded drug investigations. These restrictions remained in place for six months.[256] However, after a favourable report from Peattie,[257] he was returned to full duties. At the beginning of the year 2000 Patison and Jasper were specifically allocated the task of attending to the backlog of outstanding drug enquiries at Manly.

Search - M8 / N4 - 22 November 1999

2.229 Patison and Jasper searched premises occupied by N4 and located a cashbox containing both drugs and money. All the drugs and money found were taken back to the police station. While Jasper was counting the money, Patison asked him if he had taken any and Jasper indicated that he had. Patison then invited him to take more. Jasper did so. Patison agreed that they took $800 and $1,600 was 'booked up'. The $800 was shared between Jasper and Patison.[258]

False Information to Obtain Search Warrants

2.230 Patison and Jasper both conceded that on occasions they submitted false information in applications to Justices to issue search warrants. Whilst Patison conceded doing this on a few occasions he said he was reluctant to do so because he could easily be caught out. As an example he identified a Search Warrant and he referred to his duty book entry for 27 April 2000.[259]

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[254] PIC Transcript, DP Patison, 10 December 2001, pp. 1725-1726
[255] PIC Transcript, DP Patison, 11 December 2001, pp. 1740-1745
[256] PIC Transcript, DP Patison, 11 December 2001, pp. 1731-1737
[257] PIC Transcript, GR Morgan, 18 December 2001, p. 2049
[258] PIC Transcript, DP Patison, 11 December 2001, pp, 1747-1748; PIC Exhibit 202B
[259] PIC Exhibit 206B

Basically he admitted "exaggerating" the grounds for the search warrant by providing false information on the application.[260]

JASPER

2.231 With the use of his duty book, together with access to a file within which he kept various applications for search warrants, Jasper identified a number of instances of corruption and serious police misconduct in which he and others were involved in addition to those discussed in detail above. These additional incidents included those discussed below.

Search - M8 / N4 - 22 November 1999

2.232 Jasper recalled that he and Patison searched premises in Eustace Street, Manly consequent upon them arresting and charging two females earlier that day.[261] He attended to search the premises with Patison, and two other officers. He thought Davidson was also present. The search revealed a cash tin containing white powder and cash. The occupant was arrested and charged and the cash tin and its contents seized. After he arrived back at the police station Jasper emptied the contents of the cash tin in the detective's office at Manly. He laid the money out on the floor and then took some before he photographed it. Patison was with him and suggested he take some more money, which he did. Jasper then photographed the remaining money. Jasper kept $600, Patison had $600 and Peattie was given some money. He was not sure how much Peattie was given but said that if they retained $600 each he would have received less.[262] According to Jasper, neither of the other officers present at the search received any of the money.[263] Patison also recalled this incident although he said that they kept $800 each.[264]

2.233 Jasper claimed this was the first occasion he committed an act of corruption.[265] He told the Commission that in his previous posting to the Anti-Theft Squad such corruption was not possible because there was a much tighter level of supervision in that the unit leader was invariably present when premises were searched and search procedures were followed as close to the guidelines as possible. In addition because they were targeting property-related offences they did not usually find the large amounts of money that are common in drug-related searches.[266]

G2 - Subsequent Search

2.234 Jasper, Patison and Davidson attended premises occupied by G2 some time after they had executed the original search warrant upon him on 23 May 2000. On this occasion they attended without warrants. They conducted a

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[260] PIC Transcript, DP Patison, 11 December 2001, p. 1772; PIC Transcript, MJ Jasper, 17 October 2001, pp, 396-397
[261] PIC Exhibit 436B
[262] PIC Transcript, MJ Jasper, 17 October 2001, pp. 350-352
[263] PIC Transcript, MJ Jasper, 17 October 2001, p. 354
[264] See paragraph 2.229
[265] PIC Transcript, MJ Jasper, 17 October 2001, p. 351
[266] PIC Transcript, MJ Jasper, 17 October 2001, pp. 346-348

search and a small amount of cannabis was located. There was a discussion with G2 and deal struck that he would pay them $3,000 in return for their not taking any action. Patison later met with G2 at the Steyne Hotel and upon his return to the police station, gave Jasper and Davidson $1,000 each. Jasper was unable to identify with any specificity when this occurred other than it was after he returned from leave on 3 July 2000.[267]

Search - B9 - Wyuna Avenue, Harbord - 17 July 2000

2.235 Jasper, Peattie and Davidson attended this search. They located a small amount of cannabis mixed with tobacco, and a broken air rifle. Rather than charge the occupant they took $600 from him. They each retained $200.[268]

Search - North Narrabeen - 16 August 2000[269]

2.236 Jasper attended a search in the company of M5, Davidson, Messenger and McKillop at an address in North Narrabeen. The suspect was not present, however there were two other occupants present smoking cannabis. Uniformed police from Dee Why were called to deal with them. A further amount of cannabis was located in a cabinet together with $1,130 cash. L9, the suspect, arrived home during the search and was arrested. His vehicle was searched by Jasper and another $700-$800 located. M5 told Jasper to leave that money in the vehicle. Jasper presumed that M5 said this to him because he had found other money. Later at Dee Why Police Station M5 told Jasper he had found $3,000. M5 gave Jasper and Davidson $700 each and Messenger $300 and retained $700 for himself.[270]

2.237 Davidson also gave evidence about this search. He said he was aware at the time that money was located but not that it was taken. He later received some money, probably from Jasper.[271]

Search - French's Forest - 19 September 2000

2.238 On another occasion Jasper, Patison, M5 and an Independent Officer, executed a search warrant at premises in Frenchs Forest. Cannabis was located in a black backpack together with money. Jasper took charge of the backpack, drugs and money and whilst conveying the suspect from the scene, Jasper, Patison and M5 each took $100 in cash. The suspect was charged with supply and the remaining cash in the backpack was entered up as an exhibit. Jasper recalled there was about $900-$1,100 in total.[272]

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267 PIC Transcript, MJ Jasper, 17 October 2001, pp. 388-389
268 PIC Transcript, MJ Jasper, 17 October 2001, pp. 389-390; PIC Exhibit 437B
269 This search was also an Integrity Test of Messenger; see paragraphs 2.266-2.267
270 PIC Transcript, MJ Jasper, 17 October 2001, pp. 393-394; PIC Exhibit 438B
271 PIC Exhibit 431B, PIC Transcript, SA Davidson, 12 December 2001, p. 13
272 PIC Transcript, MJ Jasper, 17 October 2001, pp. 397-398; PIC Exhibit 439B

G3 and G4 - Visit to Frenchs Forest

2.239 Jasper referred to a visit that he and Patison made to the premises of G3 and G4. They were apparently seeking a suspect in relation to burnt out motor vehicles. Patison had previously charged G4 and knew him to be a heroin addict and dealer. After talking with G3 and G4 Jasper returned to the car before Patison. When Patison returned to the car he gave Jasper $250 saying it was "something from G4". Jasper assumed Patison had received $500 and kept half for himself. Jasper didn't know what the money was for but took it and didn't ask any questions.[273]

Applications for Search Warrants - False Information

2.240 As with Patison, Jasper conceded that there were occasions when applications for search warrants contained information that was not correct. Jasper said that he would invent information to make the applications for search warrants stronger.[274] Examples of such applications are set out following.

N2 - Application for Search Warrant - 18 September 2000

2.241 The application for this search warrant contained the false assertion that police conducted surveillance and observed a number of persons entering the premises and then leaving in a short space of time. The information was inserted in the application to *"make the application look better"*.[275]

G5 - Application for Search Warrant - 30 October 2000

2.242 This application included an assertion that the information had been received from a registered police informant. Jasper said that this was included to bolster the application because magistrates preferred information to have come from registered police informants rather than just informers.[276]

False Statements and Statements of Facts

2.243 Jasper agreed with the general proposition that he falsified statements of facts in respect of charges. He presumed that those falsified statements of facts had been placed before courts and acted upon by those courts in circumstances including applications for bail and pleas of guilty. He also agreed that he falsified exhibit lists including those relating to search warrants, property seizure records and descriptions of seized physical evidence. He did not accept, however, that he had prepared false statements of evidence in respect of any alleged offenders other than B7 and Caccamo.[277]

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[273] PIC Transcript, MJ Jasper, 18 October 2001, pp. 412-413
[274] PIC Transcript, MJ Jasper, 17 October 2001, pp. 396-397
[275] PIC Transcript, MJ Jasper, 18 October 2001, pp. 405-406; PIC Exhibit 115B
[276] PIC Transcript, MJ Jasper, 18 October 2001, pp. 406-407; PIC Exhibit 116B
[277] PIC Transcript, MJ Jasper, 19 October 2001, pp. 517-519

PEATTIE

2.244 Peattie gave evidence in relation to the following incidents in which he was involved and which are in addition to the incidents discussed above.

S3

2.245 Peattie had a relationship with a former informant, S3.[278] He used to drink with him but had not seen him for four or five years prior to 2000. M5 asked Peattie to introduce S3 to him so that he could use S3 to get information about other criminals. Peattie said he was reluctant to do this but after pressure from M5 did set up the meeting. M5 and Peattie had a number of conversations about S3. The conversations were recorded by listening device. Parts of the conversations were played to Peattie in evidence.[279] Peattie agreed he told M5 that S3 was *"robbable"*. After some improbable explanations, Peattie finally conceded to the Commission:[280]

> The crux of what I was saying to M5 was that he was telling me that he had enough to go and pinch him. I said "All right, pinch him." I said "He's robbable." But me saying he's robbable, I was saying "Arrest him. If he has money there, take some off him. Have him work for you - like give up other drug addicts", and if he did that, provide a letter of comfort for him.

2.246 The implausibility of Peattie's explanation was later conceded in the following exchange:[281]

> Q Again, in the light of what I've just been putting to you, weren't you suggesting to M5 that S3 could be robbed and wouldn't complain?
> A Yes.

2.247 In the conversation recorded by listening device between Peattie and M5 on 6 September 2000 Peattie said to M5:[282]

> And fuckin' pinch him and rob him and fuckin' get him' do that anyway.

Peattie agreed that he was suggesting here to M5 that he rob S3. Ironically, after saying this to M5, Peattie warned S3 as to M5's approach. Peattie explained this by saying he took a *"... please the one you are with"* type of approach. Peattie denied referring any other people as appropriate targets for police to rob.[283]

Mischievous Complaint / Phantom Telephone Call

2.248 Consequent to the B6 search both Patison and Jasper were charged with criminal offences in December 2000. As indicated in paragraphs 2.78-2.81 this incident was subject to an Internal Affairs investigation. As part of that investigation Peattie was interviewed by Internal Affairs investigators.

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[278] This informant was also involved in an Integrity Test of Messenger; see paragraphs 2.109-2.112
[279] PIC Exhibits 99 & 100, 101 & 102, 103 & 104, 105 & 106
[280] PIC Transcript, RJ Peattie, 16 October 2001, p. 245
[281] PIC Transcript, RJ Peattie, 16 October 2001, p. 246
[282] PIC Exhibits 105 & 106
[283] PIC Transcript, RJ Peattie, 16 October 2001, pp. 245-247

Following that interview Peattie made a complaint concerning his treatment during his interview. While he would not concede to the Commission that his complaint was mischievous he did concede in evidence that he knew Patison and Jasper had been arrested in relation to their dealings with B6, that money had been taken from B6 during the search, and that he, Peattie, had received a share of those monies.[284]

2.249 A part of his complaint was that the Internal Affairs investigators had a sub-standard knowledge of search warrant Standard Operating Procedures (SOPs). In evidence, he agreed that this was not a serious allegation, having regard to his role in the matter. Peattie also complained that Internal Affairs investigators neglected to inform him of his rights to have legal assistance and/or an Independent Observer, prior to participating in an ERISP interview. In view of his conduct in the incident and his knowledge as to rights of interviewees, having regard to his experience as an interviewing detective, Peattie's claims in his complaint seem farcical. He would not, however, agree with this proposition in evidence.[285]

2.250 It also came to light that subsequent to his complaint apparently being ignored for several months, Peattie contrived to make a phantom telephone call to himself so as to stimulate some further action on his original complaint. Basically he admitted telephoning his own mobile telephone from a public telephone so as to register what he referred to as a "threatening" phone call. He then reported the "threatening" phone call to Manly police. His excuse was that:[286]

> ... It was my stupid way of trying to get some action on the complaint.

2.251 Peattie did not agree with the proposition that he was attempting to form a counter attack to protect his corrupt workmates. Ironically, he agreed that he was complaining about being treated like a criminal.[287]

False Sick Leave / Hurt on Duty Claim

2.252 On 20 December 2000, several days after the arrest and charging of Patison and Jasper, Peattie went off duty on sick leave. He claimed his condition was one of depression and anxiety / stress. He did not resume duty but remained on sick leave up until the dates he gave evidence before the Commission. He agreed that he had consulted with doctors for the purposes of obtaining medical evidence for a Hurt on Duty claim. Peattie initially told the Commission his condition of anxiety and stress was genuine. He then listened to a conversation between M5 and himself recorded by listening device on 17 May 2001.[288] He agreed that it was a joke between him and M5 that he had been prescribed an antidepressant drug, Cipramil. When questioned about the conversation and his illness Peattie admitted that

[284] PIC Transcript, RJ Peattie, 16 October 2001, p. 252
[285] PIC Transcript, RJ Peattie, 16 October 2001, p. 253
[286] PIC Transcript, RJ Peattie, 16 October 2001, p. 254
[287] PIC Transcript, RJ Peattie, 16 October 2001, p. 255
[288] PIC Exhibits 107 & 108

although he had some of the symptoms some of the time he had exaggerated them. He said *"It wasn't a total gee-up as such"*.[289]

2.253 Not only did Peattie agree he spoke with M5 about his "condition" and Hurt on Duty claim, but he also agreed that he telephoned Messenger about his claim. He disagreed that he contacted Messenger to collaborate because Messenger was in a similar position as to medication and a pending claim. Peattie said he had contacted Messenger to obtain information and advice about the Police Association and the process involved in making a Hurt on Duty claim.[290]

2.254 Peattie later indicated to the Commission that he did not consider his Hurt on Duty claim to be genuine and that he did not intend pursuing it any further.[291]

Corrupt Conduct - 21 Division

2.255 Peattie said his introduction to corrupt conduct was during an incident in 1980 when he was attached to 21 Division as a Trainee Detective. He said that he, in company with other officers, attended a "card school" to execute a search warrant. The senior officer took the "boss of the card school" out the back and a short time later they returned and a number of people were arrested for playing cards. The "boss" was not arrested. Later during that shift, the senior officer handed Peattie $100. Peattie said he accepted the money and did not ask any questions but took steps to avoid working with that officer again.[292]

Verballing and False Statements

2.256 When interviewed Peattie told investigators that from time to time he had verballed suspects. He said he was unable to identify particular suspects without access to records. He did however recall one matter where he arrested two suspects for break and enter offences in the Manly area. He stated that he and Patison prepared a false typewritten record of interview with one of the suspects and relied on it to prosecute that suspect.[293]

2.257 Peattie agreed that he engaged in the conduct of verballing offenders over a period of seven years between 1984 and 1991. He was unable to say how often he engaged in this practice with Patison or other officers but said that although he didn't do it every day it was a regular practice.[294]

2.258 Peattie said that he also prepared false statements during this period. The statements related to various offenders, some were tendered with briefs of evidence and, on occasions, formed the basis of sworn evidence. He could

[289] PIC Transcript, RJ Peattie, 16 October 2001, pp. 255-260
[290] PIC Transcript, RJ Peattie, 16 October 2001, pp. 260-261
[291] PIC Transcript, RJ Peattie, 16 October 2001, p. 282
[292] PIC Transcript, RJ Peattie, 16 October 2001, pp. 261-262
[293] PIC Transcript, RJ Peattie, 16 October 2001, p. 263
[294] PIC Transcript, RJ Peattie, 16 October 2001, pp. 293-294

not recall the number of false statements he had signed or used, however he indicated it was less than 100 but at least 20.[295] Peattie admitted that he knew the contents of such records of interview and statements were untrue but that he was prepared to lie on oath in relation to those matters.[296]

District Drug Unit - Manly and Collaroy - 1989-1991

2.259 Peattie indicated that he was in charge of the District Drug Unit from 1989 until 1991 and during that period he was directly responsible for stealing money from drug users. He was unable to state how many times he did so but admitted that the most he stole on a single occasion was $8,000, of which he received $2,000. He acknowledged sharing stolen money with other members of the unit. He also indicated that most of these thefts occurred during the execution of search warrants.[297]

Complaints History

2.260 Peattie acknowledged that there were approximately 30 complaints made about his conduct as a police officer and of these only two were sustained. He agreed that he had denied the allegations that related to him stealing money but now admitted they were true.[298]

Manly / Davidson LAC Corruption Prevention Plan and Survey

2.261 Ironically Peattie, while acting as Crime Manager at Manly, promoted the Local Area Corruption Prevention Plan. He also caused a survey relating to corruption prevention to be distributed amongst police at Manly. He agreed that in light of his conduct the completion of this survey was the height of hypocrisy and that the results of the survey had been a "white wash" when it came to exposing the real position as to corruption at Manly.[299]

Police Vehicle Petrol Cards

2.262 Peattie volunteered that he used a Police Vehicle Petrol Card to fill his personal vehicle with petrol on approximately three occasions in the year 2000.[300]

Search Warrants - Standard Operating Procedures

2.263 Peattie said that, prior to 16 December 2000 he was not familiar with the SOPs for the execution of search warrants. This was because there were SOPs for everything in the police force and he did not make it a practice to read them especially when he had a working knowledge of a procedure.

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[295] PIC Transcript, RJ Peattie, 16 October 2001, pp. 298-300
[296] PIC Transcript, RJ Peattie, 17 October 2001, pp. 324-325
[297] PIC Transcript, RJ Peattie, 17 October 2001, pp. 302-304
[298] PIC Transcript, RJ Peattie, 16 October 2001, p. 264
[299] PIC Transcript, RJ Peattie, 16 October 2001, p. 273; PIC Exhibits 110 & 111
[300] PIC Transcript, RJ Peattie, 16 October 2001, pp. 273-274

While there were a number of requirements for the role of the Independent Officer of which he wasn't aware, he was aware of the requirement that there be continual monitoring of the search team, although he agreed he did not always do that when he was the Independent Officer. This was because he was aware that at times money was being taken, or because he assessed it as more important that he be with one person rather than another, or because:[301]

> … if you did searches according to Hoyle, you'd be there half a day every one you did. I had other stuff to do and neglected that.

He admitted that he did not realise that, under the SOPs, as Independent Officer he had to certify any seizures on a particular form.[302]

Assessment Centre - Police Promotional System

2.264 For police officers to advance above the rank of Senior Sergeant they must satisfy a pre-condition to apply for promotion by successfully completing a course at the NSW Police Assessment Centre. Peattie agreed that he obtained an advantage over the other applicants by obtaining *"... tips on what role plays they did ..."* from M2, an officer who was one of the role players at the Assessment Centre. Peattie agreed that this gave him a significant advantage over other applicants and acknowledged the impropriety of his actions. He said that he passed most of the information he received from M2 on to other police officers who were applicants.[303]

MESSENGER

2.265 Messenger admitted that he had engaged in corrupt conduct during his career in NSW Police. The corrupt conduct he admitted related to the integrity tests described above and the following additional matters.

Controlled Operation - 16 August 2000[304]

2.266 A controlled operation was conducted on 16 August 2000 at the premises occupied by L9, during which M5 took $3,000 cash. M5 later handed Messenger $300. Messenger admitted receiving the money, knowing it to have been taken during the search.[305]

2.267 During the operation, conversation between Messenger and M5 was recorded indicating that M5 showed Messenger the $3,000 cash he had discovered. Messenger is recorded as telling M5 that he should talk to the suspect first.[306] Later during the search the prospect of stealing further money from the suspect's motor vehicle was discussed and Messenger cautioned M5 about being greedy. Messenger asked M5 whether the other officers with them were involved in their arrangement and was told that only Davidson was *"...*

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301 PIC Transcript, RJ Peattie, 16 October 2001, pp. 274-275
302 PIC Transcript, RJ Peattie, 16 October 2001, p. 275
303 PIC Transcript, RJ Peattie, 16 October 2001, pp. 277-278
304 See also discussion at paragraphs 2.236-2.237
305 PIC Transcript, MW Messenger, 30 January 2002, pp. 2106-2104
306 PIC Exhibits 240 & 241

in it ...".[307] M5 and Messenger also discussed with Jasper whether the charge could be reduced to possession. Messenger suggested to Jasper that he approach the suspect to advise him that he would only be charged with possession, with the obvious inference that he would then not complain about the theft of the money. Messenger questioned whether the video recorded the weighing of the drugs found during the search. If it had it would be a problem for them to charge the suspect with possession only. The recorded conversation indicates that the video of the search was replayed at the scene in order to confirm that there would not be any problem with the proposal.[308]

Sharing Informant's Rewards

2.268 A5 gave evidence that he was a registered informant to Messenger and that on two occasions when he was to receive an approved reward, which had been recommended by Messenger for services rendered by A5, Messenger demanded approximately half of the reward money for himself.[309] Records were tendered which recorded the payment of reward monies to A5 in circumstances which involved Messenger. On 27 June 1994 a cheque for $7,800 was cashed for payment of a reward to A5. Messenger was recorded as the officer who introduced A5 to the Acting Commander who handed the cash over.[310] Similarly, records also indicated that on 16 March 1995 A5 received the sum of $4,500 as payment of a reward. The records indicate that the Commander handed the money to A5 who had been introduced by Messenger.[311] Messenger conceded that he would have been present on both occasions when the money was handed to A5 but denied the allegation that he had compelled A5 to share the money with him. He was unable to give any reason why A5 would fabricate an allegation against him, although he asserted that A5 would be doing it for his own greedy self-interest.[312]

RELATED MATTERS

2.269 The Commission has a statutory role pursuant to section 14 of the *Police Integrity Commission Act 1996* to advise on possible ways in which police misconduct might be eliminated. With this objective in mind, it is appropriate to comment on the following matters.

CONDUCT OF POLICE OFFICERS DURING SEARCHES[313]

2.270 At each of the searches referred to above during which misconduct or criminal conduct took place, an Independent Officer was present for the purposes of supervising the search. More often than not other officers were also present to assist with the search. According to Jasper, on about half of

[307] PIC Exhibits 242 & 243
[308] PIC Exhibits 242 & 243
[309] PIC Exhibit 273, pp. 10-12
[310] PIC Exhibit 289C
[311] PIC Exhibit 290C
[312] PIC Transcript, MW Messenger, 31 January 2001, p. 2176
[313] See further discussion in Chapter 11 – Procedural Matters

those occasions, Peattie was the Independent Officer, but on the other searches other officers acted as the Independent Officer.[314]

2.271 There is no evidence that any officers, other than those who have been specifically referred to, were implicated in the corrupt conduct identified. Jasper stated that the inspectors generally insisted that the searches were conducted properly.[315] Patison also claimed that they tried to do most searches *"by the book"* because a suspect would eventually be charged and the matter would go to court. He said that the fact that money was discovered and taken did not affect the process of the execution of the search warrant.[316]

2.272 According to Patison the corruption at Manly involved only himself and Jasper, M5, Peattie and Messenger.[317] He said that he was generally careful to avoid being observed by the Independent Officers. This is illustrated by the search of S1's premises where Patison observed the presence of the money during the search but left it in situ because he did not want to risk being seen. Consequently he returned to the premises later with S1 and then took the money.[318] It seems clear that the corrupt officers, for security and financial reasons, confined participation in their corrupt activities to a select few, and there is no evidence or inference that they felt sufficiently confident that other officers present would ignore their corrupt conduct if it was observed.

2.273 Notwithstanding the assertions of Patison and Jasper concerning the propriety of the actions of other officers present, it is clearly the case that greater diligence and vigilance would have prevented or curtailed the corrupt conduct that took place during the searches.

2.274 Other than these general observations it is apparent that the issue of improving procedures for search warrants is complex. As a starting point strict compliance with the current form of SOPs should be demanded. Such compliance may come at a cost of convenience, time and resources, but that is less significant than the cost to the community of the activities of corrupt police officers.

SUPERVISION

2.275 The extent of corrupt conduct by Manly police established by the evidence creates an almost irresistible inference that there was a breakdown in the system of supervision. The role of inadequate supervision in relation to corrupt conduct by police, particularly detectives, was well recognised by the Royal Commission, and it would seem that, to a large extent, history has repeated itself.

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[314] PIC Transcript, MJ Jasper, 18 October 2001, p. 448
[315] PIC Transcript, MJ Jasper, 18 October 2001, p. 448
[316] PIC Transcript, DP Patison, 12 December 2001, p. 1833
[317] PIC Transcript, DP Patison, 12 December 2001, pp. 1832-1834
[318] PIC Transcript, DP Patison, 12 December 2001, pp. 1820-1821; See also discussion at paragraphs 2.66-2.71

2.276 The Local Area Commander at the relevant times was Superintendent Gary Ernest Raymond who joined NSW Police in 1972. After being designated a detective he obtained general experience as an investigator, a beat supervisor and then as a Duty Officer. He was appointed Manly / Davidson Local Area Commander on a temporary basis in November 1998. Six months later he was promoted permanently to the position, and was the Local Area Commander during 1999 and 2000.[319] It was during these years that the majority of the corrupt conduct described above took place.

2.277 There is no evidence that Raymond was implicated in, or knew of, the corrupt activity that took place in his command. His explanation for the ability of the officers to act corruptly was that *"... their extremely sneaky and deceiving practices eluded any detection by myself or my staff"*,[320] and that he did not think that people would engage in that sort of behaviour, particularly post the Royal Commission.[321]

2.278 Raymond knew that Patison had been the subject of various allegations of impropriety and he was aware that he had been nominated for dismissal under section 181D of the *Police Act 1990*. He also said Patison had been the subject of an extensive internal investigation that involved allegations of improper dealings with drug dealers, and during the investigation Patison had been placed on restricted duties that precluded him from participating in drug investigations.[322]

2.279 Notwithstanding those warnings, Raymond, relying on the recommendation of Peattie as Crime Manager, acquiesced in Patison and Jasper later being allocated the task of cleaning up the backlog of drug investigations, because of their experience in that area. Raymond claimed that the performance of the Command in relation to drug detection was lacking at the time and he had to account to regional office for that. In addition there was a lack of experienced detectives available to him so that he did not have much choice other than to put Patison and Jasper back on to the drug work.[323]

2.280 Raymond was also aware that Peattie too had been considered for dismissal under section 181D of the *Police Act 1990*. In relation to both Patison and Peattie, he took the view that because there were no sanctions imposed as a result of those investigations he presumed there was either no substance in the complaints or if there was then the behaviour had stopped. He gave evidence that he *"... didn't see any corruption red flags at all"*.[324]

2.281 Raymond had in fact received a very specific warning of the possibility of police misconduct when he spoke to V1 by telephone on 15 May 2000. In that telephone call, which was recorded, V1 claimed that police were at his premises either searching or about to search, and he was reluctant to go there

[319] PIC Transcript, GE Raymond, 17 December 2001, pp. 2001-2002
[320] PIC Transcript, GE Raymond, 17 December 2001, p. 2002
[321] PIC Transcript, GE Raymond, 17 December 2001, p. 2005
[322] PIC Transcript, GE Raymond, 17 December 2001, pp. 2005-2006
[323] PIC Transcript, GE Raymond, 17 December 2001, pp. 2006-2007
[324] PIC Transcript, GE Raymond, 17 December 2001, pp. 2006-2008

for fear of being loaded, as had happened to a friend, about a week before. V1 said that he did not want to go to his premises unless there was another officer present. Raymond endeavoured to placate V1 by telling him that there were strict procedures for the execution of search warrants that would ensure that the police involved acted properly. He said:[325]

> It's not the bad old days, this is [sic] highly sophisticated procedures these days and um accountable.

2.282 V1 told Raymond that *"... the good old days ..."* were still present *"Good, bigger and better than ever"*, and referred to a friend who had been searched previously. Raymond told V1 that the warrants were issued by Magistrates and that there would be an independent senior officer present. V1 pointed out that when the independent officer had his back turned impropriety could take place. Raymond's response was, *"Well we don't, that's not the way we work"*. V1 told Raymond that [M5] was involved in the search of his premises and the conversation concluded on the basis that Raymond would make further enquiries.[326]

2.283 Raymond told the Commission that he tried to contact M5 and eventually left a message asking him to contact V1. He took no further action as a result of the telephone conversation. His explanation was that he thought the officers in his command were following the SOPs in executing search warrants, that V1's fears of misconduct were just that and were not substantiated, and as there was obviously an investigation in progress he was hesitant to go too deeply into it.[327]

2.284 Raymond considered that he had put in place appropriate anti-corruption strategies. There was a Region Corruption Prevention Plan that fitted with the Manly Corruption Prevention Plan. He relied on the Professional Responsibility Committee operated by the Region that looked at behaviour, complaints and Internal Affairs investigations within the command. He had caused signs, coloured red for high alert, to be placed around the police station referring to corruption prevention and reporting. Raymond had spoken at training days about corruption and he monitored, on a daily basis, through his Executive Officer any new complaints or information of corrupt conduct or misbehaviour *"... so I thought we had all the catching nets in place"*.[328]

2.285 Raymond said that he was satisfied that procedures were being followed in relation to the execution of search warrants because he received monthly reports, that indicated that the SOPs were being followed. At Crime Management Meetings where he received information concerning the results of drug operations and the execution of other search warrants he was told by Peattie that they were being done according to the SOPs.[329] Peattie, however gave evidence that he was not, in fact, familiar with the SOPs nor did he

[325] PIC Exhibits 54 & 55
[326] PIC Exhibits 54 & 55
[327] PIC Transcript, GE Raymond, 17 December 2001, p. 2009
[328] PIC Transcript, GE Raymond, 17 December 2001, p. 2003
[329] PIC Transcript, GE Raymond, 17 December 2001, p. 2009

follow them, or ensure that they were followed, when he was executing a search warrant or acting as the independent observer.[330]

2.286 The monthly audit reports Raymond received also indicated that SOPs were being followed. He said that there were no complaints about search procedures from legal representatives, courts or other police officers:[331]

> ... so I had no red flags that the procedures weren't being followed and I had the monthly reports saying that they were being followed, so I didn't suspect for one minute that they weren't following the SOPs to the letter.

2.287 Raymond claimed that he was unaware that the filming of searches was confined to small periods when items were located or that the independent officers were not completing reports at conclusions of the searches as required by the SOPs. He said that he had never attended the scene of a search nor had he ever examined a video film of a search.[332]

2.288 Raymond agreed that shortly before he was promoted to the position of Local Area Commander there had been a Comprehensive Audit of the Manly / Davidson Local Area Command, the Report of which included the following:[333]

> Ineffective supervisory checks and management information reports were either not actioned or not actioned in a timely manner, contributing to an unprofessional response in information systems. This situation coupled with a lack of effective supervision, increases the risk of material omission, error and poor response times. Opportunities exist for improvement in record keeping and compliance with established guidelines.

and later:

> The review and inspection function is ineffective. Supervisory and portfolio inspections/controls are non-existent and lack effectiveness. Again, the situation increases the level of risk and exposure unnecessarily and has resulted in departure from Service Guidelines and discrepancies in records.

2.289 Raymond's response to the Report was to introduce a Command Management Framework that generated weekly and monthly reports. These reports were favourable and indicated that the situation had improved. He also pointed to the permanent appointment of Duty Officers in about November 1999 as a significant contribution to an improvement in the position.[334]

2.290 However a further Audit Report, which reviewed Manly / Davidson's operational, financial and management systems for the period 18 December 2000 to 4 January 2001, again criticised the supervision and administration of the Command. This Audit commenced just two days after the arrest of Patison and Jasper in December 2000. The Report concluded that the results of the review were similar to those of the previous inspection and Audit. It said that there was room for improvement across command systems and

[330] PIC Transcript, RJ Peattie, 16 October 2001, pp. 274-276
[331] PIC Transcript, GE Raymond, 17 December 2001, p. 2009
[332] PIC Transcript, GE Raymond, 17 December 2001, pp. 2009-2013
[333] PIC Transcript, GE Raymond, 17 December 2001, p. 2021
[334] PIC Transcript, GE Raymond, 17 December 2001, p. 2022

functions and that serious weakness existed in supervision, internal control, administration and accountability. The result was that:[335]

> … a high risk situation exists with the potential for improper practices, departures, material loss and error to occur with little chance of detection.

2.291 Raymond did not agree with all of the criticisms in the Report. He told the Commission that there had been improvements in the system and, because it took time for new systems to be implemented and show results, it had been premature to conduct the Audit at that time. This was despite the fact that the previous Audit had been conducted two years earlier.[336]

2.292 An illustration of the laxity of the system of inspection was revealed by the state of Patison's duty book at the time of his arrest on 16 December 2000. There were no entries in his duty book after 24 November 2000 and the book had not been checked since he commenced using it on 8 October 2000. Raymond acknowledged that the issue of duty books had been flagged in the 1998 Audit and that the situation in relation to Patison's duty book was unsatisfactory.[337]

2.293 The Audit Reports had also drawn attention to the difficulty of the Commander's office being geographically separate from the police station at which the operational police worked. Raymond did not regard that situation as a difficulty because he was *"... over at the station on a constant basis"* and because he was represented there by both the Duty Officer and the Crime Manager. Raymond considered it to be part of leadership to allow officers to lead and develop under him.[338]

2.294 The conclusion that there were deficiencies in the supervision and management of the officers at Manly during 1999 and 2000 is inescapable. There is some force in Raymond's argument that because of the extremely clever and deceitful mode of operation of the corrupt officers, the systems available were not capable of detecting their corrupt conduct. Whilst Raymond put in place the conventional strategies for the prevention and detection of corruption, the lesson seems to be that it is necessary to take further steps than the mere establishment of those structures, to ensure that they are effective. The additional steps do not require a great deal of ingenuity or foresight. Raymond never attended the scene of a search warrant, whether as an independent officer, or as random attendee, he never checked or watched a video of a search, examined a duty book or made any other random operational check to personally and directly ascertain whether officers were performing their duties with the professionalism that he expected. The need for these types of checks seems obvious when one considers the information that was available concerning the background of the officers concerned. The situation was compounded by the fact that Peattie, the Crime Manager, was involved in the corruption. In addition, in failing to

[335] PIC Transcript, GE Raymond, 17 December 2001, pp. 2023-2024; PIC Exhibit 269
[336] PIC Transcript, GE Raymond, 17 December 2001, pp. 2023-2026
[337] PIC Transcript, GE Raymond, 17 December 2001, pp. 2026-2027
[338] PIC Transcript, GE Raymond, 17 December 2001, p. 2028

show appropriate sensitivity to the warning flagged in the telephone conversation with V1, Raymond missed an opportunity to uncover the corrupt conduct. Raymond told the Commission that he would now take a more hands on approach to checking of operational procedures.[339]

2.295 The evidence in this segment revealed the occurrence of a significant degree of corruption, which on the face of it, proper supervision may have prevented. The views of the officers who participated in the corrupt conduct should be approached with caution. However their views on the supervisory system at Manly do warrant some recognition.

2.296 Hill had strong views about the inadequacy of the supervision, particularly in relation to the detectives, at Manly. In his view, there seemed to be no supervision and the detectives basically did what they liked. He nominated Peattie in particular as being responsible because he would never accept complaints about the detectives. Hill, as Branch Chairman of the Police Association, had discussed with Raymond his concerns about the lack of supervision. Raymond agreed with some of his concerns but nothing came of these discussions. Hill was also critical of Raymond's capacity to supervise and cited him as an example of the failure of the promotions system that allowed unsuitable candidates to be promoted, with the result that unsuccessful candidates were left disgruntled.[340]

2.297 Patison took a slightly different view. He said that supervision had little influence on his activities and that if he was minded to do *"... the wrong thing ..."* he would simply lie about his purpose for leaving the office and would therefore be free to carry out his corrupt activities.[341] Patison regarded a more significant problem being the under-strength staffing of the detectives at Manly. His perception was that there were supposedly 19 staff, but on average there would be only eight or nine detectives on duty at a time. Many of these officers were relieving and responsible for doing their own work as well as supervising. He claimed that he had pointed out to the previous Crime Manager that the system did not work but that nothing had changed.[342]

2.298 Jasper said that he had not participated in or observed any corrupt conduct during his career in NSW Police, prior to his posting to Manly in 1999. In his previous position with the Warringah Anti-theft Squad a high level of supervision meant there was no scope for improper conduct. The following, as closely as possible, of procedures for search warrants and the presence of the squad commander on the job were significant differences to procedures at Manly.[343] Jasper said that at Manly they often asked Peattie to be the Independent Officer for the execution of search warrants because of his tolerant attitude towards their misconduct. He doubted that they would have been able to engage in such corrupt activity if there had been an honest supervisor. He did say however, that Peattie, leaving to one side his improper

[339] PIC Transcript, GE Raymond, 17 December 2001, p. 2010
[340] PIC Transcript, DM Hill, 19 October 2001, pp. 567-569
[341] PIC Transcript, DP Patison, 12 December 2001, pp. 1830-1831
[342] PIC Transcript, DP Patison, 12 December 2001, pp. 1843-1844
[343] PIC Transcript, MJ Jasper, 17 October 2001, p. 347

conduct, was otherwise an officer he admired for his willingness to undertake difficult tasks and to assist with information and advice.[344]

2.299 Peattie gave evidence of his role as Crime Manager at Manly during the relevant period. He said that his function was the overall management of crime and crime reduction within the LAC, involving the introduction of initiatives, and the deployment of officers to implement those initiatives. He said that it was the function of the Duty Officers to act as independent officers for searches, but because their commitments often rendered them unavailable, he filled in. He said that the responsibility for supervision of detectives was shared between himself and the Duty Officers.[345]

2.300 Peattie said that it had been his suggestion that two officers be assigned to work on the backlog of drug investigations and that he had selected Patison and Jasper for that role. It was initially intended to be a short-term arrangement at the beginning of 2000, but in the end continued on throughout the entire year until Patison and Jasper were arrested. Peattie denied that he knew that Patison and Jasper were corrupt when he allocated the work to them. They were chosen for their experience in that type of work. He became aware of their corrupt activities as the year progressed and allowed them to continue with the work, although he claimed that he was taking some steps to remove them, and put other officers on the drug work, when they were arrested.[346]

2.301 Somewhat ironically, Peattie was also the sponsor of the Corruption Plan implemented at Manly, which became known as the *"Manly Davidson Local Area Command Corruption Prevention Plan 2000"*.[347] It is trite to state that the conduct of Patison and Jasper, much of which he was aware of, accepted and participated in, was completely at odds with the message he was endeavouring to communicate in the document. Peattie's hypocrisy was accentuated by his circulation, during 2000, of the above-mentioned *"Corruption Prevention Survey 2000-2001"*[348] which required officers at Manly to complete a survey indicating their views of the situation at Manly. Peattie said that he was not concerned that he might be named in the completed forms. His confidence was well placed as the results of the survey were generally favourable and contained no allegations of corruption or expressions of concern.[349]

2.302 When asked what he thought a Crime Manager in the position he occupied should do to prevent corrupt conduct, or minimise the chances of it occurring, Peattie said:[350]

> Do the opposite of what I did. Certainly you've got to be au fait with all the standard operation procedures and stuff, in relation to all these things.

[344] PIC Transcript, MJ Jasper, 18 October 2001, pp. 445-446
[345] PIC Transcript, RJ Peattie, 16 October 2001, pp. 227-228, 276
[346] PIC Transcript, RJ Peattie, 16 October 2001, pp. 265-267
[347] PIC Exhibit 110
[348] PIC Exhibit 111
[349] PIC Transcript, RJ Peattie, 16 October 2001, pp. 267-273
[350] PIC Transcript, RJ Peattie, 17 October 2001, p. 340

> You've got to be vigilant in your supervision. You've got to do your best as a crime manager to bring the best resources you can get for your command – be it personnel or physical resources.

2.303 Peattie, like Patison, suggested that lack of staff was a problem in relation to supervision. He said that supervisors should be able to supervise and not be trying to supervise and carry their own workload as well.[351]

MANAGEMENT

2.304 Evidence was also taken from the former Region Commander, Mr Graeme Morgan, concerning the situation from a Region perspective in the context of the corrupt conduct of the officers in the Manly / Davidson and Northern Beaches Local Area Commands. Morgan gave evidence on 18 December 2001 without objection. He was, at that time, the Commander Crime Agencies. He said that he had been appointed North Metropolitan Region Commander in July 1997 and was transferred to his current position on 1 January 2001. Between September 1998 and June 1999 he left the Region to carry out duties in Police Headquarters. The then Assistant Commissioner Christine Nixon relieved for him during the time he was absent.[352]

2.305 Morgan said that his corruption prevention strategy involved two aspects. Firstly ensuring that Local Area Commands discharged their responsibilities for having localised and specific corruption prevention plans, and secondly addressing issues of risk management. The overriding plan was to utilise the limited Region resources to assess and assist Local Area Commands in their implementation of strategies. An officer was designated as an Internal Affairs consultant to interact with each of the Local Area Commands and assist them in the development of their own corruption prevention plans.[353]

2.306 Morgan said that following the release of the Jade Report by this Commission in October 1998 NSW Police developed, through its Special Crime and Internal Affairs Branch, a comprehensive document to give guidance on the assessment of individuals as to the risks they presented. Following the Jade Report he was obliged to present a list of personnel in the Region who had been identified as people presenting as a risk. In addition, on a monthly basis, each Local Area Command in his Region was required to report on the persons who were assessed as risks. There were regular Performance Enhancement Program meetings at which the officers nominated as constituting a risk were the subjects of discussion.[354]

2.307 Eventually, in June 2000, the Region produced a model corruption prevention plan for adoption by the Local Area Commands. The Region plan was intended to cause the Local Area Commanders to address their plans to three

[351] PIC Transcript, RJ Peattie, 17 October 2001, p. 340
[352] PIC Transcript, GR Morgan, 18 December 2001, pp. 2041, 2043-2044
[353] PIC Transcript, GR Morgan, 18 December 2001, pp. 2045-2046
[354] PIC Transcript, GR Morgan, 18 December 2001, pp. 2051-2052

areas: complaints management; persons who prevented risks; and practices that presented risks.[355]

2.308 Morgan confirmed that following the Royal Commission, Peattie and Patison were on a list of officers to be assessed for the purposes of section 181D dismissal. In addition, he was aware that Patison was the subject of a significant Internal Affairs investigation because of allegations of his association with a drug dealer. While Morgan was absent on other duties, the decision was finally made to put Patison on restricted duties for a period of six months for assessment and management. He was placed on general duties and subjected to a performance enhancement program on the basis that if he discharged his duties for approximately six months, then there would be no objection to him returning to plain-clothes duties. He said that Patison fulfilled those conditions, which included *"... commendatory reports from Peattie ..."* and he went back to plain clothes.[356]

2.309 Morgan's explanation for the failure of his system of risk assessment to identify Peattie, Patison, Jasper and others was simply that *"... no indicia of corrupt conduct was observed"*.[357] He was also of the opinion that those officers were experienced criminal investigators who were experienced in identifying weaknesses in the systems, and no doubt capitalised on those weaknesses.[358]

2.310 Morgan was invited to comment on the operation of the relatively recent management system introduced into NSW Police whereby Duty Officers became the primary source of operational supervision. The system was meant to reflect a change in the role of general duties officers and to integrate better the functions of plain clothes and uniform officers. Morgan said that it was his observation that it was not uncommon for detectives to have difficulty in changing their reporting relationships to Duty Officers, away from the Crime Managers, who were seen by many to be no more than an extension of the former Chief of Detectives. He also commented that in many cases Duty Officers had not been assertive in exercising their responsibilities.[359] He did qualify his views however by saying that he did not want to make a generalisation about this aspect as he was *"... not sufficiently familiar with enough local area commands to know how widely effective or otherwise it is"*.[360] His views would seem to accord with the evidence of the general behaviour of the corrupt detectives, who were largely unsupervised, except by Peattie, the Crime Manager, who was of course also corrupt.

2.311 Morgan's attention was drawn to the series of unsatisfactory Audits of the Manly patrol, in 1996, 1998 and 2000. Morgan was aware of the 1996 and 2000 audits, but the 1998 audit had taken place when he was elsewhere. He

[355] PIC Transcript, GR Morgan, 18 December 2001, p. 2057
[356] PIC Transcript, GR Morgan, 18 December 2001, pp. 2048-2049
[357] PIC Transcript, GR Morgan, 18 December 2001, p. 2064
[358] PIC Transcript, GR Morgan, 18 December 2001, p. 2066
[359] PIC Transcript, GR Morgan, 18 December 2001, pp. 2066-2067
[360] PIC Transcript, GR Morgan, 18 December 2001, pp. 2066-2067

offered no explanation for the recurring references to ineffective supervision within the patrol.[361]

GENERAL OBSERVATIONS

2.312 It is difficult to find fault with the conceptual model utilised within the Region for corruption prevention. In theory the appropriate structures were in place. However, it is clear that from the point of view of delivery, the system failed.

2.313 It would seem that the failure took place largely at the Local Area Command level. The Corruption Prevention Plan[362] published at Manly was an innocuous document. It did little more than exhort officers not to act corruptly and to report any corruption of which they were aware. Such a piece of paper was hardly likely to have any significant practical effect. The document failed to provide any practical guidance to officers concerning areas of risk at which vigilance was required or to otherwise describe any indicators of corruption that should be reported. Raymond himself said that he adopted a high trust model of management with little intrusive supervision or checks. This was an error of judgment on his part.

2.314 Similarly, the distribution by Peattie of the Corruption Survey, requiring answers by Manly staff to simplistic questions as to their knowledge of the corruption plan and of corruption generally, achieved little. It appeared to be merely an exercise of an officer going through the motions of implementing a strategy, which was in reality ineffective. In addition, there was a failure in the system of supervision and in bringing to the attention of the Region such information, as was available, concerning the risks constituted by the corrupt officers.

2.315 That having been said, there is validity in the statement of Morgan that Patison, Jasper, Peattie, Messenger and others were experienced criminal investigators who were able to exploit flaws in the system as a result of which, particularly at the Region level, no indicia of corrupt conduct was observed. The corrupt officers met little resistance from the drug dealers from whom they stole or from whom they took money for green lighting. None of the offenders involved in their corrupt actions made any complaint prior to the complaints of Benbow and B6. The actions of B6 and his solicitor in approaching NSW Police Internal Affairs, which eventually led to the arrests of Patison and Jasper in December 2000, indicate that the system can work when offenders make appropriate complaints. Otherwise, the officers concerned were clever enough to ensure that those from whom they took money were not likely to complain about them. This undoubtedly makes identification of officers at risk very difficult.

[361] PIC Transcript, GR Morgan, 18 December 2001, pp. 2043-2044
[362] PIC Exhibit 110

2.316 It is clear that supervisors and their officers at the operational level have a greater responsibility for ensuring that corrupt officers are exposed. Honest officers need to better appreciate that their reputations suffer from the corrupt actions of a few, and that they owe it to themselves to maintain a high level of responsibility and vigilance in monitoring the actions of fellow officers, particularly in high risk situations, such as drug investigations, but also in social situations in which signs of inexplicable affluence may be evident. Until there is a further improvement in this aspect of police culture, it is difficult to be confident that similar corrupt activity will not continue to occur in the future.

AFFECTED PERSONS

2.317 A person against whom, in the Commission's opinion, substantial allegations have been made in the course of, or in connection with, an investigation, is an "affected person" for the purposes of a Report to Parliament by the Commission.[363]

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

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

b) the taking of action against the person for a specified disciplinary offence,[364]

c) the taking of action (including the making of an order under section 181D of the *Police Act 1990*) against the person as a police officer on specified grounds, with a view to dismissing, dispensing with the services or otherwise terminating the services of the police officer,

d) the taking of reviewable action within the meaning of section 173 of the *Police Act 1990* against the person as a police officer.

2.319 In addition the Commission may form opinions as to whether police misconduct has occurred: subsection 16(1)(a) of the Act.

2.320 Based on the allegations made during the hearing, the Commission is of the opinion that each of the following is an affected person:

- Benbow, Luke Michael
- Caccamo, Vincent

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

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

- Davidson, Shaun Andrew
- Green, Martin Geoffrey
- Hill, David Marshall
- Jasper, Matthew John
- Messenger, Mark William
- Patison, David Phillip
- Peattie, Raymond John

2.321 Each of the abovementioned affected persons gave evidence after a declaration had been made under section 41 of the Act. Therefore pursuant to section 40 of the Act the evidence is not admissible against him or her in subsequent criminal or civil proceedings except for proceedings for an offence against the Act or for contempt under the Act.

2.322 The codenamed drug offenders who gave evidence before the Commission have not been named as affected persons as they had all been charged and dealt with by the time of the Commission's hearing. There was no public interest to be served by reconsidering possible charges in each case.

2.323 M5 took part in some of the incidents of corruption discussed in this segment. His involvement came about as a result of the assistance he provided to the investigation and therefore he did not have the mens rea to commit any criminal offences.

LUKE MICHAEL BENBOW

2.324 Benbow is an affected person because he is the subject of the substantial allegation that he supplied prohibited drugs.

2.325 Following the Commission's hearing Benbow pleaded guilty to two counts of supplying cannabis pursuant to subsection 25(1) of the *Drug Misuse and Trafficking Act 1985.* A further charge of supply cannabis pursuant to subsection 25(1) of the *Drug Misuse and Trafficking Act 1985* and two counts of goods in custody were taken into account on sentencing. He was sentenced on 21 March 2002 and received a two year suspended sentence.

2.326 The Commission is of the opinion that consideration **should not** be given to the prosecution of Benbow for any further criminal offences arising from Operation Florida.

VINCENT CACCAMO

2.327 Caccamo is an affected person because he was the subject of the substantial allegation that he supplied prohibited drugs.

2.328 Following the Commission's hearing Caccamo was charged with a number of drug related offences and eventually pleaded guilty to two counts of supplying heroin pursuant to subsection 25(2) of the *Drug Misuse and Trafficking Act 1985* and one charge of supplying cannabis pursuant to subsection 25(1) of the *Drug Misuse and Trafficking Act 1985.* Three further charges were taken into account on sentencing: two charges of supplying heroin pursuant to subsection 25(1) of the *Drug Misuse and Trafficking Act 1985* and a charge of receiving stolen property pursuant to section 188 of the *Crimes Act 1900.* He was sentenced on 30 May 2002 to eight years imprisonment with a non-parole period of five years. Caccamo received a significant discount on his sentence for the assistance he provided. The Judge indicated that but for his assistance he would have received 15 years imprisonment.

2.329 The Commission is of the opinion that consideration **should not** be given to the prosecution of Caccamo for any further criminal offences arising from Operation Florida.

SHAUN ANDREW DAVIDSON

2.330 Davidson is an affected person because he is the subject of a number of substantial allegations, namely that he:

- received bribes;
- was an accessory after the fact knowing Patison had committed the serious indictable offence of stealing cash;
- received stolen property i.e. cash; and
- committed certain actions and omissions with the intention of perverting the course of justice.

2.331 The Commission considers that Davidson engaged in police misconduct: subsection 16(1)(a) of the Act.

2.332 On 15 January 2002 Davidson was charged with four counts of accepting bribes pursuant to subsection 200(1) of the *Police Act 1990*. He pleaded guilty on all counts and on 16 August 2002 was sentenced to 18 months imprisonment concurrent on each, with a non-parole period of 12 months. He appealed to the District Court, which confirmed the sentence on 3 October 2002, but reduced the non-parole period to nine months. Issues of assistance to authorities were taken into account on sentence.

2.333 The Commission is of the opinion that consideration **should not** be given to the prosecution of Davidson for any further criminal offences arising from Operation Florida.

2.334 Davidson was suspended with pay from NSW Police on 8 October 2001 and without pay from 20 December 2001. He resigned on 14 January 2002.

Accordingly the question of taking action pursuant to subsections 97(2)(c) and (d) of the Act does not arise.

2.335 In May 2002 the Commission commenced proceedings in the Supreme Court of New South Wales under the *Criminal Assets Recovery Act 1990* against Davidson. On 27 May 2002 the Supreme Court ordered that Davidson pay the Treasurer the sum of $1,100. The money was paid on 30 May 2002.

MARTIN GEOFFREY GREEN

2.336 Green is an affected person because he is the subject of allegations of improper conduct as a solicitor in relation to his dealings with police and Benbow.

2.337 In the conference with Benbow on 14 November 2000 Green indicated a willingness to be involved in an agreement with Benbow to defraud the Commissioner of Taxation of revenue. There is in fact, in that conversation, an agreement reached between Benbow and Green to defraud the Commissioner of Taxation on the two bases discussed earlier in this Report. But for the fact that Benbow was at that point in time a registered informant acting under the instructions of the NSW Crime Commission, and, therefore, did not have the appropriate mens rea to enter into any such agreement with Green, consideration would need to have been given to the prosecution of Green for the offence of Conspiracy to Defraud the Commonwealth under section 86 of the *Crimes Act 1914 (Cth)*. In the circumstances, however, the Commission is of the opinion that there is insufficient evidence for the Commission to form an opinion that consideration should be given to prosecuting Green for such an offence.

2.338 Section 319 of the *Crimes Act 1900* provides as follows:

> A person who does any act, or makes any omission, intending in any way to pervert the course of justice, is liable to imprisonment for 14 years.

2.339 Pursuant to section 312 of the *Crimes Act 1900* the reference to perverting the course of justice is a reference to obstructing, preventing, perverting or defeating the course of justice or the administration of the law.

2.340 An act that has the tendency to deflect the police from prosecuting a criminal offence or instituting disciplinary proceedings before a judicial tribunal or from adducing evidence of the true facts is an act tending to pervert the course of justice and it is unnecessary that the prosecution prove that a particular offence has been committed or even that a charge has been laid; *R v Rogerson* (1992) 174 CLR 268. See also *R v Charles* (1998) NSWCCA unreported 23 March 1998 at pp 5, 14-15; and *Karageorge* (1998) 103 A Crim R 157 at pp. 159-160; 169-174 and 183-184.

2.341 Green was charged on 8 May 2002 and faced trial for the following three matters – count 1) Incitement of Benbow to bribe Patison and counts 2) and

3) Act with intent to pervert the course of justice. His trial commenced on Monday 7 April 2003. Green pleaded not guilty on each count. On 17 April 2003 a jury in the District Court at Sydney returned a verdict of "Not Guilty" on each count on the indictment.

2.342 The Law Society of New South Wales cancelled Green's practising certificate as a solicitor on 17 January 2002. On 6 February 2002 the Supreme Court of New South Wales refused an application for a stay of the cancellation pending an appeal. The appeal was later dismissed. The Law Society has advised the Commission that Green does not hold a current practising certificate.

2.343 The Commission is of the opinion that consideration **should not** be given to the prosecution of Green for any further criminal offences arising from Operation Florida.

DAVID MARSHALL HILL

2.344 Hill is an affected person because he is the subject of a number of substantial allegations, namely that he:

- received a bribe;
- was an accessory after the fact knowing that Patison had committed the serious indictable offence of stealing $6,000 cash; and
- received stolen property, i.e. cash.

2.345 The Commission considers that Hill engaged in police misconduct: subsection 16(1)(a) of the Act.

2.346 On 17 January 2002 Hill was charged with receiving a corrupt reward pursuant to section 249B of the *Crimes Act 1900*. He pleaded not guilty but was convicted and on 3 April 2003 was sentenced to eight months imprisonment with a non-parole period of six months.

2.347 The Commission is of the opinion that consideration **should not** be given to the prosecution of Hill for any further criminal offences arising from Operation Florida.

2.348 Hill was suspended with pay from NSW Police on 8 October 2001 and without pay on 20 December 2001. He was nominated for action pursuant to section 181D of the *Police Act 1990* on 6 December 2001. He resigned on 25 March 2002 after being required to show cause why he should not be subject to section 181D action by the Commissioner of Police. Accordingly the question of taking action pursuant to subsections 97(2)(c) and (d) of the Act does not arise.

MATTHEW JOHN JASPER

2.349 Jasper is an affected person because he is the subject of a number of substantial allegations, namely that he:

- received stolen property, both cash and goods;
- was an accessory before and after the fact knowing that serious indictable offences had been committed;
- committed certain actions and omissions with the intention to pervert the course of justice;
- solicited and received bribes;
- with Patison conspired to supply prohibited drugs;
- neglected his duty as a police officer;
- corruptly solicited and received cash;
- stole cash and property including during the execution of search warrants;
- hindered the investigation of and discovery of evidence concerning the serious indictable offences of supply prohibited drugs and break enter and steal;
- concealed the commission of the serious indictable offences of supply prohibited drugs and break enter and steal;
- solicited / accepted a benefit for himself and others so as to conceal the commission of the serious indictable offences of supply prohibited drug and break enter and steal;
- concealed evidence with intent to mislead a judicial tribunal;
- made a false official instrument (the search warrants containing false information);
- made a false instrument, i.e. police property receipt; and
- conspired with R1 to commit the serious indictable offence of break enter and steal.

2.350 The Commission considers that Jasper engaged in police misconduct: subsection 16(1)(a) of the Act.

2.351 Jasper was charged on 15 January 2002. He pleaded guilty to the following 13 counts on an indictment:

- five counts of perverting the course of justice pursuant to section 319 of the *Crimes Act 1900*;
- four counts of receiving / giving corrupt rewards pursuant to section 249B of the *Crimes Act 1900*;

- three counts of receive bribe pursuant to subsection 200(1) of the *Police Act 1990*; and
- one count of accessory before the fact to a break, enter and steal.

A further 13 offences were taken into account on sentence.

2.352 Jasper was sentenced in the Supreme Court of New South Wales on 11 April 2003 and received a sentence of seven years imprisonment with a non-parole period of five years. Assistance to authorities was taken into account on sentence. An appeal on the basis of inadequacy of sentence is pending in the New South Wales Court of Criminal Appeal.

2.353 Jasper was tried separately in relation to one charge of permitting the supply of a prohibited drug (heroin) pursuant to subsection 25(1) of the *Drug Misuse and Trafficking Act 1985*. He pleaded guilty and on 11 March 2004 was sentenced in the Supreme Court of New South Wales to five years imprisonment with a non-parole period of three years. The sentence will be served concurrently with his earlier sentence so will not increase Jasper's overall time in gaol.

2.354 The Commission is of the opinion that consideration **should not** be given to the prosecution of Jasper for any further criminal offences arising from Operation Florida.

2.355 Jasper was suspended from NSW Police on 8 October 2001 and resigned on 23 October 2001. Accordingly the question of taking action pursuant to subsections 97(2)(c) and (d) of the Act does not arise.

2.356 In October 2001 the Commission commenced proceedings in the Supreme Court of New South Wales under the *Criminal Assets Recovery Act 1990* against Jasper. On 15 April 2002 the Supreme Court ordered that Jasper pay the Treasurer the sum of $39,517. The money was paid on 10 August 2002.

MARK WILLIAM MESSENGER

2.357 Messenger is an affected person because he is the subject of a number of substantial allegations, namely that he:

- corruptly received cash;
- received stolen property;
- was an accessory after the fact knowing that M5 had committed serious indictable offences;
- solicited and received bribes;
- neglected his duty as a police officer;
- tampered with evidence with the intention to mislead a judicial tribunal;

- made a false official instrument;
- committed certain actions with the intention of perverting the course of justice;
- obtained unauthorised access to data held in a computer; and
- stole cash.

2.358 The Commission considers that Messenger engaged in police misconduct: subsection 16(1)(a) of the Act.

2.359 Messenger was charged on 22 February 2002 with four counts of receiving corrupt rewards pursuant to section 249B of the *Crimes Act 1990*, and one count of giving false or misleading evidence pursuant to section 107 of the Act. He pleaded guilty and was sentenced on 25 October 2002 to a total of five years and two months imprisonment with a non-parole period of three years and two months.

2.360 The Commission is of the opinion that consideration **should not** be given to the prosecution of Messenger for any further criminal offences arising from Operation Florida.

2.361 Messenger was suspended with pay from NSW Police on 8 October 2001, suspended without pay on 20 December 2001, and resigned on 18 September 2002. Accordingly the question of taking action pursuant to subsections 97(2)(c) and (d) of the Act does not arise.

2.362 In August 2002 the Commission commenced proceedings in the Supreme Court of New South Wales under the *Criminal Assets Recovery Act 1990* against Messenger. On 19 August 2002 the Supreme Court ordered that Messenger pay the Treasurer the sum of $1,500. The money was paid on 20 August 2002.

DAVID PHILLIP PATISON

2.363 Patison is an affected person because he is the subject of a number of substantial allegations, namely that he:

- stole cash during the execution of search warrants;
- corruptly received / solicited cash from suspected drug dealers and others;
- hindered the investigation, and the discovery, of evidence concerning the commission of the serious indictable offences of supply prohibited drug and break enter and steal;
- solicited / ccepted a benefit for himself and others so as to conceal the commission of the serious indictable offence of supply prohibited drug;
- concealed evidence with intent to mislead a judicial tribunal;

- was an accessory before and after the fact knowing that the serious indictable offences of supply prohibited drug, break enter and steal and steal cash had been committed;
- committed certain actions and omissions with the intention to pervert the course of justice;
- solicited, received and offered bribes;
- conspired to pervert the course of justice to obtain a refund of cash seized by police;
- with Jasper, conspired to supply a prohibited drug;
- demanded cash with menaces and intent to steal;
- received stolen property and cash;
- made a false official instrument (the search warrants containing false information); and
- conspired to commit the serious indictable offence of break enter and steal.

2.364 The Commission considers that Patison engaged in police misconduct: subsection 16(1)(a) of the Act.

2.365 Patison was charged on 15 January 2002. He pleaded guilty to ten offences on an indictment:

- three counts of perverting the course of justice pursuant to section 319 of the *Crimes Act 1900*;
- two counts of receiving corrupt rewards pursuant to section 249B of the *Crimes Act 1900*;
- one count of permitting the supply of a prohibited drug (heroin) pursuant to subsection 25(1) of the *Drug Misuse and Trafficking Act 1985*;
- three counts of receive bribe pursuant to subsection 200(1) of the *Police Act 1990*; and
- one count of knowingly take part in the supply of a prohibited drug (cannabis) pursuant to subsection 25(1) of the *Drug Misuse and Trafficking Act 1985*.

A further 12 corruption based offences were taken into account on sentence.

2.366 Patison was sentenced in the Supreme Court of New South Wales on 2 December 2002 to seven years imprisonment with a non-parole period of five years. Assistance to authorities was taken into account on sentence. An appeal by the ODPP against the inadequacy of sentence was dismissed by the Court of Criminal Appeal.

2.367 The Commission is of the opinion that consideration **should not** be given to the prosecution of Patison for any further criminal offences arising from Operation Florida.

2.368 Patison was suspended from NSW Police on 8 October 2001 and resigned on 8 February 2002. Accordingly the question of taking action pursuant to subsections 97(2)(c) and (d) of the Act does not arise.

2.369 In October 2001 the Commission commenced proceedings in the Supreme Court of New South Wales under the *Criminal Assets Recovery Act 1990* against Patison. On 6 May 2002 the Supreme Court ordered that Patison pay the Treasurer the sum of $58,675. The money was paid on 1 August 2002.

RAYMOND JOHN PEATTIE

2.370 Peattie is an affected person because he is the subject of a number of substantial allegations, namely that he:

- received stolen property;
- committed certain actions and or omissions with the intention to pervert the course of justice;
- solicited and received bribes;
- stole cash;
- corruptly solicited and received cash;
- hindered the investigation and discovery of evidence concerning the serious indictable offence of supply prohibited drug;
- concealed the commission of the serious indictable offence of supply prohibited drug;
- solicited / accepted a benefit for himself and others so as to conceal the commission of the serious indictable offence of supply prohibited drug; and
- concealed evidence with intent to mislead a judicial tribunal.

2.371 The Commission considers that Peattie engaged in police misconduct: subsection 16(1)(a) of the Act.

2.372 Peattie was charged on 29 October 2001 with four counts of accepting bribes pursuant to subsection 200(1) of the *Police Act 1990*. He pleaded guilty and on 3 May 2002 was sentenced to three years and two months imprisonment with a non-parole period of one year. Significant issues of assistance and contrition were taken into account on sentence.

2.373 The Commission is of the opinion that consideration **should not** be given to the prosecution of Peattie for any further criminal offences arising from Operation Florida.

2.374 Peattie was suspended from NSW Police on 8 October 2001 and resigned on 31 October 2001. Accordingly the question of taking action pursuant to subsections 97(2)(c) and (d) of the Act does not arise.

2.375 In May 2002 the Commission commenced proceedings in the Supreme Court of New South Wales under the *Criminal Assets Recovery Act 1990* against Peattie. On 27 May 2002 the Supreme Court ordered that Peattie pay the Treasurer the sum of $2,500. The money was paid on 8 April 2003.

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INTRODUCTION

3.1 The segment of hearings referred to as "Guns" concerned the activities of the former Armed Hold-Up Unit or Squad (AHU) attached to the Major Crime Squad North (MCSN). In particular, evidence was led of a collection or "stash" of weapons retained by members of the AHU for the apparent purpose of using them to "load" suspects and / or otherwise strengthen the prospects of success in prosecutions brought by the AHU. The hearings also examined the circumstances surrounding the eventual dumping of that stash of weapons in the Hawkesbury River near Brooklyn during the Royal Commission into the New South Wales Police Service (the Royal Commission).

3.2 The hearings commenced on 3 June 2002. Sixteen witnesses gave evidence over 11 hearings days. There was a considerable amount of electronic evidence including surveillance film and conversations recorded by listening device. The segment also utilised the assistance of the covert operative, M5 together with two other former police officers who gave evidence under code names N1 and F7.

3.3 The Scope and Purpose of this segment was to investigate:[365]

1. the circumstances of the dumping of weapons into the Hawkesbury River by members of the New South Wales Police Service during the Royal Commission into the New South Wales Police Service;
2. practices and procedures concerning the handling and disposal of weapons exhibits by members of the New South Wales Police Service;
3. the collection, retention and use of weapons and other items in acts of misconduct and/or corruption by members of the New South Wales Police Service; and
4. other acts of misconduct and/or corruption arising from the incidents examined in paragraphs 1-3.

3.4 The relevant time span relating to the activities of MCSN was from the date of its relocation to Chatswood in about 1985-1986 until the alleged dumping of a stash of firearms in the Hawkesbury River during the Royal Commission in 1995-1996. The principal personnel involved in the segment were former and / or current detectives who served within the AHU when it was attached to MCSN based at Chatswood. MCSN was originally located at Redfern but relocated to Chatswood in about 1985.

3.5 MCSN at Chatswood comprised a number of specialised Units. The Commander of MCSN was primarily based at an office in Newcastle. The Co-ordinator or Deputy Commander was based at the Chatswood office. That officer oversaw the operation of all the Units at the Chatswood office

[365] PIC Transcript, 3 June 2002, pp. 3047-3048

and was directly responsible to the Commander. The Commander visited the Chatswood office regularly, sometimes weekly, and / or on an ad hoc basis.[366]

3.6 At various times, in addition to the AHU, there was the Homicide Unit, Special / Organised Crime Unit (or "Breakers"), Child Mistreatment Unit, Stock Squad, Arson Unit and Second-hand Dealers Unit. The main Units, both in personnel and workload, appear to have been the Special Crime Unit, the Homicide Unit and the AHU. They all occupied an open plan office with rows of desks allocated to each Unit. There were also several interview rooms and locker rooms.[367]

3.7 There was some overlap in the duties of the officers of the various Units in that, when there were insufficient personnel available, they would assist one or other of the Units in particular operations. This also involved assistance in the task of corroborating and / or adopting statements, records of interview and notebook interviews. More senior officers, including the Co-ordinator who held the rank of Inspector, generally undertook these latter tasks.[368]

3.8 The hierarchy / structure of the AHU, during the years 1987 until 1997, comprised a Team Leader, who was a Senior Sergeant, and two teams of three or four officers each. The members of the teams varied both in personnel and rank. Evidence was given indicating that the division into teams was primarily based on geographical location, that is, the officers who lived at the Central Coast worked together primarily due to convenient travelling arrangements and commitments. A number of the officers including Dennis Peter O'Toole, Kim Dowding, and M5, came from the Northern Beaches regions and they formed the other team. The teams were not however precisely defined and throughout the relevant period there was regular interaction between the individual officers.[369]

3.9 A number of officers within MCSN and AHU were also qualified members of the State Protection Group (SPG) (or SWOS as it was known prior to 1991). Basically, this meant that some of the officers were qualified to participate in Special Operations involving those squads and were also allowed access to, and use of, special weapons and equipment. This was an additional qualification held by officers over and above their detective qualifications and was relevant to evidence heard at the Commission of the existence of an SPG cabinet within which at least some unaccounted weapons were retained.[370]

3.10 The colloquial terms "load" and "verbal" were used frequently in the evidence during this segment. For the purposes of the hearing and this Report, the terms were generally accepted as having the following meanings:

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[366] PIC Transcript, K Dowding, 3 June 2002, pp. 3060-3061; N1, 4 June 2002, p. 3172; F7, 5 June 2002, p. 3210; RB Smith, 12 June 2002, pp. 3426-3427

[367] PIC Transcript, K Dowding, 3 June 2002, pp. 3059, 3061-3062; M5, 11 June 2002, pp. 3314-3315

[368] PIC Transcript, DP Minehan, 6 June 2002, pp. 3287, 3289-3290

[369] PIC Transcript, F7, 5 June 2002, pp. 3212-3213; M5, 11 June 2002, pp. 3297-3298; DP O'Toole, 13 June 2002, pp. 3612-3613; DP O'Toole, 17 June 2002, pp. 3708-3710

[370] PIC Transcript, 3 June 2002, K Dowding, pp. 3062-3063

Load – Suspect charged with offence/s based wholly or in part on false evidence as to the finding of a weapon (or other items) in the possession of the suspect and / or related false admissions.

Verbal – False evidence by police that a suspect has confessed or made inculpatory remarks at arrest or interview.

3.11 The initial focus of this segment was on the dumping of a stash of weapons by members of MCSN during the Royal Commission, some time in 1995-1996. The evidence suggests that as the Royal Commission progressed, officers of MCSN became concerned as to the retention of the stash. Two officers, Dowding and M5, undertook the task of disposal and borrowed (then) Inspector Ronald Smith's boat to do so. They collected the firearms in carry bags and then proceeded to the Hawkesbury River near Brooklyn where they dumped the weapons. They broke up many of the weapons, both at MCSN offices, and in the boat prior to dumping them.

3.12 With M5's cooperation some of the weapons disposed of were later recovered. Video evidence was tendered at the hearing depicting the recovery of some of the weapons.[371] Photographs of recovered weapons were also tendered.[372]

3.13 A serial number was located on one of the recovered firearms. This number enabled the firearm to be traced back to a seizure of weapons during an armed robbery arrest in 1984. N1 was involved in the seizure and after the conclusion of the prosecution in that matter the firearms found their way back to the MCSN offices at Chatswood. These firearms formed part of the stash and were among the weapons disposed of by Dowding and M5.

3.14 After the firearms were recovered from the Hawkesbury River and the serial number identified, a controlled operation was undertaken by investigators from the New South Wales Crime Commission (NSWCC) and NSW Police whereby a COPS report was created revealing the discovery of the firearms in the Hawkesbury River near Brooklyn by police divers. The COPS report was brought to the notice of some of the former members of the AHU at Chatswood. The report stimulated considerable conversation among those involved.

3.15 M5 spoke with a number of former members of the AHU and who were apparently aware of the dumping of the stash and the existence the stash of weapons prior to them being dumped in the Hawkesbury River. The conversations, some of which were captured by listening device worn by M5, revealed concerns among those involved as to the possible identification of weapons, through serial numbers on the recovered weapons, which would enable them to be traced to a particular police operation and / or personnel. Evidence was presented in this segment of various discussions between

[371] PIC Exhibits 413 & 414, 415 & 416
[372] PIC Exhibits 417, 418, 419

identified officers and M5 as to the recovery of the weapons and the risks of discovery.

3.16 Paragraph three of the Scope and Purpose focused on why police would retain such a stash of weapons and what use, if any, was made of them. Evidence was adduced in relation to two specific operations involving officers from the AHU. The first was referred to by the police as the "Wogs Out of Work" Operation. It involved a number of civilians who were arrested and charged by officers from MCSN in 1990. Two of those persons gave evidence before the Commission under the codenames M11 and P2. They both maintained from the date of their arrest that they were loaded with firearms and verballed as to related admissions. P2 is now deceased. He died in September 2003.

3.17 The second operation occurred in 1994 and involved the arrest and charging of a person codenamed A2, who died prior to the Commission's hearing. This too involved an alleged load and related verbal. The operations involving these civilians were identified as being representative of the type of practice apparently implemented on occasions by officers of the AHU. The evidence of the civilian witnesses, and that of the codenamed police officers, together with the exhibits and surveillance material, portrays a trail of corruption and serious police misconduct deliberately directed to perverting the course of justice.

THE WITNESSES

3.18 The principal personnel involved in this segment were detectives and former detectives attached to the AHU. They each had varying roles in the different activities examined by the Commission. A brief profile of each of the 13 involved officers and former officers, all of whom gave evidence, follows. For ease of reference the profiles are in alphabetical order.

3.19 There were three additional witnesses in this segment. Two of those witnesses, P2 and M11, were civilians who were charged as a result of the "Wogs Out of Work" Operation.

3.20 The remaining witness was Acting Inspector Graeme Ronald Jamieson from the Marine Area Command. The "Wogs Out of Work" Operation involved police divers searching for weapons in the water under the Roseville Bridge. Jamieson, who was in charge of the police diving squad at that time, gave evidence about that search.

KIM DOWDING

3.21 Dowding joined NSW Police in 1978. He became a designated Detective in 1983 and was promoted to Sergeant in 1993 and Inspector in 1999. He was attached to MCSN for approximately 10 years from 1987 until 1997. He served in a number of units within MCSN however the bulk of his time was spent attached to the AHU. Throughout that period he was also a qualified

weapons instructor and member of the SPG. As such, he was the officer primarily responsible for weapons and firearms within MCSN and the SPG cabinet. Dowding was medically discharged from NSW Police in July 2003.[373]

PETER JOHN EHSMAN

3.22 Ehsman joined NSW Police in 1973. He was attached to the AHU within the Major Crime Squad South from 1992 until 1995. In November 2001 Ehsman retired from NSW Police on medical grounds.[374]

F7

3.23 F7 joined NSW Police in 1980. He was attached to the AHU within MCSN from 1991 until 1995. During his time with MCSN he worked with N1, M5, Dowding, King, Minehan, Vicary and Smith. At the commencement of his evidence he undertook to co-operate with investigators from the Commission and admitted to corrupt and criminal activities throughout his service as a police officer. His admissions included instances of participating in loads, verbals, false admissions, falsifying statements for use in proceedings and perjury. He also admitted to lying to the Commission on a previous occasion.[375] F7 resigned from NSW Police on 13 November 2002.

GLENN WAYNE KENDALL

3.24 Kendall joined NSW Police in 1974 and was designated a Detective in 1981. He was attached to MCSN from its inception in 1985 and remained there until 1997 when he moved to Crime Agencies. At the time of the hearing he was a Detective Inspector attached to Crime Agencies. He was medically discharged from NSW Police on 7 May 2004.

3.25 Kendall was attached to various units within MCSN and to the best of his recollection only served in the AHU for about nine months in 1996. This was immediately prior to his transfer to Crime Agencies. He was promoted to the rank of Sergeant in 1991 and Senior Sergeant in 1996. Whilst attached to the AHU he was the Team / Unit Leader. He then held the rank of Senior Sergeant. This was a position previously held by O'Toole. Whilst attached to the AHU he said he did not work with F7, M5 or N1. The only nominated officers he recalled were Dowding and Smith. Notably, however, he was attached to other Units within MCSN during the times when other nominated officers were attached to the AHU.[376]

[373] PIC Transcript, K Dowding, 3 June 2002, pp. 3057-3058
[374] PIC Transcript, PJ Ehsman, 18 June 2002, pp. 3883-3885
[375] PIC Transcript, F7, 5 June 2002, pp. 3208-3210
[376] PIC Transcript, GW Kendall, 18 June 2002, pp. 3850-3854

JAMES JUSTIN KING

3.26 King joined NSW Police in 1978. He was designated a Detective in 1985. He achieved the rank of Detective Sergeant in 1996. He was attached to the AHU within MCSN from about 1989 until 1997. He worked with most of the personnel who gave evidence before the Commission in this segment. These included M5, N1, F7, O'Toole, Smith, Dowding, Vicary and Minehan. He retired from NSW Police by way of a medical discharge on 17 February 2000.[377]

M5

3.27 M5 joined NSW Police in 1980. He was attached to the AHU within MCSN from 1987 until 1996, except for a period of 14 months in 1992 when he was attached to the Drug Unit. Whilst at the AHU he worked with F7, Smith, O'Toole, Dowding, King, Vicary and Minehan. At the beginning of his evidence M5 disclosed that he had been co-operating with investigators from the NSWCC and NSW Police since 1998. He admitted that he had participated in corrupt and criminal conduct during his police career and this included participation in loads, verbals, preparation and use of false statements in proceedings and perjury.[378]

DAVID PATRICK MINEHAN

3.28 Minehan joined NSW Police in 1984. He became a designated Detective in 1990. He was attached to the AHU within MCSN from approximately 1991 until 1996. Within this Unit he worked with N1, M5, F7, O'Toole, Smith, Vicary, Dowding and King. Whilst attached to the AHU he was known by the nickname "Yuppie".[379] At the time of the hearing he was a serving member of NSW Police.

N1

3.29 N1 joined NSW Police in 1969. He was attached to the AHU within MCSN from its inception in 1985 until 1993 when he retired from NSW Police on medical grounds. He last worked in February 1992. Whilst at the AHU he worked with F7, M5, Smith, O'Toole, Dowding, Vicary, Minehan, and King. At the commencement of his evidence N1 indicated he wished to co-operate with the Commission. He admitted his involvement in corrupt practices and criminal activities during his career as a police officer. His admissions included participation in loads, verbals, providing false statements for use in court, perjury and previously lying to this Commission.[380]

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[377] PIC Transcript, JJ King, 14 June 2002, pp. 3640-3646
[378] PIC Transcript, M5, 11 June 2002, pp. 3294-3298, 3375
[379] PIC Transcript, DP Minehan, 6 June 2002, pp. 3247-3252, 3276
[380] PIC Transcript, N1, 4 June 2002, pp. 3169-3174, 3197

DENNIS JOHN O'TOOLE (MILES)

3.30 O'Toole joined NSW Police in 1967. He achieved the rank of Sergeant in 1983, Senior Sergeant in 1993 and Inspector in 1994. He retired from NSW Police in 2001. He was attached to the Homicide Squad within MCSN from 1989 until 1994. He was never a member of the AHU within MCSN.[381] He was known by the nickname "Miles".

DENNIS PETER O'TOOLE (DOODLES)

3.31 O'Toole joined NSW Police in 1967. He was designated a Detective in 1976. He attained the substantive rank of Detective Sergeant in 1984, Senior Sergeant in 1989 and Inspector in 1995. He left NSW Police at the end of 2000 when his contract was not renewed. O'Toole was attached to MCSN from its inception. He spent the majority of his time within MCSN attached to the AHU. He left the AHU to join the Drug Unit attached to MCSN in about 1994. Whilst attached to the AHU he was a Senior Sergeant and Team Leader. This meant he was essentially in charge of the Unit and directly responsible to the Co-ordinator who, for the majority of the time, was Smith.[382] O'Toole was known by the nickname "Doodles".

RONALD BRUCE SMITH

3.32 At the time of the hearing Smith was a serving officer attached to Crime Agencies. He joined NSW Police in 1967 and was formally designated a Detective in 1973. Apart from a number of secondments to various task forces he was attached to MCSN from its inception in about 1985. He was promoted to the rank of Detective Sergeant in 1983, Senior Sergeant in 1989 and Inspector in 1992. He worked in various units attached to MCSN culminating in the position of overall co-ordinator in about 1992. In this role he supervised most of the police and former police who appeared as witnesses before this Commission. In particular, Dennis Peter O'Toole, when holding the position of Team Leader of the AHU, was directly responsible to him. He also supervised N1, F7, M5, King, Dowding, Vicary and Minehan.[383] Smith was medically discharged from NSW Police on 5 September 2003.

GREIG ROBERT VICARY

3.33 Vicary joined NSW Police in 1981. He served at MCSN from approximately 1990 until 1992 during which time he was attached to the AHU. He worked with N1, M5, F7, Smith, O'Toole, Dowding and Minehan. Whilst attached to the AHU he was known by the nickname "Bumhole". He ceased active duty on medical grounds in 1995 and was eventually discharged from NSW Police on medical grounds in 2000.[384]

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[381] PIC Transcript, DJ O'Toole, 4 July 2002, pp. 3916-3920
[382] PIC Transcript, DP O'Toole, 13 June 2002, pp. 3609-3613; 17 June 2002, p. 3702
[383] PIC Transcript, RB Smith, 12 June 2002, pp. 3417-3431
[384] PIC Transcript, GR Vicary, 17 June 2002, pp. 3787-3791

GARY JOHN WILLIAMS

3.34 Williams joined NSW Police in 1977. He was designated a Detective in 1982. In 1985 he joined MCSN and remained there until 1997. He was attached to various units within MCSN but was not apparently ever attached to the AHU.[385] At the time of the hearing he was a current serving member of NSW Police.

THE DUMPING OF WEAPONS

N1

3.35 At the commencement of giving evidence N1 identified a photograph and document depicting five firearms that he had seized as part of an armed robbery arrest in 1984.[386] The firearms formed a part of the exhibits in the prosecution. Following the conclusion of the prosecution the firearms found their way back to the MCSN offices at Chatswood where they were kept in the same blue canvas bag they were in when initially seized. N1 thought he left them in the SPG locker. In the blue bag, in addition to the firearms, there were also other items such as masks, balaclavas, beanies and handcuffs.[387] N1 told the Commission that during the period of time he was at Chatswood he retained a number of other firearms which:[388]

> … were to be used for the purpose of loading people that we thought required loading.

3.36 It was N1's view that everybody in the AHU was aware of and generally participated in the practice of retaining illegitimate firearms and using them for loads. He was absolutely certain that the officers within his team, nominated as being O'Toole, Dowding, King and M5, did the same thing and had knowledge of this practice. He said that "*illegal firearms*" were obtained in a number of ways including during searches, for example, where three firearms were found, and only two were required for the charge, the least traceable firearm might be kept and not booked up as an exhibit.[389]

3.37 N1 explained that there were a number of factors that affected the decision as to whether an offender would be loaded or not. He said that the general practice was that they would go out with the ability to load a suspect but not necessarily the intention to do so. If the person cooperated and they found weapons there was no need to load and / or verbal the person but if they didn't cooperate then the illegal weapons were available to use.[390] The test to be applied was how strong the information was compared to the evidence. If the information on which the officers based their belief as to the culpability of the suspect was strong, then they would make sure the evidence was strong enough to form the basis for a prosecution.

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385 PIC Transcript, GJ Williams, 18 June 2002, pp. 3870-3873, 3879
386 PIC Exhibits 461, 462B
387 PIC Transcript, N1, 4 June 2002, pp. 3175-3180
388 PIC Transcript, N1, 4 June 2002, p. 3179
389 PIC Transcript, N1, 4 June 2002, pp. 3179-3181
390 PIC Transcript, N1, 4 June 2002, pp. 3182-3183

3.38 N1 said that all members of the AHU participated in this activity. He was asked about the direct involvement of his immediate supervisor, O'Toole. He was unable to say whether O'Toole did or did not keep specific illegitimate firearms himself, but said that he was aware of him using weapons to load people and that O'Toole had been involved in loads with N1. He also said that it was the practice of members of the AHU to share various weapons among themselves on a needs basis.[391] NI rejected the suggestion that he was merely assuming that other officers used weapons to load offenders. He said that he had observed other officers doing it. He also said that it was not up to individual officers to either load, or not load a suspect, as it was done as a team.[392]

3.39 In relation to O'Toole, he also said that as the senior officer O'Toole would oversight interviews and perform the formal adoption of the interview where he was aware loads had taken place. He said further that where a suspect had been loaded he would also be verballed so the oversighting officer, O'Toole, would know the load had taken place when he adopted the interview. N1 nominated the "Wogs Out of Work" Operation as one in which O'Toole was involved in a load.[393]

3.40 N1 also recalled another operation where there was a specific load. This involved a person code-named A4. N1 said he, King and possibly M5 loaded a person up with an Uzi firearm. A4 was also verballed as to its possession and was successfully prosecuted.[394]

3.41 N1 said that when he left the AHU he left his illegitimate guns with the Unit. He said the practice of loading continued until his departure. N1 said he did not participate in the dumping of the weapons but he was aware that it had occurred.[395]

F7

3.42 On his arrival at Chatswood F7 said he was immediately made aware of a stash of weapons. He said they were in a "*Brownbuilt or Namco or similar style two-door locker cabinet*". The locker contained a number of old weapons, at different times between eight and twelve, including shotguns and rifles, both full barrelled and sawn off. With the weapons were a number of items of armed hold up paraphernalia including clothing jackets, jumpers, balaclavas, beanies, baseball caps etc and bits of timber, stick and batons.[396]

3.43 F7 later became aware of some further weapons, machine pistols, which had been seized during a search warrant or operation. He said these machine pistols were kept in the SPG locker. He did not think they were formal

[391] PIC Transcript, N1, 4 June 2002, pp. 3181-3183
[392] PIC Transcript, N1, 4 June 2002, pp. 3203-3204
[393] PIC Transcript, N1, 4 June 2002, pp. 3184-3185; "Wogs Out of Work" Operation is discussed in detail at paragraphs 3.114 to 3.184
[394] PIC Transcript, N1, 4 June 2002, pp. 3192-3193
[395] PIC Transcript, N1, 4 June 2002, pp. 3192-3195
[396] PIC Transcript, F7, 5 June 2002, pp. 3213-3214

exhibits in any proceedings and said they were kept in the locker for years. He described the cabinet in which the other guns and armed hold-up paraphernalia were kept as the "*exhibit locker*". When further questioned he agreed that they were not legitimate exhibits and that the term exhibit, in this context, really meant "*future exhibit*" i.e. items kept for the sole purpose of loading offenders. He said that only Dowding and Smith had keys to the SPG locker but everyone else in the AHU had access to the "*future exhibits locker*".[397]

3.44 When asked about how loads or loading of offenders would occur F7 said that there was usually a discussion before the job where O'Toole, as coordinator of the AHU would provide information to the officers who were to be involved. This often involved being shown victim statements in order to make sure "… *we got the right exhibits*." By getting the right exhibits F7 meant taking with them matching weapons and clothing to load the offender if necessary. F7 described the A2 operation that involved his "*Colt .38 pistol*".[398] That operation is discussed in detail below.[399]

3.45 F7 said the AHU also retained weapons for lecture purposes. They were not the illegal weapons although they were sometimes kept in the "*future exhibits*" cabinet and / or the SPG cabinet. Dowding was in charge of those guns. He thought these demonstration weapons had been obtained from the armoury and were therefore legitimate.[400]

3.46 F7 thought there were also some pistols retained and not kept in the future exhibits locker but hidden elsewhere by Dowding. They were hidden because they were much more scarce, and thus more valuable, than rifles and shotguns. The contents of the "*future exhibits locker*" were occasionally on display when the lockers were cleaned and / or rubbish thrown out. F7 said there was no secrecy attaching to the existence of the stash and its purpose. He said Dowding was in charge of the "*illegal exhibit cabinet*" and that if O'Toole wanted to know what was there, he would speak to Dowding.[401]

3.47 F7 said there was concern among officers within the AHU when the Royal Commission commenced and that concern increased upon the execution of search warrants upon other police offices. He indicated that at around that time Smith advised MCSN that anything illegal should be disposed of. He could not recall the exact words but he said that there was some talk within the AHU that members of the fishing club could dump the firearms in the Hawkesbury on their next fishing trip. F7 said that trip was cancelled, he was transferred, and the fishing trip "dump" did not occur. When he left the Unit the illegitimate firearms were still in the future exhibits cabinet.[402]

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397 PIC Transcript, F7, 5 June 2002, pp. 3214-3216
398 PIC Transcript, F7, 5 June 2002, p. 3217
399 See paragraphs 3.185-3.210
400 PIC Transcript, F7, 5 June 2002, pp. 3231-3232
401 PIC Transcript, F7, 5 June 2002, pp. 3232-3233
402 PIC Transcript, F7, 5 June 2002, pp. 3234-3235

3.48 F7 was a member of the fishing club. He said Dowding and M5 were not members and that he would have been very surprised had Dowding and M5 suddenly decided to borrow a boat to go fishing. Smith was a member of the fishing club and knew that neither Dowding nor M5 were fishermen.

3.49 F7 said Dowding's version of the sweep of the office, (discussed below) revealing firearms about which he had no knowledge, was completely untrue as Dowding was in charge of the firearms. F7 recalled a meeting where Smith indicated to the officers that they had to get rid of anything they should not have. He said that there was no need for Smith to say specifically that they should get rid of the guns because everybody, including Smith, knew the illegal guns were in the cabinet.[403]

M5

3.50 M5 told the Commission that it was Dowding who approached him and said that Smith had assigned him the task of disposing of the guns. M5 said they gathered the guns into two big carry bags that were placed in the police car and taken to Smith's house because they had arranged to borrow Smith's boat. At Smith's house the guns were transferred to Dowding's car, which had a towbar and could tow the boat. Prior to dumping the guns M5 and Dowding broke up the firearms. M5 did not think any pistols were dumped because Dowding said something along the lines of *"... they were too good to get rid of"*. He thought the pistols were hidden under personal lockers. M5 said the particular place to dump the guns was chosen because Smith had allegedly told Dowding that was a deep part of the river.[404]

3.51 M5 did not recall any discussions with Smith about the proposed dump or the stash. He had never borrowed Smith's boat before and to his knowledge, neither had Dowding.[405] He disputed the more innocuous version of the sweep and discovery of the firearms as deposed by Dowding and said:[406]

> … I don't know why he would say that because he was well aware of what was in that cabinet…it wasn't a discovery in any event; it was a known fact that there were those items in there. I think – I think if there was any surprise as to the extent or the volume of what was in there would have been from me.

3.52 M5 recalled the dump took place in 1995 during the Royal Commission and that the stimulus was the "rollover" by Trevor Haken at the Royal Commission. M5 described the gun cabinet as being a double door lockable cabinet containing two bags of firearms and other weapons. The weapons included replica pistols, shortened rifles, shotguns, ammunition, balaclavas and knives. He also recalled there were two Ruger rifles and a number of shortened shotguns, machetes, shortened .22 rifles, separate barrels and filings from sawn off weapons in plastic bags. He said that these items had been accumulated by the AHU over the years. He was emphatic that they

[403] PIC Transcript, F7, 5 June 2002, pp. 3236-3237
[404] PIC Transcript, M5, 11 June 2002, pp. 3299-3303
[405] PIC Transcript, M5, 11 June 2002, p. 3310
[406] PIC Transcript, M5, 11 June 2002, p. 3316

were not legitimate exhibits that had previously been used in the prosecution of offenders. He said access to the locker was confined to members of the AHU.[407]

3.53 M5 agreed there was also an SPG locker and that it was separate and more secure than the guns cabinet. It contained legitimate SPG firearms, ammunition, vests and related equipment. He also confirmed that some "demonstration firearms" were kept in the SPG cabinet. They were kept for the purposes of lectures and demonstrations given by AHU officers. He thought that the weapons used for demonstrations had initially been taken out of the illegitimate guns cabinet but that at a later stage legitimate weapons were also obtained for this demonstration role.[408] M5 said that every officer who was attached to the AHU would have known about the existence of the illegitimate firearms locker and its contents.[409]

3.54 M5 denied that he persuaded Dowding to participate in the "dump" and that Dowding had any other innocent proposal to dispose of the firearms.[410]

KIM DOWDING

3.55 Dowding gave evidence before the Commission on 3 and 4 June 2002. He conceded at the beginning of his evidence that he, with assistance of M5 was responsible for the disposal of a number of firearms into the Hawkesbury River.[411] He recalled that the dump took place during the Royal Commission and more specifically between late 1995 and April 1996 (when he sold his Subaru with tow bar).[412]

3.56 Dowding's evidence was that during the Royal Commission he responded to a comment by Smith (his then Commander), that he, Smith, hoped that there was nothing in the Office that would bring it into ill repute, by undertaking to do a "sweep" of the office. The sweep was undertaken by Dowding after hours and covered all the lockers within MCSN office including personal lockers, exhibit lockers and brief lockers, but not the guns cupboard. He located and disposed of bottles of alcohol that were in various officers' personal lockers. He also found and shredded a lot of paper work including Facts sheets and Information Reports. He located about a dozen firearms of different types, some of which were old exhibits. He also located some old knives and handcuffs that were broken up and destroyed.[413]

3.57 Later that evening he had a beer with M5. M5 was not, at that time, attached to MCSN. According to Dowding, M5 persuaded Dowding to dispose of the weapons by dumping them in the Hawkesbury River. On the pretext of going fishing Dowding arranged to borrow Smith's boat. Despite the fact that

[407] PIC Transcript, M5, 11 June 2002, pp. 3302-3309
[408] PIC Transcript, M5, 11 June 2002, p. 3305
[409] PIC Transcript, M5, 11 June 2002, p. 3315
[410] PIC Transcript, M5, 11 June 2002, pp. 3315-3317
[411] PIC Transcript, K Dowding, 3 June 2002, p. 3065
[412] PIC Transcript, K Dowding, 3 June 2002, pp. 3105-3106
[413] PIC Transcript, K Dowding, 3 June 2002, pp. 3095-3071

Dowding was not known as a fisherman and had never borrowed Smith's boat before, Smith did not question Dowding about this request.[414]

3.58 Dowding could not offer any reasonable explanation as to why he destroyed these items without checking with any of the officers as to their legitimacy or indeed whether they were pending exhibits. He said the request by Smith to clean up the office was merely a passing comment made by him at one of the weekly Wednesday meetings in the presence of all officers of the Unit. Dowding did not volunteer to make the sweep in front of the gathered officers but instead followed it up discreetly with Smith. He said that the firearms located by him were "*broken down*" with a sledgehammer on the floor of the office. Dowding loaded the firearms into an unmarked police car and then drove his beige Subaru with towbar to Smith's home to pick up Smith's boat. He later reported back to Smith and told him "*the office was okay*".[415]

3.59 It was apparent that Dowding was trying to convey to the Commission the impression that his involvement in locating what he said was a relatively small stash of firearms and then dumping them was a relatively innocuous incident. The interpretation he appeared to be presenting was that he was merely responding to the wishes of his Commander to ensure there were no items, whether they be old firearm exhibits or paperwork, that could reflect adversely on MCSN. He appeared to be proposing that the only problem with MCSN at that time was that it might have been a little untidy or inefficient in the storage and recording of exhibits. The surveillance material and other evidence conveyed a more serious state of affairs.

Listening Device Conversation, 29 January 2001, M5 & Dowding[416]

3.60 This conversation took place whilst Dowding was the Duty Officer Crime Manager, at Chatswood. During the conversation M5 suggested to Dowding that he look at a recent COPS entry. Dowding accessed the COPS system while the conversation continued. M5 directed Dowding to the relevant entry, which related to some guns having been located in the Hawkesbury River, and they then discussed whether the entry was significant or not. Dowding said that he didn't think the entry was significant because the guns found were located *"west"*.[417]

3.61 When questioned about the conversation Dowding conceded that he read a COPS entry relating to the finding of firearms west of the F3. He agreed that he knew the dump that he participated in with M5 had occurred east of the F3. He also agreed that whilst perusing the COPS report and discussing the matter with M5, he made the following handwritten notes:[418]

> "print"
>
> "I don't think there were serials"

[414] PIC Transcript, K Dowding, 3 June 2002, pp. 3065-3066
[415] PIC Transcript, K Dowding, 3 June 2002, pp. 3071-3076
[416] PIC Exhibits 428 & 429
[417] PIC Exhibits 428 & 429
[418] PIC Exhibit 430

"800M west F3"

Dowding shredded the note after the conversation with M5 but it was later recovered by NSW Police investigators and reconstructed. The reconstructed note was tendered as an exhibit in the Commission's hearing.[419]

3.62 Dowding could offer no other reasonable explanation as to these notes and conversation other than the one suggested to him, that is, he was enquiring about whether fingerprints and / or serial numbers had been found on the firearms that could then identify them as being a part of the stash that he had dumped. He could not suggest any other reasonable explanation as to why the note was shredded by him other than he wanted to dispose of it so it would not implicate him in the dumping of the firearms.[420]

Listening Device Conversation, 13 February 2001, M5 & Dowding[421]

3.63 In this conversation, 14 days after the conversation discussed above, Dowding's inquisitiveness as to the alleged finding of the firearms escalated. In this conversation Dowding asked M5 if he had been *"... following those events"*. M5 said he had and then informed Dowding that a serial number had been located on one of the guns. Dowding indicated that he was aware that the type of gun had been identified but not that a serial number had been found. They then discussed whether the serial number could be linked to a certain person's arrest, given that at the time of the arrest computer records were not in use.

3.64 In evidence Dowding agreed that the references to "Ronnie" in the conversation referred to Smith. He said that at the time he felt some security about not being identified as participating in the dumping of the weapons, even though M5 told him that one of the located firearms had a serial number on it, because the guns allegedly located dated back as far as 1981 / 1982. He also said that he had some thoughts about coming forward and admitting his part in the dumping of the firearms but decided to do so only if asked.[422]

3.65 When questioned by the Assistant Commissioner Dowding said that he only decided to admit his involvement when the dump was revealed in the opening of the Operation Florida hearings in October 2001, but at that time he was under medical treatment and advice that had dissuaded him from coming forward. He did concede however that as at February 2001, when the conversations took place, he was not under medical treatment or psychiatric care and therefore not prevented from divulging his apparent misconduct.[423]

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[419] PIC Exhibit 430
[420] PIC Transcript, K Dowding, 3 June 2002, pp. 3080-3083
[421] PIC Exhibits 453 & 454
[422] PIC Transcript, K Dowding, 4 June 2002, pp. 3142-3144
[423] PIC Transcript, K Dowding, 4 June 2002, pp. 3144-3145

Listening Device Conversation, 18 April 2000, M5, Dowding, F7 & N1[424]

3.66 In this conversation there was discussion about the dump of the firearms by Dowding and M5, the existence of the stash at the MCSN offices and the source of the firearms. At the beginning of the conversation M5 referred to fact that the original proposal was that F7 and Vicary (Bumhole) do the dump of the weapons but that when they declined to go ahead it was left to M5 and Dowding to carry out the dump. F7 agreed with M5 that this is what had occurred. The following exchange then took place:[425]

> Dowding: Yeah it was a good night of fishin'. We had a good night there. We enjoyed that.
>
> M5: Oh yeah, terrific.
>
> Dowding: A few stumpies, a few beers, and it was a good night. … the fishin' was a bit light on, but eh, who gives a fuck?

And later:

> Dowding: Anyway, what can we say, we had a good night of fishing that night. … in the boat was a fuckin' sensational fuckin' experience that was.

3.67 Later in the conversation there was discussion about the stash at the MCSN offices. There are comments about the fact that the firearms were kept in the *"big blue bag"*. F7 said they had a bag that they took to lectures and said they *"probably added a few things to that"*. He later said: *"we added a lot to that bag"*. In the conversation F7 referred to searching the ceiling of MCSN offices and discovering everything had disappeared, except one set of handcuffs. M5 described the amount of firearms as consisting of "*two fucking big bags full of fucking shit like heavy metal*".

3.68 They all discussed the source of the bags in which the guns were transported, including a cricket bag and a blue bag that N1 had retained from a previous arrest. N1 said that the blue bag belonged to him. The discussion then turned to the source of the weapons and reference was made to the armed robbery arrest in 1984 as being the source of both some of the firearms and the blue bag.

3.69 None of these propositions were challenged, disputed or denied by Dowding at the time of the conversation. When asked in evidence why he did not do so he proffered that he would have been drunk and just dismissed the conversation. When was asked how his drunkenness could so affect his decision to challenge apparent untruths, he merely offered that the drunkenness affected his memory of both the conversation and the incident.[426] It is noted that drunkenness appears to have been his overall excuse for all matters revealed in this conversation that appeared contrary to his version of events given in evidence.

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[424] PIC Exhibits 451 & 452
[425] PIC Exhibits 451 & 452
[426] PIC Transcript, K Dowding, 4 June 2002, pp. 3138-3139

3.70 Dowding's version of events was inconsistent with both the substance and tone of this conversation, in which he described the venture with some excitement (see above). In evidence Dowding referred to a separate store of guns in what was called the SPG cupboard and another bag of guns that were retained by AHU officers for the purposes of demonstrations and lectures. When asked why he did not refer to any of these guns in the conversation recorded by listening device he could not offer any explanation. Notably, in this conversation he also referred to the very same bag that he earlier told the Commission was the one containing the demonstration firearms. The only excuse he could offer was that the conversation took place in the afternoon and he must have therefore been drunk.[427]

3.71 This recorded conversation was inconsistent in a number of ways with Dowding's version before the Commission. For example, the original proposal that "Bumhole" and F7 were to carry out the dump as was subsequently confirmed by both M5 and F7 in their evidence.[428] Another example was the referral by N1 to the source of some of the firearms in the stash in that he said they came from previous arrests.[429]

Listening Device Conversation, 2 March 2001, M5 & Dowding[430]

3.72 In this conversation M5 reassured Dowding in the following exchange:

> Dowding: No more fishing?
>
> M5: Eh?
>
> Dowding: No more fishing stories?
>
> M5: … there hasn't been actually. … It's all quiet. … It's all quiet on the Western Front. … well the only thing is the … about the divers, that's all, but there's been nothing come so, you know, simple.

3.73 Dowding agreed that in this conversation M5 was giving him some reassurance and that he then felt a greater sense of security about his involvement not being discovered.[431]

3.74 Dowding's protestation as to lack of recall is not assisted by the chronology of conversations as recorded by listening device. On 18 April 2000 he participated in detailed discussions of the dump with his former workmates and friends F7, N1 and M5.[432] He did not dispute any of the extensive and damning propositions about the dump. Almost one year later, on 29 January 2001 a further conversation[433] and handwritten note,[434] reflect a clearer recollection of events than he was prepared to concede in evidence. On 13

[427] PIC Transcript, K Dowding, 4 June 2002, p. 3141
[428] PIC Transcript, M5, 11 June 2002, p. 3300; F7, 5 June 2002, pp. 3234-3235
[429] PIC Transcript, N1, 4 June 2002, p. 3180
[430] PIC Exhibits 455 & 456
[431] PIC Transcript, K Dowding, 4 June 2002, p. 3146
[432] PIC Exhibits 451 & 452
[433] PIC Exhibits 428 & 429
[434] PIC Exhibit 430

February 2001[435] and 2 March 2001[436] Dowding participated in further discussions with M5 that again confirmed his intimate knowledge of, and participation in, the dump.

3.75 Dowding told the Commission he initially intended to dispose of the firearms in a manner other than dumping them in the river. He did not say how he intended to dispose of them but instead attributed blame to M5 by suggesting M5 persuaded him that they ought to dispose of them in the river.[437]

3.76 Dowding belatedly acknowledged to the Commission that he committed an error of judgment and eventually accepted responsibility for his participation in the dump. He maintained however, that M5 played a large role in persuading him to go down that path. Whether he did or not, Dowding seemed to continually attempt to attribute responsibility to M5. During his evidence Dowding also expressed a sense of betrayal by M5. Notably, he did not focus on the fact that M5 had given him up in relation to the dumping of the guns, which was clearly an inappropriate activity, but more specifically on what he perceived to be the "*betrayal of a friendship*".[438]

3.77 Dowding maintained that he had no knowledge of any stash of weapons or any illegitimate firearms within the offices of MCSN until he did his clean up. In saying this he agreed that he was what could be termed the "*armoury officer*" and the most experienced and skilled officer at MCSN in relation to firearms. He also agreed that he was one of the most senior officers at MCSN and that other than Smith and O'Toole, he had been there for the longest period of time.[439]

3.78 Unfortunately Dowding did not conclude giving evidence. Early in cross-examination by Counsel for NSW Police, he broke down and was unable to return to the witness box.[440]

RONALD BRUCE SMITH

3.79 Smith was taken to the material presented in the Opening of the Operation Florida hearings that related specifically to the finding of the guns in the river and he acknowledged that it was his boat that was used for the disposal of the weapons.[441] He initially said that when the codenamed officers who gave evidence (see above) referred to an illegal stash of weapons that was kept at MCSN office, he did not know to what those officers were referring. He later indicated however that he knew there were weapons kept by the AHU in a bag but thought those weapons were used for lectures and SPG exercises. He said that the weapons may have included shortened firearms and were kept in a blue calico bag in the SPG cabinet. He agreed that he never satisfied

[435] PIC Exhibits 453 & 454
[436] PIC Exhibits 455 & 456
[437] PIC Transcript, K Dowding, 3 June 2002, p. 3066
[438] PIC Transcript, K Dowding, 3 June 2002, p. 3126
[439] PIC Transcript, K Dowding, 3 June 2002, p. 3128
[440] PIC Transcript, K Dowding, 4 June 2002, pp. 3166-3168
[441] PIC Transcript, RB Smith, 12 June 2002, pp. 3465-3466

himself that they were properly obtained weapons nor whether they were operable or not.[442]

3.80 Smith said he did have some suspicions when Dowding asked him to borrow his boat because the timing of the request was relatively close to when Dowding had offered to *"do a sweep of the office"*. Smith initially said that the sweep was relating to exhibits, property that could not be accounted for and other miscellaneous property. When questioned about this aspect, he agreed that there were proper procedures to record and / or dispose of exhibits and he acknowledged that such procedures were appropriate and ought be enforced in respect of firearms. He acknowledged that there were also procedures available for the proper disposal of miscellaneous property.[443]

3.81 Smith indicated that neither Dowding nor M5 had ever borrowed his boat before or since. Although Smith's suspicions were aroused by Dowding's request he ignored the suspicions because he did not suspect Dowding was going to do anything *"improper"*. He conceded that that was the wrong approach to have taken and that he should have taken the matter further.[444]

3.82 Smith later volunteered that he had a vague recollection of M5 bringing to his attention that there was a dump of weapons in the Hawkesbury River. He agreed that as a result of this conversation he held more than a suspicion that a dump of weapons had occurred but he still did nothing. He eventually conceded that whether the dump of firearms involved the improper disposal of exhibits or illegal weapons, it was improper conduct.[445]

3.83 The Assistant Commissioner asked Smith why, when he found out his boat had been used for an unlawful purpose he didn't go to his commander and tell him. Smith's reply was firstly that it didn't cross his mind to report the matter and later that he chose to ignore it. [446]

3.84 Smith eventually conceded that his suspicions did extend to firearms being dumped in the river. He said that whilst he did not specifically suspect firearms had been dumped he agreed that as he suspected the dump included "*improperly processed exhibits*" it might well have also included firearms.[447]

Listening Device Conversation, 29 January 2001, M5 & Smith[448]

3.85 Before listening to this tape, Smith conceded that he had earlier been told by M5 of the dump of firearms. Furthermore he agreed that he was aware of the NSW Police Code of Conduct and Ethics and clause 20 of the Police Regulation 2000 requiring officers to report any suspicion of corrupt conduct,

[442] PIC Transcript, RB Smith, 12 June 2002, pp. 3467-3470
[443] PIC Transcript, RB Smith, 12 June 2002, pp. 3470-3474
[444] PIC Transcript, RB Smith, 12 June 2002, pp. 3475-3478
[445] PIC Transcript, RB Smith, 12 June 2002, pp. 3483-3485
[446] PIC Transcript, RB Smith, 12 June 2002, pp. 3492-3493
[447] PIC Transcript, RB Smith, 12 June 2002, p. 3494
[448] PIC Exhibits 490 & 491

unlawful conduct or any officer participating in a criminal offence or misconduct. He agreed that he had ignored those requirements.[449]

3.86 When taken to the recorded conversation between himself and M5 on 29 January 2001, Smith said he understood that it referred to the purported fishing trip and to the dumping of firearms. He agreed that in this conversation he made inquiries of M5 about the traceability of the firearms back to MCSN. He also agreed that the conversation clearly identified his suspicions attaching to the dump as including the firearms. He further agreed that he understood this was a clear instance of misconduct, corrupt or improper conduct by M5 and Dowding that he chose not to report so as to protect himself, M5 and Dowding. He also added that he did not wish to bring discredit to NSW Police.[450]

Listening Device Conversation, 5 February 2001, M5 & Smith[451]

3.87 Smith agreed this listening device conversation again referred to the dumping of the firearms by M5 and Dowding and the related use of his boat. He conceded that he was then aware of the dumping of the firearms.[452]

Listening Device Conversation, 8 February 2001, M5 & Smith[453]

3.88 This conversation revealed a degree of specificity and focus by Smith as to the possible tracing of the firearms. Smith specifically acknowledged that one of the firearms could have been traced back to N1. In evidence Smith appeared to try to distance himself from culpability by suggesting he had some doubts as to the situation as being described by M5. This is irreconcilable in the context of the conversation where he clearly sought to allay the concerns of M5 about the traceability of the firearm. When taken to his words on tape Smith agreed that he was suggesting that M5 ought not worry about any of the firearms being traced back to MCSN.[454]

Listening Device Conversation, 14 March 2001, M5 & Smith[455]

3.89 This conversation revealed Smith expressing concern as to the possibility of the inquiries by him and M5 on the COPS system relating to the recent finding of firearms in the Hawkesbury River being discovered and questions being subsequently asked as to why he and M5 were interested in this COPS event. In evidence Smith seemed to resist this conclusion by suggesting that the only suspicion he held related to the information M5 was telling him. He eventually conceded that he was also concerned about the various accountable instances of access to the COPS system in relation to the finding of the firearms which in turn may have been traced back to him and thereby

[449] PIC Transcript, RB Smith, 12 June 2002, pp. 3495-3496
[450] PIC Transcript, RB Smith, 12 June 2002, pp. 3497-3501
[451] PIC Exhibits 492 & 493
[452] PIC Transcript, RB Smith, 12 June 2002, pp. 3501-3503
[453] PIC Exhibits 494 & 495
[454] PIC Transcript, RB Smith, 12 June 2002, pp. 3503-3510
[455] PIC Exhibits 496 & 497

reflect adversely on his role as the former coordinator of MCSN. Smith prevaricated as to whether the dump involved guns or not. He eventually conceded that it was quite clear that the dump did relate to guns and moreover, the possibility that those guns may have been illegal firearms obtained by police.[456]

3.90 Smith's actual knowledge was further demonstrated by his comments in this conversation. For example he was unable to offer any other reasonable explanation for his words *"I would have thought that it would have been booked up somewhere and he doesn't have any knowledge of what happened to it after that"* than that he was proffering an excuse that could be offered by N1 should the firearm be traced back to him.[457]

3.91 Smith was also taken to his suggestion in the conversation that Dowding ought to be the one to keep an eye on the matter because in his capacity as Crime Manager Dowding had a better excuse for leaving a trail of inquiry as to the finding of the firearms than M5. Smith acknowledged that the reason he suggested Dowding was because he was the other person involved in the dump of weapons. He also agreed that he offered M5 some legitimate reasons or excuses to explain why he had been enquiring as to the finding of the firearms. Smith could offer no other reasonable explanation for these suggestions other than that his comments were made to legitimise the otherwise improper interest held by M5 as to the finding of the firearms.[458]

3.92 This conversation and the conversation of 8 February 2001[459] suggest that Smith had detailed knowledge of the dumping of the weapons and prior knowledge of the stash retained at MCSN offices.

JAMES JUSTIN KING

3.93 King told the Commission that the only firearms he was aware of at the MCSN offices were the "demonstration" firearms, the legitimate firearms contained in the SPG cabinets and individual officers' NSW Police revolvers. He offered that the demonstration firearms may well have not been legitimate and should have been sorted and disposed of properly. He also described other items including clothing and knives that were with those weapons. He said he was not aware of a stash of illegal weapons nor did he participate in any loads, verbals, false admissions or assaults upon offenders.[460] He thought that the firearms that were dumped were the ones that had been used for demonstration purposes.[461]

3.94 King said that M5 told him that he, together with perhaps Dowding, had dumped weapons into the Hawkesbury. King said that he did not do anything about that information such as making any enquiries as to how improperly

[456] PIC Transcript, RB Smith, 12 June 2002, pp. 3513-3520
[457] PIC Transcript, RB Smith, 13 June 2002, p. 3522
[458] PIC Transcript, RB Smith, 12 June 2002, pp. 3524-3526
[459] PIC Exhibits 494 & 495
[460] PIC Transcript, JJ King, 14 June 2002, pp. 3648-3654, 3677
[461] PIC Transcript, JJ King, 14 June 2002, p. 3663

retained firearms could have remained at the offices. King agreed that there were appropriate procedures applying to the retention, and eventual destruction or disposal, of firearms exhibits and said that he and his fellow officers abided by these procedures. He conceded that there was no proper reason for an officer to retain such sensitive exhibits once a case had concluded. He agreed he ought to have reported the conversation with M5 when he revealed the dumping of firearms and that by not doing so he had committed misconduct.[462]

Listening Device Conversation, 4 June 1999, M5 & King[463]

3.95 Although King recalled M5 telling him about the dump of firearms he was not able to pinpoint the date of that revelation. After listening to a recording of his conversation with M5 on 4 June 1999, King was still not able to say whether this was the occasion or not. He did, however, agree that this conversation referred to the dump of weapons and he agreed that any reference to *"fishing"* referred to the dump.

3.96 King was unable to give any explanation as to what the words he said on that recording meant or referred to. When asked if he had any other reasonable explanation to give the Commission he responded that he couldn't remember being there and that it was drunken talk.[464] Despite these responses, it was quite clear that during the conversation King was acclaiming with excitement the actions of M5 in dumping the stash of firearms, for example:[465]

> M5: … I had to go and get fuckin' pissed that day.
>
> King: But, but that, but that … you think back … well don't think back now, but you think back years ago, that was tremendous stuff.
>
> M5: It was a fuckin' big call.
>
> King: That's fuckin' great. I, I, I thought, 'Oh fuck, these blokes are great.' You know, like, you know, heart pumpin' stuff.
>
> M5: It was fuckin' heart pumpin' I tell ya.
>
> King: Yeah, it was, but … good stuff…

Listening Device Conversation, 25 June 1999, M5 & King[466]

3.97 King was taken to another conversation recorded some three weeks later in which mention was again made of "*fishing*". Although he conceded that it was him speaking to M5, he could not remember the conversation. He acknowledged that M5 conveyed to him that Dowding was involved in the dump but rejected the suggestion that this conversation, and the previous

[462] PIC Transcript, JJ King, 14 June 2002, pp. 3647-3656
[463] PIC Exhibits 510 & 511
[464] PIC Transcript, JJ King, 14 June 2002, pp. 3671-3675
[465] PIC Exhibits 510 & 511
[466] PIC Exhibits 512 & 513

conversation,[467] were directed to the dumping of a stash of illegally retained firearms rather than any *"demonstration weapons"*.[468]

Listening Device Conversation, 7 February 2001, M5, O'Toole & King[469]

3.98 This conversation was recorded at about the same time as the other recorded conversations between M5, Dowding and Smith.[470] All were consequent to the COPS entry revealing the finding of firearms in the Hawkesbury River. In the conversation King and M5 discuss whether the guns that had been found could be traced back to MCSN. King said:[471]

> JK: There's no dramas about it. None of that shit was (ui), they were only pick-me-ups that we were going to use down the track.

and

> JK: The fact that they've got numbers on 'em or not, they'd never be able to fuckin' trace any of that shit.

3.99 When King was taken to these segments of the conversation he was unable to offer any other explanation for it other than it was a drunken conversation. He said that where he referred, in the conversation, to *"use"* of the firearms he meant use for demonstration purposes, not to load suspects.

3.100 This conversation revealed that King possessed detailed knowledge of the stash and dump. His evidence as to his use of the words "*pick-me-ups*" was not plausible. That term is, however, quite consistent with the evidence given by N1, namely, that firearms were seized from offenders but not declared as exhibits and retained by the AHU for future illegal purposes. Indeed, this inference is confirmed where King says, as quoted above, that even if they do find serial numbers the guns will not be able to be traced back.

3.101 Later in the conversation King tries to reassure M5, acknowledging he is under pressure because he actually dumped the weapons, and tells him to stay away from the computer. In evidence King tried to explain these words by saying he was drunk and did not recall the conversation. He did, however, concede that the conversation might have been referring to the possibility of tracing the firearms back to personnel of the AHU.[472] Later in his evidence King was even more selective when he said his concern was only for the *"demonstration weapons"* and that they may be traced back to M5.[473]

DENNIS PETER O'TOOLE

3.102 O'Toole agreed that there were proper procedures for the recording and securing of exhibits. He accepted that the primary types of exhibits retained

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[467] PIC Exhibits 510 & 511
[468] PIC Transcript, JJ King, 14 June 2002, pp. 3675-3676
[469] PIC Exhibits 422 & 423
[470] PIC Exhibits 492 & 493; 494 & 495; see also paragraphs 3.87-3.88
[471] PIC Exhibit 423, p. 3
[472] PIC Transcript, JJ King, 14 June 2002, p. 3659
[473] PIC Transcript, JJ King, 14 June 2002, p. 3664

by the AHU would have been firearms, masks, balaclavas and other related items. He also said that it would be unusual for firearms or other weapons to be left around the offices of the AHU or MCSN for any length of time other than perhaps on overnight occasions, when the weapons were in transit, either to or from an exhibit room or court matters. It was in this context that he volunteered there was a collection of firearms that were retained by the AHU and used "*for demonstration and education purposes*".[474] He thought they were retained primarily in the SPG cabinet or another reinforced locker next to it. O'Toole agreed that he, as a supervisor, should have satisfied himself as to the legitimacy or otherwise of the collection.[475]

3.103 O'Toole could give no reasonable explanation as to how the stash of weapons could have been retained at MCSN offices during his tenure. He said he was not aware of any loads or verbals occurring during his tenure as supervisor and he did not participate in any loads or verbals.[476]

Listening Device Conversation, 7 February 2001, M5, O'Toole & King[477]

3.104 This conversation was recorded at about the same time as the other conversations between M5, Dowding and Smith and was subsequent to the COPs entry revealing the finding of firearms in the Hawkesbury River. The conversation is also referred to in the section concerning King above.[478]

3.105 O'Toole said that this conversation related to the guns that were used for demonstration purposes. He could offer no reasonable explanation as to why, if those firearms were demonstration guns, they could not have been merely returned to the armoury or ballistic unit, other than that he did not think that there was any proper record of the AHU having those weapons for use in demonstrations. It appears that O'Toole was trying to minimise or deflect the assertion that the dumped firearms were illegitimate firearms retained by the AHU for use as "future exhibits". He said that he had nothing to do with the dump. He could offer no reason as to why N1, F7 and M5 would indicate that everyone in the AHU was aware of the existence of the guns and their specific use. He agreed that whilst at the AHU he had trusted M5, N1 and Dowding.[479]

Listening Device Conversation, 18 May 2001, M5 & O'Toole[480]

3.106 This conversation took place after O'Toole had left NSW Police. The discussion again related to the firearms located in the Hawkesbury River and it was apparent that O'Toole expressed some surprise when M5 relayed to him that a serial number had been located and traced back to a firearm from a

[474] PIC Transcript, DP O'Toole, 17 June 2002, pp. 3703-3705
[475] PIC Transcript, DP O'Toole, 17 June 2002, p. 3719
[476] PIC Transcript, DP O'Toole, 17 June 2002, pp. 3711-3713
[477] PIC Exhibits 422 & 423
[478] See paragraphs 3.98-3.101
[479] PIC Transcript, DP O'Toole, 17 June 2002, pp. 3733-3747
[480] PIC Exhibits 516 & 517

police brief from 1984. O'Toole could offer no explanation as to why he was concerned about that revelation.[481]

3.107 During this conversation O'Toole plainly indicated that he was concerned that he may have been under surveillance and that the discovered firearms may have been traced. In evidence he could not offer any explanation as to this part of the conversation.

3.108 In the conversation O'Toole encouraged M5 to speak with Ehsman to find out further information about the Commission's inquiry into guns. He eventually agreed that this part of the conversation could well have related to something more substantial than the mere dumping of demonstration weapons.[482] It is apparent from this conversation that, as at 18 May 2001, O'Toole was aware the dumped guns were not merely demonstration weapons.

ASSESSMENT

3.109 The Commission is of the opinion that Dowding had far more extensive knowledge of the firearms and the reasons for his participation in the dump of firearms than he was prepared to concede in evidence. His account is totally inconsistent with that given by M5, F7 and N1. All were former officers of the AHU and M5 participated in the dump with Dowding. Dowding's evidence that the dump was merely the result of an impromptu sweep that revealed a small stash of firearms that emanated from the batch of "demonstration weapons" is difficult to accept. His version is further eroded by the covertly recorded conversations of 18 April 2000, 29 January 2001, 13 February 2001 and 2 March 2001. The latter three conversations were consequent to the revelation by M5 that some of the firearms they had dumped had been located. This resulted in Dowding expressing considerable concern about the traceability of those firearms back to MCSN. The handwritten note that was prepared by him on 29 January 2001 also defies his more innocuous explanation. When taken to various parts of the conversations that suggested obvious inconsistencies with his testimony to the Commission, Dowding could offer no reasonable explanation. Where Dowding's evidence is inconsistent with the listening device material and the evidence of M5, N1 and F7, it is rejected.

3.110 M5, N1 and F7 all testified that there was a stash of illegitimate firearms retained at MCSN office during their respective tours of duty at MCSN. Whilst they acknowledged the existence of a batch of "demonstration weapons" they said these were quite separate to the stash of illegitimate firearms. They all gave evidence that the stash was retained for use by officers of the AHU for the specific purpose of "loading" suspects. N1 was even able to identify specific firearms that he improperly retained after an operation. F7 said that the stash was brought to his attention as soon as he arrived at MCSN. He corroborated N1's explanation of the practice of

[481] PIC Transcript, DP O'Toole, 17 June 2002, p. 3758
[482] PIC Transcript, DP O'Toole, 17 June 2002, pp. 3761-3762

loading up offenders with the firearms and described them as "future exhibits".

3.111 The Commission does not accept Smith's evidence that he did not know about the stash or the improper purpose for which M5 and Dowding borrowed his boat. The recorded conversations of 29 January, 5 February, 8 February and 14 March 2001 reflect far greater knowledge on Smith's part than he was prepared to concede before the Commission.

3.112 King and O'Toole were also participants in various recorded conversations, including those of 14 June 1999, 25 June 1999, 7 February 2001 and 18 May 2001. They too were unable to provide any reasonable alternative explanation as to their words and participation in the conversations other than they were drunk at the time and unable to recall. The Commission rejects their evidence where it is contrary to the evidence of M5, F7 and N1 and the listening device material.

3.113 The Commission is of the opinion that all the abovementioned former MCSN personnel were aware of and / or participated in the collection and retention of illegitimate weapons at the MCSN office for the purpose of loading suspects.

"WOGS OUT OF WORK" OPERATION - P2

3.114 "Wogs out of Work" was an operation conducted by officers of the AHU and others from MCSN. The Operation culminated in August 1990 when several alleged offenders were arrested, interrogated and charged with various serious offences including armed robbery and conspiracy to commit armed robbery. The Commission hearing principally examined the arrest and charging of two civilians, M11 and P2.

3.115 P2 was arrested and charged on 15 August 1990 in respect of a series of armed robberies and other serious offences. According to the evidence of Dowding and Kendall before the Commission, and as deposed in various police statements within the original brief, P2 co-operated fully with police. He allegedly admitted his involvement in the armed robbery and firearms offences. It was also alleged that he voluntarily took police to a site near the Roseville Bridge where he had allegedly dumped firearms into the river.

3.116 According to the statements and evidence of police, P2 led them to the precise position near the water's edge where the firearms were dumped. Their version is that P2 also confirmed his admissions and co-operation in an unsigned notebook interview. He apparently refused to participate in a typewritten record of interview.

3.117 P2 denied such comprehensive and inculpatory co-operation from the outset. P2 defended the charges and after being committed for trial, a six-week voir dire hearing was conducted before the District Court of NSW. At the

conclusion of the voir dire hearing the evidence of the alleged confessions was not admitted. Therefore the criminal charges and trial did not proceed.[483] As the evidence unfolded before the Commission it became apparent that P2's claims were substantially corroborated by other police officers and surveillance material.

P2

3.118 P2 said that Dowding was the principal officer dealing with him. He also thought Kendall was involved. P2 alleged that Dowding hit him over the ear with an open hand during his interrogation. He said he was also pushed into a wall and kneed in the thigh by another police officer whose name he could not recall. He did recall two detectives later having a look at the wall because it was damaged. He said he was assaulted because he told the police he didn't know what they were talking about.[484]

3.119 The Commission hearing did not focus on the alleged assaults. Without diminishing the seriousness of the claim, the evidence of P2 was adduced primarily to identify an instance of a load and related verbals and how it related to the apparent stash of weapons.

3.120 P2 also stated that during the evening of his interrogation he was handcuffed and taken by police in an unmarked police car to an area near the Roseville Bridge. He recalled that Dowding and possibly M5, Kendall and Vicary accompanied him. Dowding indicated to the driver to stop at a certain spot and he was taken out of the car and led by police by the handcuffs or the back of the jeans and taken to the edge of the water. Dowding then said, "*Where is it (P2)?*" after which his hands were lifted by the chain between the handcuffs and pointed towards the water. P2 said he was then taken back to MCSN offices. Upon his return no one told him why he had been taken down to the river.[485]

3.121 P2 said that the first time he learned that police were alleging there were some firearms located in the river was when he received the brief of evidence containing photographs of the firearms.[486] He denied participating in any notebook interview[487] with Kendall or Dowding and said no interview was recorded in his presence whilst in custody. He denied providing any directions to police from which a map could have been drawn relating to the Roseville Bridge area. He said the notebook interview was never read out to him nor was he afforded any opportunity to read it. P2 denied ever making any of the alleged admissions or possessing any of the firearms depicted in the photographs or relied upon by police in the prosecution brief.[488]

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[483] PIC Transcript, P2, 14 June 2002, pp. 3619-3621
[484] PIC Transcript, P2, 14 June 2002, pp. 3622-3624
[485] PIC Transcript, P2, 14 June 2002, pp. 3625-3628
[486] PIC Exhibit 424
[487] PIC Exhibit 505B
[488] PIC Transcript, P2, 14 June 2002, pp. 3629-3631

3.122 Under cross-examination by Counsel for NSW Police P2 nominated Kendall as the officer who remained with him and Dowding for the majority of his time whilst in custody. He said Dowding gave false evidence at the voir dire hearing before the District Court in relation to his alleged admissions and the directions he allegedly gave to police directing them to the area of water under the Roseville Bridge.[489]

N1

3.123 N1 told the Commission that there were a number of sources of information indicating the suspects, including P2, were participating in various criminal activities. N1, and fellow officers of the AHU, devised a plan to facilitate compiling a brief against the suspects. In accordance with the plan, on the day after a robbery that they thought these suspects had committed, a firearm[490] was thrown into Middle Harbour near the Roseville Bridge. N1 could not remember where the gun came from but said it could have been one from the illegitimate stash. He said it was one that suited the description of the weapon used in the armed robbery. The plan was that if everything went well the gun would be left in the water, however if extra evidence was required the suspect who was the least co-operative, or the one against whom there was the least evidence, could be subjected to the load. As it turned out P2 was that suspect. N1 confirmed the plan was implemented. Photographs were taken of P2 indicating the place where he had allegedly thrown the gun. Police divers were then sent down to locate the gun.[491]

3.124 N1 could not recall who threw the gun in the river. He said O'Toole and others in his team knew both about the gun being thrown there and its intended purpose. He agreed that this was corrupt and criminal conduct and perverted the course of justice. He volunteered that it was a practice adopted by the AHU, when necessary to improperly obtain evidence by way of verbals, false admissions and loads.[492] N1 said everyone in the AHU was aware of and participated in the practice of loads and that the practice could only occur with the knowledge and acquiescence of other members of the team.[493]

3.125 N1 also explained that some specific difficulties arose when the police divers were unable to locate the firearms. He thought that the divers made at least four attempts to locate the firearms. Not surprisingly, he indicated that the divers were not informed as to the reasons why the police were certain they should be able to find the firearms in the river.[494]

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[489] PIC Transcript, P2, 14 June 2002, pp. 3635-3636

[490] N1 initially said in evidence that a firearm was thrown into the water. Police divers located two firearms, a shotgun and a pistol. When shown photographs of the firearms N1 said he recalled the shotgun but not the pistol.

[491] PIC Transcript, N1, 4 June 2002, pp. 3185-3188

[492] PIC Transcript, N1, 4 June 2002, pp. 3189-3190

[493] PIC Transcript, N1, 4 June 2002, pp. 3202-3203

[494] PIC Transcript, N1, 4 June 2002, pp. 3190-3191

3.126 N1 also recalled that there was a pistol buried on behalf of M11 in the same operation.[495]

M5

3.127 M5 was primarily responsible for the arrest and charging of another alleged offender, M11. He was, however, aware of the prosecution of the alleged offender P2, and he knew that the interviewing officers were Dowding and Kendall. He was aware that P2 was assaulted during the interview and that there was some damage to the walls within the interview room. He was also aware that members of the AHU had placed some firearms in the water near the Roseville Bridge and that the firearms were later located by police divers. He attended at the scene with Dowding on at least one occasion when police divers were present. He was shown photographs of the relevant firearms[496] and he thought they came from within the AHU office. It was his understanding that the firearms formed a part of a load of P2. He said O'Toole was aware of the firearms having been thrown into the river for the purposes of the load.[497]

3.128 M5 recalled that it was a source of some amusement among the AHU officers that the divers were initially unable to locate the firearms. This was because of the irony of the situation where the members of the AHU had put the firearms in the water so that they could be found but when the divers searched for them they had difficulty locating them.[498]

KIM DOWDING

3.129 Dowding agreed he was the officer in charge of the arrest and charging of P2. He did not initially recall any particular dealings with him or any allegations being made against him by P2. He said however, that it was a fairly common practice for defendants to make allegations of either verbals or loads. He initially stated that he had no recall of any incident involving the locating of guns in the river near the Roseville Bridge, the search by police divers, or whether P2 was involved in these circumstances at all.[499]

Listening Device Conversation, 19 February 1999, M5 & Dowding[500]

3.130 It was apparent from this conversation that contrary to what Dowding said in evidence before the Commission, he recalled as at 19 February 1999, the six-week voir dire hearing and the "Wogs Out of Work" Operation. In the conversation M5 appears to reprimand Dowding for assaulting P2. Dowding says it was not P2 but another offender, D6. They both appear to bemoan the eventual dismissal of the charges and discuss the apparent basis for that dismissal.

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[495] PIC Transcript, N1, 4 June 2002, p. 3191
[496] PIC Exhibit 424
[497] PIC Transcript, M5, 11 June 2002, pp. 3362-3363
[498] PIC Transcript, M5, 11 June 2002, p. 3363
[499] PIC Transcript, K Dowding, 3 June 2002, pp. 3113-3115
[500] PIC Exhibits 442 & 443

3.131 After listening to the conversation Dowding said that he still had no recollection of his involvement with P2. He said he did not recall the actual conversation and denied assaulting anybody during the Operation. He did not recall the six-week voir dire hearing. He could offer no explanation other than that he did not recall the conversation or the incident. He later offered that it was "*drunken talk*".[501]

3.132 In the conversation Dowding comments that he was glad they threw the guns in the water and that it was "*innovative*" and "*… better than standardised fuckin' admissions obtained in the back of a fuckin' Police vehicle*". It was suggested to Dowding that the only reasonable explanation for this part of the conversation was that it reflected him complimenting himself on an innovative way of verballing and / or loading an offender. The only explanation Dowding could offer was that he was "*drunk and talking*".[502]

3.133 In the light of this conversation it is difficult to accept that Dowding knew nothing about load or verbals or any of the circumstances surrounding the charging of P2.

Listening Device Conversation, 16 December 1999, M5, N1, King, Dowding[503]

3.134 This conversation, in which Dowding specifically mentions P2 on several occasions, took place ten months after the previous conversation. Again, Dowding appears to bemoan the fact that the charges did not proceed. When he was taken to each aspect of the conversation Dowding maintained his response that he did not recall the conversation or the Operation. He could give no other reasonable explanation as to the contents of the conversation other than "*being on the drink*".[504] It is again apparent that at the time of this conversation, 16 December 1999, Dowding's recollection was much clearer than he was prepared to concede before the Commission.

Listening Device Conversation, 7 February 2001, M5, N1, O'Toole, Dowding[505]

3.135 Dowding was taken to various aspects of this conversation and again he professed that he did not recall it. It took place some 16 months prior to him giving evidence before the Commission. In the presence of Dowding, N1, O'Toole and M5 discussed the actual load and how it was carried out. O'Toole says that he marked the place where he threw the gun into the water so he knew where it was.

3.136 When asked about the assertions in the conversation as to the difficulties with finding the firearms apparently thrown into the river and that the police divers were called back at least three or four times, Dowding again could not recall the conversation, the Operation or even the name, "Wogs out of Work",

[501] PIC Transcript, K Dowding, 3 June 2002, pp. 3116-3119
[502] PIC Transcript, K Dowding, 3 June 2002, p. 3119
[503] PIC Exhibits 444 & 445
[504] PIC Transcript, K Dowding, 3 June 2002, pp. 3120-3122
[505] PIC Exhibits 425 & 426

which was given to the Operation. He was shown photographs of the firearms[506] and did not recall them. He did not recall participating in a six week voir dire.[507]

GLENN WAYNE KENDALL

3.137 Kendall conceded that he was involved in the interview of P2 in the company of Dowding however he denied seeing Dowding assault P2 and said he knew nothing about any damage to the wall. He did not recall a voir dire examination relating to, or giving evidence at, the trial of P2.[508]

3.138 Kendall disagreed with the evidence given by P2 that the purported admissions made in his notebook[509] were fabricated. He disagreed with the suggestion that P2 did not direct him or other officers to the location of firearms near the Roseville Bridge. He denied that there was any load or falsified evidence implicating P2. He said he had no knowledge of any officers from the AHU tossing firearms into the river for the purpose of "loading up" offenders. He said however, that he did vaguely recall attending at the river near Roseville Bridge with P2 and other officers although he could not remember any detail of the incident. He relied on his statement, made at the time, for any details about the incident.[510]

3.139 At the time of Kendall's participation in this Operation he was attached to the Special Crime Unit at MCSN. He was not then a member of the AHU. He agreed that it was possible that police could have planted the firearms in the river without his knowledge. He did not recall seeing the firearms and upon being shown the photographs,[511] indicated that he could not confirm whether they were the relevant firearms or not. He was shown a map in his notebook entry and agreed that it was the type of information that would be provided to assist police divers in locating the firearms although he did not know whether that diagram was provided to them or not.[512]

JAMES JUSTIN KING

3.140 King recalled the "Wogs Out of Work" Operation and confirmed that he dealt with one of the other alleged offenders, D6. He had no recollection of the guns being found in the river in respect of P2 and said he had no knowledge of those guns being a load. He did, however, recall there was a six-week voir dire in the District Court.[513]

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506 PIC Exhibit 424
507 PIC Transcript, K Dowding, 3 June 2002, pp. 3123-3127
508 PIC Transcript, GW Kendall, 18 June 2002, pp. 3861-3862
509 PIC Exhibit 505B
510 PIC Transcript, GW Kendall, 18 June 2002, pp. 3863-3865; PIC Exhibit 506B
511 PIC Exhibit 424
512 PIC Transcript, GW Kendall, 18 June 2002, pp. 3865-3869; PIC Exhibit 505B
513 PIC Transcript, JJ King, 14 June 2002, pp. 3677-3686

GARY JOHN WILLIAMS

3.141 At the time Williams participated in the "Wogs Out of Work" Operation he was not attached to the AHU but, like Kendall, was attached to the Special Crime Unit and was called in to make up the numbers.[514]

3.142 Williams was shown his statement, dated 14 September 1990, which related to P2.[515] At the outset he informed the Commission that he had no recollection whatsoever of the events referred to in that statement. He said however that the contents of his statement were a contemporaneous record of his activities and those of P2 on 15 August 1990 and that, to the best of his knowledge, it was true and correct. When advised of the contrary version given by P2, Williams asserted, and maintained, that his statement was true and correct. He said he was not called to a voir dire hearing in respect of the proceedings and that he was not aware that the criminal trial did not proceed.[516]

DENNIS PETER O'TOOLE

3.143 O'Toole was in charge of the AHU at the time of the "Wogs Out of Work" Operation. He indicated he could recall very little if anything about the Operation.[517]

Listening Device Conversation, 7 February 2001, M5, N1, O'Toole, Dowding[518]

3.144 O'Toole acknowledged that the participants of this conversation were all long standing members of the AHU and part of what could be described as the Northern Beaches group. He was taken through parts of the conversation and his general response was that he could not recall the incident or the conversation. He did, however, recall that police divers had to search for the firearms on several occasions. He agreed that in this conversation N1 appeared to be referring to police throwing guns into the water for the purpose of a load. He also agreed that his participation in the conversation reflected that he agreed with what N1 was saying.[519]

3.145 O'Toole was taken to part of the conversation where he said, "*I threw it in*." He told the Commission that he did not know what he was referring to by the use of those words. When asked to give any alternative reasonable explanation other than he actually threw the firearms in the river, he could only say that he did not throw the firearms in the river, that he was drunk, and perhaps speaking with bravado. When taken to a part of the conversation where he says he "*marked the spot on a certain rock*", he said that he may

[514] PIC Transcript, GJ Williams, 18 June 2002, pp. 3876, 3879
[515] PIC Exhibit 525B
[516] PIC Transcript, GJ Williams, 18 June 2002, pp. 3876-3879
[517] PIC Transcript, DP O'Toole, 17 June 2002, pp. 3723-3724
[518] PIC Exhibits 425 & 426
[519] PIC Transcript, DP O'Toole, 17 June 2002, pp. 3725-3726

have thrown a rock there to indicate the place he had been shown by the offender.[520]

3.146 He agreed that the police divers had difficulty finding the guns. He agreed that the conversation reflected overall knowledge by the group of the possibility of corrupt conduct involving a load. He also said that the only other explanation he could give was that it was a drunken conversation and an example of his bravado under the influence of alcohol. He was asked why he did not report the possibility of corrupt conduct to other police officers after having that conversation. He said he did not do so because he did not remember the conversation.[521]

3.147 He was also taken to part of the conversation where he said he had to have a "*little yarn*" with the divers. It was suggested to O'Toole that this part of the conversation reflected him telling the police divers that the guns were definitely there because he knew police had thrown them there. He indicated that he did not believe that was the case.[522]

3.148 O'Toole agreed that he trusted M5, N1 and Dowding, both during the time he worked with them and as at the date of this recorded conversation. He was asked why in the presence of these three men would he, without hesitation and apparently without coercion, suddenly put himself in the position of admitting commission of a serious offence. He responded that he did not know and that he could not recall the conversation. It was suggested to O'Toole that if his various assertions in the recorded conversation were untrue then it was quite a series of ingenuous and incredible statements that he had made. He agreed and could give no other reasonable explanation.[523]

3.149 It is noted that O'Toole was a particularly vocal participant in this conversation. He and N1 even disagreed about who threw the gun into the river. In the light of the recorded conversations and the evidence of N1, M5 and P2, the Commission is of the opinion that O'Toole knowingly participated in the load.

GRAEME RONALD JAMIESON

3.150 Jamieson was a senior officer with the Police Diving Squad in 1990 and participated in the final search for the firearms that were eventually found in the river near the Roseville Bridge. He said the relevant Occurrence Records and Divers' Logs revealed there were four searches for firearms on 16 August, 22 August, 5 September and 6 September 1990. He said that after the second search O'Toole contacted him at his home on the telephone. O'Toole was insistent that the firearms were there despite the previous two unsuccessful searches. Jamieson decided to attend and conduct a further search, or searches, due to the insistence of O'Toole. Two more searches

[520] PIC Transcript, DP O'Toole, 17 June 2002, pp. 3727-3728
[521] PIC Transcript, DP O'Toole, 17 June 2002, pp. 3729-3730
[522] PIC Transcript, DP O'Toole, 17 June 2002, p. 3729
[523] PIC Transcript, DP O'Toole, 17 June 2002, pp. 3746-3749

were conducted during which two firearms were located. Jamieson was disappointed that his officers had not found the firearms on the previous occasions.[524]

3.151 Jamieson said it was very unusual for him to be contacted in this way and in fact he had never been telephoned at home prior to, or since, this occasion in respect of a search.[525] Although he thought the contact was unusual O'Toole allayed his concerns when he explained that the group of criminals they were investigating was extremely violent, that the police had an informant in the group and it was very important that the informant was not "*given up*" due to the violent nature of the criminals.[526]

3.152 In the course of Jamieson's evidence it became clear that there were inaccuracies in the recording of the times of dives and the locating of the weapons. Jamieson said that except in relation to deep dives, times of starting and finishing of dives were recorded in 15-minute intervals rather than the exact time. He also said that the exact time of locating items found during a dive was not recorded. Jamieson conceded, in evidence, that the procedures for recording the starting and finishing times of dives, and the times of locating items could be improved.[527]

3.153 The submissions of NSW Police dated 14 March 2003 advised that the standard operating procedures (SOPs) for the Marine Area Command (MAC) were under review.[528] In its letter dated 8 January 2004 NSW Police advised that the MAC had completed its review of SOPs. The new SOPs were implemented on 30 May 2003. Improved Dive Logs were implemented in the first half of 2003. Both the new SOPs and the Dive Logs include improved procedures and record keeping in relation to MAC diving operations.[529]

ASSESSMENT

3.154 The Commission accepts the evidence of P2 in relation to the allegation of a load and falsified record of interview. M5 and N1 also give corroborative evidence of the load and the premeditated strategy of the AHU in tossing the firearm into the river shortly after one of the robberies so as to later facilitate the investigation if required.

3.155 Kendall was directly involved in the alleged verbal of P2 because he recorded the alleged conversation with P2, including P2's alleged admissions, in his police notebook. He subsequently confirmed this in this police statement and in evidence to the Local Court and the District Court.

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[524] PIC Transcript, GR Jamieson, 4 July 2002, pp. 3961-3971
[525] PIC Transcript, GR Jamieson, 4 July 2002, p. 3997
[526] PIC Transcript, GR Jamieson, 4 July 2002, pp. 3964-3965
[527] PIC Transcript, GR Jamieson, 4 July 2002, pp. 3978-3985
[528] PIC Exhibit 847
[529] PIC Exhibit 934

3.156 The recorded conversations in which Dowding participated are damning. Whilst his lack of recollection at the time he gave evidence may well have been attributable to a medical condition, it is apparent that at the time of the actual conversations, his recollection of the "Wogs Out of Work" Operation, and his corrupt involvement in it, was both detailed and accurate. Notably, he referred to the six-week voir dire hearing and on one occasion announced with apparent enthusiasm how innovative the load was.

3.157 The Commission considers that O'Toole was also a major participant in the load, does not accept his version of events, and prefers the sworn evidence of P2, N1 and M5 together with O'Toole's statements in the recorded conversation of 7 February 2001. In that conversation he was obviously referring to throwing the guns into the river and described how he marked the reference spot on a rock by the river for the police divers to identify where the firearms had been thrown into the river. His denial that he did in fact throw the guns into the river, his explanation as to the innocent reason for marking the spot, and his assertion that this conversation was the result of him being drunk and speaking with bravado is rejected.

"WOGS OUT OF WORK" OPERATION - M11

3.158 The police statements show that M11 was arrested, interviewed and charged on 15 August 1990 with possessing a prohibited weapon and conspiracy to commit armed robbery. According to the police brief, M11 co-operated fully with police. He allegedly admitted his involvement in various offences and voluntarily led police to a site in bushland near the Roseville Bridge where he had allegedly buried a firearm that was to be used in a planned armed robbery. Police alleged that he also participated in a typewritten record of interview in which he made full admissions as to his involvement in the offences including his voluntary assistance in locating and identifying the firearm.

3.159 After unsuccessfully contesting the charges at a committal hearing, M11 later pleaded guilty before the District Court. He was sentenced to 12 month's imprisonment to be served by way of periodic detention. At the time of the alleged offences he had just turned 18 years of age.[530]

M11

3.160 In evidence before the Commission M11 recalled that he was arrested by M5 and Vicary. He said he was taken back to MCSN offices in Chatswood and spoken to by those officers, however no formal record of interview was conducted with him. M5, Vicary and O'Toole[531] then took him to a location in bushland near the Roseville Bridge. He said that on arrival at this location they exited the vehicle and Vicary took a shovel and a jumper out of the boot of the police vehicle. The officers then realised they did not have a film for their camera. M11 said that Vicary remained at the location while he, M5

[530] PIC Transcript, M11, 12 June 2002, pp. 3396-3398
[531] Later identified as Dennis John O'Toole.

and O'Toole drove to a chemist in Roseville in search of film. Being unsuccessful, they then returned to MCSN offices at Chatswood, obtained a film and went back to the same location. M11 was then walked to a location in the bush where Vicary was waiting. Vicary removed some soil from the ground and pulled up a bag. M11 was asked by Vicary what was in the bag. He thought it was drugs but when he suggested that the officers replied that it was too heavy.[532]

3.161 M11 was then taken back to MCSN offices and the article unwrapped and revealed to be a pistol with bullets. The record of interview was then prepared. M11 said M5 and Vicary typed the questions and answers themselves and he did not answer any of the questions. He was asked to sign the record of interview and after initially protesting, he was slapped by Vicary with a "*backhander on my forehead*". M11 then signed the record of interview, although he used a different signature to his usual signature. He said O'Toole came in and did not ask any questions but told him he had cooperated well. M11 did not protest about the interview because he did not think there was any use in doing so, and because he was scared and just wanted to leave.[533]

3.162 M11 said that whilst at the scene some photographs were taken with him standing in the location in the bushland together with Vicary. He said that he had never seen the gun or bullets before. Upon the attendance of O'Toole at the end of the record of interview the officers told O'Toole that M11 had co-operated and would therefore get bail. He was later released on bail. In evidence before the Commission he was taken to the relevant record of interview and acknowledged it contained his signature, albeit not his usual signature. He said that whilst he denied the allegations at committal, he eventually pleaded guilty on legal advice. He said it was suggested by his counsel that he ought consider changing his plea to guilty because of the evidence of a signed confession. He chose to adopt this course to ensure he did not receive a full-time custodial sentence.[534]

M5

3.163 M5 recalled the offender M11. He said that he and Vicary were assigned to interview M11. Dennis Peter O'Toole was in charge of the Operation. M5 recalled that M11 was searched and Vicary stole all of his cash. He and Vicary initially interviewed M11 and during that process M5 formed the view that M11 was not involved in the substantive robbery offences that formed the basis of the investigation. After forming this view M5 spoke with O'Toole who was not impressed and said to M5:

> You're going to have to give him a gun.

[532] PIC Transcript, M11, 12 June 2002, pp. 3398-3401
[533] PIC Transcript, M11, 12 June 2002, pp. 3402-3405
[534] PIC Transcript, M11, 12 June 2002, pp. 3406-3410

He interpreted this as meaning he had to load him up with a firearm from the stash.[535]

3.164 M5 recalled either Dowding or O'Toole providing him with a small silver revolver from the stash. He said he, Vicary and M11 then went to a bushland location near the Roseville Bridge with a shovel and the pistol. It was the intention of M5 and Vicary to bury the firearm then dig it up and photograph it at the site with M11. M5 said they attended the bushland location on two occasions because on the first occasion they realised the camera had no film in it. The three of them drove back to the MCSN office to obtain a film after having been unsuccessful in obtaining one at a local chemist shop. Upon their return they went down a bush track, Vicary dug a hole, threw the firearm in the hole, then pulled the firearm out and took photographs including some depicting M11. They then returned to MCSN offices and a second record of interview was conducted, the first having been disposed of consequent to the direction given by O'Toole.[536]

3.165 In evidence before the Commission M5 perused the second record of interview[537] and agreed that the questions and answers relating to any admissions as to conspiring to commit a robbery, possessing and / or advising of the location of the firearm or the background to it being hidden in bushland were fabrications. When asked about the circumstances relating to M11 signing the record of interview he said that M11 signed it under duress after being assaulted by Vicary.[538]

3.166 M5 was also taken to the specific statements prepared by himself[539] and Vicary for the brief. It was his view that M11 was probably not cautioned but, in accordance with their usual practice, reference to the caution was inserted to demonstrate compliance with Police Instructions and to bolster the admissibility of the evidence. He said that all references to admissions were false. In relation to Vicary's statement[540] he again said that all references to admissions and to M11 showing them where the gun was hidden were false.[541]

3.167 M5 was also taken to a supplementary statement relating to M11 dated 29 May 1992.[542] As with the previous statements, he said it was false. That statement was apparently provided to the Crown post-committal so as to supplement the specific evidence as to the locating of the firearm and related admissions by M11. M5 also perused Vicary's supplementary statement[543] that was in similar terms. He confirmed that it too was untrue.[544]

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535 PIC Transcript, M5, 11 June 2002, pp. 3334-3337
536 PIC Transcript, M5, 11 June 2002, pp. 3337-3340
537 PIC Exhibit 482B
538 PIC Transcript, M5, 11 June 2002, pp. 3341-3346
539 PIC Exhibit 483B
540 PIC Exhibit 484B
541 PIC Transcript, M5, 11 June 2002, pp. 3349-3354
542 PIC Exhibit 485B
543 PIC Exhibit 486B
544 PIC Transcript, M5, 11 June 2002, pp. 3356-3357

3.168 It was apparent from the evidence that another detective, Dennis John O'Toole (attached to the Homicide Unit at MCSN) had accompanied both Vicary and M5 on at least one of the journeys out to the bushland location near the Roseville Bridge.[545] M5 was unsure as to whether O'Toole was aware of the load and / or verbals. He did not think he was present on the second visit to the site when the gun was found, but agreed it was possible that he was there.[546]

3.169 M5 was surprised that M11 pleaded guilty to the charges before the District Court. This was not only because the evidence of possession of the firearm and related admissions was false but also because he was of the view M11 was merely an associate of the other more culpable offenders. He agreed that both he and Vicary had lied to the Local Court at the committal in respect of the load, purported admissions, verbals and assault.[547]

GREIG ROBERT VICARY

3.170 Vicary professed to have little memory of the "Wogs Out of Work" Operation and more specifically of his involvement in the arrest and charging of M11. He told the Commission that he had refreshed his memory as to his involvement by reading the police statements tendered as exhibits in the proceedings before the Commission. He said he did not recall the evidence relating to M11 being challenged at the committal. He was taken to the record of interview involving M11[548] and was aware that it was alleged before this Commission that it was false. He initially stated that he would "*have to deny the allegation*" because he couldn't remember it but later, despite not recalling participating in the interview, became more emphatic in that he would not accept the possibility that it was false and / or fabricated by police.[549]

3.171 When directed to the contrary evidence of M5 he indicated that he "*did not believe it"*. He denied M5's version of events. He said that he did not have any problems with M5 and the only reason he could offer as to why M5 may have made up the allegations about him was that M5 wanted to *"... save his own neck"*.[550]

3.172 When taken to the specific allegations he gave a variety of answers ranging from not recalling to outright denial. He denied stealing any property from M11. He denied the load and the related "false admissions", both in fact and insofar as they were specifically described in the various statements. He also denied the alleged falsehoods contained in the record of interview. He did not recall any intervention by "Doodles" O'Toole during the interview

[545] He is to be distinguished from Dennis Peter O'Toole ("*Doodles*") who was at that stage a Team Leader attached to the AHU.
[546] PIC Transcript, M5, 11 June 2002, pp. 3356-3357
[547] PIC Transcript, M5, 11 June 2002, pp. 3357-3359
[548] PIC Exhibit 482B
[549] PIC Transcript, GR Vicary, 18 June 2002, pp. 3816-3819
[550] PIC Transcript, GR Vicary, 18 June 2002, pp. 3819-3820

process with M11. He denied striking M11, whether by way of a backhander or using a map.[551]

3.173 Vicary was also shown his relevant notebook entries of 15 August 1990.[552] Whilst having no memory of the activities described in the notebook, he said that it represented a contemporaneous record of co-operation by M11. Vicary could not answer why M11 was not asked to read through his notebook entry. He agreed that as an investigator it would have been prudent to ask M11 to read it. The only excuse he offered was that he was not in charge of the brief. Vicary denied M5's assertion that he was concerned about the trial and giving evidence at that trial. Again, whilst not recalling any concerns, he said that he would not have been concerned about going to Court. Vicary could not explain the circumstances as to why he prepared a further statement specifically directed to the alleged finding of the firearm.[553]

3.174 Vicary denied that the notebook and his police statements formed a part of a verbal and load relating to M11.[554] He could not give any explanation as to why M5 and M11 would be making the allegations and asserted they were untrue.[555] Vicary also denied participating in, or being aware of, any verbals whilst attached to the AHU at MCSN.[556]

DENNIS JOHN O'TOOLE

3.175 O'Toole did recall attending in bushland with Vicary, M5 and M11 but relied primarily on his statements[557] to aid his recollection. He indicated that M11 led them to the location of the weapon in a cooperative manner. He said that M11 identified a specific location and Vicary dug into the ground and found the silver revolver in a bag. O'Toole said that the pistol was not taken out of the bag at the scene and it was only when they returned to the vehicle that he asked to look at it. This was not revealed in either of his police statements. When asked why there was no comment or acclamation by police upon finding the firearm precisely where M11 allegedly indicated it was to be found, O'Toole said that he was under the impression that Vicary and M5 had been interviewing M11 at the police station prior to going to the bush location and that he, O'Toole, was not aware of any conversation they had with M11.[558]

3.176 In his statements O'Toole did not record any conversation that occurred at the scene where the gun was located. After questioning about this he told the Commission that there had been conversation but he did not recall the details of it. He said that although it was the usual practice to include such

[551] PIC Transcript, GR Vicary, 18 June 2002, pp. 3822-3825
[552] PIC Exhibit 522B
[553] PIC Transcript, GR Vicary, 18 June 2002, pp. 3827-3830
[554] PIC Transcript, GR Vicary, 18 June 2002, p. 3832
[555] PIC Transcript, GR Vicary, 18 June 2002, p. 3840
[556] PIC Transcript, GR Vicary, 17 June 2002, pp. 3797-3798
[557] PIC Exhibits 531B, 533B
[558] PIC Transcript, DJ O'Toole, 4 July 2002, pp. 3926-3929

conversations in statements he believed that the conversation that occurred at the scene had not been included because it was not relevant.[559]

3.177 O'Toole agreed that there were apparently two trips to the site. The first, as recorded in his statement,[560] went only to the beginning of the track where police took a single photograph. He saw no problem with them leaving the scene unsecured. He thought the return to Chatswood was to obtain a shovel. He later recalled that they needed film for a camera. He told the Commission that he did not include those matters in his statement because he did not believe them to be relevant. He recalled activity at the boot of the police car on the first visit but did not recall the reasons for the activity. He did not recall whether Vicary stayed at the scene or not.[561]

3.178 O'Toole said he was not aware of any load or verbal in respect of M11. He also told the Commission that he was not aware of any loads or verbals ever occurring during his long career with NSW Police. He denied not attending the bushland site on the second occasion. He accepted that from an evidentiary point of view if a verbal and / or load was to take place it would be of assistance to have an officer from outside the AHU participate in that exercise by corroborating, and thus adding weight, to the verbal and / or load. He said he had no suspicions as to the propriety of the conduct of M5 or Vicary in the M11 investigation and could give no explanation as to why M5 would now give an entirely contrary version.[562]

DENNIS PETER O'TOOLE

3.179 O'Toole had little recollection of this matter. He denied the allegation that he insisted that M5 load M11 with the gun.[563]

Listening Device Conversation, 15 February 2000, M5 & N1[564]

3.180 O'Toole was played a telephone conversation between M5 and N1 recorded on 15 February 2000 in which N1 and M5 recounted the details of the load of M11 by M5 and "Bumhole", which O'Toole agreed was a reference to Vicary. They also discussed details of the gun that was planted and their actions in burying the gun and digging it up again. M5 recounted that during cross-examination at the committal of M11 whilst being shown the alleged firearm the defence counsel said:

> 'This? You call this a fucking exhibit?' he said, 'I've seen this gun one hundred times.'

O'Toole denied promoting or participating in the loading up of M11.[565]

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559 PIC Transcript, DJ O'Toole, 4 July 2002, pp. 3929-3930
560 PIC Exhibit 533B
561 PIC Transcript, DJ O'Toole, 4 July 2002, pp. 3934-3938
562 PIC Transcript, DJ O'Toole, 4 July 2002, pp. 3940-3944
563 PIC Transcript, DP O'Toole, 17 June 2002, p. 3753
564 PIC Exhibits 514 & 515
565 PIC Transcript, DP O'Toole, 17 June 2002, pp. 3754-3755

ASSESSMENT

3.181 The recorded conversation above[566] appears to be an objective description of what M5 says occurred and is corroborated by N1. Both were participants in the "Wogs Out of Work" Operation and M5 was directly involved with the arrest and charging of M11. In his evidence, and in the recorded conversation some 20 months earlier, M5 gave a consistent version of events relating to the load and verballing of M11. His account is corroborated in all essential aspects by M11. Neither M5 nor M11 were shaken in cross-examination.

3.182 Vicary denied the allegations. His version was contrary to that given by M5 and M11. Essentially Vicary's evidence was that whilst he could not recall the Operation he did not or would not have participated in the alleged load or verbal.

3.183 Dennis John O'Toole also denied any impropriety attaching to his involvement however it is possible that he was not privy to the actual load. O'Toole's evidence was a little more detailed than Vicary's in that he recalled attending the bushland site and M11's co-operation in leading them to the buried firearm. His explanation, about not including in his statements any further details of discussions or actions at the scene where the gun was located because they were not relevant, was not convincing. The evidence of M11 and M5 is therefore preferred over the contrary versions given by Vicary and Dennis John O'Toole.

3.184 Dennis Peter O'Toole's evidence was that he could not recall the Operation but he denied promoting or participating in the loading and verballing of M11. This is contrary to the evidence of M11, who said that he was verballed and loaded, the version of events given by M5 in evidence (which is the same as in the recorded conversation), and N1's evidence that O'Toole was aware of the load.[567] The Commission prefers the evidence of M5, N1 and M11 to that of O'Toole.

HAWKESBURY RIVER ESCAPEE - ARREST AND CHARGING OF A2

3.185 On 30 March 1994 police officers, including personnel from MCSN attended at Mooney Mooney as part of an operation to locate and arrest an escapee, E2. The participation of MCSN officers was initiated by a request from Major Crime Squad South ("MCSS"). An apparently unexpected result of this Operation was that another person, A2, was also arrested and charged. He drove into the temporary police operational headquarters at Mooney Mooney seeking to use a telephone. He was arrested and transported to Hornsby Police Station and charged with various offences including possession of a prohibited weapon. The principal players in his arrest and

[566] PIC Exhibits 514 & 515
[567] PIC Transcript, N1, 4 June 2002, p. 3185

charging included F7, M5, Dowding and Ehsman. Ehsman was, at that time, attached to the AHU that was part of MCSS. A2 died on 7 July 1999.[568]

M5

3.186 M5 recalled that whilst he and other officers were preparing to arrest E2, A2 drove into the car park at Mooney Mooney Ambulance Station, effectively into the arms of police. The police were aware from surveillance that A2 had actually come from the boat where E2 was hiding. They needed a reason to detain A2 until E2 was arrested so they decided to plant a gun on A2. M5 also said that his involvement in the Operation came about due to a telephone call from Ehsman, who not only requested assistance in the Operation but also asked them to bring along a pistol because the MCSS didn't have one. M5 said that Dowding obtained a pistol from the illegitimate firearms stash.[569]

3.187 M5 said this incident was an example of the practice of taking firearms to operations where there was a perceived need to have a prospective exhibit (or "future exhibit") available to load offenders. He and Dowding attended the Operation together. Dowding brought the pistol. M5 described the decision to use the firearm to load A2 as being impromptu and followed discussion at the Ambulance Station after A2 unexpectedly turned up there. Whilst at Mooney Mooney, M5 specifically recalled Ehsman attending at A2's car together with A2 and asking about the location of the thing that had been found. M5 said Ehsman's comment was premature as nothing had been found and the gun had not yet been planted.[570]

3.188 Ehsman and F7 transported A2 back to Hornsby. Dowding and M5 followed. At that stage Dowding and M5 still had the pistol. M5's recollection was that Ehsman and F7 took A2 into the police station while he and Dowding planted the gun under the front driver's seat. They took a number of photographs of the gun both in position under the seat and when they brought it out. M5 said that Dowding was going to plant the gun but couldn't, so M5 planted it. M5 recalled the gun was an "… *old western-style gun, like in the movies*". He also recalled that F7 protested about the use of the gun as he claimed it was his gun.[571]

3.189 In his evidence before the Commission M5 perused his statement[572] in relation to the arrest and charging of A2 and, more particularly, the finding of the firearm in the vehicle. He said that any reference to the firearm and its location in the car was false. He said he planted the firearm with the knowledge of Dowding, Ehsman and F7. He also perused Dowding's statement[573] and said that any suggestion in that statement that the firearm was legitimately found in the vehicle was untrue. He also confirmed that the

[568] PIC Exhibit 723B
[569] PIC Transcript, M5, 11 June 2002, pp. 3320-3321
[570] PIC Transcript, M5, 11 June 2002, pp. 3322-3324
[571] PIC Transcript, M5, 11 June 2002, pp. 3324-3326
[572] PIC Exhibit 481B
[573] PIC Exhibit 457B

taking of photographs, as described in paragraph six of that statement, was to produce further corroborative evidence to suggest the firearm was in the possession of A2. M5 was shown the Ehsman's statement.[574] He said that A2 did not cooperate and that the notebook interview referred to in the statement was a fabrication or verbal by Ehsman and F7.[575]

3.190 M5 said that Ehsman's statement was an example of the practice adopted by police officers when loading up offenders to record false questions and answers purporting to be admissions if the offender did not co-operate. He said that there was also a practice of recording falsified comments of refusal from offenders in circumstances of a load if the offenders would not go on video or sign any documents. He said this methodology was used to avoid the recent introduction of ERISP[576] machines.[577]

F7

3.191 F7 said that it was common practice for other regions and more particularly between MCSN and the South and Northwest regions to cooperate with the sharing of "*prospective exhibits*". He relayed the history behind the .38 Colt pistol used in the A2 Operation. He said he had previously obtained it from the Major Crime Squad Northwest as it then matched a description given by a witness in a MCSN operation. It was not used in that operation and was thereafter retained in the "*future exhibits locker*". F7 said that when they had received the weapon it was in poor condition and he had cleaned it up to make it look more suitable. F7 said he saw Dowding with this weapon prior to going to Mooney Mooney. He also saw the same weapon later that night at Hornsby Police Station.[578]

3.192 F7 said the he and others from AHU attended this job after receiving a call from MCSS requesting assistance. F7 described the subsequent interview and charging of A2. He said A2 was taken to Hornsby Police Station Detectives Office and placed in an interview room. F7 and Ehsman sat outside the room and wrote up an interview in F7's notebook, which included the finding, by Dowding, of the weapon. The weapon was booked up as an exhibit along with photographs taken of it in the car and being taken out of the car. To corroborate this for the brief F7 obtained statements from both Dowding and M5. He said the interview was completely fabricated.[579]

3.193 F7 was shown his statement.[580] He agreed that insofar as it contained purported admissions, it was untrue. He was also shown Ehsman's statement[581] and said it was also incorrect where it referred to the circumstances of the notebook interview, admissions and the finding of the

[574] PIC Exhibit 471B
[575] PIC Transcript, M5, 11 June 2002, pp. 3327-3330
[576] ERISP – Electronically Recorded Interview Suspected Person
[577] PIC Transcript, M5, 11 June 2002, pp. 3330-3331
[578] PIC Transcript, F7, 5 June 2002, pp. 3217-3221
[579] PIC Transcript, F7, 5 June 2002, pp. 3222-3223
[580] PIC Exhibit 470B
[581] PIC Exhibit 471B

gun. F7 was shown Dowding's statement.[582] He said where that statement referred to the finding of the gun it was the same gun that was originally obtained from the Northwest Crime Squad and that Dowding was aware that his statement was false.[583]

3.194 F7 said that Ehsman was more senior than him. He agreed that he did not resist participating in the verbal and added that he was actually chosen to assist Ehsman because although there was another MCSS officer available to assist Ehsman, that officer's attitude towards participating in corrupt conduct was unknown.[584]

KIM DOWDING

3.195 Dowding said he vaguely recalled the Operation at the Hawkesbury River. He knew Ehsman but did not recall him working on this Operation.[585]

Listening Device Conversation, 31 October 2000, M5, N1 & F7[586]

3.196 Dowding was taken to a recording of a conversation on 31 October where M5, N1 and F7 described the planting of the Colt .38 pistol on A2. Dowding denied that he and M5 planted the firearm on A2. He only recalled some general details about the Operation but he was adamant that he did not plant a gun.[587]

3.197 Dowding perused his statement in the A2 matter.[588] He confirmed that the contents of the statement "*would be true and correct"*. He denied being involved in the planting of the firearm in A2's vehicle. He said he did not know anything about the origin of the firearm. He did not recall any discussion about a pistol and ammunition being taken to the Operation by officers from MCSN and denied any discussion between himself and M5 in relation to planting a pistol under the seat of A2's vehicle.[589]

PETER JOHN EHSMAN

3.198 Ehsman recalled that E2 was an escapee and that members of his Unit were investigating E2's escape. He agreed that officers from MCSN assisted in the Operation and that it was not uncommon for officers from other squads to assist when required. He said that he arrested A2 and then, together with F7, took A2 to the Hornsby Detectives office. He was later told by M5 that he, M5, and Dowding had found a gun under the driver's seat of A2's car.[590]

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582 PIC Exhibit 457B
583 PIC Transcript, F7, 5 June 2002, pp. 3223-3226
584 PIC Transcript, F7, 5 June 2002, pp. 3229-3230
585 PIC Transcript, K Dowding, 3 June 2002, p. 3129
586 PIC Exhibits 446 & 447
587 PIC Transcript, K Dowding, 3 June 2002, pp. 3132-3133
588 PIC Exhibit 457B
589 PIC Transcript, K Dowding, 4 June 2002, pp. 3157-3159
590 PIC Transcript, PJ Ehsman, 18 June 2002, pp. 3886-3889

3.199 He said that the evidence before the Commission suggesting he telephoned officers from MCSN requesting them to take a pistol to the scene and that he thereafter used it to load A2 was a complete fabrication and not true. He said that the suggestion that the interview with A2 was fabricated and did not take place was also untrue.[591]

3.200 Ehsman agreed there was a subsequent Police Internal Affairs investigation following a complaint by A2 about the matter.[592] Notably the complaint corroborated the version of events given to the Commission by F7 and M5. He was shown two photographs of the subject firearm and agreed they depicted a pistol similar to the one that was found.[593] He denied having any knowledge of, or acquiescing in, the load. He denied that the purported notebook interview was a fiction. He agreed that the notebook interview was incorporated within his statement[594] and after checking through the notebook interview again, he denied that the notebook interview and his statement were fabrications.[595]

3.201 Ehsman agreed that he searched A2's car at Mooney Mooney when A2 was first arrested. When it was revealed to him that he obviously missed the firearm he said that it was dark and he had missed things like that before. When taken to the evidence of M5 and F7 that the firearm was not in the vehicle at Mooney Mooney Ehsman disputed the proposition by saying that it was their evidence and not his. He said that he had known M5 and F7 for about ten years and did not know of any reason not to trust them. The only reason he could offer as to why they might give evidence against him at the Commission was that they were trying to get themselves out of trouble.[596]

3.202 Ehsman agreed that his search of the vehicle that missed the gun was an important feature of the arrest and investigation but could give no explanation as to why that was not recorded in his statement.[597]

3.203 Ehsman said he was not particularly concerned that A2 may have been armed. This was despite being aware that E2, the escapee under surveillance was potentially armed and dangerous. He also said that he knew A2 had been flashing lights at E2 and that this suggested he was an accomplice. Indeed this relationship appears to have been proposed by Ehsman as justification for the arrest of A2. Despite this he then suggested that he did not think, as an experienced investigator, there would be any particular possibility that A2 may also have been armed.[598]

3.204 It was also suggested to Ehsman that he demonstrated his prior knowledge of the proposed load because upon the arrest of A2 he stated words to the effect

[591] PIC Transcript, PJ Ehsman, 18 June 2002, p. 3890
[592] PIC Exhibit 528B
[593] PIC Exhibits 518, 519
[594] PIC Exhibit 471B
[595] PIC Transcript, PJ Ehsman, 18 June 2002, pp. 3890-3894
[596] PIC Transcript, PJ Ehsman, 18 June 2002, pp. 3897-3899
[597] PIC Transcript, PJ Ehsman, 18 June 2002, p. 3900
[598] PIC Transcript, PJ Ehsman, 18 June 2002, pp. 3908-3911

"*What have we found here?*"[599] thereby indicating prior knowledge of the load. Ehsman denied this proposition and denied that he used those words.[600]

JAMES JUSTIN KING

3.205 King's recollection of this Operation was vague. He said he had no knowledge of any alleged load and related false admissions.[601]

DENNIS PETER O'TOOLE

3.206 O'Toole was of the view that Ehsman, despite being junior to him, was in charge of the escapee Operation. He said he knew nothing about the M5 allegation that there was a joint decision between the officers at Mooney Mooney to load A2 with a pistol. He also said he had no knowledge about the alleged admissions by A2 or the load.[602]

ADDITIONAL MATERIAL

Listening Device Conversation, M5, N1 And F7, 31 October 2000[603]

3.207 This conversation contains a discussion about the A2 load. Each of the participants subsequently gave evidence before the Commission in terms that were consistent with the conversation. Recorded 20 months prior to the hearing, the conversation appears to be a frank exchange between former colleagues about the load at a time when N1 and F7 were not aware that the conversation was being recorded. The conversation was played to Ehsman who discounted the suggestion that he had asked for the gun to be provided by MCSN for the Operation as "*ridiculous*".[604]

ASSESSMENT

3.208 The Commission accepts the evidence of M5 and F7 in relation to this Operation as an example of the practice of loads and verbals. At the time of the Operation both officers were working with MCSN and, whilst dealing with the same offender, A2, had separate involvement in that they dealt with different facets of the arrest and charging process. M5 was partnered with Dowding. F7 worked with Ehsman. M5, together with Dowding, participated in the load. F7, with Ehsman, participated in creating the false admissions and verbals. Indeed it could be said that this instance revealed a relatively sophisticated loading up and verballing of an offender with four officers all attesting to corroborative components of an overall load and verbal. It is also notable that A2 did complain about the load shortly after his arrest and that his complaint resulted in an investigation by NSW Police

[599] PIC Transcript, M5, 11 June 2002, p. 3324
[600] PIC Transcript, PJ Ehsman, 18 June 2002, p. 3910
[601] PIC Transcript, JJ King, 14 June 2002, pp. 3681-3685
[602] PIC Transcript, DP O'Toole, 17 June 2002, pp. 3766-3769
[603] PIC Exhibits 446 & 447
[604] PIC Transcript, PJ Ehsman, 18 June 2002, p. 3901

Internal Affairs, however, the investigation found the complaint to be not sustained.

3.209 The recorded conversation on 31 October 2000,[605] corroborates the versions given by M5 and F7. In the conversation, which took place years after the incident, the participants identify the load, the firearm, the offender, the initiating telephone call from Ehsman, the E2 escapee Operation and the original source of the Colt .38 firearm. Whilst the conversation may also be described as "war stories" among colleagues, all these aspects were consistent with the evidence subsequently deposed before the Commission.

3.210 Both F7 and M5 stated that police planted the .38 Colt pistol in the vehicle driven by A2. M5 gave direct evidence that both he and Dowding had the pistol and that it was planted in the vehicle. The account given by Dowding was one of either vague recollection or denial. Ehsman too, had little recall of the Operation but denied that police had loaded and verballed A2. The Commission does not accept their evidence of the events.

AFFECTED PERSONS

3.211 A person against whom, in the Commission's opinion, substantial allegations have been made in the course of, or in connection with, an investigation, is an "affected person" for the purposes of a Report to Parliament by the Commission.[606]

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

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

b) the taking of action against the person for a specified disciplinary offence,[607]

c) the taking of action (including the making of an order under section 181D of the *Police Act 1990*) against the person as a police officer on specified grounds, with a view to dismissing, dispensing with the services or otherwise terminating the services of the police officer,

d) the taking of reviewable action within the meaning of section 173 of the *Police Act 1990* against the person as a police officer.

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[605] PIC Exhibits 446 & 447

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

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

3.213 In addition the Commission may form opinions as to whether police misconduct has occurred: subsection 16(1)(a) of the Act.

3.214 This segment of the investigation revealed a number of substantial allegations:

- That former and current officers of NSW Police were aware of and / or participated in the collection and retention of a stash of weapons at the offices of MCSN at Chatswood, ("the stash");
- That former and current officers of NSW Police participated in and / or used weapons and other items to load and / or participated in related verbals of alleged offenders, ("the loads").
- That former and current officers of NSW Police were aware of the dumping of a stash of weapons into the Hawkesbury River by former and current officers of NSW Police, ("the dump");

Three specific instances were identified in support of the latter substantial allegation. These were the operations involving the arrests and charging of P2, M11 and A2.

3.215 In light of these substantial allegations the following persons are "affected persons" for the purposes of section 97(3) of the Act:

- Dowding, Kim
- Ehsman, Peter John
- F7
- Kendall, Glenn Wayne
- King, James Justin
- M5
- N1
- O'Toole, Dennis Peter
- Smith, Ronald Bruce
- Vicary, Greig Robert

3.216 Each of the abovementioned affected persons gave his evidence before the Commission under objection, and therefore, pursuant to section 40 of the Act, that evidence is not admissible against him in subsequent criminal or civil proceedings except for proceedings for an offence against the Act or for contempt under the Act.

KIM DOWDING

3.217 Dowding is an affected person because he is the subject of the substantial allegations that:

- he was aware of and / or participated in the collection and retention of a stash of weapons at the offices of MCSN at Chatswood, ("the stash");
- he participated in the use of weapons and other items to load and / or verbal alleged offenders, ("the loads"); and
- he, together with M5 dumped of a stash of weapons into the Hawkesbury River, ("the dump").

3.218 The Commission considers that Dowding engaged in police misconduct: subsection 16(1)(a) of the Act.

3.219 The admissible evidence against Dowding is primarily that of M5, F7, N1 and the recorded listening device conversations in which he was a participant. In relation to the specific instances of loads and verbals, there is also the additional evidence of the civilian, P2.

3.220 In relation to the dump the Commission prefers the evidence of M5 together with the listening device material and handwritten note to the version given by Dowding. Dowding's concession that the dump was merely an exercise in disposing of what may have been "demonstration weapons" is untenable. There is abundant evidentiary material that supports the existence of the stash and it being the subject of the dump.

3.221 Similarly the admissible evidence also supports the view that Dowding was aware of the existence of the stash and the practice of retaining firearms for the purposes of loads. The Commission does not accept Dowding's version of the load of P2. The admissible evidence of P2, N1, M5 and the recorded conversations in which Dowding participated are cogently persuasive of far greater and damning participation than he was prepared to concede before the Commission. In addition Dowding's (and Ehsman's) version of the load of A2 is not accepted. The admissible evidence of F7 and M5 is preferred.

3.222 In relation to the stash and the dump the relevant offences are Possess Prohibited Weapons (*Prohibited Weapons Act 1989*) and Possess Prohibited Firearms (*Firearms Act 1989*). The Commission is of the opinion that consideration **should not** be given to the prosecution of Dowding for these offences because they are statute barred.

3.223 The Commission is of the opinion, however, that the evidence supports consideration being given to the prosecution of Dowding for the following criminal offences:

"Wogs Out of Work" Operation - P2

- Conspiracy to commit an act intending to pervert the course of justice (sections 319 and 342, *Crimes Act 1900*)
- Commit certain actions and / or omissions with the intention to pervert the course of justice (section 319, *Crimes Act 1900*)

- Fabricate / knowingly make use of false evidence (section 317, *Crimes Act 1900*)
- Perjury with intent to procure conviction (section 328, *Crimes Act 1900*)
- Make false instrument (subsection 300(1), *Crimes Act 1900*)
- Use false instrument (subsection 300(2), *Crimes Act 1900*)

Hawkesbury River Escapee – Arrest and Charging of A2

- Conspiracy to commit an act intending to pervert the course of justice (sections 319 and 342, *Crimes Act 1900*)
- Commit certain actions and / or omissions with the intention to pervert the course of justice (section 319, *Crimes Act 1900*)
- Fabricate / knowingly make use of false evidence (section 317, *Crimes Act 1900*)
- Perjury with intent to procure conviction (section 328, *Crimes Act 1900*)
- Make false instrument (subsection 300(1), *Crimes Act 1900*)
- Use false instrument (subsection 300(2), *Crimes Act 1900*)

3.224 Following the public hearings in this segment and prior to the completion of this Report, NSW Police gave consideration to the question of criminal prosecution. NSW Police advised the Commission that there is insufficient evidence to proceed. The Commission notes that P2, who gave evidence on 14 June 2002, passed away in September 2003.

3.225 NSW Police also gave consideration to the preparation of a brief of evidence against Dowding in relation to the Hawkesbury River Escapee incident. A decision was made to take no further action. The reasons for this decision included the age of the matter, the lack of corroborating evidence, the facts that the victim is deceased and Dowding is no longer a serving officer, and the discrepancies in the versions of the incident given by the participants.

3.226 In the circumstances the Commission is of the opinion that further consideration **should not** be given to the prosecution of Dowding for any criminal offences.

3.227 Dowding was a serving officer at the time he gave evidence. Following the public hearings in this segment and prior to the completion of this Report, NSW Police investigated this matter. A recommendation was made that consideration be given to taking action against Dowding pursuant to section 181D of the *Police Act 1990*. However prior to this process commencing Dowding was granted medical discharge. He left NSW Police in July 2003.

Accordingly the question of taking action pursuant to subsections 97(2)(c) and (d) of the Act does not arise.

PETER JOHN EHSMAN

3.228 Ehsman is an affected person because he is the subject of the substantial allegation that he participated in the load and related verbal of an offender, A2.

3.229 The Commission considers that Ehsman engaged in police misconduct: subsection 16(1)(a) of the Act.

3.230 The admissible evidence against Ehsman is that of M5 and F7. This related to a specific allegation of a load and related verbal upon A2. Where the evidence of Ehsman (and Dowding) is in conflict with that of F7 and M5, the latter is preferred.

3.231 In relation to the arrest and charging of A2 the Commission is of the opinion that the evidence supports consideration being given to the prosecution of Ehsman for the following criminal offences:

- Conspiracy to commit an act intending to pervert the course of justice (sections 319 and 342, *Crimes Act 1900*)
- Commit certain actions and / or omissions with the intention to pervert the course of justice (section 319, *Crimes Act 1900*)
- Fabricate / knowingly make use of false evidence (section 317, *Crimes Act 1900*)
- Perjury with intent to procure conviction (section 328, *Crimes Act 1900*)
- Make false instrument (subsection 300(1), *Crimes Act 1900*)
- Use false instrument (subsection 300(2), *Crimes Act 1900*)

3.232 Following the public hearings in this segment and prior to the completion of this Report, NSW Police gave consideration to the preparation of a brief of evidence against Ehsman in relation to the Hawkesbury River Escapee incident. A decision was made to take no further action. The reasons for this decision included the age of the matter, the lack of corroborating evidence, the facts that the victim is deceased and Ehsman is no longer a serving officer, and the discrepancies in the versions of the incident given by the participants.

3.233 In the circumstances the Commission is of the opinion that further consideration **should not** be given to the prosecution of Ehsman for any criminal offences.

3.234 Ehsman is no longer a serving police officer. Accordingly the question of taking action pursuant to subsections 97(2)(c) and (d) of the Act does not arise.

F7

3.235 F7 is an affected person because he is the subject of the substantial allegations that:

- he participated in the collection and retention of a stash of weapons at the offices of MCSN at Chatswood, ("the stash");
- he participated in the use of weapons and other items to load and / or verbal alleged offenders, ("the loads"); and
- he was aware of the dumping of a stash of weapons into the Hawkesbury River by former and current officers of NSW Police, ("the dump").

3.236 The Commission considers that F7 engaged in police misconduct: subsection 16(1)(a) of the Act.

3.237 In relation to the dump and the stash of weapons at the offices of MCSN, the admissible evidence against F7 is that of M5 and N1. In relation to the loading of A2 the admissible evidence against F7 is that of M5. The recorded listening device conversations in which F7 participates are also admissible against him. The admissions F7 made are not admissible against him.

3.238 In relation to the stash and the dump the relevant offences are Possess Prohibited Weapons (*Prohibited Weapons Act 1989*) and Possess Prohibited Firearms (*Firearms Act 1989*). The Commission is of the opinion that consideration **should not** be given to the prosecution of F7 for these offences because they are statute barred.

3.239 In relation to the arrest and charging of A2 the Commission is of the opinion that the evidence supports consideration being given to the prosecution of F7 for the following criminal offences:

- Conspiracy to commit an act intending to pervert the course of justice (sections 319 and 342, *Crimes Act 1900*)
- Commit certain actions and / or omissions with the intention to pervert the course of justice (section 319, *Crimes Act 1900*)
- Fabricate / knowingly make use of false evidence (section 317, *Crimes Act 1900*)
- Perjury with intent to procure conviction (section 328, *Crimes Act 1900*)
- Make false instrument (subsection 300(1), *Crimes Act 1900*)
- Use false instrument (subsection 300(2), *Crimes Act 1900*)

3.240 Following the public hearings in this segment and prior to the completion of this Report, NSW Police gave consideration to the preparation of a brief of evidence against F7 in relation to the Hawkesbury River Escapee incident. A decision was made to take no further action. The reasons for this decision included the age of the matter, the lack of corroborating evidence, the facts that the victim is deceased and F7 is no longer a serving officer, and the discrepancies in the versions of the incident given by the participants.

3.241 In the circumstances the Commission is of the opinion that further consideration **should not** be given to the prosecution of F7 for any criminal offences.

3.242 F7 is no longer a serving police officer. Accordingly the question of taking action pursuant to subsections 97(2)(c) and (d) of the Act does not arise.

GLENN WAYNE KENDALL

3.243 Kendall is an affected person because he is the subject of the substantial allegation that:

- he participated in the loading and verballing of P2 following his arrest in August 1990.

3.244 The Commission considers that Kendall engaged in police misconduct: subsection 16(1)(a) of the Act.

3.245 Kendall had limited recollection of the circumstances surrounding P2's arrest and charging but denied any knowledge of, or involvement in, any wrongdoing in relation to it. P2's evidence in relation to the load and the falsification of his record of interview is supported by the evidence of M5 and N1 who corroborated the load and gave evidence in relation to the premeditated strategy of the AHU of tossing the firearms into the river. The Commission prefers this version of events to the evidence of Kendall.

3.246 In relation to the "Wogs Out of Work" Operation - P2, the Commission is of the opinion that the evidence supports consideration being given to the prosecution of Kendall for the following offences:

- Conspiracy to commit an act intending to pervert the course of justice (sections 319 and 342, *Crimes Act 1900*)
- Commit certain actions and / or omissions with the intention to pervert the course of justice (section 319, *Crimes Act 1900*)
- Fabricate / knowingly make use of false evidence (section 317, *Crimes Act 1900*)
- Perjury with intent to procure conviction (section 328, *Crimes Act 1900*)
- Make false instrument (subsection 300(1), *Crimes Act 1900*)

- Use false instrument (subsection 300(2), *Crimes Act 1900*)

3.247 Following completion of the Commission's hearings in this segment, P2 passed away (in September 2003). P2 was not examined on Kendall's behalf at the time he (P2) gave evidence at the Commission. There is now no opportunity for Kendall to cross-examine P2. NSW Police has given consideration to the question of criminal prosecution against Kendall and formed the view that there is insufficient evidence for a prosecution to succeed.

3.248 In the circumstances the Commission is of the opinion that further consideration **should not** be given to the prosecution of Kendall for any criminal offences.

3.249 At the time he gave evidence Kendall was a serving officer however he was medically discharged from NSW Police on 7 May 2004. Accordingly the question of taking action pursuant to subsections 97(2)(c) and (d) of the Act does not arise.

JAMES JUSTIN KING

3.250 King is an affected person because he is the subject of the substantial allegations that:

- he participated in the collection and retention of a stash of weapons at the offices of MCSN at Chatswood, ("the stash");
- he participated in the use of weapons and other items to load and / or verbal alleged offenders, ("the loads"); and
- he was aware of the dumping of a stash of weapons into the Hawkesbury River by former and current officers of NSW Police, ("the dump").

3.251 The Commission considers that King engaged in police misconduct: subsection 16(1)(a) of the Act.

3.252 The admissible evidence against King is primarily that of M5, N1 and F7 together with the covertly recorded conversations in which he was a participant.

3.253 In relation to the dump and the stash the evidence of M5, N1 and F7 together with the recorded conversations is preferred to the version given by King. There is abundant evidentiary material that supports the existence of the stash of illegitimate weapons and that they constituted the dump. The admissible evidence also supports the conclusion that King was aware of the existence of the stash at the MCSN office. The Commission does not accept King's explanations in light of the admissible evidence.

3.254 The Commission is of the opinion, however, that despite considerable suspicion attaching to King's degree of knowledge and participation in the use, and retention, of the stash there is insufficient admissible evidence for consideration to be given to the prosecution of King for any related criminal offence. There is also insufficient evidence to substantiate King participating in or having specific knowledge of loads or verbals. On the admissible evidence, therefore, the Commission is of the opinion that consideration **should not** be given for the prosecution of King for any criminal offence.

3.255 King is no longer a serving police officer. Accordingly the question of taking action pursuant to subsections 97(2)(c) and (d) of the Act does not arise.

M5

3.256 M5 is an affected person because he is the subject of the substantial allegations that:

- he participated in the collection and retention of a stash of weapons at the offices of MCSN at Chatswood, ("the stash");
- he participated in the use of weapons and other items to load and / or verbal alleged offenders, ("the loads"); and
- he, together with Dowding dumped of a stash of weapons into the Hawkesbury River, ("the dump").

3.257 The Commission considers that M5 engaged in police misconduct: subsection 16(1)(a) of the Act.

3.258 In relation to the dump and the stash, the admissible evidence against M5 is that of N1 and F7. In relation to the alleged loading and verballing of M11 the evidence of M11, and the duty book and notebook entries are admissible against M5. The evidence of N1 also supports the evidence of M11. In relation to the alleged loading and verballing of A2 the evidence of F7 is admissible against M5. The admissions M5 made are not admissible against him. M5 did not participate in the loading and verballing of P2.

3.259 In relation to the stash and the dump the relevant offences are Possess Prohibited Weapons (*Prohibited Weapons Act 1989*) and Possess Prohibited Firearms (*Firearms Act 1989*). These offences are statute barred.

3.260 In relation to M5's involvement in the "Wogs Out of Work" and the Hawkesbury River Escapee Operations the relevant criminal offences are as follows:

"Wogs Out of Work" Operation - M11

- Conspiracy to commit an act intending to pervert the course of justice (sections 319 and 342, *Crimes Act 1900*)

- Commit certain actions and / or omissions with the intention to pervert the course of justice (section 319, *Crimes Act 1900*)
- Fabricate / knowingly make use of false evidence (section 317, *Crimes Act 1900*)
- Perjury with intent to procure conviction (section 328, *Crimes Act 1900*)
- Make false instrument (subsection 300(1), *Crimes Act 1900*)
- Use false instrument (subsection 300(2), *Crimes Act 1900*)

Hawkesbury River Escapee - Arrest and Charging of A2

- Conspiracy to commit an act intending to pervert the course of justice (sections 319 and 342, *Crimes Act 1900*)
- Commit certain actions and / or omissions with the intention to pervert the course of justice (section 319, *Crimes Act 1900*)
- Fabricate / knowingly make use of false evidence (section 317, *Crimes Act 1900*)
- Perjury with intent to procure conviction (section 328, *Crimes Act 1900*)
- Make false instrument (subsection 300(1), *Crimes Act 1900*)
- Use false instrument (subsection 300(2), *Crimes Act 1900*)

3.261 The Attorney General has granted M5 has an indemnity from prosecution in relation to all matters in respect of which he has admitted criminal conduct. Therefore the Commission has not expressed an opinion about whether consideration should be given to the prosecution of M5 for any of the above criminal offences.

3.262 M5 is no longer a serving police officer. Accordingly the question of taking action pursuant to subsections 97(2)(c) and (d) of the Act does not arise.

N1

3.263 N1 is an affected person because he is the subject of the substantial allegations that:

- he participated in the collection and retention of a stash of weapons at the offices of MCSN at Chatswood, ("the stash");
- he participated in the use of weapons and other items to load and / or verbal alleged offenders, ("the loads"); and
- he was aware of the dumping of a stash of weapons into the Hawkesbury River by former and current officers of NSW Police, ("the dump").

3.264 The Commission considers that N1 engaged in police misconduct: subsection 16(1)(a) of the Act.

3.265 In relation to the dump and the stash, the admissible evidence against N1 is that of M5 and F7. From his own evidence and the recorded conversations in which N1 participated it is clear that although N1 did not directly participate in the loading and verballing of M11 and P2 he was aware of those events. He was not involved in the A2 arrest. The admissions N1 made are not admissible against him.

3.266 In relation to the stash and the dump the relevant offences are Possess Prohibited Weapons (*Prohibited Weapons Act 1989*) and Possess Prohibited Firearms (*Firearms Act 1989*). The Commission is of the opinion that consideration **should not** be given to the prosecution of N1 for these offences because they are statute barred.

3.267 In relation to the "Wogs 'Out of Work" Operation - P2 and M11, the Commission is of the opinion that the evidence supports consideration being given to the prosecution of N1 for the following criminal offences:

- Conceal serious indictable offence (section 316, *Crimes Act 1900*)
- Pervert the course of justice (section 319, *Crimes Act 1900*)

3.268 Following the public hearings in this segment and prior to the completion of this Report, NSW Police investigated N1's involvement in this matter. A decision was made to take no further action because none of the victims was prepared to provide a statement or give evidence in court. Without this evidence a prosecution would not succeed.

3.269 In the circumstances the Commission is of the opinion that further consideration **should not** be given to the prosecution of N1 for any criminal offences.

3.270 N1 is no longer a serving police officer. Accordingly the question of taking action pursuant to subsections 97(2)(c) and (d) of the Act does not arise.

DENNIS PETER O'TOOLE

3.271 O'Toole is an affected person because he is the subject of substantial allegations that:

- he was aware of and / or participated in the collection and retention of a stash of weapons at the offices of MCSN at Chatswood, ("the stash");
- he participated in the use of weapons and other items to load and / or verbal alleged offenders, ("the loads"); and
- he was aware of the dumping of a stash of weapons into the Hawkesbury River by former and current officers of NSW Police, ("the dump").

3.272 The Commission considers that O'Toole engaged in police misconduct: subsection 16(1)(a) of the Act.

3.273 The admissible evidence against O'Toole is primarily that of M5, N1, and F7 together with the covertly recorded listening device conversations in which he was a participant.

3.274 In relation to the dump and the stash, the evidence of M5, N1 and F7 and recorded conversations where O'Toole reassures M5 that the located guns may not be traced reflects far greater knowledge and participation by O'Toole than he was prepared to concede before this Commission. His expressed concerns, in two recorded conversations reflecting his disquiet about other persons being present whilst speaking with M5, and his subsequent request to M5 to seek further information about an earlier Commission inquiry relating to the guns from Ehsman, are also indicative of a more suspect purpose and knowledge.

3.275 There is abundant evidentiary material that supports the existence of the stash of illegitimate weapons and that they constituted the dump. There is also evidence to support the conclusion that O'Toole was aware of the stash at MCSN office and that O'Toole was aware of the practice of retaining firearms for the specific purposes of loads and more specifically, that he acquiesced and participated in that practice.

3.276 The Commission does not accept O'Toole's version in relation to the load of P2. The admissible evidence of P2, N1, M5, the recorded conversations in which O'Toole participated, and the evidence of Jamieson from the Police Diving Squad suggest a far greater knowledge and participation than he was prepared to concede before the Commission. Whilst Jamieson's evidence as to the direct approach by O'Toole may have been, in other circumstances, equivocal, the evidence of N1 and M5 together with that of P2, casts a far more suspicious light upon O'Toole's eagerness for the search to continue.

3.277 In relation to the load of M11, only the direct evidence of M5 implicates O'Toole. His evidence is that after telling O'Toole that he did not consider M11 to be substantially involved in the alleged offences, O'Toole told him to load M11 by saying *"You're going to have to give him a gun"*. This assertion is consistent with an apparently corrupt supervisory role adopted by O'Toole. If M5's evidence is accepted then it is clear that O'Toole had knowledge of the subsequent load and related verbal.

3.278 With respect to the load relating to A2, there is insufficient admissible evidence to implicate O'Toole in any criminal offence.

3.279 In relation to the stash and the dump the relevant offences are Possess Prohibited Weapons (*Prohibited Weapons Act 1989*) and Possess Prohibited Firearms (*Firearms Act 1989*). The Commission is of the opinion that consideration **should not** be given to the prosecution of O'Toole for these offences because they are statute barred.

3.280 The Commission is of the opinion that the evidence supports consideration being given to the prosecution of O'Toole for the following criminal offences:

"Wogs Out of Work" Operation - P2

- Conspiracy to commit an act intending to pervert the course of justice (section 319 and section 342, *Crimes Act 1900*)
- Commit certain actions and / or omissions with the intention to pervert the course of justice (section 319, *Crimes Act 1900*)
- Fabricate / knowingly make use of false evidence (section 317*, Crimes Act 1900*)

"Wogs Out of Work" Operation - M11

- Conspiracy to commit an act intending to pervert the course of justice (section 319 and section 342, *Crimes Act 1900*)
- Commit certain actions and / or omissions with the intention to pervert the course of justice (section 319, *Crimes Act 1900*)

3.281 Following the public hearings in this segment and prior to the completion of this Report, NSW Police investigated O'Toole's involvement in this matter. A decision was made to take no further action because none of the victims was prepared to provide a statement or give evidence in court. Without this evidence a prosecution would not succeed.

3.282 In the circumstances the Commission is of the opinion that further consideration **should not** be given to the prosecution of O'Toole for any criminal offences.

3.283 O'Toole is no longer a serving police officer. Accordingly the question of taking action pursuant to subsections 97(2)(c) and (d) of the Act does not arise.

RONALD BRUCE SMITH

3.284 Smith is an affected person because he is the subject of the substantial allegations that:

- he was aware of and / or participated in the collection and retention of a stash of weapons at the offices of MCSN at Chatswood, ("the stash");
- he participated in the use of weapons and other items to load and / or verbal alleged offenders, ("the loads"); and
- he was aware of the dumping of a stash of weapons into the Hawkesbury River by former and current officers of NSW Police, ("the dump").

3.285 The Commission considers that Smith engaged in police misconduct: subsection 16(1)(a) of the Act.

3.286 The admissible evidence against Smith is that of M5, F7, N1 and the covertly recorded listening device conversations in which he was a participant.

3.287 In relation to the dump the Commission prefers the evidence of M5 together with the recorded conversations to the version given by Smith. Smith's eventual concession that the dump may have involved the disposal of "old exhibits" is untenable. There is abundant evidentiary material that supports the existence of the stash of illegitimate weapons and that they constituted the dump. Similarly the admissible evidence supports the conclusion that Smith was aware of the existence of the stash at MCSN office. The Commission does not accept Smith's explanation as to "the sweep" and its innocuous consequences. The evidence of M5, N1 and F7 and the relevant recorded conversations reflect far greater, and more damning, participation by Smith than he was prepared to concede before this Commission.

3.288 The Commission is of the opinion that despite considerable suspicion attaching to Smith's degree of knowledge and participation in the dump and retention of the stash, there is insufficient admissible evidence for consideration to be given to the prosecution of Smith for any criminal offence. There is also insufficient evidence to substantiate Smith participating in or having specific knowledge of any loads or verbals. This is despite the evidence reflecting a number of clear examples of corrupt and criminal conduct by several officers of the AHU and despite Smith being unable to offer any explanation as to how these practices could have occurred at MCSN without this knowledge. The Commission is of the opinion therefore that consideration **should not** be given to the prosecution of Smith for any criminal offences.

3.289 Smith was a serving officer when he gave evidence. He was suspended from duty on 13 August 2002. Following the public hearings in this segment and prior to the completion of this Report, NSW Police recommended that consideration be given to taking action against Smith pursuant to section 181D of the *Police Act 1990*. However prior to this process commencing Smith was medically discharged. He was not reinstated to duty prior to his medical discharge. His last day of service was 5 September 2003. Accordingly the question of taking action pursuant to subsections 97(2)(c) and (d) of the Act does not arise.

GREIG ROBERT VICARY

3.290 Vicary is an affected person because he is the subject of the substantial allegations that:

- he was aware of and / or participated in the collection and retention of a stash of weapons at the offices of MCSN at Chatswood, ("the stash");

- he participated in the use of weapons and other items to load and / or verbal alleged offenders, ("the loads"); and
- he was aware of the dumping of a stash of weapons into the Hawkesbury River by former and current officers of NSW Police, ("the dump").

3.291 The Commission considers that Vicary engaged in police misconduct: subsection 16(1)(a) of the Act.

3.292 The admissible evidence against Vicary is that of M5 and the civilian M11. This related to a specific allegation of a load and related verbal.

3.293 The Commission is of the opinion that the admissible evidence in relation to Vicary's degree of knowledge, and participation in, the retention and use of the stash is insufficient for consideration to be given to the prosecution of Vicary for any related criminal offence. In relation to the load of M11 the Commission is of the opinion that the evidence supports consideration being given to the prosecution of Vicary for the following criminal offences:

- Conspiracy to commit an act intending to pervert the course of justice (sections 319 and 342, *Crimes Act 1900*)
- Commit certain actions and / or omissions with the intention to pervert the course of justice (section 319, *Crimes Act 1900*)
- Fabricate / knowingly make use of false evidence (section 317, *Crimes Act 1900*)
- Perjury with intent to procure conviction (section 328, *Crimes Act 1900*)
- Make false instrument (subsection 300(1), *Crimes Act 1900*)
- Use false instrument (subsection 300(2), *Crimes Act 1900*)

3.294 Following the public hearings in this segment and prior to the completion of this Report, NSW Police investigated Vicary's involvement in this matter. A decision was made to take no further action because none of the victims was prepared to provide a statement or give evidence in court. Without this evidence a prosecution would not succeed.

3.295 In the circumstances the Commission is of the opinion that further consideration **should not** be given to the prosecution of Vicary for any criminal offences.

3.296 Vicary is no longer a serving police officer. Accordingly the question of taking action pursuant to subsections 97(2)(c) and (d) of the Act does not arise.

4. LET'S DANCE SEGMENT

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INTRODUCTION

4.1 This segment of evidence examined a police operation called "Let's Dance" conducted by police from Manly Detectives and the Major Crime Squad North (MCSN) over a period of two days from 4-6 February 1992. There were 16 hearing days in all, commencing on 12 November 2001, and continuing in December 2001 and April and May 2002. Twenty-one witnesses gave evidence, some of them on more than one occasion.

4.2 The Scope and Purpose of this segment was as follows:[608]

> … to investigate allegations of police misconduct by members of the New South Wales Police Service, including but not limited to officers attached to the former Drug Enforcement Agency, the Major Crime Squad North, and Manly Police in the investigation of persons alleged to have committed criminal offences, including the supply of prohibited drugs during the period 1 January 1991 to the present.

4.3 On 4 February 1992 a civilian codenamed, P1, was arrested in a room at the Manly Pacific Hotel. According to the police documentation prepared at the time, a small quantity of cannabis leaf and $85,500 / $86,000 was located in the room. Police subsequently searched P1's premises, in a suburb on the northern beaches, and located 30,000 ecstasy tablets and 676 grams of cannabis leaf. On 5 February 1992 P1's associate, A1, was arrested by police at his premises in Sydney's eastern suburbs. At the time of A1's arrest police found 38 ecstasy tablets and a bag containing $25,000 in cash at his premises.[609]

4.4 The hearing examined allegations that police involved in the arrests of P1 and A1 had corruptly taken money found at the Manly Pacific Hotel, and at A1's premises, and divided it amongst themselves (and other police who were not involved in the operation). A further allegation arose during the course of the hearing that documentation prepared by police for use in the prosecution of A1 and P1 deliberately understated the amount of money found by police at the time of the arrests.

4.5 Supporting the allegations were listening device recordings of conversations between the informant M5, who was a former member of the MCSN, and two other former members of that squad, N1 and F7. At the time of the recorded conversations neither N1 nor F7 knew that M5 was an informant and that the conversations were being recorded. In the conversations N1 and F7 indicated that they had both, together with other police, been involved in the stealing of money during the course of Operation Let's Dance, and that some of the money had subsequently been given to other officers.

4.6 When first called to give evidence at the hearing, N1 and F7 both denied that they had been involved in any such corrupt activity and suggested that the conversations were simply drunken talk. Subsequently, however, both

[608] PIC Transcript, 12 November 2001, p. 582
[609] PIC Exhibits 392B, 404B

indicated a desire to assist the Commission in its investigation. They were both recalled to give evidence and then confirmed the substance of the recorded conversations. They admitted to being involved in the stealing of money during Operation Let's Dance and implicated others in the corrupt taking and receiving of money seized during the course of the Operation.

4.7 The evidence relating to the events of February 1992 is set out hereunder dealt with in chronological order, starting with the initial police involvement in the Operation on 4 February 1992 through to the conclusion of the Operation sometime on 6 February 1992. The evidence contained in the recorded conversations and that given by both N1 and F7 is dealt with separately, following the evidence relating to the events.

4.8 In assessing the evidence of the witnesses called before the Commission, the difficulties anyone would have in recalling events that occurred a decade prior to the giving of the evidence has been taken into account. However it is apparent that the events that occurred during the course of this Operation were very significant events and might be thought to have stayed in the mind of those who had key roles to play.

THE WITNESSES

4.9 A number of former members of Manly Detectives who were involved in Operation Let's Dance were called to give evidence before the Commission. They were:

- Miles Bradley Adams
- Steven Anthony Bridges
- Wayne Hollis
- Paul Hulme
- Robert John Monk

Adams, Bridges, Hulme, and Monk were serving officers at the time they gave evidence. Adams and Hulme have since left NSW Police.

4.10 Similarly a number of former members of MCSN were called to give evidence at the hearing. They were:

- Vivienne Alexa Crawford
- F7
- Howard Robert Gumley
- Michael Arthur Hagan
- Glenn Wayne Kendall
- James Justin King

- N1
- Ian Bruce Nicholson
- Dennis Peter O'Toole (known by the nickname "Doodles")
- Ronald Bruce Smith

Gumley and Crawford remain employed as police officers with NSW Police. Smith and Kendall were serving officers at the time they gave evidence but have since left NSW Police.

4.11 In addition to the above witnesses a former member of the Surveillance Unit, Stephen Anthony St John, who took part in the Operation gave evidence. He is no longer employed as police officer with NSW Police.

4.12 Adams, Bridges, Crawford, Gumley, Hollis, Hulme, Kendall, King, Monk, Nicholson, O'Toole, Smith, and St John all denied on their oath any suggestion that they had been involved in any corrupt conduct during the course of the Operation or in the few days after its conclusion. Hagan denied having any knowledge of any corrupt conduct by officers during the Operation.

4.13 A number of civilian witnesses, all codenamed, gave evidence. They were:

- A1
- B8 (a friend of K2)
- K2 (a friend of A1 and with him when A1 was arrested)
- M7 (the security manager of the Manly Pacific Hotel at the time of Operation Let's Dance)
- P1

THE EVENTS OF 4 FEBRUARY 1992

4.14 Manly Detectives were the first police to become involved in the events that gave rise to Operation Let's Dance. The former head of security at the Manly Pacific Hotel, codenamed M7, gave evidence that on 31 January 1992 he was told by Hotel staff that they were suspicious of A1 and P1, who were staying at the Hotel in room 506, because they had paid their bill in cash, taken from a large bundle of notes, and P1 had given a home address which was relatively close to the Hotel. Furthermore staff had smelt marijuana coming from the room in which A1 and P1 were staying. M7 said that as a result of receiving that information he waited until he knew A1 and P1 were out and went into the room. While in the room he saw a red bag containing several bundles of cash and two small bags of marijuana. He did not remove any of

the contents of the bag and did not count the money. After a further look around he left the room.[610]

4.15 M7 said he telephoned Hulme, whom he knew was in charge of Manly Detectives, and told him what his staff had reported to him and what he had found upon going into the room. The telephone call to Hulme was sometime on the morning of 4 February 1992 but M7 was not able to be more precise as to time. In response to Hulme's questions about how much cash was in the bag M7 estimated between $10,000 and $20,000. M7 said that Hulme appeared to be *"very interested"* and indicated he would send someone around to speak with M7 soon.[611]

4.16 Hulme confirmed to the Commission that he had received a call from M7 who had told him that *"two guys were living high on the hog"*, that they had money, and that staff had smelt marijuana coming from the room. Hulme had no recollection of M7 saying that he had been into the room and found a bag containing bundles of cash. Hulme said that this call was made to him before 10am on 4 February 1992. He recalled saying to M7 that he would send someone down to the Hotel and believed that he sent Monk to investigate.[612]

4.17 Monk could not recall how it was that he came to attend the Manly Pacific Hotel on the first occasion and was not sure whether or not he attended on his own. There is a significant difference between Monk's evidence as to what occurred when he first attended the Hotel and M7's account as to what occurred. According to Monk, upon attending the Hotel he spoke to M7 and was told that Hotel staff had smelt cannabis being smoked in a room. As a consequence of receiving that information he decided to obtain a search warrant and left the Hotel in order to do so.[613]

4.18 According to M7, when Monk first attended at the Hotel M7 told him what he had told Hulme on the telephone and Monk asked if he could look in the room. He took Monk to the room and showed him the bag with the money in it. Afterwards they went to the bistro/coffee shop and had a conversation with Adams and Bridges who by then had also attended at the Hotel. Shortly after that Monk left to obtain a search warrant in relation to the room.[614]

4.19 In evidence before the Commission Monk was initially not prepared to deny that he had been into the room prior to obtaining a search warrant although he eventually did deny the suggestion.[615] He maintained that he did not know that there was money found in the room, or that anyone had been into the room, until he subsequently returned to the Hotel around 2pm with a search warrant.[616]

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610 PIC Transcript, M7, 3 December 2001, pp. 1190-1192
611 PIC Transcript, M7, 3 December 2001, pp. 1193-1194
612 PIC Transcript, P Hulme, 4 December 2001, pp. 1275-1277
613 PIC Transcript, RJ Monk, 14 November 2001, pp. 782-785
614 PIC Transcript, M7, 3 December 2001, pp. 1195-1197
615 PIC Transcript, RJ Monk, 14 November 2001, pp. 785-786
616 PIC Transcript, RJ Monk, 14 November 2001, pp. 807-808

4.20 Hollis voluntarily came forward to the Commission and made himself available as a witness. He had not made a statement at the time of the incident and said he had no recollection of making any notes concerning it. His account contained a number of significant matters which, if they occurred, ought to have been reflected in the statements of others, particularly Monk, Adams or M7, and should have formed the subject of a statement by Hollis.

4.21 It was clear that, when giving his evidence, Hollis had read the transcript of evidence given to the Commission by Monk and M7. It did appear that Hollis' reading of the transcript affected the evidence he gave. It was also clear that Hollis was not giving evidence as to what he actually could recall about the events. Hollis conceded on at least two occasions that he did not have a recollection of certain matters about which he had earlier purported to give evidence as though he did.[617] While taking into account the difficulties encountered by any person in recalling events that happened ten years previously, the Commission does not consider that the account given by Hollis is a reliable account of what occurred at the Hotel on 4 February 1992.

4.22 At some stage on 4 February officers from the MCSN were called to the Hotel although no one from Manly Detectives who gave evidence was able to recall who made the decision to call in the MCSN.

4.23 The duty books that are available from a number of the officers from MCSN, suggest that officers from that squad were called in very soon after M7 made his telephone call to Hulme. As noted earlier, Hulme gave evidence that he was certain he had received that call before 10am on 4 February. Significantly the duty book of Smith,[618] who was the commander of the MCSN, records that Hulme contacted him at 10am in relation to *"possible armed robberies"*, that assistance was required and Nicholson and Gumley were dispatched.

4.24 Smith told the Commission that he had, at that time, only recently returned to the MCSN and was acting as the co-ordinator of staff at the Chatswood office. It was his job in that role to allocate officers to particular jobs. He could not add anything further to what was recorded in his duty book concerning the first contact from Hulme on 4 February 1992.[619] Hulme did not confirm that it was he who first contacted the MCSN but told the Commission that if it was him, he would not have spoken to Smith about possible armed robbery suspects.[620]

4.25 What is clear from the evidence is that the MCSN was contacted shortly after the initial call from M7 to Hulme in which the first report concerning suspicious activity by A1 and P1 was made. The evidence as to what protocol existed, in February 1992, governing a local patrol calling in the

[617] PIC Transcript, W Hollis, 1 May 2002, pp. 2740-2754
[618] PIC Exhibit 371B
[619] PIC Transcript, RB Smith, 2 May 2002, pp. 2800-2802
[620] PIC Transcript, P Hulme, 9 May 2003, p. 2980

MCSN is unsatisfactory. There seems, however, to be no justification for Hulme calling in the MCSN at that time, which was well before Monk had applied for a search warrant in relation to the room, if all Hulme had been told by M7 was that cannabis had been smelt coming from a room and two persons were living *"high on the hog"*. It seems clear that the reason why Hulme made such an early call to the MCSN was because M7 had mentioned to Hulme during his initial call to Manly Detectives that he had been into the room and seen a bag with a large quantity of money. The Commission accepts the evidence of M7 that he had in fact been into the room prior to calling Hulme and that he mentioned that fact to Hulme in the first conversation, which was prior to Monk attending the Hotel. In terms of when Monk first knew of the presence of money in the room, and when he first entered the room, the Commission also prefers M7's version of events to that of Monk.

4.26 Monk said his application for a search warrant set out the information that had been received from M7 about the matter including that fact that M7 had been into the room. The application did not mention the fact that money had been found in the room by M7 or that Monk had been into the room. The warrant was issued at 1pm on 4 February 1992.[621]

4.27 Monk completed a "Report to Authorised Justice" the following day, 5 February 1992. That report states that the search warrant was executed at 2pm on 4 February 1992. The items seized were described in the report as *"12.4 grams of cannabis leaf. $86,000 in money in red bag with personal papers of [A1]. Grey sports bag with $500 (part of $86,000)"*.[622]

4.28 According to Monk's statement,[623] which was dated 9 February 1992, he executed the warrant with Adams and Bridges and it was Adams who *"located"* a *"red canvas carry bag"* containing *"the sum of $85,500 in cash bundled in various denominations of Commonwealth Bank notes"* together with certain documents, some of which contained references to A1. It was also Adams who located a *"grey canvas sports bag containing clothing, ... the sum of $500 in Commonwealth Bank notes, and 12.4 grams of cannabis leaf in a re-sealable plastic bag"*. While the police were in the room P1 arrived and was arrested. The statement indicates that Monk questioned P1 concerning the ownership of both the grey and red bags and the money in them, and that P1 made relevant admissions, including the fact that at his premises he was holding a bag containing a large quantity of ecstasy and that A1 had gone to Queensland. After this questioning, according to Monk's statement, P1 was conveyed to Manly Police Station.

4.29 Monk told the Commission that when he returned to the Hotel with the warrant he was told, for the first time, that someone had entered the room and found a large sum of money. His evidence was that he was *"half annoyed"* that someone had been into the room before the warrant was executed, but he

[621] PIC Exhibit 148B
[622] PIC Exhibit 149B
[623] PIC Exhibit 147B

did not record the fact anywhere. He said that while in hindsight it seems important, it did not at the time.[624] Monk's recollection was that M7 let him into the room to execute the warrant and Adams and Bridges went into the room with him. He did not think there was any other police officer in the room at the time of the execution of the warrant. He had no recollection as to which of them first accessed the bag with the large amount of cash in it.[625]

4.30 Monk's recollection was that the procedure at that time for recording exhibits was to simply record them in the police notebook. He said that as Adams was the person who had located the two bags it was his job to record the location of the bags and who found them. Neither Monk's statement nor Adams' statement records the location of the bags within the room.[626]

4.31 Monk said there was a *"rough count"* of the money in the room. He recalled that the money was bundled but he could not recall if he counted the bundles in the bag or whether they were tipped out of the bag on to the bed and counted. Monk thought that officers from MCSN attended the room before P1 was conveyed to Manly Police Station although he could not name any officers. He was not able to recall how the transfer of P1 and the money from the hotel room to the police station took place.[627]

4.32 Adams said that he was approached by Monk to assist with the execution of the search warrant on the hotel room. At the time he was a Detective Constable First Class and junior to Monk. He recalled that when he attended the Hotel with Monk and Bridges to execute the warrant they spoke to M7 and other hotel staff but could not recall any suggestion that staff had already been into the room. He did not recall being given the role of recording where seized items were found, and by whom, and doubted that he was given that role. He remembered that when they entered the room the red bag containing the large amount of cash was out in the open. He had no recollection of any count of the money occurring in the hotel room, although he recalled that the three of them looked into the bag and saw the bundles of money and that someone pulled the bundles out but he could not recall who that was. He had no recollection of taking P1 and or the money back to the police station.[628]

4.33 In terms of the execution of the search warrant at the Hotel and the dealings with P1, Adams' statement,[629] made on 22 February 1992, is in identical terms to Monk's statement. It is clear from the statement's format, and from Adams' evidence, that he simply modified Monk's statement in order to produce his statement.[630]

4.34 Bridges was at the relevant time a Detective First Class having been a designated detective since 1990. His recollection was that he attended the

[624] As indicated earlier, (see paragraph 4.25) the Commission does not accept this part of Monk's account and M7's account of what occurred when Monk first attended the Hotel is preferred.
[625] PIC Transcript, RJ Monk, 14 November 2001, pp. 788-790
[626] PIC Transcript, RJ Monk, 14 November 2001, pp. 792-793
[627] PIC Transcript, RJ Monk, 14 November 2001, pp. 793-797
[628] PIC Transcript, MB Adams, 14 November 2001, pp. 859-865
[629] PIC Exhibit 153B
[630] PIC Transcript, MB Adams, 14 November 2001, p. 863

Manly Pacific Hotel on 4 February 1992 prior to the execution of the search warrant and conducted observations in relation to P1. He had no recollection of being involved in the execution of the search warrant although he had a recollection of being in the room after the return, and arrest, of P1. He could not recall what occurred in the room while he was there. He had no recollection of seeing any other officers from Manly Police Station at the Manly Pacific on that day.[631] Bridges is mentioned in the statements made by Monk and Adams in February 1992 as attending the Manly Pacific Hotel in order to execute the search warrant however neither Bridges' statement nor his duty book was available to the Commission.

4.35 P1 said that before he and A1 checked into the Manly Pacific Hotel in late January 1992 he had collected bags from A1's premises, one of which was a red soft sports bag that he knew contained money. He had with him his own grey sports bag that contained about $1000. P1 had a recollection that the money in the red bag was counted either at A1's premises or when they arrived at the Hotel and that the total was $110,000, bundled in $20s and $50s.[632]

4.36 Sometime prior to 4 February 1992 P1 took A1 to the airport and A1 travelled to Queensland. After taking A1 to the airport he kept the red bag with the cash in the room at the Hotel and the drugs at his premises. He said that while A1 was in Queensland he sent him $4000 from the cash in the bag. He also agreed that the bag containing the cash was left in the room unattended from time to time.[633]

4.37 P1 said that when he returned to the hotel room on 4 February 1992 he found a number of detectives in the room and the money, which was still bundled, was spread out on the bed. The money was not counted in front of him. He said that apart from the $4,000 that was sent to A1, he did not remove any money from the red bag and therefore it would have around $106,000 in it. He didn't complain that the police had taken some of the money from the bag because he thought to do so *"... may create more waves. ... I thought it would be just easier to let it slip"*.[634]

4.38 P1, although having a criminal past, gave his evidence in an impressive and forthright manner. On its face his evidence, although differing in amount to that suggested by A1, suggests there was more money in the red bag at the time that the police executed the search warrant at the Manly Pacific Hotel than revealed by the police. His evidence also indicates that the bag was left unattended in the room during a period where other persons, being hotel staff could have access to it, and according to the evidence of M7, did have access to it. In the light of the evidence of N1 and F7 and the listening device material this evidence is of considerable significance.

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631 PIC Transcript, SA Bridges, 5 December 2001, pp. 1354-1363
632 PIC Transcript, P1, 12 November 2001, pp. 654-656
633 PIC Transcript, P1, 12 November 2001, pp. 656-661
634 PIC Transcript, P1, 12 November 2001, pp. 663-672

4.39 A1 said that when he and P1 first arranged a room at the Manly Pacific Hotel he had some 40,000 ecstasy tablets and a *"bank"* of $50,000 that he claimed was made up of the profits from selling drugs and from some legitimate business activities in which he was involved. He could not describe the bag in which the money and the drugs were kept. He further claimed that prior to going to Queensland he provided K2 with 5,000 ecstasy tablets and that K2 was to pay him $87,500, being $17.50 per tablet, when he returned from Queensland. A1 also said that he had sold a further 5,000 ecstasy tablets to another person prior to going to Queensland and was paid $87,500. His estimate of the total amount of money in the bag was that it was *"probably in the realms of $137,000"*.[635] He gave the cash and the remaining ecstasy pills to P1 and told P1 not to keep the cash and the drugs together. He understood that P1 decided to keep the drugs at his home and the cash in the Hotel room.[636]

4.40 While A1 was not an impressive witness, has a criminal record, and gave evidence that he struggled with alcoholism for a long time, his evidence does provide some support for a conclusion that there was more money in the red bag at the time of the execution of the search warrant than was stated by the police.

4.41 Smith, Nicholson, Gumley, King and F7 all gave evidence about their involvement in the events of 4 February 1992. As stated above Smith's duty book[637] indicates that when first contacted by Hulme at 10am on 4 February 1992 he dispatched Nicholson and Gumley to assist Manly Detectives. Nicholson had little independent recollection of the events however his duty book records that he went with Gumley to the Hotel and took part in the arrest of P1.[638]

4.42 Gumley's duty book[639] records his involvement in the operation on 4 February 1992. He could not remember who sent him to assist Manly Detectives but did recall that he knew he was going there in relation to an apparent major drug dealer. He had no recollection of conferring with Hulme and Monk at Manly Police Station however he did recall speaking to Monk outside the Manly Pacific when he was provided with a description of a person and possibly a car. He recalled that he made observations outside the Hotel and that at some point he was advised that a large sum of money had been found at the Hotel.[640] It seems likely, from the entry in Smith's duty book, that it was Smith who gave the instructions to Gumley.

4.43 Smith's duty book indicates that after dispatching Nicholson and Gumley to Manly Police Station, he *"contacted Det King and F7 re further assistance Manly"*.[641] King and F7 both worked in the Armed Hold-Up Unit (AHU) at

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635 See also paragraph 4.80 in relation to the amount of money A1 thought was in the bag.
636 PIC Transcript, A1, 12 November 2001, pp. 593-599
637 PIC Exhibit 371B; see also reference at paragraph 4.23
638 PIC Exhibit 170B
639 PIC Exhibit 397B
640 PIC Transcript, HR Gumley, 15 November 2001, pp. 926-927
641 PIC Exhibit 371B

the MCSN, which was supervised by O'Toole. Although Smith had no recollection of speaking to O'Toole about contacting King and F7 it seems likely that they did confer about the matter that morning as O'Toole recorded in his duty book that he conferred with Smith *"re drug operation at Manly re assistance required by Det Sgt Hulme – Operation Let's Dance"*.[642]

4.44 King had very little recollection of the events however a statement he made on 10 February 1992 indicates that he observed P1 enter the Manly Pacific Hotel at about 2.50pm on 4 February 1992.[643] The duty books of F7 and King contain almost identical entries.[644]

4.45 The entries in the duty books and the evidence before the Commission concerning the role of the MCSN officers on the morning of 4 February 1992 are consistent with Hulme being contacted early that morning by M7 and informed of something which caused Hulme to call in the MCSN. By comparison the evidence given by Hulme as to what he was told, and as to what Monk knew, even after he had attended the Manly Pacific for the first time, clearly did not justify calling in the MCSN. The weight of evidence strongly supports the version of M7 that he told Hulme about the money in the first conversation he had with him. The Commission concludes it was that fact that led Hulme to call in MCSN.

4.46 The recording by Smith that Hulme wanted assistance *"re possible armed robbery suspects"* is problematic. It is open, in the light of other evidence before the Commission, to take the view that it was an attempt by Smith to provide a justification as to why the AHU were given principal responsibility for the matter from the MCSN perspective. As stated above, see paragraph 7.25, on the basis of Hulme's evidence of what he was told by M7 there is no justification for either calling MCSN in or for the AHU to take responsibility for the investigation.

4.47 P1 said that after he was arrested at the Hotel he was questioned by the police and then went with them when a search was conducted of his premises. During the search he showed them the ecstasy as well as a quantity of cannabis. He also said that he provided a set of keys to A1's premises to Monk.[645] Neither Monk nor any of the police officers involved could remember being provided with these keys.

4.48 A formal record of interview between P1, Monk and Adams was recorded as having been carried out late on the evening of 4 February 1992.[646] During the interview, apart from making admissions and providing police with relevant information concerning A1 and his whereabouts, P1 agreed to further assist the police in their investigation. M7 said that later on the night of 4 February he was contacted by Monk or Hulme and asked whether P1 could be returned to the room at the Hotel to continue with his drug dealing activities and assist

[642] PIC Exhibit 379B
[643] PIC Exhibit 175B
[644] PIC Exhibits 173B, 398B
[645] PIC Transcript, P1, 12 November 2001, pp. 664-667
[646] PIC Exhibit 137B

in the police investigation. After receiving permission from the general manager of the Hotel M7 told the detectives that permission had been granted. P1 was later returned to the room at the Manly Pacific in the company of two detectives. M7 did not remember the names of these detectives but said it was definitely not Adams, Bridges or Monk.[647]

4.49 Monk's statement, dated 9 February 1992, records that as a result of the information P1 provided to him after his arrest, he applied for and was issued with search warrants for both P1's premises and A1's premises. Monk executed the first warrant with Adams and Hollis in the presence of P1. At P1's premises a bag was located containing 30 clear plastic bags of ecstasy tablets. Twenty-six ounces of cannabis were also found.[648]

4.50 King's duty book[649] suggests he may have attended P1's premises at the time that the search warrant was executed although the evidence before the Commission is not conclusive as to whether any officer from MCSN attended P1's premises that day. F7's duty book contains a similar equivocal record.[650]

4.51 The evidence concerning the finding of the money at the Manly Pacific, the conveyance of it to Manly Police Station, its counting and its recording as an exhibit is very unsatisfactory. No exhibit book for Manly Police Station from that time is available to the Commission. No photograph of the money was taken either at the Hotel when it was located, or back at the station, despite the fact that not only were the Manly Detectives involved, but by the time of the arrest of P1 and the transfer of the money to the Manly Police Station, a number of officers from the MCSN were also involved in the matter. The lack of detail in the recollection of the witnesses concerning the location, movement and counting of the money is difficult to accept in some instances, given that, for at least those officers from Manly Detectives, it was a very significant job in terms of the amount of cash and drugs that had been seized that day. According to Hulme it was the largest seizure of ecstasy tablets in the country at that time.[651]

4.52 Monk, Adams, Bridges and Hulme all recalled that the money was counted at Manly Police Station but could not recall either where the count took place or exactly who was involved. Monk, Adams and Hulme did however recall that Chief Inspector Gilligan, the Commander of Manly Police Station at that time, was present. Gilligan, now retired, was unable to give evidence to the Commission but did provide a statement.[652] In his statement Gilligan said that he supervised the count of the money and that it had to be counted three times before he was satisfied the count was correct. Although Monk could not recall whether he was present at the count of the money or not, both P1 and Bridges gave evidence that he was present.

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[647] PIC Transcript M7, 3 December 2001, pp.1206-1207
[648] PIC Exhibit 147B
[649] PIC Exhibit 398B
[650] PIC Exhibit 173B
[651] PIC Transcript, P Hulme, 4 December 2001, p. 1282
[652] PIC Exhibit 393B

4.53 The entry in O'Toole's duty book suggests that during the afternoon of 4 February 1992 he personally attended at Manly Police Station in relation to the matter.[653] O'Toole gave evidence that he had a vague recollection of going to Manly Police Station that day but could add nothing to what was recorded in his duty book. He had no recollection of seeing the money or the drugs while at the station. Nor could he remember what instructions he had given to the MCSN officers who were there. He said he was fairly sure an agreement was arrived at between himself and Hulme as to the future conduct of the investigation.[654]

4.54 O'Toole's claim to have virtually no recollection of what occurred when he went to Manly Police Station on 4 February 1992 is difficult to accept, even taking into account the length of time since the events. Apart from the evidence as to the significance of the size of the drug and cash seizure which has already been referred to, the investigation was a drug investigation, and O'Toole as the supervisor of the AHU at the MCSN, did not usually become involved in investigations about drug matters. In addition, as will be apparent when the evidence of what occurs on 5 and 6 February 1992 is reviewed, Operation Let's Dance, even without the suggestion of corruption, became notorious because of the conduct of officers King, F7 and N1 both during the Operation and after it. O'Toole's claimed lack of recall of the events is therefore not accepted as genuine.

4.55 M7 made a statement, on 6 April 1992, that was to be included in the brief of evidence concerning the arrest of P1 and the search of the hotel room.[655] The fact that M7 had accessed the room prior to the execution of the search warrant was not mentioned. M7 said he had told Monk, who took the statement, that he did not want to include it in the statement, as he did not think it would be good for his employment at the Hotel. Monk agreed to his request. M7 also said that the statement was not correct where it said that he had smelt cannabis coming from the room on 3 February 1992 but it was true that cannabis had been smelt by others that evening coming from the room. M7 could not provide a reason as to why he had included this falsity in his statement.[656] Monk said he had no doubt that he had taken the statement from M7 as he had signed it as the witness but he could not recall the taking of it.[657]

4.56 M7 also said that prior to making his statement he had a conversation on the telephone with Hulme relating to the seized money. During that conversation he asked Hulme:[658]

> Did you guys get any of that money?

To which Hulme replied with words to the effect:

> Well, we're not stupid are we?

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653 PIC Exhibit 379B
654 PIC Transcript, DP O'Toole, 5 December 2001, pp. 1393-1400
655 PIC Exhibit 152B
656 PIC Transcript, M7, 3 December 2001, pp. 1208-1211
657 PIC Transcript, RJ Monk, 14 November 2001, p. 803
658 PIC Transcript, M7, 3 December 2001, p. 1213

M7 took Hulme's reply to mean that Manly Detectives had taken some cash for themselves. However he had no knowledge of who specifically had taken any cash. He did not report the conversation to anyone at the time.[659] Hulme was not prepared to deny that any such conversation took place.[660]

4.57 M7 said that he had a further conversation with Hulme in which Hulme told him that the Manly Detectives wanted to take him to lunch. He could not remember the words used but said that Hulme had implied that the lunch would be paid for with the money taken from the Manly Pacific. Three Manly detectives, one of whom was Monk, took M7 to lunch. That was the only time he was taken to lunch by Manly Detectives.[661] Hulme had no recollection of any such conversation but said that it possibly had occurred.[662] Monk had no recollection of going to any lunch with M7 in relation to the arrest of A1 and P1.[663]

4.58 M7 presented as a credible witness and the Commission accepts his account of the conversations with Hulme concerning the money and being taken to lunch.

THE EVENTS OF 5 AND 6 FEBRUARY 1992

4.59 A1's premises were under surveillance from early in the morning of 5 February 1992. The duty books of King, F7, O'Toole, Gumley and Nicholson all refer to the Let's Dance operation. King's duty book[664] records that he commenced duty early in the morning of 5 February 1992 and, together with F7 attended Major Crime Squad South (MCSS) to see the surveillance team's observations. King's duty book also records that he conferred with both O'Toole and Hulme, although no detail of the conference is included, and attended the vicinity of A1's premises with F7. King himself had no recollection of these events. F7's duty book[665] contains similar entries to King's with the addition of naming St John as being one of the officers in the Surveillance Unit whom they saw and dispatched to A1's premises.

4.60 O'Toole's duty book[666] records that he conferred with King and others including Hagan in relation to Let's Dance during the morning. O'Toole was not able to give any further information in relation to the events of that day.

4.61 Gumley's duty book[667] records that he commenced duty early on the morning of 5 February and conferred with King, F7 and others before attending A1's premises to conduct observations. His duty book also records that he attended the Airport to make observations in relation to a particular flight with a negative result. Gumley had only a vague recollection of the events of

659 PIC Transcript, M7, 3 December 2001, p. 1217
660 PIC Transcript, P Hulme, 4 December 2001, p. 1317
661 PIC Transcript, M7, 3 December 2001, pp. 1218-1221
662 PIC Transcript, P Hulme, 4 December 2001, p. 1318
663 PIC Transcript, RJ Monk, 6 December 2001, pp. 1509-1511
664 PIC Exhibit 398B
665 PIC Exhibit 173B
666 PIC Exhibit 379B
667 PIC Exhibit 397B

that day but he did recall going to A1's premises.[668] Nicholson's duty book[669] contains a similar entry to that of Gumley as to what duties he performed on 5 February 1992.

4.62 In relation to the afternoon and evening of 5 February 1992 King's duty book[670] records that between 12.30pm and 8pm that day he conducted further observations of A1's premises, and that it was expected that A1 would arrive on a flight due at 9.45pm. His duty book also makes reference to the involvement of Kendall and N1 in the Operation. F7's duty book[671] contains a similar entry for what occurred between 12.30pm and 8 pm that day.

4.63 Gumley's duty book[672] records that from 1.30pm to 7.30pm he attended the vicinity of A1's premises and conducted observations. Later he attended Mascot Airport and located A1. Surveillance operatives then followed A1 back to his premises. Gumley told the Commission he had no recollection of going to the airport at all that day, or of being involved in following A1 back from the airport to his premises.[673]

4.64 Kendall was not working in the AHU at the time of the Operation. His duty book[674] indicates that on 5 February 1992 he was recalled to duty at 6pm, he collected N1 from his home, attended at the offices of MCSS and conferred with King and F7 in relation to the operation. He attended premises at Surry Hills and then A1's premises and continued conducting surveillance of those premises until A1 arrived. Kendall's only recollection of the events of that day was of being present when A1's premises were searched.[675] He could not recall who had called him out to work but conceded that it was likely that it was one of the senior sergeants who had some involvement in the job, which would limit the possible persons to Smith, O'Toole and Nicholson.[676] N1's notebook indicates that he was recalled to duty at 7pm and attended MCSS in relation to a briefing concerning A1 and that he was then on standby at the premises until the arrest of A1.[677]

ARREST OF A1 AND EXECUTION OF SEARCH WARRANT – POLICE ACCOUNT

4.65 King's statement,[678] made on 10 February 1992, gives a detailed account of what occurred when A1 was arrested and his premises searched. King records that A1 and others arrived at the premises at around 10.45pm. According to the statement, King, F7 and A1 went into his room where A1 emptied his pockets and was cautioned by King. King then asked to see the baby's room. On entering the baby's room King saw a brown suitcase.

668 PIC Transcript, HR Gumley, 2 May 2002, pp. 2828-2832
669 PIC Exhibit 170B
670 PIC Exhibit 398B
671 PIC Exhibit 173B
672 PIC Exhibit 397B
673 PIC Transcript, HR Gumley, 2 May 2002, pp. 2831-2832
674 PIC Exhibit 378B
675 PIC Transcript, GW Kendall, 15 November 2001, p. 966
676 PIC Transcript, GW Kendall, 5 December 2001, pp. 1456-1457
677 PIC Exhibit 365B
678 PIC Exhibit 175B

When opened, the suitcase was seen to contain some screwed up Manly Pacific papers and some pills that A1 immediately admitted were ecstasy. King informed A1 of the arrest of P1. Nicholson showed King a blue carry bag that contained a large amount of cash. King, F7 and A1, entered A1's room and the contents of the bag were placed on the bed. The bundles of cash were estimated to amount to approximately $25,000. King's statement does not suggest that any of the bundles were actually counted prior to estimating how much money was present. It is recorded that A1 made a number of admissions as to the ownership of the drugs found at P1's premises the previous day and indicated he was prepared to travel with police to P1's premises. A1 was then taken to the outside of P1's premises, and identified P1's unit before being taken to Manly Police Station.

4.66 King told the Commission he had very little recollection of the events referred to in the statement. He did recall that F7 and Nicholson were at the premises at the time that the search warrant was executed, and that other police were also present. He was not able to explain why he asked A1 immediately after cautioning him, where the baby's room was and denied he had been inside the premises prior to the arrival of A1. He could not recall if he took the money with him when he left the premises but assumed he did.[679]

4.67 F7's statement[680] from that time is almost identical to that of King's in so far as the arrest of A1 and the execution of the search warrant are concerned.

4.68 In relation to the execution of the search warrant, Kendall's duty book[681] records the arrival of A1, A1's female partner, K2 and C2 at the premises. It also records that ecstasy tablets were located along with a rucksack type of carry bag that contained money. It indicates that Kendall conveyed A1's partner and child to Manly Police Station. As mentioned above Kendall had little independent recollection of the events. He had a *"faint recollection"* of Nicholson being there but no one else, and he could not recall who was in charge.[682] He said that N1 was the senior officer in the field.[683]

4.69 Nicholson's statement[684] suggests that he was the first person to find the bag and to note that it contained a significant sum of money. Although Nicholson's recollection of the events was limited when he gave evidence, he did recall seeing the bag in the premises, and that there were a number of persons present in A1's lounge room.[685]

4.70 Gumley also recorded the search of A1's premises in his duty book.[686] He was unable to recall if he was present at the time of entry to the premises or whether he arrived later. He recalled that there were a large number of police present including King, Nicholson, and F7. Gumley had no recollection of

[679] PIC Transcript, JJ King, 16 November 2001, pp. 993-1001
[680] PIC Exhibit 172B
[681] PIC Exhibit 378B
[682] PIC Transcript, GW Kendall, 15 November 2001, pp. 966-970
[683] PIC Transcript, GW Kendall, 6 December 2001, p. 1465
[684] PIC Exhibit 171B
[685] PIC Transcript, IB Nicholson, 15 November 2001, pp. 906-912
[686] PIC Exhibit 397B

N1 being present. He said he did not do much of the searching but was principally involved in *"keeping an eye on the lady"* in the lounge room of the premises. He could not recall other significant events such as the finding of the bag containing the money, or any conversation between King and A1. At the time of this Operation Gumley worked in the Special Crime Unit and did not usually undertake drug investigation work. He conceded that this Operation was out of the ordinary in terms of his usual day-to-day duties at that time.[687]

ARREST OF A1 AND EXECUTION OF SEARCH WARRANT – CIVILIAN ACCOUNT

4.71 A1 said that the police approached him, K2, C2 and A1's partner and child as they entered his eastern suburbs apartment on 5 February 1992. King and F7 spoke to him and immediately upon entering the apartment they went straight to his daughter's room and pulled the ecstasy tablets out of a wardrobe. It appeared to A1 that the police knew exactly where to look for the tablets. They then proceeded with him into his bedroom where a conversation occurred between himself, King and F7. A1 said that while in his bedroom a third officer, whom he could not name, brought in a blue sports type bag with a Thailand label on it and which contained a plastic bag of money. According to A1 he had not seen that bag before. The contents of the bag were poured on to the bed. The police told him that it looked as though there was $25,000 in the bag. A1 said he told the police that he was *"being set up"* and had a discussion with King and F7 about the need to obtain fingerprints from the bag. He was taken out of the room by both detectives and conveyed to Manly Police Station. He had no recollection of seeing either of them carry the bag from the room.[688]

4.72 The evidence of P1 that he had provided the police with the key to A1's premises on 4 February 1992 when arrested, together with the content of King and F7's statement and A1's evidence gives rise to the suspicion that police entered the premises prior to the arrival of A1 on 5 February 1992. No witness, however, conceded that had occurred.

4.73 K2 said that prior to A1 going to Queensland he had arranged the sale of 10,000 ecstasy tablets and had attended A1's premises and obtained the tablets. According to K2, it was agreed that he would pay A1 $15.50 per tablet. He took the blue bag, ultimately seized by the police, with him when he collected the ecstasy. He did not pay A1 any money because the arrangement was that he would pay P1 when he had sold the tablets.[689]

4.74 By the time that A1 arrived back in Sydney K2 had sold all of the ecstasy. K2 said he kept the bag with the cash from the sales in his possession until A1 returned. At one stage he counted the money when C2 was with him and

[687] PIC Transcript, HR Gumley, 15 November 2001, pp. 935-942
[688] PIC Transcript, A1, 12 November 2001, pp. 604-611
[689] PIC Transcript, K2, 13 November 2001, pp. 709-713

it totalled $88,000 in $5,000 bundles. K2 took the bag with him when he collected A1 from the airport.[690]

4.75 K2 had the bag on his shoulder at the time the police approached A1 when he was entering the premises. The police told them to drop everything and go into the unit. K2 thought there were about eight or nine police at the unit. He dropped the bag with the money in it outside the unit. A1 was taken into a bedroom while C2, A1's partner and K2 were taken into the lounge room. He was not able to name any of the police officers involved in the search of the premises. At one point one of the officers, whom he described as being overweight, came into the lounge room and asked if the bag was his and he confirmed that it was. At that time he observed that the bag was empty. He was asked for and gave the officer his car keys. That officer left the room and took the blue bag with him. K2 and C2 were conveyed from the unit to Manly Police Station in the back of a white van. He was not able to say which police officers accompanied them.[691]

4.76 K2's evidence concerning the amount of money in the blue bag at the time that it came into the possession of Nicholson, F7 and King, suggests that it contained a far larger sum than the $25,000 recorded in the statements of King and F7 and other police documents. The recorded conversations and the evidence given by N1 and F7 before the Commission (see below), support the evidence of K2 that the bag contained more money than recorded by the police. The Commission accepts K2's evidence on that issue.

4.77 C2 was not available to give evidence to the Commission, however she made a statement[692] dated 3 November 2001 in which she detailed her previous association with K2, A1 and A1's partner. The statement records that prior to accompanying K2 to the airport on the night that A1 was arrested, K2 showed her a bag that appeared to be full with bundles of money. She asked K2 how much was there and K2 replied *"one hundred and ten"*, which she took to mean $110,000. K2 told her the money was for A1. She did not see what K2 did with the money after that conversation. Although her statement is not fully consistent with K2's evidence concerning his dealings with her and the amount of money in the bag, it is further evidence suggesting that the bag contained more than $25,000 at the time it came into the possession of the police. In terms of what occurred at A1's premises, she recalled that when the police first approached them A1 and K2 dropped their bags near the front door of the premises.

EVENTS AT MANLY POLICE STATION ON 5 AND 6 FEBRUARY 1992

4.78 A1, his partner, K2 and C2 were taken by police back to Manly Police Station after the conclusion of the search of A1's premises. There is no evidence that anyone from Manly Detectives was in attendance at the time of the execution of the search warrant. This was despite the fact that Monk had been the

[690] PIC Transcript, K2, 13 November 2001, pp. 714-720
[691] PIC Transcript, K2, 13 November 2001, pp. 720-724
[692] PIC Exhibit 386B

applicant for the warrant but is consistent with the suggestion that MCSN officers were in charge of the investigation on 5 February 1992.

4.79 According to the statements of King and F7, A1 was taken back to the station by them, placed in an interview room and a record of interview was conducted. A1 was first interviewed by way of questions and answers recorded by F7 on a typewriter, with King asking the questions. A1 was then placed in front of a video camera and read the typed record of interview. King's explanation for this was that video interviewing had not long been in use and he was not familiar with it.[693]

4.80 In the typed interview[694] A1 is recorded as indicating that he left the red bag containing $85,500 with P1 before he went to Queensland. He made no suggestion that there was more money in the bag when he left it with P1. In evidence A1 said there were two reasons that he did not indicate to the police that there was more money in the bag than King suggested. The first was that he did not know exactly how much money was in the bag, although he believed it was about $130,000. The second reason was that he did not want to aggravate his situation.[695]

4.81 When asked, in the police interview, about the blue bag containing $25,000 A1 gave an evasive answer that did not indicate either ownership of the bag or knowledge of its contents. In evidence the reason he gave for this answer was that he thought that the money might have been dropped off at his place during his absence by one of the persons who had keys. A1 did not make a complaint about the fact that he was charged in relation to the $25,000 when in fact it had never been in his possession.[696]

4.82 According to King's statement A1 was charged with Goods in Custody in relation to $85,500 said to have been found at the Manly Pacific Hotel on 4 February 1992, $25,000 said to have been found at A1's premises on 5 February 1992, Supply Prohibited Drug in relation to the 676 grams of Indian hemp found at P1's premises, Supply Prohibited Drug in relation to the 30,000 ecstasy tablets found at P1's premises and Supply Prohibited Drug in relation to the 38 ecstasy tablets said to have been found at A1's premises. King prepared the statement of facts concerning A1's charges in which the amounts of cash and drugs were specified.[697] It appears that King was the case officer responsible for the charging of A1 and the preparation of the brief concerning him.

4.83 In the statement made on 6 February 1992[698] C2 said that she had never seen the blue bag before being shown it at Manly Police Station and did not know anything about the money it contained. In her statement made for the

[693] PIC Transcript, JJ King, 16 November 2001, p. 1002
[694] PIC Exhibit 132B
[695] PIC Transcript, A1, 12 November 2001, p. 614
[696] PIC Transcript, A1, 12 November 2001, pp. 616-617
[697] PIC Exhibit 404B
[698] PIC Exhibit 387B

Commission on 3 November 2001[699] C2 said that although she might have thought that the blue bag she was shown was the one K2 had previously shown her, she did not admit that to the police.

4.84 K2 said that when he was first taken into Manly Police Station he was spoken to by police who had been at A1's premises. After some time, another officer saw him and threw the blue bag at him and asked him what was in it. He responded by asking what had police put in it. He felt the bag then threw it back at the officer and pointed to the officer who had shown him the empty bag when he was in the unit. A statement was then taken from him.[700] The officer who witnessed his statement, according to K2, was the same officer who had shown him the empty bag at the unit. In the statement K2 identified the blue bag as his bag but asserted that he left the bag at A1's premises on 29 December 1991 after a boating trip and that although he had seen it there a number of times since he had not worried about getting it back. In evidence K2 said this part of his statement was false and that he had made up that explanation to avoid *"... going to gaol with them"*.[701]

4.85 K2 was not charged with any offence arising from the events of 5 February 1992. He told the Commission that after giving his statement he was driven to his hotel room by two police officers. They searched his room, although they did not appear to have a search warrant, and found a small amount of cocaine that they flushed down the toilet. They *"... smacked me in the head ..."* and advised him against associating further with A1.[702] Nicholson's duty book[703] records that he, with Kendall, conveyed K2 to a hotel in Victoria Street, Kings Cross and searched the room with his permission. The search according to the duty book produced a *"negative result"*. Nicholson said that he did not recall going to K2's premises but specifically denied ever flushing cocaine down a toilet at any time in his career.[704] Kendall's duty book contains a similar entry to that of Nicholson but Kendall had no recollection of the search of K2's hotel room.[705]

4.86 Hulme recalled that he was at the station late on the evening of 5 February 1992 but could not recall if he was there when A1 was brought to the station, or anything specific that he did there that night, or how long he stayed there. He presumed that Monk was present but named no other Detective from Manly as being present at that time. He said that the police under his control had nothing to do with this side of the investigation. Again this is consistent with the assumption that the investigation of 5 February 1992 was under the control of MCSN. Hulme recalled N1 arriving, *"heavily intoxicated"*, in the company of Nicholson and Kendall. He said N1 was so intoxicated that it would have been obvious to anyone who spoke to him. Hulme said he took N1 to a coffee shop where N1 drank coffee. He had no recollection of seeing King at the station and at the time he believed that Kendall was in charge of

699 PIC Exhibit 386B
700 PIC Exhibit 141B
701 PIC Transcript, K2, 13 November 2001, p. 729
702 PIC Transcript, K2, 13 November 2001, pp. 730-732
703 PIC Exhibit 170C
704 PIC Transcript, IB Nicholson, 15 November 2001, pp. 916-918
705 PIC Exhibit 378B, PIC Transcript, GW Kendall, 15 November 2001, p. 793

the operation from the MCSN perspective as he was *"the senior man"*. After taking N1 for coffee he returned to the station with him but could not recall what he then did at the station or how N1 got home although he assumed that someone from MCSN drove him. He may at some stage have discussed N1's state with O'Toole but could not recall doing so. He had no recollection of seeing the money seized from A1's premises or of seeing it being counted at the station.[706]

4.87 Hulme's evidence concerning N1 will be returned to when discussing the listening device material and the evidence of N1 and F7. His assertion that he has very little recollection of the events of the evening of 5 February 1992 and the morning of 6 February 1992, is difficult to accept given the significance of the Operation, in terms of quantities of drugs and cash seized and the fact that it was a job *"brought in"* by Manly Detectives, a group of police of which he was *"the Chief"*. In particular, his inability to give evidence as to any count of the seized money or of securing the money is particularly surprising.

4.88 Monk said he did not know who was in charge of the investigation on 5 February 1992. He was present when A1 and the others were brought to the station but was unable to say how long after that he remained at the station. He did not recall seeing N1 at the station or at all in relation to Operation Let's Dance. The first time he had heard that N1 turned up heavily intoxicated at Manly Police Station on 5 February 1992 was when Hulme gave evidence to the Commission to that effect. Monk had no recollection of seeing Kendall or Nicholson at the station that night. He said he did not see the money counted. The evidence before the Commission is that P1 was not charged until the early hours of 6 February 1992 and that Monk was the informant.[707]

4.89 When Kendall first gave evidence his duty book was not available and he did not recall either conveying anyone to Manly Police Station that evening or what occurred at the Police Station. His only recollection was that he went to the station and acknowledged Hulme. He did not know who took the money back to the station and did not know if he or anyone else took steps to secure it. He had no recollection of seeing the blue bag back at the station, or of seeing any count of the money there.[708]

4.90 On the second occasion Kendall gave evidence his duty book had been located. It records, in relation to what occurred at Manly Police Station:[709]

> … attend to security of money, attend to exhibit money – count etc with uniform Sgt …

This duty book entry did not assist Kendall's recollection of being involved in, or even seeing the count of the money at Manly Police Station. He said he did not recall N1 being heavily intoxicated at Manly Police Station that night,

[706] PIC Transcript, P Hulme, 4 December 2001, pp. 1302-1314
[707] PIC Transcript, RJ Monk, 6 December 2001, pp. 1508-1515
[708] PIC Transcript, GW Kendall, 15 November 2001, pp. 971-975
[709] PIC Exhibit 378C

or seeing him there at all, or any discussion concerning the fact that N1 was drunk. He could not recall how the money was secured or whether he brought it from A1's premises. He could not provide a description of the money.[710]

4.91 Kendall's evidence of an almost complete lack of recollection of what occurred at Manly Police Station concerning the security and counting of the money, in light of his involvement in both tasks as recorded in his duty book, bearing in mind his rank of Detective Sergeant at the time, and the surrounding circumstances of the Operation and his involvement in it, is not accepted as a genuine lack of recollection.

4.92 Gumley was at Manly Police Station for several hours that night and could only recall Nicholson being there. He could not recall if anyone else from MCSN was present and had no recollection of seeing either N1 or Kendall there. He did recall that Hulme was there and thought that Gilligan might have been there.[711]

4.93 It is significant that no other officer who was at Manly Police Station that night, or who worked on Operation Let's Dance that night, apart from Hulme confirmed that N1 was heavily intoxicated. If N1 had been heavily intoxicated it would no doubt have been recalled by someone apart from Hulme, especially given Hulme's evidence that N1 arrived in the company of two other officers from MCSN. The Commission rejects Hulme's evidence concerning N1 being intoxicated. However Hulme's evidence that he left the station that night with N1 and drank coffee elsewhere, is particularly significant given the content of the recorded conversations and N1's evidence concerning the corrupt arrangement he said was arrived at between himself and Hulme. The evidence by Hulme strongly confirms the evidence given by N1 on that issue.

THE LISTENING DEVICE MATERIAL

4.94 Four listening device tapes and transcripts are relevant to this Operation.[712] They contain conversations between M5, N1 and F7 during which N1 and F7 make admissions as to the commission of criminal conduct during Operation Let's Dance. The conversations also suggest there was corrupt conduct by other officers involved in the Operation. At the time of the conversations neither N1 nor F7 knew that M5 was acting as an informant or that the conversations were being recorded. In the conversations a number of events are discussed on more than one occasion. Although the detail of the conversations in terms of particular incidents varies to some degree, in the main the conversations are consistent. Relevant extracts from the conversations are reproduced below. It is apparent from listening to the tape recordings that the participants were affected to some degree by alcohol at the time of the conversations.

[710] PIC Transcript, GW Kendall, 5 & 6 December 2001, pp. 1458-1470
[711] PIC Transcript, HR Gumley, 2 May 2002, pp. 2836-2837
[712] PIC Exhibits 168C & 169B, 165C & 166B, 161C & 162B, 163C & 164B

THE CONVERSATION ON 15 FEBRUARY 2000

4.95 The first recorded conversation was between M5 and N1 at the Malaya Restaurant on 15 February 2000.[713] The following relevant extracts are taken from the conversation:

N1: Do you remember Glenn Kendall?

M5: Mm.

N1: My actual last work day in the job. 'Cause the following day I collapsed again.

M5: He did?

N1: I did. Went down to Manly.

M5: (ui) 'Let's Dance'. …

N1: No, no, we went from the Airport (ind) …

N1: (ui) thank you. We went down there and again, always did the right thing.

M5: That was Operation … that was the Ecstasy one wasn't it?

N1: Yeah.

M5: Yeah, yeah. That's was Let's Dance.

N1: Oh right is that what it was called?

M5: Yeah …

M5: How much was there?

N1: Eighty.

M5: Eighty?

N1: No, half went in.

M5: Oh half went in. See F7 and Kingy always tell a story. I don't know if they told a story on the piss once and they've denied it since. That was after all that finished, on their way home they fell asleep pissed in a car at Mona Vale and they had a pocketful of cash.

N1: they did.

M5: … and the cops pulled up, and they always laugh about it because it's like … circumstances where they had pockets full of cash and they finally got home to Kingy's place.

N1: They must (ui)

M5: They had nine each.

N1: No.

M5: No.

N1: No, no way. Either that or I got done.

M5: that's what F7 told me. I put it on Kingy, he denied it.

N1: I'll tell you what happened, did the job [redacted] was there.

[713] PIC Exhibits 168C & 169B

M5: Mm. Didn't [redacted] dud everyone though.

N1: [redacted] wanted to, Paul and I went for a drink (ui).

M5: Mm.

N1: Paulie Hulme and I went for a drink.

M5: Oh okay.

N1: I had control of the bag.

M5: Oh okay.

N1: (ui) wanted to have a drink. Was it forty, sixty, like … I forget how much it was.

M5: Oh who cares.

N1: It was a lot of fucken' money. (ui) drink you know where you wanted to take me for a cup of coffee the other week, couple of months ago, on the round corner.

M5: Yeah, yeah, yeah.

N1: Yeah go downstairs, it used to be open all night, or most of the night.

M5: Yeah.

N1: Hulmey, I said I feel like a drink Hulmey. …

N1: … Anyway went for a walk with Paul. A couple of drinks down this place, went downstairs.

M5: Down under.

N1: Yeah. That little … we were gonna go … we were gonna go for a cup of coffee, right on the corner of The Corso. It's around …

M5: Around the corner.

N1: No, no, no, no. You went down the … you went down the stairs.

M5: Oh that's the old … that's fuckin' … yeah, anyway, yeah go on.

N1: Years ago.

M5: Yeah. Boat Shed.

N1: An Italian bloke ran it.

M5: Anyway, go on.

N1: (ui) downstairs he said oh what are we gonna do about this? I said well mate the way I figure is um you blokes brought the brief in the first place cause they did.

M5: Mm.

N1: I said I'll give you half, you work your half out and I'll take half. I'll work our half out (ui) It might have been …

M5: Whatever.

N1: Whatever, you know. He said "oh you're a fair man, N1," I said we'll have another drink won't we.

M5: [Laughs]

N1: He said yes, N1 (ui) and it was just … there was … not an ounce of trouble. So off we went and I've still got it all. We're in the old van.

M5: Mm.

N1: We're in the van.

M5: Yeah.

N1: After I gave them their, you know.

M5: There's half, yeah.

N1: (ui)

M5: Kendall was on it too.

N1: Kendall was in on it?

M5: Oh yeah.

N1: I said right, this is how it's gonna happen. No, no, no. (ui) N1, not like that. He was trying to get it all (ui) whoa, whoa, whoa! I'll be deciding. Oh sat in the back of the van.

M5: [Laugh] I love that.

N1: Right you guarantee, you guarantee who you have to see, I'll go and see who I have to see. They might have got nine hundred each.

M5: Eh?

N1: They might have got nine hundred each, not nine thousand. Then fuckin' F7 and I drank piss for fuckin' twenty-four hours.

4.96 In this conversation N1 speaks of an arrangement he arrived at with Hulme as to the sharing of money taken by the police from Operation Let's Dance. The conversation is only explicable on the basis that N1 is acknowledging that police, both from Manly Detectives and from MCSN, were involved in the corrupt taking of money from the Operation.

4.97 There is objective evidence that confirms a number of matters stated by N1 in the conversation. It is clear from N1's duty book, and the duty books of others, that he collapsed at the offices of MCSN on 7 February 1992, was taken to hospital, and did not return to active police duties. Kendall and Hulme played a part in Operation Let's Dance and were involved in the Operation on 5 February 1992. There is evidence indicating that both Kendall and Hulme had face-to-face contact with N1 on the night. As discussed above, Hulme[714] gave evidence that he and N1 left Manly Police Station on the night of 5 February 1992 and went elsewhere for a drink. According to Hulme it was coffee that was drunk and there was no discussion of corrupt conduct however, as also indicated earlier,[715] the evidence strongly supports what N1 is recorded as saying in relation to his dealings with Hulme concerning the Operation.

[714] See paragraph 4.86 above
[715] See paragraph 4.93 above

THE CONVERSATION ON 18 APRIL 2000

4.98 This conversation was recorded at the Malaya Restaurant and involved discussions between N1, F7 and M5.[716] The significant extracts from the conversation are as follows:

F7: I remember going through every duty book at the Crime Squad, opening it up and going …

N1: Whose duty books. Mine don't exist any more.

M5: Don't they? …

F7: Puttin' something in each duty book. (ui) duty book. We got there early in the morning and we filled every duty book except for Ronny Smith's, and Doodle 'cause they got a little … a couple …

N1: Which one was that one?

F7: Ecstasy.

N1: Oh yeah.

M5: Oh the Let's Dance.

F7: Let's Dance, Let's Dance.

M5: Let's Dance. [Laughs] You … you and Kingy asleep at the fucken lights out at Mona Vale.

F7: Oh that's …

M5: (ui)

F7: Yeah. I had …

M5: Sittin' there.

F7: I had 13,000 in me pocket.

N1: 'cause you and I found it.

F7: Got pulled up, got carried up, thrown in the paddy wagon, put, put in the interview room. I've woken up and gone …

M5: [Laughs] Right oh I'm out the window.

N1: That was me last day, that was me last day in the cops.

M5: Yeah.

N1: I got pulled … I was on the last day of work.

F7: And I didn't have a licence, I was unlicensed. Kingy was too pissed to drive home so I drove him home.

M5: [Laughs] …

F7: Oh that was a fucken funny day that was, a huge day. We'd started work the day before …

N1: I found the bag.

F7: We ended up, we ended up under the …

[716] PIC Exhibits 165C & 166B

N1: I found the bag.

F7: I found the second one (ui)

N1: Then …

F7: We ended up under the bridge at…

N1: Yeah.

F7: …Roseville.

M5: Over the barbecue.

N1: With Glenn. With Glenn actually.

F7: No.

N1: Fucken oath.

F7: We had the (ui)

N1: With Glenn.

F7: No.

N1: He was there. (ui) …

F1: And you were very fortunate too, because you just come right in, right at the death of that one.

N1: Well you know why I was sent along don't ya, you know why I was there don't ya?

F1: 'cause we rang up because we had no one to help us.

N1: No.

F7: Yes.

N1: No. I was rung up, I'll tell you now, by someone else. He said N1 …

F7: We rang you up.

N1: It was Doodles, he fucken rang me too. Doodles said …

F7: No we rang …

N1: Get your fucken self (ui) or I'll fucken (ui) and make sure we're all fucken, make sure it comes back to me.

[Laughter]

F7: No, no, we rang up Doodles and we said we're, we're short and he said get on to fucken N1.

N1: Yes F7, that is right. And I just told you the other phone call. …

F7: Oh yeah well that's only Doodles bein' fucken Doodles.

M5: We got the message in Coffs Harbour.

F7: Happy days

M5: and we're, we're sittin around, we're eatin' king prawns and fucken drinkin' beer and we goin' those fucken cunts, they've got the cash [Laughter]

N1: You got some money

M5: eh?

N1 You got some

M5: No I didn't …

N1: Everyone got a quid.

M5: You told me he got nine out of that. …

M5: I spoke to Kingy about that later. He said you got nine.

F7: I got seven and a half.

M5: Seven and a half. …

F7: It should have been more.

M5: Eh?

F7: It should have been a lot more.

M5: Yeah.

F7: 'cause he wanted to divide it (ui)

M5: Yeah. …

F7: It should have been about 15, 18 each.

M5: Yeah.

N1: I mean that (ui)

F7: And honestly we'd do all the work and he'd come in, he'd come in at the last second uninvited (ui) Fuck off N1.

4.99 In the above conversation F7 is recorded discussing the distribution of money in the duty books of officers at MCSN after the conclusion of Operation Let's Dance.[717] The conversation also contains admissions by F7 of him corruptly taking money from the Operation. N1 and F7 discuss a division of the money said to have taken place under the Roseville Bridge. There was evidence from other witnesses indicating that the area under the Roseville Bridge was a location frequented on social occasions by officers from MCSN.

4.100 F7 talks about being an unlicensed driver at the time and discusses an incident involving himself and King after the conclusion of the Operation. F7's Traffic Record Report[718] from the RTA shows that he was a disqualified driver at the time of Operation Let's Dance, providing confirmation of that part of the conversation.

4.101 F7 also discusses the fact that N1 came into the job late. That is consistent with other evidence that suggests that N1's first involvement was when he was called back to duty on the evening of 5 February 1992. N1 indicates that he was contacted by *"Doodles"*, (O'Toole's nickname), and told to *"make sure it comes back to me"*, clearly suggesting that O'Toole instructed him to ensure that the money went back to him. This is consistent with the fact that N1 worked in the AHU at MCSN and reported to O'Toole.

[717] See further discussion at paragraphs 4.126-4.127
[718] PIC Exhibit 389B

THE CONVERSATION ON 31 OCTOBER 2000

4.102 This conversation between M5, N1 and F7 was recorded at the Wentworth Hotel.[719] The significant parts of the conversation are as follows:

F7: Yeah. Well I'll tell you where I would have been the luckiest bloke in the world, and Kingy, after "Let's Dance" we got on the squirt at um The Steyne. I didn't have a licence. He was paralytic. I drove … drove him … I said I'll drive you home. Well, I'm unlicensed, I'm not licensed. I pull up at the corner of Pittwater Road and fuckin' Mona Vale Road, fall asleep at the lights. I've got fifteen grand in my pocket.

M5: Hhhhmm.

F7: … Kingy's got twelve in his. We wake up in the police station. Oh fuck.

M5: Everything intact?

F7: Window up, out the window.

M5: Out the window?

F7: Out the window.

M5: Fair dinkum.

F7: Fuck. (ui)

N1: What brief was that?

M5: That's the one you were in charge of N1. Let's Dance.

F7: No, he wasn't in charge of, he come in on the last night.

N1: Oh that one, yeah, that's true.

M5: Oh yeah, that one.

F7: Under … under the bridge, in the back of the van. No I had … we had um … other peoples money (ui) too …

M5: Yeah as you would.

F7: You know, like it wasn't fifteen in my pocket.

M5: No I appreciate what you're saying F7.

N1: I was only making sure that everyone, other blokes (ui) worry about it …

M5: I was in Coffs, I was in Coffs Harbour and fucking …

F7: You got called in at the last hour and …

M5: It's alright for you, I was in Coffs Harbour spewin' because I wasn't there.

F7: And the next day we went to work but I … I fuckin' …

N1: (ui)

F7: No, no sorry the Monday we got to work. That was a Friday night. Monday I got in early and went around everyone's duty book. I

[719] PIC Exhibits 161 & 162B

put 200 in everyone's duty book. Remember that? They all come in.

N1: I was still pissed.

F7: And … oh actually … and then I went in and saw Mr Smith and said "uh boss, um", he said "come in" and said "oh it was a great job on Friday night". I said "oh by the way boss, here, have lunch".

N1: (ui)

F7: (ui) Mr Smith, don't worry about that.

M5: No I appreciate that.

F7: But everyone opened their duty books up. Except you wouldn't let us put 200 in Viv's.

M5: In Viv's?

F7: No no, not in Viv's, in Kim McGrath's….

M5: Kim McKay …

F7: Kim McKay …

N1: (ui)

F7: And … oh a couple of young woodchucks obviously.

M5: Oh as you wouldn't.

N1: (ui) both of them did get it though.

F7: But Kim McKay he wouldn't. "No, no, we're not going to put in there". He's walking around saying "there (ui) right oh, next duty book" and all these people who hid their duty books they missed out. Oh we searched a lot, we stuck 'em in drawers, we stuck 'em everywhere. N1 wanted to divide that up between 4000 people. …

4.103 The themes of this conversation are similar to the two previous conversations. F7 suggests that the distribution of money in duty books occurred on a Monday. That issue will be considered in the discussion of F7's evidence below.

THE CONVERSATION ON 16 MAY 2001

4.104 This conversation between M5, N1 and F7 and took place at the Wentworth Hotel.[720] The significant parts of the conversation are as follows.

F7: And he was very happy after Let's Dance. When we sat under the Gladesville Bridge in the back of the old panel van N1. …

F7: That was a big, that was a big uh two days on the drink.

M5: I don't know, I think [redacted] got the lot of youse actually.

N1: I'm sure he did.

M5: Eh? I think [redacted] got youse bad.

N1: I know he did.

[720] PIC Exhibits 163 & 164B

F7: (ui) [redacted] …

M5: I think [redacted] got youse all.

N1: I know he did.

F7: I, I think if you look at the figures that we got, with all due respects…

N1: (ui)

F7: …if it wasn't for fucken N1 …

M5: Wanted to share it with everyone.

F7: Four thousand fucken ways.

M5: Well you know what N1's like.

F7: And N1 only came to the job one hour before fucken …

M5: Yeah it was a very important time, obviously he'd been sent down for that purpose [Laughs]

F7: We'd been workin' on it for fucken days …

N1: No you didn't.

F7: And he said now what happens (ui) no we rang you up N1.

N1: No, no you're wrong.

F7: N1 we rang you up at home.

N1: I can tell you, you were told to ring me.

F7: (ui) we weren't.

N1: Yes you were.

F7: Well I'm tellin' ya now [redacted] ...

N1: You had no choice in the matter.

F7: He rang up N1 and he got N1 down. Who rang ya, I rang ya.

N1: I know.

F7: And I wasn't told to ring you from anyone, I can tell you that right now.

N1: I tell you that was I rung before you rung. …

F7: Well I did the countin' and N1's up there goin' whoo hoo, whoo hoo.

M5: [Laughs]

N1: I didn't do that at all.

F7: Yes you fucken did.

N1: No I didn't.

F7: In the fucken panel van.

N1: That was (ui)

F7: And you mentioned 25, 30, 40, 50 thousand (ui) to recount it again. Do you know how long that takes?

M5: Oh not long. (ui)

N1: (ui) [redacted], I tell you the truth … [redacted] didn't because …

M5: [redacted] didn't.

N1: No not, not there, not that one.

M5: He got it before.

N1: Yeah from something else.

M5: He got it from the Hotel didn't he? I'm sure he did.

F7: Yeah the Hotel. Oh shit yeah.

N1: (ui) as it turned out…

F7: He got his at the Pacific.

N1: I was the one that (ui) that found it that night.

F7: No only a bit of it. Remember it was in three spots, it was found by three different people.

N1: I got the … no one knew that I had another bag … except us. [Laughter]

F7: Yeah but as it was the whole lot got clipped so it didn't matter.

N1: It didn't matter.

F7: We gave 'em, we gave 'em 30 and the rest went.

N1: Yeah. But …

F7: Like, like [redacted] took back 30 or 40 to Manly.

N1: Oh yeah.

F7: Well I reckon it only went about three ways there. They ended up with a lot more because I think it went between him and who was the boss down at the time, um …

M5: I don't know.

F7: Paul, Paul Hulme.

N1: Yeah.

F7: And um …

N1: Well I was on the piss with Hulmey and it was all worked out.

F7: Between him, Hulmey and um … oh what was his name?

M5: With Gilligan. Gilligan.

M5: I heard … I heard Gilligan um …

N1: (ui)

M5: … counted it three times and got three different numbers.

N1: Yeah.

F7: Yeah. We ended up (ui)

M5: Eh.

N1: Probably right too.

M5: And um …

N1: We didn't …

F7: Who was the other sergeant down there?

N1: The other blokes did get a little extra.

F7: Well I know when we sat in the back of the van too…

N1: (ui) …

N1: (ui) who was there. Who was with us? There was one other. …

M5: Who?

N1: Glenn.

F7: Glenn Kendall.

M5: Kendall.

F7: Ronny Smith sent him in.

M5: What to get a fucken token?

N1: No, no, no, no.

F7: (ui)

N1: 'cause I (ui) 'cause you didn't know at the time but I was, I was rung by fucken Doodles. …

LATER IN THE CONVERSATION

F7: But I … yeah. I remember after Let's Dance I went back to work the next day and N1 said right oh here's all the money and we put it in different names and I've got in early, I've got all the duty books, I opened 'em up.

M5: Mm.

F7: And Viv, I remember we even gave Viv some which is pretty unusually. Viv's opened up duty book you can just watch her, you know you sit there and she's …

N1: No that wasn't that one.

M5: That can't be that one because we weren't there.

F7: No, no this was, this was Let's Dance. The uh …

M5: Oh right.

F7: You know the Ecstasy one I'm talkin' about.

M5: Mm.

F7: And I can always remember Viv she must have looked around at every bloke and she's bloody stewin', waiting for someone to look her in the eye. …

F7: I walked in, I walked in the morning and said Ron can I help ya.

N1: We were still pissed (ui)

F7: And he was (ui) and we, we sat down at the um the morning meeting on the Wednesday mornin', all right (ui)

F7: Right, okay (ui)

F7: Off we went again. But we're lookin' at … you know the bosses in those days, you got in the mornin' meeting and you'd tell

everyone after the meeting we're going to the Willoughby. [Laughter]

F7: (ui)

N1: We opened the Willoughby up. We opened the Willoughby …

F7: Yeah that's right. They never opened 'til ten. …

N1: We had fucken … we were … we were drinkin' fucken cans of piss during the fucken meeting.

F7: And … but the funny thing of the whole lot, which a lot of people forget, we drank all day and I ended up down at The Steyne Hotel, we had an interstater, Viv had an interstater and Viv was over the moon.

N1: Was it that night, that night.

F7: Ah yes. Viv was over the moon because she got a bit of extra quid. And Dad and Pato come down and … and uh … 'cause Pato was off on holidays 'cause he had the shits 'cause he missed out and Kingy's come down and Kingy's blind and I didn't have a licence at the time.

N1: Again.

F7: Kingy lost his car. No, no, that's right, Kingy was too pissed to drive and he was on the floor paralytic. So uh that … the same night I jumped in … I said oh come on I'll drop ya home and I'll pick you up in the mornin'. Drove him home, fell asleep at the set of lights up at Mona Vale. Wake up in the police station.

M5: Oh that was the next night.

F7: That was the night I got Tommy … 18 grand in my wallet, 18 grand.

M5: Oh that's right yeah.

F7: Because I had money for everyone else, the whole lot.

N1: (ui)

F7: My pockets. I've got the money for every cunt and we did (…ind…) where I am … yeah but I'm asleep in the police car, unlicensed, at the lights, blind, with 20 grand in my fuckin' pocket, fucken hell, who's … imagine now.

M5: Didn't you climb out the window or something?

F7: Yeah at the police station. I wake up hey, hey, and the coppa says oh mate it's alright, I'll come and see you in a minute.

M5: [Laughs]

F7: Fucken … that Kingy, they couldn't get Kingy out of the police car, he was asleep in the police car.

M5: [Laughs]

F7: I went out the window.

N1: (ui)

F7: Got a taxi, the taxi went right around the corner, you know from the side street at Mona Vale, around on the main road, Pittwater Road, got a flat tyre. (ui)

F7: We had to stop and change the flat tyre and I'm thinkin' they're gonna come and get me, they're gonna … you know they're gonna come and get me.

N1: I collapsed.

F7: Oh fuck.

M5: Were you with 'em?

N1: No I collapsed the following day and I ended up in hospital, F7.

F7: Yeah the next mornin'.

M5: Ahh …

N1: I had a panic attack.

M5: Oh yeah see I was down at the Drug Squad.

F7: You drank from about two in the morning right through, at the morning meeting on the Wednesday then we drank through 'til 2 o'clock the next morning and I was dropping Kingy home. The next day he come to work, he's fucken collapsed at work, it's oh …

M5: [Laughs]

F7: We had a pearla of a couple of days.

4.105 This conversation contains a number of statements by N1 and F7 similar to those made on the earlier recordings. Clearly their recollections of the detail of what occurred during the Operation, as reflected in the recorded conversations are not totally consistent. There are, however, consistent themes in the conversations. Those themes are that:

- money was corruptly taken by the police involved in the Operation;
- an arrangement was arrived at between N1 and Hulme as to how the money was to be shared between Manly Detectives and MCSN;
- there was considerable drinking at the end of the Operation;
- F7 and King were involved in an unusual journey at the conclusion of the Operation;
- a count of the money took place under the Roseville Bridge; and
- the money corruptly taken was later distributed amongst police at MCSN.

THE EVIDENCE OF N1 AND F7

N1

4.106 N1 first gave evidence on 20 November 2001. At that time he claimed to have virtually no recollection of his involvement in Operation Let's Dance. His recollection was limited to recalling that at some point on 5 February 1992 he had been at the bottom of the building in which A1's apartment was located. He claimed not to be able to remember what occurred inside A1's

premises and he had no recollection of going to Manly Police Station. He said he had no recollection that Hulme played any role in the Operation. He also claimed to have no recollection of the recorded conversations. He specifically denied that he had corruptly taken money seized by police during the Operation, that he had come to a corrupt arrangement with Hulme in relation to the sharing of such money between Manly Detectives and MCSN officers, and that with F7 he had assisted in the sharing of money, corruptly taken during the Operation, with officers from MCSN.[721]

4.107 N1 was recalled before the Commission on 30 April 2002. He indicated that since early in 2002 he had been assisting the Commission's investigators with their investigation. N1's recollection, on the second occasion he gave evidence, was considerably better than his recollection on the first occasion and included evidence of corrupt conduct by himself and other officers in relation to the Operation. He conceded that when he had first given evidence to the Commission, he had lied when he indicated that he had almost no recollection of the Operation, when he had denied involvement in the corrupt taking of money, and when he had denied the making of an arrangement with Hulme for the sharing of the money taken between Manly Detectives and officers of MCSN.[722]

4.108 When he gave evidence for the second time, N1's duty book had been located.[723] The entry for 5 February 1992 indicates that during the day he went to the vicinity of A1's premises to make observations. He was called back to duty later that evening.[724] The duty book records that after being called back to duty he went to MCSS for a briefing before going to the vicinity of A1's premises to conduct observations and assist in the execution of the search warrant. He later went to Manly Police Station to assist before going off duty at 8am on 6 February 1992.

4.109 N1 recalled that prior to going off duty on 5 February at 5pm, he had been to A1's premises and carried out observations. He could not remember who telephoned him at home to call him back to duty him, but he did remember receiving a telephone call from O'Toole who asked him to *"look after the interests of the squad"*. He understood that to mean that if there was money found part of it was to be given to the squad.[725]

4.110 N1 could not remember his role in the execution of the search warrant but recalled that Gumley, Nicholson, King and F7 were present and that one of the police officers showed him a bag with bundles of money in it. He believed that he conveyed one or more of the civilians, and the money, from A1's premises to Manly Police Station.[726]

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721 PIC Transcript, N1, 20 November 2001, pp. 1133-1160 and 3 December 2001, pp.1162-1184
722 PIC Transcript, N1, 30 April 2002, pp. 2664,2670
723 PIC Exhibit 365B
724 The duty book records that he was recalled at 7am but this is clearly a mistake and should read 7pm.
725 PIC Transcript, N1, 30 April 2002, p. 2641
726 PIC Transcript, N1, 30 April 2002, pp. 2643-2644

4.111 After arriving at Manly Police Station N1 interviewed A1's partner. He did not have a positive recollection that he saw either Monk or Gilligan at the police station that night, but thought they were there. He did recall that Hulme, King, F7, Kendall and Gumley were present. N1 suggested that the money was initially separated with some put aside to be divided amongst the police, and the rest to be included in the brief. He could not remember who counted the money.[727]

4.112 N1 denied that he was drunk when he first spoke to Hulme.[728] He said that he and Hulme left the station and went for a drink at a bar opposite the Manly wharf near the pedestrian crossings. That was the first drink he had that night. While at the bar he discussed with Hulme how the money was to be divided between Manly Detectives and MCSN officers. Although he recalled having the conversation he could not recall the precise words used. After their conversation Hulme and N1 returned to the police station and N1 was given a sum of money. He was unable to say who gave the money to him or how much money was given to him.[729]

4.113 N1 recalled that after being given the money he travelled to Davidson Park under the Roseville Bridge in the MCSN van. He thought it was daylight, i.e. on the morning of 6 February when he was there. Once there he and Kendall got into the back of the van and divided up the money he had taken from Manly Police Station. He could not recall if anyone else was there with Kendall and himself. When questioned in relation to the listening device conversation of 16 May 2001 N1 had no recollection that F7 was in the back of the van when the money was divided up. He could only recall there being one bag of money involved despite the reference to more than one in the conversation.[730]

4.114 The money was divided in such a way that King and F7 received the largest shares as they had done the interviewing of A1, would prepare the brief, and would have to answer any allegations of impropriety made against the police. N1 took at least $1,000 as his share, as well as money to give to O'Toole and others, although he could not name the others or the amounts that he took for them and O'Toole. He believed that Kendall took money for Smith and others who were on Smith's team although he could not say how much.[731] N1 conceded that there was *"bad blood"* between himself and Kendall.[732]

4.115 N1 recalled that he went to the offices of MCSN some time on the morning of 6 February 1992. He thought it was then that he gave money to O'Toole. He had no recollection of there being a distribution of money by him and F7 in the duty books of other officers at the MCSN although he did not deny that it occurred as discussed in the listening device conversation of 31 October

[727] PIC Transcript, N1, 30 April 2002, pp. 2644-2655
[728] PIC Transcript, N1, 30 April 2002, p. 2692
[729] PIC Transcript, N1, 30 April 2002, pp. 2646-2647
[730] PIC Transcript, N1, 30 April 2002, pp. 2661-2663; PIC Exhibits 163 & 164B
[731] PIC Transcript, N1, 30 April 2002, pp. 2648-2649
[732] PIC Transcript, N1, 30 April 2002, p. 2691

2000.[733] The next day, 7 February 1992, he collapsed at the offices of MCSN, was taken to hospital, and did not ever return to operational police duties.[734]

F7

4.116 F7 first gave evidence in relation to Operation Let's Dance on 16 and 20 November 2001. When questioned F7 claimed he could not really recall the matter because of the passage of time. He indicated however, prior to the playing of any of the recorded conversations, that at the conclusion of the Operation he and King had been drinking at the Steyne Hotel in Manly. King had become so drunk he was unable to drive home so F7, although at the time a disqualified driver, attempted to drive them home. F7 and King had fallen asleep in their car while parked at traffic lights on the corner of Mona Vale Road and Pittwater Road.[735] This was a significant concession given the descriptions of that incident contained in the recorded conversations.

4.117 When the recorded conversations to which he was a party were played to him he denied that he had been involved in corruptly taking money, and that he had been involved in distributing money in officers' duty books on the day after the Operation concluded. He asserted that those parts of the recorded conversations in which he made statements suggesting he and others were involved in corrupt conduct during the course of the Operation were *"drunken embellishments"*, and were said in order to make himself appear to M5, and others, to be a *"bigger man"*.[736]

4.118 F7 was recalled to give further evidence on Wednesday 8 May 2002. He said that on the previous Monday, through his legal representative, he had indicated to Commission investigators that he was prepared to assist them in their investigation.[737] His evidence, after his recall, of his involvement and that of others included evidence of corrupt conduct during the course of Operation Let's Dance and its immediate aftermath. He said that the evidence he had previously given about not corruptly taking money was not true.[738]

4.119 F7 said that he first became aware of the Operation on 4 February 1992 while at the MCSN office when O'Toole mentioned the possibility of doing a job at Manly. Later, he and King were attending to another matter at the Downing Centre Court complex when Hulme contacted King, and they then proceeded to Manly. F7 had a recollection that when they arrived there they spoke to both Monk and Hulme in Hulme's office. Hulme and Monk told them that a security guard had found a large amount of money in a room and that they intended to obtain a search warrant. His recollection was that he and King

[733] PIC Transcript, N1, 30 April 2002, pp. 2660, 2700, 2709-2710; PIC Exhibits 161 & 162B
[734] PIC Transcript, N1, 30 April 2002, pp. 2652-2653
[735] PIC Transcript, F7, 16 November 2001, pp. 1031-1032, 1035; PIC Transcript, F7, 20 November 2001, p. 1086
[736] PIC Transcript, F7, 20 November 2001, pp. 1068-1070
[737] PIC Transcript, F7, 8 May 2002, p. 2871
[738] PIC Transcript, F7, 8 May 2002, p. 2928

were to perform surveillance at the Hotel. F7 said that the conversation with Hulme and Monk occurred late in the morning.[739]

4.120 After he and King went to their homes and changed their clothes they conducted surveillance of the Manly Pacific Hotel. At some point they were told that the search warrant had been executed and they returned to the Manly Police Station. F7 recalled seeing money on Hulme's desk and that at some point Gilligan arrived. He and King remained at Manly Police Station conducting further inquiries in relation to A1 and arranging surveillance for the following day. He did not assist with the execution of the search warrant on P1's premises. He could not recall any specific conversations that day in which the taking of any of the seized money was discussed but he had a clear understanding that not all of the money would be booked up as an exhibit.[740]

4.121 Although his duty book[741] indicates that he went to the Manly Detectives Office at 5.30am on 5 February 1992, F7 had no recollection of doing so. His first recollection was of going to the MCSS and briefing the Surveillance Unit. He had a recollection that St John and King were at the briefing. F7 confirmed entries in his duty book indicating the dispatching of the Surveillance Unit to A1's premises, conferring with O'Toole and Hulme on the phone, and conducting further surveillance of A1's premises. In the afternoon he and King returned to the AHU of the MCSS and briefed N1 and Kendall. That was the first time, as far as F7 knew, that Kendall and N1 had any involvement in the matter. King remained the case officer in the matter.[742] N1 told him that O'Toole had called him and told him to *"look after the interests of the crime squad"*.[743]

4.122 F7 said he had no knowledge of any MCSN officer obtaining entry to A1's premises prior to A1's arrival that evening. He recalled that King, Kendall, Gumley and Nicholson were present at the premises. F7 said he was not present when either the money or drugs were found. His evidence in relation to the finding of the bag containing money was not consistent with the content of the recorded conversation on 18 April 2000.[744] F7 said that Nicholson gave him and King a blue bag containing money. King upended the bag and the money fell on to the bed. King estimated that there was $25,000 in the bag at that point. F7 became aware at some point that night that there had been more money in the bag although he could not say when or how he became so aware. He had no recollection as to who found the drugs in the premises. He had a vague recollection of a conversation with A1 prior to leaving the premises in which he indicated to A1 that if he co-operated then his partner would not be charged. He believed that N1 conveyed the money to Manly Police Station. On the way to Manly Police Station he and

[739] PIC Transcript, F7, 8 May 2002, pp. 2871-2874
[740] PIC Transcript, F7, 8 May 2002, pp. 2872-2878
[741] PIC Exhibit 173B
[742] PIC Transcript, F7, 8 May 2002, pp. 2878-2882
[743] PIC Transcript, F7, 8 May 2002, p. 2888
[744] PIC Exhibits 165 & 166B

King drove with A1 past the Manly Pacific Hotel and P1's premises so that those premises could be mentioned in the interview with A1.[745]

4.123 F7 told the Commission that he and King interviewed A1 and adjusted some of his answers, particularly those in relation to the money found at his premises. They told A1 that if he agreed with what was in the interview, his partner would not be charged.[746]

4.124 F7 confirmed, after having access to his duty book, that these events occurred on the Thursday after the arrest of A1 and not the Monday as suggested in the recorded conversation on 31 October 2000.[747] F7's duty book[748] records him going off duty at 8am on Thursday 6 February 1992 however his recollection was that he might have finished earlier. F7 said that he and N1 drove to a park under the Roseville Bridge in the MCSN's white van. Once there they went into the back of the van and divided a large sum of money. F7 recalled that N1 said he and King should receive the largest share of the money, about $6,500 each, because they had charged A1 and if there were any problems at court they would have to deal with it. N1 then worked out amounts for the other people from MCSN who were involved in the job. His recollection was that N1 mentioned O'Toole and Smith and probably Kendall, Gumley and Nicholson. N1 indicated that one share of the money was to be "*for a drink for the office*." He was given that money, $2000 for Smith and some money to give to the Surveillance Unit. He could not recall how much he was given for the Surveillance Unit. F7 was under the impression they had a total of around $40,000 and that the Manly Detectives also had $40,000 as it had been agreed that the money taken would be split equally between them. He had no direct knowledge that Monk had received money from the Operation.[749]

4.125 F7 had a vague recollection that at some point Kendall arrived at the park while he and N1 were there. He did not believe he spoke to Kendall or that Kendall got into the back of the van. F7 thought Kendall spoke to N1.[750] Prior to giving evidence at the Commission F7 had been interviewed by investigators about this matter. In the interview he was equivocal about whether Kendall was given any money by N1 while they were at the park under the Roseville Bridge.[751]

4.126 After dividing the money he and N1 drove to the MCSN offices, arriving there before any other police arrived. According to F7, N1 decided that the money that had been set aside *"for the office drink"* would be put into the officers' duty books. F7 said that with the exception of a couple of officers they placed money in every duty book that they could find. Money was not placed in the duty books *"... of the people who were on the job"* as they were

[745] PIC Transcript, F7, 8 May 2002, pp. 2882-2889
[746] PIC Transcript, F7, 8 May 2002, pp. 2889-2895
[747] PIC Exhibits 161 & 162B; PIC Transcript, F7, 8 May 2002, p. 2923
[748] PIC Exhibit 173B
[749] PIC Exhibits 163 & 164B, PIC Transcript, F7, 8 May 2002, pp. 2924-2925
[750] PIC Transcript, F7, 8 May 2002, pp. 2895-2900
[751] PIC Exhibit 412C, pp. 5, 45, 48, 52-53

to receive separate payment. N1 determined how much would be placed in each officer's duty book. F7 confirmed that this distribution of money into duty books was the incident discussed in the recorded conversation on 18 April 2000.[752]

4.127 F7 and N1 remained in the office and observed the reactions of the other officers when they opened their duty books. F7 specifically observed Crawford arrive and open her duty book. He noted that she had a look of surprise on her face and then closed the book. After Smith arrived, F7 said that he walked into his office and shook his hand and gave him $2,000 and said words such as, *"Lunch is on us, or Here is lunch"* and walked out of the office. His recollection was that Smith looked at the money and nodded.[753]

4.128 From the MCSN office F7 and N1 went to the Willoughby Hotel and were permitted by the publican to commence drinking prior to opening hours. At the time they went to the Willoughby Hotel F7 had both his share of the money and the share that was to be given to the Surveillance Unit. He and N1 drank there and then went down to the Steyne Hotel in Manly. He recalled that King was with him at the Steyne. He thought that there were interstate police officers having a drink with them and that Crawford was also there.[754]

4.129 When they eventually left King was too drunk to drive so F7, although he was unlicensed and probably also too drunk to drive, attempted to drive them home. They got to about Mona Vale and fell asleep in the car, an unmarked police vehicle. According to F7 he woke up at Mona Vale Police Station and after talking to a police officer there left and caught a taxi home. F7 still had his share of the money in his pocket at the time. The police officer told him that King was asleep in the car. He presumed King also had his share of the money with him. F7 was not charged in relation to this incident.[755]

4.130 F7 went to work on 7 February 1992 and thought he was present when N1 took ill. He took the money he had for the Surveillance Unit with him that day and made arrangements for St John from that Unit to come and collect the money.[756]

AFFECTED PERSONS

4.131 A person against whom, in the Commission's opinion, substantial allegations have been made in the course of, or in connection with, an investigation, is an "affected person" for the purposes of a Report to Parliament by the Commission.[757]

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[752] PIC Exhibits 165C & 166B
[753] PIC Transcript, F7, 8 May 2002, pp. 2900-2911
[754] PIC Transcript, F7, 8 May 2002, pp. 2911-2913
[755] PIC Transcript, F7, 8 May 2002, pp. 2914-2916
[756] PIC Transcript, F7, 8 May 2002, pp. 2901-2902, 2916-2917
[757] Subsection 97(3), *Police Integrity Commission Act 1996*

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

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

b) the taking of action against the person for a specified disciplinary offence,[758]

c) the taking of action (including the making of an order under section 181D of the *Police Act 1990*) against the person as a police officer on specified grounds, with a view to dismissing, dispensing with the services or otherwise terminating the services of the police officer,

d) the taking of reviewable action within the meaning of section 173 of the *Police Act 1990* against the person as a police officer.

4.133 In addition the Commission may form opinions as to whether police misconduct has occurred: subsection 16(1)(a) of the Act.

4.134 The substantial allegations made in this segment are as follows:

- that all police officers from both Manly Detectives and the MCSN who were involved in the arrest of A1 and P1 entered into an agreement to share money corruptly taken during Operation Let's Dance, and that payments were also made to other nominated officers who were not involved in the Operation; and
- that false documentation was deliberately prepared for use in the prosecution of A1 and P1.

4.135 Based on the allegations, the Commission is of the opinion that each of the following is an affected person:

- Adams, Miles Bradley
- Bridges, Stephen Anthony
- Crawford, Vivienne Alexa
- F7
- Gumley, Howard Robert
- Hagan, Michael Arthur
- Hollis, Wayne
- Hulme, Paul

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

- Kendall, Glenn Wayne
- King, James Justin
- Monk, Robert John
- Nicholson, Ian Bruce
- N1
- O'Toole, Dennis Peter
- Smith, Ronald Bruce
- St John, Stephen Anthony

4.136 Each of the abovementioned affected persons gave evidence after a declaration had been made under section 41 of the Act. Therefore pursuant to section 40 of the Act the evidence is not admissible against him or her in subsequent criminal or civil proceedings except for proceedings for an offence against the Act or for contempt under the Act.

MILES BRADLEY ADAMS

4.137 Adams is an affected person because he is the subject of the substantial allegation that all police officers from both Manly Detectives and MCSN who were involved in the arrest of A1 and P1 entered into an agreement to share money corruptly taken during Operation Let's Dance. Adams located the money in the hotel room, took part in the search of P1's premises and assisted in the electronically recorded interview with P1 on the night of 4 February 1992. He appears to have had no other involvement in the matter.

4.138 There is no direct evidence that Adams received any of the money seized during the course of the Operation. There is no evidence that he was shown into the room at the Manly Pacific Hotel before the execution of the search warrant, that he was present at Manly Police Station on 5 February 1992 or during the early hours of 6 February 1992, or that he had any involvement in the matter on that day. No evidence was given by N1, F7 or M7 that raises any concerns about his role in the matter. There is no admissible evidence in relation to Adams that he committed any criminal offence. The Commission is of the opinion therefore that consideration **should not** be given to the prosecution of Adams for any criminal offence.

4.139 Adams was a serving officer when he gave evidence however he left NSW Police on 13 March 2003. Accordingly the question of taking action pursuant to subsections 97(2)(c) and (d) of the Act does not arise.

STEPHEN ANTHONY BRIDGES

4.140 Bridges is an affected person because he is the subject of the substantial allegation that all police officers from both Manly Detectives and MCSN who

were involved in the arrest of A1 and P1 entered into an agreement to share money corruptly taken during Operation Let's Dance.

4.141 There is no evidence that Bridges took, or received, money corruptly taken during Operation Let's Dance, or that he had any knowledge that any money was corruptly taken by police during the course of the Operation. There is no evidence he had any involvement in the Operation on 5 February 1992 or indeed after the search warrant was executed on P1's premises on the afternoon of 4 February 1992. No evidence was given by N1, F7 or M7 that raised any concerns about his role in the matter. The Commission is of the opinion therefore that consideration **should not** be given to the prosecution of Bridges for any criminal offence.

4.142 Bridges is a serving officer so it is necessary to consider the issues raised in subsections 97(2)(c) and (d) of the Act. In doing so the evidence he gave to the Commission may be considered. While it might be thought he would have had a better recollection of the events of 4 February 1992, he was a relatively junior officer at the time, was not in charge of the investigation, had a limited role to play in it, and on the evidence, took no role in it on 5 February 1992. Therefore the Commission is of the opinion that consideration **should not** be given to the taking of action against Bridges under subsections 97(2)(c) or (d) of the Act.

VIVIENNE ALEXA CRAWFORD

4.143 Crawford is an affected person because she is the subject of the substantial allegation that a payment of corruptly obtained money was made to her following Operation Let's Dance. The only directly admissible evidence against her is the evidence of F7 that on the morning after the Operation, some money that had been corruptly obtained was placed in her duty book. F7 also said that he observed her reaction when she found the money and noted it to be one of surprise. The evidence is that she played no role whatsoever in the Operation. There is no evidence she was ever told, or ever had any knowledge of, the source of the money. It is the opinion of the Commission that consideration **should not** be given to the prosecution of Crawford for any criminal offence arising out of the evidence before the Commission.

4.144 Crawford is a serving officer so it is necessary to consider the issues raised in subsections 97(2)(c) and (d) of the Act. In doing so the evidence she gave to the Commission may be considered. While it might be thought that this was a matter that an officer would never forget, if it happened, bearing in mind the length of time that has passed, the fact that Crawford was not involved at all in Operation Let's Dance and was not in the Armed Hold-Up Unit or the Organised Crime Unit, it is at least understandable that she might genuinely not recall that the incident occurred. Her position concerning recollection is considerably different from others who were involved in the Operation. When giving her evidence before the Commission Crawford had the demeanour of someone endeavouring to give truthful evidence. She gave

frank evidence about the nature of the working environment she found herself in during the time she was at MCSN. In light of her sworn denial, and the matters mentioned earlier, the Commission is of the opinion that consideration **should not** be given to the taking of action against Crawford under subsections 97(2)(c) and (d) of the Act.

F7

4.145 F7 is an affected person because he is the subject of the substantial allegations that all police officers from both Manly Detectives and MCSN who were involved in the arrest of A1 and P1 entered into an agreement to share money corruptly taken during Operation Let's Dance, that payments were also made to other nominated officers who were not involved in the Operation, and that false documentation was deliberately prepared for use in the prosecution of A1 and P1.

4.146 The Commission considers that F7 engaged in police misconduct: subsection 16(1)(a) of the Act.

4.147 F7's admissions given in evidence cannot be used against him. The admissible evidence against F7 is the evidence of A1, P1, K2, C2, and N1, F7's admissions contained in the recorded conversations in which he took part, and his duty book entries showing his involvement in the Operation on 4 and 5 February 1992. The evidence is that part of the money found in K2's bag on 5 February 1992 was stolen and that F7 was a party to a joint criminal enterprise that had as its objective the stealing of that money from K2. The admissible evidence against F7 also gives rise to an inference that he was not only party to a conspiracy to pervert the course of justice, (being the preparation of documentation concerning the arrest of A1 and P1 which deliberately understated the amount of cash found at the time of their arrest) but did in fact prepare such documentation with knowledge that it was false. The Commission is of the opinion that the evidence supports consideration being given to the prosecution of F7 for the following criminal offences:

- Steal Money from the Person of K2 under section 94 of the *Crimes Act 1900* on the basis that F7 was party to a joint criminal enterprise which had as its objective the stealing of money from K2;
- Larceny under section 117 of the *Crimes Act 1900* of the money from K2 on the same basis; and
- Conspiracy to Do an Act Intending to Pervert the Course of Justice in breach of sections 319 and 342 of the *Crimes Act 1900*. The conspiracy had as its object the preparation of documentation for use in the prosecution of A1 and P1 that deliberately understated the amount of money that was seized during the course of their respective arrests.

4.148 Following the public hearings in this segment and prior to the completion of this Report, NSW Police forwarded a submission to the ODPP seeking advice as to the sufficiency of evidence to commence criminal proceedings against F7. The ODPP recommended that no criminal proceedings be commenced.

4.149 In the circumstances the Commission is of the opinion that further consideration **should not** be given to the prosecution of F7 for any criminal offences.

4.150 F7 is no longer a serving police officer. Accordingly the question of taking action pursuant to subsections 97(2)(c) and (d) of the Act does not arise.

HOWARD ROBERT GUMLEY

4.151 Gumley is an affected person because he is the subject of the substantial allegation that all police officers from both Manly Detectives and MCSN who were involved in the arrest of A1 and P1 entered into an agreement to share money corruptly taken during Operation Let's Dance. The evidence that is directly admissible against him is that of N1 and F7, A1, K2, C2 and his duty book entries showing his involvement in the Operation on both days, and in particular that he and Nicholson were the first officers from MCSN to join the officers from Manly in the Operation on 4 February 1992.

4.152 There is no direct evidence from either N1 or F7 that they paid any of the corruptly taken money to Gumley, or ever discussed with him the payment of such money. They gave evidence that they understood that Gumley was someone who was to be paid money but their evidence does not support an inference that he actually was paid any money. There is also no direct evidence that he ever received any such money. There is no evidence he found any of the money, conveyed it to Manly Police Station or took part in its counting or securing. He did not provide a statement for the brief of evidence in relation to the arrest of A1 and P1. Although he was at Manly Police Station on the evening of 5 February 1992 and early in the morning of 6 February 1992, he was a relatively junior officer in terms of the investigation.

4.153 The evidence available to the Commission raises a suspicion that Gumley knew about the corrupt conduct that occurred, in particular on the evening of 5 February 1992, and that he might have been involved in it, in that he may have received part of the money corruptly taken. However the admissible evidence in respect of Gumley is such that the Commission is of the opinion that consideration **should not** be given to the prosecution of Gumley for any criminal offence.

4.154 As Gumley is a serving officer it is necessary to consider the issues raised in subsections 97(2)(c) and (d) of the Act. In doing so the evidence Gumley gave to the Commission may be considered. On the evidence he had a significant, although junior role, in the matter. Given the events that occurred at A1's premises and at Manly Police Station, and the notorious nature of the involvement of MCSN officers in the Operation, Gumley's lack of recollection of the events on 4 and 5 February 1992 is hard to accept. However Gumley was a junior officer at the time. He provided evidence to the Commission that due to his involvement, in 1985, as a witness for the prosecution in a matter in which NSW police officers were prosecuted he was

considered by corrupt police officers as a person not to be trusted.[759] This together with Gumley's absolute denial of involvement in the corrupt activities supports the Commission forming the opinion that consideration **should not** be given to the taking of action against Gumley pursuant to subsections 97(2)(c) or (d) of the Act.

MICHAEL ARTHUR HAGAN

4.155 Hagan is an affected person because he is the subject of the substantial allegation that all police officers from both Manly Detectives and MCSN who were involved in the arrest of A1 and P1 entered into an agreement to share money corruptly taken during Operation Let's Dance.

4.156 There is no evidence that Hagan took or received money corruptly taken during the course of the Operation or that he knew of the fact that police under his command took or received any such money. Hagan had the most cursory of supervisory roles in relation to the Operation because although he was in charge of MCSN, the supervisory responsibility for the Operation at MCSN was with O'Toole and Smith. There is no evidence he was aware of any corrupt arrangement arrived at between Manly Detectives and officers of MCSN in relation to the sharing of money taken during the Operation. Therefore the Commission is of the opinion that consideration **should not** be given to the prosecution of Hagan for any criminal offence.

4.157 Hagan is no longer a serving police officer. Accordingly the question of taking action pursuant to subsections 97(2)(c) and (d) of the Act does not arise.

WAYNE HOLLIS

4.158 Hollis is an affected person because he is the subject of the substantial allegation that all police officers from both Manly Detectives and MCSN who were involved in the arrest of A1 and P1 entered into an agreement to share money corruptly taken during Operation Let's Dance.

4.159 While Hollis is commended for voluntarily making himself available as a witness in this matter, the Commission does not accept the account he gave of his conduct, and the events of 4 February 1992, as being a reliable account. There is however no evidence he took or received any money corruptly taken during the course of the Operation or that he had any involvement in the Operation on 5 February 1992. There is no evidence he was aware of any corrupt arrangement entered into between Manly Detectives and MCSN in relation to the sharing of money taken during the course of the Operation. Therefore the Commission is of the opinion that consideration **should not** be given to the prosecution of Hollis for any criminal offence arising out of the matters the subject of this segment of the hearing.

[759] PIC Exhibits 813, 814

4.160 Hollis is no longer a serving police officer. Accordingly the question of taking action pursuant to subsections 97(2)(c) and (d) of the Act does not arise.

PAUL HULME

4.161 Hulme is an affected person because he is the subject of the substantial allegations that all police officers from both Manly Detectives and MCSN who were involved in the arrest of A1 and P1 entered into an agreement to share money corruptly taken during Operation Let's Dance, and that false documentation was deliberately prepared for use in the prosecution of A1 and P1.

4.162 The Commission considers that Hulme engaged in police misconduct: subsection 16(1)(a) of the Act.

4.163 The admissible evidence against Hulme is the evidence of N1 and F7 together with the evidence of M7. The recorded conversations would not be admissible in criminal proceedings against him because he is not a party to them. The evidence of N1 and F7 suggests Hulme was central to the arrangement arrived at between officers from Manly Detectives and MCSN by which money was corruptly taken from P1 and A1 and shared. The evidence of M7 that when he first phoned Hulme on 4 February 1992 he referred to the fact that he had located a bag with money in it in the hotel room supports the evidence of N1 and F7 about Hulme's early knowledge of the money and his involvement in the corrupt arrangement. In addition M7's evidence of a conversation with Hulme in which Hulme impliedly suggested that money had been corruptly taken, and the further conversation in which Hulme stated that Manly Detectives wanted to take M7 out to lunch as a consequence of the referral of the matter to them, adds weight to the evidence against Hulme.

4.164 In relation to the second allegation it is acknowledged that Hulme did not himself prepare any documentation for use in the prosecution of A1 and P1. However by reason of his position as Chief of Manly Detectives, his role in the Operation over both days, and the evidence of N1 that it was with Hulme that the arrangement was made concerning the sharing of the money taken during both arrests, there is some evidence available to establish that Hulme knew about the preparation of such false documentation.

4.165 While the evidence raises a strong suspicion that Hulme was involved in the corrupt conduct that took place during this Operation, if not one of the instigators of it, the admissible evidence is such that the Commission is of the opinion that consideration **should not** be given to the prosecution of Hulme any criminal offence in relation to this matter.

4.166 At the time he gave evidence Hulme was a serving officer however he was medically discharged from NSW Police on 2 January 2004. Accordingly the

question of taking action pursuant to subsections 97(2)(c) and (d) of the Act does not arise.

GLENN WAYNE KENDALL

4.167 Kendall is an affected person because he is the subject of the substantial allegation that all police officers from both Manly Detectives and MCSN who were involved in the arrest of A1 and P1 entered into an agreement to share money corruptly taken during Operation Let's Dance.

4.168 The Commission considers that Kendall engaged in police misconduct: subsection 16(1)(a) of the Act.

4.169 The evidence directly admissible against Kendall includes the evidence of N1 and F7, the entry in Kendall's duty book for 5 February 1992 which details his role in being called back to duty and collecting N1 early that evening, his presence at the search of A1's premises, and his role in the counting and securing of the money seized at A1's premises.

4.170 F7's evidence about the role Kendall played in the Operation was equivocal when he was interviewed prior to giving evidence (see paragraph 4.125).[760] In evidence F7 said that he thought Kendall arrived at the park under the Roseville Bridge after him and N1, and that Kendall had a conversation with N1. F7 said he did not get out of the van or speak to Kendall. He did not think Kendall stayed there very long and did not have a recollection of N1 giving Kendall anything.[761]

4.171 N1's evidence differed from F7's in some aspects. N1 said that he travelled to the park under the Roseville Bridge and once there divided the money. He said that Kendall was with him although he could not remember travelling to the park with Kendall and could not remember any of the conversation he had with Kendall while there. He said Kendall took a portion of the money to be divided as he saw fit. N1 could not remember F7 being in the van with him when he divided the money.[762] N1 also gave evidence of there being *"bad blood"* between himself and Kendall.[763]

4.172 Kendall did not deny that the entry in his duty book for 5 February 1992 was correct or that he took part in the search of A1's premises. However he had little independent memory of the events and could not recall being involved in or seeing the count of money at Manly Police Station. N1's evidence confirmed the entry in Kendall's duty book that he was present at the police station when the money was counted however neither N1's evidence nor the duty book entry implicates Kendall in any illegal conduct.

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[760] PIC Exhibit 412C
[761] PIC Transcript, F7, 8 May 2002, pp. 2898-2899
[762] PIC Transcript, N1, 30 April 2002, pp. 2648-2649, 2661, 2696
[763] PIC Transcript, N1, 30 April 2002, p. 2691

4.173 The Commission is therefore of the opinion that the available evidence is such that consideration **should not** be given to the prosecution of Kendall for any criminal offence arising out of this matter.

4.174 At the time he gave evidence Kendall was a serving officer however he was medically discharged from NSW Police on 7 May 2004. Accordingly the question of taking action pursuant to subsections 97(2)(c) and (d) of the Act does not arise.

JAMES JUSTIN KING

4.175 King is an affected person because he is the subject of the substantial allegations that all police officers from both Manly Detectives and MCSN who were involved in the arrest of A1 and P1 entered into an agreement to share money corruptly taken during Operation Let's Dance, and that false documentation was deliberately prepared for use in the prosecution of A1 and P1.

4.176 The Commission considers that King engaged in police misconduct: subsection 16(1)(a) of the Act.

4.177 The admissible evidence against King consists of the evidence of P1, A1, K2, C2 and M7, the entries in King's duty book for 4 and 5 February 1992, King's statement made in the matter on 10 February 1992, the statement of facts he prepared in relation to the arrest of A1, and the evidence of N1 and F7. The evidence of A1, P1, K2, C2 and M7, although not mentioning King specifically, would be admissible against him if a prosecution was brought on the basis that he was party to a relevant joint criminal enterprise or conspiracy. The Commission is of the opinion that the evidence supports consideration being given to the prosecution of King for the following criminal offences:

- Steal Money from the Person of K2 under section 94 of the *Crimes Act 1900* on the basis that King was party to a joint criminal enterprise which had as its objective the stealing of money from K2;
- Larceny under section 117 of the *Crimes Act 1900* of the money from K2 on the same basis; and
- Conspiracy to Do an Act Intending to Pervert the Course of Justice in breach of sections 319 and 342 of the *Crimes Act 1900*. The conspiracy had as its object the preparation of documentation for use in the prosecution of A1 and P1 that deliberately understated the amount of money that was seized during the course of their respective arrests. In King's case, he prepared such documentation. The available evidence from F7 and N1 clearly supports the allegation he did so with knowledge that it was false.

4.178 Following the public hearings in this segment and prior to the completion of this Report, NSW Police gave consideration to the preparation of a brief of

evidence against King. However after N1 and F7 indicated that they were not prepared give evidence in criminal proceedings against King it was determined that there was insufficient evidence to prepare a brief against him.

4.179 In the circumstances the Commission is of the opinion that further consideration **should not** be given to the prosecution of King for any criminal offences.

4.180 King is no longer a serving police officer. Accordingly the question of taking action pursuant to subsections 97(2)(c) and (d) of the Act does not arise.

ROBERT JOHN MONK

4.181 Monk is an affected person because he is the subject of the substantial allegations that all police officers from both Manly Detectives and MCSN who were involved in the arrest of A1 and P1 entered into an agreement to share money corruptly taken during Operation Let's Dance, and that false documentation was deliberately prepared for use in the prosecution of A1 and P1.

4.182 The Commission considers that Monk engaged in police misconduct: subsection 16(1)(a) of the Act.

4.183 The admissible evidence against Monk consists of the evidence of A1 and P1, which supports a finding that there was more money in the bag seized by police on 4 February 1992 than revealed in the police documentation. The evidence of M7 is also admissible against Monk in relation to Monk entering the room when he first went to the Manly Pacific Hotel prior to obtaining a warrant and Monk's dealings with M7 in relation to the preparation of M7's statement. M7's evidence of a "thank you" lunch some time after the arrest of A1 and P1 adds some weight to his other evidence. It is acknowledged however that the evidence of A1 and P1 and the evidence of M7 was at times equivocal and open to interpretation.

4.184 Neither N1 nor F7 gave direct evidence of the payment of money to Monk or of any conversation had with him in which he acknowledged that he or others had corruptly taken or received money as a result of the arrest of A1 or P1. The only evidence of F7 admissible against Monk is that when F7 and King first went to Manly Police Station on 4 February 1992 they met with both Hulme and Monk and were told of the fact that money had been found at the Manly Pacific Hotel, well before Monk applied for a search warrant. This evidence assumes significance in considering the position of Monk, as it confirms the effect of M7's evidence that Monk, from a very early point in the day, was aware of the money in the room and did not reveal that fact to the issuing justice when he applied for the search warrant.

4.185 Other significant evidence against Monk includes his overall involvement in the arrest of P1, as the principal detective at Manly in charge of his arrest, and

the preparation of his statement for use in the prosecution of P1. The evidence contained on the listening device material is not admissible against Monk in criminal proceedings because he is not a party to the conversations.

4.186 While the evidence available to the Commission raises a strong suspicion that Monk was involved in the corrupt conduct that occurred, in particular in relation to the events of 4 February 1992, and that he received part of the money corruptly taken, the admissible evidence in respect of Monk is such that the Commission is of the opinion that consideration **should not** be given to the prosecution of Monk for any criminal offence.

4.187 Monk is a serving officer so it is necessary to consider the issues raised in subsections 97(2)(c) and (d) of the Act. In doing so the evidence he gave to the Commission may be considered. Monk's asserted lack of recollection as to the events surrounding the conduct of Operation Let's Dance and the specific conduct of other officers during the Operation is difficult to accept as genuine. This Operation, even without the corrupt conduct by the police and despite the length of time since the actual events, was from the point of view of Manly Detectives, a very significant Operation. The admissible evidence against Monk as set out above, although not strong enough to support criminal charges, reflects adversely on Monk's competence, integrity, performance and conduct as a police officer and the Commission is of the opinion that it supports consideration being given to the taking of action against him pursuant to subsections 97(2)(c) or (d) of the Act.

4.188 NSW Police suspended Monk from duty with pay on 13 August 2002 pending a decision by the NSW Police Internal Review Panel as to the most appropriate course of action to be taken against him. The types of action under consideration ranged from removal from NSW Police, to transfer to different duties, or no formal action.

4.189 On 24 January 2003 Deputy Commissioner (Operations), Mr Madden, agreed that Monk should be allowed to return to duty. He returned to duty on 10 March 2003 and relocated to a different local area command. NSW Police recommended he be subject to reviewable or non-reviewable action pursuant to section 173 of the *Police Act 1990*. A decision was made by his Commander to take non-reviewable action against him, pursuant to subsection 173(1) of the *Police Act 1990*.

4.190 In the circumstances the Commission is of the opinion that further consideration **should not** be given to the taking of action against Monk pursuant to subsections 97(2)(c) or (d) of the Act.

N1

4.191 N1 is an affected person because he is the subject of the substantial allegations that all police officers from both Manly Detectives and MCSN who were involved in the arrest of A1 and P1 entered into an agreement to share money corruptly taken during Operation Let's Dance and that false

documentation was deliberately prepared for use in the prosecution of A1 and P1. The admissible evidence against N1 consists of the evidence of A1, P1, K2 and C2 which suggests that there was more money seized from A1's premises than revealed by the police, the duty book entries of N1 and his involvement in the Operation on 5 February 1992 and the admissions made by him in the recorded conversations contained on the listening device material. The admissions he made in evidence at the Commission are not admissible against him.

4.192 The Commission considers that N1 engaged in police misconduct: subsection 16(1)(a) of the Act.

4.193 There is evidence, including the listening device material, that in respect of the money taken from K2, there was an agreement or understanding between a number of the officers who attended A1's premises on 5 February 1992, that money would be stolen from K2, that N1 was a party to that agreement or understanding, and was present when the money was stolen. The evidence also suggests that there was a conspiracy amongst some of the police involved in the arrest of P1 and A1 to do an act with intent to pervert the course of justice. The inference is available that a number of the police involved agreed that documents that would be produced in the prosecution of P1 and A1 would understate the amount of money found by the police upon the arrest of those persons. Although he did not himself provide or prepare a document to be used in the prosecution of A1 or P1, N1's activities on the night of 5 February 1992, his duty book entries, and the statement of facts prepared in relation to the arrest of A1, suggest that N1 at least knew of the arrangement or was party to it. The Commission is of the opinion that the evidence supports consideration being given to the prosecution of N1 for the following criminal offences:

- Steal Money from the Person of K2 under section 94 of the *Crimes Act 1900* on the basis that N1 was party to a joint criminal enterprise which had as its objective the stealing of money from K2;
- Larceny under section 117 of the *Crimes Act 1900* of the money from K2 on the same basis; and
- Conspiracy to Do an Act Intending to Pervert the Course of Justice in breach of sections 319 and 342 of the *Crimes Act 1900*. The conspiracy had as its object the preparation of documentation for use in the prosecution of A1 and P1 that deliberately understated the amount of money that was seized during the course of their respective arrests.

4.194 Following the public hearings in this segment and prior to the completion of this Report, NSW Police forwarded a submission to the ODPP seeking advice as to the sufficiency of evidence to commence criminal proceedings against N1. The ODPP recommended that no criminal proceedings be commenced.

4.195 In the circumstances the Commission is of the opinion that further consideration **should not** be given to the prosecution of N1 for any criminal offences.

4.196 N1 is no longer a serving police officer. Accordingly the question of taking action pursuant to subsections 97(2)(c) and (d) of the Act does not arise.

IAN BRUCE NICHOLSON

4.197 Nicholson is an affected person because he is the subject of the substantial allegations that all police officers from both Manly Detectives and MCSN who were involved in the arrest of A1 and P1 entered into an agreement to share money corruptly taken during Operation Let's Dance, and that false documentation was deliberately prepared for use in the prosecution of A1 and P1. The evidence directly admissible against Nicholson is that of A1, K2, C2, his duty book entries and his statement made on 2 March 1992, and the evidence of N1 and F7.

4.198 The duty book entries of Nicholson and Smith reveal that Nicholson was the senior officer first sent from MCSN by Smith to assist Manly Detectives on 4 February 1992, after Smith had received the telephone call from Hulme. Nicholson played a significant part in the Operation on 4 and 5 February 1992. He was the first police officer to locate K2's bag with the money in it and to bring it to King and F7's attention. Nicholson was present at Manly Police Station late on the evening of 5 February 1992 and in the early morning of 6 February 1992.

4.199 There is no direct evidence that Nicholson took money from that seized by police on 4 and 5 February 1992 or that he was paid money by either N1 or F7, or that the arrangement arrived at between N1 and Hulme was ever discussed with him. N1's and F7's evidence was that they understood all those involved in the Operation were to receive money and Nicholson was someone they understood received money. However they did not give evidence that he actually received any money. Although the admissible evidence establishes that he was the most senior officer from MCSN who first attended at Manly Police Station, there is no suggestion that at any time he was the officer giving instructions to officers of MCSN in relation to their conduct, with the possible exception of Gumley.

4.200 The available evidence gives rise to a suspicion that Nicholson must have been aware of the corrupt conduct that occurred and may well have been party to it. On the admissible evidence, however, the Commission is of the opinion that consideration **should not** be given for the prosecution of Nicholson for any criminal offence.

4.201 Nicholson is no longer a serving police officer. Accordingly the question of taking action pursuant to subsections 97(2)(c) and (d) of the Act does not arise.

DENNIS PETER O'TOOLE

4.202 O'Toole is an affected person because he is the subject of the substantial allegations that all police officers from both Manly Detectives and MCSN

who were involved in the arrest of A1 and P1 entered into an agreement to share money corruptly taken during Operation Let's Dance, and that false documentation was deliberately prepared for use in the prosecution of A1 and P1.

4.203 The Commission considers that O'Toole engaged in police misconduct: subsection 16(1)(a) of the Act.

4.204 The admissible evidence against O'Toole consists of the evidence of A1, P1, K2, C2 and M7, his entries in his duty book indicating his involvement in the Operation, and in particular his attendance at Manly Police Station on 4 February 1992, his contact with Hulme and King over both days and the evidence of N1 and F7. The recorded conversations are not admissible against O'Toole because he was not a party to the conversations. While the evidence of A1, P1, K2, C2 and M7 did not directly mention O'Toole it would be admissible against him if there was a prosecution which alleged a relevant joint criminal enterprise or conspiracy.

4.205 The Commission is of the opinion that the evidence supports consideration being given to the prosecution of O'Toole for the offences of:

- Steal Money from the Person of K2 pursuant to section 94 of the *Crimes Act 1900* on the basis that O'Toole was an accessory before the fact;
- Larceny under section 117 of the *Crimes Act 1900* on the same basis; and
- Conspiracy to Do an Act Intending to Pervert the Course of Justice under sections 319 and 342 of the *Crimes Act 1900*, the act being the deliberate preparation of false documentation to be used in the prosecution of A1 and P1. Although there is no evidence O'Toole prepared any such document, there is sufficient evidence concerning his role in the Operation to support a conclusion that he was a party to that conspiracy.

4.206 Following the public hearings in this segment and prior to the completion of this Report, NSW Police gave consideration to the preparation of a brief of evidence against O'Toole. It was determined however that there was insufficient evidence to prepare a brief against him.

4.207 In the circumstances the Commission is of the opinion that further consideration **should not** be given to the prosecution of O'Toole for any criminal offences.

4.208 O'Toole is no longer a serving police officer. Accordingly the question of taking action pursuant to subsections 97(2)(c) and (d) of the Act does not arise.

RONALD BRUCE SMITH

4.209 Smith is an affected person because he is the subject of the substantial allegation that all police officers from both Manly Detectives and MCSN who were involved in the arrest of A1 and P1 entered into an agreement to share money corruptly taken during Operation Let's Dance.

4.210 The Commission considers that Smith engaged in police misconduct: subsection 16(1)(a) of the Act.

4.211 The admissible evidence against Smith consists of the evidence of A1, P1, K2, C2 and M7, Smith's duty book entries for 4 and 5 February 1992, and the evidence of N1 and F7. While the evidence of A1, P1, K2, C2 and M7 did not directly mention Smith, where a prosecution was brought on the basis that he was a party to a relevant joint criminal enterprise or a conspiracy the evidence might be admissible against him. The recorded listening device conversations are not admissible against him because he was not a party to the conversations.

4.212 While the entry in Smith's duty book concerning his initial contact from Hulme is particularly suspicious with the reference to armed hold-up suspects, the evidence concerning his involvement is not sufficient to justify the laying of a charge in relation to the stealing of the money from P1. Given Smith's limited involvement in the matter on 5 February 1992 and the lack of admissible evidence the Commission is of the opinion that consideration **should not** be given to the prosecution of Smith for the offence of conspiracy to pervert the course of justice.

4.213 The Commission is of the opinion that the evidence of F7 concerning the payment to Smith of $2,000 supports consideration being given to the prosecution of Smith for the offence of Receiving under section 188 of the *Crimes Act 1900.* The money paid to Smith by F7 was stolen from K2. That stealing was an offence under section 94 of the *Crimes Act 1900*, and therefore amounted to a serious indictable offence under section 4 of the *Crimes Act 1900* as required by section 188.

4.214 Following the public hearings in this segment and prior to the completion of this Report, NSW Police gave consideration to the preparation of a brief of evidence against Smith. It was decided that there was insufficient evidence to prepare a brief against Smith for any criminal offences.

4.215 In the circumstances the Commission is of the opinion that further consideration **should not** be given to the prosecution of Smith of any criminal offences.

4.216 Smith was a serving officer when he gave evidence. He was suspended with pay on 13 August 2002. Following the public hearings in this segment and prior to the completion of this Report, NSW Police assessed the matter and

decided to take no further action in relation to Smith. Smith was subsequently granted medical discharge from NSW Police from 5 September 2003. He was not reinstated to duty prior to his medical discharge. His last day of service was 5 September 2003. Accordingly the question of taking action pursuant to subsections 97(2)(c) and (d) of the Act is no longer applicable to him.

STEPHEN ANTHONY ST JOHN

4.217 St John is an affected person because he is the subject of the substantial allegation that all police officers who were involved in the arrest of A1 and P1 entered into an agreement to share money corruptly taken during Operation Let's Dance and that payments were also made to other nominated officers who were not involved in the Operation.

4.218 The admissible evidence against St John is the evidence of F7 as to the arrangements for the making of a payment to him to distribute some of the money taken from K2 on 5 February 1992 to members of the Surveillance Unit who had been involved in the Operation. F7's evidence was that the idea to pay money to the Surveillance Unit was raised by N1 after the money had in fact been taken and the shares were being calculated. F7 said that prior to N1 raising the matter there was no discussion with St John, or anyone else from the Surveillance Unit, about them sharing in the money. There is no evidence that St John was a party to the joint criminal enterprise that had as its objective the stealing of money from K2. There is no evidence he was a party to the conspiracy to pervert the course of justice. There is no evidence that St John actually collected or received the money F7 said was allocated to the Surveillance Unit and left for collection at the offices of MCSN. In all of these circumstances the Commission is of the opinion that consideration **should not** be given to the prosecution of St John for any criminal offence.

4.219 St John is no longer a serving police officer. Accordingly the question of taking action pursuant to subsections 97(2)(c) and (d) of the Act does not arise.

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INTRODUCTION

5.1 This segment of Operation Florida focused on the creation of documentation by members of the former Drug Enforcement Agency of NSW Police, (DEA), which detailed assistance said to be have been provided by certain offenders to police. The purpose of such documents was to provide information to a sentencing judge that could be taken into account in sentencing an offender with the expectation that the offender would receive a reduced sentence.

5.2 The hearing commenced on 8 April 2002 and continued over seven hearing days, the last being 29 April 2002. Fourteen witnesses gave evidence.

5.3 The Scope and Purpose of the segment was:[764]

> Firstly to investigate allegations of misconduct during the period 1 January 1990 to 1 January 1995 by certain members of the former Drug Enforcement Agency of New South Wales Police Service, known as the DEA, in relation to the creation of documents to be tendered in sentencing proceedings which detailed assistance provided by offenders to law enforcement authorities and, secondly, allegations of other misconduct by members of the former DEA mentioned above.

5.4 The practice, in sentence proceedings, of tendering documents that detail assistance given by offenders with a view to having the sentence reduced or discounted, is a long standing practice in criminal law, now enshrined in section 23 of the *Crimes (Sentencing Procedure) Act 1999*. The practice is of benefit to both offenders and law enforcement authorities. The offender has an incentive to cooperate with police and provide useful information if the sentence he or she receives is substantially discounted as a consequence of the assistance provided.

5.5 Some of the evidence given during this segment touched on evidence given in another segment of Operation Florida, the Let's Dance segment. Some witnesses who gave evidence in that segment were recalled to give further evidence in this segment. The Let's Dance segment is discussed in detail in Chapter 4.

5.6 In addition to allegations of police misconduct in relation to "letters of assistance", evidence was also adduced, in this segment, about allegations of other misconduct by members of the DEA, including stealing money from an offender and involvement in drug dealing.

THE WITNESSES

5.7 There were three groups of witnesses in this segment. The first group comprised the police officers who had participated in the alleged misconduct - former Detective Senior Sergeant Guy Wilding and former Detective Senior

[764] PIC Transcript, 8 April 2002, p. 2206

Constable Michael Kempnich. The civilian witnesses made up the second group. This group comprised P4 and P6, a brother and sister for whom letters of assistance had been written, and C6, F3, F4, and W8 who were friends and associates of P4. P4's solicitor Graeme Newman and his barrister Gezinus Van Der Vlag also gave evidence. The third group were the police witnesses who were not the subject of allegations of misconduct. They were former Detective Superintendent Robert Lysaught, Superintendent Geoffrey Owens, Detective Chief Inspector Mark Brett and former Detective Senior Sergeant Ian Kennedy.

MICHAEL SCOTT KEMPNICH

5.8 Kempnich joined NSW Police in August 1979 and resigned in April 1997. By 1991 he had achieved the rank of Detective Senior Constable. Like Wilding, he joined the DEA at its inception. Kempnich and Wilding were partners at the time of the events examined in this segment. They worked together for a period of approximately 12 months.

5.9 Kempnich gave evidence on 18 April 2002. He denied all allegations made against him.

GUY JOHN WILDING

5.10 Wilding joined NSW Police in 1977 and left in January 1998. He ceased actual duties in late 1996 / early 1997. At the time he ceased duties he had attained the rank of Detective Senior Sergeant. In June 1991 he was a Detective Sergeant attached to the DEA. He was a supervisor but also performed duties himself. He had worked in drug law enforcement for some time, having commenced working with the DEA when it started in late 1989 / early 1990.

5.11 Wilding gave evidence over two days, 8 and 18 April 2002. He denied all allegations made against him.

THE ALLEGATIONS

5.12 Four central allegations made by the witness P4 were the focus of this segment. The allegations were:

- That when P4's premises were searched on 28 June 1991 by police from the DEA including Kempnich and Wilding, money was stolen by the police;
- That, in return for money paid by P4 to Kempnich and Wilding, false documentation concerning assistance said to have been provided by P4 to NSW Police was provided to a judge in the Sydney District Court on 23 October 1992 during the sentencing of P4 for a drug offence;
- That, in return for money paid by P4 to Kempnich and Wilding, false documentation concerning assistance said to have been provided by

P4's sister, P6, to NSW Police was provided on 4 December 1992 to a judge in the Victorian County Court during the sentencing of P6 for a drug offence; and

- That around March 1993 Wilding and Kempnich were involved in seizing a quantity of LSD tablets from F3, and providing those tablets to P4 to sell and thereafter account to Wilding and Kempnich for the proceeds of sale.

5.13 The hearing also examined the procedures in place at the relevant time for the preparation and endorsement of letters of assistance. Following the completion of the evidence NSW Police provided submissions to the Commission detailing improved procedures for the creation and cross-checking of such documents. Those procedures are discussed in Chapter 11.

THE ARREST OF P4 ON 28 JUNE 1991

5.14 P4 was arrested during the early hours of 28 June 1991 while staying at his then girlfriend's (V4), premises in Sydney's eastern suburbs. The two police officers in charge of the arrest were Wilding, and Kempnich. According to the statement of facts[765] and Wilding's statement[766] concerning the arrest, the police found ecstasy tablets, cocaine, cannabis leaf and some LSD at those premises. After his arrest P4 was conveyed to his premises in one of Sydney's northern suburbs and a search of those premises was conducted. The documentation suggests that Wilding and Kempnich were present during both the search of V4's premises and the search of P4's premises. According to Wilding's statement the search of P4's premises produced a *"negative result"*.

5.15 Wilding's statement indicates that after the search of P4's premises, P4 was taken to a local police station, interviewed and charged. The typed interview between P4 and Wilding,[767] with Kempnich present as the typist, records that P4 was asked a series of questions concerning the drugs that had been found at V4's premises. P4 is recorded as making a number of admissions in relation to his ownership and intended use of those substances. He was also asked questions in relation to the search of his premises but was not asked to confirm the *"negative result"* of the search of his premises nor any other aspect of what occurred during the search of his premises.

5.16 P4 was originally charged with the following offences arising out of this arrest:[768]

- Supply prohibited drug (Deemed) Ecstasy
- Supply prohibited drug (Deemed) Cocaine
- Supply prohibited drug (Deemed) LSD

[765] PIC Exhibit 293B
[766] PIC Exhibit 294B
[767] PIC Exhibit 295B
[768] PIC Exhibit 296C

- Possess prohibited drug (Cannabis Leaf)
- Possess prohibited drug (Cocaine)
- Possess prohibited drug (LSD)

5.17 P4 gave evidence before the Commission on 8 and 9 April 2002. His recollection of the events of 28 June 1991 was that there were about seven or eight police present at the time of the search of V4's premises. He could not recall the names of all the police officers but did recall that it was Wilding and Kempnich who conveyed him to his premises following the search of V4's premises. He had a recollection that there was another officer also involved in the search of his premises although he was unable to name that officer.[769]

5.18 P4 said that the police found money while searching his premises. His recollection was that the money was found in a jacket pocket in a cupboard in his bedroom. He wasn't sure of the exact amount but thought it was around $7,000 - $8,000. He had a vague recollection that he had told the police the money was from the sale of drugs.[770] He was not given a receipt for the money that was found and did not receive the money back.[771] He was not charged in relation to the possession of the money and did not make a formal complaint about the conduct of Wilding and Kempnich. P4's recollection was that, with the possible exception of V4, he did not tell anyone about the fact that the money was taken.[772]

5.19 Gezinus Van Der Vlag, gave evidence before the Commission on 9 April 2002. He is a practising barrister and was so in June 1991. He was retained by Graeme Newman, solicitor, to act for P4 in relation to the charges arising out of P4's arrest on 28 June 1991. He made his file available to the Commission after P4 had waived legal professional privilege. The file included notes of conferences conducted with P4, and in particular a note of an early conference that, according to Van Der Vlag, was conducted on either 12 or 22 July 1991, i.e. less than one month after the arrest of P4 by Wilding and Kempnich.[773] The file note and the evidence of Van Der Vlag suggests that Newman was also present at the conference.[774]

5.20 The file note[775] indicates that there were two amounts of money taken, one of $4,000 and the other of $7,000 and that the money was "*under bed*". After reading the file note Van Der Vlag gave evidence concerning what he was able to recall being told by P4 during the conference. He said he had no independent recollection of the events until he reread the file note. He did recall having discussions about the possibility of P4 taking legal proceedings

[769] PIC Transcript, P4, 8 April 2002, pp. 2259-2262
[770] PIC Transcript, P4, 8 April 2002, pp. 2260-2262
[771] PIC Transcript, P4, 8 April 2002, p. 2294
[772] PIC Transcript, P4, 8 April 2002, p. 2264
[773] PIC Exhibit 318B
[774] PIC Transcript, G Van Der Vlag, 9 April 2002, pp. 2321-2323
[775] PIC Exhibit 318B

against the people involved, identified in the file note as Wilding and Kempnich, but that P4 instructed him to do nothing about that issue.[776]

5.21 While the amounts stipulated in the file note, and the location of the money, are different from that given by P4 in evidence before the Commission, the fact that P4 made an early complaint of such conduct to his lawyers and instructed them to take no action in relation to it, is a significant factor in assessing the credibility of the allegation made by P4 concerning the corrupt taking of money by Kempnich and Wilding from his premises on 28 June 1991.

5.22 Newman, P4's solicitor at the time, gave evidence before the Commission on 10 April 2002. He confirmed that during a conference with Van Der Vlag, P4 alleged that the police had taken money from him. He could specifically remember P4 saying that *"... they weren't nice fellows and they'd taken money and/or drugs from him"*. He clarified this by saying that he could remember P4 saying that money had been taken but wasn't sure if P4 said that drugs were taken as well. Newman was not able to recall whether P4 had indicated where the money had been taken from other than to say it was from his flat during the police search.[777]

5.23 V4, P4's girlfriend at the time, was not available to give evidence before the Commission. However she had previously provided the NSW Crime Commission with a statement as to her recollection of the relevant events.[778] In the statement she described an incident *"around 1990"* where police came to search her premises. This appears to be the incident on 28 June 1991. According to V4 after the search of her premises she and P4 were taken by the police to P4's premises. She described one of the detectives as being *"... in his late 30s to early 40s, caucasian, he had a slight build. His name was Guy. One of the other detectives was also blonde haired and had a solid build, caucasian. They were both from Manly. I can't recall the third detective"*.[779]

5.24 Her recollection of what occurred while at P4's premises is in the following terms:[780]

> I sat in the lounge room while they made a search of the house. I think P4 was also in the loungeroom as well. They searched the unit and I think they found some LSD in P4's bedroom. I think they also found some money it was either twelve thousand or twenty thousand. I know it had a one and a two in it. I'm not sure whether there was two or three detectives there at the time. I remember I was near the bedroom, I think I was walking up the hall to see what was going on. I saw P4 and the detectives in P4's bedroom. I saw a large amount of money, in notes, on P4's bed. And I think I recall one of the detective's, the one named Guy, put the majority of the money in his jeans pocket. …

[776] PIC Transcript, G Van Der Vlag, 9 April 2002, p. 2324
[777] PIC Transcript, GS Newman, 10 April 2002, p. 2338
[778] PIC Exhibit 311C
[779] PIC Exhibit 311C, p. 2
[780] PIC Exhibit 311C, p. 3

> I can't remember whether they took P4 away that night but I know I had a conversation with P4 that night about what had happened. I said to P4, "What happened, what did they find?" He said, "They took some LSD and some money." I asked, "Are you going to be alright?" He responded, "I don't know".

5.25 While there are differences between V4's recollection of events and the evidence given by P4 to the Commission, V4's recollection provides further evidence that in fact money was corruptly taken by Wilding and Kempnich when P4's premises were searched on 28 June 1991.

5.26 Wilding's evidence was that the first time he met P4 was when he arrested him on 28 June 1991. Wilding agreed that he prepared the statement of facts concerning that arrest.[781] He was unable to recall how it was that police came to go to V4's premises on that date apart from the fact that the statement of facts indicated that it was as a result of information obtained *"following a Police undercover investigation"*. Wilding had no recollection of the arrest and searches, independent of what was contained in the statement of facts and his statement from the brief.[782]

5.27 When asked whether police took anything from P4's premises he said that as the statement records there was a *"negative result"* nothing would have been taken.[783] He could not offer an explanation as to why no question was asked in the record of interview as to what had occurred during the execution of the search warrant at P4's premises.[784] When asked if he denied being involved in corruptly taking money from P4's premises on 28 June 1991 Wilding said, *"I totally deny taking any money from P4 at all"*.[785]

5.28 Kempnich was examined about the contents of the statement he made on 29 June 1991 concerning the events of 28 June 1991.[786] He had a very limited recollection of the events concerning the searches and arrest although he could remember that he smashed the door of V4's premises to gain entry.[787] He also said that he had no recollection of having gone to P4's premises on 28 June 1991 but conceded that he probably did go there.[788]

P4 SENTENCED FOR THE OFFENCE OF SUPPLY PROHIBITED DRUG

5.29 On 7 September 1992 P4 appeared for sentencing before a judge of the District Court after pleading guilty to one count of supply prohibited drug. The material tendered before the sentencing judge included the statement of facts prepared by Wilding on 8 November 1991,[789] Wilding's statement of 29

[781] PIC Exhibit 293B
[782] PIC Exhibit 294B; PIC Transcript, GJ Wilding, 8 April 2002, p. 2216
[783] PIC Transcript, GJ Wilding, 8 April 2002, p. 2218
[784] PIC Transcript, GJ Wilding, 8 April 2002, p. 2222
[785] PIC Transcript, GJ Wilding, 18 April 2002, p. 2477
[786] PIC Exhibit 542B
[787] PIC Transcript, MS Kempnich, 18 April 2002, p. 2532
[788] PIC Transcript, MS Kempnich, 18 April 2002, p. 2535
[789] PIC Exhibit 293B

June 1991[790] and the record of interview conducted with P4 on 28 June 1991.[791] Pursuant to a Form 2,[792] P4 requested that the sentencing judge take into account a further four offences at the time of his sentence, three relating to the possession of drugs on 28 June 1991 and one relating to possession of a small quantity of cannabis resin on 29 July 1992. The Form 2 was signed by both P4 and Wilding.

5.30 The Crown closed its case in relation to the sentence on 7 September 1992. There was no evidence indicating that P4 had provided any assistance to the police. It appears from a reading of the transcript of the proceedings[793] that the only reason the matter did not conclude on that day was that during cross-examination of P4 by the Crown as to where P4 had obtained the money to buy the drugs that had been seized, P4 had made admissions of supply offences that were not the subject of charges. In the light of such admissions the judge considered that it was appropriate to obtain a pre- sentence report and adjourned the proceedings until 23 October 1992 to permit such a report to be prepared. There is no reference in the transcript of the proceedings on 7 September 1992 or the judge's associate's note of the proceedings,[794] to indicate the court was also waiting on a document that set out the assistance said to have been provided to the police by P4.

5.31 It does appear, however, that the prospect of such a letter being available had been raised with P4's legal advisors, Wilding, and the Crown's representative at the hearing on 7 September 1992, either on that day or earlier. A letter from Van Der Vlag to Newman of 7 September 1992 reporting on what had occurred stated:[795]

> It is also expected that the Police will be in a position to tender a sealed envelope in relation to [P4] on the next return of this matter. I confirm that I was informed by Ms. Walker and Mr. Wilding of the police, subsequent to the commencement of the hearing, that the said letter was not available at the hearing.

5.32 The transcript of proceedings on 23 October 1992 is not available nor are the remarks on sentence of the sentencing judge. The judge's associate's note[796] indicates that Van Der Vlag appeared for P4 and Bullivant (Solicitor) appeared for the Crown. His Honour deferred imposing sentence and ordered that P4 enter into a good behaviour recognisance for a period of three years subject to the supervision of the Probation and Parole Service and certain other conditions.

5.33 Bullivant made a statement on 11 April 2002 for the purposes of the Commission's hearing.[797] Annexed to the statement is a copy of a note

[790] PIC Exhibit 294B
[791] PIC Exhibit 295B
[792] PIC Exhibit 303B
[793] PIC Exhibit 309C
[794] PIC Exhibit 310C
[795] PIC Exhibit 319C
[796] PIC Exhibit 310C
[797] PIC Exhibit 352B

Bullivant made of the proceedings on 23 October 1992. The relevant part of the note is as follows:

> hands up doc't from Det Wilding (on reading it contains information of extensive assistance given to Police with arrests in 10 matters (of substance) and more to come (Doc't sealed and put on record).

5.34 According to Bullivant's statement he *"... did not read the letter of assistance but would have written my notes in relation to what Detective Wilding and the judge would have said"*.[798] Wilding's duty book entry for that day indicated that he attended the court on the day of the sentence.[799]

THE ASSISTANCE DOCUMENTS PROVIDED TO THE JUDGE AT P4'S SENTENCE

5.35 On 23 October 1992 the judge who sentenced P4 was provided with two documents referring to the assistance P4 was said to have given to NSW Police. The first was a letter addressed to the Presiding Judge, Sydney District Court, dated 22 October 1992 from the Commander of Task Force Five of the Drug Enforcement Agency, Detective Superintendent Robert Lysaught.[800] The substance of the letter was as follows:

> Following the arrest of the person [P4] in relation to the matters for which he is now before the Court he indicated his willingness to supply information and assist Police in relation to other matters.
>
> He subsequently supplied considerable information to Police, which resulted in a number of arrests and seizures of various illicit drugs. The full details of these arrests and seizures are set out in the attached report of Detective Sergeant Wilding and Detective Kempnich.
>
> The information is forwarded for your consideration when sentencing the prisoner [P4].

5.36 The second document provided to the sentencing judge was a seven page report signed by Wilding and Kempnich, addressed to the Commander Drug Enforcement Agency Task Force Five, and dated 22 October 1992.[801] The letter was made up of 11 numbered paragraphs. Paragraphs one and two contained the following:

> 1. The prisoner is a registered informant with the Drug Enforcement Agency. He is known to the Commander of Task Force Five, Detective Superintendent Lysaught, Detective Sergeant Wilding and Detective Senior Constable Kempnich.
>
> 2. Following his arrest, the prisoner indicated to the arresting Police his willingness to supply information. The prisoner voluntarily supplied information which has been instrumental in the following drug seizures and arrests …

5.37 The remainder of the document provided particulars of persons arrested and drugs seized in which it was said information supplied by P4 had been

[798] PIC Exhibit 352B, paragraph 7
[799] PIC Exhibit 345B
[800] PIC Exhibit 297B
[801] PIC Exhibit 298B

"instrumental". Numbered paragraphs three to ten of the letter followed what might be described as a "pro forma" approach in that they each stated the following:

> On [stated date] Police from the Drug Enforcement Agency, executed a Search Warrant on premises at [stated premises]. Police located [type and quantity of drugs stated]. The following person was arrested and charged [offender named].

5.38 Those paragraphs each detailed the type and quantity of prohibited drug that had been seized by the police and the street value of the drug concerned. The highest street value particularised in those paragraphs was $6,000.[802] Each of those paragraphs described what was said to be a seizure and arrest by police from the DEA.

5.39 Paragraph 11 of the letter, the last paragraph, was worded differently. The substance of it reads as follows:[803]

> Further to this, the prisoner supplied information that was instrumental in the arrest of [P1] and [A1]. [P1] was arrested and charged following the seizure of 33,000 Ecstasy tablets and $86,000.00 in cash at the Manly Pacific Hotel on Tuesday 4 February 1992. [A1] was arrested the following day and charged in relation to the Ecstasy tablets and cash.

5.40 The paragraph then particularised the charges and quantity of prohibited drugs and cash seized. The 33,000 ecstasy tablets were said to have a street value of $1,650,000. In contrast to the previous paragraphs, paragraph 11 did not state which police had effected the arrests and seizures referred to. This is surprising, not only because of the approach taken in the earlier paragraphs, but also because it is clear from the stipulated quantities and street values of the prohibited drugs referred to in the document, that the arrests referred to in paragraph 11 were far more significant than the other arrests detailed in the document.

5.41 The Commission also heard evidence from Detective Chief Inspector Brett and former police officer Ian Kennedy who were the two senior sergeants working at Task Force Five at the time. Both said that it would be normal to expect a letter of assistance to contain reference to the names of the arresting police and / or the operation name.[804]

5.42 The evidence before the Commission establishes that P1 was arrested by Manly Detectives, and A1 was arrested by officers of the Major Crime Squad North. It also establishes that the arrests of A1 and P1 and the seizure of drugs did not come about as a result of information provided to them by P4, P6 or the DEA. That evidence is referred to in more detail below.[805]

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802 PIC Exhibit 298B, p. 3, paragraph 5
803 PIC Exhibit 298B, p. 6, paragraph 11
804 PIC Transcript, MC Brett, 19 April 2002, p. 2597; IM Kennedy 29 April 2002, p. 2626
805 See paragraphs 5.85-5.89

P4'S EVIDENCE CONCERNING THE ASSISTANCE DOCUMENTS

5.43 P4 said that sometime after his arrest on 28 June 1991, possibly a week later, he telephoned either Wilding or Kempnich to discuss his situation and arranged to meet them for coffee in Military Road Cremorne. Both Kempnich and Wilding attended. At the meeting P4 asked if he could get some assistance in relation to the matters he had been charged with. Either Wilding or Kempnich, he couldn't remember which, raised the topic of money being exchanged for their assistance in getting a lighter sentence. It was arranged that P4 would pay approximately $12,000 to $15,000 for Wilding and or Kempnich to hand up a letter to the judge that would assist him in his sentence. P4 told the Commission that about a week and a half after this meeting he attended Wilding's home and gave him an envelope containing the money.[806]

5.44 P4 gave evidence that he had difficulty in reading[807] and that he had not had an opportunity to have the letter of assistance read to him prior to, or at the time of, his sentencing. His difficulty in reading was confirmed in the file notes of Van Der Vlag.[808] P4 said that at the time of his sentencing he was not aware of the contents of the letter of assistance provided for him. He had only become aware of its contents in recent times.[809]

5.45 P4 confirmed that after his arrest on 28 June 1991 he did provide information to Wilding on a number of occasions over the period between his arrest and sentence.[810] During his evidence before the Commission P4 was taken through the contents of the letter of assistance provided for him[811] on 23 October 1992, and asked whether he had provided information to police concerning the offenders named in that letter.[812]

5.46 In relation to paragraph three and the person F5, P4 said that he had not directly provided information to police. At the time of his arrest he had been in possession, however, of a key and a map given to him by F5 and he had been told that if anything happened to F5, he could go to the garage and *"... get money or whatever he had in the garage"*. He believed the map had the address and the garage number on it.[813]

5.47 In relation to paragraph four and the person C7, P4 confirmed that he had provided information to Wilding concerning the drug activities of that person. In relation to paragraph five and the person F6, P4 confirmed that he had given information concerning that person's drug activities to Wilding or Kempnich. P4 said he did not know the person, R3, referred to in paragraph six, but had heard his name. He denied that he had given information concerning that person to police. In relation to paragraph seven and the

[806] PIC Transcript, P4, 8 April 2002, pp. 2264-2267
[807] PIC Transcript, P4, 8 April 2002, p. 2260
[808] PIC Exhibit 318B
[809] PIC Transcript, P4, 8 April 2002, p. 2269
[810] PIC Transcript, P4, 8 April 2002, p. 2267
[811] PIC Exhibit 298B
[812] PIC Transcript, P4, 8 April 2002, pp. 2268-2277
[813] PIC Transcript, P4, 8 April 2002, pp. 2270-2271

person A3, P4 said that he knew that person at the relevant time, that he was the brother of A1 and that he used drugs. P4 stated that he did not provide information to police concerning A3. In relation to paragraph eight and the person G6, P4 said that it was possible he knew that person under a different name. He said he did not supply information to police concerning the person D7 referred to in paragraph nine. In relation to paragraph ten and the person C8, P4 gave evidence that he did not know that person in the second half of 1991, being the time at which C8 was said to have been arrested, and did not at that time have any information concerning that person.[814]

5.48 In relation to paragraph 11 and the persons A1 and P1, P4 said that prior to 4 February 1992 he knew P1, had possibly met him on a couple of occasions and knew P1 was a friend of A1's. In 1991/92 P4 had known A1 for about a year in connection with the supply of drugs. He had a recollection that A1 had told him if he needed any drugs, being ecstasy, while A1 was away P4 could call P1. P4 also recalled A1 mentioning the Manly Pacific Hotel. He could not recall if he spoke to P1 following the discussion with A1. Significantly, P4 denied providing any information to any police officer about the fact that A1 and / or P1 was involved in the supply of drugs prior to 4 February 1992, being the date of the arrest of A1 and P1.[815]

5.49 There are inconsistencies between P4's evidence and the earlier accounts he gave to the NSW Crime Commission concerning what might be called the mechanics of the means by which his letter of assistance was obtained. However, in relation to the contents of the document in so far as it suggested he provided information to police that was instrumental to the arrest of A1 and P1, his denial that he did provide that information is completely confirmed by the evidence adduced from the independent police sources. The Commission accepts the evidence of P4 in relation to the letter of assistance and therefore concludes that the documentation placed before the sentencing judge in relation to P4's "assistance" was false and was deliberately so in fulfilment of a corrupt agreement arrived at between P4 and Wilding and Kempnich to pervert the course of justice.

THE ARREST OF P6 IN VICTORIA

5.50 P6 is the sister of P4. On 12 December 1991 P6 was arrested and charged by Victorian police in relation to drug offences.[816] She pleaded guilty to those offences on 4 December 1992 and was sentenced in the Victorian County Court on 7 December 1992. The remarks on sentence include the following:[817]

> There is another matter relevant to sentencing in this case, to which I should refer. I have received into evidence the correspondence from one Lysacht [sic] and a handwritten statement of certain relevant evidence. There are reasons of public policy for me not elaborating or referring in detail to the contents of those documents. All that I need say, is that I have

[814] PIC Transcript, P4, 8 April 2002, pp. 2271-2275
[815] PIC Transcript, P4, 8 April 2002, pp. 2275-2277
[816] PIC Exhibit 327B
[817] PIC Exhibit 314B

> taken the contents of those documents very much into account and as a result, the sentence I pass today has been significantly reduced from what it would otherwise have been.

5.51 P6 received a sentence of two years imprisonment, 18 months of which was suspended, resulting in her spending only six months in custody.

THE ASSISTANCE DOCUMENTS PROVIDED TO THE JUDGE AT P6'S SENTENCE

5.52 The documentation before the sentencing judge concerning P6's sentence, consisted of two documents, one under the hand of Lysaught and another under the hand of Wilding. The document signed by Lysaught was dated 3 December 1992 and addressed to the Presiding Judge, Melbourne County Court.[818] It contained the following:

> The attached report of Detective Sergeant WILDING sets out the assistance rendered to the New South Wales Police Service by the prisoner [P6].
>
> [P6] supplied the information to Police with a view to any results being brought to the notice of the sentencing judge for the matter she is now before the court for. …
>
> Perhaps these matters could be taken into account when she is sentenced.

5.53 The second document before the sentencing judge in relation to P6 was Wilding's report, which was referred to in the Lysaught document and dated 1 December 1992. In contrast to the report concerning P4, Kempnich's signature does not appear on this document, nor does it assert that P6 was known to Lysaught. The document contains the following:[819]

> The prisoner [P6] is known to Detective Sergeant Guy John WILDING of Task Force Five of the Drug Enforcement Agency, New South Wales Police Service.
>
> Following her arrest the prisoner in January and February 1992 voluntarily supplied information that was instrumental in the following major drug seizure and arrests. The informant has not received any payment for this information and has now indicated her desire that the presiding judge at her sentencing be made aware of the assistance she has rendered Police.
>
> 1. The prisoner supplied information to Police which supported intelligence already obtained from other sources in relation to an organised ecstasy distribution ring. She later supplied additional information that led directly to the arrests of [P1] and [A1] and the seizure of a large commercial quantity of ecstasy tablets.
>
>   [P1] was arrested and charged following the seizure of 33,000 ecstasy tablets and $86,000.00 in cash at the Manly Pacific Hotel on Tuesday 4 February 1992. [A1] was arrested the following day and charged in relation to the ecstasy tablets and cash.

5.54 The above document is in similar terms to the document prepared in relation to P4, in so far as it concerned the arrest of A1 and P1.[820] It particularised the

[818] PIC Exhibit 299B
[819] PIC Exhibit 300B
[820] See description at paragraphs 5.35-5.40

charges, quantity and street value of the drugs seized. It did not indicate which police had arrested P1 and A1. The arrest of A1 and P1 was, however, the only arrest and seizure referred to in the letter of assistance for P6.

5.55 P4 gave evidence concerning his role in the preparation of the documentation used in the sentence of P6. P6 contacted him shortly after her arrest in December 1991 and P4 made an arrangement to meet with Wilding and Kempnich. He was not certain whether both attended the meeting but thought it might have been both of them.[821] At that meeting he asked whether they could assist his sister and was told that they would get back to him. One of them later contacted him and another meeting was arranged. Again P4 was not sure whether both Kempnich and Wilding attended the meeting or whether only one of them attended.[822] His recollection of what occurred at that meeting was as follows:[823]

> I think – they said that they would be able to hand up a letter to the judge for my sister. I think - I'm not sure – and we discussed the amount of about $30,000.

5.56 P4 said that he obtained the money by selling drugs and then made arrangements to meet with both Kempnich and Wilding. He subsequently met both of them in a car he believed was Wilding's car, and gave them an envelope containing $30,000. He recalled that during the discussion they said a letter would be handed up to the judge when his sister appeared in court.[824]

5.57 P4 said that at the time of his dealings with Kempnich and Wilding concerning P6's sentence he did not have contact with P6 concerning those dealings. It was some time later that he spoke to his sister and she told him that a letter had been handed up.[825]

5.58 As with the evidence relating to his own letter of assistance there are inconsistencies between P4's evidence and the account he gave to the NSW Crime Commission about the procedure by which P6's letter of assistance was obtained. However the fact that neither P6 nor P4, provided any information leading to the arrest of A1 and P1 is confirmed by evidence adduced from independent police sources.[826]

P6'S EVIDENCE CONCERNING THE ASSISTANCE DOCUMENTS PROVIDED TO HER SENTENCING JUDGE

5.59 P6 told the Commission that she first became aware in late November 1992, about a week before she was to appear for sentence, that NSW Police might provide a document to assist her. She received a call from P4 who told her it would assist her case to fax a portion of the hand up brief concerning her offences to a particular Sydney number. The number he gave her was not

821 PIC Transcript, P4, 8 April 2002, p. 2279
822 PIC Transcript, P4, 8 April 2002, pp. 2277-2279
823 PIC Transcript, P4, 8 April 2002, p. 2280
824 PIC Transcript, P4, 8 April 2002, pp. 2286-2287
825 PIC Transcript, P4, 8 April 2002, p. 2288
826 See paragraphs 5.85-5.89

P4's number. P4 told her that a fax would arrive the morning of her court case to help her. P6 then faxed about ten pages of the brief to the number P4 had given to her. She telephoned the number she had been given by P4 after she sent the fax and spoke to someone but could not remember to whom she had spoken or what was discussed.[827]

5.60 On the day P6 appeared for sentence she was shown the document and she read it. She could not recall who showed her the document but believed it may have been her lawyer. P6 said that she had never met Wilding although she may have spoken to him on the telephone on the occasion that she faxed material to the Sydney number. She denied supplying any information to any NSW police officer in January and February 1992. She said she had never met P1 or A1 and had no information concerning them in January and February 1992. P6 also said that when her lawyers, at the time of her sentencing proceedings, asked her if the contents of the document were true she told them they were as P4 had instructed her to say; *"If any lawyer, solicitor, policeman, anyone asked me, I was to say it was true"*.[828]

5.61 While in prison P6 contacted P4 to obtain the phone number for the police officer who had provided the documentation as she had lost the number. She then telephoned the police officer and thanked him for the letter. She knew at some point that his name was *"Guy W"*. P6 told the Commission that after she was released from prison P4 told her the documents had cost $30,000.[829]

5.62 The evidence from independent police sources is powerful confirmatory evidence to support P6's evidence to the Commission that she did not supply any information concerning A1 or P1 that led to their arrest and the seizure of significant quantities of drugs. P6 was an impressive witness when giving her account. Although she has a criminal past she had no outstanding charges at the time of giving her evidence. She was asked to explain why she initially stated to the NSW Crime Commission that the contents of her letter of assistance were true. She said that P4 had told her to always say that if questioned. It is the Commission's assessment that P6's explanation is plausible, and her conduct at the time of her sentence and when giving evidence to both the NSW Crime Commission and this Commission is consistent with that explanation.

5.63 The Commission accepts the evidence of P6, together with the evidence of P4, that the submission of the documents concerning the so-called assistance by P6 to her sentencing judge was corrupt conduct by Wilding and Kempnich pursuant to a conspiracy to pervert the course of justice.

[827] PIC Transcript, P6, 9 April 2002, pp. 2300-2302
[828] PIC Transcript, P6, 9 April 2002, pp. 2303-2307
[829] PIC Transcript, P6, 9 April 2002, pp. 2308-2310

LYSAUGHT'S EVIDENCE CONCERNING THE ASSISTANCE DOCUMENTS

5.64 Lysaught gave evidence to the Commission on 17 April 2002. During the time that he was the Commander of Task Force Five of the Drug Enforcement Agency, the Task Force was involved in some operations that were conducted jointly with the NSW Crime Commission and some that were not. In relation to the provision of documents detailing the assistance an offender had provided to police, the procedure to be adopted in terms of the preparation and checking of the document varied depending upon whether or not the offender was connected with an operation involving the Crime Commission or one that was not. If the operation involved the Crime Commission that Commission would provide the document and the Task Force would provide the information. If the offender was connected with an operation that did not involve the Crime Commission, the documentation was prepared by the relevant Task Force officer who would either bring it to the Commander or send it through the chain of command to the Commander. The Commander would have some inquiries made in relation to the information contained in the documentation, would put a forwarding letter on it and in most instances give the documentation back to the case officer to provide to the relevant Crown Prosecutor. In some instances the covering letter was drafted by the officer submitting the assistance documents to the Commander, ready for the Commander's signature.[830]

5.65 The evidence given by Lysaught suggests that the checks that he would generally have done were limited to confirming that the arrests particularised in the assistance document did in fact occur and whether or not the person concerned was in fact a registered informant. The checking would often be with the officer who had prepared the document. There was no central repository of assistance documents and there was no means of checking what had been included in an earlier letter relating to another person. In cross examination Lysaught stated that although he did make the checks as detailed above he accepted Wilding's word that the information contained in the letters was correct. He said he *"... had no reason to doubt what Wilding was telling me"*.[831] He also said that he did not recall any of the arrests referred to in P4's document of assistance.[832]

5.66 Lysaught confirmed that it was his signature on the covering letter[833] although he had no recollection of signing the document. He believed from the format of the letter that it had been presented to him for signature and not prepared by him. He also gave evidence that he did not know the person P4 and was quite definite that if the assistance document[834] had contained the assertion that P4 was known to him, he would not have permitted it to leave the office in that form. The evidence he gave in that respect does raise the possibility that the document that was provided to him to approve was altered

[830] PIC Transcript, RJ Lysaught, 17 April 2002, p. 2375
[831] PIC Transcript, RJ Lysaught, 17 April 2002, pp. 2377-2378, 2407, 2411
[832] PIC Transcript, RJ Lysaught, 17 April 2002, pp. 2385-2387
[833] PIC Exhibit 297B
[834] PIC Exhibit 298B

after his approval. There is however no evidence to support such an assertion apart from the statement by Lysaught that he would not have permitted the document to leave the office containing the assertion that P4 was known to him.[835]

5.67 Lysaught identified his signature on the covering letter for the assistance document concerning P6.[836] He agreed that it was an unusual occurrence to prepare a document detailing assistance given by an offender for use in interstate sentencing proceedings and that there would not have been many other occasions, if any, where he signed a covering letter in relation to such a document.[837]

5.68 Lysaught said that he could not recall the person P6, he had not met her, he had no recollection of the assistance documentation concerning her, and had no recollection of any discussion with Wilding or Kempnich concerning P6. He had a recollection, which he believed related to the matter concerning P6, that he had arranged for inquiries to be made to determine if the system of using assistance documents in NSW was in use in Victoria.[838] In later questioning he indicated that he assumed that the inquiries related to this matter but had no actual recollection that they did.[839]

5.69 The evidence establishes that the preparation of the assistance documentation concerning P6 was unusual for a number of reasons. It was to be used in sentencing proceedings in the Victorian County Court, and not in a NSW Court. It related to the sister of an informant of Task Force Five, P4, who had been sentenced a month and a half earlier in a NSW Court for drug offences. It referred to a substantial non-Drug Enforcement Agency arrest and seizure of drugs that was also referred to in the assistance documentation provided to the judge who sentenced P4. Taking into account these unusual aspects it is hard to accept Lysaught's almost complete lack of recollection of the circumstances concerning the production of the assistance documentation for P6. This is despite making an allowance for the fact that the events occurred almost 10 years prior to Lysaught giving evidence, that there is no evidence that he personally prepared the assistance documentation for either P4 or P6, and the number of matters with which he was no doubt required to attend as the Commander of Task Force Five. That said, there is no evidence before the Commission suggesting improper or criminal conduct by Lysaught in relation to the creation of the assistance documentation for P4 and P6.

WILDING'S RELATIONSHIP WITH LYSAUGHT

5.70 Lysaught's recollection was that Wilding commenced at Task Force Five sometime shortly after the Task Force was established around the beginning of 1990. He may have met Wilding prior to him joining Task Force Five but

[835] PIC Transcript, RJ Lysaught, 17 April 2002, pp. 2383-2385
[836] PIC Exhibit 299B
[837] PIC Transcript, RJ Lysaught, 17 April 2002, p. 2391
[838] PIC Transcript, RJ Lysaught, 17 April 2002, pp. 2392-2393
[839] PIC Transcript, RJ Lysaught, 17 April 2002, p. 2403

could not remember any operation involving him prior to that time. He had not worked with Kempnich prior to him joining Task Force Five in 1990.[840]

5.71 As the senior sergeants, Brett and Kennedy supervised the operations carried out by the Task Force. A senior sergeant was allocated to each operation and the sergeants involved in that operation reported to the senior sergeant.[841] Neither Brett nor Kennedy had any recollection of having been involved in the preparation of the assistance documentation concerning P4 and P6 and there is no evidence that they were involved, or that they had any dealings with either of those persons at the relevant time. They both, however, gave evidence concerning the nature of the relationship between Lysaught and Wilding when they worked at Task Force Five.

5.72 Brett said that Wilding appeared to have a *"special relationship"* with Lysaught and was able to circumvent the chain of command within the task force. He said Wilding appeared to have *"... a pipeline straight to Mr Lysaught"*. This undermined the position of the senior sergeants within the task force. Brett was sufficiently concerned about the matter at the time to have discussed it with Kennedy. He did not however have any recollection of having had concerns about Wilding by-passing him in relation to the preparation of a document of assistance to be used for an offender.[842]

5.73 Kennedy's evidence confirmed Brett's evidence that Wilding had a direct access to Lysaught that other sergeants at the Task Force did not enjoy. He had been sufficiently concerned about this, and its effect of undermining the chain of command, to have raised it with Lysaught on a number of occasions. Kennedy's view was that Wilding's direct access to Lysaught came about because of Lysaught's *"hands on"* approach and the heavy workload that Wilding had at that time.[843]

5.74 Brett said that while at the Task Force Wilding and Kempnich worked together frequently, socialised together and were "buddies". Initially they were seen as inseparable and ultimately a decision was taken by management at the Task Force to separate them. They were seen as an effective team but according to Brett, *"Kempnich wasn't very good without Wilding"*. The main reason for the separation was that Wilding and Kempnich were both experienced officers and were both needed to work with more junior staff.[844]

5.75 Kennedy confirmed that Wilding and Kempnich worked together regularly and were friends. He did not recall any decision to separate them.[845]

[840] PIC Transcript, RJ Lysaught, 17 April 2002, pp. 2380-2381
[841] PIC Transcript, MC Brett, 19 April 2002, p. 2588
[842] PIC Transcript, MC Brett, 19 April 2002, pp. 2592-2595
[843] PIC Transcript, IM Kennedy, 29 April 2002, pp. 2623-2624
[844] PIC Transcript, MC Brett, 19 April 2002, pp. 2600-2601
[845] PIC Transcript, IM Kennedy, 29 April 2002, p. 2625

WILDING'S AND KEMPNICH'S EVIDENCE - PREPARATION OF ASSISTANCE DOCUMENTS

5.76 Wilding said that after P4's arrest on 28 June 1991 he worked with P4 as an informant for a period of time and, on occasions, P4 provided him with useful information.[846] Wilding had no doubt that his signature appeared on the document detailing the supposed assistance provided by P4 although he had doubts as to whether he had typed the document because his name was typed as *"G J Wilding"* and his practice was to sign his name as *"G Wilding"*.[847] He recognised the signature of Kempnich on the document. He could not recall anything about the circumstances surrounding the preparation or signing of the document. He could not remember whether he, or Kempnich, had introduced P4 to Lysaught.[848]

5.77 In terms of the content of the document of assistance concerning P4, Wilding said that the only arrest he had any recollection of was that concerning the person G6 referred to in paragraph eight of the letter. His recollection was limited to the address shown in the paragraph, as the address was across the road from a friend's place and he could remember *"... doing a job across the road from the friend's place"*. Otherwise he had no recollection of the arrest.[849]

5.78 Wilding had no recollection of being involved in the arrest of A1 and P1 and agreed that, given its significance, he would remember it if he had been so involved. He could not remember how he heard of their arrest and had no recollection of P4 telling him anything that was instrumental in the arrest of A1 and P1. In addition he had no recollection of providing the document concerning P4 to Lysaught.[850]

5.79 In relation to P6, Wilding said that he could not remember when or if he came to know that she had been arrested on drug charges in late 1991. He said he could not remember whether P4 had a sister.[851]

5.80 In relation to the document of assistance concerning P6, Wilding agreed that it contained his signature, but said he could not recall signing the letter.[852] The typed version of his name appeared on this document as *"G Wilding"*. If Wilding's evidence concerning the typed version of his name on the document concerning P4 is accepted, it is open to infer that not only did he sign the document but he prepared it as well.[853] In fact Wilding told the Commission, on the second occasion he gave evidence, that he thought he had typed the document.[854] He claimed he could not remember if he had met P6 at the time he signed the document, and said that it was possible he had

[846] PIC Transcript, GJ Wilding, 8 April 2002, p. 2226
[847] PIC Transcript, GJ Wilding, 8 April 2002, p. 2229
[848] PIC Transcript, GJ Wilding, 8 April 2002, pp. 2231-2232
[849] PIC Transcript, GJ Wilding, 8 April 2002, pp. 2232-2237
[850] PIC Transcript, GJ Wilding, 8 April 2002, pp. 2238-2240
[851] PIC Transcript, GJ Wilding, 8 April 2002, p. 2242
[852] PIC Transcript, GJ Wilding, 8 April 2002, p. 2243
[853] See paragraph 5.76
[854] PIC Transcript, GJ Wilding, 18 April 2002, p. 2474

spoken to her on the phone, although he had no recollection of having done so. He had no memory of P6 providing any information concerning A1 and P1, or of being told by some other person that she had. He could not remember how he came to hear that P6 required a document, detailing her supposed assistance, for use in sentence proceedings in Victoria, or forwarding the document to Victoria.[855] He conceded that the circumstances concerning the signing of the document of assistance for P6 and its use in interstate proceedings were unique.[856] Wilding denied being paid money for the document.[857]

5.81 The circumstances in which the assistance documents for P6 were signed were unique. They were for use in interstate proceedings for the sister of an informant for whom Wilding had principal responsibility at the DEA. P6's sentencing was for drug offences and was less than two months after the sentencing of P4 for similar offences. Given these circumstances the Commission does not accept that Wilding would have no recollection of how he came to sign the assistance document or of his role in the creation of it.

5.82 Kempnich ultimately agreed that the assistance document concerning P4 did contain his signature although he said that he did not prepare the document and did not know who did. He had not introduced P4 to Lysaught and could not recall Wilding telling him that he had introduced P4 to Lysaught.[858] He suggested that paragraph 11 might have been added to the letter after he signed it, as he had no recollection concerning the arrests of A1 and P1.[859] There is no other evidence to support his suggestion that the document was altered after he signed it. The only two persons who were in a position to alter it after he signed it were Wilding and Lysaught. There is no evidence that either did.

5.83 Kempnich had no recollection of having previously been informed of P6's arrest in Victoria on drug charges. He claimed never to have seen the document detailing the so-called assistance provided by P6 (prior to being shown it at the Commission). He had no recollection of any discussion with Wilding about the fact that P6 had been arrested in Victoria.[860]

5.84 Given the evidence of the closeness between Kempnich and Wilding when they worked at Task Force Five, the connection between Kempnich and P4, and the fact that Kempnich's signature is on the assistance documentation concerning P4 the Commission does not accept that Kempnich has no recollection of P6, her sentencing or of her letter of assistance.

[855] PIC Transcript, GJ Wilding, 8 April 2002, pp. 2244-2246
[856] PIC Transcript, GJ Wilding, 18 April 2002, p. 2475
[857] PIC Transcript, GJ Wilding, 8 April 2002, p. 2247
[858] PIC Transcript, MS Kempnich, 18 April 2002, pp. 2542-2544
[859] PIC Transcript, MS Kempnich, 18 April 2002, p. 2561
[860] PIC Transcript, MS Kempnich, 18 April 2002, pp. 2545-2546

THE EVIDENCE CONCERNING THE ARREST OF A1 AND P1

5.85 The Commission relied upon the evidence given in the Let's Dance segment by the witnesses listed below in considering how the Manly Detectives and the MSCN came to be involved in the arrests of A1 and P1. The legal representatives of Wilding and Kempnich were given the opportunity to have those witnesses recalled but neither took advantage of that opportunity. With the exception of Monk, none of the witnesses mentioned below were called to give further evidence.

- Robert John Monk
- Miles Bradley Adams
- M7
- Paul Hulme
- Steven Anthony Bridges

5.86 Monk told the Commission that after the arrest of P1 and the finding of the large quantity of cash at the Manly Pacific Hotel room and the 33,000 ecstasy tablets at P1's premises, he contacted the DEA because of the large quantity of drugs involved. He could not recall to whom he spoke but said that the DEA advised that they were aware of a large quantity of ecstasy being in Sydney at the time and had an operation going in relation to the main suspects. Monk could not remember the details he had given them but said that it was not the name of A1 or P1 but details P1 had given him about where the ecstasy was being held or coming from.[861]

5.87 Monk gave some further evidence concerning contact with police from the DEA in relation to A1 and P1 that suggests how it was that police from that agency obtained full details of the nature of the arrests of A1 and P1. He said that on the day after he had contacted the DEA two young detectives were sent from that agency to speak with him. He gave them a photocopy of the notes he had taken of his interviews with P1. Monk said he did not hear from the DEA in relation to this matter again.[862]

5.88 While there are variations in the evidence as to the precise roles the police took in the arrests of P1 and A1, there is conclusive evidence that P1 and A1 first came to the notice of police on 4 February 1992 when they were staying at the Manly Pacific Hotel and M7, who was in charge of security at the Hotel, contacted Hulme, who was in charge of Manly Detectives. Subsequently Hulme contacted Smith at MCSN and officers from that squad became involved. The details of the arrests are set out in the Let's Dance Chapter of this Report (Chapter 4) and will not be repeated here.

5.89 The evidence before the Commission positively establishes that neither P4 nor P6 provided any information to Manly Detectives that was "instrumental"

[861] PIC Transcript, RJ Monk, 10 April 2002, pp. 2361-2362
[862] PIC Transcript, RJ Monk, 10 April 2002, p. 2362

in the arrest of A1 or P1, in the seizure of the cash and drugs from the hotel room, or the large quantity of ecstasy found at P1's premises. This evidence establishes that the documents detailing the supposed assistance to police by P4 and P6, in so far as that assistance was said to have had any influence on the arrest of P1 and A1, and the seizure of large quantities of drugs and cash associated with them, were objectively false.

THE ALLEGATIONS CONCERNING WILDING AND KEMPNICH AND F3

5.90 P4 gave evidence of an incident involving Wilding and Kempnich, which P4 said occurred after the payment of the $30,000 for the assistance documents for P6, and which from other evidence, appears to have occurred in March 1993. F3 was an associate of P4 and was involved in the drug trade. P4 said that he arranged to meet with Wilding in Cremorne and at the meeting he discussed the fact that F3 was in possession of 10,000 LSD trips. He said that he knew that F3 had the drugs in his possession as a result of having had a conversation with him. P4 discussed this matter because Wilding and Kempnich had previously said to him that if he had any information about obtaining drugs to let them know and they would give him some money or get him to sell the drugs for them.[863]

5.91 P4 said that a few days after that meeting with Wilding he had a further meeting with Wilding and was given an envelope containing LSD trips and was told to sell them. He assumed that the tablets had come from F3. He was told that if he sold the LSD he was to give Wilding the money from the sale. P4 then sold the LSD. He obtained around $10,000 for the sale and gave all of that money, in an envelope, to either Wilding or Kempnich during a meeting in the Cremorne area. P4 did not keep any money from the sale of the drugs for himself.[864]

5.92 F3 appeared at the Commission on 17 April 2002. His evidence as to the sequence of these events and precisely what occurred was vague and imprecise. He was a less than impressive witness.

5.93 F3 said he had first met P4 socially 15 years or so ago and that the relationship developed *"on more of a transactional business level in regards to drug relating [sic]"*. About ten years previously, in about 1992, he met P4 after having been telephoned by him. Although unable to give precise details as to the timing, location and what was said in the phone call and the subsequent meeting, he gave evidence that P4 asked him if he could obtain *"some Ts"*, being sheets of LSD. He obtained a quote from a person, K6, and relayed that to P4. He was uncertain as to whether he had obtained 5,000 or 10,000 acid Ts.[865]

[863] PIC Transcript, P4, 9 April 2002, pp. 2289-2291
[864] PIC Transcript, P4, 9 April 2002, pp. 2291-2293
[865] PIC Transcript, F3, 17 April 2002, pp. 2419-2422

5.94 F3 arranged to collect the drugs on credit from somewhere in Pitt Street Mall. He had obtained drugs from K6 in the past although in smaller amounts. P4 had said that he would come over and pay for the drugs once they had been obtained. F3 was to meet K6 later that night and pay for the drugs. As he understood it, P4 and K6 did not have a good relationship and this was why he was used as a middleman. After collecting the drugs he phoned P4 and told him they had been collected and it was arranged that P4 would see him at his premises in Mosman 20 minutes later. When F3 arrived home his girlfriend, W8, was present and he put the newspaper containing the LSD on top of a tallboy in the lounge room.[866]

5.95 According to F3 approximately half an hour later two men appeared at the front door. One of them was tapping a revolver on the security door. When F3 went to the door he was told they were police officers and was shown a piece of paper said to be a search warrant. He gave a description of the two men and could recall that he was told that one of them was Wilding. The police officers asked F3 if he *"had anything"* and F3 immediately revealed the drugs. The police indicated that they required $10,000 from him if he was not to be charged in relation to the finding of the drugs. During the time that the police were at his premises F3 claimed he received a pager message from P4. There was a discussion with the two police who wanted the person who had paged to come over with the money for the drugs. At some point in the discussion the person who identified himself as Wilding pointed the gun at F3 in a threatening manner and said that he should not tell anyone about the approach to him. F3 said that Wilding spoke to him while the other officer spoke to W8. It was agreed that F3 and the two police would meet the following day.[867]

5.96 F3 told the Commission that after the two police left he telephoned P4 but could not recall the conversation except to say that P4 did not offer him any help. Later that night he met with K6 and told him that he had been *"ripped off"* and would not be able to pay him for the drugs. He claimed that K6 did not believe his story and threatened him as a consequence of his inability to pay for the drugs. After receiving the threats from K6, F3 rang his brother, F4, who advised him to document what had occurred and to provide the documentation to a solicitor. He created a document but he was not sure if he provided it to a solicitor or to F4 or C6.[868] The Commission has been unable to locate any such document.

5.97 F3 made arrangements to leave his employment with F4's company and to move to Perth. He obtained $6,000 as a consequence of leaving the company and gave $4,000 to K6, retaining $2,000 for travelling. K6 also took a blue Daihatsu that F3 had used for work. C6 reported the car stolen to the police. F3's recollection was that he was that he did not see the car again after K6

[866] PIC Transcript, F3, 17 April 2002, pp. 2423-2426
[867] PIC Transcript, F3, 17 April 2002, pp. 2426-2432
[868] PIC Transcript, F3, 17 April 2002, pp. 2432-2434

took it and he was already out of the state at the time that the car was recovered. P4 escorted him to the airport when he left the state.[869]

5.98 F3 said that on the day after the drugs were taken from his house he again met with the two men who came to his premises claiming to be police officers. They tapped him down before questioning him about when they might be paid. He told them he did not have the money for them and that he did not *"... have those kind of connections"*. One of them gave him his card and he spoke to that person the following day on the phone. Apart from that he had not seen or spoken to them since.[870]

5.99 W8 gave evidence to the Commission in relation to these events. She recalled that the events took place about nine years earlier at a time when she was living with F3. She said that two men arrived at the premises soon after F3 had arrived home. They did not identify themselves. One of the men stayed with her in the lounge room while the other took F3 into the bedroom. They were dressed in plain clothes and stayed about 20 minutes. After they left F3 appeared to be very agitated and told her that the men were policemen, that they had threatened him, and wanted money from him. According to W8, F3 did not mention why the men wanted money from him. He did tell her that when he came home he had brought home some LSD tablets and that the men had taken them. W8 said that she never saw the two men who came to the premises again.[871]

5.100 W8 said that at the time of this incident F3 drove a black hatchback. Not long after the men had come to their home he told her that the car had been taken from him by people he owed money to, which she understood to be people other than the two men who had come to their home. She did not see the car again after F3 told her it had been taken. She confirmed that F3 moved to Western Australia not long after this incident.[872]

5.101 The Commission also heard evidence from C6, who managed the Sydney office of F4's business. He said that at a time when F3 was working for the business he received a call from him in which he indicated that he was in trouble and in some sort of danger. In that call F3 indicated that he'd been threatened, that the car had been demanded from him and that he had handed over the keys. C6 subsequently met with F3 who indicated that some money had gone missing, that he was held responsible for it and that he did not know what to do. C6 gave F3 the contact details of a solicitor. At no stage did F3 indicate to him who it was that had taken the car. C6 said that as a consequence of what he had been told by F3, he reported the vehicle stolen either to Erskineville Police station or North Sydney Police Station. His recollection was that F3 accompanied him at the time of the report.[873]

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869 PIC Transcript, F3, 17 April 2002, pp. 2435-2440
870 PIC Transcript, F3, 17 April 2002, pp. 2438-2439
871 PIC Transcript, W8, 17 April 2002, pp. 2449-2452
872 PIC Transcript, W8, 17 April 2002, pp. 2452-2454
873 PIC Transcript, C6, 10 April 2002, pp. 2347-2349

5.102 After reporting the vehicle stolen C6 received a call from someone who identified himself as a sergeant of police and who indicated that they had contacted the person who had the car, and that they were endeavouring to arrange its return and would contact him if they did so. Later that day he received a further call from that person advising that the car had been located and could be collected from Mosman, and that the officer would be there but he would not see him. He spoke about these telephone calls to F3 who told him *"... that he'd been caught in – in between criminals and the police and he understood that the car would be delivered back ..."*, and that he could pick it up.[874]

5.103 C6 said he went to the vicinity of the Mosman RSL club close to midnight and the car was there along with F3 and a female. F3 gave him the keys to the vehicle, which he drove away. F3 telephoned him a few days later and said that he was leaving Sydney because he thought he was in danger.[875] The evidence that F3 was present at the time that the vehicle was recovered contradicts the evidence of F3 that he did not see the vehicle again after it had been taken by K6.[876]

5.104 C6 confirmed the details contained in a police COPS event summary that indicates that on 5 March 1993 C6 reported a stolen vehicle owned by F4's business to North Sydney Police Station, and noted that the vehicle was recovered on 12 March 1992 at 11 pm at the Mosman RSL car park in Military Road, Mosman.[877] This exhibit is the most accurate evidence available to the Commission as to the likely dates when the incidents referred to in the evidence of P4, F3, W8, C6 and F4 occurred.

5.105 F4, who is F3's brother, also gave evidence to the Commission concerning these events. At the relevant time F4 was living in Queensland. He gave evidence that he received a phone call from F3 in the very early hours of a weekday morning in mid to late 1992. F3 was upset and emotional and said words to the effect that *"They are after me, they want money. I'm in big trouble"*. F3 identified the *"they"* as being *"cops"*. The first call ended when F3 said that he had to go because *"They are here"*. F4 said he received a further call from F4 about two hours later. F4's recollection of what he was told in that call was that F3 was in trouble, that *"they"* wanted money, had put a gun to his face and that he feared for his life.[878]

5.106 F4 said he received a further call from F3 about a day later and during that call he told F3 to make a written record of what was occurring. During this call F3 told him that the matter had something to do with his involvement in drugs.[879]

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874 PIC Transcript, C6, 10 April 2002, pp. 2350-2351
875 PIC Transcript, C6, 10 April 2002, p. 2352
876 See paragraph 5.97
877 PIC Exhibit 323B
878 PIC Transcript, F4, 18 April 2002, pp. 2460-2461
879 PIC Transcript, F4, 18 April 2002, p. 2462

5.107 According to F4, F3 wanted money so F4 advised him that if he resigned he would make his entitlements available to him. Shortly thereafter F3 resigned and was paid between $1,000 and $2,000 in entitlements. F3 advised him at some point that *"they"* had taken F3's company vehicle. F4 said he was told that the car had been taken so that *"they"* could get money from F3. F4 told F3 to tell *"them"* that he would be reporting the loss of the car to the police and arranged for C6 to do so.[880]

5.108 Wilding gave evidence that F3 was not someone who was familiar to him and that he did not know his name. He could not say if he had heard of it before being referred to it while in the witness box. He had no recollection of dealing with F3, or of P4 providing any information concerning F3. C6's name was not familiar to him and Wilding was not able to say whether or not he had heard C6's name before he gave evidence.[881]

AFFECTED PERSONS

5.109 A person against whom, in the Commission's opinion, substantial allegations have been made in the course of, or in connection with, an investigation, is an "affected person" for the purposes of a Report to Parliament by the Commission.[882]

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

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

b) the taking of action against the person for a specified disciplinary offence,[883]

c) the taking of action (including the making of an order under section 181D of the *Police Act 1990*) against the person as a police officer on specified grounds, with a view to dismissing, dispensing with the services or otherwise terminating the services of the police officer,

d) the taking of reviewable action within the meaning of section 173 of the *Police Act 1990* against the person as a police officer.

5.111 In addition the Commission may form opinions as to whether police misconduct has occurred: subsection 16(1)(a) of the Act.

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880 PIC Transcript, F4, 18 April 2002, pp. 2463-2464

881 PIC Transcript, GJ Wilding, 8 April 2002, p. 2252

882 Subsection 97(3), *Police Integrity Commission Act 1996*

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

5.112 Based on the allegations made during the hearing, the Commission is of the opinion that each of the following is an affected person:

- Kempnich, Michael Scott
- Wilding, Guy John

5.113 The abovementioned affected persons both gave evidence after a declaration had been made under section 41 of the Act. Therefore pursuant to section 40 of the Act the evidence is not admissible against them in subsequent criminal or civil proceedings except for proceedings for an offence against the Act or for contempt under the Act.

5.114 P4 and P6 have not been named as affected persons as they had been charged and dealt with prior to the Commission's hearing. There is no public interest to be served by reconsidering possible charges in each case.

MICHAEL SCOTT KEMPNICH

5.115 Kempnich is an affected person because he is the subject of the following substantial allegations, namely that:

- in relation to the preparation of assistance documentation concerning P4, he did an act intending to pervert the course of justice;
- in relation to the preparation of assistance documentation concerning P6, he conspired to do an act intending to pervert the course of justice; and
- he stole money from P4's premises during a search on 28 June 1992.

5.116 The Commission considers that Kempnich engaged in police misconduct: subsection 16(1)(a) of the Act.

5.117 The Commission is of the opinion that the evidence is capable of supporting the conclusion that the document detailing the supposed assistance by P4 was signed by both Wilding and Kempnich with the intention to mislead the sentencing judge so that a lesser sentence would be imposed.

5.118 Although Kempnich did not sign P6's assistance documentation the Commission is of the belief that the evidence from P4 links Kempnich to the creation of the documents and to being a party to an agreement with P4 and Wilding which had as its object the creation of the document with the intention to mislead the sentencing judge so that a lesser sentence would be imposed.

5.119 P6's sentencing proceedings were held in Victoria. The New South Wales Court of Criminal Appeal decision in *Regina v Lowe*[884] considered the scope of Part 7 of the *Crimes Act 1900*, (Public Justice Offences) and found that

[884] *Regina v Lowe* [2003] NSWCCA 150

"... The overwhelming implication from Part 7 as a whole is that it exists to protect the administration of justice in and of New South Wales". The court also considered the effect of section 12 of the *Interpretation Act 1987* and section 3A of the *Crimes Act 1900* and concluded that the matter or thing referred to in an Act must be *"in and of New South Wales"* thus requiring that the course of justice referred to in the relevant sections of Part 7 must be the course of justice in and of New South Wales. Thus in relation to Kempnich's actions and the letter of assistance for P6 the relevant offence for consideration is the Victorian offence rather than an offence under Part 7 of the *Crimes Act 1900*.

5.120 The Commission is of the opinion that the evidence supports the allegation that police took money fraudulently and with no consent or claim of right from P4's premises with a clear intention to permanently deprive P4 of it.

5.121 The Commission is of the opinion that the evidence supports consideration being given to the prosecution of Kempnich for the offences of:

- doing an act intending to pervert the course of justice; section 319, *Crimes Act 1900;*
- conspiring to do an act intending to pervert the course of justice at Common Law (Victoria); and
- larceny at Common Law.

5.122 NSW Police sought advice, prior to the completion of this Report, from the ODPP regarding possible criminal proceedings against Kempnich. The ODPP advised that no proceedings should be commenced.

5.123 In the circumstances the Commission is of the opinion that further consideration **should not** be given to the prosecution of Kempnich for any criminal offences.

5.124 Due to the unsatisfactory nature of the evidence concerning the allegation made by P4 concerning Wilding and Kempnich and the alleged dealing with F3, the Commission is of the opinion that consideration **should not** be given to the prosecution of Kempnich for any criminal offence relating to this matter.

5.125 Kempnich is no longer a serving police officer. Accordingly the question of taking action pursuant to subsections 97(2)(c) and (d) of the Act does not arise.

GUY JOHN WILDING

5.126 Wilding is an affected person because he is the subject of the following substantial allegations, namely that:

- in relation to the preparation of assistance documentation concerning P4, he did an act intending to pervert the course of justice;
- in relation to the preparation of assistance documentation concerning P6, he did an act intending to pervert the course of justice; and
- he stole money from P4's premises during a search on 28 June 1992.

5.127 The Commission considers that Wilding engaged in police misconduct: subsection 16(1)(a) of the Act.

5.128 The Commission is of the opinion that the evidence is capable of supporting the conclusion that the document detailing the supposed assistance by P4, was signed by both Wilding and Kempnich with the intention to mislead the sentencing judge so that a lesser sentence would be imposed.

5.129 In relation to P6's assistance documentation the Commission is of the opinion the evidence is capable of supporting the conclusion that the document detailing the supposed assistance of P6 was created with the intention to mislead the sentencing judge so that a lesser sentence would be imposed.

5.130 P6's sentencing proceedings were held in Victoria. The New South Wales Court of Criminal Appeal decision in *Regina v Lowe*[885] considered the scope of Part 7 of the *Crimes Act 1900* and found that *"... The overwhelming implication from Part 7 as a whole is that it exists to protect the administration of justice in and of New South Wales"*. The court also considered the effect of section 12 of the *Interpretation Act 1987* and section 3A of the *Crimes Act 1900* and concluded that the matter or thing referred to in an Act must be *"in and of New South Wales"* thus requiring that the course of justice referred to in section 319 of the *Crimes Act 1900* must be the course of justice in and of New South Wales. Thus in relation to Wilding's actions and the letter of assistance for P6 the relevant offence for consideration is the Victorian offence rather than an offence under Part 7 of the *Crimes Act 1900*.

5.131 The Commission is of the opinion that the evidence supports the allegation that police took money fraudulently and with no consent or claim of right from P4's premises with a clear intention to permanently deprive P4 of it.

5.132 The Commission is of the opinion that the evidence supports consideration being given to the prosecution of Wilding, in relation to both the P4 and P6 letters of assistance, for the offences of:

- doing an act intending to pervert the course of justice; section 319, *Crimes Act 1900;*
- doing an act intending to pervert the course of justice at Common Law (Victoria)*;* and

[885] *Regina v Lowe* [2003] NSWCCA 150

- larceny at Common Law.

5.133 NSW Police sought advice, prior to the completion of this Report, from the ODPP regarding possible criminal proceedings against Wilding. The ODPP advised that no proceedings should be commenced.

5.134 In the circumstances the Commission is of the opinion that further consideration **should not** be given to the prosecution of Wilding for any criminal offences.

5.135 Due to the unsatisfactory nature of the evidence concerning the allegation made by P4 concerning Wilding and Kempnich and the alleged dealing with F3, the Commission is of the opinion that consideration **should not** be given to the prosecution of Wilding for any criminal offence relating to this matter.

5.136 Wilding is no longer a serving police officer. Accordingly the question of taking action pursuant to subsections 97(2)(c) and (d) of the Act does not arise.

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INTRODUCTION

6.1 This segment of Operation Florida commenced on 9 July 2002. The hearing examined the activities of members of the Major Crime Squad North Drug Unit based at Gosford Drug Unit (GDU) and North Sydney Drug Unit (NSDU), in relation to the execution of search warrants at West Ryde and Newport on 21 February 1992.

6.2 There were six days of public hearings. After the public hearings further evidence was given in two private hearings by two codenamed witnesses, one of whom had given evidence in the public hearings. Edited versions of the transcripts of evidence given at those private hearings were later tendered into evidence in the public proceedings.

6.3 The Scope and Purpose of the segment was:[886]

> To investigate allegations of corruption and misconduct by members of the major crime squad north drug unit based at Gosford and North Sydney in relation to the execution of search warrants at premises at West Ryde and Newport on 21 February 1992 and the arrest and charging of a person on or about 21 February 1992 in relation to the execution of those search warrants.

6.4 The impetus for this inquiry came from information provided by the informant M5, who had been attached to NSDU and participated in the execution of the search warrants on 21 February 1992. L17, who was associated with both premises the subject of the search warrants also provided information.

6.5 During the execution of the search warrant at the West Ryde address police located 707 grams of compressed cannabis leaf and 25.3 grams of cannabis resin. At the Newport address they located four blocks of cannabis resin, with a gross weight of 4099 grams. L17 was arrested and charged with two counts of supply of a prohibited drug and three counts of possession of a prohibited drug. She was committed for trial on one supply charge while the three charges of possession and one of supply were dismissed. L17 was eventually found not guilty of the supply charge.

THE ALLEGATIONS

6.6 The following allegations of police misconduct were examined in this segment:

- that police stole a small gold ingot from the Newport premises;
- that police stole $10,000 in cash from the Newport premises;
- that $10,000 stolen from the Newport premises was shared between the members of GDU and NSDU;

[886] PIC Transcript, 9 July 2002, p. 4090

- that police officers involved in the prosecution of L17 corruptly assisted L17 in relation to the charges brought against her, and thereby perverted the course of justice; and
- that members of GDU and NSDU shared $50,000 corruptly received following the arrest and charging of L17.

THE WITNESSES

6.7 Twelve witnesses gave evidence in this segment. The police who were the subject of the allegations were attached to GDU or NSDU. Wayne James Eade, Ian Frederick Ison, Timothy Andrew Kerr-Thomson and Stephen James McClelland were members of GDU. The NSDU members were David Marshall Hill, Maurice Gilbert Nield, Frank Ramaccia and M5. N1, a former police officer gave evidence of his knowledge of, and involvement in, the matter. Former police officer Ronald Walsh also gave evidence. He was the independent officer who conducted the adoption procedure in relation to L17's record of interview following her arrest. The remaining witnesses were L17, and S7, another drug dealer. S7 was the informant who provided the information to police that enabled them to obtain the search warrants. A short profile of each of the involved police officers and former police officers follows.

WAYNE JAMES EADE

6.8 Eade joined NSW Police in 1971. In 1992 he had attained the rank of Sergeant, was a member of the GDU and in charge of this operation. Eade was dismissed from NSW Police in 1996 as a result of investigations conducted by the Royal Commission into the New South Wales Police Service (the Royal Commission).

DAVID MARSHALL HILL

6.9 Hill joined NSW Police in 1977. He was attached to Major Crime Squad North from 1988 to 1997. In 1992 he had achieved the rank of Senior Constable. He was suspended from duty on 8 October 2001 and resigned from NSW Police on 25 March 2002.

6.10 In evidence during the Northern Beaches segment of hearings, discussed in Chapter 2 of this Report, Hill conceded that, during his time at Major Crime Squad North, he had shared in money taken from suspects.[887] At that time he named three officers, one as being the officer who had given him money and two who had shared the money with him. In his evidence in this segment Hill again conceded that while he was a member of NSDU members of the NSDU shared moneys taken from suspects.[888] He named M5 as being an officer who

[887] PIC Transcript, DM Hill, 19 October 2001, pp. 559-560
[888] PIC Transcript, DM Hill, 9 July 2002, p. 4071

shared money with him and Nield as the officer who gave him money on one or two occasions.[889]

6.11 As a result of the evidence given in the Northern Beaches segment Hill was charged, on 17 January 2002, with one charge of receiving a corrupt reward pursuant to section 249B of the *Crimes Act 1900*. He pleaded not guilty but was convicted and on 3 April 2003 was sentenced to eight months imprisonment with a non-parole period of six months

IAN FREDERICK ISON

6.12 Ison joined NSW Police in 1982. In 1992 he was a Senior Constable attached to GDU. He was dismissed from NSW Police in 1996 as a result of investigations conducted by the Royal Commission.

TIMOTHY ANDREW KERR-THOMSON

6.13 Kerr-Thomson is a currently serving officer with the rank of Senior Constable having joined NSW Police in 1978. He resigned in 1982 but rejoined NSW Police in 1988. In 1992 he held the rank of Constable and was attached to GDU.

M5

6.14 M5 joined NSW Police in 1980. In 1992 he had achieved the rank of Senior Constable. M5 said he was attached to NSDU for a short period of three months in 1992.[890]

6.15 M5 commenced co-operation with the NSW Crime Commission (NSWCC), Operation Mascot, in 1998 and since that time has co-operated with investigators from both the NSWCC and this Commission as part of Operation Florida. M5 was medically discharged from NSW Police in 2003.

STEPHEN JAMES MCCLELLAND

6.16 McClelland joined NSW Police in 1972. In 1992 he held the rank of Sergeant and was attached to GDU. He was medically discharged from NSW Police in 1999.

MAURICE GILBERT NIELD

6.17 Nield joined NSW Police in 1968. In 1992 he was the Sergeant in charge of NSDU and had held that position since 1987-88. He was medically discharged from NSW Police in 1999.

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[889] PIC Transcript, DM Hill, 12 July 2002, pp. 4315-4316
[890] PIC Transcript, M5, 10 July 2002, p. 4129

6.18 Nield told the Commission that he did not accept the evidence of both Hill and M5 that there was an arrangement between members of NSDU to share money illegally taken from suspects. He said that nothing like that took place. Nield said that although he trusted M5 at the time he worked with him, he had asked for M5 to be removed from NSDU due to his attitude and lack of interest in the type of work done by the NSDU. M5 was moved from the NSDU several months after Nield spoke to his Commander about him.[891]

6.19 Nield said that Hill's evidence, that Nield had given him money on two occasions, was a complete fabrication. He said that he had reservations about Hill prior to Hill coming to work at NSDU due to his experience as Hill's supervisor in 1984 when Hill had had a drinking problem. Despite this Nield said that Hill was a competent worker. The only explanation he could offer as to why Hill would give evidence against him was that there was animosity between them.[892]

FRANK RAMACCIA

6.20 Ramaccia is a serving NSW Police officer currently holding the rank of Senior Constable. He joined NSW Police in 1987. At the time of the events in question he held the rank of Constable and was attached to NSDU.

RONALD WALSH

6.21 Walsh joined NSW Police in 1961 and retired at the rank of Senior Sergeant in 1998. In 1992 he was stationed at Mona Vale Police Station and was on duty when L17 was brought in to be interviewed and charged following her arrest. Walsh conducted the adoption procedure in relation to L17's record of interview and made a statement to that effect. He gave evidence at her trial.

BACKGROUND FACTS

6.22 S7 and L17 were both drug dealers. In 1992 they had known each other for a number of years and were described by S7 as being *"associates, doing business together"*.[893] L17 was not as forthcoming in evidence as S7, and was reluctant to admit her relationship with S7, but eventually said they had a *"business relationship"* and agreed it was in drug dealing.[894]

6.23 On 13 February 1992 GDU detectives had executed a search warrant on S7's house in his absence and charged his wife with possession of approximately 1.4 kilograms of cannabis resin and a firearms offence. On the day the warrant was executed the police officers waited for S7 to return home but he did not appear. On 20 February 1992 S7 was arrested in Seven Hills by uniformed police and taken to Castle Hill Police Station. The GDU detectives were notified that S7 was there and as a result Eade, Ison and Kerr-

[891] PIC Transcript, MG Nield, 12 July 2002, pp. 4368-4370
[892] PIC Transcript, MG Nield, 12 July 2002, pp. 4370-4371
[893] PIC Exhibit 790B: PIC Transcript, S7, 26 July 2002, p. 7
[894] PIC Exhibit 793B: PIC Transcript, L17, 22 August 2002, p. 17

Thomson travelled to Castle Hill Police Station to interview him. Ison and Kerr-Thomson conducted the formal interview and charged S7 with offences relating to the cannabis resin found at his home the previous week.[895]

6.24 Following the interview Eade spoke to S7 and S7 provided Eade with some information about addresses associated with supply of cannabis resin.[896] S7 said he spoke to both Eade and Ison. S7 also said that in addition to giving information he agreed to pay money to the police for them to assist him in relation to his charges.[897]

6.25 S7 had previously given evidence about this incident to the Royal Commission. S7 said that on the day following his arrest he paid $30,000 to Ison in the presence of both Eade and Kerr-Thomson.[898]

6.26 Eade denied that such a demand was placed on S7 or that S7 paid money to him.[899] Not surprisingly the duty book entries for that day only refer to the information provided to the police by S7.

6.27 S7, Eade, Ison and Kerr-Thomson all agreed, however, that on the evening of 20 February 1992 S7 assisted the police by showing them a house in Palm Beach that he believed was a safe house for a large amount of cannabis resin. Both Eade's and Ison's duty books record that S7 took the police to "various addresses" associated with the operation.[900]

6.28 The following day, 21 February 1992, S7 again met with the detectives from GDU. The duty books record that after meeting with S7 the police conducted surveillance at both the West Ryde premises and the Newport premises. Later that day search warrants were obtained for both addresses and executed.[901] L17 lived at the Newport premises. S7 confirmed in evidence that on that day he told the police where L17 lived.[902]

6.29 S7's version of these events is not entirely consistent with that of the police. S7 said that he gave L17's name to police because they told him they were going to rob her. He said he was asked to assist the police to rob other drug suppliers. Although he gave L17's name to police he said he did not give them any other drug suppliers' names. He gave them L17's name because he thought she would have 20 kilograms of hashish at her house. He said he had an arrangement, made with Eade, that if the police took 20 kilograms of hashish they would give him four kilograms. He also said that he gave both the West Ryde address and the Newport address to police because he had been to the West Ryde address on dozens of occasions to pick up hashish or

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[895] PIC Transcript, TA Kerr-Thomson, 16 July 2002, pp. 4482-4483; WJ Eade, 15 July 2002, pp. 4408-4409; PIC Exhibit 596B
[896] PIC Transcript, WJ Eade, 15 July 2002, pp. 4408-4409
[897] PIC Exhibit 790B: PIC Transcript, S7, 26 July 2002, pp. 5, 10
[898] PIC Exhibit 790B: PIC Transcript, S7, 26 July 2002, pp. 5, 16, 18
[899] PIC Transcript, WJ Eade, 15 July 2002, p. 4213
[900] PIC Transcript, WJ Eade, 15 July 2002, p. 4409; IF Ison, 15 July 2002, p. 4454; TA Kerr-Thomson, 16 July 2002, pp. 4483-4484; PIC Exhibits 596AC, 601AC
[901] PIC Exhibits 551B, 597B
[902] PIC Exhibit 790B: PIC Transcript, S7, 26 July 2002, p. 9

cannabis from L17. The plan, as he understood it, was that the police would enter the premises, take the hashish and leave, and no one would be charged. S7 said he was later told by Eade that L17 had *"jumped up and down or something or another and she was charged"*. He did not receive any hashish as a result of the execution of the search warrants. He also denied that he had supplied the hashish, found at L17's premises, to her.[903]

6.30 Eade denied having any such arrangement with S7. He said he could not recall what information was provided or whether they had an expectation that they would find more than four kilograms of cannabis resin at L17's premises. He also denied telling S7 that he was not able to give him any of the drugs seized at Newport.[904]

THE SEARCH AT WEST RYDE

6.31 After the police had received the information from S7 and conducted surveillance and further inquiries Ison made applications for search warrants for both the West Ryde premises and the premises at Newport.[905] Additional police officers were called in to assist Eade, Ison and Kerr-Thomson in the execution of the search warrants. They were McClelland from GDU and Nield, Hill, Ramaccia and M5 from NSDU.

6.32 The first warrant was executed at the West Ryde address of L18, who was related to L17. During the search a quantity of both cannabis leaf and resin was located. It also became clear from a photograph inside the premises seen by police that N1 was related to both L17 and L18.

6.33 M5 said that when he was called in to assist he was not aware of the information about the Newport premises. He was involved in conducting surveillance of the West Ryde premises initially and was outside while other officers entered the premises. He did go inside a short time later when he became aware that drugs had been located. Once inside the premises he became aware that N1 was associated with L17. M5 said he had discussions with Ison about this association and that he and Ison then went to N1's home to discuss the matter with him. M5 said Ison was present during his discussions with N1.[906]

6.34 M5 said they explained to N1 what had been found and N1 asked the police to do whatever they could to assist L17. M5 agreed to that course and said that Ison also indicated his agreement. M5 and Ison then returned to the West Ryde premises. He could not remember any discussion between himself and Ison in relation to N1's request.[907]

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[903] PIC Exhibit 790B: PIC Transcript, S7, 26 July 2002, pp. 9-13
[904] PIC Transcript, WJ Eade, 15 July 2002, pp. 4427-4428
[905] PIC Exhibits 552B & 554B
[906] PIC Transcript, M5, 10 July 2002, pp. 4129-4130
[907] PIC Transcript, M5, 10 July 2002, pp. 4130-4131

6.35 By the time they returned to the West Ryde premises some of the police officers had already left to go to Newport. Ison also immediately left to go to Newport. M5 said that only Nield and possibly one other officer were left at West Ryde. At that stage the drugs were still in the bedroom in a suitcase. They were later taken out and put into a police vehicle. M5 said he could not recall talking to Nield about the discussion with N1 but later on that evening he did mention it to Hill. M5 also then left to attend at Newport. He thought he travelled to Newport with Hill and Ramaccia.[908]

6.36 Ison's duty book[909] records him as being the person who served the Occupier's Notice on L18 on entering the West Ryde premises but he could not recall doing this. He said he did not recall finding out that N1 had a connection with the West Ryde premises but that he would have known about it because he knew N1 well, having grown up in the same area as him and played football with him. Ison denied having any conversation with M5 about N1 in this context. He said he knew nothing of N1 being contacted in relation to the operation but conceded that it may have occurred. He did not recall going to N1's home, or any other police officer contacting N1, in relation to this matter.[910]

6.37 Hill had a recollection of becoming aware that N1 had a connection with the West Ryde premises. He did not, however, recall when he became aware of that connection, whether it was that night or the day after. He did not recall anyone making a telephone call to N1 that night. He said that M5 and N1 were good friends so M5 may have called N1. Hill also said that no information was passed to him in relation police being asked to "look after" L17.[911]

6.38 Nield's duty book[912] records that Nield took part in the surveillance earlier in the day and then in the execution of the search warrant at the West Ryde premises. However, despite the fact that his duty book recorded him as locating the drugs, Nield had little independent recall of these events.[913]

6.39 Eade also had little recall of events surrounding the execution of the search warrant at West Ryde. His duty book[914] contained a similar entry to those of the other officers. Eade said he had no recollection of seeing anything in the house that linked this matter to N1. He said he had become aware that N1 was associated with the matter but was not sure whether he became aware on the night or at a later stage. He denied being aware, at any stage, that police had assisted L17 because of N1's association with the matter.[915]

[908] PIC Transcript, M5, 10 July 2002, pp. 4131-4132
[909] PIC Exhibit 551B
[910] PIC Transcript, IF Ison, 9 July 2002, pp. 4044-4047
[911] PIC Transcript, DM Hill, 9 July 2002, pp. 4060-4061
[912] PIC Exhibit 546B
[913] PIC Transcript, MG Nield, 9 July 2002, pp. 4019-4022
[914] PIC Exhibit 597B
[915] PIC Transcript, WJ Eade, 15 July 2002, pp. 4418-4419

6.40 Ramaccia's duty book[916] recorded that he conferred with Eade and then waited outside while the search warrant was executed. In evidence Ramaccia said that he did recall the operation but could not recall the conversation with Eade. He also said that he had no knowledge of N1's association with the matter and only became aware of it following evidence given at the hearing.[917] McClelland also said that he only found out about the association between N1 and the West Ryde premises at the proceedings.[918] Kerr-Thomson had no recollection of going into the house at West Ryde or that N1 had any connection with the house.[919]

THE SEARCH AT NEWPORT

6.41 Following the search at West Ryde the eight officers from GDU and NSDU went to the Newport address, occupied by L17, and executed the second search warrant. There is no dispute that four kilograms of cannabis resin were located at that address.[920] There are, however, different versions of some aspects of the events at the Newport address.

L17

6.42 L17 was positive that Hill and M5 were the first officers to arrive at her house. She said they were accompanied by other officers but she could not identify those other officers. She said Hill and M5 told her they had a search warrant for her house and handed her the Occupier's Notice. She could not remember the exact terms of the conversation but said she took them to her bedroom and showed them a blue bag that contained cannabis resin. There were other police in the house at the time but she couldn't recall if they were actually in the bedroom with M5 and Hill. She recalled Ramaccia searching the house because she said he pulled a dishwasher from the wall breaking some tiles.[921]

6.43 L17 told the Commission that she had not put the cannabis resin in the bag. Her version of events was that a person she identified as H5 telephoned her at work and requested she do him a favour. She knew H5 through L19 who had been related to her but was now deceased. As a result of that telephone call she travelled to the domestic terminal at Kingsford Smith Airport and met H5. He asked her to mind something for her and she agreed. In her statement dated 8 June 1994[922] and an undated hand written document[923] L17 wrote that she left H5 outside the terminal and went to the toilet. In her absence he put some articles into a bag she had in the boot of her car. She said she did not know what he had put into the bag until she arrived at her house and looked into the bag. It was later that same day that the police arrived at her house to execute the search warrant. It was L17's understanding that she had been

[916] PIC Exhibit 548B
[917] PIC Transcript, F Ramaccia, 9 July 2002, pp. 4028, 4033
[918] PIC Transcript, SJ McClelland, 16 July 2002, p. 4524
[919] PIC Transcript, TA Kerr-Thomson, 16 July 2002, p. 4485
[920] PIC Exhibit 555B
[921] PIC Transcript, L17, 11 July 2002, pp. 4201-4203
[922] PIC Exhibit 796B
[923] PIC Exhibit 798B

observed while at the airport and although she couldn't remember who told her that she assumed it was M5 or Hill. According to L17, H5 wanted her to look after the drugs because he had to catch a flight and somebody else had not turned up to collect them. H5 did not tell her where he was going, he did not tell her who the other person was and she has never heard from him since that day.[924]

6.44 L17 told the Commission that prior to the police arriving at her house she had $10,000 in cash under the mattress of her bed. She did not know how long the money had been there but said it had belonged to L19. At some stage during the execution of the search warrant police took the money. L17 did not see who took the money. During a conversation with either Hill or M5 outside her house she was told that the money and a gold ingot had been taken. The gold ingot had been stored in a dressing table drawer in her bedroom. She said that either M5 or Hill told her that the money had been taken and that if she complained about it she would be given an additional charge. L17 said she decided not to say anything about the $10,000 because she had enough difficulties already. She told Hill and M5 however that she wanted the gold ingot returned to her because it had sentimental value.[925]

6.45 During the conversation with Hill and M5, while still at Newport, L17 said that the fact of her association with N1 was raised. She said she saw one of them make a telephone call to N1 from a public telephone box in her street. She could not remember the exact conversation that followed the call but denied she was told that the police would do their best to look after her.[926]

6.46 While still at Newport, L17 was shown the substances taken from the West Ryde premises. At the time they were shown to her they were in the boot of a police car. She was not sure which police officer showed the drugs to her. She told the Commission that on that night she admitted that the drugs found at West Ryde belonged to L19 but denied she had made any admissions as to her ownership of any drugs, both those found at West Ryde and those located at Newport.[927]

6.47 L17 told the Commission that she was taken by police from her Newport premises to Mona Vale Police Station. She was put into an interview room with Hill and M5. She recalled M5 making notes but said that the notes were not accurate and that when she was asked to sign them she refused. She recalled a uniformed officer speaking to her about the notes but did not recall his name. She said she could not remember what she said to that officer but did not think she would have told him that the notes were accurate because they were not. She did not however complain to that officer about the $10,000 or the gold ingot. She said the gold ingot was returned to her either that night or the next day. She could not remember who returned it to her.[928]

[924] PIC Transcript, L17, 11 July 2002, pp. 4218-4222
[925] PIC Transcript, L17, 11 July 2002, pp. 4204-4210
[926] PIC Transcript, L17, 11 July 2002, pp. 4207-4208
[927] PIC Transcript, L17, 11 July 2002, pp. 4208-4209
[928] PIC Transcript, L17, 11 July 2002, pp. 4210-4213

6.48 The statements of Hill and M5 that were used against L17 in court contain both an admission by her that the cannabis resin was hers and the contradictory statement that she was minding it for someone else. L17 denied that Hill or M5 had suggested that course to her as a way of getting around the charge of possession. She also denied that N1 had ever told her that he had asked the police to assist her.[929]

M5

6.49 M5's evidence to the Commission conflicted with L17's in some respects. He said that by the time he arrived at Newport the other officers, who he identified as McClelland, Ison and Eade, were already there and had located the cannabis resin. He travelled to Newport with Hill and he thought Ramaccia. When he arrived he and Hill and Ramaccia entered the premises. In contrast with L17's account M5 was definite that they weren't the first officers there. He said he became aware around the time he left Newport that $10,000 in cash and the gold ingot had been located, in addition to the cannabis resin. His dealings with L17 while at Newport were casual. Later, at Mona Vale Police Station, M5 and Hill were given the responsibility of speaking to her formally. He didn't think that the drugs located at West Ryde were shown to L17 while they were still at Newport.[930]

6.50 M5 told the Commission that while they were at Newport he telephoned N1 from a public telephone box. He said that after the telephone call to N1 he spoke to Hill about N1's request that they assist L17. M5 said that Hill mentioned that "Teh's case"[931] might assist L17 beat the charge of supply.[932]

6.51 M5 told the Commission he did not know who had taken the $10,000 and the gold ingot from the house but said that after interviewing L17 and while arranging for an independent officer to oversight the interview, he became aware that the Gosford officers had left and taken the money and ingot with them. He said he was angry about this because they had not yet taken L17 through the oversighting process when she would have the opportunity to make a complaint. M5 said he expressed his concerns to Hill. Following that conversation Hill made a telephone call to Nield. M5 said that Hill later told him that Nield had met the Gosford officers on the highway somewhere and retrieved the ingot from them. The gold ingot was then returned to L17 prior to her receiving bail.[933]

6.52 M5 said that either later that night or the next day Hill gave him $1,000. M5 understood this to be his share of the $10,000 although Hill did not say anything to him when he gave it to him. M5 said the practice was to divide any money equally and at that time GDU had six members and NSDU had four so M5 would have received one tenth of the money taken. M5 said he had received money on one previous occasion from Ramaccia for a job

[929] PIC Transcript, L17, 11 July 2002, pp. 4214-4215
[930] PIC Transcript, M5, 10 July 2002, pp. 4132-4134
[931] He Kaw Teh v R (1985) 157 CLR 523
[932] PIC Transcript, M5, 10 July 2002, pp. 4134-4135
[933] PIC Transcript, M5, 10 July 2002, pp. 4135-4137

conducted while he was away on holiday. He said that shortly after he commenced work with the NSDU probably Hill, but possibly Ramaccia or Nield, informed him that the practice was that money was shared equally even if an officer was not actually involved in a particular job.[934]

6.53 M5 said that the notebook interview[935] of L17 at Mona Vale Police Station was a fabrication composed jointly by himself and Hill. The interview records that L17 showed the cannabis resin to M5 during the search at Newport. M5 said that McClelland, Ison and others had already located the cannabis resin before he arrived at Newport. He could not remember whether L17 admitted to ownership of the cannabis resin but thought she may have. He said that his understanding was that she was a middle level supplier of drugs and had the cannabis resin for on-sale. He said that the inclusion of the statement in the interview that she was minding it for someone else had come from Hill and himself and that they had made a deliberate decision to include this in the interview in order to assist her with charges that were to be laid. M5 said that the entire conversation as set out in the interview said to have taken place at Newport did not occur. He said that L17 was not asked to sign the interview. The notebook is however signed by Walsh who oversighted the interview. M5 said that Walsh was not aware that the interview was a fabrication and that Walsh was not involved in the sharing of the money stolen from Newport. Hill and M5 based their court statements on the notebook interview. M5 agreed that those statements were also false.[936]

WALSH

6.54 Walsh agreed that he performed the adoption procedure in relation to L17's interview, as recorded in M5's notebook. He could not recall whether at the time of the adoption of the interview he had asked L17 to sign the notebook. He said that when he asked L17 if the interview as recorded in the notebook was accurate she replied that it was. He recalled giving evidence at L17's trial but was not aware of any challenge to the accuracy of what was recorded in the interview.[937]

HILL

6.55 Hill's duty book[938] recorded that Hill travelled to Newport with McClelland and others, that he handed the Occupier's Notice to L17 and that L17 led him to the bedroom, showed him the cannabis resin, admitted ownership of it, and also said she was minding it for a friend. It also recorded that he, together with M5, showed L17 the drugs that had been located at West Ryde and that L17 said that the cannabis leaf belonged to L19 but that the cannabis resin belonged to her. When Hill first gave evidence to the Commission he had little memory of these events and said that what was recorded in his duty

[934] PIC Transcript, M5, 10 July 2002, pp. 4138-4140
[935] PIC Exhibit 566B
[936] PIC Transcript, M5, 10 July 2002, pp. 4140-4146
[937] PIC Transcript, R Walsh, 9 July 2002, pp. 4092-4096
[938] PIC Exhibit 557B

book would be correct.[939] When he later gave evidence it was put to Hill that he and M5 fabricated the evidence that they were the first to arrive at the Newport premises to enable them to prepare the brief and write GDU out of it. Hill denied this proposition. Hill had no recollection of the events and repeated that what was in his duty book would have occurred.[940]

6.56 Hill denied knowing anything about a gold ingot being taken and returned on the night of the search warrant.[941] He denied that his statement[942] was a fabrication.[943] He said he knew nothing of any money being taken on the night[944] and he did not receive a share of the money.[945]

6.57 On 9 September 1992 Hill created a document titled "Facts in relation to [L17]".[946] Hill prepared the document for use by the ODPP when L17's case came up for mention. Although Hill's statement contained an admission by L17 of ownership of the cannabis resin the facts sheet did not. Hill denied he had deliberately watered down the facts to assist L17.[947]

6.58 Hill was played a listening device conversation between himself and M5 dated 16 June 2000.[948] In this conversation Hill said *"It's always been in equal parts"*. Later in the conversation Hill referred to an argument he had with the *"blokes"* at Mona Vale in relation to L17.

6.59 Hill acknowledged that it was his voice on the tape but said he couldn't recall the conversation and denied he was talking about sharing, in equal parts, money taken from suspects. He said he could not remember anything about a gold ingot and would not agree that the argument he was referring to in the conversation was about members of the GDU taking the money and the gold ingot on the night of the execution of the search warrant at Newport.[949]

6.60 Hill was played another listening device conversation between M5 and himself dated 21 June 2000.[950] In this conversation Hill refers to getting angry in relation to the gold ingot and the fact that L17 may have complained about it being taken. He also referred to L17 being happy and laughing through her trial.

6.61 Once again Hill agreed it was his voice in the conversation. He said he couldn't recall the conversation and that he didn't know what he meant by his reference to L17 making a complaint. Hill said he had no recollection of the trial or of L17's demeanour during it. He denied that he perjured himself at

939 PIC Transcript, DM Hill, 9 July 2002, pp. 4063-4064
940 PIC Transcript, DM Hill, 12 July 2002, pp. 4300-4301
941 PIC Transcript, DM Hill, 11 July 2002, p. 4237
942 PIC Exhibit 578B
943 PIC Transcript, DM Hill, 11 July 2002, p. 4265
944 PIC Transcript, DM Hill, 11 July 2002, p. 4269
945 PIC Transcript, DM Hill, 11 July 2002, p. 4288
946 PIC Exhibit 569B
947 PIC Transcript, DM Hill, 11 July 2002, pp. 4270-4272
948 PIC Exhibits 574 & 575
949 PIC Transcript, DM Hill, 11 July 2002, pp. 4241-4259
950 PIC Exhibits 576 & 577

the trial and that the conversation alleged to have taken place between himself and L17, as recorded in his statement,[951] was a fabrication.[952]

RAMACCIA

6.62 Ramaccia's duty book[953] records a similar version of events to the version recorded by Hill. His statement,[954] however, is not consistent with the duty book. The duty book records that Ramaccia executed the search warrant and was handed the blue leather handbag containing the cannabis resin. It also states that L17 admitted ownership of the cannabis resin. The statement records that Ramaccia remained in the vehicle outside while Hill and M5 entered the premises. Sometime later Hill and M5 came outside with L17 and Hill handed Ramaccia the blue bag containing the cannabis resin. The statement omits the admission by L17 as to ownership of the cannabis resin.

6.63 When questioned about his duty book entry Ramaccia said he had no clear recollection of the events. He had no recollection of L17's admission as to ownership of the cannabis resin but said that his duty book entry would be accurate.[955]

6.64 In relation to his statement Ramaccia also said that it was an accurate account of his role in the investigation. However he said he thought he did go into the house but said that he didn't search the dishwasher. He could not explain why his statement did not contain the admission by L17 of ownership of the cannabis resin but denied that it was omitted to assist L17 in relation to her charges. He said he was not aware that $10,000 had been found and denied he received any money following the investigation.[956]

6.65 When recalled to give evidence on the second occasion, Ramaccia said he could now recall that he entered the Newport premises, assisted with the search and that he did search the dishwasher and break a plate. The explanation he gave for not including this information in his statement was that he did not find anything relevant in the search. He did not, at first, agree that it was misleading to put in his statement that he waited outside when in fact he entered the premises and assisted with the search.[957] Later however, in cross-examination, he did agree that his statement was misleading in this respect.[958]

6.66 Ramaccia's duty book records that in the weeks following the arrest of L17 he returned to the Newport area with both M5 and Hill. Ramaccia could not

[951] PIC Exhibit 578B
[952] PIC Transcript, DM Hill, 11 July 2002, pp. 4260-4264
[953] PIC Exhibit 548B
[954] PIC Exhibit 549B
[955] PIC Transcript, F Ramaccia, 9 July 2002, pp. 4028-4030
[956] PIC Transcript, F Ramaccia, 9 July 2002, pp. 4031-4036
[957] PIC Transcript, F Ramaccia, 12 July 2002, pp. 4337-4339
[958] PIC Transcript, F Ramaccia, 12 July 2002, p. 4360

recall these visits or the reason for them. He also said he had no knowledge of the gold ingot taken from L17.[959]

NIELD

6.67 Nield said that he was one of the last to leave the West Ryde premises so he was not present at Newport when the police entered the premises and did not know which officers arrived there first. He had little recollection of the events although his duty book[960] recorded that he assisted with the search at Newport. In his statement[961] Nield recorded that he returned to Mona Vale Police Station and assisted Hill in relation to the charging of L17. Nield told the Commission he had no recollection of assisting Hill.[962]

6.68 In evidence Nield was asked about the conversation between M5 and Hill on 16 June 2000[963] when Hill talked about *"blueing"* with members of the GDU in relation to their actions at Newport. Nield could not explain the conversation and said he had no knowledge of a gold ingot or money being taken from Newport.[964]

6.69 Nield's duty book contained a detailed list of the property taken from the Newport premises. The list did not however mention the gold ingot or the $10,000 cash. Nield could offer no explanation as to why those items were not included other than to say he had no knowledge of those items.[965]

6.70 Nield denied that he made arrangements to meet officers from GDU to collect the gold ingot or that he arranged for another officer to collect it. He also denied that he arranged for the receipt of NSDU's share of the $10,000 and that he gave any money to Hill, M5 or Ramaccia. Apart from the preparation of his own statement he said he had nothing to do with the preparation of the brief against L17 and he did not oversight Hill's preparation.[966]

GOSFORD DRUG UNIT OFFICERS

6.71 The duty books of Ison[967], Eade[968] and McClelland[969] all recorded that they assisted in the search of the Newport premises. McClelland's duty book records that he served the Occupier's Notice. Despite this, the officers had little recall of events. McClelland could not recall whether there were other officers already at the Newport premises when he arrived. He also had no

[959] PIC Transcript, F Ramaccia, 12 July 2002, pp. 4342-4345
[960] PIC Exhibit 546B
[961] PIC Exhibit 591B
[962] PIC Transcript, MG Nield, 12 July 2002, pp. 4377-4380
[963] PIC Exhibits 574 & 575, see paragraphs 6.58-6.59
[964] PIC Transcript, MG Nield, 12 July 2002, p. 4381; 15 July 2002, pp. 4432-4433
[965] PIC Transcript, MG Nield, 15 July 2002, pp. 4432-4433
[966] PIC Transcript, MG Nield, 15 July 2002, pp. 4442-4443
[967] PIC Exhibit 551B
[968] PIC Exhibit 597B
[969] PIC Exhibit 563B

recollection of serving the Occupier's Notice and said it was possible that another officer served it in his presence.[970]

6.72 Although the job of searching the two premises commenced as a GDU operation, Hill became the informant and prepared the prosecution brief. None of the GDU officers made statements for inclusion in the brief despite the fact that they all assisted in the execution of the search warrants. Eade did not recall any discussions with Nield in relation to a decision that NSDU officers would have carriage of the brief. Eade said there was nothing untoward about the fact that NSDU officers took over this brief because it was logistically more practical for the NSDU to have carriage of the matter.[971]

6.73 All the members of the GDU denied that anything was found, or taken, from the Newport premises other than what was recorded in their duty books. They also denied being aware of any complaint by L17 in relation to the gold ingot, of any arrangement to return the gold ingot, or knowledge of the $10,000 in cash taken from the Newport premises and later divided amongst the members of GDU and NSDU.[972]

ASSESSMENT

6.74 The fact that L17 did not make an immediate complaint about the theft of the $10,000 is understandable given that evidence of $10,000 in cash located in the same room as the cannabis resin would have severely jeopardised her defence. In addition she said that the police told her that if she complained she would have to face more charges. After her acquittal L17 did make a complaint to Internal Affairs.[973] L17's allegation is however weakened by the fact that she was not able to name the officer, or officers, who had stolen the money.

6.75 Although M5 gave evidence that $10,000 and a gold ingot were taken by police from the Newport premises he did not know who took the money nor did he ever see the entire amount. He received $1,000 from Hill on the day following the searches and he assumed the money came from this job. M5 gave evidence of the practice among officers attached to the drug unit at that time, of dividing money from each job equally among all the officers, even those not present at the actually job. As there were ten officers attached to NSDU and GDU at the time of these incidents he concluded that the $1,000 he was given was his share of the $10,000. While M5's evidence lends some support to L17's evidence in relation to the $10,000 it does not confirm it.

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970 PIC Transcript, SJ McClelland, 10 July 2002, pp. 4106-4107
971 PIC Transcript, WJ Eade, 15 July 2002, p. 4416
972 PIC Transcript, IF Ison, 9 July 2002, pp. 4049-4050, 4055; SJ McClelland, 16 July 2002, pp. 4510, 4516-4517; TA Kerr-Thomson, 10 July 2002, pp. 4123-4124; WJ Eade, 15 July 2002, pp. 4422-4423
973 PIC Transcript, L17, 11 July 2002, pp. 4223-4224

6.76 The taped conversation between Hill and M5, on 21 June 2000,[974] adds some confirmation that the events relating to the gold ingot took place as described by M5.

6.77 Although the evidence raises a suspicion that police stole money from L17 on 21 February 1992, in the face of the denial of the allegation by all the officers involved except M5, and without further confirmatory evidence, the Commission is unable to reach a conclusion as to whether the money was stolen.

6.78 Although the general proposition that it was more practical for NSDU to take over the carriage of the matter is understandable from a geographical point of view, the evidence suggests that this allowed for a misrepresentation of the facts to the court, in relation to who arrived first at the Newport premises and who conducted the search. It seems unusual that the officers who conducted the search and located the cannabis resin did not provide statements for the brief against L17. Some doubts are also raised about the lack of memory of the events at Newport by the four members of GDU.

THE PAYMENT OF $50,000

6.79 M5 said that some time after the arrest and charging of L17 he became aware, through conversations with Hill, that B11, a solicitor, was going to represent L17. Through these conversations M5 also became aware that McClelland was organising a payment in relation to L17 through B11.

6.80 Some time later M5 was involved in a joint operation with GDU in the Kulnura area on the Central Coast. During down time in the operation there was conversation about the L17 matter. On the way back to Chatswood Police Station M5 travelled with Ramaccia and Hill. When Ramaccia left the vehicle he told M5 to look under the front seat because there was something there for him. M5 said Ramaccia held up his hand to indicate "five". When he looked under the seat he found a paper bag containing a wad of money totalling $5,000. M5 linked this money to L17 because of what Hill had told him and what had been discussed during the operation at Kulnura. He said his share, $5,000, represented one tenth of the total of $50,000. M5 did not speak to McClelland about the matter. He did not recall speaking to either Ramaccia or Hill about receiving the money but said he could have spoken to one or both of them.[975]

6.81 M5 was unsure about the reason for the payment of the money. He said members of the GDU arranged the payment. In addition he said that as far as he was concerned they were assisting L17 because N1 had asked them to and they were prepared to do so without the payment of any money. M5 said further that in his opinion, the money, i.e. the $10,000, and the gold ingot, should not have been taken from her and that is why he arranged for the gold

[974] PIC Exhibit 576 & 577
[975] PIC Transcript, M5, 10 July 2002, pp. 4147-4149

ingot to be returned to L17. M5 said he did not speak about his concerns in relation to the taking of the money and the gold ingot to any of the members of the GDU.[976]

6.82 N1 told the Commission that he knew B11 and spoke to him about L17 although he didn't arrange for him to represent L17. B11 did not indicate to N1 that any payment to police was being arranged, or that he had anything to do with any such payment. In discussions with M5 soon after L17's arrest, and in the years since, M5 had told N1 about the assistance given to L17 and that money was paid on her behalf. N1 thought the amount of money was $200,000 and that it was paid not by L17 but on her behalf. He said he thought this was strange because both M5 and Hill had already told him that they had given L17 assistance and he expected that, due to the connection between L17 and himself and his request that they assist her, any assistance would have been provided without requiring payment. N1 said that he did not speak to L17 about the payment made on her behalf. N1 did not know why such a large sum of money would have been paid and said he did not think that L17, at the time of her arrest, would have had access to such a large sum of money.[977]

6.83 S7 gave evidence that Eade and Ison sought payment from him for assistance with the charges he faced. He said he paid them $30,000. He also said that after L17's arrest he met with her. During their conversation L17 told him that she was working out a deal with Eade and other members of the GDU and paying them money. She did not tell him how much money was involved but S7 thought it was *"around that ballpark"* of the $30,000 he had paid.[978]

6.84 L17 said that B11 was recommended to her by an acquaintance. She said she was not aware of the payment of any money to police on her behalf in relation to her arrest. She also said that she was not aware of her solicitor, B11, being involved in any such payment and that she did not have access to $50,000 at the time she was arrested.[979] In later evidence L17 admitted that she met S7 after her arrest but denied telling him that she was working out a deal with police or paying them any money.[980]

6.85 Nield,[981] Hill,[982] Ison,[983] Kerr-Thomson[984] and Eade[985] all denied knowledge of the payment of $50,000 on behalf of L17 and receipt of a share of the money. In addition to denying knowledge of, and receipt of a share of the $50,000, McClelland said he had limited knowledge of B11.[986] Ramaccia's duty book mentioned the Kulnura operation but he could not recall any details about it. He said he could not recall travelling back with Hill and M5. He

[976] PIC Transcript, M5, 10 July 2002, p. 4149
[977] PIC Transcript, N1, 15 July 2002, pp. 4390-4395
[978] PIC Exhibit 790B: PIC Transcript, S7, 26 July 2002, pp. 15-18
[979] PIC Transcript, L17, 11 July 2002, pp. 4215-4217
[980] PIC Exhibit 793B: PIC Transcript, L17, 22 August 2002, pp. 14-15
[981] PIC Transcript, MG Nield, 15 July 2002, pp. 4441-4442
[982] PIC Transcript, DM Hill, 11 July 2002, pp. 4288-4289
[983] PIC Transcript, IF Ison, 15 July 2002, p. 4469
[984] PIC Transcript, TA Kerr-Thomson, 16 July 2002, pp. 4491-4492
[985] PIC Transcript, WJ Eade, 15 July 2002, p. 4426
[986] PIC Transcript, SJ McClelland, 16 July 2002, pp. 4518-4519

denied ever giving M5 any money and said that although they worked together their relationship was never very good.[987]

ASSESSMENT

6.86 Unlike the allegations in relation to the $10,000 M5's allegations about the $50,000 are not supported by L17. While it is possible that money was paid by others on her behalf without her knowledge this conflicts with S7's evidence and is otherwise speculative. It is also noted that there is no positive link between M5's alleged receipt of the money and L17. At best M5 recalled discussions with Hill in relation to the payment. M5 said that the payment was not for police assistance with her matter because that assistance would have been given, and in fact does appear to have been given, without any payment, as discussed below.

6.87 N1 said he thought that money had been paid and nominated the sum of $200,000 but said that this information had come to him from M5 and thus N1's knowledge cannot be considered to be independent corroboration of M5's allegation. N1 said that L17 had not told him that any money had been paid on her behalf. He also said that he had spoken to B11 and that B11 did not indicate any knowledge of or involvement in a payment to police on L17's behalf.

6.88 S7's evidence that L17 told him about an arrangement she had with police to pay money does offer some support for M5. However it is possible that L17 was referring to the $10,000 and not a further amount. In evidence L17 denied she told S7 that she paid police or had any arrangement with them to assist her. In the face of the lack of evidence from L17 and the denials of all the police officers involved, the Commission is not able to form an opinion as to the truthfulness or otherwise of the allegation in relation to the payment of the $50,000.

ASSISTANCE PROVIDED TO L17 – PERVERTING THE COURSE OF JUSTICE

6.89 As stated above, M5's evidence was that while they were still at Newport but after the drugs had been located he called N1 from a public telephone box and that N1 reiterated his previous request that they "look after" L17. M5 said that after speaking to N1 he spoke to Hill about the conversation. Some time after that, he could not remember the timing exactly, M5 said that Hill mentioned "Teh's case" as being a way in which they could assist L17.[988] Teh's case[989] concerned the importation of illegal drugs. It was held by the High Court of Australia in 1985 that the Crown must prove beyond reasonable doubt that an accused not only had the drugs in his or her possession but that he or she knew that what was in his or her possession was a drug.

[987] PIC Transcript, F Ramaccia, 12 July 2002, pp. 4348-4356
[988] PIC Transcript, M5, 10 July 2002, pp. 4134-4135
[989] He Kaw Teh v R (1985) 157 CLR 523

6.90 M5 told the Commission that his understanding was that L17 was holding the cannabis resin for the purpose of on-selling it and that she was a middle supplier, that is, she sold the cannabis resin in blocks rather than in smaller quantities. He said that he and Hill fabricated the notebook interview with L17.[990] In that interview L17 was asked why she had so much hashish at her premises. Her reply was recorded as being that she was minding it for someone else. M5 said that this reply was an invention of Hill and himself and a deliberate attempt to include a factor in her interview that would assist in her defence.[991]

6.91 In his evidence to the Commission Hill recalled that when L17's matter had finally been heard at court she was successful in defeating the charges by raising a defence based on Carey's case.[992] Hill admitted he was familiar with the principle in Carey's case. In that case it was held that a person is not "in possession for supply" of a prohibited drug within the definition of supply in section 3, or in the defence to deemed supply under section 29, of the *Drug Misuse and Trafficking Act 1985*, where the person has possession of the drug but intends merely to transfer the physical control of it to its owner or the person reasonably believed to be such. The ODPP notes which were tendered in evidence to the Commission,[993] in relation to L17's matter recorded that the trial judge[994] in L17's matter delivered a not guilty verdict on the basis of Carey's case.

6.92 L17 told the Commission that she was holding the cannabis resin for someone else and that the answers given in the notebook interview were true. She denied the suggestion that the answers were given by Hill and M5 as a way of getting around the charge and said she knew nothing of any suggestion that the police were assisting her. She said that N1 did not tell her that he had asked the police to assist her.[995] L17 also said that she had not heard of Teh's case but that she had read Carey's case after her arrest in relation to her matter. She denied that Hill had spoken to her about Carey's case.

6.93 There are a number of significant matters in the documentary evidence that lend weight to the allegation that the police assisted L17 in creating a defence capable of defeating the charges against her. The first matter is the dispute over who arrived first at the Newport premises and located the drugs. McClelland's duty book[996] recorded that he went to the Newport address with Hill, Ramaccia and Kerr-Thomson, executed the search warrant, and served the Occupier's Notice on L17. It recorded that L17 showed him the cannabis resin and was then cautioned. He then spoke with Hill. McClelland said that he had little independent recall of the events. He could not remember if he had served the Occupier's Notice and said that he may have done so or it could have been served in his presence. He could not recall being taken to the bedroom and being shown the cannabis resin. He could offer no

990 PIC Exhibit 566B
991 PIC Transcript, M5, 10 July 2002, 4142-4144
992 R v Carey (1990) 20 NSWLR 292
993 PIC Exhibit 581C
994 L17 elected to have her matter heard by a judge alone rather than before a jury.
995 PIC Transcript, L17, 11 July 2002, pp. 4215-4216
996 PIC Exhibit 563B

explanation as to why, given his role in the events as recorded in his duty book, he had not made a statement for inclusion in the brief. His duty book makes no mention of M5 being present and he said he could not recall ever working on a job with M5. He could not offer an explanation as to why M5's statement[997] recorded Hill and M5 as being the first to arrive at the Newport premises and that L17 showed the drugs to them.[998]

6.94 An explanation for this discrepancy is that a decision was taken on the night of 21 February 1992 that the NSDU should take over the brief and in doing so give assistance to L17 as requested by N1. To do this Hill and M5 had to record that they were the first to arrive at Newport and be shown the drugs by L17. In this way the GDU members could be "written out" of the brief. When this scenario was put to Hill he denied it[999] however M5's version of events supports this theory.[1000]

6.95 Hill's duty book[1001] recorded L17 as admitting ownership of the cannabis resin but it also recorded that she said she was minding it for a friend. M5's notebook interview[1002] is in similar terms. Hill's statement[1003] also recorded the admission by L17 that the cannabis resin was hers and that she was minding it for a friend and added that she said she had been "set up". A subsequent Statement of Facts[1004] prepared by Hill for the ODPP, prior to the matter being mentioned in court, omitted the admission by L17 that the drugs were hers. Hill denied that the admission was omitted in order to assist L17.[1005]

6.96 Prior to L17's matter going to trial, Hill had a conference with the ODPP solicitor at which notes were recorded.[1006] Hill and two ODPP officers attended the conference. In evidence before the Commission Hill agreed that he provided the information recorded in the notes of the conference. The notes record that there was surveillance of L17, that search warrants were obtained for both premises and that no other person was charged. L17's version of meeting a person at the airport and being asked by him to hold the drugs is recorded. The notes state, *"name given – no more detail available"* and this is followed by the words *"no indicia of supply"*. When questioned about this Hill could not recall attending the conference. He had no memory of L17 providing the name of the person who had given her the drugs to mind. He also could not recall her telling him she had met that person at the airport. He could not explain why he had said there was *"no indicia of supply"* when his statement recorded the finding of a diary with relevant information in it. It is noted that he did not mention the $10,000 found at L17's premises. Hill denied that he was assisting L17 by providing the

997 PIC Exhibit 568B
998 PIC Transcript, SJ McClelland, 10 July 2002, pp. 4106-4108
999 PIC Transcript, DM Hill, 12 July 2002, pp. 4300-4302
1000 PIC Transcript, M5, 10 July 2002, pp. 4142, 4167
1001 PIC Exhibit 557B
1002 PIC Exhibit 566B
1003 PIC Exhibit 578B
1004 PIC Exhibit 569B
1005 PIC Transcript, DM Hill, 11 July 2002, pp. 4270-4272
1006 PIC Exhibit 579C

ODPP with the information about the airport and the name being provided.[1007]

6.97 At the committal hearing Hill gave evidence that, following L17's arrest, L17 had assisted police by supplying information to them. Hill could not recall, however, ever making any record of this information, or ever following up on the leads provided, and no further arrests were made.[1008]

6.98 It is clear from a review of the documents and the evidence given in the prosecution that while L17 initially admitted ownership of the drugs located at her premises, the case against her changed to one where her version of minding the drugs for another person became a significant part of the Crown case. This is consistent with the police initially identifying her as a drug supplier and then, after becoming aware of N1's association with her and his request that police assist her, changing the brief to allow her to construct a defence.

6.99 Some of the evidence given to the Commission is also relevant. N1 said that he spoke to M5 about the L17 matter on a number of occasions during the years after her arrest. He could not remember Hill being present during any of these conversations. During these conversations M5 told him that assistance had been given to L17 as he had requested. The assistance was that the police advised L17 to answer the questions in her record of interview by saying she was minding the drugs for another person in order to mitigate her involvement in drug dealing.[1009]

6.100 In a typed statement dated 8 June 1994[1010] and an undated handwritten statement[1011] L17 recorded that when Hill asked her who owed the four blocks of cannabis resin she replied *"I do*? *I've been set up haven't I*?*"*. In the duty books this reply is recorded as "I do" without the question mark. The question mark puts a different connotation on the admission and in fact turns the reply from being an admission of ownership to being a question as to whether the police thought she owned it. The typed statement is dated and so it is clear that it was written well after the events occurred. The handwritten statement is undated and L17 said that she could not remember when she wrote it although she agreed that the details would have been fresher in her mind shortly after her arrest.[1012]

6.101 The evidence of S7 is significant in that he confirmed that L17 was a drug supplier and that she supplied some, although, not all of the drugs he obtained. The evidence of M5 about N1's request that they assist her and that the subsequent notebook interview was a fabrication specifically designed to assist her also accords with the allegation that the police assisted L17 and in doing so perverted the course of justice. Added to this are the doubts

[1007] PIC Transcript, DM Hill, 11 July 2002, pp. 4274-4279
[1008] PIC Transcript, DM Hill, 12 July 2002, pp. 4309-4311
[1009] PIC Transcript, N1, 15 July 2002, p. 4392
[1010] PIC Exhibit 796B
[1011] PIC Exhibit 798B
[1012] PIC Exhibit 793B: PIC Transcript, L17, 22 August 2002, pp. 21-22

surrounding the assertion of Hill, at the committal hearing and in conference with the ODPP, that L17 provided the name of the person who gave her the drugs, and the doubts surrounding L17's evidence of how she came to have the drugs in her possession.

ASSESSMENT

6.102 It is clear, taking into account the factors discussed above, that there is a case against Hill for perverting the course of justice in relation to L17. The case against the other members of GDU and NSDU is not so clear. McClelland is implicated because his decision not to make a statement does not stand comfortably with his duty book entry that recorded him as being one of the first officers at the Newport premises, as serving the Occupier's Notice and being shown the cannabis resin by L17.

6.103 In relation to the other members of GDU and NSDU there is a much weaker case to found an allegation of perverting the course of justice. In the light of the amount of drugs located at the Newport premises the allegation of $10,000 also being found is significant. Any case against the officers would depend on their knowledge of the cash being located at the Newport premises and their subsequent sharing of it. However all the involved officers except M5 denied that any cash was found and later shared, and as stated above there is insufficient evidence to conclude that $10,000 was stolen.

6.104 A case against these officers is however also complicated by the fact that M5 stated that the assistance he and Hill provided to L17 was done at N1's request and not on the basis of the receipt of any money, either a share of the $10,000 or of the $50,000. As discussed above M5 said that the payment of the $50,000 did not have any impact on the course of action taken by himself and Hill and they would have taken that action regardless of any money being received.

AFFECTED PERSONS

6.105 A person against whom, in the Commission's opinion, substantial allegations have been made in the course of, or in connection with, an investigation, is an "affected person" for the purposes of a Report to Parliament by the Commission.[1013]

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

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

[1013] Subsection 97(3), *Police Integrity Commission Act 1996*

b) the taking of action against the person for a specified disciplinary offence,[1014]

c) the taking of action (including the making of an order under section 181D of the *Police Act 1990*) against the person as a police officer on specified grounds, with a view to dismissing, dispensing with the services or otherwise terminating the services of the police officer,

d) the taking of reviewable action within the meaning of section 173 of the *Police Act 1990* against the person as a police officer.

6.107 In addition the Commission may form opinions as to whether police misconduct has occurred: subsection 16(1)(a) of the Act.

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

- that police from both the NSDU and GDU of Major Crime Squad North, entered into a corrupt agreement to share money, being $10,000, stolen from L17 during the execution of a search warrant on 21 February 1992, at premises occupied by L17;
- that police from both the NSDU and GDU of Major Crime Squad North, entered into a corrupt agreement to share $50,000, paid by L17 to police, for assistance provided to her in respect of the matters with which she was charged;
- that police stole a gold ingot from L17;
- that police involved in the prosecution of L17 corruptly assisted her in relation to the charges brought against her and thereby perverted the course of justice.

6.109 Based on these allegations the Commission is of the opinion that each of the following is an "affected person":

- B11
- Eade, Wayne James
- Hill, David Marshall
- Ison, Ian Frederick
- Kerr-Thomson, Timothy Andrew
- McClelland, Stephen James
- M5
- Nield, Maurice Gilbert

[1014] The power of the Commissioner of Police to refer a departmental charge against a police officer for hearing by the Police Tribunal was repealed on 8 March 1999. Since that date, the powers and obligations of the Commissioner to recommend or state whether consideration should be given to the prosecution of a person for a specified "disciplinary offence" (subsections 16(1)(b), 97(2)(b) of the Act) has no effective application to police officers. This is so even for police misconduct that occurred before this date.

- Ramaccia, Frank
- Walsh, Ronald

6.110 Each of the abovementioned affected persons, with the exception of B11 who did not give evidence, gave evidence after a declaration had been made under section 41 of the Act. Therefore pursuant to section 40 of the Act the evidence is not admissible against him or her in subsequent criminal or civil proceedings except for proceedings for an offence against the Act or for contempt under the Act.

6.111 The Commission is also of the opinion that L17 is an "affected person" based on the substantial allegation that she gave false evidence to the Commission.

B11

6.112 B11 is the solicitor who acted for L17 during her committal hearing. He is an affected person because of the serious allegation that he entered into an agreement with McClelland to pay police $50,000 on behalf of L17 for their assistance with the charges she faced. B11 did not give evidence in the Commission hearing. He was, however, legally represented.

6.113 M5 gave evidence that Hill told him McClelland had organised with B11 for the payment of the $50,000, on behalf of L17. L17 said that she had no knowledge of money allegedly paid on her behalf however S7's evidence was that he was told by L17 that she had paid the police. McClelland denied that he participated in any arrangement with B11 in relation to the payment. Hill also denied telling M5 that McClelland had organised the payment of $50,000 on behalf of L17.

6.114 The evidence of M5 is hearsay and in the absence of any corroboration that B11 was a participant in the payment of the $50,000 there is no prima facie evidence to suggest that B11 committed any offence and consequently the Commission is of the opinion that consideration **should not** be given to the prosecution of B11 for any criminal offences.

WAYNE JAMES EADE

6.115 Eade is an affected person because he is the subject of the substantial allegations that police from both North Sydney Drug Unit (NSDU) and Gosford Drug Unit (GDU) of Major Crime Squad North:

- entered into a corrupt agreement to share money, being $10,000, stolen from L17 during the execution of a search warrant on 21 February 1992, at premises occupied by L17;
- entered into a corrupt agreement to share $50,000, paid by L17 to police, for assistance provided to her in respect of the matters with which she was charged;

- stole a gold ingot from L17; and
- corruptly assisted L17 in relation to the charges brought against her and thereby perverted the course of justice.

6.116 The admissible evidence against Eade consists of the evidence of M5, L17 and the duty book entries establishing that he was one of the police involved in the execution of the search warrants at both the West Ryde and the Newport premises.

6.117 The Commission is of the opinion that there is insufficient evidence to confirm the allegations in relation to the stealing of the gold ingot and the sharing of the money stolen from the Newport premises. Although L17 gave evidence that the money and the gold ingot were stolen she was not able to say who stole the money and the ingot. M5 gave evidence that the ingot and $10,000 were stolen but he did not know who stole the ingot and the money, did not see the ingot or the money either before or after they were stolen, and, although he received $1,000 from Hill on the day after the ingot and money were alleged to have been stolen, M5 could not confirm that the money he received was his one tenth of the $10,000. All of the other involved officers denied stealing the ingot and the $10,000 and receiving a tenth share of it. Therefore the Commission is of the opinion that consideration **should not** be given to the prosecution of Eade for any criminal offence in relation to the stealing of the gold ingot and $10,000 or the receipt of a tenth share of it.

6.118 M5's evidence in relation to the payment of $50,000 is hearsay and there is no positive link between L17 and the alleged payment of $5,000 to M5. Although S7 gave evidence that L17 told him she was paying police he was not able to indicate an amount. L17 denied paying the police, or making any arrangement for money to be paid to the police to assist her. She denied knowledge of any payment on her behalf and denied telling S7 that she was paying police. N1's knowledge of the payment came from M5 so it is not corroborative of M5's allegation. In the absence of any corroboration, M5's allegation cannot be relied upon. Therefore the Commission is of the opinion that consideration **should not** be given to the prosecution of Eade for any offence in relation to the alleged receipt of a tenth of $50,000.

6.119 There is no evidence to suggest that Eade was involved in the fabrication of the record of interview with L17. In addition he did not give evidence at the trial of L17. There is therefore no evidence to suggest the involvement of Eade in the assistance provided to L17 by police. The Commission is of the opinion that consideration **should not** be given to the prosecution of Eade for the offence of perverting the course of justice.

6.120 Eade is no longer a serving police officer. Accordingly the question of taking action pursuant to subsections 97(2)(c) and (d) of the Act does not arise.

DAVID MARSHALL HILL

6.121 Hill is an affected person because he is the subject of the substantial allegations that police from both the NSDU and GDU of Major Crime Squad North:

- entered into a corrupt agreement to share money, being $10,000, stolen from L17 during the execution of a search warrant on 21 February 1992, at premises occupied by L17;
- entered into a corrupt agreement to share $50,000, paid by L17 to police, for assistance provided to her in respect of the matters with which she was charged;
- stole a gold ingot from L17; and
- corruptly assisted L17 in relation to the charges brought against her and thereby perverted the course of justice.

6.122 The Commission considers that Hill engaged in police misconduct: subsection 16(1)(a) of the Act.

6.123 The admissible evidence against Hill consists of the evidence of M5, L17 and the recorded conversations. Those conversations indicate that Hill was aware of the theft of the gold ingot from the Newport premises. In one of the conversations Hill also said *"It's always been in equal parts"* although he denied that this referred to the sharing of money taken from suspects.

6.124 The Commission is of the opinion that there is insufficient evidence to confirm the allegations in relation to the stealing of the gold ingot and the sharing of the money stolen from the Newport premises. Although L17 gave evidence that the money and the gold ingot were stolen she was not able to say who stole the money and the ingot. M5 gave evidence that the ingot and $10,000 were stolen but he did not know who stole the ingot and the money, did not see the ingot or the money either before or after they were stolen, and, although he received $1,000 from Hill on the day after the ingot and money were alleged to have been stolen, M5 could not confirm that the money he received was his one tenth of the $10,000. All of the other involved officers denied stealing the ingot and the $10,000 and receiving a tenth share of it. Therefore the Commission is of the opinion that consideration **should not** be given to the prosecution of Hill for any criminal offence in relation to the stealing of the gold ingot and $10,000 or the receipt of a tenth share of it.

6.125 M5's evidence in relation to the payment of $50,000 is hearsay and there is no positive link between L17 and the alleged payment of $5,000 to M5. Although S7 gave evidence that L17 told him she was paying police he was not able to indicate an amount. L17 denied paying the police, or making any arrangement for money to be paid to the police to assist her. She denied knowledge of any payment on her behalf and denied telling S7 that she was paying police. N1's knowledge of the payment came from M5 so it is not corroborative of M5's allegation. In the absence of any corroboration, M5's

allegation cannot be relied upon. Therefore the Commission is of the opinion that consideration **should not** be given to the prosecution of Hill for any offence in relation to the alleged receipt of a tenth of $50,000.

6.126 The listening device evidence also provided corroboration of M5's evidence regarding Hill's involvement in the assistance provided to L17. M5 said that he and Hill fabricated the record of interview between themselves and L17. His evidence was also to the effect that the statements prepared by both himself and Hill for the prosecution, in that they adhered to the fabricated record of interview, were false and that they both therefore gave perjured evidence at the trial of L17. The Commission is of the opinion that the evidence supports consideration being given to the prosecution of Hill for perverting the course of justice pursuant to section 319 of the *Crimes Act 1900*.

6.127 Following the public hearings in this segment and prior to the completion of this Report, NSW Police gave consideration to the preparation of a brief of evidence against Hill. A decision was made to take no further action. The reasons for this decision were that there was insufficient evidence and a lack of corroborative evidence. In addition the duty book entries were inconsistent and L17 declined to assist.

6.128 In the circumstances the Commission is of the opinion that further consideration **should not** be given to the prosecution of Hill for any criminal offences.

6.129 Hill is no longer a serving police officer. Accordingly the question of taking action pursuant to subsections 97(2)(c) and (d) of the Act does not arise.

IAN FREDERICK ISON

6.130 Ison is an affected person because he is the subject of the substantial allegations that police from both the NSDU and GDU of Major Crime Squad North:

- entered into a corrupt agreement to share money, being $10,000, stolen from L17 during the execution of a search warrant on 21 February 1992, at premises occupied by L17;
- entered into a corrupt agreement to share $50,000, paid by L17 to police, for assistance provided to her in respect of the matters with which she was charged;
- stole a gold ingot from L17; and
- corruptly assisted L17 in relation to the charges brought against her and thereby perverted the course of justice.

6.131 The admissible evidence against Ison consists of the evidence of M5, L17 and the duty book entries that establish that Ison was involved in the execution of

the search warrants at both the West Ryde and the Newport premises. It is also relevant that Ison was the officer who sought and obtained the search warrants.

6.132 The Commission is of the opinion that there is insufficient evidence to confirm the allegations in relation to the stealing of the gold ingot and the sharing of the money stolen from the Newport premises. Although L17 gave evidence that the money and the gold ingot were stolen she was not able to say who stole the money and the ingot. M5 gave evidence that the ingot and $10,000 were stolen but he did not know who stole the ingot and the money, did not see the ingot or the money either before or after they were stolen, and, although he received $1,000 from Hill on the day after the ingot and money were alleged to have been stolen, M5 could not confirm that the money he received was his one tenth of the $10,000. All of the other involved officers denied stealing the ingot and the $10,000 and receiving a tenth share of it. Therefore the Commission is of the opinion that consideration **should not** be given to the prosecution of Ison for any criminal offence in relation to the stealing of the gold ingot and $10,000 or the receipt of a tenth share of it.

6.133 M5's evidence in relation to the payment of $50,000 is hearsay and there is no positive link between L17 and the alleged payment of $5,000 to M5. Although S7 gave evidence that L17 told him she was paying police he was not able to indicate an amount. L17 denied paying the police, or making any arrangement for money to be paid to the police to assist her. She denied knowledge of any payment on her behalf and denied telling S7 that she was paying police. N1's knowledge of the payment came from M5 so it is not corroborative of M5's allegation. In the absence of any corroboration, M5's allegation cannot be relied upon. Therefore the Commission is of the opinion that consideration **should not** be given to the prosecution of Ison for any offence in relation to the alleged receipt of a tenth of $50,000.

6.134 There is no evidence to suggest that Ison was involved in the fabrication of the record of interview with L17. In addition he did not give evidence at the trial of L17. There is therefore no evidence to suggest the involvement of Ison in the assistance provided to L17 by police. The Commission is of the opinion that consideration **should not** be given to the prosecution of Ison for the offence of perverting the course of justice.

6.135 Ison is no longer a serving police officer. Accordingly the question of taking action pursuant to subsections 97(2)(c) and (d) of the Act does not arise.

TIMOTHY ANDREW KERR-THOMSON

6.136 Kerr-Thomson is an affected person because he is the subject of the substantial allegations that police from both the NSDU and GDU of Major Crime Squad North:

- entered into a corrupt agreement to share money, being $10,000, stolen from L17 during the execution of a search warrant on 21 February 1992, at premises occupied by L17;
- entered into a corrupt agreement to share $50,000, paid by L17 to police, for assistance provided to her in respect of the matters with which she was charged;
- stole a gold ingot from L17; and
- corruptly assisted L17 in relation to the charges brought against her and thereby perverted the course of justice.

6.137 The admissible evidence against Kerr-Thomson consists of the evidence of M5, L17 and the duty book entries that establish that Kerr-Thomson was one of the officers involved in the execution of the search warrants at both the West Ryde and the Newport premises.

6.138 The Commission is of the opinion that there is insufficient evidence to confirm the allegations in relation to the stealing of the gold ingot and the sharing of the money stolen from the Newport premises. Although L17 gave evidence that the money and the gold ingot were stolen she was not able to say who stole the money and the ingot. M5 gave evidence that the ingot and $10,000 were stolen but he did not know who stole the ingot and the money, did not see the ingot or the money either before or after they were stolen, and, although he received $1,000 from Hill on the day after the ingot and money were alleged to have been stolen, M5 could not confirm that the money he received was his one tenth of the $10,000. All of the other involved officers denied stealing the ingot and the $10,000 and receiving a tenth share of it. Therefore the Commission is of the opinion that consideration **should not** be given to the prosecution of Kerr-Thomson for any criminal offence in relation to the stealing of the gold ingot and $10,000 or the receipt of a tenth share of it.

6.139 M5's evidence in relation to the payment of $50,000 is hearsay and there is no positive link between L17 and the alleged payment of $5,000 to M5. Although S7 gave evidence that L17 told him she was paying police he was not able to indicate an amount. L17 denied paying the police, or making any arrangement for money to be paid to the police to assist her. She denied knowledge of any payment on her behalf and denied telling S7 that she was paying police. N1's knowledge of the payment came from M5 so it is not corroborative of M5's allegation. In the absence of any corroboration, M5's allegation cannot be relied upon. Therefore the Commission is of the opinion that consideration **should not** be given to the prosecution of Kerr-Thomson for any offence in relation to the alleged receipt of a tenth of $50,000.

6.140 There is no evidence to suggest that Kerr-Thomson was involved in the fabrication of the record of interview with L17. In addition he did not give evidence at the trial of L17. There is therefore no evidence to suggest the involvement of Kerr-Thomson in the assistance provided to L17 by police. The Commission is of the opinion that consideration **should not** be given to

the prosecution of Kerr-Thomson for the offence of perverting the course of justice.

6.141 Kerr-Thomson is a serving officer so it is necessary to consider the issues raised in subsections 97(2)(c) and (d) of the Act. In doing so the evidence he gave to the Commission may be considered. Kerr-Thomson had little recollection of these events but denied involvement in any wrongdoing. As stated above there is insufficient evidence to corroborate the allegations in relation to the stealing of $10,000 and $50,000. In addition there is no evidence that Kerr-Thomson was involved in the fabrication of the record of interview with L17 and he did not give evidence at her trial. The Commission is of the opinion that consideration **should not** be given to the taking of action against Kerr-Thomson pursuant to subsection 97(2)(c) or (d) of the Act.

L17

6.142 L17 is an affected person because it is alleged that she gave false evidence in a material particular to the Commission.

6.143 On 11 July 2002, L17 gave evidence under objection after a declaration pursuant to section 41 of the Act had been made. She was cautioned that her evidence may be admissible against her in any criminal proceedings for perjury should any evidence she gave be false or misleading in a material particular. The Commission is of the opinion that that there is evidence given by L17 that warrants consideration in this regard.

6.144 L17 told the Commission that the name of the person who gave her four kilograms of cannabis resin was the person identified on Exhibit 572C.[1015] This person was codenamed H5 in the Commission's hearing. L17 also stated that she contacted B11 on the recommendation of a person she knew only by his first name. The name she gave is a common male name and the same as the first name of S7.[1016] L17 denied that she was looking after the drugs for the person who recommended she contact B11. Her evidence was that he was possibly involved in drugs but she did not know that definitely and she did not know whether he had been arrested at around the same time as herself.[1017] Later, L17 stated that she knew that this man had been convicted and sentenced previously to imprisonment for drug offences.[1018] When shown Exhibit 573C containing S7's surname, L17 stated that she did not know any male by that name.[1019]

6.145 A number of documents from L17's solicitor, during her trial, were tendered in evidence. An undated ten-page hand written statement refers to the person who gave her the drugs to mind as "X".[1020] Her solicitor's conference note,

[1015] PIC Transcript, L17, 11 July 2002, p. 4219
[1016] PIC Transcript, L17, 11 July 2002, pp. 4215-4216; PIC Exhibit 571C
[1017] PIC Transcript, L17, 11 July 2002, pp. 4216-4217
[1018] PIC Transcript, L17, 11 July 2002, pp. 4226-4227
[1019] PIC Transcript, L17, 11 July 2002, pp. 4234-4235
[1020] PIC Exhibit 798B

dated 4 May 1994, refers to "X" for the first three and a half pages. At the end of the note regarding X's involvement, the solicitor has noted "X = [S7]".[1021] In a typed statement dated 8 June 1994, L17 refers to the person "X" as H5.[1022]

6.146 On 22 August 2002, L17 gave evidence to the Commission in a private hearing.[1023] L17 was reminded of her answers given in relation to S7's surname. L17 then agreed that she did not know the person with the code name "S7" and he definitely was not the person she met at the airport.[1024] Contrary to what appears in her solicitor's conference note[1025] L17 stated that she had not, to her knowledge, provided S7's name to anyone in relation to the charge that had been brought against her and she could not explain how it was that her solicitor had written "X = [S7]".[1026]

6.147 Again, in contradiction to earlier evidence, L17 agreed that she knew that S7 was someone who dealt in drugs and that the relationship they had was a type of business relationship, in drug dealing. S7 was someone who had met L17's husband in gaol. H5 may also have met L17's husband in gaol.[1027]

6.148 These matters suggest that L17 gave false or misleading evidence, in a material particular, to the Commission. Specifically, L17 gave evidence of that character in relation to: (1) her knowledge of S7; and (2) the association that she had with S7. The Commission is of the opinion that consideration **should** be given to the prosecution of L17 for giving false or misleading evidence to the Commission pursuant to section 107 of the Act.

M5

6.149 M5 is an affected person because he is the subject of the substantial allegations that police from both the NSDU and GDU of Major Crime Squad North:

- entered into a corrupt agreement to share money, being $10,000, stolen from L17 during the execution of a search warrant on 21 February 1992, at premises occupied by L17;
- entered into a corrupt agreement to share $50,000, paid by L17 to police, for assistance provided to her in respect of the matters with which she was charged;
- stole a gold ingot from L17; and
- corruptly assisted L17 in relation to the charges brought against her and thereby perverted the course of justice.

[1021] PIC Exhibit 797B
[1022] PIC Exhibit 796B
[1023] PIC Exhibit 793B
[1024] PIC Exhibit 793B: PIC Transcript, L17, 22 August 2002, pp. 4-5
[1025] PIC Exhibit 797B
[1026] PIC Exhibit 793B: PIC Transcript, L17, 22 August 2002, p. 14
[1027] PIC Exhibit 793B: PIC Transcript, L17, 22 August 2002, pp. 17-19

6.150 The Commission considers that M5 engaged in police misconduct: subsection 16(1)(a) of the Act.

6.151 The admissible evidence against M5 consists of the evidence of L17. M5's own admissions are not admissible against him.

6.152 In relation to the stealing of the gold ingot and the sharing of the money stolen from the Newport premises the only admissible evidence against M5 is that of L17. Although she gave evidence that the money and the gold ingot were stolen she was not able to say who stole the money and the ingot. Therefore the Commission is of the opinion that there is insufficient admissible evidence to support consideration of the prosecution of M5 for any criminal offence in relation to the stealing of the gold ingot and $10,000 or the receipt of a tenth share of it.

6.153 L17 denied paying the police $50,000, or making any arrangement for money to be paid to the police to assist her. She denied knowledge of any payment on her behalf and denied telling S7 that she was paying police. Although S7 said that L17 told him she was paying police he was not able to indicate an amount. N1's knowledge of the payment came from M5 so it is not corroborative of M5's allegation. In the absence of any corroboration, M5's allegation cannot be relied upon. Therefore the Commission is of the opinion that there is insufficient admissible evidence to support consideration of the prosecution of M5 for any criminal offence in relation to the alleged receipt of a tenth of $50,000.

6.154 The only evidence about M5's involvement in the assistance provided to L17 in relation to the charges brought against her came from M5 himself. That evidence cannot be used against him. Therefore there is no admissible evidence against M5, in relation to this allegation.

6.155 The Attorney General has granted M5 has an indemnity from prosecution in relation to all matters in respect of which he has admitted criminal conduct. Therefore the Commission has not expressed an opinion about whether consideration should be given to the prosecution of M5 for any criminal offences.

6.156 M5 is no longer a serving police officer. Accordingly the question of taking action pursuant to subsections 97(2)(c) and (d) of the Act does not arise.

STEPHEN JAMES MCCLELLAND

6.157 McClelland is an affected person because he is the subject of the substantial allegations that police from both the NSDU and GDU of Major Crime Squad North:

- entered into a corrupt agreement to share money, being $10,000, stolen from L17 during the execution of a search warrant on 21 February 1992, at premises occupied by L17;

- entered into a corrupt agreement to share $50,000, paid by L17 to police, for assistance provided to her in respect of the matters with which she was charged;
- stole a gold ingot from L17; and
- corruptly assisted L17 in relation to the charges brought against her and thereby perverted the course of justice.

6.158 The admissible evidence against McClelland consists of the evidence of M5, L17 and the duty book entries that establish that McClelland was one of the officers involved in the execution of the search warrants at both the West Ryde and the Newport premises.

6.159 The Commission is of the opinion that there is insufficient evidence to confirm the allegations in relation to the stealing of the gold ingot and the sharing of the money stolen from the Newport premises. Although L17 gave evidence that the money and the gold ingot were stolen she was not able to say who stole the money and the ingot. M5 gave evidence that the ingot and $10,000 were stolen but he did not know who stole the ingot and the money, did not see the ingot or the money either before or after they were stolen, and, although he received $1,000 from Hill on the day after the ingot and money were alleged to have been stolen, M5 could not confirm that the money he received was his one tenth of the $10,000. All of the other involved officers denied stealing the ingot and the $10,000 and receiving a tenth share of it. Therefore the Commission is of the opinion that consideration **should not** be given to the prosecution of McClelland for any criminal offence in relation to the stealing of the gold ingot and $10,000 or the receipt of a tenth share of it.

6.160 M5's evidence in relation to the payment of $50,000 is hearsay and there is no positive link between L17 and the alleged payment of $5,000 to M5. Although S7 gave evidence that L17 told him she was paying police he was not able to indicate an amount. L17 denied paying the police, or making any arrangement for money to be paid to the police to assist her. She denied knowledge of any payment on her behalf and denied telling S7 that she was paying police. N1's knowledge of the payment came from M5 so it is not corroborative of M5's allegation. In the absence of any corroboration, M5's allegation cannot be relied upon. Therefore the Commission is of the opinion that consideration **should not** be given to the prosecution of McClelland for any offence in relation to the alleged receipt of a tenth of $50,000.

6.161 There is no evidence to suggest that McClelland was involved in the fabrication of the record of interview with L17. In addition he did not give evidence at the trial of L17. There is therefore no evidence to suggest the involvement of McClelland in the assistance provided to L17 by police. Therefore the Commission is of the opinion that consideration **should not** be given to the prosecution of McClelland for the offence of perverting the course of justice.

6.162 McClelland is no longer a serving police officer. Accordingly the question of taking action pursuant to subsections 97(2)(c) and (d) of the Act does not arise.

MAURICE GILBERT NIELD

6.163 Nield is an affected person because he is the subject of the substantial allegations that police from both the NSDU and GDU of Major Crime Squad North:

- entered into a corrupt agreement to share money, being $10,000, stolen from L17 during the execution of a search warrant on 21 February 1992, at premises occupied by L17;
- entered into a corrupt agreement to share $50,000, paid by L17 to police, for assistance provided to her in respect of the matters with which she was charged;
- stole a gold ingot from L17; and
- corruptly assisted L17 in relation to the charges brought against her and thereby perverted the course of justice.

6.164 The admissible evidence against Nield consists of the evidence of M5, L17 and the duty book entries that establish that Nield was one of the officers involved in the execution of the search warrants at both the West Ryde and the Newport premises.

6.165 The Commission is of the opinion that there is insufficient evidence to confirm the allegations in relation to the stealing of the gold ingot and the sharing of the money stolen from the Newport premises. Although L17 gave evidence that the money and the gold ingot were stolen she was not able to say who stole the money and the ingot. M5 gave evidence that the ingot and $10,000 were stolen but he did not know who stole the ingot and the money, did not see the ingot or the money either before or after they were stolen, and, although he received $1,000 from Hill on the day after the ingot and money were alleged to have been stolen, M5 could not confirm that the money he received was his one tenth of the $10,000. All of the other involved officers denied stealing the ingot and the $10,000 and receiving a tenth share of it. Therefore the Commission is of the opinion that consideration **should not** be given to the prosecution of Nield for any criminal offence in relation to the stealing of the gold ingot and $10,000 or the receipt of a tenth share of it.

6.166 M5's evidence in relation to the payment of $50,000 is hearsay and there is no positive link between L17 and the alleged payment of $5,000 to M5. Although S7 gave evidence that L17 told him she was paying police he was not able to indicate an amount. L17 denied paying the police, or making any arrangement for money to be paid to the police to assist her. She denied knowledge of any payment on her behalf and denied telling S7 that she was paying police. N1's knowledge of the payment came from M5 so it is not corroborative of M5's allegation. In the absence of any corroboration, M5's

allegation cannot be relied upon. Therefore the Commission is of the opinion that consideration **should not** be given to the prosecution of Nield for any offence in relation to the alleged receipt of a tenth of $50,000.

6.167 There is no evidence to suggest that Nield was involved in the fabrication of the record of interview with L17. In addition he did not give evidence at the trial of L17. There is therefore no evidence to suggest the involvement of Nield in the assistance provided to L17 by police. The Commission is of the opinion that consideration **should not** be given to the prosecution of Nield for the offence of perverting the course of justice.

6.168 Nield is no longer a serving police officer. Accordingly the question of taking action pursuant to subsections 97(2)(c) and (d) of the Act does not arise.

FRANK RAMACCIA

6.169 Ramaccia is an affected person because he is the subject of the substantial allegations that police from both the NSDU and GDU of Major Crime Squad North:

- entered into a corrupt agreement to share money, being $10,000, stolen from L17 during the execution of a search warrant on 21 February 1992, at premises occupied by L17;
- entered into a corrupt agreement to share $50,000, paid by L17 to police, for assistance provided to her in respect of the matters with which she was charged;
- stole a gold ingot from L17; and
- corruptly assisted L17 in relation to the charges brought against her and thereby perverted the course of justice.

6.170 The admissible evidence against Ramaccia consists of the evidence of M5, L17 and the duty book entries that establish that Ramaccia was one of the officers involved in the execution of the search warrants at both the West Ryde and the Newport premises.

6.171 The Commission is of the opinion that there is insufficient evidence to confirm the allegations in relation to the stealing of the gold ingot and the sharing of the money stolen from the Newport premises. Although L17 gave evidence that the money and the gold ingot were stolen she was not able to say who stole the money and the ingot. M5 gave evidence that the ingot and $10,000 were stolen but he did not know who stole the ingot and the money, did not see the ingot or the money either before or after they were stolen, and, although he received $1,000 from Hill on the day after the ingot and money were alleged to have been stolen, M5 could not confirm that the money he received was his one tenth of the $10,000. All of the other involved officers denied stealing the ingot and the $10,000 and receiving a tenth share of it. Therefore the Commission is of the opinion that consideration **should not** be

given to the prosecution of Ramaccia for any criminal offence in relation to the stealing of the gold ingot and $10,000 or the receipt of a tenth share of it.

6.172 M5's evidence in relation to the payment of $50,000 is hearsay and there is no positive link between L17 and the alleged payment of $5,000 to M5. Although S7 gave evidence that L17 told him she was paying police he was not able to indicate an amount. L17 denied paying the police, or making any arrangement for money to be paid to the police to assist her. She denied knowledge of any payment on her behalf and denied telling S7 that she was paying police. N1's knowledge of the payment came from M5 so it is not corroborative of M5's allegation. In the absence of any corroboration, M5's allegation cannot be relied upon. Therefore the Commission is of the opinion that consideration **should not** be given to the prosecution of Ramaccia for any offence in relation to the alleged receipt of a tenth of $50,000.

6.173 There is no evidence to suggest that Ramaccia was involved in the fabrication of the record of interview with L17. In addition he did not give evidence at the trial of L17. Except for the inconsistency between his duty book and his statement there is no admissible evidence to suggest the involvement of Ramaccia in the offence of perverting the course of justice. The Commission is of the opinion that consideration **should not** be given to the prosecution of Ramaccia for the offence of perverting the course of justice.

6.174 Ramaccia is a serving officer so it is necessary to consider the issues raised in subsections 97(2)(c) and (d) of the Act. In doing so the evidence he gave to the Commission may be considered. Ramaccia had little recollection of these events and denied any involvement in corruption. As stated above there is insufficient evidence to corroborate the allegations in relation to the stealing of $10,000 and $50,000. In addition there is no evidence that Ramaccia was involved in the fabrication of the record of interview with L17 and he did not give evidence at her trial. The Commission is of the opinion that consideration **should not** be given to the taking of action against Ramaccia pursuant to subsections 97(2)(c) or (d) of the Act.

RONALD WALSH

6.175 Walsh is an affected person because he is the subject of the substantial allegation that police involved in the prosecution of L17 corruptly assisted her in relation to the charges brought against her.

6.176 M5 gave evidence that Walsh had no idea that the record of interview with L17 was fabricated and that he did not participate in the sharing of money taken from the Newport premises.

6.177 Walsh provided a statement for the proceedings involving L17 in which he said that he spoke to her and asked whether she had read the notes taken by M5 and she replied affirmatively. He had also asked her whether the notes were a true record of the interview. Again she had replied in the

affirmative.[1028] Walsh could not recall being challenged by counsel for L17, when he gave evidence at her trial, about the adoption of the record of interview. The notes taken by the ODPP solicitor show that Walsh gave evidence on 14 February 1995 and was cross-examined but there is no indication of the content of the examination.[1029]

6.178 In her evidence L17 agreed that Walsh spoke to her but that she could not recall whether she told him that the notes were accurate. Because she did not consider the notes to be accurate she could not imagine that she would have told him that they were accurate and a true record of her interview. She also said however that she did not complain to Walsh about the theft of the $10,000 or the gold ingot.

6.179 There is no evidence that Walsh committed any offence and the Commission is of the opinion that consideration **should not** be given to the prosecution of Walsh for any offences arising out of these events.

6.180 Walsh is no longer a serving police officer. Accordingly the question of taking action pursuant to subsections 97(2)(c) and (d) of the Act does not arise.

[1028] PIC Exhibit 559B
[1029] PIC Exhibit 581C

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