

CHAPTER 5

OPERATION FARFALLE

5.1 INTRODUCTION

The Royal Commission became aware that a person who was subsequently given the code-name R1, was willing to provide information concerning alleged corrupt conduct by police officers. At that time, R1 was in custody, awaiting trial on drug trafficking charges. Investigators from the Royal Commission interviewed R1 over several days and received a significant amount of information from him concerning his drug trafficking activities and his dealings with police officers. Further investigations were then conducted under the operation code-named Farfalle. It was noted that R1 had not been charged in the period 1989 to 2000, a period during which he said he was actively involved in drug related activity.

Many of the allegations made by R1 were not capable of corroboration, and eventually they were not pursued. However, one of the matters to which he had referred was well documented and became the subject of further investigation by the Royal Commission. The result of that investigation was revealed in a public hearing, the outcome of which is summarized below.

5.2 ARREST OF R1

R1 claimed that, in 1989, he had planted and cultivated cannabis in about 43 separate crop sites, known as "pits". In this enterprise, he was assisted by two persons who were referred to by the code-names, R6 and R3. R1 estimated that he had planted between 100 and 300 seedlings per pit, but indicated that natural attrition, cultivation techniques and continuous harvesting meant that, as the season progressed, each pit might contain fewer plants. The cannabis was harvested, either by cutting plants off at the stem near ground level, or by cutting branches or "heads" from larger plants.

The crops were planted in the Moore River Reserve, several kilometres from the property of Cheryl and Gregory Morton at Beeramullah West Road, Gingin. Also residing on that property were their two sons, James and Brendan, and Gregory Morton's uncle, Mervyn Edwards, with whom the Mortons farmed the property in partnership.

R1 established a camp that was either on or at the back of the Mortons' property, not far from Greenwood Crossing on the Moore River. Nearby, he tied up cuttings of cannabis to

dry on lines of wire between trees. Mervyn Edwards encountered R1, R3 and R6 at the campsite on 29 August 1989, but he did not see any cannabis. He told Cheryl Morton of their presence and she reported to the Gingin police that she suspected some "campers" were cultivating cannabis.

R1 suspected that his cannabis-related activity had been observed. He and R3 stripped the cannabis of leaves and broke camp. Approximately 50 stripped cannabis stems were left nearby.

On 31 August 1989, the general duties officer in charge of the Gingin Police Station, who was then a senior constable, together with a first class constable and two constables, who were also stationed at Gingin, drove out towards Greenwood Crossing in response to the information provided to them by Cheryl Morton. There they located the stripped cannabis stems.

In the meantime, R1 and R3 had set up another camp, further south on the Moore River. They again tied up lines of cannabis to dry, some 50 metres from their camp. R3 said that there were several lines in one area, but only a single line was tied up in the second area. On 5 September 1989, members of the Morton family observed them at their second camp.

R1 returned to Perth, probably on 5 September 1989. He had arranged with R5 and R2 to come up to the camp the next day for a picnic. R5 was then the wife of R1, although she was to leave the marriage within a year of these events. R2 was the housekeeper for R3, and a friend of R1 and of R5. She and R1 later married.

Early on 6 September 1989, Gregory Morton telephoned the Gingin police. He told the police that the men who had been on his property the previous week had returned, and he asked if the police would attend. The OIC Gingin and another of the constables from Gingin attended once again. They parked their police 4WD vehicle on the eastern side of the Moore River, near Edward's Crossing, and forded the river on foot. The OIC was carrying a side arm, a shotgun and a box of shotgun cartridges. The constable was also carrying a side arm.

The officers found a tent and a camp fire. On searching the campsite, they discovered a small amount of cannabis leaf and a smoking implement. Within a few minutes, R3 emerged from the bush, carrying a long-bow. He was arrested and handcuffed. The officers then discovered the cannabis cuttings. R3 denied any knowledge of the cannabis, but he was not believed, and the officers locked him in the rear of the police vehicle.

The constable was then sent to the Mortons' farmhouse with R3 in order to make two telephone calls. The first call was to request the attendance of the Drug Squad, and the second was to ask two traffic officers from Gingin to bring the police camera to the scene. While the constable and R3 were at the farmhouse, the OIC Gingin left the campsite for a short period. He took the shotgun with him, but he left the box of shotgun cartridges somewhere near the campsite.

In the meantime, R1, R2 and R5 had arrived in R1's Range Rover, unseen by the OIC Gingin. R1 saw unfamiliar tyre tracks and footprints. He also found the OIC's box of cartridges, which he handed to R2. Realizing that his cannabis operation had been compromised, he told the two women to remain at the campsite while he ran to hide the cannabis.

R1 said he took all the cannabis off the lines at one site. He crammed it into four or five hessian bags and ran into the bush where he hid the cannabis. He was unsure of the total number of lines, but estimated that there were between five and eight. He did not remove any cannabis from the single line at the second site. He was unsure of the number of cuttings that he had hidden, but he estimated that there would have been between 150 and 300.

While R1 was occupied in hiding the cannabis, the OIC Gingin returned to the campsite and apprehended the two women, R2 and R5. When R1 arrived at the campsite several minutes later, he also was apprehended. The OIC recovered his box of cartridges from the tent, where R2 had put it.

The constable and R3 returned from the farmhouse after R1 had been apprehended. R1 was placed in the rear of the police vehicle with R3. At about this time, the two Gingin officers noticed that most of the cannabis that they had previously seen had disappeared.

R4 then arrived in a 4WD vehicle under a previous arrangement with R1 to repair one of his vehicles. He had no involvement in the cultivation of cannabis, but he also was locked in the rear of the police vehicle with R1 and R3.

Later in the day, two traffic officers from the Gingin Police Station came to the site with the police camera. Photographs were taken of the single line of cannabis left by R1 at the second location. Those photographs show a line of some 17 cannabis cuttings hanging upside down from a line strung between two trees.

5.3 INVOLVEMENT OF DRUG SQUAD OFFICERS

Five officers from the Drug Squad, including a detective sergeant, a male and a female detective constable, a probationary detective constable, and an unidentified officer, arrived at the site at about midday. They drove to the Mortons' farm in at least two vehicles, a Holden Commodore sedan and a Toyota 4WD.

The OIC Gingin told the Drug Squad officers about the missing cannabis. R4 was removed from the police 4WD vehicle and handcuffed inside his own vehicle. R1 and R3 were left in the police vehicle. The women remained in the tent.

According to R1, he was questioned by two of the detectives, but he did not co-operate with them. Officers, including the two local officers, searched for the missing cannabis without success. Eventually, R1 said he was approached by the male detective constable who said words to the effect:

Well, come on. It's not kilos of heroin we are dealing with here. It's just a bit of marijuana. Can you tell us where it is?

R1 then became more receptive. He said something to the effect:

Well, what if I was able to tell you where some heroin could be obtained? Could we come to some sort of arrangement with all the people apprehended here?

On the evidence of R1, the detective sergeant and the male detective constable walked him a short distance from the others to discuss the matter. It was agreed that, if R1 told the police where the cannabis was hidden, and if he became an informant for the police, then they would free the others who had been apprehended that day, and they would charge R1 in relation to only 10 or 12 plants. R1 then showed the detectives where he had hidden the cannabis.

The evidence of the various witnesses regarding the number of cannabis cuttings recovered was conflicting. R1 said that there were about five to eight lines of cannabis drying in the vicinity of the camp, and that there were approximately 150 to 300 cuttings. R3 said there was one line that contained plant cuttings at one site, and several lines that contained heads of cannabis at another site. The OIC Gingin thought he had seen two lines of cannabis, but he could not recall the number of cuttings. He recorded on the day that, upon his first search, he had seen "approximately 100 plants...hung out for drying" in two different areas, about 50 metres north of the campsite. The photographs taken by the

traffic officer show a single line, probably of 17 cannabis cuttings, which appeared to be the single line of cuttings, rather than the line of the cannabis heads referred to by R3.

R1's evidence was that he had shown the police officers the hidden cannabis. The two Drug Squad officers pressed him for the location of the crop sites from which the cannabis had been harvested. R1 testified that he had agreed to do so, as he had little room to negotiate on the matter. He showed the detectives the location of two of his pits, several kilometres away from the campsite. He said that the cannabis plants were uprooted by officers, placed in hessian bags and stacked in the rear of the Drug Squad's 4WD on top of the bags of cannabis previously discovered. The detectives and R1 then drove directly to the Mortons' farmhouse, where R1 was put into the police Commodore sedan.

Three of the Drug Squad detectives claimed that they could not recall being shown the sites of the cannabis crops, although each recorded in his or her journal that the suspect or suspects had been "spoken to at length" and that officers then visited crop sites. None could say whether plants were found. However, there is little doubt that R1 showed detectives cannabis plants at those sites. R1 said so, and the female detective recorded in her journal, "Travel to crops & pull same". The local OIC was told at the time that plants had been located.

The evidence was far from unanimous as to the number of cannabis plants recovered by the detectives. R1 said that each site had not less than 100 or 120, and possibly as many as 200 or 250 plants. R3 said that he thought that the sites with which he was familiar would have contained only about 30 to 50 plants, but he also said that he was not familiar with all of R1's crop sites. The local OIC recorded in the Gingin police occurrence book that about 600 plants were pulled later in the day, but he said that the figure indicated information he was given, rather than his own observation. James Morton, who was 11 years old at the time of R1's arrest, said that, when he arrived home from school on that day, he observed bags in the rear of a police 4WD vehicle, which he assumed contained drugs. His impression was that the rear of the vehicle was stacked more than half full with bags. On his evidence, it seems there were more than five bags. However he could not estimate how many he saw.

R1 said that detectives transferred some of the bags of cannabis into the boot of the sedan. Initially, R1 said that all the cannabis had been placed in the boot of the sedan, but he conceded that he did not inspect the rear of the 4WD and that some cannabis may have been left there. It appears from other evidence that the probationary detective, who was the exhibits officer, took at least 65 plants or cuttings to Perth in a vehicle other than the Commodore sedan.

After leaving the Morton property, R1 was taken first to his home, where a search was conducted, and then to the Criminal Investigation Branch ("CIB") headquarters in Perth. He was briefly interviewed, a meeting was arranged for the following day and he was then charged, given bail and allowed to go home.

That evening, the OIC Gingin recorded in the Gingin occurrence book:

Further inquires [sic] were conducted which resulted in the discovery of a further 600 mature cannabis plants.
[R3] & [R1] to be charged with the offences of (by Drug Squad)
Possession of cannabis with intent to sell or supply.
Cultivate cannabis with intent to sell or supply.
Cannabis plantation pulled, photographs and other exhibits collected.
1630 Depart scene.
1715 RTS Complainant advised re above.
1730 Off duty:....

The OIC could not precisely recall, but he assumed, that the two charges, namely possession and cultivation, reflected the two stages in which cannabis was located, namely, growing and harvested.

The exhibits officer recorded five bags containing "app" 10, 10, 15, 17 and 13 "plants". His explanation for recording the numbers as "app" (approximately) was that they were not entire plants, as they did not have their roots attached. That is consistent with the cannabis having been harvested in the manner described by R1 and R3, and hung to dry, rather than having been removed from the ground as entire plants by detectives. R1's evidence was that he hid about four or five bags that, with one bag for the line of cannabis left by R1, accords with the number of bags recorded by the exhibits officer. Accordingly, it appears that the cannabis "plants" recorded were the cuttings, or some of the cuttings, found near the campsite.

Only one bag of 10 "plants" was recorded on the P11 property form number 47791 prepared by the exhibits officer. The other four bags were recorded on P11 form number 47792. On both forms, the cannabis was recorded as seized "near Edwards Road Gingin." Form 47791 recorded that R1 was charged in respect of those 10 "plants", while Form 47792 recorded "No person charged (for destruction)." The exhibits officer agreed that each of the five bags was collected from the same Drug Squad search area, but not necessarily at the same location.

According to R1, some of the cannabis seized on 6 September 1989 was later returned to him by the Drug Squad sergeant and another detective with the intention that R1 should sell it and share the proceeds with the detectives. R1 said that he had originally proposed

that the cannabis should be returned to him on 6 September 1989, but that no agreement could be reached at that time. A day or so later, however, the Drug Squad sergeant and another officer met R1 at the Duncraig Recreation Centre, where he gave them some information on other criminals. R1 said that he also asked the sergeant what was to happen to the cannabis. The sergeant did not commit himself, but gave some indication that R1's proposal was not out of the question. Another meeting was arranged.

The sergeant and another detective from the Drug Squad had a second meeting with R1 on the following day at the same location. R1 was told that some of the information he had relayed the previous day had been pursued and had been shown to be valuable. R1 again inquired about the cannabis, and this time he was told that there was every chance that it would be returned to him.

On the third meeting, held at a different location, the sergeant and another detective arrived with some bags of cannabis in the boot of their vehicle. R1 and the detectives discussed the dividend to be paid to them from the sale of the cannabis by R1. R1's evidence was that it was agreed that the detectives would be given half of the proceeds, but that the actual amount of money could not be decided until after the cannabis had been dried, cut down, assessed for quality and weighed. The cannabis was transferred to R1's Range Rover.

It was R1's evidence that the female detective was not present when the cannabis was returned to him. He said that he always understood that the subject of the cannabis was not to be discussed in her presence.

R1 said that he took the cannabis home and laid it out in the roof cavity of his house to dry. He later sold it for about \$20,000. Despite the terms of his agreement with the police officers, he retained about two thirds of that money. According to R1, he telephoned the Drug Squad sergeant and arranged to meet him some time between 18 and 20 September 1989 in the car park of the Craigie Leisure Centre to give him his share of the money. Another detective accompanied the detective sergeant, but stayed in the police car. The detective sergeant stepped out of the car and R1 said he gave the detective sergeant a brown paper bag containing cash.

After that meeting, R1 said he proceeded to harvest the rest of his crop, assisted by R3, safe in the knowledge that they were effectively protected from prosecution by arrangement with the Drug Squad sergeant. R1 explained the arrangement in these terms:

What arrangement was that?---That every now and again, when I was selling - - I would sell the marijuana to one person, okay, and this one person had numerous

contacts and I had a relationship with this wholesaler that I was selling to, where I would know who he was on-selling it to, and I would pick and choose from these people names and people that I disliked or wanted removed from the scene, and I would pass these names down the line to Mr [], with times and locations upon when the marijuana would be getting supplied to them, so Mr [] and the rest of the people would arrest these people.

R1 said that there were about three later occasions when he gave money to the detective sergeant from the proceeds of sale of the rest of his crops from the 1989 season. In his parlance, he had been given the "green light" to continue his cannabis cultivation.

The next year, 1990, R1 and R3 cultivated another crop, still confident by virtue of R1's continuing role as an informant that the police would not charge them. R1 said that he made further payments of money to officers during that year.

It is noted that R1 told his associates aspects of these matters shortly after the events at Gingin and into the following year. Some of the evidence about those revelations was given to the Royal Commission by persons with no remaining allegiance to R1, including R3, R4 and R5:

- R3 said that R1 told him that he had made an arrangement with the police, that he showed police a couple of sites of cannabis, that he had a "licence" to grow cannabis which depended upon R1 acting as an informant and that the police were to provide a letter to the sentencing Magistrate in respect of R1's assistance. R3 also said he thought it was safe to help R1 harvest the remainder of the cannabis at Gingin, and to grow another crop in 1990, because R1 was "licensed" by the police. R3's evidence did not extend to whether the police returned cannabis to R1;
- R4 said that R1 told him that a quantity of cannabis was "held over as a threat for [R1] to behave himself..." but that, later, R1 was to sell the cannabis and to tell police the names of the persons to whom it was sold. R1 also told him that he had a "licence to grow dope" and that he was channelling funds to the police;
- R5 said that R1 told her that the cannabis had disappeared, that he would be passing information to the police in future and that, while he did so, he would be allowed to continue growing and selling cannabis; and
- R2 said that R1 had told her that detectives had returned the remainder of the cannabis to R1 to be sold.

It should be observed, however, that the foregoing evidence of R2, R3, R4 and R5 would not be admissible in a criminal court, as their evidence was clearly hearsay.

Evidence was taken from each of the detectives known to have been present at the Morton property on 6 September 1989. The exhibits officer and the female detective claimed that they had no recollection of the events of the day. The male detective constable initially denied that he was present on 6 September 1989, and gave sketchy details of another dealing with R1, those details being inconsistent with the events of 6 September 1989. He later conceded, however, that he had been present, but he gave very little evidence regarding the day's events.

5.4 CANNABIS AT CROP SITES

The detective sergeant's journal recorded that suspects were spoken to at length regarding the alleged crops and that officers were "[t]hen shown locations where crops were located". He said that, although he had no recollection of the event, he assumed that his journal entry meant that each site was of a previous, not a current, crop. He said that he assumed that they were the sites from which the cannabis seized on the day had earlier been taken. He was shown the journal entry of the female detective, which recorded that officers had travelled to the crops and pulled them, but he was not swayed. It might be thought that showing police officers where crops had previously been grown was rather less than helpful. The journal entry spoke for itself.

The contemporaneous documentary records show that the detectives travelled to the Morton farm, questioned R1 and the others at length, found cannabis cuttings, travelled to crop sites, pulled crops, searched R1's home and returned to the CIB offices in Perth, where they attended to relevant paperwork and charged R1. The only aspect of those events, which might be contested, was the number of plants at the two crop sites, from which an inference might be drawn about the time likely to have been taken for detectives to remove them. A detective senior sergeant, who gave evidence of an expert nature, said that an officer with one hand could easily pull plants of the description given and in the location alleged by R1. Since there were at least three, and possibly four, detectives at the crop site, there is nothing inherently implausible in the allegation that several hundred plants were pulled within the available timeframe.

The record made by the OIC Gingin in the Gingin occurrence book of the discovery of 600 mature cannabis plants is of somewhat limited value as it was a figure given to him at WAPS rather than having been observed by him. Nevertheless, it must be given some weight. It supports the general allegations of R1 and casts some doubt on the evidence of the Drug Squad detectives. The OIC Gingin was said to be an efficient, well organized officer and a meticulous record keeper.

The evidence was vague as to the precise quantity of cannabis pulled from the two crop sites. It is clear that, whatever quantity was pulled was fitted into the police 4WD vehicle on top of the cannabis that had been seized earlier, and with R1 and three or four police officers in the vehicle for the trip back to the farmhouse. It does not have to be determined how much of the cannabis was, or could have been, put into the boot of the sedan. On the evidence, it was sufficiently clear that there was considerably more cannabis found by detectives at Gingin on 6 September 1989 than that which was recorded by the exhibits officer on the P11 form and became the subject of the charge against R1.

5.5 AGREEMENT WITH DETECTIVES

The evidence supported the allegation of R1 that he reached an agreement with detectives on 6 September 1989. Each promise comprising the alleged agreement appears to have been fulfilled. R1 claimed that he showed officers the hidden cannabis, that R3 and the others were released and never charged, that R1 showed detectives the two crop sites, that R1 was charged in respect of only 10 plants and that he became an informant to the detective sergeant.

There were significant discrepancies between the female detective's journal entry and her description of the offence on the Face Sheet for the Court brief. The journal recorded:

Whilst travelling to Gingin 4 further suspects apprehended. Speak to all suspects at length re alleged crops. Travel to crops & pull same. Return to Perth & search premises in Duncraig. To Headquarters & tend to briefs & associated paperwork. Arrest [R1] charge cultivate cannabis.

That record accords closely with the account given in evidence by R1. It also states, as did the OIC Gingin, that the crops were pulled.

However, the version on the Face Sheet that was prepared for the Court hearing was:

On the 6th September 1989, Uniform Police conducting a patrol of bushland in Gin Gin located the accused and his vehicle along a bush track. A subsequent search of the area Police located 10 plants approx 3 feet in height, hidden in the bush. When interviewed he admitted the plants were his and for his own use.

The Face Sheet account is not recognizably related to any version of the events of 6 September 1989 at Gingin. It was misleading to relate as a fact that "Police located 10 plants", because the police located more cannabis than that directly as a result of R1 showing them its location. The Face Sheet suggests that cannabis was found as a result of, and during, a search, which is inconsistent with R1 having shown it to them. It reads as

though R1 admitted possession only after the plants were discovered, which also does not accord with R1's evidence. It records that R1 claimed that the 10 plants were for his own use, which is both untrue and implausible. Lastly, while the charge against R1 was in respect of 10 entire plants found by officers growing in bush, the P11 record of the seizure in respect of which R1 was charged refers to "app" 10 plants, on the basis that they were not plants but cuttings.

The reason for such a misleading account on the Face Sheet could only be to justify a less serious charge and to ensure a more lenient sentence than would otherwise be imposed. The motive for that is unexplained, except upon the account of R1 as to his agreement with the officers.

For some reason, not revealed in evidence, the female detective did not tailor her journal entry to the arrangement. It is unclear why she lent her name to the misleading Face Sheet record, yet made a candid record in her journal. The inference is that the Face Sheet was drafted to facilitate an arrangement between R1 and the Drug Squad detectives who spoke to him.

It was suggested that there might not have been sufficient evidence against R3 to charge him, so that his release did not assist on the question whether an agreement had been made between R1 and the officers. However, in the circumstances, whether or not there was sufficient evidence to convict, it is clear that R3 was in peril of sustainable charges, and his release was a distinct benefit to him and thereby to R1. The evidence suggests that R3 was considered at risk of being charged.

It is difficult to accept that R1 would have confessed to the cultivation of cannabis, shown officers the relevant locations and become an informant in the circumstances unless there was some particular advantage to him in doing so. It was acknowledged by the detective sergeant that R1 was unlikely to have assisted police unless he profited somehow by doing so. No event, other than the agreement of 6 September 1989, was suggested as a reason for R1 so to conduct himself.

5.6 RETURN OF CANNABIS

The detective sergeant's journal shows subsequent contacts with R1 on 9, 14, 18, 19, 22, 23, 25 and 27 September 1989. His journal for 9 September 1989 records a telephone call from "informant [R1's first name]" which indicates that R1 was then already an informant. The male detective constable agreed that, in the normal course, there would be one or two meetings with a new or potential informant to sort out details, such as the method of

communication. Despite no record of contact with R1 on 7 or 8 September 1989, it is likely that he spoke to R1 on 7 and/or 8 September 1989, as R1 testified.

The male detective constable gave evidence that it was common in 1989 for officers in the Drug Squad to attempt some form of arrangement with lower level drug offenders. Usually, some accommodation was reached in respect of the charge in exchange for information about drug suppliers at a higher level, often the supplier to the offender. He claimed that this was attempted in as many as 95 per cent of apprehensions. He said, however, that he was unaware of officers at the Drug Squad reducing the officially recorded amount of drugs found in a suspect's possession.

In a situation where several hundred cannabis plants were found in connection with R1, it seems unlikely that officers could have officially recorded that amount of cannabis, while charging R1 with simple possession of only 10 plants, without raising awkward questions from their superiors.

The detectives could have recorded all of the seized cannabis on P11 forms and properly lodged the cannabis for destruction at the Drug Room. That was how the exhibits officer dealt with approximately 55 "plants" which were not the subject of charges against R1. The reason the detectives did not record the full number of plants may be that the officers knew that the agreement was improper and/or that they held an improper intention in respect of the additional cannabis. The Drug Squad detective constable also gave evidence that, during the period in question, officers sometimes pulled cannabis crops, took samples and burned the remainder on site, not always in the presence of a superior officer or of a Justice of the Peace. If the motive for failing to record the seizure of the cannabis plants was simply that detectives doubted that their superiors would approve their agreement with R1, then the option was open to them to burn the cannabis without record. That was not done, which leaves open the alternative motive that the detective constable was contemplating returning the cannabis to R1.

5.7 CREDIBILITY

The Drug Squad detectives denied the allegations. In assessing the evidence, the Royal Commission was obliged to weigh various matters, the most critical of which was the credibility of R1. R5, R4 and R3, who knew R1, said that he was an accomplished liar and prone to exaggeration. Some of the detectives offered similar opinions. R1 accepted that, in this matter, he acted completely from self-interest. In particular, he was anxious to have his assistance to the Royal Commission taken into account in what was then his imminent trial and/or sentencing on drug charges.

Weighed against those considerations, R1's evidence was generally cogent and was consistent with comments he made to others at the time, consistent with the evidence of R2, R3, R4 and R5, and generally consistent with some of the official records, especially those of the OIC Gingin. Evidence from the detectives, on the other hand, was unsatisfactory in several respects.

The detective sergeant did not record in his journal for 6 September 1989 the name of R1 or of the others, that any person was arrested or charged or that any cannabis had been found. He maintained that this was not unusual, and that it was up to individual officers. It is surprising that the basic details were omitted. His journal entry in respect of the crop sites was ambiguous as to whether plants were found, in contrast to the female detective's entry. Furthermore, the Face Sheet record, for which the detective sergeant was ultimately responsible, was clearly not an accurate reflection of the facts.

Some of the accounts given by the detectives were disingenuous. The detective sergeant claimed that the Face Sheet was accurate. The exhibits officer purported to give evidence that, in the parlance of Drug Squad officers, to "pull" a crop could mean something other than to remove plants from the ground.

There is evidence that the Drug Squad failed adequately to investigate R1. In 1990 and 1991, after the detective sergeant had been transferred, R1 acted as an informant for another detective, who had been present at meetings in 1989. This detective became aware in 1991 of information from R3 that R1 had grown a profitable crop in 1990 under a claimed freedom from police scrutiny, which the detective took to be a reflection on his own integrity. He said that he spoke to R1 about this matter, that he made entries in his journal about R3's allegations and that he then disassociated himself from R1. However, he undertook no investigations because, he said, the matter was by then too old, being related to a 1990 crop, that he was too busy on other things and that it was "information only." Those answers are difficult to accept, having regard to R3's allegation in 1991. Furthermore, the detective did not disassociate himself from R1, but had further dealings with him after he was transferred back to the metropolitan area. He also spoke to R1 a couple of times from his country posting. The inference is open that there was another reason for the detective's inaction in respect of R3's allegation, namely, that he already knew, or suspected, that R1 was growing cannabis under protection and was concerned, not by that fact, but by the fact that R1 was indiscreet about police involvement.

Lastly, a matter of concern was that the Drug Squad detectives each claimed little or no recollection of the events of 6 September 1989, notwithstanding that each was shown the relevant documents and was prompted with some details of the events of the day. The

exhibits officer was then a probationary detective and may not have been closely involved in the matters relevant to the Royal Commission's inquiries. However, the memory failures of the other detectives were in sharp contrast to the memories of R1, R2, R3, R4 and R5, and of the OIC Gingin, all of whose evidence was generally consistent one with the other and with the written records. One of the traffic officers, whose involvement was minimal on the day, also recalled some of the events. Cheryl and James Morton recalled some of the day's significant events. An explanation proffered for the claimed lapses of memory was that these officers carried out too many drug searches in the bush to be able now, after 13 years, to recall each one, although three of the Drug Squad detectives only spent two years and nine months, three years, and nine months respectively, in the Drug Squad at that time. The fact that R1 became an informant might have prompted the memories of those who dealt with him in the following months.

The male detective constable gave evidence that he had not been present on the day. He mentioned another occasion on which he was present with R1 at a crop site. He said that R1 was then an informant for the detective sergeant, that only "one or two pretty scaly-looking cannabis plants" were located, that R1 claimed that the plants belonged to someone else and that the area searched was north of Wanneroo, possibly Yanchep. He pointed the Royal Commission to documentary evidence which, when obtained, indicated his involvement at Gingin on 6 September 1989. He then suggested that the occasion he could recall was indeed 6 September 1989. This was despite his having no recall of certain facts specific to the day and despite "recalling" facts contrary to the evidence.

On the evidence, there was substantially more cannabis found on 6 September 1989 than the detectives recorded and they made the agreement alleged by R1, in both cases contrary to the evidence of the detectives. While the Royal Commission did not succeed in obtaining corroborative evidence for the allegations of R1 on the question of whether cannabis was returned to R1, in all the circumstances, the evidence was persuasive that R1's allegation was substantially correct.

As indicated in Chapter 1 of this Volume, the Royal Commission does not propose to make any finding of corrupt or criminal conduct on the part of any individual Western Australian Police Officer. Any such finding would have no consequence in law and could be highly prejudicial in relation to any future action against officers.

CHAPTER 6

OPERATION HALCYON

6.1 INTRODUCTION

The Royal Commission investigated allegations of stealing and other corrupt or criminal conduct by a former detective sergeant who had been stationed at the Karratha Detectives' Office as Officer in Charge ("OIC") in 1994. The genesis of the Royal Commission investigation was an allegation that, in July 2002, a former detective sergeant had attempted to arrange for a Police Service Journal, for the year 1994, to be removed from police custody and destroyed.

The Royal Commission obtained possession of the relevant journals for this period and upon analysis discovered that they contained references to two men who, unknown to each other, appeared in the Western Australia Police Service ("WAPS") records as alleging serious corrupt conduct on the part of the former detective sergeant and officers associated with him.

One of the men, code-named G3, had alleged that the former detective sergeant and another officer had stolen money and drugs from him on a number of occasions and, further, that he had an arrangement with the detectives whereby charges against him would be reduced in exchange for information to be provided regarding the drug dealing activities of his competitors.

The other man, code-named G1, had alleged that \$36,000 had been stolen from his home in South Hedland during the execution of a search warrant by police officers.

G1 and G3 later made complaints to WAPS of corrupt conduct by police officers. Their complaints were referred to the Internal Affairs Unit ("IAU"). An IAU folio was created in 1995 in respect of the allegations made by G3, but the complaint was said to be "not sustained". Allegations made by G1 were not referred to the IAU for investigation until 2000. However, in 2002, the matter was taken over by the Anti-Corruption Commission ("ACC"). The ACC closed its file on the matter in May 2002, on the basis that the former detective sergeant had left WAPS, and that there were difficulties in obtaining evidence and police records.

6.2 ATTEMPT TO DESTROY POLICE JOURNAL

RETRIEVAL AND AUDITING OF JOURNALS

On 22 February 2002, the ACC issued a Notice to the Commissioner of Police requiring the production of various documents, including the journals of the former detective sergeant and other officers who had been stationed at the Karratha Detectives' Office and at the South Hedland Detectives' Office during the period 1 January to 30 June 1994. The Notice was issued following the decision by the ACC to investigate allegations made by G1.

On 1 March 2002, the Executive Superintendent of Crime Investigation Support sent a memorandum to officers in charge of business areas within the Crime Investigation Support portfolio, seeking their assistance in auditing journal holdings. The memorandum requested officers to complete a spreadsheet, recording details of all journals stored within their areas. On 5 March 2002, the WAPS Police Royal Commission Unit sent a similar memorandum to designated "Points of Contact" within WAPS. This action was taken in anticipation of possible requests from the Royal Commission for the production of those journals.

From January to July 2002, some of the former detective sergeant's journals were stored at the Rockingham Police Station where he had served prior to his retirement. The journals were held in a store room at the Detectives' Office. Amongst these journals were some that related to the time that he had been the OIC of the Karratha Detectives' Office. Entry to the storeroom required access using a key, which was in the possession of the OIC of the Rockingham Detectives' Office. The current OIC of the Rockingham Detectives advised that he would permit a former member to view a journal at the Rockingham Police Complex or a serving member to take a journal outside the complex, provided that he or she retained custody of it.

THE JOURNAL: APPROACHES MADE TO ROCKINGHAM DETECTIVES

In 2002, the former detective sergeant raised the issue of his journals with some of his former colleagues. In particular, in March 2002, the subject was discussed with a currently serving detective sergeant who then occupied the position of second in charge ("2IC") of the Rockingham Detectives. The 2IC knew the former detective sergeant and was aware that he had previously served at the Rockingham Detectives' Office. The former detective sergeant owned a delicatessen and the 2IC would call in from time to time to buy his lunch. They would discuss policing matters because the former detective sergeant was able to provide information about local criminal activity.

The 2IC remembered a particular occasion when he attended the delicatessen to buy his lunch and the topic of police journals was discussed. He said that the former detective sergeant told him that he had heard that the ACC had been to Karratha to see his journals, though he was not sure why. The former detective sergeant asked the 2IC to check if there were any of his journals at the Rockingham Police Station, to which the 2IC had replied, "No worries. I'll have a look for you". The 2IC did not perceive any difficulty in looking for the journals at that time, as he assumed that the former detective sergeant simply wanted to view them.

Some weeks later, the 2IC discovered the journals in his OIC's office while he was conducting an audit of journals in accordance with the directive he had received from "Command". He observed that one of the journals related to the former detective sergeant's service at Karratha. This journal was distinguishable by its different coloured spine.

A few weeks later, a currently serving detective sergeant ("the friend"), who was a friend of the former detective sergeant, attended at the Rockingham Detectives' Office and had a discussion with the 2IC about the journals. At that time the friend was based at Armadale Detectives, but the 2IC knew him well, and had previously served with him at Rockingham. The friend would call into the Rockingham Detectives' Office on occasions, usually on a Friday after work, as he lived reasonably close by. On this occasion, the friend said to the 2IC, in relation to a journal that was at Rockingham, words to the following effect, "Have you heard [the former detective sergeant] had a blister from Karratha?". The friend then said, "It's a pity it can't disappear". The 2IC believed that the friend was merely joking, and the matter was not discussed further for some time.

APPROACHES MADE AT THE GARDEN ISLAND FUNCTION

On 10 July 2002, a function was held at HMAS Stirling Naval Base on Garden Island for officers of the Rockingham Police Station and naval staff to enhance friendly relations between WAPS and the Royal Australian Navy.

One member of WAPS who attended the function was a detective senior constable ("the detective senior constable") based at Rockingham Police Station. The detective senior constable arrived at Garden Island at around 4.00 pm in a bus with other police officers. At around 7.45 pm that evening, he was standing at a table with a "colleague", apart from the main socializing area. The detective sergeant (described as "the friend", above) was also present. The friend approached them and said that he needed a "really big favour ... for [the former detective sergeant]". The detective senior constable described the friend's

demeanour as being nervous and hesitant and said that he was "beating around the bush", which was unlike his usual manner.

The friend then said "[the former detective sergeant's] got a diary out the back room ... He needs it to go missing", or words to that effect. At the time, the detective senior constable understood the request to relate to a journal that was "something to do with Karratha". He told the friend that he was "shocked" by the request and responded by saying, "it's not on", or words to that effect. About half an hour later, the detective senior constable observed the friend talking to his colleague against a wall and, as he approached them, he overheard the friend say the reason he had asked them was that he trusted them.

The officer described as the colleague was a detective constable at Rockingham at the relevant time. (The detective senior constable and the detective constable are together referred to as "the detectives") He also gave evidence as to what had occurred. He recalled that four or five hours into the evening, or possibly earlier, he had a conversation with the friend and the detective senior constable. He recalled that the friend said he needed "a big favour" and eventually said, "[S]omething needs to go missing from the office ... A journal. One of [the former detective sergeant's] from when he was at Karratha". He said he did not initially understand the magnitude of what was being asked of him, but that the detective senior constable had told the friend that, "[W]e can't do this. This just can't be done". He described the friend's demeanour as being "insistent" and "possibly desperate" and that this was out of character.

About 30 to 45 minutes later, the colleague was in the Sailors' Mess when the friend approached him again. The friend came over and said words to the effect that the journal needed to go missing from the office. He then told the friend that if it were to be taken, it would be obvious that it had been taken by somebody from within the office and that the journal may even be being "watched". The friend responded by saying that "they wouldn't know which one" of the Rockingham officers had taken it. The colleague replied by attempting to explain the "heartache and turmoil" that would be caused if a journal were to go missing in "the current climate". He recalled that the detective senior constable then came over and the conversation ended.

On the following morning, 11 July 2002, the detective senior constable had a brief conversation with his colleague and asked him, "[W]hat are we going to do?" and his colleague replied, "no choice, go tell Sergeant [the 2IC]". The detective constable then spoke with the 2IC who said, "[S]hit, I know something about this ... I've had a similar approach".

All three officers then went to see the OIC of Rockingham Detectives and reported the matter. The OIC went to the records room and collected four or five diaries with the former detective sergeant's name on them and then delivered them to the District Office in Fremantle.

The officer-in-charge recorded the conversation in his Police Journal:

(10.15 am) D/Sgt [2IC] advises of situation involving request for journal of [the former detective sergeant] to "have a look at a former Journal". Journal [sic] concerned was from Karratha Detectives and is now being stored at Rockingham. D/Sgt [2IC] advised that original request was made in March. Later approached by [the friend] who alluded to the fact it would be good if it disappeared. Advised that this was inappropriate and wouldn't happen. Overnight at an office function, an approach was made by [the friend] (Armadales Detectives) to [the detective constables] for the same thing to occur.

Both advised [the friend] that this was inappropriate and not to ask again. [The detective constables] brought into the office and matter discussed where this was reinforced. Decision made to advise CM District Office.

The officer referred to as the friend has now resigned as a detective sergeant of WAPS and moved overseas. He gave evidence by way of video link. The former detective sergeant had been his supervisor at Rockingham Detectives Office and also worked with him at the Fremantle Police Station. He agreed that the former detective sergeant was his friend, and that they socialized with each other.

The friend was stationed at Rockingham when the former detective sergeant resigned from WAPS. Shortly after that, Rockingham Detectives relocated to a new office. The friend observed that there was a box that contained the former detective sergeant's old files and Police Journals that he personally had moved to the new office.

In about January 2002, the friend said he had a conversation with the former detective sergeant at his delicatessen about a police journal. The former detective sergeant told him that he had heard "a whisper" that the ACC was looking for a journal and he asked the friend to find out if there were any journals back at the station. The friend replied that he believed there was a journal back there, because he could remember moving the box from the old office to the new office. He said that he undertook to obtain the journal because he knew "the boys, all the blokes that [were] there". His recollection was that the former detective sergeant asked for a journal, or journals, which may have related to when he was based at Karratha.

The friend approached the 2IC, who was the acting OIC of Rockingham Detectives' Office at that time. He said to the 2IC that "[the former detective sergeant] has asked me can he

have a look at a journal that's in the box". The 2IC told him that all the journals had now been recorded and that he could not obtain it. The friend did not press the matter further, because the 2IC did not confirm that the journals he was looking for were being held. He believed that he might then have informed the former detective sergeant that the journals were all in a box, recorded and accounted for, although he had no distinct memory of doing so.

The friend alleged that the 2IC had concocted his story and that his evidence that the friend had approached him and suggested that the Karratha journal be destroyed was a lie. He could not suggest a reason why the 2IC would lie, other than "to go along with the story of the other(s)".

The former detective sergeant was called to give evidence at the hearings. He confirmed that he had resigned from WAPS in 1998 with the rank of detective sergeant. Prior to that time, he had been the OIC of the Rockingham Detectives' Office. He knew that the ACC was looking for his journals and believed that an officer from the ACC had flown to Karratha to locate them, as well as other documents, such as property receipts. He was aware that the ACC was looking for journals belonging to officers from "all of Hedland and all of Karratha". He said he did not know why the ACC was looking for the journals and added that he had no concern that they were doing so.

The former detective sergeant said he recalled an occasion when the 2IC came to his delicatessen and told him that he was acting as the OIC at Rockingham. He claimed that the 2IC told him, "[W]e've been asked to collect up all the journals and to ... to catalogue them – names and dates and where they're from and that there's one of yours there from Karratha ... it's in the corner of [the OIC's] office ... do you want to have a look at it?". He said that he accepted this invitation because "forewarned is forearmed" and viewing his journal would allow him to "refresh his memory". He said that the ACC was mentioned by the 2IC in the course of the conversation.

The former detective sergeant said that, a "considerable time later", he had a conversation with his friend regarding the journals. He said that he was talking with the friend in his delicatessen about general matters when he said, "[L]ook, [the 2IC] has been to see me and there's a Karratha journal down at that office", and asked whether he could get a look at it. The friend said that he replied, "I don't work at Rockingham any more. I work at Armadale ... [but] I'll see [the 2IC] and ask him if you can have a look at it or what's happened about it".

The former detective sergeant was later approached by investigators from the IAU but he did not participate in a record of interview because, he said, it was not convenient for him to do so at the time. He refused to give a statement because he wanted to speak to his friend first, but he said the IAU never contacted him again.

ANALYSIS

The evidence of the 2IC, the detective senior constable and the detective constable is central to the allegations and requires careful assessment. It is to be observed that the three officers were not offered any inducement by way of reward or promise for giving evidence, and to some extent, they gave evidence reluctantly against former members of WAPS whom they respected. They had no motivation to lie or to give false evidence.

One of the detectives described the friend as "a good, honest bloke" and the 2IC agreed that he was a respected member of the Rockingham Detectives' Office and that he had never previously had cause to question his integrity.

It was contended by the former detective sergeant and his friend that the evidence of the detectives relating to the function on Garden Island was not reliable or accurate because they were intoxicated. The detectives frankly conceded that they had been drinking when the approaches by the friend occurred, but they rejected suggestions put to them that they were so heavily drunk as to be unable to recall accurately what had been said. To some degree, the suggestion of drunkenness rested upon an allegation that the detectives, in company with the OIC and the 2IC, had been to lunch at the Waikiki Hotel that day, and that they had been drinking alcohol since midday. There is no reliable evidence to support this assertion. An electronic diary maintained by the OIC indicated that a debriefing for an operational matter was held in the office until 1.35 pm on that day. Whilst it is true that none of the officers could specifically recall what they did for lunch that day, all denied that they would have been drinking alcohol prior to the Navy function. The OIC and 2IC were able to give an account of their activities that afternoon which was credible and which significantly undermined the evidence of the friend that he had conversations that led him to believe that they, along with the detective constables, had been to a long lunch at the Waikiki Hotel.

On 30 July 2002, the 2IC and the detective constables were interviewed by officers of the IAU in respect of these matters. The accounts given by the officers were in substantially the same terms as the evidence they gave before the Royal Commission. Despite extensive cross-examination, they presented as reliable witnesses who readily conceded the limitations of their recollections.

The friend's assertion that there were other means by which he could have obtained the journal from the Rockingham Detectives' Office is not supported by the evidence. The officer-in-charge confirmed that entry to the Rockingham Detectives' Office was by an electronic swipe card, which was only issued to staff members, and that entry to the storeroom, where the journals were kept, required his personal approval. The friend acknowledged that attempting to obtain the journals without permission would have been improper and that was why he had contacted the 2IC in the first place. Importantly, he conceded that, when he had spoken to the detective constables, he had requested that they obtain the journals for him as "a favour".

Police journals are the property of WAPS. They are not the property of the police officers who are required to complete them. No doubt, a former member may be given access to his or her journals, but the manner in which the friend sought to obtain the journal was highly improper, given that he was aware that it had been collected for auditing purposes to assist possible Royal Commission investigations. The impropriety of the friend's conduct is evident in the reaction of the detective constables, who reported his approach to their supervisor almost immediately. His conduct was the more serious, having regard to the fact that he was attempting to obtain a journal of a former officer whom he understood to be the subject of an ACC inquiry.

Furthermore, at the time the former detective sergeant was seeking to obtain his journals, he was aware that the ACC was also seeking them. In attempting to obtain the journals himself, or through his friend, he could potentially hinder the inquiries of the ACC. The comments made by the friend that the journals be made "to disappear", or words with a similar connotation, strongly suggest that he sought, on behalf of the former detective sergeant, to destroy a document that might ultimately have evidentiary value in a corruption investigation.

An attempt to frustrate or subvert an inquiry into police conduct in the Pilbara region by destroying records may indicate a consciousness of wrongdoing. If allegations of corrupt or criminal conduct arise in respect of the period covered by the journals, and those journals provide some evidence of involvement in the matters from which the allegations arise, then an attempt to destroy the journals may provide strong corroboration of the truth of those allegations.

Significantly, an attempt to destroy evidence of past conduct indicates how that conduct and the influence of former officers may impact adversely upon contemporary circumstances. It should not be assumed that, because allegations are "historical", and the subject has left the police service, that the problem has been solved and the risks nullified.

Past corrupt activity may cast a long shadow and may expose currently serving officers to risks such as those revealed here.

6.3 ALLEGED THEFT OF \$36,000 FROM G1 AT PORT HEDLAND

The Notice for the journals issued by the ACC related to allegations that G1 had made two years before. The journals of the former detective sergeant were obtained by the Royal Commission and, on examination, were found to contain references to G1 and the execution of a search warrant at his home in 1994. The entry was related to the incident that was referred to in the complaints made by G1. It was then determined that contact would be made with G1 and this was achieved by telephone in January 2003. When located, G1 was in the process of moving from Western Australia and was reluctant to be interviewed; but eventually he agreed to speak to Royal Commission investigators at a later time. He was contacted again and agreed to be interviewed at his residence on 20 March 2003. Whilst he did not seek out the Royal Commission, he did co-operate in the process and was summoned as a witness.

G1 had been the owner-operator of a taxi and car hire business in Broome in the 1980s. In 1991 he was charged with an alleged involvement in financing a cannabis crop. His business at this time was not doing well and he decided to sell the business and its assets. After paying debts, the sale left him with \$36,000 in cash. He retained that cash and did not place it in a bank for fear that, if he were to be convicted on the drug charge, it would be seized as part of an asset confiscation process. Vehicle ownership records confirmed that, in 1991, G1 had sold a number of cars of the types previously described by him.

Some time after selling the business and its assets in Broome, G1 moved to Port Hedland. He took with him a shipping container that he had owned for several years. The shipping container held tools, outboard motor tanks, an aluminum boat and accumulated gear. G1 said he had placed the sum of \$36,000 in a round Tupperware container, which was itself placed inside the shipping container. The Tupperware container was 30 centimetres wide and 10 centimetres deep. The cash was bundled in denominations of \$10, \$20, \$50 and \$100, each bundle being secured with a rubber band. The shipping container was not locked, but the money was well hidden.

While G1 was living in Port Hedland, the cannabis charge against him was still pending before the District Court in Broome. The matter finally went to trial, resulting in G1's conviction. He was sentenced to four years' imprisonment on 10 February 1993. G1 was released on parole on 11 February 1994 and then returned, after a few days, to Port Hedland.

On his return to Port Hedland, G1 checked that the money was still hidden in the shipping container. He said that it was exactly as he had left it. Some time later, a couple of weeks prior to his travelling to Perth with a view to purchasing a truck, G1 moved the Tupperware container into the roof space of his house. To do so, he had stood on a chair, reached through the inspection hatch and placed the container inside the roof space.

Approximately one month to six weeks after his release from prison, G1 travelled to Perth with his son, returning a short time later. While he was away, G1 agreed to allow G5 to "house-sit" his Port Hedland home. G1 had met G5 in prison and understood him to have had a past involvement in drugs.

G5 had left the house before G1 and his son returned to Port Hedland, and it seems that G5 had been dealing in drugs while staying there, which may have attracted the attention of the police to the house. However, the police journals suggest that G1 had himself become the subject of police attention as a result of other information received from an informant who had told them in April 1994 that G1 was supplying him with cannabis. This information was received by the former detective sergeant, who was then OIC of the Karratha Detectives. As a consequence of this, the former detective sergeant, together with a detective senior constable, who was also a Karratha detective, conducted some surveillance activities on G1's home in South Hedland over a number of days in late April 1994. During the course of this surveillance, G1 was observed to go to a shed located at premises in South Hedland known as the "Airport Kennels".

A search was conducted at the home of G1 shortly after his return from Perth with his son. Police records indicate that a search was conducted at the house on 18 August 1994, which is considerably later than the estimate by G1 of six weeks to two months after his release.

G1 said in his evidence that there were five officers in total who conducted the search of his house. He recalled the first name of one of the officers, which is the first name of the former detective sergeant, and that this officer was in charge of the Criminal Investigation Branch ("CIB") in Karratha. He also recalled the name of another officer who was then the OIC of South Hedland Detectives. Of the others, he could only recall that one was very tall. It was this tall man who, G1 claimed, searched the roof space and located the Tupperware container of cash. He said that during a conversation that occurred in the course of the search, this man had identified himself as having formerly been an electrician.

If this search is the one that police records establish occurred on 18 August 1994, then those records indicate that three officers from Karratha were present, including the former detective sergeant. A former detective senior constable from South Hedland also confirmed

in his evidence that he had been present at the search. Whilst the search warrant annotations do not indicate that the South Hedland OIC was present, the fact that they do not refer to the senior constable from South Hedland, who conceded that he did attend, tends to show that the records cannot be relied upon to establish conclusively who was present.

G1 stated that the Tupperware container was opened and placed on the kitchen table in the presence of the former detective sergeant and the South Hedland OIC. He said that the cash was taken, notwithstanding that he had told the officers that the money was the proceeds from the sale of cars, and had nothing to do with drugs. He said that a number of other items were also located and seized, including some plastic "deal bags", a set of scales, which G1 assumed must have belonged to G5 and indicated that G5 may have been dealing in drugs at the house, and the sum of \$2,000, which G1 was required to remove from his wallet.

G1 states that he was asked to accompany the officers back to the South Hedland Police Station. At the station, he was placed in an interview room on his own for about an hour. The South Hedland OIC entered the room and told G1 that he was being taken for a ride. He said that he was taken for a ride in a police car with the South Hedland OIC and the former detective sergeant. They sat in the front of the car while he sat in the back. He said that they drove him to the back of the South Hedland squash courts and there returned to him the sum of \$2,000. The South Hedland OIC told him that he was to "keep his mouth shut". He was driven back to the police station and released at the front of the building. He then telephoned his son to collect him. G1 used the sum of \$2,000 to purchase a television set from a local retailer, because he feared that the officers would return and take this money back from him.

G1 asserted that the officers stole the cash found in the roof. He maintained that no one other than himself knew that the cash had been hidden in the roof and that he was sure that it was all there at the time of the search. He said that he told a friend what had occurred shortly after the search. That friend was Philip Pierce.

In 1994, Pierce was operating the business known as the "Airport Kennels" in Port Hedland with his then wife. G1 had told him that the police had searched his house and located a bundle of cash in the roof space, which they had found by going up through the inspection hatch. Whilst he could not recall the exact amount of money that G1 said had been taken, he said that it was over \$30,000. G1 told him that the money had come from Broome. Pierce believed that this conversation had occurred a few days prior to the police going to the "Airport Kennels" to conduct a search. Pierce said that comments made to him at this

time by the officers attending his property had led him to believe that the search related to G1. Pierce stated that the police located a pump wrapped in blue plastic cloth, buried near to a shed that he had sub-let to G1. Pierce knew nothing of this pump, which was then seized by the police. Three police officers attended on this occasion, one of whom was the South Hedland OIC. Pierce believed that one of them was from Karratha. The officers gained entry to the shed, and one of them commented that he could smell cannabis.

G1 said in his evidence that a month or two after the search of his home he was contacted by the South Hedland OIC and asked to go to the South Hedland Police Station. On arrival, he was spoken to by that officer and another officer. They questioned him regarding some pumps that had been stolen from a cattle station and wanted to know whether he had "a crop going". G1 said that he was strip-searched, and that the South Hedland OIC told him that the reason for this was in case he had a device with which to record the conversation. However, G1 said later in his evidence that this was an assumption that he had made because of the nature of the search, and because the officers showed particular interest in a telephone message device that he had attached to his keyring. The South Hedland OIC then told him that they had heard from Pierce's wife that G1 had been complaining to Pierce about the theft of the money and that G1 was to shut his mouth. G1 was unsure whether the other detective was present when this last comment was made.

Police records confirm that a pump was seized from the "Airport Kennels" on or about 29 August 1994. The pump was receipted by a detective senior constable from South Hedland. The journal of the South Hedland OIC for 29 August 1994 records that he attended "dog kennels seize motor rtn office & i/v [G1] re motor and drug suspect [G5]". The journal of the detective senior constable for 29 August 1994 states "to dog kennels seize water pump ... I/v [G1] re pump and drug suspect [G5]". Both officers in evidence denied having any recollection of such an interview and the detective senior constable said that he did not believe he had ever spoken to G1. The duplicate copies of the relevant journal entries only came to light after the two officers had given their evidence and they were invited to submit a statement of any additional evidence that they wished to give in the light of those journal entries. A statement was received from the detective senior constable, but it did not further the matter because, although he accepted the accuracy of the journal entries, he said he had no recollection of interviewing G1 and could only speculate as to what occurred.

G6 is one of G1's sons, though not the son with whom he returned to Port Hedland on the day of the search. G6 said that he could recall receiving a telephone call from his father while he, G6, was in Perth seeking further education. He believed the call was in July or August of the year in question. In this conversation, G1 said that the police had raided his

house and taken money that was hidden in the roof. G1 had previously told him that he had some cash, but G6 did not know that it had been hidden in the roof. G6 believed that the amount of cash was \$36,000, but he was unsure when he had become aware of this. G6 confirmed that his father had owned a shipping container that was situated at his place of work in Port Hedland. G1 told G6 in their telephone conversation that the police had taken him to the police station for questioning, that he was then taken to the tennis courts and given a couple of thousand dollars and told to keep his mouth shut. G6 believed that one of the officers was the South Hedland OIC, but it was unclear whether this was something that he had been told by his father at the time of the telephone conversation, or something he had learnt subsequently when the South Hedland OIC had been referred to in newspaper reports about an unrelated matter, and discussions with his father had ensued. G6 said his father told him that he had used the \$2,000 returned to him to purchase a television set. G6 said that he later saw the television set, which is still in the possession of his brother, G2.

The officers all denied that they had stolen any money from G1. Whilst the former detective sergeant and three others conceded that they were present at the search on 18 August 1994, all of them claimed they had little recollection of the details of that search, because, they said, nothing of note had occurred. One of the officers said that he had been an electrician prior to joining WAPS and that it was possible that this had been referred to during the search. However, he claimed to have no recollection of searching the roof or of finding a Tupperware container of cash. Another of the officers is a tall man (194 centimetres), but he also claimed to have no recollection of searching the roof or of any money having been found. G1 was clearly in error in saying that the former electrician was the tall man. He had confused the two of them. The former detective sergeant said that, whilst it is normal practice for the roof cavity to be searched, he had no recollection of that occurring on this occasion. Why the roof cavity was not searched on this occasion was never adequately explained by him. He maintained that no money had been found, and that G1 was not taken back to the police station as he had claimed. The fourth officer said that he had a recollection of attending at the search; but his task was to search the cars that were parked outside the premises, and he does not believe that he entered the house.

The South Hedland OIC said that he had no recollection of the day of the search, but as a result of speaking to others during the hearings he had concluded that he had not attended the search because he had been engaged with the District Inspector who was conducting his annual inspection on that day. His only recollection of G1 was being asked to do some "drive-bys" of G1's house by another agency. He could not recall any investigation involving a pump or any interview with G1 in that regard. The officers who conceded that they were at the search all maintained that the South Hedland OIC was not present. He denied that

any incident involving the passing back to G1 of \$2,000 in the car had taken place while he was there and said that he had never, to his knowledge, spoken to G1. Copies of his Journal pages which subsequently came to light contained entries that appear to record that he had conducted an interview with G1 in company with the former detective sergeant on the day of the search. The former detective sergeant denied that any such interview had occurred. Further, an entry for 29 August 1994 recorded that the South Hedland OIC had seized a motor from the "dog kennels" and interviewed G1 in relation to it. An opportunity was provided to the South Hedland OIC, now resigned from WAPS, to provide a statement of any evidence that he could give in respect of these entries. No statement was received from him.

ANALYSIS

G1 has consistently maintained that \$36,000 in cash was hidden in the roof of his house and that this money was taken by the police. He made complaints regarding this alleged theft to his son, G6, and to Pierce close to the time of the search. He did not approach the Royal Commission, but was sought out after the analysis of the former detective sergeant's journals. He had no obvious motive to bring false accusations against these particular officers. Although he had a criminal history, it did not relate to any actions taken by the officers concerned in the present matter. No charges arose out of the search warrant, and there was no evidence that G1 harboured any grievance that would cause him to manufacture the allegation. Despite the denials by all of the officers involved, and intensive cross-examination, G1 presented as a credible witness who did not seek to exaggerate or tailor his evidence.

The evidence referred to earlier regarding the alleged attempt to destroy the journals, provides some corroborative evidence against the former detective sergeant. As it happens, the matter the ACC was investigating at the time was that involving G1. Whilst the former detective sergeant may not have known this with certainty, it shows that a possible inference is capable of being drawn that the former detective sergeant had a realization of what the journals may lead investigators to by way of corrupt or criminal conduct on his part, and that this realization related to G1 and the theft of the cash.

The evidence can only reliably implicate the former detective sergeant and the former South Hedland OIC in the theft of the money. Whilst other officers were present at the time of the search and deny that any money was located, G1's evidence does not clearly implicate any of them in particular in an act of stealing.

6.4 ALLEGED THEFTS FROM, AND "GREEN-LIGHTING" OF, G3 AT TOM PRICE

The examination of the journal of the former detective sergeant by Royal Commission investigators also revealed that he had a significant number of contacts with G3. G3 had not arisen at that stage in any other context in the Royal Commission's investigations. During January and February 2003, a number of unsuccessful inquiries were conducted in an endeavour to locate G3. Finally, information was obtained that he was working in the Kalgoorlie area. On 24 March 2003, Royal Commission investigators travelled to a mine site unannounced and interviewed G3 at length. Whilst initially reluctant, he too eventually co-operated with the investigators. He confirmed that he had previously made a partial complaint, and an IAU file on that matter was subsequently located.

G3 attended before the Royal Commission and gave evidence that, prior to 1994, he had lived and worked in Beagle Bay, where he had formed a relationship with G4, by whom he had a child. In 1994, he had moved to Tom Price, to which town G4 had previously moved to live with her mother. After three to six months, G3 and G4 moved into rental accommodation in Tom Price. Whilst there, G3 was visited by two detectives, one of whom was the former detective sergeant. He told G3 that he wanted to speak about incidents at Beagle Bay, and G3, at his request, accompanied the officers to the Tom Price Police Station. There he was questioned regarding allegations of theft and fraud while at Beagle Bay. He was finally charged with theft.

A second interview took place two to three weeks later. Again G3 was taken to the Tom Price Police Station. On this occasion, the former detective sergeant asked him whether he had any information about drug dealing in the town. He said that if G3 could provide information they would help him in his case in relation to the Beagle Bay allegations. G3 said that he was not himself engaged in drug dealing at that time, but that he was able to provide the names of some people whom he knew to be engaged in that activity in the town.

Two to three weeks after the second interview, the same detectives visited him at his home. On this occasion, the officers conducted a search of the premises. They did not find anything at that stage, but took him to the police station once again. At the station, G3 said the former detective sergeant gave me "a bit of a chat, asked for more names, told me that I was best to play their game". He indicated that the other officer was present when this was said. He provided more information regarding drug dealers, and in return, the officers promised to help him in regard to the Beagle Bay charges and said that they would also help him find a lawyer.

Two to four weeks later, the same two officers came again to G3's house in company with two uniformed officers. By this time, G3 had begun to deal in drugs. The uniformed officers were from Tom Price. G3 said that the officers had a search warrant with them. Subsequent inquiries confirmed that a search warrant for G3's home in Tom Price had been issued in Karratha on 17 October 1994, and that the former detective sergeant and three other officers attended at the search.

On searching the house, quantities of amphetamines and cannabis, scales, deal bags and \$2,500 in cash were found. G3 said that there were between five and six ounces of cannabis. G4 said in her evidence that she recalled the search, and that six to seven ounces (about 30 grams) of cannabis had been found in bags that were five centimetres by ten centimetres in size, about 30 grams. The bags were full. G3 indicated that the cash was concealed in a back room between carpet tiles that were stacked together. This money was the proceeds of drug dealing. G3 said that the former detective sergeant walked out of the room where the money had been hidden, holding the cash. He asked how much there was. On being told the amount, he placed the money in his pocket. By that time, the two uniformed officers had left the scene with a friend of G3, who had come to the house whilst the search was being conducted and had been arrested for being in possession of a smoking implement. The other items seized were placed in a box that was then taken to the police station with G3.

At the station, G3 was put into an interview room and the former detective sergeant placed the box on the table and said, "What are you up to? You want to clean yourself up. We'll be back in 10 or 20 minutes. Get what you need". The box was left on the table and G3 was left alone in the room. He said that he took a couple of ounces of the cannabis, the amphetamines, the scales and the deal bags, but that the money was not in the box. The officers came back after about 15 minutes and told him that, because they had executed a search warrant, they had to charge him with something, but it would only be for a portion of the cannabis. A statement was then written out for him, containing a false story as to how he came into possession of the cannabis and what he intended to do with it. The former detective sergeant told him to keep a low profile and that if "he tried to play any stupid games, they could deliver an ounce at any time they wanted". When G3 returned home from the station, he told G4 that the police had taken \$2,000 to \$2,500 in cash.

G3's record of convictions shows that he appeared in the Tom Price Court of Petty Sessions on 15 November 1994. He was convicted on one count of possessing cannabis and was fined \$500. The charge related to only 54 grams of cannabis (that is, approximately two ounces). A statement obtained from the police file was typed out by another Karratha detective, and it seems clear that he was the other detective present at the search on that

day. G3 said that the statement was untrue and that it had been manufactured by the police. Needless to say, there is no reference in the statement to the larger quantity of cannabis that G3 and G4 claimed had been seized.

G3 took home the cannabis that he had removed from the box and later sold it. Thereafter, he had regular contact with the former detective sergeant, sometimes with another officer being present. He said that this occurred on about four or five occasions, and that each time cash hidden in the carpet tiles, and being the proceeds of drug dealing, was taken. G3 estimated that the amount taken on each occasion was \$2,000. It was G3's understanding that, in return for allowing the officers to take the cash, he was not arrested by them, though this was not said in so many words. He said that the police were at this time taking approximately half his profits.

G3 said that, on one occasion, he had \$2,000 to \$2,500 in cash in his wallet. This money was the proceeds from the sale of an F100 vehicle. He described this vehicle as being a white, short-wheel base, 1956 model. He said that the former detective sergeant had taken his cash and that another officer had been present at that time.

G3's suppliers at this time were based in Perth, and this meant that he took regular flights to Perth via Parburdoo. This was explained to the former detective sergeant, who told G3 that he would park in the airport car park when he knew that G3 was flying in, and flick his lights on and off if he knew that there was to be any search of passengers. At this time, G3 was continuing to give the police officers the names of other persons dealing in drugs.

G3 said that as supplies of drugs dried up, he told the former detective sergeant that he planned to go east to source some product. The former detective sergeant provided him with names and mobile telephone numbers of two possible suppliers in Melbourne in this regard. He flew to Melbourne, where he stayed for three months. The names that were given to him proved to be of no use and he then made his own contacts. He commenced selling heroin in Melbourne. Whilst there, he was contacted by a detective from the St Kilda Drug Squad, who told him that the former detective sergeant would like to speak to him. Instead of doing so, he changed his telephone number. He was also contacted by G4, who told him that the surety for his bail on the Beagle Bay charges had withdrawn.

G3 decided to return to Tom Price, as he now had a hearing date for the Beagle Bay charges that he had to attend. G3 claimed that, prior to his leaving Melbourne, he deliberately developed an opiate habit with a view to using this as some form of mitigation of sentence in the event he was found guilty on the Beagle Bay fraud charges. He also sent on ahead a parcel containing a teddy bear in which was hidden an ounce of amphetamines.

On returning to Tom Price, on or about 3 February 1995, G3 was arrested and charged with two counts of possession of amphetamines, one in relation to the drugs in the teddy bear and the other in relation to a second quantity that he had carried with him. The former detective sergeant was not present on this occasion, as he had been transferred. G3 was later convicted both on the Beagle Bay matter and on the amphetamines charges. He was given a gaol sentence.

G3 accepted that, at the conclusion of his trial in Broome on the Beagle Bay matter, he had been angry and had said some heated words to the former detective sergeant. He denied, however, that he bore a grudge as a consequence of that conviction and that this was the motivation for his evidence at the Royal Commission. He had been summoned to appear at the Royal Commission, an appearance which he would rather not have made.

Whilst at the Central Law Courts awaiting sentencing on the stealing and amphetamines charges, G3 was placed in a holding cell. There he met a sergeant to whom he was related. He had not seen this relative for some years, but he trusted him. G3 told the sergeant about the stealing of the cash that was realized by the sale of the vehicle. He said little about the other cash, because it had been derived from the sale of drugs. The sergeant told him that he would pass the information on to the IAU. G3 was not contacted by anyone from the IAU thereafter.

About two weeks after being released from gaol, G3 was contacted by the former detective sergeant while G3 was staying at his mother's house. The former detective sergeant asked him how he was going. G3 replied by asking where his money was and saying that he wanted nothing more to do with him. He said that the money he was referring to was that stolen from him during the period he was in Tom Price.

The former detective sergeant and another former Karratha detective gave evidence as to their contact with G3. The former detective sergeant recalled having contact with G3 in relation to the Beagle Bay matter and said that it was the other officer who had assisted him in those inquiries. He said that, at that time, he had heard from other sources that G3 was dealing in drugs. There are references in his journal to an "informant", with the same first name as G3 and he conceded that these were references to G3. Whilst he could not recall how G3 came to be an informant, he said that it was not unusual for people who were facing charges to be told, "You do something for us and we may be able to do something for you at the end of the line". He said that none of the information provided by G3 was sufficiently specific to lead to any arrests and accordingly G3 was not given any discount on his sentence on the Beagle Bay matter. When pressed, he conceded that, on

the basis of his journal entries, it was possible that G3 had provided some useful information.

The former detective sergeant said that he had little recollection of the circumstances of the search warrant executed at G3's home on 17 October 1994. His journal indicated that G3 was interviewed "at length" at the police station. Whilst he could not recall the search or any interview, he denied that G3 was charged with anything less than the cannabis found in his possession and he denied taking any money from G3, either at this time or subsequently. He agreed that he had made attempts to contact G3 through the St Kilda Drug Squad, but said that this was because G3 was wanted on a bench warrant because his surety had withdrawn. He said that the reason that he made inquiries in Melbourne was that information received from G4 suggested that this was where G3 was.

The other former Karratha detective gave evidence that he first met G3 in company with the former detective sergeant in relation to the Beagle Bay matter. He recalled that G3 was given the opportunity to provide information as a way of possibly reducing his sentence on that matter. Whilst information was received, he did not recall that it ever led to another person's arrest. He did not, however, discount the possibility that G3 had given some information that had led to further inquiries.

The other former Karratha detective had no independent recollection of the search of 17 October 1994. However, he denied that G3 had any cannabis returned to him or that any money had been stolen. He said that, although G3 had been charged with the possession of 54 grams of cannabis, he could identify his handwriting on a second P11 Drug Inventory Form that indicated that a further 134 grams of cannabis seeds had been seized. The inference was that this made up the balance of the five to seven ounces of cannabis that G3 and G4 said was initially seized. However, the endorsement on the back of the search warrant, which is also in the officer's handwriting, makes no reference to 134 grams of seeds, only to 54 grams of cannabis. He was unable to provide any explanation for this. Furthermore, according to the P11 Drug Inventory Form, the seeds were seized at the same time and in the same premises by the same officers, yet no charge in respect of them was preferred. The officer suggested that this was because the evidence in respect of the possession of the seeds might have been materially different. There is no obvious reason why this would be so. He strongly denied that he had ever taken cash from G3 as alleged.

ANALYSIS

The evidence in respect of the former detective sergeant is direct. The allegations made by G3 are consistent with that made by G1 at around the same time. There is no suggestion that G1 and G3 knew of each other, either then or now. Furthermore, as with G1, the

evidence of the attempt to destroy his Karratha journals acts as supportive evidence as to the allegations made by G3. The police records indicate that the other Karratha detective was present at the search on 17 October 1994 and he was, in all probability, present on other occasions with the former detective sergeant when visits were made to G3. Whatever suspicions might attach to another officer who may have been present, the fact is that G3 provides no evidence that directly implicates that other officer in the theft of any money or in any encouragement to G3 to continue drug dealing.

6.5 IAU/ACC INVESTIGATIONS

As has already been noted, in 1995, a sergeant who was working in the Perth Central Law Courts when G3 was taken there for sentencing was spoken to by G3. G3 told him that the former detective sergeant and another detective had come to his house to conduct a search and had taken the sum of \$2,500, which constituted the proceeds from the sale of a vehicle. G3 asked if the sergeant could take some action on the complaint. The sergeant then immediately contacted the IAU with the information.

The sergeant said that he had heard nothing more until approximately two months later, when he telephoned the IAU and asked what was happening. He was told that G3 had been transferred to the Albany prison and that it was too far away to go to interview him. He heard no more about the matter.

An IAU memorandum was located, which purported to set out the information passed to it by the sergeant. When shown this document in the course of his evidence, the sergeant said that it was inaccurate in a number of respects. In particular, although it did refer to the alleged theft of \$2,500, it also referred to other allegations that were attributed to G3 regarding police officers supplying drugs to him, and failing to record all of the amphetamines that he had in his possession on his final arrest. G3 did not make these allegations to the Royal Commission, and the sergeant said that they had not been made to him. The sergeant denied giving information of this type to the IAU. The matter had some significance, because the IAU noted that the "allegation" regarding the amphetamines was doubtful, because it referred to the former detective sergeant in relation to a time when it was known he had been transferred from Karratha. For this reason the view expressed was that G3 lacked credibility.

Whatever the reasons for the confusion, the IAU did not interview G3 with respect to what, on either version, appeared to have been serious allegations. The prudent and sensible course would have been to interview the complainant. In any event, the complaint should have provided useful intelligence with respect to the officers concerned.

In early 2000, G1 became a registered informant in relation to an unrelated matter. In the course of his dealings with the police, he detailed the allegation regarding the stealing of the sum of \$36,000. On 29 February 2000, he was interviewed at length by two superintendents and, during the course of that interview, he provided a detailed account of what he said had occurred in relation to the cash. A decision was then made to pass a transcript of the interview to the IAU. G1 continued to be contacted in relation to the unrelated crime operation, but no introduction of an officer from the IAU was considered until 23 May 2000, notwithstanding that a preliminary review of the allegation had determined that G1's assertions regarding the sale of his Broome business and vehicles were capable of being verified.

On 24 May 2000, the ACC wrote to the IAU, indicating that it intended to take responsibility for the investigation of the matter. G1 was initially reluctant to speak to the ACC, but an interview was eventually conducted with ACC officers on 30 November 2001. Then, on 23 May 2002, the ACC closed its file, on the basis that the former detective sergeant and the former South Hedland OIC had both left WAPS and there was a difficulty in obtaining evidence and various WAPS records.

What the IAU overlooked was the significance of the earlier complaint by G3. Apart from a lack of vigour on both matters the IAU had investigated each matter as an entirely separate incident. This failed to take into account that other complaints relating to the same officer and of a similar nature, during the same time period, had the potential to reveal a pattern of behaviour. Even though the IAU records indicate that the G3 complaint could be utilized for "analysis and later profiling for future operations", there is no reference to it in the file relating to the G1 investigation.

It is also noteworthy that, before writing off the G3 complaint, the comment was made on the IAU file that "the only hope of any beneficial result being achieved under these circumstances is the effective use of covert staff, which this branch is not in a position to utilise". This was, in effect, recognition that corruption investigations presented special challenges which had to be met with extra resources. In the absence of such resources, it seems to have been concluded that investigations were futile.

The consequence of this approach was that allegations of serious criminal and corrupt conduct were not investigated and resolved one way or the other. The belief that the matters were of less significance because the principal players had left WAPS overlooked important issues. In particular, other serving officers might have been influenced by an association with those who had resigned.

CHAPTER 7

OPERATION ROEBUCK

7.1 BACKGROUND

The Royal Commission investigated allegations of corrupt and criminal conduct by a serving senior constable in the Western Australia Police Service ("WAPS"). The matter came to the attention of the Royal Commission during an interview with D1, who has a lengthy criminal history. He had been on the periphery of the Kalgoorlie investigation in Operation Solo, as an associate of an informant in that segment. D1 referred to a number of matters involving possible police corruption, from which the present matter was selected for investigation.

The senior constable first joined WAPS in 1984. He later left the Police Service for a number of years before rejoining it in 1992. For part of the intervening period, he worked as an investigator for Telecom, as it was then named. It was during this time that he first met D1, who had a complaint about nuisance telephone calls he had been receiving. The senior constable and D1 maintained contact over the following years. On at least two occasions, D1 visited the senior constable at his home.

On the afternoon of 12 September 1994, the senior constable reported that a burglary had been committed at his home. Police were called, and an offence report was created. The report listed property to the value of \$37,532 as having been stolen. Forensic officers attended the scene on 13 September 1994. There were no positive fingerprint results, no offenders were apprehended, and no property was initially recovered.

On 19 September 1994, the senior constable sent a claim form to his insurer, listing the items that he alleged had been stolen from his home. Amongst these items were at least two firearms, including, in particular, a .38 Smith and Wesson revolver. Following an assessment of the loss, the insurance claim was settled by way of replacement items and cash, the total value amounting to \$26,640.85. One of the items claimed to have been stolen was an engagement ring, which was said to have belonged to the senior constable's wife.

Not long afterwards, D1 came to the attention of WAPS, having been under suspicion for trafficking in heroin. On Thursday 31 August 1995, a search warrant was executed at D1's home. During the search, the .38 Smith and Wesson revolver, which belonged to the senior constable, was discovered. It was found under D1's bed, together with three rounds of ammunition and a number of 10 millimetre rounds. A piece of paper was also located in the

kitchen cupboard. It contained some personal details of the senior constable. D1 was later charged with receiving the revolver. After a substantial delay, D1 pleaded guilty to the charge. He was fined \$7,500.

The apparent coincidence that D1, an acknowledged acquaintance of the senior constable, should have come into possession of the stolen revolver, gave rise to a strong suspicion that either D1 had committed the burglary or that there had been some collusion between D1 and the senior constable to stage a burglary. During a subsequent investigation into the matter, the senior constable and D1 were interviewed. Each of them denied any involvement in the burglary, and each further denied that the senior constable had provided D1 with the revolver. The investigation was written off as having insufficient evidence to proceed. However, the senior constable was served with a Commissioner's instruction to disassociate himself from D1.

7.2 EVIDENCE OF D1

D1 gave evidence to the Royal Commission that he had met the senior constable in the early 1990s while the senior constable had been working for Telecom and a friendship developed between them. D1 was receiving nuisance calls and sought to find out who had been making them. D1 said that the senior constable disclosed to him the name and details of the person who had been making the calls, no doubt relying upon Telecom records. As a result of this information, D1 confronted his caller and warned him to stop making the calls. It appears that this warning brought the calls to an end.

While the senior constable was employed by Telecom, D1 obtained other information from him. In particular, the senior constable was able to provide D1 with unlisted telephone numbers and addresses. In exchange for this information, D1 said that he had paid the senior constable a "few hundred dollars here and there".

The evidence of D1 was that, when he met the senior constable he, D1, was dealing in amphetamines. He estimated that he was selling about a pound of amphetamines every two weeks. He told the senior constable that he was dealing in the drug, but he could not recall the circumstances. In relation to the time when the senior constable had rejoined WAPS, D1 claimed that the senior constable had not complained about his illegal activities. D1 was asked whether he had any concern about a police officer knowing that he, D1, was dealing in drugs. D1 replied that, "by this time...he was...like a friend, so it didn't really...I didn't worry about it".

D1 thereafter continued to have contact with the senior constable. He told the Royal Commission, "If I needed registrations or something like that, he'd...give me names and addresses to car registrations". D1 understood that this information was obtained from the police computer. D1 paid the senior constable for this information and he estimated that on each occasion he paid around "two, three, four hundred, five hundred dollars". D1 said that the senior constable would also, upon request, provide D1 with information of a general background type, such as a person's criminal history, where he or she lived and what vehicle he or she drove. Their normal arrangement was to meet in a shopping centre or at the senior constable's home in order that the senior constable might hand over the information. The provision of information by the senior constable continued over a few years and the two men continued to keep in contact with one another.

D1 said it was possible that he had asked the senior constable to look up his own criminal record on the computer, and it was possible that, as a result of his having a number of demerit points, D1 had asked the senior constable to inquire as to whether he had lost his licence or was going to lose his licence. D1 denied a suggestion that he had provided the senior constable with information about drug deals and searches. He also denied that he had been an informant for the Police Service and, in particular, he denied that he had been an informant for the senior constable.

D1 gave evidence that, on one of the occasions when he went to the senior constable's house, the latter expressed his desire to replace his household electrical items through insurance, and he suggested that a burglary be staged at his home in order to achieve that result. The senior constable told D1 that he wanted to "replace the stuff that he had...for new stuff". D1 told the Royal Commission that the senior constable "wanted me to get someone to tip over his house. In other words, rob it". D1 agreed to arrange to have a "burglary" committed, and told the senior constable that, in return, he wanted the senior constable to leave him his briefcase, with the guns in it, as his payment. The senior constable agreed to this arrangement.

D1 told the Royal Commission about a discussion prior to the proposed "burglary". It was arranged that, on a particular day, when the senior constable's wife was not at home, the senior constable would also absent himself from the house, leaving a door or window open. It was also arranged that the senior constable would take his dog away from the house with him.

D1 arranged for another person to carry out the burglary. According to D1, the arrangement was that the third person would retain the proceeds of the burglary, but that he would pass on to D1 the briefcase containing the guns. It is convenient to describe the

third person as "the burglar", although, ultimately, he did not carry out the burglary himself but engaged a fourth person who will be identified as "O" to do so. D1 informed the burglar that the house belonged to a police officer, and that the purpose of the burglary was to allow the officer to commit an insurance fraud. A short time later, the burglary took place.

D1 believed that the burglar had carried out the burglary himself. He called at the burglar's house and was given some information about it. On D1's evidence, the burglar was obviously not impressed with the quality of the goods stolen, and said that it had not been worth his while. D1 claimed that he gave the burglar either some money, or some money and drugs, in order to compensate him. D1 indicated that the value might have amounted to \$1,000 or \$1,500.

D1 told the Royal Commission that he had received the firearms as payment for arranging the burglary. He said there was a vigorous market for stolen guns and that on the black market a handgun would sell for between \$2,000 and \$3,000. He claimed that he had forgotten about one of the revolvers, which he had kept under his mattress.

In August 1995, officers from the Drug Squad searched, under a warrant, D1's residence where they located the remaining gun and some ammunition. D1 told the Police Officers that he had bought the revolver from a man in a hotel. He claimed that he had given this excuse because he did not wish to disclose the name of the person from whom he had obtained the revolver.

D1 told the Royal Commission that he remembered that, some time after the search, he had become aware that a small piece of paper had been found in the course of the search. It contained some personal details of the senior constable. D1 was shown a copy of the paper some time later, and he recognized that it contained the address of the senior constable, telephone numbers that were familiar to him, and a name which he thought was the name of one of the senior constable's private companies. He could not, however, recognize the handwriting. On the back of the note there were numbers that appeared to relate to a car registration and description. D1 said that the detail could have related to a car he used to own, but he could not remember. He thought that the handwriting on the back of the note looked like his writing.

D1 was approached by investigators from the Internal Affairs Unit ("IAU") after the search at his home, and he was questioned about the nature of his relationship with the senior constable. He told the investigators that his relationship with the senior constable was purely one of business, and that he was preparing a quotation for cabinets in the senior constable's home. This, he told them, was the reason he had the senior constable's

personal details. The investigators put to D1 that he had committed a burglary at the behest of the senior constable, but he denied the allegation.

D1 spoke to the senior constable about his contact with the IAU and told him that he had informed the investigators that he had bought the gun from a man in a hotel and that the connection between himself and the senior constable was for the purpose of giving a quotation for some cabinets. D1 told the senior constable to “stick to the same story”.

7.3 EVIDENCE OF THE BURGLAR

The burglar gave evidence that he had first met D1 in prison in 1993 or 1994. He was released from prison in August 1994, but he continued to keep in contact with D1.

He told the Royal Commission that, in 1994, D1 had put a proposition to him with regard to committing a burglary in a particular house in Carine. D1 told him that it was “fail safe” and that he would give the burglar the exact times when the house would be unoccupied. D1 also told the burglar that the house belonged to a police officer, who knew about the proposed burglary. The burglar, who is a large man, said that, due to his health and weight, he would get another person to commit the burglary. D1 accepted the advice that this person could be trusted. D1 gave the burglar the address of the senior constable, and the burglar drove past the house to identify the premises from the outside. During the course of the Royal Commission’s inquiries, the burglar was invited by investigators to identify the house. He was taken to the street in which the house was situated and he identified the former home of the senior constable. The burglar said that, at the time of the offence, the front door of the house was not visible from the street. The fact that the front door could not be seen from the street was significant, because D1 had asked the burglar to leave the house with the appearance of a break-in.

The burglar went on to give evidence that he had enlisted the services of O to carry out the actual burglary. That person is now deceased. The burglar told O to enter the house through a back window which was to be left open, and “in that room, take everything”. He told O that everything would be boxed up to assist in its removal. This information had come from D1 in the first instance. The burglar did not tell O who owned the house, or that the owner was a police officer. The burglar, however, told the Royal Commission that O later told him that he had seen police uniforms in a wardrobe in the house.

After the event, O returned to the burglar’s house with the stolen goods. The burglar described the stolen goods as comprising sports bags, carry bags, and some boxes - around 12 or 15 different items. The burglar stated that he was disappointed with the quality of the

goods, and estimated that they would have been worth only \$4,000 at the time. He estimated that the original value of the items, if new, would have been a maximum of \$10,000. He paid O about \$300, but claimed that it was not impossible that O might have pocketed some additional items during the burglary. He said that O used a TX5 car to transport the goods. A TX5 is a Ford five door hatchback, which was able to accommodate all of the items in one trip. It was a stolen vehicle.

After the burglar had received the property from the burglary, D1 came to his house. Amongst the items stolen was a bag. D1 half unzipped the bag and the burglar saw the butt of a handgun. D1 took the bag, and paid the burglar the money that they had agreed upon. The burglar sold those goods which he could, and dumped the remainder at a rubbish tip.

7.4 WAPS INVESTIGATIONS

Sergeant Robert John Morskate gave evidence that he was an Acting Inspector at the IAU in November 1995. He had been allocated responsibility for an internal investigation relating to the senior constable.

The senior constable had reported the burglary of his home the year before. The Drug Squad in the execution of a search warrant on D1's premises, discovered the revolver which had been reported stolen by the senior constable. During their search, the Drug Squad also located the note, which contained personal details relating to the senior constable. This was brought to the attention of the IAU.

Morskate gave evidence that, on the IAU file, the insurance assessor had, at the time of his inquiry, indicated that the senior constable's claim was excessive, and that he had some doubt as to whether the claim was legitimate.

Morskate and Acting Inspector Fussell interviewed the senior constable. He told the investigators that he had known D1 for some years prior to the burglary, and that he did not, at the time of the burglary, have any suspicion that D1 might have been involved in it. He explained that D1 had been to his home because he had wanted him to do some work in relation to a hi-fi cabinet. He claimed that he was not aware that D1 had a criminal record, or that he had spent time in prison.

Morskate said that it had been ascertained that the senior constable had accessed D1's criminal or antecedent details on the police mainframe computer, but he did not investigate when this access had taken place. Royal Commission inquiries have established that it is no longer possible to determine whether the senior constable had accessed D1's details.

Nevertheless, Morskate put the proposition to the senior constable, that he had given D1 his firearm, but the senior constable denied having done so.

IAU investigators also interviewed D1, who provided a similar explanation for his relationship with the senior constable. The IAU investigation was written off as having “Insufficient evidence to proceed”. There were no disciplinary charges brought against the senior constable. Morskate stated that, if the evidence D1 had given to the Royal Commission had been available to him, it would have made a material difference to the IAU investigation.

7.5 EVIDENCE OF THE EX-WIFE

The senior constable’s ex-wife whose marriage to the senior constable had been dissolved three or four years before she gave her evidence in January 2002, said she was out working on the day that their house was burgled. She recalled telephoning to her home on the day of the burglary, but she noted that her call did not divert to their answering machine. When she later made contact with her husband, he told her that they no longer had an answering machine, and that they had been burgled. By the time the senior constable’s ex-wife returned home, the police had left. She was told that the front door had been “bashed in”, and a deadlock had been “bashed”. She did not observe the house to be ransacked in appearance, but had a recollection that her former husband said he had tidied up the house before she came home. The senior constable’s ex-wife recalled that some jewellery had been stolen, and that the value of a ring had been claimed from the insurance company. The senior constable’s ex-wife gave evidence that she had never had an engagement ring or any ring fitting the description of the ring claimed on insurance. She gave evidence that a gold and silver bracelet, which had been given to her by her father-in-law, “would have been” in the house, but it was not taken during the burglary. She believed it was likely to have been with the other jewellery items. It was, she said, of significant value, both financially and emotionally.

The ex-wife said that the insurance claim was discussed with the senior constable, but she was told that they were not going to be able to replace all that had been taken, and that he was negotiating with the insurance company. She left the insurance to him. She stated that, as a consequence of having been burgled, some lattice that was concealing the front door was removed. She said that her former husband owned some firearms, but she did not have any memory of seeing them. He used to clean them when she was not at home. They did not discuss possible suspects for the burglary, and she did not recognize the name of D1 as being that of someone who was ever introduced to her.

7.6 EVIDENCE OF FRANK PILEGGI

Frank Pileggi gave evidence that he had met D1 when he was playing in a band at a hotel in 1989 or 1990. D1 was working at the hotel as a doorman. At the time, Pileggi had a silent telephone number and he was careful as to who was given his number. He did not give D1 his telephone number. He could recall that, on one occasion, he received a telephone call from D1, and he asked D1 how he obtained this silent number. He said that, some time after this call, he had approached D1. D1 alleged that Pileggi had been telephoning his home number. Pileggi recalled that D1 told him that he had "means and ways of getting any phone number". D1 went on to say that he had a friend in Telecom and mentioned his name. Pileggi was not able to recall the name, but said that, although the name of the senior constable was familiar to him, "that was not the name that was mentioned".

Pileggi gave evidence that, as a result of his conversation with D1, he telephoned Telecom and spoke to the superior of the person to whom D1 had referred. He thought that it was to the "line tapping" section, but it could have been to the "security section".

The relevance of this evidence was said to be to show that D1 had been able to access confidential information from Telecom at a time when the senior constable had been working for that organization.

7.7 EVIDENCE OF JUDITH GAYE FORDHAM

Ms Judith Gaye Fordham is a barrister, practising principally in criminal law. She gave evidence that, during 1995, she had represented D1 in respect of the charge of receiving a stolen firearm. Fordham recalled that, as part of the brief for D1's prosecution, there was an issue regarding one of the statements. Fordham was of the view that the statement contained detail that was irrelevant to the charge of receiving, and "to a suspicious mind, might have led to a suggestion that he was perhaps involved in the original offence" of stealing. This statement referred to the finding at the home of D1 of the note containing the personal details of the senior constable, the senior constable being the complainant as to the burglary. Fordham's concern was that this information was not relevant to the charge her client was facing, and she spoke to D1 about it. D1 told her that he knew the senior constable and that he had undertaken some trade work for him. He gave this as the reason why the note with his personal details had been found in D1's home.

Fordham then made contact with the senior constable by telephone. She believed that they may subsequently have met at her office. She could recall the conversation in general

terms. Fordham was seeking to bolster the innocent explanation her client had provided as to why the note was found at his house. A statement was then drafted. It supported the explanation given to her by D1. The statement was, she believed, an accurate account of what the senior constable had told her. The senior constable had already provided a statement for the prosecution, which merely set out that he was the owner of the gun, that it had been taken from his home and that he had not given any person permission to take it. There was no mention in the earlier statement of any previous association with D1. This was a noticeable omission, given that the note with the senior constable's personal particulars had been found in D1's home and was referred to elsewhere in the prosecution brief. Accordingly, Fordham prepared a statement which not only confirmed the existence of a previous association with D1, but also provided an explanation as to why this had not been referred to in the earlier statement.

The explanation for not having provided that detail earlier was that the senior constable said he had not been advised that the note had been found, and therefore he saw no need to provide the information that D1 was known to him. He clearly knew at the time he provided the first statement that D1 had been charged with receiving the stolen gun.

7.8 EVIDENCE OF THE SENIOR CONSTABLE

The senior constable confirmed that he had met D1 as a complainant while he was employed by Telecom as an investigator. He understood that D1 had been receiving nuisance calls and Telecom was able to identify the subscriber. He denied having provided the name of any person to D1 which would have identified the nuisance caller. Some years later, he said, he remembered that D1 was a cabinetmaker, and made contact with him because he was interested in having some work done. D1 came to the senior constable's house in Carine on two occasions. This was at a time when the senior constable had rejoined WAPS. The senior constable showed D1 around the house, but did not recall showing him any firearms, although he accepts that he may have done so.

The senior constable said that he used to keep his guns in a briefcase behind a chest of drawers in a built-in wardrobe in a bedroom. There were two guns, a Smith and Wesson .38 revolver and a semi-automatic 10 millimetre pistol and there may have been other guns. He could not recall that, when the IAU investigators interviewed him, he had told them that D1 had provided him with some information about amphetamines. He agreed that, at some stage, he would have looked up D1 on the police computer, but thought that it was probably in relation to the burglary, or after the gun had been located at D1's house. He gave evidence that he did not think he was aware of D1's police record at the time that they were acquainted.

In relation to the circumstances of the burglary, and the subsequent finding of the gun, the senior constable gave an explanation consistent with that which he had provided to the IAU and the insurance company. He said that he pursued his own investigations in respect of the burglary, conducting door knocks, attempting to locate stolen property and trying to obtain information on possible offenders. He claimed that he "probably would have mentioned who'd recently been coming through the house, who had been to the house recently", but could not remember if he did provide any names. He said he did not have any suspects whom he could name.

After the burglary, the senior constable could not recall whether he continued to maintain contact with D1, but thought he saw him on perhaps two occasions. He may have visited D1's house to look at his cabinetmaking. He recalled that he had met with D1 after the burglary with the intention of asking him about the burglary.

After the gun had been found by the Drug Squad, the senior constable said that he suspected D1 of having had some involvement in the burglary. He was asked to sign a statement regarding his ownership of the gun and how it had gone missing. D1 had been charged with receiving that gun and the senior constable was to be a witness in the event that D1 pleaded not guilty. This transpired before the IAU had become involved, that is to say, before the senior constable became aware that the note containing his personal details had also been found. In the statement the senior constable had provided in support of the receiving charge, he had made no mention of the fact that he knew D1. He was not able to provide an explanation for the omission of this information, but claimed that he imagined he would have told the Drug Squad that he knew D1. He further said in this regard that he did not recall doing so, and was not sure that he did.

The senior constable could not recall having been asked to make a second statement in order to provide an innocent explanation for the note having being found at D1's home. He conceded that, at some time, D1's barrister, Fordham, had called him. He had spoken with Fordham at her office and a statement was drafted. This statement was not signed. He said that, by discussing the matter with Fordham, it was his intention to "find out more about the burglary". He accepted that, in the course of discussion, he had given an account of his relationship with D1. He also accepted that the draft prepared by Fordham was an accurate summary of their discussion. However, notwithstanding the second statement's self-evident purpose, he denied that he had attended upon Fordham with any intention of assisting D1.

The senior constable made contact with D1 after being told that the gun had been found in his home. They met at a café in Scarborough. The senior constable "put to him he'd done the burglary". He said that D1 denied any involvement, and claimed that he had bought the

gun from someone in a pub. He said that, since D1 had not provided him with any significant information, he did not report the fact of the meeting to the investigators.

The senior constable denied providing information to D1, either from Telecom records, or later from police records. He denied both arranging for D1 to organise a break-in of his premises, and arranging for D1 to be given a firearm belonging to him.

7.9 ASSESSMENT OF THE EVIDENCE

The evidence of D1 and of the burglar is generally consistent. Since the Royal Commission's interest in the matter, there has been no opportunity for D1 and the burglar to collude. The fact that they have separately given similar accounts of events that are unusual is significant. The small differences in their evidence are more likely to be due to failures of recollection than to fabrications, given that their evidence in so many important respects is substantially the same.

The evidence of Pileggi and D1 is generally consistent, and provides some support for the nature of the relationship established between D1 and an officer at Telecom. This evidence supports the existence of a relationship between D1 and the senior constable that accords with that described by D1, particularly as regards the unlawful provision of confidential information.

The credit of D1 requires careful assessment. He has a lengthy criminal history, including convictions for various drug related offences, stealing, and perverting the course of justice. At the time he gave evidence, he was serving a term of imprisonment. However, D1 gave evidence to the Royal Commission without any obvious benefit to himself. He has also given evidence against his own interest, and disclosed serious criminal conduct for which he has not been charged.

Acceptance of the evidence of the burglar also requires caution. As with D1, his version of the evidence was against his own interest, and disclosed serious criminal conduct for which he has not been charged. There was no obvious benefit to him in making a false claim, and no suggestion that he had any ill will towards the police officer concerned, whom he had never met.

To the extent that D1's evidence contradicts any prior statements, in particular that given to the IAU, it is not surprising that, at that time, D1 was attempting to distance himself from the senior constable. He did not want to be implicated in the burglary, and if his evidence to the Royal Commission is to be believed, he had benefited financially from the commission of

a crime with the senior constable. D1 also considered that he was a friend of the senior constable and they had a mutual interest in denying any collusion in relation to the burglary.

The senior constable's failure to reveal his relationship with D1 until shown the note found at the home of D1 containing his personal details, strongly suggests that the relationship was not as he presented it. If, as he said, he suspected D1 of the burglary when told about the gun being found at D1's premises, it is not consistent with any innocent explanation that he would fail to reveal that D1 had been to his home. This information would obviously have been relevant to any inquiries in regard to D1's involvement. His supposition that he "imagined" he would have told investigators of the association at the time the gun was found, is self-serving, as well as being inconsistent with the statement given to Fordham.

The senior constable wrote to the insurance company that the offenders had ransacked the rooms of his house and that drawers and wardrobes had been rifled through and their contents strewn throughout the house. This is to be contrasted with his ex-wife's version, although she had a recollection that the senior constable told her that he had put things away before she returned home. He claimed that an 18-carat white gold and diamond engagement ring had been stolen. He said that his wife was not wearing the item at the time of the burglary, as a ring impeded her practical teaching of physiotherapy to her students. The senior constable's ex-wife claimed that she had no knowledge of such a ring and that she had never had an engagement ring.

Fordham's evidence does not support the senior constable's proposition that he spoke to her in an attempt to find out more about the burglary. The senior constable was, as Fordham describes it, "concerned about his position". Clearly, at that time, D1 and the senior constable had a continuing common interest in ensuring that D1 was not implicated in the burglary.

7.10 CONCLUSION

In the circumstances, the similarities of the independent accounts of D1 and the burglar, as contrasted with the denials of the senior constable, would suggest that the senior constable was responsible for arranging the robbery of his house and making a fraudulent insurance claim. As indicated in Chapter 1, however, whether the evidence gathered in any segment is sufficient for the purposes of prosecution or disciplinary action against senior constable will be determined by the Commissioner of Police or the Director of Public Prosecutions in the light of the evidence ultimately available.

CHAPTER 8

OPERATION FIRESTORM

8.1 INTRODUCTION

On 29 July 2002, the Royal Commission commenced hearings in respect of allegations that, on 28 April 1997, detectives attached to the Armed Robbery Squad ("ARS") stole cash recovered during their response to an armed robbery earlier the same day at a Supa Valu supermarket in Swan View.

The alleged theft by detectives was reported to the Anti-Corruption Commission ("ACC") in October 1997 by Craig Monaghan, one of the men convicted of the armed robbery. Through his counsel, he had also brought his allegation to the attention of the sentencing Judge.

The ACC conducted an extensive investigation into the matter, including conducting a search of the ARS offices. That search attracted considerable press coverage and some public comment from the Police Union. Following the ACC investigation, a brief was sent to the Director of Public Prosecutions ("DPP") for advice on the prospects of a prosecution of certain detectives. The DPP declined to indict. The ACC, being dissatisfied with that outcome, then tried to advance the matter in a different way, and in 2001, it prepared a draft report with the intention of submitting it to Parliament. However, before doing so, advice was obtained from senior counsel to the effect that a report to Parliament would not have been in compliance with the provisions of the *Anti-Corruption Commission Act 1988*.

In the meantime, there was also some disquiet expressed outside official circles. The proprietor of the supermarket, Florice Dawson, harboured suspicions about the failure of detectives to recover more of the cash lost by her business. Karen Muller, the daughter of Mrs Dawson, was at the supermarket at the time of the robbery and was directly confronted by the armed robbers, Monaghan and his accomplice, Stephen Rose. Ms Muller became concerned that detectives had advance knowledge of the robbery, but had failed to warn staff at the supermarket. Her concerns were taken up by the media, with the result that *A Current Affair* and Channel 7 News published reports in which reference was made to the allegations that police had advance notice of the robbery and that they had stolen some of the proceeds. In her televised interview, Ms Muller called for a Royal Commission into the matter.

Shortly after the announcement of the Royal Commission, the ACC provided details of its investigation and of its efforts to advance the matter. After perusing those materials, the

Royal Commission decided that the allegations should be investigated. The investigation was given the operation name Firestorm. The Royal Commission investigation was based on the evidence obtained by the ACC, and was expanded to include other witnesses.

8.2 BURGLARY AT MT LAWLEY

Prior to recounting the events of the armed robbery at the supermarket, there is some benefit in gaining an appreciation of the manner in which the ARS went about its business, and the inappropriate manner in which, it is claimed, a relationship with Craig Monaghan was cultivated by a senior police officer.

On 4 June 1996, Monaghan, in company with his girlfriend, Cher Blight, went to Mount Lawley with the intention of committing a burglary. Both were heroin users and needed cash to finance their heroin habits. Monaghan broke into a residence and stole various items, including a number of compact discs recorded in Chinese and some electrical equipment. He rejoined Blight and they caught a bus to the city, intending to sell the stolen items.

Monaghan and Blight alighted from the bus in Northbridge, where two uniformed police officers became suspicious as to Monaghan's movements. They arrested him. A short time later, Blight was also arrested, and both were taken to the Police Station at Curtin House.

Monaghan was initially interviewed by a uniformed officer. He denied that the items in his possession had been stolen. He did, however, offer to provide information about other criminal conduct of which he was aware. His offer prompted the uniformed officer to contact the ARS, which was also located at Curtin House. As a result, Monaghan was released into the custody of members of the ARS, who were, according to the entry in the uniformed officers' Occurrence Book, "taking over inquiries".

Detectives Randall and Corry from the ARS interviewed Monaghan, who alleged that, during the interview, Corry told him that it was only a matter of time before the owners of the property would be identified. Monaghan believed he was at risk, because he could not explain his possession of Chinese compact discs or his lack of familiarity with the electrical equipment. He said that Corry offered not to charge him in relation to the break and enter if he undertook to provide information about armed robberies. Monaghan agreed to do so and, according to him, Corry then told him that he would arrange to dispose of the stolen items.

Both Corry and Randall denied these allegations and gave evidence to the Royal Commission that Monaghan had told them that the property had been given to him by a

person named "Ty" in payment of a debt, a claim which they could not disprove. Monaghan denied this. In any event, Monaghan was not charged and he was allowed to leave Curtin House with Blight. The property taken from Monaghan by Corry and Randall remained at the ARS offices, but was not entered in the Property Tracing System ("PTS") until eight months later.

In July 1996, Monaghan was imprisoned in respect of an unrelated matter and was held in custody until March 1997. On 21 March 1997, Corry spoke by telephone to Monaghan in prison, immediately prior to his release. Three days later, Monaghan returned to the ARS offices and met with Corry.

Monaghan alleged that Corry had asked him why he had not been in touch with him as promised. Corry then told Monaghan that no-one had been charged with the burglary and that he would give the property back to Monaghan, adding, "I want you this time to do the right thing and give me a call when you know what's going on". Monaghan was allowed to leave with the property. Corry denied that any such conversation occurred. He said that he had been unable to find any owner of the property or evidence that it was stolen and, therefore, he was obliged to return it to Monaghan.

A number of matters were not satisfactorily explained by the ARS officers, including:

- The eight month delay in entering the stolen property on the police database;
- Why the description of the CDs did not include the fact that they were in Chinese (which might have aided any person searching the database for these items);
- The inclusion of a cap in the list of property, when in fact it was not part of the stolen property; and
- Their acceptance, or lack of critical analysis, of the conflicting explanations offered separately by Monaghan and Blight for being in possession of the Chinese CDs.

The above points are consistent with the allegation by Monaghan that the circumstances of the robbery, and the recording of the stolen property were obfuscated so that it appeared that charges against him need not be laid, in exchange for assisting the ARS with other matters.

Further confirmation of this arrangement is evident in a later conversation between Corry and Monaghan on 28 April 1997, in relation to the supermarket robbery. According to a

note made by Corry, Corry's first words were "Hello, what happened? You didn't ring me", to which Monaghan replied, "Allan I got on the shit [heroin] and that's stuffed me". That exchange is consistent with Monaghan's account of the agreement reached on 4 June 1996 and re-confirmed on 24 March 1997. Corry explained that the exchange related to the nickname of a possible offender that Monaghan had volunteered on 24 March 1997.

Corry's account fails to explain why he made no efforts to further establish the identity of the person whose nick-name he had been given. Corry did maintain that he mentioned the name to "some guys" at the Break and Enter Squad, but he could not recall to whom he spoke or when, and he made no notes in relation to the matter.

Monaghan's evidence must be viewed with caution. He has an extensive criminal history and, by his own admission, he had engaged in criminal conduct on this occasion. However, his version of events is credible. Such arrangements between police and criminals were not uncommon at the time, as police relied heavily upon informants in the investigation of crime. It may readily be appreciated that a person such as Monaghan would be grateful for such an indulgence by the police and would be prepared to co-operate by supplying information. The lack of documentation recording such arrangements was unsatisfactory, in that the situation was clandestine and open to misinterpretation. Police were left without recourse in the event that the criminal failed to honour his side of the bargain.

8.3 ARMED ROBBERY AT SUPA VALU

BACKGROUND

On 3 April 1997, an armed robbery took place at Mac's Supermarket in Gosnells. Detectives of the ARS received information that Stephen Frank Rose was involved in that robbery, and was planning another.

Rose was placed under surveillance, commencing on 10 April 1997, by the Bureau of Criminal Intelligence ("BCI") Observation Squad in what it called "Operation Two Step". Detective Sergeant Glen Potter assumed the role of Operational Commander, and another ARS detective, Senior Constable Douglas Nelson, took the roles of Field Commander and "inquiry officer".

At 6.36 pm on 24 April 1997, BCI officers observed Rose and an unknown male (later identified as Monaghan) enter the Supa Valu supermarket in Morrison Road, Swan View where they checked the location of the manager's office and the store security cameras. Rose was overheard asking a staff member what time the store closed.

Friday, 25 April 1997 was the Anzac Day holiday, and the surveillance of Rose was suspended at 9.15 pm on the previous day, with the intention that it be resumed on the morning of Monday, 28 April 1997. The following reasons have been advanced for the suspension of surveillance:

- Budgetary considerations (the cost of the surveillance was being met from a depleted BCI budget);
- Constraints on overtime under the ARS budget;
- Fatigue of the BCI officers, who had been working on Operation Two Step since 10 April 1997;
- BCI commitments to the Macro Task Force investigating serial killings;
- The belief that Rose intended to rob a financial institution (which would be closed over the long weekend);
- The fact that Rose had not risen from bed early on any of the other mornings he had been under surveillance;
- The fact that Rose had inspected other premises; and
- The belief that, if Rose intended to rob Supa Valu, he would do so on an evening. That belief was based on his inquiry about Supa Valu's closing time and his previous *modus operandi*.

While those reasons do not address the apparent likelihood that Rose might rob the Supa Valu supermarket on an evening on the long weekend, they were otherwise sufficiently cogent for the Royal Commission not to pursue further the allegation that the suspension of surveillance was motivated by improper considerations.

8.4 THE ROBBERY

Rose and Monaghan stayed at the Eastway Lodge Rivervale on the night of Sunday 27 April 1997. Rose was in Unit 5 in company with Tracey-Anne Turton, whom he had known for some time, and Zoe Emonson. Monaghan was with Cher Blight in Unit 22. All three women were heroin users and sex-workers. Turton had introduced Emonson to Rose a couple of days earlier.

On the morning of 28 April 1997, Rose and Monaghan travelled in Rose's panel van to Midland, where they stole a vehicle. They drove the vehicle to the supermarket, donned disguises, entered the supermarket and ran to the manager's office. Rose carried a knife and Monaghan a .22 calibre bolt-action rifle modified to resemble a sawn-off shotgun.

Paul Carse, the manager of Supa Valu, and Karen Muller, the proprietor's daughter, were in the manager's office, counting the weekend's takings. Some of the money was contained in pencil cases, in accordance with the practice of the supermarket. Rose demanded the money and Muller and Carse put it in a bag that Rose had placed on the desk.

Rose took the money and ran from the office and out to the front door of the supermarket. A person standing outside realized what was happening and released the shop's roller door. The door fell and hit Rose on the head, knocking him forward onto the pavement and shutting Monaghan inside the supermarket. Monaghan banged on the door and Rose shouted something, whereupon the person released the door and Monaghan escaped. As he ran to the car, Monaghan discharged the rifle.

The police were telephoned and Carse spoke with them, as Muller appeared to them to be distressed to the point of incoherence.

8.5 RETURN TO EASTWAY LODGE

Rose and Monaghan returned to Rose's panel van, abandoned the stolen vehicle and drove the panel van to a house in Blackadder Road, Swan View. The house was leased by Tara Sinclair, who was married to a man whom Rose had befriended in prison. Rose had been staying at the house for a period of some months following his release from prison in January 1997.

Rose and Monaghan removed their outer clothing and placed it in some plastic bags, together with stolen till documents and cheques. The money was removed from the pencil cases and roughly counted. The pencil cases were also placed in the plastic bags. Sinclair agreed to dispose of the plastic bags, whereupon Rose placed them in the boot of her car. She also agreed to drive the two men in Rose's vehicle to Eastway Lodge. Rose said he gave her \$500 for her assistance.

Rose and Monaghan departed from Sinclair's house in the panel van, driven by Sinclair. They arrived at Eastway Lodge at 9.14 am. Sinclair then took a taxi back to Blackadder Road.

Rose and Monaghan went to Monaghan's unit, sent Blight to Rose's unit and then counted and divided the money. Monaghan was given all the loose notes, which were said to have left him with a few thousand dollars more than Rose.

Rose returned to Unit 5, where Turton and Emonson were still present. Rose entered the unit, carrying his share of the money in a bag and went into the spare bedroom. At the time, Turton was seated at the kitchen table and had her back to him. The bag at that time, according to Rose, contained his share of the money and the modified rifle. He said he removed about \$5,000, put some clothing in the bag on top of the gun and the remaining money, and hid the bag under a speaker box beneath the bed. Emonson was in the bathroom. Neither woman at that time said she saw the bag or observed Rose in the spare bedroom.

After Rose and Monaghan had divided the money, Monaghan collected Blight from Unit 5 and returned with her to Unit 22. He said that he placed his share of the money in a plastic shopping bag and placed that bag inside his jacket.

8.6 POLICE RESPONSE

Detective Nelson was advised of the armed robbery shortly after 8.20 am. He informed Potter, who asked BCI to deploy a surveillance team in the motel precinct of Great Eastern Highway, Rivervale, where he believed Rose was likely to hide. ARS detectives, Williams, Potter, Thompson and Nelson, proceeded to the supermarket to join uniformed police and detectives from Midland who were already at the scene and had started interviewing witnesses.

At 9.14 am, Potter had been advised of Rose's arrival at the Eastway Lodge, and he and Nelson returned to the ARS offices, while Thompson, Williams and the Midland detectives completed the crime scene tasks at the supermarket, including the taking of statements. At approximately 9.20 am, Potter briefed ARS detectives Calzada, Baker, Crozier, Da Re, Corry and Keegan. Additional officers from the Break and Enter Squad and the Motor Squad were also called in to assist.

Because the robbery was known to involve a firearm, Potter did not order the immediate apprehension of Rose and Monaghan by ARS or BCI officers. Instead, he sought the deployment of the Tactical Response Group ("TRG"). However, Potter was told that the TRG would not be available for some time, and he made the decision to effect the arrests without their assistance.

8.7 ARRESTS OF ROSE AND MONAGHAN

Rose left Eastway Lodge at approximately 9.50 am, having told Turton that he was leaving, either to obtain his "Done" (methadone) or to purchase some heroin.

BCI officers observed Rose leave Eastway Lodge in his panel van. Some officers followed him, whilst others kept the Eastway Lodge under surveillance. Those remaining observed a woman, later identified as Zoe Emonson, leave Eastway Lodge and catch a bus, but did not follow her.

Rose arrived at a nearby Ampol service station at 9.51 am where he purchased petrol and washed his panel van. The BCI officers followed Rose to a business in Bayswater, operated by Paul Musarri, a suspected heroin dealer. Rose spoke to Musarri outside the building, then retrieved a dark blue and maroon Adidas jacket from his panel van and entered the building with Musarri. He departed at 10.24 am and drove to a nearby lunch bar, where he purchased some food. He left the lunch bar at 10.39 am, wearing the Adidas jacket, and returned to Musarri's premises. At 10.46 am he left those premises and went to another business address in Bayswater, operated by Musarri's brother, Joseph Musarri. At one of those premises, Rose purchased four grams of heroin, for which, he said, he paid at least \$4,000. He placed the heroin in the pocket of the Adidas jacket.

At 10.53 am, while still under surveillance, Rose left the second business address and drove to the Alcohol and Drug Authority methadone clinic in Northbridge. He parked in front of the clinic at 11.06 am. There he was arrested by BCI officers who had been following him.

During this period, other BCI officers had Monaghan and Blight under surveillance when they left Eastway Lodge in a taxi. Monaghan directed the taxi driver to Blight's mother's address as, unknown to Blight, he intended to leave her at her mother's house and then travel to the airport to leave the State. En route, Monaghan suspected a police presence and asked the taxi driver to stop in Beaufort Street. Monaghan and Blight alighted from the taxi just north of the intersection of Beaufort and Walcott Streets in Mount Lawley at 10.47 am.

Monaghan and Blight went into a news agency in Beaufort Street at about 10.50 am and emerged about one minute later. By this time, Monaghan realized that police were present, but he still hoped to escape. Monaghan took Blight to a car yard, with a view to escaping through the rear of the premises. Shortly afterwards, they left that car yard and walked in a northerly direction to another car yard.

ARS detectives Baker and Crozier, assisted by BCI officers, arrested Monaghan at about 11.00 am. One BCI officer apprehended Blight and another took possession of her handbag. Baker patted down Monaghan and found a plastic shopping bag containing cash. The plastic bag and the jacket were handed to Crozier, who placed them in the boot of the police vehicle.

Monaghan and Blight were conveyed to Curtin House by Baker and Crozier. Baker and Crozier gave evidence that Monaghan had commented to the effect that he had \$10,000 in the shopping bag.

Rose was apprehended by BCI officers at about 11.08 am. Approximately 10 minutes later, ARS officers, Calzada and Williams, and Break and Enter Squad officers, Nesbitt and Cave, arrived. It was Williams who found the heroin in the pocket of Rose's jacket.

Calzada and Williams took Rose to Curtin House. At some stage, Williams asked Rose about the heroin. Rose denied having possession of it, but he did not suggest at that time that the Adidas jacket belonged to another person. By about 11.30 am, both Rose and Monaghan were in custody at Curtin House.

According to the evidence of Rose and Monaghan, at the time of their arrests, the money stolen from Supa Valu had been dealt with as follows. Rose's share was approximately \$27,000. He said he had given \$500 to Sinclair. He spent \$4,000 or \$5,000 on heroin, he had \$820 on his person, and the remainder, about \$21,000, was in his bag hidden at Eastway Lodge. Monaghan's share was about \$34,000. He gave Blight \$1,000 in five dollar notes and the rest of the money was still inside his jacket. He variously stated the amount in his jacket as being \$37,000 or as being \$35,000, or thereabouts.

8.8 SEARCH AT EASTWAY LODGE

After Potter and Nelson had been advised that Rose's vehicle had been located at Eastway Lodge, they went to the Belmont Police Station and conducted a short briefing for members of the ARS, the Break and Enter Squad and the Belmont Detectives. Detective Susan Debnam, from the Break and Enter Squad, went to Eastway Lodge and obtained from the manager the keys to the units occupied by Rose and Monaghan. She advised Potter of this by telephone and waited for the arrival of the other officers. After Debnam's call, and the advice of the arrests, Potter, Nelson and Thompson, together with Detectives Scott Etherton, Brandon Keys and Douglas Stjepic from Belmont Detectives, left Belmont to search Eastway Lodge.

At 11.26 am, Potter entered Unit 5 with his service revolver drawn. He was followed by Nelson, Thompson and Debnam. Turton was then in the kitchen. Potter remained with Turton, while the other officers searched the unit for other persons. None were found. Debnam entered the spare bedroom, where she saw the green bag that had been left by Rose under one of the beds, but she did not touch it.

Once the unit had been secured, Nelson and Thompson undertook a search while Debnam stayed with Turton. Thompson located and inspected Rose's bag containing the gun and cash. He called Nelson and Potter into the bedroom. Turton was then taken into the bedroom where she was shown the bag and its contents, and asked what she knew of them. She told the Royal Commission in the course of her evidence that the money in the bag included bundles of \$50 notes and that Rose had given her \$50 to pay for another night at the motel.

Etherton, Keys and Stjepic searched Unit 22, but they found nothing of significance. Personal items left by Blight and Monaghan were later removed by the motel manager, and subsequently were returned to Blight.

Etherton drove Thompson, with the items seized from Unit 5, to Curtin House and thereafter, they had no further involvement in the matter.

Turton was conveyed to Curtin House by Debnam and two other officers from the Break and Enter Squad. Potter and Nelson returned to Curtin House, while Thompson and Etherton waited at Eastway Lodge for the arrival of a forensic officer. The forensic officer arrived about half an hour later and took photographs. Those photographs show the gun, some strewn clothing and \$4,030 in cash. The cash contained no \$50 or \$100 notes. Turton was later returned to Eastway Lodge where, on her evidence, the police frantically searched the room she had occupied. They found nothing.

8.9 OTHER SEARCHES

Potter arranged for another team of police to search Musarri's premises in Bayswater, while he and others searched Eastway Lodge. The police officers knew that Rose had been at Musarri's premises earlier in the morning. Search warrants under the *Firearms Act 1973* were obtained by Calzada, indicating that the searches of Musarri's premises were for a firearm and were not related to any deficit in the cash recovered.

The police arrived at Paul Musarri's premises in Bayswater at 12.02 pm. After earlier having left the premises for a period, Paul Musarri returned at about the time the police arrived. Paul Musarri was present during the searches of his premises and those operated by Joseph Musarri. Paul Musarri was asked whether he had supplied a firearm to Rose, and whether he had other firearms. He said he was not questioned about drugs or the money Rose had paid him that morning. The money, Paul Musarri said, was still on the premises.

The searches in Bayswater took about two hours. After those searches, detectives also searched the Blackadder Road address. Nothing of significance was found during any of the searches.

According to the police, the total cash recovered, which they attributed to the robbery, was \$14,850, made up as follows:

- \$4,030 recovered from Unit 5 of the motel;
- \$9,400 recovered from Monaghan;
- \$600 recovered from Blight; and
- \$820 recovered from Rose.

A further amount of \$1,000, also recovered from Monaghan, was not attributed to the robbery. The amount stolen from Supa Valu was \$61,500. After taking into account the amounts claimed to have been given to Sinclair, to one or other of the Musarris or spent on incidentals, the total unaccounted for was \$40,070.

8.10 INTERVIEW OF ROSE

Rose and Monaghan were interviewed on video consecutively, because, Nelson claimed, the ARS offices possessed only one interview room equipped with a video recorder.

At 1.55 pm, Thompson and Calzada commenced a video taped interview of Rose. Rose denied knowledge of the heroin and initially denied any involvement in the robbery. The sum of \$820 was found in his shorts, but he claimed that he had earned it working. At this point, Rose refused to answer questions and asked to see a lawyer. The interview was suspended at 2.20 pm. Rose gave evidence to the Royal Commission that, following the suspension of the video taped interview, he saw a detective walk past, carrying the bag he had hidden at Eastway Lodge. By that time, he said, he knew his guilt could be established and he decided to "go into damage control".

Rose then offered to admit to the armed robbery on the conditions that he not be charged with possession of the heroin and that he be given bail. The amount of heroin was approximately four grams. Thompson and Calzada said they had to check with their superiors. They returned shortly afterwards and told Rose that he would be granted bail and would not be charged with possession of the heroin. The video taped interview was recommenced at 3.10 pm, in the course of which Rose admitted to the armed robbery. At 3.36 pm, Rose was shown the sum of \$4,030. He immediately asked, "Where is all the fifties?". Thompson replied, "Well that's what was located at your unit this morning at the

motel ... four thousand and thirty dollars". Rose responded "Well there was a heap of fifties in the bag, in the green bag".

The interview of Rose was concluded at 3.43 pm. Rose was not questioned about the heroin in that interview. Later, however, officers told him that another video taped interview was required, in which he was to say that he had borrowed the Adidas jacket and was not aware that heroin was in the pocket.

Rose then participated in a further video taped interview, conducted by Thompson and Calzada, to explain that the Adidas jacket he was wearing at the time of his arrest was not his, that he had never seen it before and that he had borrowed it from "one of the girls". When asked whether he could identify the women, Rose responded that he knew their first names and could identify them by sight. No further questions were asked regarding the identity of "the girls". Presumably, "one of the girls" referred to one of the three girls who had been with Rose and Monaghan on the night before the armed robbery.

The detectives denied that such an agreement was made. However, there is some evidence to support Rose's version. First, he had ample opportunity earlier to say that the jacket was not his, but he did not do so. In fact, he gave a story inconsistent with that contention and made other references to the jacket in proprietorial terms. Secondly, he was observed with the jacket at Musarri's premises from where officers knew he had purchased the heroin. Thirdly, the last of his interviews was patently an inadequate interrogation as to his possession of the heroin. The jacket was in fact a man's jacket "large" size, and his claim that it belonged to one of "the girls" was not credible. Fourthly, detectives alerted the Drug Squad who tried to persuade Rose to assist in their investigation of Musarri. The basis for this was obviously the belief that Rose had purchased the heroin from Musarri, not that the heroin belonged to one of the women in whose jacket it was found. Lastly, Calzada completed the "P11" property form in a manner that suggested that the heroin had been found in the street, rather than in the possession of any person. He made no reference to Rose. Nor did he enter the details on the Police Offence Information System.

8.11 INTERVIEW OF MONAGHAN

Corry and Monaghan had a conversation at 11.25 am. Corry's handwritten note purports to record that Monaghan admitted that he got involved in "the job" the previous night, that he had \$10,000 in his possession and that he carried the gun. At 2.00 pm, Corry and Crozier spoke to Monaghan. Crozier's handwritten notes purport to record that Monaghan said that:

- He had \$10,000 in his possession, borrowed from a friend;

- An additional \$1,000 in his tracksuit pants belonged to him and Blight, being retained from his social security payments and Blight's earnings as a sex-worker; and
- Blight had \$800 in her possession, consisting of \$200 of her earnings and \$600 given to her by Monaghan out of the sum of \$10,000.

Corry later informed Monaghan that Rose had admitted the robbery. Monaghan was then allowed to speak to Rose. Rose confirmed that he had admitted the robbery, but said he had not named Monaghan as his accomplice.

According to Monaghan, he and Corry agreed that, in the light of Monaghan's story that he had the money in order to buy a car from a Mount Lawley car yard, it was more plausible that he had \$10,000 cash, rather than an amount in excess of \$30,000. Corry also allegedly said that, if Monaghan agreed to say he had only \$10,000, he would allow him to take \$1,000 into prison, so he could buy a television set. Corry later added that Monaghan was to say on video that the sum of \$1,000 was found in his trouser pocket and belonged to him and Blight. A video interview was arranged for that purpose.

No reference was made in that interview either to when Monaghan "got on the job" or to the gun, as purportedly recorded by Corry earlier. The interview was terminated at 4.56 pm.

Monaghan's allegation is that his agreement with Corry was the reason he agreed to a video interview, and the reason he said on video that he had only \$10,000 (of which Blight had \$600) plus \$1,000. When Monaghan was later lodged at the East Perth Lockup, his property included exactly \$1,000, consisting of three \$100 notes, six \$20 notes, 56 \$10 notes and four \$5 notes.

8.12 CONFIRMATION OF AMOUNT STOLEN

There is little doubt that approximately \$61,500 in cash was on hand at the supermarket at the time of the robbery. Having regard to the normal cash receipts over a three day period, the figure of \$35,000 or \$40,000 would have been far too low. There was a contest on the evidence whether the initial reports made by the supermarket staff to the police about the amount stolen were correct. The staff insisted that they told the officers the correct amount of approximately \$61,000. Detectives insisted that they were initially told a figure of \$35,000 or \$40,000. The contest was relevant to the suggestion made by and on behalf of the detectives that one or more of the staff had seized the opportunity presented by the robbery to steal additional money, and that Mrs Dawson had lodged a fraudulent insurance

claim. This overlooks entirely of the evidence of Mrs Dawson, which the Royal Commission accepts, that the insurance cover was limited to \$30,000 only. Whether or not the initial reports were incorrect, the Royal Commission rejects the suggestion made by the detectives in relation to the staff.

Both Rose and Monaghan said that they had stolen about \$61,000. Carse and Ms Muller say that all the money was taken in the robbery. Any decision by staff to steal money or to lodge a fraudulent insurance claim would have been highly unlikely in the circumstances and would constitute an act of extraordinary audacity, particularly on the story of the police that they initially gave the "correct" figure of only \$35,000 or \$40,000. Mrs Dawson pursued inquiries relating to her suspicion that police had taken money, which would be imprudent, to say the least, had she stolen the money. She also recorded Potter's comment about the \$20,000 recovered, that is referred to below. At the time, she could not have guessed the significance of this figure. No member of staff could have known that Rose and Monaghan would be apprehended with only \$35,000 to \$40,000 in circumstances which would have led police to investigate the staff. Finally, the suggestion that Ms Muller was involved in stealing the money, yet later took the step of calling for a Royal Commission, finds no basis in the evidence and the suggestion must be rejected.

8.13 MRS DAWSON'S CONCERNS

Mrs Dawson kept a note of some telephone calls on the day of the robbery, including one from Potter informing her that the police had recovered \$20,000. He asked if she could fax to him the names of all staff who had touched the money. When Mrs Dawson called Potter to ask if he had received her fax, he informed her that it was not necessary, because the offenders had confessed.

Mrs Dawson's concern about the missing money was reflected in her further diary note as follows:

First told there was \$20,000 dollars. Later in the day told there is \$14,000. Next day told there is \$14,000 on 1 guy, \$1,000 on the other.

Potter's reference to \$20,000 is difficult to explain on the detectives' version of events. If the call was made before Potter knew about the cash found on Monaghan, then Potter should have been aware only of the \$4,030 found at Eastway Lodge. If the call was made after he knew of the money found on Monaghan, he must then have known that the money recovered was \$14,000, or perhaps \$15,000 on one version, but not \$20,000. Potter said that he in fact told Mrs Dawson that police had recovered \$15,000 to \$20,000. However, that purported explanation merely compounds the problem. It assumes that the call was

made after Potter knew about the money found on Monaghan and Blight, at which time there was no basis for an estimate in those terms. At that time, the amount was known to be \$14,000 or \$15,000.

Subsequently, Mrs Dawson conveyed her concerns to a regular customer of the supermarket, a licensed private investigator. He told her he would make some inquiries for her. However, he appears to have done little more than make a joke about it in a call to Potter, whom he knew from his own service in the police.

8.14 FURTHER INVESTIGATION BY ARS

On 3 June 1997, Detectives Nelson and Lee interviewed Turton at Bandyup Prison. This interview was conducted primarily to obtain information in relation to Zoe Emonson, whom Turton had identified as the woman seen leaving Eastway Lodge on the morning of 28 April 1997. Nelson made handwritten notes of the information he received.

On 3 June 1997, Nelson also attended Supa Valu and interviewed a person he identified only as the "complainant". He confirmed the details of the armed robbery and made arrangements for a meeting with Mrs Dawson.

On 12 June 1997, Nelson also executed a search warrant on Bank West in relation to the bank records of Mrs Dawson and her company, Amis Holdings Pty Ltd and seized a copy of the account statements.

On 18 June 1997, Nelson interviewed Emonson at the ARS offices. A typed statement was prepared which Emonson signed and Nelson witnessed. In her statement, Emonson claimed to have no knowledge of any money or firearms that were in the unit at Eastway Lodge.

8.15 THE MISSING MONEY

Apart from the possibility of police impropriety, five hypotheses have been raised to explain the missing money:

- Mrs Dawson or her staff inflated the amount stolen;
- Mrs Dawson or her staff removed the missing money;
- Rose and/or Monaghan gave the missing money to Sinclair and/or one or other or both of the Musarris;
- The missing money was stolen by Emonson or Turton; and
- Some of the money was stolen by staff at Eastway Lodge.

There was no evidence in support of any of the first, second and fifth hypotheses. So far as the third hypothesis is concerned, Rose and or Monaghan could have given the missing money to Sinclair after they had returned to her house following the robbery. Rose could also have given the missing money to one or other or both of the Musarris at their premises to which he had gone after the robbery.

Rose did not initially claim that the police had stolen money from his unit at Eastway Lodge. He said merely that he left at Eastway Lodge a great deal more than the \$4,030 the police claimed to have recovered, including a large amount in \$50 notes. When shown \$4,030 during his interview, Rose said, "where's all the fifties" and "there was a heap of fifties in the bag ...". It is implausible that Rose, at that very early stage, had decided to "set-up" police. He told an associate shortly after his arrest that he left the money in the bag, which could not have been related to any plan to falsely implicate police. Secondly, Turton has consistently said that there were \$50 notes in the bag when police arrived at Eastway Lodge. Thirdly, Potter told Mrs Dawson that \$20,000 had been recovered.

Several conclusions follow if there was more than \$4,030 in Rose's bag when the police arrived at Eastway Lodge. The Royal Commission would not need to decide whether Sinclair was given more money than she, Rose or Monaghan have testified, whether Musarri or any other person was given more money than Musarri or Rose has testified, or whether Mrs Dawson or her staff either exaggerated the loss or themselves stole money. It would be necessary to decide only whether Turton or Emonson stole money from the bag after Rose had left.

8.16 TURTON

Turton denied in evidence that she had stolen any money. There is no evidence in support of the proposition that Turton stole money from Rose's bag, and substantial reasons to indicate that she did not.

Rose told her he was returning to Eastway Lodge. Had she stolen from Rose, it is unlikely that she would have remained at the Lodge. There was no explanation for stealing about \$17,000, but leaving \$4,030. That would not have impressed Rose. Had she stolen the money, but not yet made her escape, the money would presumably still be on her person or elsewhere in the unit when police searched the unit. She was without a vehicle. It is unlikely that she hid the money outside the unit because she still would have had to face the difficulty of explaining its disappearance to Rose while she remained in the unit. Nelson searched outside the unit upon returning to Eastway Lodge the second time and found nothing. After her release, Turton returned to Northbridge for the purposes of prostitution

for money to buy drugs, which seems unlikely conduct for a person in possession of \$17,000.

8.17 EMONSON

Emonson also denied in evidence that she had stolen any money. Emonson told Turton that she was going to the city to obtain money to pay Rose for heroin he had earlier supplied on credit. She did in fact withdraw cash from her bank and return to Eastway Lodge. Whether or not she then knew that Rose had been arrested, her conduct was inconsistent with the suggestion that she had stolen about \$17,000 from Rose a few hours earlier. Emonson later accompanied Turton into Northbridge, knowing that Turton was of interest to the police and that police had ostensibly searched for missing money. On the face of it, this was inconsistent with Emonson having stolen the missing money.

8.18 MONAGHAN

The evidence of Monaghan was that he had about \$34,000 cash in his possession at Eastway Lodge. On his evidence, he had no suspicion that he was under police surveillance until he and Blight were in Mount Lawley riding in a taxi. Prior to that, there was little opportunity, it would seem, for Monaghan to dispose of the money. The opportunities to dispose of money were at Sinclair's house, in the taxi, at the newsagency or in either of the two car yards. Police searched none of those places. Once Monaghan suspected that he was the subject of police interest, it would be surprising if he disposed of about \$24,000 but retained \$10,000 when he was proposing to leave Western Australia almost immediately.

In addition, there are several anomalies in police evidence, which cast doubt on the police version of events.

On his apprehension, Baker searched Monaghan, conscious that he may have possessed a firearm. Monaghan was placed face first against a car with his arms and legs spread and his tracksuit pants patted down each leg. Police say, and Monaghan denies, that he then had \$1,000, comprising three \$100, six \$20, 56 \$10 and four \$5 notes, in the pocket of the track suit. The detectives' claimed that they did not find the missing money.

Monaghan was charged with armed robbery on the basis that \$61,500 was stolen. Rose told police that his accomplice was in urgent need of \$10,000. Police purportedly knew that a great deal of money was missing. It is implausible in those circumstances that police could genuinely have believed that Monaghan owned \$1,000 found on his person, particularly including as it did 56 \$10 notes. Detectives alleged that they were told that part of the

\$1,000 came from Blight's earnings the previous night, but made no effort to check whether she was paid with 56 \$10notes. On the contrary, a detective falsely reported that Blight had corroborated Monaghan in this regard.

Crozier said that he gave to his officer in charge first the \$1,000 and later Monaghan's jacket and bag of cash. The officer in charge, however, both in a statement in 1997 and before the Royal Commission, said that he received the jacket first and the \$1,000 later. On Monaghan's version, the \$1,000 never existed as a sum separate from the cash in the shopping bag, or separate from Blight's cash, until it was separated pursuant to the agreement with Corry that he be allowed \$1,000 to take to prison. The sequence from the officer in charge is consistent with Monaghan's story, but Crozier's sequence is not.

The police version that Monaghan had \$10,000 (albeit \$9,400 on his person and \$600 on Blight's) would not have been difficult to establish – the money merely had to be counted. However, the brief for the prosecution included evidence that:

- Monaghan stated in the police car that he had \$10,000;
- Monaghan stated to Corry alone that he had \$10,000;
- Monaghan stated to Corry and Crozier that he had \$10,000; and
- Despite those admissions, Monaghan agreed to a video taped record of interview solely to say that, and how, he had \$10,000.

The inference is open that the detectives were overly concerned to prove admissions that Monaghan had \$10,000, particularly since the detectives could have testified to that fact.

Monaghan earlier refused to be interviewed on video. He intended to falsely maintain that he had borrowed \$10,000 for the purchase of a car. If he actually had \$10,000, and from an armed robbery, there was no sensible reason why he would have changed his mind to agree to a video taped interview as to the fact that he had \$10,000. It could hardly be suggested that he feared police would testify that he had more than \$10,000.

8.19 CONSPIRACY THEORY

The suggestion was put forward that a conspiracy theory was behind the loss of the missing money. It was highly speculative in the circumstances of the case.

When interviewed by the ACC and in evidence to the Royal Commission, Rose consistently asserted that money was missing, but he was reluctant to implicate police. A letter he wrote

to Monaghan in prison also showed his reluctance. Despite Rose's evidence, he would have had to conspire with Monaghan to fabricate evidence.

It is improbable that there was the time or opportunity for any such conspiracy to have been entered into before the occurrence of what would have been the first step in it. Neither Rose nor Monaghan suspected BCI surveillance prior to their separation at about 9.50 am on 27 April 1997. They did not speak to each other again until after Rose had made his comments about the missing \$50 notes.

The fact that Rose was reluctant to make allegations about the police, but otherwise supported the proposition that significant cash was missing, contradicts the theory. Cash was missing contradicts the theory.

8.20 CONCLUSION

When presented with the brief of evidence prepared by the ACC, the DPP formed the view that there were insufficient prospects of a conviction to warrant the institution of prosecution proceedings against the police. That was a view which was clearly available on the evidence. Each of Rose, Monaghan, Blight, Turton and Emonson had formidable criminal records for dishonesty and other offences. Their evidence was not consistent in all respects. Undoubtedly, a jury would have to be directed that their evidence had to be treated with the utmost caution and undoubtedly the police would emphatically deny the allegations against them. Notwithstanding the further investigations by the Royal Commission, the same problems with the evidence remain. Whilst it may be accepted that approximately \$40,000 went missing after the robbery, the quality of the evidence is not such as to lead to the view that there is any reasonable prospect of the police officers being convicted.

CHAPTER 9

OPERATION SOLO

9.1 INTRODUCTION

The first segment of the hearings of the Royal Commission heard evidence that had been obtained by an investigation of the Royal Commission under the name Operation Solo. The investigation was based upon a previous investigation by a joint operation of the Anti-Corruption Commission ("ACC") and the Internal Affairs Unit ("IAU") of the Western Australia Police Service ("WAPS"), which concluded in January 1999. The ACC investigated under the name Operation Norway, and the IAU under the name Operation Echo Papa. The targets of the joint operation were a group of detectives associated with Kalgoorlie. The outcome of the investigation had been inconclusive, and although significant evidence of what appeared to be criminal conduct was obtained, no arrests were made and no charges were laid. However, the Commissioner of Police initiated termination action under s. 8 of the *Police Act 1892* for a lack of confidence in some of the officers involved. The termination action was the subject of proceedings in the Industrial Relations Commission. Those proceedings were unresolved at the time of the Royal Commission hearings, but they were later concluded in favour of the Commissioner of Police.

It was considered appropriate to examine the matter publicly because:

- Substantial evidence of corrupt conduct had been obtained by the ACC/IAU investigation, but the extent of the incriminating evidence had not been publicly revealed previously;
- There were aspects of the evidence of criminal conduct that had been obtained, which appeared not to have been utilized in the action against the police officers;
- Royal Commission investigators were able to expand substantially the evidence of corruption by the same group of police officers;
- The existence of the available body of evidence from the ACC/IAU investigation of corrupt conduct provided a convenient start to the hearings of the Royal Commission while other investigations were being developed; and
- The further evidence gathered through the investigations by the Royal Commission and the public hearing of the evidence of matters previously examined by the ACC was a useful test of the benefits of the additional powers available to the Royal Commission.

The six officers who were at the centre of the inquiry in this segment were serving members of WAPS at the time of the conduct examined, but due to various circumstances, they have all since left the police service. All of them were detectives, most of them being detective sergeants, and they had links from working with each other in the past. The members of the group appeared to be well known to each other, and most shared an interest in horse racing and gambling.

The ACC/IAU operation was centred on the activities of some of the group of police officers in Kalgoorlie. The investigation utilized an informant who claimed that the police had a quantity of drugs to sell. Evidence obtained by telephone intercepts seemed to confirm what he was saying, but eventually the operation failed to produce a result, primarily because the informant misappropriated money provided for to him to buy the drugs. Investigators were able to identify an incident when it seemed that the police took possession of a quantity of morphine tablets from a person, code-named K1 by the Royal Commission. However, the indications later received from the Director of Public Prosecutions ("DPP") were that the evidence was insufficient to prosecute, although the Commissioner of Police did take the opportunity to proceed against some of the officers under s. 8 of the *Police Act*.

The Royal Commission investigation extended the ambit of the inquiry into allegations of similar conduct when some of the group of officers were earlier stationed at Brentwood Police Station (which later merged into Murdoch Police Station). By the end of the investigation, Operation Solo, it is suggested, exposed corrupt conduct over a period from 1996 until 1999, when the group disintegrated following the conclusion of the ACC/IAU investigation, which led to the s. 8 action being taken against some of the officers.

The evidence produced by the investigation fell into three parts:

- The first part focused on allegations of police officers indulging in a practice known as "ripping";
- The second part focused on allegations of trafficking in prohibited drugs; and
- The third part was concerned with allegations of other improper conduct associated with corrupt relationships, which involved practices such as "green-lighting", "tipping off" persons regarding pending searches of their premises, and the undertaking by police officers of unauthorized secondary employment.

Common features surrounding the allegations included the use of a network of criminal informants, who supplied information about drug users, the use of public or mobile telephones to arrange drug transactions, attempting to conceal telephone calls through the expedience of pre-paid SIM cards held in false names, and the abuse of information and resources available to the officers, such as personal information stored on WAPS computer databases. Further features were the use of the Police Air-wing Service for private purposes, the misuse of police equipment and the complete lack of any appearance of appropriate supervision.

In the course of their activities, WAPS orders and policies were ignored or abused. Examples of such misconduct included:

- Failing to make proper journal entries;
- Failing to submit contact advice reports and to adhere to the Informant Management Manual;
- Improper accessing of the WAPS computer system;
- The abuse of WAPS procedures regarding mobile telephones;
- The defiance of policies relating to acceptable conduct of police officers, such as policies relating to secondary employment and to improper associations; and
- The inadequate and incomplete grounding of search warrants.

The officers totally denied all of the allegations of corrupt or criminal conduct, notwithstanding the specificity of the evidence against them. At the conclusion of the segment, the officers were given the opportunity to comment on a draft of this chapter of the Report, but only one chose to respond. The failure of the others reflected the attitude of officers who, whilst compliant with summonses compelling them to attend and give evidence, were apparently indifferent to the allegations of corrupt or criminal conduct made against them, or recognized that they were not able to provide a cogent explanation.

9.2 THE PRACTICE OF “RIPPING” - BRENTWOOD DETECTIVES OFFICE

As indicated, the focus of part of the investigation was the practice known as a “rip” or “tip and rip”. This involves the theft of money and drugs by police officers whilst entering premises under the pretence of a lawful search.

Evidence was given reluctantly by a person code-named B3, who had become an informant to some of the Brentwood detectives. B3’s evidence was that he had first met officers from Brentwood Police Station in 1996 or 1997. At the time, he owned a smash repairs workshop, which was subjected to a search for drugs by detectives from Brentwood. No

drugs were found on the premises, but the detectives continued to visit B3 about once or twice a week. B3 later made an arrangement with three of the detectives that he would provide them with information about local drug dealers. In exchange, he was to receive an "even share" of drugs and money and other items that were seized by the detectives as a result of the information provided by him. The failure of the detectives to maintain their end of the bargain eventually led to a falling out, which resulted in B3 making complaints to the IAU and to the ACC.

CASE EXAMPLE 1

Evidence was given about an occasion on which B3 told two of the officers, while they were at his workshop, that a person code-named B4 had a quantity of hydroponically grown cannabis at his home in Ferndale. B4 was subsequently arrested and charged by these officers. B3 received an amount of cannabis and approximately \$500 in cash as his reward.

Police records show that, on 30 April 1997, police seized from B4 two cannabis plants, four feet in height, and weighing 370 grams, which were found in a lunchbox in the laundry cupboard of the house. This was significantly less than the quantity of 2.5 pounds that B4 was to claim in his evidence before the Royal Commission had been seized by the police. B4 was subsequently convicted on one charge of cultivating cannabis and one charge of possessing cannabis. He was fined a total amount of \$550, which was significantly less than if he had been convicted on the total amount of cannabis that was actually seized.

The reduction in charges was a classic technique employed by detectives to forestall any complaints from the offenders in the knowledge that, were they to do so, they would make themselves liable to increased charges and accompanying penalties. This technique has been widely commented upon by Fitzgerald (1989), Mollen (1994) and Wood (1997).

When questioned about this matter, the officers involved could not recall the incident, but they denied stealing any drugs from B4 or reducing the charges in any respect. This was to become a feature of the evidence provided by these detectives.

CASE EXAMPLE 2

B3 gave evidence telling one of the detectives about a heroin dealer in Perth, B5, who he knew to be selling a lot of heroin and he thought would be "a good hit". B3 telephoned B5 at the detective's instigation and arranged to purchase heroin from her. This was done in order to ensure that B5 would be at her flat at a specific time. B3, together with two

detectives, then drove to B5's flat in East Perth and while they were watching, B3 purchased about 0.5 gram of heroin from B5. B3 then left the vicinity.

The next day, B3 spoke to one of the detectives, who told him it was "a good job" and that they had taken a "good whack out of it". B3 was told that an amount of \$18,000 had been taken and that his "share" was \$2,000. B3's evidence was that he had later spoken to B5, who told him that about \$60,000 had been taken.

In her evidence, B5 admitted that she and a person code-named B6 were dealing in heroin and that she had money hidden in Kings Park and at other places. On the night of the police raid, she was found in possession of heroin, and she was compelled to reveal the hiding places for her money and to take the police to those places. She said that a total of between \$60,000 and \$70,000 was taken by the detectives. In return, B5 was permitted to retain an ounce of heroin that had been found in her flat. B5 estimated the value of this heroin to have been about \$20,000. B5 was not charged with any offence.

B6 said that he had been arrested after he had left the flat of B5 in East Perth. He was found in possession of four grams of heroin. He was taken to Brentwood Police Station, where he was asked about B5's money. He lied about the money, although he was aware that B5 had secreted large sums of cash in Kings Park and in other places. He was charged with possession of 0.4 gram of heroin, rather than with the actual amount of four grams, which would have attracted the presumption of an intention to supply. When released on bail the next day, he returned to the flat, and was told by B5 of the theft of her money. He was subsequently fined the sum of \$500.

The search warrant taken out for the search of the premises confirms that two of the detectives were among the officers who attended the flat of B5 that evening. The search was said by them to be part of an operation, but no running sheets for such an operation were ever located. Furthermore, there was no plausible explanation for detectives from Brentwood conducting an operation in East Perth.

CASE EXAMPLE 3

B3 told the detectives about B7, another heroin dealer in Perth. A plan was developed whereby B3 telephoned B7 to find out where B7 was. B3 ascertained that B7 was at the Cannington TAB. He then conveyed this information to one of the detectives, who subsequently located and arrested B7, seizing a quantity of drugs, together with his wallet containing \$1,600 in cash.

B7 was then taken to his house in Queen's Park, where a search was conducted, in the course of which a lawnmower was located. Despite B7 maintaining that he had purchased the lawnmower by answering an advertisement in a newspaper, the lawnmower was seized. Following the search of his house, B7 was taken to the Brentwood Police Station, where he was interviewed. When his wallet was eventually returned to him, it contained only \$900, the detectives having kept \$700 and the lawnmower. By way of exchange, they promised not to charge B7's girlfriend with any offence. B7 had later told B3 of the circumstances of his arrest, unaware, of course, that it had been orchestrated by B3.

B7 has stated in evidence before the Royal Commission that he had been in possession of three grams of heroin, but he was only charged with having two grams. He was fined \$2,000. Police records confirm the involvement of two of the detectives, but they do not document the seizure from B7 of \$700 or of a lawnmower. B7's girlfriend was not charged with any offence.

CASE EXAMPLE 4

B3 provided information to one of the detectives in relation to another person, B8, who he knew had a hydroponics set up at his home in Thornlie. The detective told him that they seized cannabis from B8's residence as a result of this information, and B3 received "a couple of ounces" of cannabis as a reward for supplying the information.

B8 gave evidence that he worked for B3 for a short period, and that B3 had visited his home and had seen him retrieve cannabis from where he kept it in a sports bag on top of a bedroom wardrobe. Some time later, three detectives had gone to his home and executed a search warrant, during which they asked him "where it [referring to the cannabis] was", to which B8 responded that he did not have any. One of the detectives then went to his bedroom and returned with the cannabis that was stored on the top of the wardrobe. The officer appeared to know where the cannabis was kept.

B8 estimated the cannabis to be "very good quality", having a total value of about \$1,500. He estimated that the weight of the cannabis was 157.5 grams, divided into five bags, each individually containing 31.5 grams. B8 said that "a few grams" were left behind. B8 stated that the police officers left this as a "favour" to him. The detectives left the premises and B8 was later summoned to appear in the Fremantle Court of Petty Sessions.

B8 was charged with simple possession of a prohibited drug, notwithstanding that the possession of 100 grams or more of cannabis gives rise to the presumption of an intention to sell or supply the drug to others. The Statement of Material Facts indicated that B8 was

in possession of “approximately 100 grams of cannabis”, an amount that avoided the presumption of an intention to supply. B8 was convicted of the offence and he was fined \$250.

CASE EXAMPLE 5

While he was working at B3’s workshop, B8 observed that two police officers were attending almost on a daily basis. B8 said that B3 referred to these officers as his “copper mates”. B8 knew these officers to be detectives stationed at the Brentwood Police Station.

B8’s evidence was that, on one occasion, he observed an unmarked police car pull up in a street close to the workshop. He saw a plastic bag being passed through the car window to B3. He recognized the person in the car as a policeman. B8 said that B3 took the plastic bag to the “smoko room”. The bag contained cannabis, which was later smoked by B8 and B3. B3 agreed that one particular detective was a regular visitor to his workshop, and that, on numerous occasions, he had left quantities of cannabis for B3.

It was admitted by B3 that, on some occasions, he smoked cannabis with two of the detectives, and furthermore, that he had been to the Brentwood Police Station where he had seen a quantity of cannabis secreted behind several cartons of beer in the detectives’ office. He also said that he had smoked cannabis with the two detectives at the police station.

CASE EXAMPLE 6

Royal Commission investigators made random inquiries of persons who were recorded as being charged with drug offences by the detectives from Brentwood at about the time of the foregoing events. One such person was B9, who, it transpired, had an interesting but familiar story to tell. In January 1998, police officers in plain clothes executed a search warrant at the home of B9 in Gosnells. Another witness, B10, was present at the time. During the search, the following were discovered:

- Approximately two pounds of cannabis packed in a freezer;
- Eight to ten cannabis plants, weighing about one pound each, growing hydroponically under lights in an upstairs room; and
- Some “rubbish” cannabis consisting of root balls and stalks from plants near a rear shed, that had already been harvested.

B9 described the cannabis in the freezer and the hydroponically grown plants as being of “very high grade”, known as “super skunk”. A search of the house located the cannabis in the freezer. An estimate of the value of the cannabis in the freezer was given as approximately \$10,000. The cannabis was taken outside and put into the boot of an unmarked police vehicle by one of the detectives.

B9 stated that he was upset that his “smoko” had been taken and asked whether he could have some back. B9 claimed that one of the detectives went outside and returned about five minutes later with a small bag of cannabis for him.

After the cannabis from the freezer had been seized, a number of other officers attended the premises and the hydroponically grown cannabis and “rubbish” cannabis was also seized.

B9 was later interviewed, and he was charged in relation to the 12 hydroponically grown cannabis plants and the “rubbish” cannabis, but he was not charged in relation to the cannabis inside the freezer, and there is no record of this cannabis having been seized.

B9 stated that he did not complain about the theft of the two pounds of cannabis as he “figured it [was] an illegal substance anyway” and that he “wasn’t going to get anywhere against someone who had so much power, like the police ... it’s just a criminal’s word against a police officer’s ...”.

CASE EXAMPLE 7

In April 1998, B11 and B12 lived in a rented property in Walliston. Their evidence also resulted from the random inquiries of the Royal Commission investigators. During this period, B11 and B12 planted cannabis in a vegetable garden in their backyard, growing up to three or four plants at a time. They described an occasion when two plain clothes police officers entered their home in the morning and conducted a search. B11 and B12 stated that there was a quantity of cannabis and drug paraphernalia on the premises at this time. This included:

- The product of four plants of cannabis hung out on a “string line” in a spare bedroom, weighing about a pound;
- Eight to fourteen plastic bags containing cannabis in a shoe box in B11’s bedroom, each bag containing about one ounce of cannabis;
- Some cannabis in the dining room, lounge room and kitchen;
- A cannabis plant in the back yard; and

- A “bucket bong” and loose cannabis material in the laundry, including some cannabis seeds.

B12 estimated there was over two pounds of cannabis in total. B12 stated that 90 per cent of the cannabis in the spare bedroom was “A grade”, while B11 said that the cannabis in the bags in his bedroom was of high quality.

B11 and B12 gave evidence that the cannabis in B11’s bedroom and the cannabis in the spare bedroom had been located by the detectives, with B12 recalling that one of the detectives began “grading” the cannabis, separating the high quality cannabis from the rest. B12 observed this whilst sitting on a foam mattress in his bedroom. During this process, one of the detectives placed four or five plastic bags containing cannabis underneath the foam mattress B12 was sitting on. The officer winked at B12 and said words to the effect of “no-one needs to know about this”.

B12 gave evidence that, in total, the officers seized: the cannabis on the string line; the cannabis from B11’s bedroom, save for four or five packets returned to B12; and the cannabis plant. The remaining cannabis and the paraphernalia were not seized. B12 said that he had been left with about five to six ounces of “good grade cannabis”. B11 stated that, after the officers had left, B12 handed him a bag and said that it had been “left”. As the officers drove away from the premises, B12 was told he would receive a summons, but that he had “nothing to worry about”.

B12 gave evidence that the officers returned two and a half to three weeks later. He said that one detective wrote a statement and told him (B12) to “just sign it...everything will be alright”. B12 signed the statement and endorsed a plea of guilty. He was later fined \$200.

B11 was not charged, notwithstanding the bags of cannabis that were located in his bedroom. Furthermore, B11 was not questioned about any of the other cannabis inside the house.

CASE EXAMPLE 8

B3 gave evidence that he had received payments from one of the detectives who had been transferred to the Crime Stoppers Unit, for information he did not provide. Crime Stoppers documentation records payments to B3 of \$750 and \$200, with both payments having been approved by the detective.

B3 claimed that he did not supply legitimate information to Crime Stoppers in respect of these payments, but instead, the money was part payment for panel beating work carried out on vehicles owned by the detective and his son. The evidence of B3 on this issue was not consistent, and his account is not supported by documentation, other than the records of the payments. The allegations were denied by the detective concerned. The records of Crime Stoppers are maintained to preserve the anonymity of persons who supply information, and those records did not assist in determining whether, and what, information had been provided by B3.

INCIDENT INVOLVING K1

In the course of the ACC/IAU investigation into the allegations of an informant that police officers had drugs for sale, investigators were led to believe that the drugs were available because in 1998 the informant and a person code-named K3 arranged to steal a quantity of morphine tablets from K1. K1 resided in Alexander Heights. The scheme involved the informant engaging the services of police officers to effect a "rip" upon K1.

K1, a Spanish immigrant, was taking prescription tablets, described as MS Contin, the active ingredient of which is morphine, to treat his back and neck pain as a result of an accident. In 1993 and 1994, he travelled to Spain on two occasions. He acquired a stockpile of MS Contin tablets by obtaining in advance from his general practitioner in Australia tablets for the period of his trips and additional prescription morphine from a doctor while he was in Spain. He estimated that by this means he had accumulated approximately 900 tablets.

In 1994, K1 began supplying some of these tablets to K3, who was a family friend. K3 claimed that there was an arrangement between herself and K1 that involved K1 providing her with MS Contin tablets on credit. She would then sell the tablets to various associates. K3 gave evidence that they shared the profits from this enterprise. K1 denied the existence of any such arrangement.

According to K3, K1 eventually accumulated about 1,000 tablets that he asked her to sell. K3 was approached by the informant, who told her that K1 was charging her too much money for the tablets. At this time, the informant was living in Kalgoorlie and had a social relationship with one of the detectives stationed at the Kalgoorlie Detectives' Office. This officer introduced him to another officer, who was informed about the morphine tablets in the possession of K1. It was arranged for the second officer's brother and the brother's partner, who were both detectives in Perth, to raid K1's premises and to take the tablets. The informant and K3 were then to purchase the tablets back from the detectives once they had been stolen.

Telephone records reveal a total of 70 telephone calls were made between the detectives, the informant, K1 and K3 in the two days prior to the "rip". Telephone records also showed that one of the Perth detectives had been in the area of the residence of K1 on the day before, and on the morning of, the raid, even though he was employed at Crime Stoppers and his duties did not involve his leaving the office. His activities were not noted in his Police Journal. The detectives also accessed the details of K1 and K2 (K1's son) eight times by interrogating WAPS Vehicle Information System ("VIS") and Central Name Index ("CNI") computer databases. Twenty-six calls were made between the detectives involved on the morning of the search.

K1 gave evidence that, on the morning of the day of the search, he drove to the chemist and collected 180 MS Contin tablets. Shortly after his returning home, K1 received a visit from three men, one of whom said he was from the "secret police" and that "we know that you are selling morphine tablets". Two of the men then searched the house, while K1 remained with the other man.

Some tablets stored in a bedside drawer were located, but the detectives were insistent that K1 had more, and that if he did not reveal them, his wife would be arrested. As a consequence, K1 retrieved from his bedroom a briefcase containing approximately 900 MS Contin tablets in envelopes and handed them over. The men seized the envelopes and prepared to leave. At this point, K1 told them he needed the tablets and one of the men gave him a sheet of ten tablets.

After the men had left, K1 telephoned his son, K2, who in turn contacted the Nollamara Police Station, resulting in two uniformed officers from the Warwick Police Station being dispatched to attend K1's premises. K1 told these officers that about 950 MS Contin tablets had been taken by men who, he said, claimed to have a search warrant and said that they were from the ACC.

In the meantime, K3 called K1 on the pretext that she wanted to confirm a pre-arranged purchase of the tablets that afternoon. K1 told her of the visit he had received and that "there's something funny going on here ... I've called the police". K3 relayed this information to the informant, who in turn told the detective in Kalgoorlie. Call charge records reveal a call was then made from that detective to his brother in Perth.

K1 was explaining to the two uniformed police officers what had happened when two of the detectives returned and entered the room. K1 recognized these men as having been there earlier, although he did not tell the two uniformed police officers that these were the men who had stolen his morphine tablets.

The men identified themselves as detectives and told the two police officers that they were taking over. On moving outside, they identified themselves and said that they had been on their way to lunch when they responded to a radio call that a person had been selling drugs from a vehicle in a park and, from information they obtained about the registration number, they had driven to the premises of K1. The two uniformed police officers were not totally convinced. They took the precaution of noting the registration number of the vehicle the detectives were driving for later verification against the WAPS database to ensure that it was indeed a police vehicle.

The two uniformed police officers were concerned and suspicious about the attendance of the detectives at K1's premises, as they "appeared very concerned that we were there" and "seemed slightly nervous". At the completion of their shift, the two officers reported the matter to their supervisor, who asked for a report to be submitted. The Action Report that was completed at the end of their shift by the officers stated:

Spoke to comp, who stated that at about 13:00 hrs 26.6.98 3 males 30's-40's had attended and told him they were Police searching the house. Comp states 950 Morphine Sulphate tablets removed from his beside cabinet by them. Males then left stating they may be back to arrest him.

Comp concerned they were not Police and may sell morphine. Draft O/R details and descriptions obtained. Whilst Police present Dets from Brentwood CIB and Crime Stoppers attended and stated they attended previously and would continue inquiries. No further action necessary by Police.

Their supervisor subsequently told one of the police officers that the matter had "been sorted out". This conclusion was apparently reached simply as a result of the WAPS VIS database confirming that the vehicle driven by the detectives was registered to the Commissioner of Police.

The detectives later claimed that they had gone to K1's house following the receipt of information from the detective in Kalgoorlie to the effect that K1 had a quantity of drugs in his possession and might be vulnerable. The Information Report recording the information is dated 1 July 1998, and not 26 June 1998, the date of the raid. It was claimed that the detectives happened to be in the company of each other at Curtin House shortly after receiving the information, and they decided that they should check on the welfare of K1, whom they then found to be in possession of the morphine tablets. They said that there were only about 100 tablets, and that the reason for returning to the premises was to return the tablets to him after making inquiries. An entry was made on the WAPS Property Tracing System database of the seizure, but not until 29 June 1998. There was no record of the receipt of the information by the Kalgoorlie detective from the informant.

K3 said that she had alerted the informant to the existence of the tablets in the possession of K1 and that he had told her of his plan to steal them, with the assistance of “the boys”, who were “coppers”. The sequence of telephone calls and the documentation available supports that assertion.

CONCLUSION: GENERAL OBSERVATIONS

The evidence in this segment marked the beginning of a pattern of conduct that was to become familiar as the hearings progressed. In particular, common features emerged in respect of the manner in which drugs, money and property were stolen. These features included:

- The officers left a small quantity of drugs behind, following a search of premises (B8, B9, B12, K1);
- The officers preferred charges that could be dealt with summarily and attracted a lower penalty by reducing the amount of drugs said to be located (B4, B6, B8 and B12);
- The officers issued summonses, or released persons on personal bail (B4, B6, B7, B8, B9, B12);
- The officers threatened to charge partners, friends or relatives who may have been co-offenders (B7 – his girlfriend; B12 – his room mate; K1 - his wife), unless co-operation was forthcoming; and
- In some cases, no charges were preferred in exchange for money (B5) or co-operation (K1).

These techniques ensured compliance amongst persons whose drugs, money and property were stolen. They also explained why none of the witnesses complained in relation to these matters.

The witnesses who gave evidence in the above matters were a diverse group of people, many of whom had no association with each other, and in particular, B3. Several of these persons had minor criminal records only. Each of these persons gave evidence that was not in his own interests, and disclosed criminal conduct by him.

Whilst the detectives claimed they appeared before the Royal Commission to give evidence to assist the Royal Commission’s inquiry, the officers were evasive and non-responsive to critical questions in respect of the allegations. Instead of addressing questions asked of them, the detectives aggressively dismissed the allegations as fiction, invented by K1, K3 and the informant, and the B series of witnesses.

As part of a general strategy of avoidance, the officers frequently claimed events were beyond their recall. On the other hand, the detectives displayed clarity when questioned on matters peripheral or incidental to the Royal Commission's inquiry.

9.3 TRAFFICKING IN PROHIBITED DRUGS

This segment re-traced the investigation of the ACC/IAU joint operation, and then followed another line of inquiry that had been largely ignored, consequently examining allegations that these same detectives were engaged in drug trafficking involving the attempted sale of the morphine tablets, and the attempted purchase of a substantial quantity of ecstasy.

THE SALE OF THE MORPHINE TABLETS

Following the failure of his business in Kalgoorlie, the informant had moved to Perth in the latter part of 1998. Being in financial difficulty at this time, he decided he would attempt to obtain money from the police by giving information to them about the theft of the morphine tablets. He attended the offices of the IAU in December 1998 and said that he had information about a number of detectives who had recently searched a house and seized a number of morphine tablets. He further claimed that the tablets were presently for sale and that he was prepared to participate in a controlled operation to purchase them. It seems that his motive was in part also to obtain an advantage for an associate who had recently been arrested and was facing sentence. He had hoped that, if his information could lead to an arrest, the credit could be assigned to his associate, but he was told that that was not possible.

Between 19 and 23 December 1998, the informant met with the detective whom he knew in Kalgoorlie and who had been transferred to Perth on three occasions. The meetings were under surveillance. He had several telephone calls, overheard by the IAU, which appeared to relate to preparatory arrangements to purchase the morphine. It was subsequently agreed by the IAU that a controlled purchase of the tablets should take place. This became the joint operation between the IAU and the ACC and included the use of telephone intercepts and the planned introduction of an undercover officer ("UCO") to facilitate the purchase of the morphine from the detectives. The UCO assumed the identity of a fictitious female purchaser using the alias "Sue Lowe".

On 29 December 1998, a meeting took place at Gloucester Park Raceway. Video footage depicts the detective "patting down" the informant and the pair driving off in the detective's vehicle out of sight of the surveillance officers. The informant had been supplied with "buy money" in the sum of \$7,200 to hand over as a deposit for the purchase of the tablets at

this meeting. Instead, the informant stole the money. This was not known by the IAU or the ACC at the time, but was to influence the future of the operation.

PREPARATION FOR THE PURCHASE OF THE MORPHINE: 29 DECEMBER 1998 TO 2 JANUARY 1999

In December 1998, one of the detectives requested a Police Air-wing pilot to collect a “Christmas present” from his brother, who was also a detective, and to bring it from Perth to Kalgoorlie. On the afternoon of 30 December 1998, the Perth detective drove to Jandakot Airport and gave the pilot a package to convey to Kalgoorlie. The indications were that the package contained the tablets.

Meanwhile, the informant was arranging to make what the ACC and the IAU believed was a second payment on the morphine tablets. This plan was put into effect on 2 January 1999, when a meeting took place under surveillance at a McDonald’s restaurant on the corner of Nicholson and Ranford Roads in Canning Vale. The actions of the informant in failing to hand over the first payment caused complications, and negotiations recommenced about the price and quantity of tablets and the issue of a sample being supplied prior to the hand over of money. This necessitated a telephone call between the detective at the meeting, and those in Kalgoorlie. This call was recorded and evidenced a disguised conversation where frustration started to arise about the changing arrangements. Numerous other calls between the detectives and the informant took place before new arrangements were arrived at. The calls were virtually meaningless on their face, due to the codes and innuendo used, and often included warnings of the need to be careful, or to ring back in more secure circumstances. The detective in Kalgoorlie was keeping a colleague in Kalgoorlie and his brother apprised of the developments. The detective in Perth who was dealing with the informant, was not a party to the theft of the tablets from K1, and there was some suggestion about his desiring to become more involved.

THE PROPOSED EXCHANGE IN KALGOORLIE: 4 TO 6 JANUARY 1999

On 4 January 1999, a further meeting was to be held under surveillance at the McDonald’s restaurant car park. The informant was supplied with a further amount of \$6,500 by the IAU by way of payment to one of the detectives for part of the tablets; but the meeting occurred out of sight and it is now apparent that the informant handed over a lesser amount (\$300 to \$500) and retained the rest for himself.

THE DEAL COLLAPSES: 7 TO 16 JANUARY 1999

On 8 January 1999, the informant was given a further amount of \$4,300 to contribute to the purchase of the morphine tablets from one of the detectives, with the payment to be made at the Carousel Shopping Centre. For a reason that is unclear, the detective did not attend this meeting, and the informant once again kept the money for himself.

On 13 January 1999, the UCO was introduced into the transaction in the role of the person behind the informant in the purchase of the drugs, and she called the detective in Kalgoorlie and explained that she had given the informant \$18,000 to purchase the tablets, but as he had not delivered them, she was contacting him directly. This introduction of the UCO aroused the suspicions of the detectives and they made considerable efforts to locate this person in order to "eyeball her" and "grab her". This included requesting a civilian analyst at the Kalgoorlie Police Station to interrogate computer databases for the name "Sue Lowe". The analyst was instructed that there was no need for him to record their request in his Police Journal.

Efforts were made to entice the UCO to attend a wine bar in Perth and "grab a hold of this person", but the UCO had flown to Kalgoorlie in the meantime, where she contacted the detective again. He made a further attempt to get her to attend the Sandalwood Hotel in Kalgoorlie for the same purpose. She declined to do so.

That afternoon, the detectives devised a plan to locate the UCO and question her. Inquiries were made with the Sandalwood Hotel, the Star and Garter Hotel and the Mercure Hotel to locate the UCO. It was ascertained that a person by the name of "Lowe" was staying at the Star and Garter. On going to the hotel, it was discovered that the person staying there was a man with the surname of Lowe. The UCO was not staying at that hotel.

That evening, the ACC ended the operation because there was "an unacceptable risk that the undercover officer would be discovered by the Kalgoorlie officers". The telephone calls between the officers at this time displayed considerable alarm, and the Perth detective was directed to make urgent contact with the informant in order to clarify the position. They were suspicious of the UCO and there was little prospect of the drug transaction going any further.

On 16 January 1999, simultaneous searches were conducted at the homes and business premises of the detectives and the informant. During a search of the Kalgoorlie Police Station, \$13,500 belonging to one of the detectives was located in a gun locker in the detectives' office. No morphine tablets were found.

The informant was subsequently charged with three counts of stealing, involving a total of \$17,200, supplied by the IAU on 29 December 1998 and 4 and 8 January 1999. On 10 February, 20 April, 4 May and 4 October 2000 the informant appeared in the Central Law Courts in respect of those charges. ACC surveillance identified the attendance of the detectives on various occasions during these appearances. The detectives were also observed in the company of the informant's associate, who was then facing charges of possession of heroin with intent to sell/supply.

ASSESSMENT OF EVENTS DURING THIS PERIOD

Among the numerous telephone calls that were intercepted during the ACC/IAU operation, there were a number that were consistent with the detectives arranging to finalize the purchase of an illegal product. The detectives were unable to account for any of the intercepted telephone conversations. As with previous conversations, the content was at times cryptic, with terms such as "Christmas present" being used as a code word in order to disguise discussions about unlawful activity.

The detectives were unable to provide any reasonable explanation for using public telephones. Whilst they claimed they were justified in using public telephones to discuss "personal matters", they were unable to specify the nature of these matters. The detective found to have stored \$13,500 cash in a gun locker at Kalgoorlie was unable to provide a reasonable explanation for having done so.

ALLEGATIONS OF TRAFFICKING ECSTASY

The intercepted calls included some that were in coded terms, consistent with the making of arrangements for the acquisition and on-sale of a separate quantity of drugs. An analysis of the calls, including prices mentioned and other circumstances, indicated that the detectives were talking about ecstasy. Several witnesses gave evidence that detectives from Kalgoorlie were engaged in trafficking ecstasy in 1998-1999 and, in particular, were in possession of white ecstasy tablets imprinted with a white butterfly motif.

C5

C5 was a "middle ranking" amphetamine dealer in Kalgoorlie in 1998, when a detective came to her home, purportedly in relation to a vehicle she had recently purchased. During that visit the detective questioned whether she would be interested in purchasing 100 ecstasy tablets a week for the next six months at \$30-\$40 per tablet. C5 initially declined this offer, as she thought it was a "set up", but she agreed to meet the detective at a rifle

range on the outskirts of Kalgoorlie. That afternoon, C5 drove to the rifle range and met the detective, who was waiting for her beside his vehicle. The detective then gave her a clip-seal bag with one or two tablets as a "sample" and reiterated his offer.

C5 described the tablets as "white, small, round tablets with a picture of a butterfly imprinted on ... one side of them". She gave the tablets to a friend to try, but was told they "weren't very good". She never spoke to the detective again about this matter.

C6

C6 stated that, in October 1998, he travelled to Perth from Kalgoorlie to receive \$12,500 as part of a workers' compensation payout. Whilst in Perth, he stayed with his cousin and loaned her \$2,000, which she used to purchase about 50 ecstasy tablets. He recouped his money by taking a quantity of amphetamines from her.

C6 then travelled back to Kalgoorlie and returned to live with his father. Shortly after arriving home, he went to the Kalgoorlie Police Station in response to a telephone call taken by his father from "the police". C6 stated that the police said to his father "tell [C6] to get up to the police station or we're going to come down and get him".

At the Kalgoorlie Police Station, C6 claimed he was spoken to by two detectives in an interview room. The detectives put it to him that he had stolen a large quantity of ecstasy tablets from a an Outlaw Motor Cycle Gang ("OMCG") in Perth. C6 denied the accusation. After further interrogation, he was told that, if he did have the ecstasy tablets, they would purchase them from him for \$40 per tablet. C6 denied having any ecstasy tablets in his possession.

B3

B3 stated that a detective supplied him with ecstasy tablets to see if he could sell them onto the drug market. B3 described an occasion in early 1998 when the detective gave him a "few hundred" ecstasy tablets for this purpose. B3 described the tablets as having "butterfly pictures" and being "off white" in colour. The detective told him he had access to 30,000 such tablets.

B3 gave evidence that a person, code-named B13, had expressed interest in purchasing 2,000 tablets. B3 said that the detective delivered some tablets to his workshop in sealable packets. B3 telephoned B13, but a sale did not eventuate, and B3 returned the tablets to the detective.

B13, an ecstasy user, described an occasion when he was present at B3's workshop and observed two detectives speaking with B3. B3 then approached him and gave him two ecstasy tablets. B13 described these tablets as "white with an emblem, a butterfly, or something like that". B13 said he later sampled the two tablets and expressed the view that they were "not real good quality".

B13 gave evidence that B3 told him that he had thousands of ecstasy tablets available for sale for about \$25-\$26 each. He did not wish to purchase the tablets because he suspected the police were the suppliers, and he was fearful of being set up.

C1

This case example highlights the many links between the detectives and known ecstasy dealers. C1 was one such dealer and has convictions for drug related matters in Western Australia. In October 1999, Crime Stoppers received the following information:

I have some information that maybe of interest to the drug squad. [C1] ... has a large amount of Ecstasy tablets in a safe at his house. I saw them myself two weeks ago, they are the butterfly one's. I can't really say anymore.

On or about 10 January 2000, C4 was arrested by the Australian Federal Police ("AFP") in Sydney for an alleged importation of 67 kilograms of ecstasy. A WAPS Information Report prepared on 12 January 2000 stated:

From inquiries conducted during OCS Operation "BRAHMAN" it was ascertained that [C1] & [C4] are extremely close. With this in mind, it is the belief of the author of this report that if [C4] is involved in the mentioned importation as stated, [then] [C1] will have some active involvement or at least have a good working knowledge [of] his [C4's] activities.

Operation Brahman was an investigation into a suspected network of persons, including C1 and C4, involved in selling drugs and smuggling stolen property between New South Wales and Western Australia.

The running sheets of the operation note that one of the detectives contacted Organised Crime Investigations ("OCI") investigators about C1 on 15 and 20 May 1998, and another detective did the same on 21 and 25 May 1998, and provided information about C1's activities in Kalgoorlie. The running sheets also indicate that C1 was charged with drug related and property offences on or about 18 August 1998. Call Charge Records ("CCRs") indicate that one of the detectives spoke with C1 in the days following his arrest, on 20, 21 and 23 August 1998. They further disclose that this detective telephoned C1 at 11.11 am on 21 August 1998, shortly before C1 participated in a taped record of interview at 1.40 pm with OCI detectives.

CCRs also reveal that the detective contacted C1 on ten occasions between 4 June and 23 August 1998. The telephone calls were made on a pre-paid SIM card from the detective's WAPS issue mobile telephone. The applicant for that SIM card did not provide any personal details in the application form, effectively enabling that person to remain anonymous.

One of the detectives also interrogated the WAPS mainframe databases on 4 May 1998 and twice on 20 August 1998, in respect of C1's personal details.

ASSESSMENT OF THE EVIDENCE

The evidence in relation to these allegations primarily derives from intercepted telephone conversations between the detectives. Relevant features of those telephone conversations are cryptic discussions that include codes and amounts, referable to terminology used in a drug transaction.

There is further circumstantial evidence that is consistent with the allegations, including: frequent use of public telephones and false name SIM cards to avoid interception, meetings at secret locations in the evening and the possession of a large quantity of cash (\$13,500) stored in a "safe" location.

A careful analysis of the conversations reveals that the discussions were not consistent with any legitimate dealings between the detectives. The detectives gave differing suggestions, but offered no credible explanation in relation to the telephone calls, other than stating that they could not recall what they were about, or offering vague suggestions, such as secondary employment issues and the delivery of Crime Stoppers merchandise. These explanations were not consistent with the tone or content of the conversations.

The telephone conversations further revealed that the detectives may have been involved in similar transactions on previous occasions. For example, on one occasion a detective remarked to another: "Everyone else stuffs up on us, mate, although we stuffed up on them before". The evidence of C5, C6, B3 and B13 supports the allegation that the detectives had prior dealings in trafficking ecstasy.

The evidence of B3, B13 and C5 suggests that the detectives were in possession of ecstasy tablets imprinted with a white butterfly motif, in early to mid 1998. CCRs establish that one of the detectives was associated with C1, who, according to WAPS intelligence, was in possession of, or had ready access to, ecstasy tablets with a white butterfly motif through his association with C4. The evidence of C6 suggests that the detectives were no longer in possession of ecstasy tablets as of October 1998. The circumstantial evidence, and the

intercepted telephone calls may suggest that the detectives were seeking to purchase a large quantity of ecstasy in January 1999.

9.4 CORRUPT RELATIONSHIPS

OVERVIEW

Public hearings in the third part of this segment heard evidence of corrupt relationships held by this same group of detectives during the period 1997 - 1998. In this part, other corrupt or criminal conduct was examined, including practices such as green-lighting and forewarning known criminals of impending police action. This part of the segment also focused on other alleged inappropriate activities by police officers, such as improper associations and unauthorized secondary employment.

Evidence was led in respect of an alleged corrupt association between the detectives and a person code-named C9. Although C9 had previous convictions for drug related matters, and remained active in the drug industry, he was not charged with any criminal offence during the period under review and whilst particular detectives were stationed at the Kalgoorlie Detectives' Office.

Telephone records reveal that during the period in question, one of the detectives and C9 had extensive contact by way of pre-paid mobile telephones held in false names. In addition to this precaution, conversations recorded between the two evidenced the extensive use of euphemisms and codes to disguise persons and topics that were being discussed.

GREEN-LIGHTING

Evidence was led in relation to an alleged scheme devised by C9 and detectives to eliminate a person code-named C7, who was a competitor of C9 in the trafficking of amphetamines in Kalgoorlie. C9 had previously approached C7 with a proposition for C7 to work for him selling amphetamines. He had declined this offer.

C8 recounted how, after being arrested in his car with a quantity of drugs by uniformed officers, his house was searched and drugs and drug paraphernalia seized. Following his arrest, C8 was interviewed by the detectives. He was instructed to agree with everything that he was told, and that they would sort things out with the uniformed officers. C8 agreed with the proposal put to him, and he participated in a short taped record of interview in which he admitted to possession of amphetamines. He was charged with possession of two grams of amphetamines and nine grams of cannabis, which were located in his motor

vehicle. C8 stated that he was "pretty happy" with this outcome and would have "pleaded guilty right there and then", as he was aware that the likely penalty for the possession of 20 grams of amphetamines, of which he had actually been in possession, would be a term of imprisonment.

C8 stated that, at the completion of his taped record of interview, he was released from custody, but it was arranged with the detectives for him to re-attend the Kalgoorlie Police Station later.

C8 returned to the police station as requested and had a conversation with the detectives who said words to the effect, "[W]e scratched your back last night. Now it's your turn to give us a little bit". C8 was asked by the detectives to provide information in relation to heroin dealers in Kalgoorlie, and was asked specific questions in respect of a dealer, C7. C7's premises were searched the following day by officers from the Kalgoorlie Detectives' Office and several bags containing amphetamines were located behind a loose brick at the rear of the house.

C7 gave evidence that, following this episode, two of the detectives subsequently attended his premises. He stated that the detectives told him he would be "left alone" if he gave the officers \$2,000 a week. C7 declined the offer.

This practice of seeking protection money from drug dealers was also testified to by another drug dealer, C5. C5 gave evidence that, during the late 1990s she had been arrested by detectives for drug related matters. C5 described an incident at the Foundry Hotel in 1998 when she was approached by a detective at the bar of the hotel with a drink in his hand. He said, "[Y]ou leave a little something out for us next time we come round and we'll keep the boys away from you ... one large a week". He told her that he was the officer responsible for signing all search warrants at the Kalgoorlie Police Station.

C5 said that she interpreted this as meaning that if she paid the detective \$1,000 a week, she would not be the subject of police attention. C5 did not accept the offer, though the detective told her to "have a think about it".

C5 recalled that, on the next day, the detective came to her home. He told her he was drunk when he spoke to her at the Foundry Hotel and asked her "not to say anything to anyone".

About a week later, C5 received a call from the detective from a public telephone. He told her that the police were going to raid her home two days later. He then called the following morning, at about 8.00 am, and told her that the plans had changed and that the raid

would now take place at about 10.00 am that day. He told her that she “had a couple of hours to run around and get rid of things”.

C5 stated that she disposed of the amphetamines she had in her home. The police attended and executed a search warrant, but they were unable to locate any prohibited drugs, other than a small bag of cannabis that was inadvertently left on the premises.

"TIPPING OFF" - INCIDENT INVOLVING TYSSUL DAVIES

Evidence was led in respect of an alleged corrupt association between one of the detectives and Tyssul David Davies. Davies has a criminal history for drug related offences. At the time of giving evidence, he was serving a term of imprisonment for possessing cannabis (18.5 kilograms) with intent to sell/supply.

Davies gave evidence that he had known the detective since he, the detective, had been a “youth” and that he had maintained contact with him when he became a police officer and had a social relationship with him.

In February 2002, Davies paid for the detective and several other persons, including two police officers, to have dinner at the Windsor Hotel in South Perth. The bill amounted to about \$600. The detective stated that this gesture was in return for his role in assisting in a matter involving Davies’ son, which had led to the son being imprisoned. In doing so, the detective acknowledged the dinner was “a way of paying me back for ... or saying thank you for the assistance I gave him in relation to his son”.

During this period, Davies was subject to a criminal investigation by OCI for drug related matters. On 4 April 2002, OCI contacted Midland Tactical Investigation Group (“TIG”) and requested assistance in executing a search warrant at Davies’ home. Midland TIG was otherwise engaged, so arrangements were made with the Midland Detectives’ Office to execute a warrant at Davies’ premises the next day. As part of that investigation, interception warrants were obtained in respect of telephone services used by Davies.

On 4 April 2002, at 6:48 pm, Davies received a telephone call from a person who did not disclose his identity, but who, it is strongly suspected, was a detective from the Midland Detectives’ Office, advising him to “just be very careful the next few days”. Reverse CCRs reveal that the telephone call was made from a public telephone that was the closest public telephone to the detective’s residential address at the time.

A search warrant was executed at Davies' address on 5 April 2002. Davies was not present when the police attended, but was contacted on his mobile telephone and advised to attend. Shortly afterwards, Davies made three telephone calls to various persons, telling them that his house was being searched, but that nothing would be found, as he had "cleaned up" following a telephone call he had received. The three telephone calls made by Davies included terms that unambiguously indicate he had been forewarned about impending police action. Although not named, sufficient information was provided to enable the caller to be identified as one of the detectives. The detective denied that he had acted improperly in the telephone call, but admitted that he had a friendship of some standing with Davies.

IMPROPER ASSOCIATIONS

During the third part of public hearings, evidence was given in respect of alleged associations between police officers and persons and organizations that were inappropriate.

Evidence was led in respect of associations between members, and former members, of WAPS with a former Victoria Police officer. This officer gave evidence that he knew "a lot of police in Western Australia going back prior to when [he] was in the Major Crime Squad" and socialized with these officers.

Evidence was led of associations between the Victorian officer and a known Victorian criminal identity, who arranged for him to meet with an organized crime figure during a trip to Western Australia. The Western Australian crime figure has been the target of a number of investigations by law enforcement agencies, including operations relating to organized crime and drug trafficking.

A meeting took place on 11 September 2001 at Rosie O'Grady's Tavern and later, at the Sorrento Restaurant, Northbridge. In attendance were a number of Perth detectives, the Victorian officer and the organized crime figure. This meeting took place after a wake held for a prominent Western Australian police officer.

In the months following, intercepted telephone conversations recorded the Perth detectives and the Victorian police officer discussing the crime figure, and an intercepted telephone conversation was recorded between the Victorian police officer and a notorious former New South Wales police officer who had been convicted of corruption related offences. Additional calls were recorded of conversations between an ex-detective from Perth and the Victorian officer concerning the activities of known criminals in Kalgoorlie.

When the detectives were pressed to explain these associations, they admitted that they were aware that the organized crime figure had been the subject of past police operations and might have been the subject of a current operation. Explanations offered for this behaviour included that no concerns were held about socializing with the crime figure as the particular detective was not operationally active at the time the meeting took place. It was also stated that drinking with convicted criminals had “been going on for years” and happened “many, many times”.

OFFICERS BASED IN KALGOORLIE

Evidence was given in respect of associations between detectives and other persons in connection with the Foundry Hotel in Kalgoorlie. It was acknowledged that officers from the Kalgoorlie Police Station frequented the Foundry Hotel, notwithstanding that during this time the Club Deroes OMCG used the hotel as their clubhouse.

In July 2000, whilst suspended from WAPS, one of the detectives acted as the director of Headframe Services Pty Ltd (“Headframe”), which was the registered proprietor and the licensee of the TAB in the Foundry Hotel. The detective resigned from Headframe six months later, and was replaced by his wife as director.

At various stages, two known criminals acquired shareholdings in the Foundry Hotel, concurrently with interests held by Headframe. One of the detectives gave evidence that whilst on duty in Kalgoorlie he had no concerns about drinking at the Foundry Hotel, and further stated that he had no concerns about entering into a business relationship with the two criminals once he had resigned from WAPS, notwithstanding that he was a member of WAPS when these relationships were formed.

The relationships uncovered indicate that the detectives had connections to officers of dubious repute in other States who, in turn, had further connections with suspected criminals. The degree of familiarity expressed by detectives in intercepted telephone conversations when referring to known criminals is consistent with the proposition that the detectives cultivated relationships with suspected criminals outside legitimate operational requirements. This in turn provided the detectives with ready access to a network of criminal associates who could facilitate and participate in corrupt or criminal conduct.

The ease with which several of these detectives engaged in social and business relationships following their departure from WAPS suggests that these relationships existed whilst they were serving members. The evidence suggests that there was a lack of integrity by these WAPS officers in forming and maintaining improper associations.

UNAUTHORIZED SECONDARY EMPLOYMENT

"KATS" AND "STAR"

Evidence was led in respect of an unauthorized secondary employment scheme involving 16 members of WAPS, the majority of whom were based at the Kalgoorlie Police Station. The scheme, which was devised by two of the detectives, involved police officers providing escort and security services to three mine sites in the Kalgoorlie region in 1997 and 1998.

The participants in the scheme operated under the unregistered business names "KATS" and "STAR". Cheques were made out by mining companies to these "entities" and subsequently cashed by the officers at various hotels, and distributed amongst the participants on the basis of work performed.

None of the officers held a licence to perform this work, as required by the *Security and Related Activities (Control) Act 1996*. None of the officers submitted an application to WAPS for approval to undertake this work. In any event, security work was classified as "prohibited employment" under the secondary employment policy in force at that time. Two of the detectives who were examined in relation to this matter admitted participation in the scheme and conceded that they had not registered the names of either "KATS" or "STAR". Nor had they declared to the Australian Taxation Office income received from the enterprise at the time.

LINENCARE

Evidence was led in respect of another secondary employment scheme involving officers providing consultancy services to a company called Linencare Australia ("Linencare"), which supplied linen to public hospitals in Western Australia.

The detectives formed a business called Exclusive Consultancy Services ("Exclusive Consultancy") and were engaged by Linencare to prevent stock loss. As part of this engagement the detectives were responsible for investigating the loss of linen, which included monitoring the movements of linen.

Evidence was given by the former managing director of Linencare that the detectives were engaged in investigatory work, but were also responsible for educating and training clients of Linencare in loss prevention.

Invoices, tax returns and corporate documents were tendered that indicated that work on behalf of Linencare was conducted whilst the detectives should have been on duty. For example, a summary prepared by Exclusive Consultancy for Linencare records that on 12 May 2000, “[W]e attended at Bentley Hospital and conducted an extensive tour of the entire campus”, and further, “[A]lso on 12 May we attended Swan Districts Hospital”. The pertinent officer’s Police Journal, however, records that, on this date, he commenced duty at his office and then attended the Children’s Court in relation to a matter. His journal records that he was on duty for eight hours from 7.30 am. Other examples of a similar nature were given.

Non-compliance with the requisite procedures indicate a lack of integrity amongst these detectives. They displayed a cavalier attitude towards operating procedures.

SUPERVISION

Throughout all of the matters examined, there was no sign of effective management or leadership of the detectives concerned. They seemed to come and go as they pleased. They flouted or ignored departmental procedures with little risk of detection or reprimand. They associated with criminals socially, and were amenable to being contacted whenever the criminals felt the need. This attitude was not at all uncommon in relation to plain clothes police officers, who regarded themselves as an elite group, exempt from the same constraints as other members of WAPS.

CHAPTER 10

OPERATION TIRARI

10.1 INTRODUCTION

On 31 October 2000, the Western Australia Police Service Internal Affairs Unit ("IAU") commenced an investigation into the activities of a detective sergeant, who was later code-named T2 by the Royal Commission, as a result of receiving anonymous information from an informant. The informant advised that T2, in company with another male person, T3, had stolen \$150,000 from a self storage unit used by a drug dealer, code-named T4. As a result, T4 had been detained by T2 and was later deported by the Department of Immigration and Multicultural Affairs ("DIMA") for overstaying his immigration visa. The informant stated that, if T3's involvement were acted upon, it would alert those involved to the source of the information.

It was believed that T4 travelled to Indonesia. The IAU, with the assistance of the Australian Federal Police Liaison Officer in Indonesia, made several unsuccessful attempts to locate T4. Consequently, the IAU investigation was suspended pending T4's return to this State. He was placed on a "pass alert", a system operated by the Australian Federal Police ("AFP") that notifies the requesting agency, in this case the IAU, of a targeted person's pending travel to Australia.

In June 2002, the IAU officially informed the Royal Commission of its investigation into T2. On 22 June 2002, the AFP advised the IAU, which then advised the Royal Commission, that T4 had returned to Perth from Indonesia.

The Royal Commission commenced an operation, code-named Tirari. T3 and T4 were each approached and agreed to co-operate with the investigation. On 22 August 2002, after the receipt of information from the IAU in June 2002, and following the approaches to T4 and then to T3, notice was given to the Commissioner of Police that the Royal Commission would take over the investigation, and arrangements were then made with the Commissioner of Police for the further investigation of matters concerning T2. It later became a joint operation with the Anti-Corruption Commission ("ACC"). Evidence was obtained confirming the participation of T2 in the theft of money from the storage unit, as indicated by the original anonymous information. In addition, the information obtained led to the discovery that a private investigator, who was subsequently code-named T1, was also a participant in the storage unit theft. T1, T2 and T3 were the subjects of extensive electronic surveillance by the Royal Commission and by the ACC after warrants had been

obtained by the ACC for the interception of their telephones. The intercepts raised evidence of further instances of corrupt conduct on the part of T2. As a result, it was decided that T2 would be subjected to an integrity testing programme under Part 7 of the *Royal Commission (Police) Act 2002* by inducing him to enter another storage unit in which \$20,000 was placed. T2 failed the test by stealing \$10,000 from the unit. Consequentially, arrangements were made to question both T2 and T1 in relation to this matter. During a series of interviews, held between 12 February 2003 and 10 March 2003, T2 was questioned about his knowledge and involvement in corrupt and criminal conduct whilst being a member of the Western Australia Police Service ("WAPS"). Throughout the course of his interviews, he gradually disclosed his participation in corrupt conduct and admitted his participation in the conduct being investigated by the Royal Commission. T1 was also questioned in relation to his involvement in the corrupt conduct of T2 during an interview held on 12 March 2003. He failed to admit any knowledge of the two storage unit thefts or of his involvement in them, but he later admitted his involvement when giving evidence before the Royal Commission.

The evidence obtained was led in a segment of the hearings of the Royal Commission on 7, 8, 9, 14 April and 29 May 2003.

10.2 MAYLANDS STORAGE UNIT THEFT

During the course of the hearings, it became known that, during the latter part of 1999, T2 had been stationed at the City Police Station although he was working out of the City Detectives' Office.

T4 had developed a relationship with the daughter of T3's live-in partner. T4 was in Australia as an illegal immigrant some years after his visa had expired and, in company with T3, he was distributing drugs, primarily ecstasy, obtained from his suppliers on the east coast, to buyers in the Perth area.

On behalf of his supplier, T4 stored the drugs and money derived from the sale of drugs in a storage unit located in Charles Street, Maylands. T3 knew the block in which the storage unit was located, and the name under which it was leased. He had also met T4's supplier, but he did not know the number of the actual storage unit. An electronic key was used to open the main gate to the Maylands storage facility. Padlocks were placed on each of the storage units themselves.

T3 told the private investigator, T1, about the money that was located in the Maylands storage facility. He told T3 that T4 was an illegal immigrant and he referred to T4's drug

dealing activities. T1 had met T3 through a family connection some years previously. T3 told T1 about T4 in the hope that T4 would be arrested or deported, and that this would break up the relationship between T4 and his partner's daughter.

T1 had known T2 for approximately 15 years, and he had previously informed T2 as to illegal activity. This had resulted in a number of arrests and legitimate investigations. T1 passed to T2 all of the information that had been given to him by T3. He continued to receive information from T3 that he also passed on to T2. In the course of discussions between T1, T2 and T3, it was decided that they would steal any money located in the Maylands storage unit, but that T2 would carry out a legitimate police investigation as to any drugs that might be located in the unit. Prior to the theft, T3 met T2 in person.

In furtherance of their plan to steal the money, T1 leased a storage unit at the Maylands storage facility. By so doing, they secured an electronic key that enabled them to open the main gate of the storage facility and to gain access to the units.

Up to the time of the theft, T1 continued to receive information from T3. T3 advised T1 as to when the time was right to steal the money.

T2 was able to find out that the storage unit used by T4 was identified as J10, and T12, a private investigator who worked for T1, picked the lock to the unit, so that T1 and T2 could look inside.

On or about 9 January 2000, T2 met T1 at a hotel and then went with him in his vehicle to the Maylands storage facility. T2 waited in T1's vehicle, outside the storage facility, whilst T1 went into the storage facility to get the money. T1 used his electronic key to open the main gate into the storage facility and then used bolt cutters to gain access to the unit. T1 removed the backpack containing the money from the unit and took it to where T2 was waiting for him in the car. He told T2 that he had the money. They drove away from the storage facility, and T1 left T2 at T2's car, which had been left nearby. They drove to T1's house separately and met together there.

There is some dispute about the share of the stolen money that T1, T2 and T3 each received. T4 claimed that he had accumulated between \$400,000 and \$500,000 from the sale of drugs over the previous month. He kept the money in a backpack in the storage unit, but later he conceded that he had not kept a record of the money and that there may have been less than \$350,000, but certainly not less than \$300,000, in the backpack, judging by its weight. T1 stated that he and T2 estimated the total amount of money taken from the storage unit as being about \$300,000. The money was to be split equally between

T1, T2 and T3, which is what occurred. Unbeknown to T1, a conversation between himself and T3 had been recorded on 15 January 2003, during which he estimated that a total of \$296,000 had been stolen. However, T2 claimed that T1 had counted the money in the garage under his house, whilst T2 stood in the driveway in order to keep a lookout for T1's wife. T1 gave T2 some money in a plastic shopping bag and told him to leave. T2 later counted the money he had received. It amounted to \$48,000, and not to \$100,000 as claimed by T1. According to T2, T3 was to get the majority of the money, and there was no arrangement as to how much money he, T2, would get. The amount he received would depend upon how much there was. T1 did not tell T2 how much money had been stolen. During interviews, T2 initially told investigators that he had only received \$25,000. He later admitted that he had in fact obtained \$48,000.

On 9 January 2000, T3 called T4 to inform him that he should get out of his premises and make sure that there was nothing incriminating left there, as a search warrant was going to be executed at his unit in South Perth. T4 went to T3's house and questioned him about the information he had received. T4 left his unit and moved into a hotel in Scarborough.

T4 contacted his supplier to tell him what he had been told by T3. T4's supplier was already in Perth, or later arrived in Perth from interstate. T4 and his supplier discovered that the money in the Maylands storage unit had gone missing and T4 discussed the loss with T3. T4's supplier told T4 that he would have to make up the money and told him to return to his residence.

On 11 January 2000, T4 returned to his unit and about 15 to 20 minutes later, three police officers, including T2, arrived at the unit to execute a search warrant, a copy of which was shown to T4. The officers said that they were searching for ecstasy tablets. T2 stayed with T4 in the bedroom section of the unit, while the other two officers searched the remainder of the unit thoroughly. T2 just opened a couple of drawers, and T2 and T4 had a somewhat inconsequential conversation.

After the search had been completed, and nothing had been located, T2 asked T4 if he could see his passport or some other identification. T4 told T2 that he could not produce any identification and said that he was in the country illegally.

T4 was taken to the City Detectives' Office and placed in an interview room. T2 contacted DIMA, but he did not conduct any interview with T4, even though he had received information that T4 was probably involved in dealing in ecstasy tablets.

T4 was later taken to DIMA officials and was forced to leave the country on 21 January 2000. Needless to say, he was not charged with any criminal offence before his departure. T2 was not aware that the complaint had been made about the theft of the money from the Maylands storage unit, nor did IAU interview T4 about his possible involvement in it, since he had already left the country.

During public hearings of the Royal Commission, both T1 and T2 admitted to having taken part in the planning and the commission of the Maylands storage unit theft. They provided very similar accounts. However, there was a dispute as to the amount of money that T2 received. On any version, T2 received a substantial amount as a result of his participation in the theft.

10.3 RIVERTIME FRAUD AND CORRUPT PAYMENTS MADE BY T15

During some of the intercepted conversations involving T2, it appeared that he was demanding the payment of money from a businessman, who was referred to by name during the hearings, but who is referred to in this Report as T15. A search of the WAPS computer system revealed that there was only one recorded matter that related to both T2 and T15. T15 had been a suspect in a police investigation into what was known as the Rivertime fraud. T2 had closed off the file on 13 February 2002, and no offenders had been charged. The ACC then obtained warrants for the interception of the telephones of T15. Surveillance operatives observed T2 meeting T15 on both 25 and 31 October 2002, after T15 had said over the telephone that he had money for T2. Consequentially, a listening device and optical surveillance devices were deployed in the office of T15 to enable the interactions between T2 and T15 to be recorded. T15 was filmed paying money to T2 on 9 December 2002, and again on 21 January 2003.

It became apparent that a detective sergeant had also worked on the Rivertime fraud investigation, under the direction of T2. T2 was transferred to the Major Fraud Squad in about May 2000 and the detective sergeant joined the Major Fraud Squad on or about 24 November 2000, until he was transferred to Kiara detectives on 17 August 2001.

The Rivertime fraud investigation stemmed from a complaint by a bank on 29 January 2001 to the Major Fraud Squad, claiming that it had been defrauded by a scam, which involved the offenders obtaining a merchant credit card facility from the bank in the name of Rivertime Enterprises Pty Ltd and then processing hundreds of transactions, using in excess of three hundred false credit card numbers over a short period, which were credited to the company's bank accounts. The account balances were then withdrawn, using company cheques, before it was discovered by the bank that the credit card transactions had been

bogus, leaving the bank defrauded of over \$3 million. T15 was named as a person who had received one of the company cheques in the sum of \$1.5 million, which was processed through his account. It was alleged that T15 then converted the proceeds into thirty \$50,000 casino chips.

T2 was assigned to the Rivertime fraud investigation. The detective sergeant assisted T2 at certain stages of the investigation, but he had other responsibilities and other investigations. As the case officer, T2 kept a running sheet with respect to the investigation, which was maintained electronically.

When T2 first received the complaint, he said that he thought that T15 might have been a member of the group involved in committing the offence and, initially, T15 was treated as a suspect. From the outset, the detective sergeant believed that the information from the defrauded bank indicated that T15 was complicit in the Rivertime fraud. T2 and the detective sergeant carried out some surveillance of T15 on 22 February 2001.

On 26 February 2001, T2, the detective sergeant and other officers went to T15's home and executed a search warrant. This was the first time that T15 had met T2. At his home, police showed T15 the cheque dated 26 December 2000 made out for \$1.5 million in his name from the account of Rivertime Enterprises Pty Ltd. The police officers told him that they were investigating a fraud that had led to the cheque being issued. T15 then went with the detective sergeant and T2 to his office, located in Welshpool, in order to show them some further documents. They then went to the Major Fraud Squad office, where T15 was interviewed by T2, although the Major Fraud Squad interview register does not record a videotaped interview having been conducted between T2 and T15 on or about 26 February 2001, and no other record of an interview being conducted with T15 could be located. T15 admitted to banking the \$1.5 million cheque into his account on behalf of the Malaysian director of Rivertime Enterprises Pty Ltd. T15 also admitted that, once the funds had been cleared, he obtained a bank cheque, which he negotiated at the casino in exchange for 30 \$50,000 chips, which he gave to the director. According to T15, his actions were innocent.

At 9.00 am on 20 June 2001, the police received a telephone call from an employee of the casino, who said that T15 had been at the casino cashing \$50,000 chips. At 12.00 pm, on the same day, T2, in the company of the detective sergeant, went to see T15 at his office to raise the matter with him. T2 asked T15 if he had cashed some chips, and T15 told him that he had, and that he had sent money up to Malaysia. The last amount of money had been sent only a couple of days earlier, which meant that it may have been retrievable. Either T2 or the detective sergeant suggested contacting the bank as a matter of urgency, to commence the process of recovering the proceeds of the last chip. The detective

sergeant said he was trying to get the money back, so that it could be returned to the defrauded bank. T2 said that the money was to be seized, in an attempt to get the Malaysian director to contact T15 and possibly to have him return to Australia. T2 and the detective sergeant drove T15 to the bank, so that he could place a stop on the last transfer, which he had consented to doing. They waited outside while T15 went into the bank. As instructed, T15 filled out some paperwork in order to stop the payment before returning to the car and advising T2 that he had been told that they would have to wait and see whether the money could be retrieved. T15 was then taken to his home via the police station. At the police station, he was left in a room until late afternoon. He was not interviewed, arrested or charged.

No reference is made in the running sheet to the activity with the bank, and the detective sergeant's journal entry for 20 June 2001 does not include any reference to stopping the transfer of money, even though he agreed that this was not something he would do every day. When T2 was asked why a record of the stop transfer was not made, he agreed that the trip to the bank, and the attempt to retrieve the proceeds of \$50,000, was relevant, and would ordinarily be included in the running sheet, but he could not explain the absence of an entry in this case.

After the trip to the bank to stop the transfer, T2 telephoned T15 a number of times and asked him if the money had yet been returned to his account. T15 told him that it had not.

On 30 July 2001, the sum of \$49,964 was deposited into T15's account, which was the return of the sum of \$50,000 transferred on 18 June 2001, less charges. According to T15, the day that he was advised by the bank that the money had been credited to his account, he sent a facsimile to T2 and to the detective sergeant at their office to advise them that the money had arrived. T15 said that he was told to leave the money in his account until he was given further instructions. According to the detective sergeant's journal, the detective sergeant and T2 met with T15 on 10 August 2001, although there are no further details recorded. He cannot recall whether he became aware that the money had already been returned to T15's account at this time, or at any time.

Up to the time that the detective sergeant left the Major Fraud Squad, he had been taking steps to have a telephone intercept placed on T15's telephone, as he still considered T15 to be a suspect. However, he was unable to obtain a warrant for the interception of T15's telephone, as it was opposed by the legal adviser to the Major Fraud Squad.

Before the detective sergeant left the Major Fraud Squad, it appeared to him that T2 was conducting the investigation appropriately. At least once every fortnight, the Operations

Manager at the Major Fraud Squad conducted a file review, although it does not seem that he was ever told about the activity at the bank.

On T15's version, before he withdrew the sum of \$45,000, he had a discussion with T2, and was told by him that he had had a discussion with his supervisor, and that they realized that T15 was not part of the fraud, but that they needed to obtain the money and put it into a police trust account until it was determined whether or not the sum of \$50,000 was part of the defrauded funds. It was agreed that \$45,000, rather than the full \$50,000 would be given to T2, as T15 had asked that the expenses he had incurred as a result of stopping the \$50,000 transfer, and previously cashing the cheque for \$1.5 million dollars, be taken into account. T15 offered to give the money to T2 by cheque. However, T2 insisted that the money be in cash. On 23 August 2001, \$45,000 was withdrawn from T15's account. This was the money that T2 had asked T15 to withdraw.

According to T15, he withdrew the sum of \$45,000 in cash, and handed it to T2 at his office in two bundles of \$20,000 together with \$5,000 in an envelope. Only T2 was present. T15 asked T2 if he could borrow \$5,000, so that he could use it for a number of debts he wanted to discharge. T2 agreed to let him use the sum of \$5,000, despite the fact that T15 still had a credit balance of \$21,361 in his bank account just after his withdrawal of the sum of \$45,000, on the condition that T15 paid it back, as otherwise his supervisor would find out. T15 kept \$5,000 and agreed to repay T2 the sum of \$5,000 as soon as he had the money.

T2 claimed that the amount that he had received from T15 was only \$30,000. He said T15 did not give him the full amount, because he had told T2 that he had gone bankrupt, and that he had a huge overdraft and was only able to withdraw \$30,000. T2 thought that the money was in three envelopes, each of which contained \$10,000 in cash. T15 then asked if he could retain \$5,000 for a week to ten days, because he needed to pay some bills. He had no money to operate his business and his father-in-law was dying in Malaysia. T2 ended up taking \$25,000 with him, in an envelope. The detective sergeant was no longer with the Major Fraud Squad when T2 received the money from T15. During interviews with Royal Commission investigators, T2 eventually admitted to taking \$25,000 from T15, although at first he had indicated that he had not received any money and then he claimed that he had only received \$5,000.

T2 kept the sum of \$25,000 that T15 had given him. He claimed that he did not form the intention to keep the money until a couple of months after T15 had given it to him, and after T15 had failed to pay him the outstanding \$5,000. By the time T15 started making repayments on the \$5000, T2 had already taken \$25,000 and made a decision to retain the

smaller repayments. T2 said that, after he decided to keep the money, he removed it from the filing cabinet in his office, where he had been keeping it in several batches for the time when he might need it. The amount gradually diminished over time. He ended up gambling all of the money he had received, but he always believed he would be able to have another “big win” and replace it.

Even though T15 had withdrawn \$45,000 from his bank account to give to T2 on 23 August 2001, as late as 22 January 2003, he was still making payments on the \$5000 owed to T2. T15 kept a card upon which he noted down the dates and amounts of money repaid to T2 in repayment of the \$5,000 debt. He recorded payments of \$400 on 25 October 2002, \$300 on 1 November 2002, \$200 and \$150 on 9 December 2002 and \$200 on 22 January 2003. Whenever he paid money to T2, T2 was alone. Before T15 could start paying T2, he still had to pay \$50,000 to the people in Malaysia. The detective sergeant was not aware of the ongoing repayments being made to T2 by T15. T2 conceded that he had compromised the seizure by accepting a sum of money that was significantly less than the original \$50,000 transferred, and that there would be little prospect of securing regular payment of the outstanding monies from T15.

The situation between T2 and T15 was curious. A number of the telephone intercepts recorded T2 threatening to talk to his superior, or stating that he had been overlooked for promotion due to T15’s outstanding debt. T2 also pressured T15 into obtaining a credit card, so that he could withdraw some money to pay back T2. In other instances, T2 told T15 that he could end up being sued and having to go to court, and that T2 would have problems delaying the matter being sent to the bailiff if he did not pay T2 the full amount. T2 stated that he never threatened to charge T15 in relation to money laundering or the fraud, and he denied that T15 was making payments to avoid being charged.

T15 said that he never obtained, or expected to obtain, favours from T2 because he was promising to pay T2 money. He claimed that he had to pay the money, but expected that if it was determined that it was not part of the fraud money, then it would be returned after the investigation had been finalized. However, in a conversation on 18 October 2002, one week before the first payment was made, T15 said that he wanted T2 “to fuck someone up” for him. T15 said that he wanted T2 to find out where a particular person lived, so that he could approach this person who owed him some money and had delayed payment. T15 gave T2 the name and mobile telephone number of the person on 30 October 2002, after he had made the first payment to T2. During a telephone intercept recorded on 31 October 2002, T2 told T15 that he would have the address for him in the morning. T2 provided T15 with the address of the person, as promised.

In addition, in a telephone conversation recorded on 20 January 2003, T15 asked whether a particular act would constitute fraud or an offence, and whether it would come under T2's department for investigation. During the telephone conversation, T2 asked T15, "You need something done?" after T15 had outlined the situation. T15 responded by saying, "When it happen, I give you a call if they charge him or whatever".

T2 claimed that, even if T15 had not been a party to, or aware of, the fraud itself, he did not consider T15 as a suspect for money laundering under s. 563A of *The Criminal Code*. Section 563A of *The Criminal Code* provides that any person who engages in a transaction that involves any money that is the proceeds of a major offence (as defined in the section) is guilty of an offence, with the proviso that it is a defence to prove that the defendant did not know, believe or suspect, or have reasonable grounds to know, believe or suspect, that the money was the proceeds of an offence. He said that T15's chances of establishing a defence under the section were discussed at the office and it was decided that his chances of doing so were not remote. As far as the detective sergeant was concerned, T15 never ceased to be a suspect for the Rivertime fraud. If it had been properly investigated, he thought that there may have been a prospect of being able to charge T15.

The Rivertime fraud investigation was eventually written off by T2, and he conceded that if it were written off, it would diminish the risk of his theft of the money being exposed. T2 claimed that this factor did not influence the way in which he wrote off the file and that before he wrote it off, he had consulted the Operations Manager.

ANALYSIS

There is no doubt that T2 wrongfully appropriated a significant sum of money from the funds, which T15 had been able to repatriate. Notwithstanding the admissions eventually made by both T2 and T15, some areas of uncertainty remain over the facts, particularly concerning the amount of money paid to T2, and as to the basis for the payment. Apart from T2 and T15, the only person who was aware that the money might be recoverable from overseas was the detective sergeant, and with his being transferred by the time funds were actually returned, T2 obviously decided to misappropriate the money. On the evidence, T15's version that T2 took \$40,000 seems more likely. The basis for the payment also seems to accord with T15's assertion, as the telephone conversations recorded confirm, that T2 was continually putting pressure on T15 to pay the balance, in the course of which he referred to allegations of anger from his superiors, and the threat that they would sue if the amount were not paid. If the amount had been a simple bribe, the conversations would not have made sense. There is no doubt that, once the money was obtained by T2, the investigation was compromised. The detective sergeant confirmed that T15 was a suspect

in the investigation, and after T2 took the money, there was little prospect of his pursuing the investigation of T15 any further. To do so would be likely to lead to the exposure of his own misappropriation. In addition, there are obvious indications that the relationship between T2 and T15 was inappropriate. The response from T2 to the improper requests by T15 for his assistance, clearly indicate that there was an understanding that T2 was indebted to T15.

10.4 BELMONT STORAGE UNIT THEFT – INTEGRITY TEST

As a result of the evidence which came to light concerning the involvement of T2 in the Maylands storage unit theft, and in what appeared to be corrupt dealings with T15, authorization was given under s. 30(1) of the *Royal Commission (Police) Act* to conduct an integrity testing programme to test the integrity of T2. The programme approved involved a proposal to replicate the circumstances of the Maylands storage unit theft by placing a sum of cash in a storage unit in Belmont. T3 was to be utilized to pass information to T1, whom it was expected would then communicate with T2. Where possible the conversations would be recorded.

T2 was transferred to Midland Tactical Investigation Group (“TIG”) (formerly known as the East Metropolitan Tactical Investigation Group) in February 2002. T1 had been continuing to provide T2 with information in relation to criminal activities after the initial theft of money from T4.

During late 2002 and January 2003, pursuant to the integrity testing programme, a scenario was created whereby T1 was led to believe by T3 that there would be a large sum of cash, perhaps up to \$1.2 million, likely to be located in a storage unit. The money was said to be the proceeds of drug deals accumulated by other associates of T3. The problem that T3 portrayed, hence the need for police assistance, is that, whilst he knew where the storage facility was located, and the name of the person who had hired it, he did not know the individual storage unit in which the money was stored, and it might not be possible to gain access.

Once this information had been passed to T1, he approached T2 in relation to the matter on 15 January 2003. T1 sent T2 an SMS, using T3’s mobile telephone from a tavern where T1 was meeting with T3. Upon receiving the SMS from T1 from a telephone number that he did not recognize, T2 asked another detective sergeant, a colleague, to call T1 and to confirm that it was T1 who had sent him the SMS. He knew T1, and was aware that he was facing charges. During the call, both T2 and the colleagues expressed their concern at the attempt by T1 to contact T2. At this time, T1 was on bail for a criminal offence. One of the

bail conditions required that T1 not approach any prosecution witnesses, except through a solicitor or a private investigator. T2 had provided a statement in relation to this matter and he was a prosecution witness. The conduct of T1 was a breach of the bail condition. T2 was aware of the bail conditions that had been imposed upon T1, as was his colleague. Previously, T1 had been legitimately contacting T2 through a private investigator acting on T1's behalf. A few minutes later, the colleague telephoned T1 and asked whether he had sent a message to "somebody mutual to us". The colleague told T1 that T2 was concerned about T1 contacting him, but T1 reassured him that he wanted to talk about "something completely different". The colleague telephoned T2 and confirmed that it was T1 who had been trying to contact him and that T1 wanted to discuss a different matter. T2 then proceeded to establish contact with T1, even though he knew that to do so was in breach of the bail condition. This was a criminal offence.

T1 later met with T2. He told T2 about the information he had been given by T3, and the possibility of stealing money contained in the storage unit. T1 also mentioned the name of a person associated with the money and drugs, as told to him by T3. By chance, the name was familiar to T2. As a result, T2 started up a legitimate police inquiry in relation to the information that T1 had given him. A detective senior constable, stationed at the East Metropolitan Tactical Investigation Group, on 20 January 2003 received information from T2 and conducted some inquiries in relation to the name provided by T1 at the instruction of T2. T1 stayed in touch with T3, so that T3 could keep T1 updated. Many of the conversations between T1 and T3 have been recorded. T3 would then text message T2 or telephone him to arrange a meeting, so that he could pass on the information given to him by T3.

For the purpose of the integrity testing programme, on 28 January 2003, the Royal Commission hired a rental self-storage unit numbered 117 from Freeway Storage located on Abernethy Road, Belmont, under a false name and placed \$20,000 cash into the storage unit. The only access to the Belmont storage facility is through the main gate. The gate is opened using an individual PIN number that is provided to each storer and there are padlocks on each of the storage units. Officers from the Royal Commission maintained surveillance of T1 and T2 for the duration of the integrity testing programme.

The planning of the Belmont theft culminated in a meeting between T3, T2 and T1 at a bank in Morley on 30 January 2003. It was agreed that T2 would attempt to get to the storage unit before the legitimate police operation was executed, so that he could remove what was expected to be close to \$1 million and leave \$200,000 behind for police to locate, which would ensure that any complaints about missing money would be treated sceptically by police, that T1 and T2 would each receive \$250,000 with the balance going to T3, and

that T2 would ensure that T3's informant was protected. T3 then revealed the location of the storage facility as Freeway Storage on Abernethy Road, Belmont.

On 31 January 2003, the Midland TIG detective senior constable submitted a report, which included the information he had received from T2. He wrote that "about \$500,000 of ecstasy will arrive in Western Australia from the Eastern States between 2 and 3 February 2003", that "upon arriving in Perth, it will be stored in an unknown self storage unit in the metro area", that "the storage unit ... currently holds \$200,000 cash" and further that "the source will be in a position later this evening, 31 January 2003, to provide police with further details of the alleged shipment".

On the morning of 31 January 2003, T2 was captured on surveillance video going to the Belmont storage facility, speaking to the manager, identifying himself as an AFP officer, and fabricating a story to enable the particular unit to be identified. The manager advised T2 of the number of the storage unit in which he was interested, and provided T2 with a PIN number that would enable him to gain access through the front main gate.

Later that evening, T1 met with T2 to carry out the Belmont storage unit theft. T1 remained outside the storage facility with his car, whilst T2 drove his car into the premises. Investigators were able to obtain video surveillance evidence of T2 breaking the locks of the storage unit with bolt cutters, entering the unit and stealing \$10,000 in cash. T2 then put the money in the back of his vehicle and left the storage facility. As T2 drove out of the main gate. T1 followed T2 in his vehicle and met him around the corner. Confirming the adage that there is no honour among thieves, T2 told T1 that there was only a small amount of money in the storage unit, in the vicinity of \$3,000. T1 was not told that T2 had taken any money from the storage unit.

T2 had the money between his legs in the front seat of his car. The money was in a large bundle, made up of smaller bundles kept together with rubber bands. When T2 got out of his vehicle, he claimed that one of the rubber bands broke, and one of the small bundles fell out of the car and went down into a drain.

Later that night, T2 contacted the Midland TIG detective senior constable and they agreed to meet back at the office to discuss what could be done in relation to the matter. The detective senior constable was instructed to make further inquiries. He had already driven by a number of suspected addresses and he was told that if it was possible to identify an address for any principal targets, a search warrant was to be obtained and executed. A number of officers were on standby, ready to be recalled should a search warrant need to be executed, even though T2 had been into the unit and knew there were no drugs in it.

The investigation was discussed again by the detective senior constable and T2 on 1 February 2003. He reported to T2 on the unsuccessful outcome of the drive-by inquiries he had conducted the night before and that other officers had been conducting that day. The detective senior constable was then told to call off any further inquiries and eventually the investigation petered out.

T2 later counted the money that he had remaining, after he had dropped \$1,000 down the drain. It came to \$9,000. He deposited \$4,000 in his joint bank account on 4 February 2003 and said that he gambled the rest away.

Throughout the course of interviews held with T2, he was questioned with respect to his involvement in the Belmont storage unit theft without being made aware of the full extent of the incriminating evidence against him. T2 gradually admitted to entering the storage unit and removing approximately \$10,000, unbeknown to T1. During the Royal Commission hearings, both T1 and T2 admitted to having taken part in the planning and commission of the theft on 31 January 2003 and provide very similar accounts, which were corroborated by the listening device product, the surveillance video and intercepted telephone communications gathered by investigators. T2 agreed that he expected to receive much more money for his role in the theft. Whilst T2 insisted that his main priority was to conduct a legitimate police operation and seize any drugs located in the storage unit, it is clear that T2's participation in the plan to steal the money frustrated any legitimate police operation and tainted the information he provided to other officers.

10.5 PERVERTING THE COURSE OF JUSTICE AND FRAUDULENT INSURANCE CLAIM

During the interview conducted between T2 and Royal Commission investigators on 10 March 2003, in the course of admitting to previous corrupt conduct, T2 mentioned that he had asked T1 to store a strong-box on behalf of a friend of his father, subsequently code-named T6, which T1 had agreed to do. An associate of T1, T12, picked the lock on the strong-box on behalf of T2. Inside the strong-box were documents, jewellery and a large amount of cash, including US currency. T2 said that he removed \$200 out of the strong-box as a "fee" and took T1 out for drinks. T2 asked T6 about the contents of the strong-box and he was told that all of the contents had been legitimately obtained, but that he did not want his wife, subsequently code-named T7, with whom he was involved in divorce proceedings, to know about the contents of the strong-box. After T6's divorce had been finalized, T6 took the strong-box back. Some time later, T6 came to T2 on several occasions and asked T2 to exchange some US currency and to sell some of the jewellery that had been in the strong-box. T6 was by then suffering from severe Alzheimer's disease, so T2 said that he took a

few hundred dollars to start with, and when he exchanged currency or sold jewellery, he was paid for that as well.

During evidence given by T2 on 14 April 2003, when T2 was asked how he came to be cashing US dollars, T2 mentioned that he came to have a lot of US dollars because he was converting US dollars for T6. He said that T6 had a substantial amount of US dollars and jewellery that he was hiding from T7 and, on numerous occasions, T2 exchanged US dollars or sold jewellery on T6's behalf. T2 believed that T6 had an upcoming family law dispute and T6 gave the jewellery and US dollars to T2 to deal with for a fee, so that T7 would not find out, presumably so that the assets would not be included in any property settlement. When T2 was asked if he agreed that this would amount to a fraud, T2 replied that he supposed so. Further, T2 stated that, at one stage, he had had access to the strong-box where the money and jewellery were kept. T6 had asked T2 if he could find somewhere secure to store some property. T2 contacted T1, who told him that T6 could store it under his house. T6 and T2 delivered the strong-box to T1's office. Later, T2 returned to T1's office, T12 picked the lock on the strong-box and T2 noticed the US dollars, Australian dollars and jewellery in the strong-box. T2 said that this time he removed \$100 from the strong-box. T1 and T2 spent the money at a bar.

After this evidence was given by T2, the Royal Commission investigators conducted further inquiries. The Family Court of Western Australia granted the Royal Commission leave to inspect the files in relation to the proceedings between T6 and T7. T6 and T7 separated in July or August 1998 and proceedings commenced on the application of T7 on 30 October 1998. One of the main issues raised during the proceedings was the extent of the matrimonial assets. T7 claimed that T6 had not disclosed substantial assets. On 22 May 2000, an order was made appointing T6's son, now code-named T8, as next friend of T6, as it was ruled that T6 did not have the capacity to conduct the proceedings in his own right. T10, a daughter of T6, stated in evidence that she had seen a number of bank safety deposit boxes belonging to T6 in the early 1990s, one of which contained jewellery, including three identical diamond bracelets, the original of which had been given to T7 by T6, cash and loose sovereigns. In the Judge's reasons for judgment, T10 was found not to be a favourable witness, due to inconsistencies in her evidence in what was described by the Judge as a highly improbable account. Ultimately, the Judge came to the conclusion that there had not been full and frank disclosure by T6 relating primarily to assets, partially based on the finding that at some time T6 possessed significant amounts of jewellery, cash and bullion and there being no explanation as to what had happened to those assets.

T1 then provided the Royal Commission investigators with photographs of the contents of the strong-box he was given by T2 to hide for some time. He had taken these photographs

without the knowledge of T2 at the time he was concealing the contents at the request of T2. The photographs are dated 5 February 1999. They depict jewellery, including three diamond bracelets, which were copies of T7's bracelet. The original bracelet had been obtained from T7 by the investigators, as well as gold bullion and cash, as had been described by T10 during the course of her evidence in the Family Court proceedings.

The concealment and later sale of the contents of the strong-box by T2 on behalf of T6 would have been directly relevant to the Family Court proceedings and may have caused the proceedings to miscarry. A different view of T10's credit may have been reached by the Judge had there been support for her account, and may ultimately have changed the outcome of the property division.

Investigators then made further inquiries in relation to the jewellery sold, and the US dollars converted, by T2. Valuation photographs obtained of the jewellery sold by T2 appear to depict similar items of jewellery to those contained in the strong-box, as photographed by T1 and as described by T10 during the Family Court proceedings, including two of the three copy bracelets belonging to T7. Upon further examination, one of the rings that had been valued and sold by T2 on behalf of T6 on 20 November 2002 appears to have been the same ring as was claimed to have been stolen during a burglary of T2's home, which had occurred on 6 January 2003. Documents pertaining to the subsequent insurance claim made by T2 were obtained, and revealed that T2 received a \$1,000 payout in relation to the theft of that ring.

T2 was recalled to explain his dealings with the property of T6 on 29 May 2003. T2 said that T6 had been a friend of his father, code-named T5, and that they had been involved in business together. T5 had introduced T2 to T6 about 15 years earlier. T2 confirmed that he had been asked to look after a strong-box for T6, which was given to T1 for safekeeping. However, he now denied that he had known that there were pending Family Court proceedings and that, when he had previously conceded that his behaviour would have amounted to a fraud, this would only have been the case had he known that proceedings had commenced.

T2 was shown the photographs of the contents of the strong-box taken by T1 but denied that they depicted the contents of the strong-box that was given to him and then stated that he saw no jewellery or coins in the strong-box.

According to T2, about one month later, T2 gave the strong-box back to T6 at his request. Then the next month, T6 asked T2 if he wanted to make \$100 for exchanging some US dollars. T2 thought he had exchanged US dollars for T6 between 1999 and 2001 for a fee

on some 12 to 15 occasions. He estimated that he had exchanged anything up to US\$30,000 in total, on behalf of T6.

A few months later, T6 asked T2 if he would sell some jewellery on his behalf. T2 estimated that he was asked to sell jewellery on behalf of T6 on at least five or six occasions, but stated that it was only after he had sold a number of items of jewellery that he became aware of the Family Court proceedings. Records obtained by investigators show that items of jewellery were sold by T2 to a number of jewellers and pawnbrokers on 28 February 2001, between 11 June 2001 and 11 January 2002, on 20, 21 and 28 November 2002, to the total value of \$27,804. Cheques for payment were then cashed by T2.

A valuation certificate No. 046785 was obtained by T2 from jewellers on 20 November 2002 for a number of items of jewellery. Item 1 was described as a "ladies dress ring set with a center diamond, approximately 0.55ct, cut round brilliant, colour H, clarity VVS, set in eight white gold claws, surrounded by ten diamonds, approximately 0.05ct each, surrounded by fourteen diamonds, approximately 0.09ct each, basket set in ballerina style. Set in 18k white gold total weight 6.2 grams" valued at \$14,625. Records show that a ring matching the description of Item 1 was sold to Cash Converters by T2 on 20 November 2002 for \$1,800. Commission investigators were able to recover the ring and took it to the gemmologist at the jewellers who had provided valuation certificate No. 046785. The gemmologist was satisfied that the ring sold by T2 to Cash Converters on 20 November 2002 was Item 1 that she had previously examined. According to T2, however, he had not sold Item 1 before the burglary.

T2 submitted an offence report about the burglary, which had allegedly occurred at his home on 6 January 2003. A backpack containing \$3,200 cash, items of sporting memorabilia and Item 1 on valuation certificate No. 046785 were reportedly stolen.

During a search warrant conducted by investigators at T2's home on 9 May 2003, T2 told them that he had telephoned T6 and spoken to him about the theft of Item 1. Although not totally coherent, T6 was able to ask T2 to claim Item 1 on his insurance.

The insurance claim form sets out the items of property that were stolen by T2 and each of those pages has been signed by T2, although the forms were filled out by the insurance assessor who interviewed T2 at his home on 13 January 2003. The claim form refers to Item 1 on valuation certificate No. 046785. The owner of Item 1 is recorded as "PH", which represents policy-holder, and was said to have been purchased in London in 1999. T2 did not tell the assessor that T6 was the owner of the ring. T2 denied that he had already sold Item 1, which was claimed on insurance, despite the fact that the gemmologist had

identified the ring sold to Cash Converters on 20 November 2002 as Item 1, which she had originally valued. The assessor also filled out a confidential assessor's report and wrote down that T2 told him that "[Item1] was going to be cleaned for a gift to his mother".

As a result of his insurance claim for items stolen, T2 received a cheque from his insurers in the amount of \$3,985, \$1000 of which was to compensate his loss of Item 1, which he later deposited into his account.

To believe T2's version of events, T6 would need to be coherent, able to conduct business transactions, make requests and receive monies from T2 throughout 1999 until early 2003. However, T6 had been receiving 24 hour live-in care since early 2001 and his son, T8 was appointed as his next friend by the Family Court on 22 May 2000, as he was suffering from dementia with Parkinsonian symptoms, and there was evidence that his mental capacity was deteriorating. One of T6's carers gave evidence that she did not believe that T6 would have been capable of discussing the sale of jewellery or handling business matters after February 2001. In fact, by the middle of 2002, T6 was hardly able to communicate.

The first explanation given by T2 for T6 entrusting him with the strong-box, that is, to ensure that the property was not included in the family law dispute, seems correct. It would appear that, before T2 gave further evidence on 29 May 2003, he realized the implications of what he had previously admitted and endeavoured to diminish the gravity of his conduct by expressing uncertainty about the existence of the family law proceedings. There is real doubt that the strong-box and its contents were ever returned to T6. T6 had been incapable of administering his own affairs since May 2000 and it is highly unlikely that his moments of clarity coincided with the occasions when T2 claims that he was given instructions to convert the US currency or to sell the jewellery. It is probable that T2 stole the property and retained the proceeds. His insurance claim was fraudulent. Although the expert evidence was not capable of demonstrating absolutely that the ring sold to Cash Converters on 20 November 2002 was Item 1 claimed on T2's insurance, there appears to be little doubt that Item 1, which T2 alleges was stolen during the burglary on his home on 6 January 2003 is the same ring that he sold to Cash Converters some months earlier.

10.6 GENERAL OBSERVATIONS

For a number of reasons the evidence relating to T2 provides a useful case study:

- His alleged corrupt conduct was the most recent examined by the Royal Commission;
- The history of his employment with WAPS provides many indicators of a high risk officer; and

- The investigation by the Royal Commission included a successful targeted integrity test.

CONDUCT OF T2

The conduct in which T2 was shown to have engaged is worthy of consideration. He is clearly a recidivist, who could only have perpetrated the conduct with such aplomb as a result of significant prior experience. His conduct is an example of typical opportunist corrupt conduct by a police officer who did not actively solicit corrupt payments, but was quick to exploit any opportunities in which he could steal money. His conduct was brazen, in that, in each of the major incidents of corruption in which he was shown to engage, he had no qualms in carrying out his conduct, notwithstanding the involvement of other police in the investigations during which the money was taken. In fact in two of the incidents, he actively involved other police in the matters after he had stolen the money, when normally it would be expected that such an offender would be anxious to minimize his association with the criminal conduct.

In relation to the Maylands storage unit theft, having participated in stealing a large sum of money from the unit, he then obtained a search warrant, and with the assistance of other police, executed the warrant upon the premises in which T4 was residing, and then initiated a process whereby T4 was compelled to leave the country. Similarly, in relation to the theft from the Belmont storage unit, notwithstanding his intention to steal what could have been \$1,000,000, he involved other officers in making inquiries and preparing for a search of the unit, once he had stolen the money.

His conduct in relation to the theft of the money recovered by T15 was no less brazen. Despite the fact that other police were involved in or monitoring the Rivertime fraud investigation, and the fact that the detective sergeant was aware that the money was being sought from overseas, he proceeded to steal it.

His conduct bears the traditional hallmarks of police corruption, with almost arrogant disregard for the risk of detection and apprehension, combined with a considerable capacity to manipulate the system in which he worked. His conduct also reflects the opportunistic character of much of the police corruption revealed in the Royal Commission. There is no evidence that he sought out opportunities to corruptly obtain rewards, but there is little doubt that whenever the opportunity presented itself, he was quick to exploit it. His conduct was unusual in that he seems to have acted alone, as there is no evidence in any of the matters detected that he acted in collaboration with other police officers.

PROFILE OF T2

In the light of what has been revealed about the conduct of T2, it is relevant to note that a risk assessment of him would have caused alarm.

T2 left school in 1975 aged 17, having completed three subjects at 5th year/leaving level. He joined the RAAF and was discharged as "unsuitable". He then spent some time working with Customs in South Australia, before applying to join the WA Police Force. His application was accompanied by three referee statements – all in the same handwriting and all on the same stationery. No explanation has been found to shed light on this occurrence.

Twice T2 was advised of non-selection for next police intakes. On both occasions, T2 took up the offer to have his name held on a reserve list for consideration at future intakes. Then he was advised that a Selection Board was being convened and his application would again be considered. He was subsequently advised by letter that, after considering his file and assessment rating compared with other applicants, he was not successful and his name was to be removed from the reserve list. This letter included the comment, "I can offer no encouragement for any further attempts at employment".

He did not accept this decision and submitted an "Application for Interview" to the Recruitment Branch. A letter from the Recruitment Branch acknowledged his request for an interview and stated "...a letter was sent to you notifying you that you were unsuccessful and that your name had been removed from the reserve list. The position has not changed I can offer you no encouragement for any further attempts at employment".

T2 then wrote to the Commissioner of Police requesting advice as to why his application had been rejected. In response, a letter was sent to him advising that his application for employment had not been "rejected", it had simply been unsuccessful. The letter includes the comment that "... because of the quality of the current applicants, after comparing your assessments and rating with successive Boards from August 1978 it became obvious that you would not be successful in the foreseeable future".

Despite the above, three months later, a letter was sent to T2 informing him that, following a review of his previous application, it had been decided that an invitation would be extended to him to re-sit the entrance examination. T2 did re-sit the entrance examination, but failed the arithmetic component of the test. He was advised that if he wanted to make a fresh application at some time in the future, he would need to provide documentation that he had completed a course of study in arithmetic.

Six months later, T2 sent an "Application for Interview" to the Recruitment Branch. He was duly notified that an appointment had been made for him and he was asked to complete a document entitled "Application for Employment – Supplementary Information". It is not clear why this offer was made, as it was not consistent with previous correspondence that repeatedly rejected his application.

The application form was completed, and another three hand written referee statements attached – again all in the same handwriting and all on the same stationery. This application was successful and T2 was advised that he had been selected for recruitment into the police force. He was then inducted into the Police Force, with the completion of a "Form of Engagement" on 28 December 1981.

He completed his training, and was posted to various general duties locations as a part of the probationary process. After a number of applications, he was transferred from uniform duties to the Criminal Investigation Branch ("CIB") as a probationary detective in December 1986. After nine years he became a senior constable.

T2 then requested a transfer from CIB to the Uniform Branch due to personal reasons. A letter in support of this transfer was written by his supervising detective inspector. This letter states that "[T2] does not wish to discuss his personal reasons, but is adamant that he returns to the Uniform Branch on general duties". It is suggested that his request was a result of his having been suspected of stealing tatts/lotto money/social club money from his colleagues in the CIB.

Following his request for transfer, T2 went on a combination of annual and long service leave. In 1992, his request for transfer to the Uniform Branch was approved. He started work with this branch in 1993.

In September 1995, a complaint was made by a community organization, which alleged that T2 acted unlawfully in arresting an employee of the organization, who was carrying out work related activities as part of a needle exchange programme. The complaint was directed to both the Minister for Police and the Commissioner of Police. The matter was investigated, and T2's complaint history was compiled as follows:

No.	Date	Complaint	Result
1	24.11.87	Failure to return property	Sustained
2	03.01.88	Stealing	Not sustained
3	30.08.88	Assault	Withdrawn
4	01.05.89	Excessive force	Not sustained

No.	Date	Complaint	Result
5	15.06.89	Assault	Not sustained
6	02.08.89	Verbal abuse	Conciliated
7	07.02.90	Improper handling of property	Sustained
8	27.02.90	Assault	Not sustained
9	02.03.90	Improper search	Not sustained
10	02.03.90	Assault	Not sustained
11	02.02.91	Verbal assault	Not sustained
12	01.05.91	Assault	Withdrawn
13	18.09.91	Excessive force	Not sustained
14	06.07.93	Travel allowance	Not sustained
15	25.05.94	Stealing	Not sustained
16	18.11.94	Verbal abuse	Not sustained
17	02.09.95	Unlawful arrest (current complaint)	Not sustained

The investigation concluded that the matter could not be arbitrated by the Police Service, and should proceed for determination by the courts. At least, this matter does appear to have raised some concern as to the appropriateness of the conduct of T2, as is evident in the following file notation:

I have discussed [T2's] prior IIB [Internal Investigation Branch] record with Supt. M who was aware of this officer's behavioural pattern [emphasis in the original]. Mr M (who has been provided with a copy of T2's print out) requested that he be allowed to deal with the matter ...

This request by the Superintendent of the Independent Patrol Group ("IPG"), to "deal with the matter" was agreed to by the Commander (Discipline). However, no records have been found to indicate that any formal performance agreement or other intervention was undertaken. This mentoring/supervision may have been effective, as no further complaints were recorded in the following year whilst T2 remained at the IPG.

In December 1996, T2 transferred to the City Inquiry Team, a plain clothes position. He remained there for only a short time, as in January 1997 he was assigned to the City Detectives, where he spent the majority of time on higher duties as a detective sergeant, and where complaints against him resumed.

No.	Date	Complaint	Result
18	20.05.97	Inaction by police	No conciliation
19	19.06.97	Harassment	Conciliated
20	21.07.97	Handling of property	Conciliated

No.	Date	Complaint	Result
21	17.11.97	Inaction by police	Conciliated
22	03.12.97	Stealing of property	Conciliated
23	23.02.98	Attitude and manner	Not sustained
24	08.04.98	Stealing of money	Not sustained
25	14.07.98	Traffic infringement	No discipline
26	21.08.98	Inaction by police	Local resolution
27	11.06.01	Stealing of money	Not sustained
28	12.07.02	Stealing of property	Information only

T2 continued at City Detectives until gaining permanency as a sergeant in the Major Fraud Squad in March 2000, where he stayed until transferring to East Metropolitan TIG in February 2002.

T2 was a chronic gambler, who attended the Burswood Casino almost daily, according to his bank statements and to those who worked with him, yet there is no record to indicate that his conduct gave grounds for concern.

ROYAL COMMISSION INVESTIGATION MODEL

Issues associated with the detection and investigation of corrupt police conduct will be canvassed more fully in Volume II of this Report. However, the opportunity is now taken to draw attention to the features of the Royal Commission investigation into the activities of T2, which made it a success. The genesis of the investigation was a situation that is not uncommon, with the receipt of an anonymous allegation concerning the theft of money by a police officer. Preliminary investigations had been carried out by the IAU to identify T2 and T4, and the profile of T2 confirmed that he was a person of interest, but the investigation was stalled by the absence of T4 from Australia. When T4 returned to Australia, the Royal Commission analysts developed a detailed profile of T2, based upon his complaints history and other information, which identified him as an appropriate target for an intensive proactive investigation. A joint operation with the ACC was commenced. Sufficient evidence was available to obtain warrants for the implementation of telephone intercepts and listening devices, including the installation of cameras in the premises of T15. Assisted by information received as a result of the intercepted telephone conversations, explicit visual images were obtained of T15 handing money to T2. T3 was recruited and participated in a number of conversations with T1 that were covertly recorded and during which T1 made significant admissions concerning the Maylands storage unit theft. Based on the information obtained, T2 became an appropriate target for an integrity test. Again with the assistance of sophisticated electronic surveillance equipment, the

scenario was created in the Belmont storage unit to record T2 stealing the money placed in the unit. When later approached and advised of the extensive electronic evidence of his corrupt conduct, T2 co-operated by providing admissions of his own conduct in relation to other corrupt activities and agreed to assist the investigation. As it turned out, suspicions developed concerning his possible communications with the Royal Commission and it became clear that his colleagues were alert to the possibility that he may be assisting the Royal Commission, with the result that he became alienated from his colleagues and opportunities did not arise to exploit his willingness to co-operate. That response was also an interesting insight into the culture of WAPS. It was hardly likely that the police wanted to distance themselves from T2 because he was suspected of corruption, because there was nothing to indicate to them the reason for contact with the Royal Commission. The obvious inference is that he was isolated because he was suspected of assisting the Royal Commission.

Such investigations are time consuming and costly. However, with appropriate target identification, preparation and planning, and the availability of sophisticated electronic technology, the successful outcome justifies the expense involved, and the compulsory powers necessary to achieve that outcome.

CHAPTER 11

OPERATION CATALPA

11.1 INTRODUCTION

In August 2002, the Internal Affairs Unit ("IAU") of the Western Australia Police Service ("WAPS") brought to the attention of the Royal Commission information it had received indicating that a senior constable stationed in a country town could be of interest to the Commission. The information was to the effect that the officer had a questionable relationship with a person, subsequently code-named N1, who was a businessman in the adult entertainment industry and the subject of several criminal intelligence reports on the WAPS database. Further inquiries confirmed that the officer was worthy of investigation and, in co-operation with the Anti-Corruption Commission ("ACC"), the Royal Commission then commenced Operation Catalpa. The results of early inquiries indicated that the investigation would be assisted by an integrity testing programme, which was subsequently authorized in accordance with s. 30 of the *Royal Commission (Police) Act 2002*. The officer failed the test, which, together with other evidence, which had been obtained, established that he was not a fit and proper person to be an officer of WAPS. He has subsequently resigned from WAPS.

In the course of public hearings, the officer was named, but for the reasons previously given, and consistent with the approach taken in relation to the reports of other investigations into corruption by the Royal Commission, he will be referred to by a code-name, N6, in this Report.

The public hearings in this segment examined the recurring issue of inappropriate associations between police officers and suspected criminals. The association between N6 and N1 was presented as an example of an improper relationship of this nature. The relationship had the potential to be particularly insidious, as it was alleged N6 took advantage of this association to obtain prostitutes from N1. It was suggested that, if true, N6's association with N1 not only created an environment in which a police officer should not be involved, but also raised the suspicion that his ability to enforce the law with honesty and integrity was compromised.

As a result of the investigation into these issues, a wider pattern of misconduct by N6 was revealed, including:

- Unauthorized access to WAPS computer databases;
- False applications for credit to financial institutions;
- Inappropriate use of the WAPS e-mail system; and
- Breach of a liquor licensing law.

Whilst it is acknowledged that the conduct is at the lower end of the scale of corruption, and some of the conduct was inappropriate rather than criminal or corrupt, N6 engaged in a pattern of behaviour that contravened the principles of integrity expected of a police officer.

Issues concerning the procedures of the IAU and the management and efficiency of its investigations were also examined in this segment. Evidence was led that, despite intelligence that N6 had allegedly engaged in a range of improper conduct, the IAU was unable to allocate sufficient resources to conduct a substantial investigation into his activities. Further, known concerns about his integrity and ethics were not communicated to his supervisors, effectively allowing his behaviour to go unchecked, and providing him with the opportunity to engage in further inappropriate conduct.

11.2 IMPROPER ASSOCIATIONS

N6 AND N1

N6 joined WAPS as a recruit in 1989. Since that time he has worked as a general duties and traffic officer in various locations.

N6 has been the subject of adverse IAU information reports since 1997, and in June 2000 an internal investigation, code-named Operation Harding, commenced following allegations that had emerged while he was based at a country station. The allegations included that he:

- Associated with strippers and local prostitutes;
- Organized strip-shows; and
- Associated with members of an Outlaw Motor Cycle Gang ("OMCG").

In August 2002, IAU became aware of a possible relationship between N6 and N1. Although N1 has a minor criminal record, he has been the subject of information reports that allege his involvement in, and knowledge of, criminal activity. Those reports may or may not be

accurate. It does not matter. What is important from the perspective of N6 as a police officer is that the reports existed, and as it later emerged, it seems that he was aware of them. What is therefore of significance is the nature of his dealings with N1 in the light of the available information.

THE VIDEOTAPE OF N1

Before reporting on those issues, it is appropriate to refer to another matter which was not connected to N6, but which was nevertheless relevant because it had the capacity to compromise a number of police officers.

As part of the Royal Commission's inquiry, telephone services used by N1 were lawfully intercepted. In several conversations, an unrelated matter emerged, not involving N6, which was of interest to the Royal Commission. In a conversation on 26 February 2003, at a time when there was substantial media coverage of the evidence given before the Royal Commission as to the conduct of officers from the Drug Squad in 1985 to 1990, N1 spoke with an unidentified male person ("UM") and said that he was in possession of a videotape that contained footage of police officers at his home in 1987 or 1988. The conversation included the following:

N1: [I] got a video tape between you and me, of all those coppers that are on, in the thing at the moment in a spa with tarts topless.

UM: Yeah, what are you going to do with it?

N1: I don't know, I mean, I'll show you, come up to my apartment I'll show ya, it's just unbelievable, you know, just unbelievable because I just...I was looking at the bloody news and I was watching the thing and everything and I was saying to [named person] just then I got all these blokes on tape, the whole of them you know?

UM: You should put it to the Royal Commission.

...

N1: They were in there. Unbelievable. I'll show you the tape, I'll show you.

UM: You can help clean up, you can clean up the Police Force.

N1: Yeah mate you know what they, I reckon there's more to it, I reckon they were involved in drugs as well as mate I tell you that right now. You know, between you and me.

N1 did not approach the Royal Commission as advised, but retained the videotape until it was seized by Royal Commission investigators during the execution of a search warrant at N1's premises in March 2003. An edited version of the tape was tendered at the Royal

Commission hearing. The videotape recorded male persons, some of whom could be identified as police officers, cavorting in a swimming pool with young women who were topless. It would appear that the women worked in the adult entertainment business run by N1. There was nothing unlawful in the conduct of the police officers, but it had the potential to cause them embarrassment. What is of significance is that N1 had kept the film in his possession for so long. N1's businesses regularly brought him into contact with police officers, and the officers on the videotape showed a lack of judgment in accepting the hospitality of N1, and in allowing themselves to be filmed in circumstances that had the capacity later to cause them to be compromised.

On 29 and 30 April 2003, N6 gave evidence before the Royal Commission. He stated that he met N1 through his wife, who worked as a stripper for N1 in a country town in which he had been stationed. He agreed that he knew N1 was in the business of providing "skimpies", strippers and exotic dancers. Indeed, in e-mail correspondence dated 20 September 2001, N1 sent the following message to N6 via an e-mail account used by N6 and his wife:

[M]ake sure my skimpy is doing the right thing, [N6] go in and check her out make sure her costumes are good and she is not wearing boots, at the Bridgetown hotel, tell her your my mate and are in charge of quality...best wishes [N1].

The evidence suggested that, on four occasions, N6 met, or attempted to meet, prostitutes or strippers arranged by N1 during the period August 2002 to January 2003.

21 AUGUST 2002

On 21 August 2002, N6 went to the Burswood Casino, Perth. Surveillance footage was obtained which revealed that, on that evening, N6 had dinner with N1, another police officer and a young female, believed to have been employed by N1. After dinner, N1 left the casino, whilst N6 gambled in the company of the female and the other police officer. N6 said that he believed that the female worked for N1, but he could not remember whether he requested N1 to provide female company for the evening.

18 AND 19 OCTOBER 2002

On 18 October 2002, N6 went to the Burswood Casino. Surveillance footage revealed N6 in the company of a young female, referred to by the code-name N2, a male associate and another young female. In the early hours of 19 October 2002, the group left the casino and travelled to the Mercure Hotel. Closed circuit television footage recorded the group entering

adjoining suites at about 1.00 am. N2 and the other female left the rooms at about 3.00 am.

N2 gave evidence before the Royal Commission on 30 April 2003. She said that she was a prostitute, and recalled that, on this occasion, N6 telephoned her and organized for her and another prostitute to spend the evening with N6 and his friend. The females were paid \$750 each, after unsuccessfully attempting to negotiate a fee of \$1,000.

N6 gave evidence that he arranged the evening by contacting N1, who gave him N2's telephone number. He admitted that he knew that N2 was a stripper, but he denied that he knew that she was a prostitute. He admitted having sexual intercourse with her that evening, but maintained that he did not pay her any money.

NOVEMBER AND DECEMBER 2002

Two weeks later, on 7 November 2002, N6 accessed N2's personal details on the WAPS computer system. He claimed that he did so because "there was something suss about her". Nevertheless, in the following months N6 maintained contact with N2 via e-mail. On 10 November 2002, N6, using his WAPS e-mail address, sent an e-mail to N2. It read, "Just testing to make sure I have the correct address... P.S. – Are you the only one that reads this address". After being assured that she was, on 11 November 2002, N6 wrote to N2:

[B]aby I am the only one that reads this. However you still have to be careful in what you write as my internals monitor it sometimes.

Later the same day, N6 sent an e-mail to N2, stating that he looked forward to meeting with her on 6 December 2002. On 3 December 2002, he sent N2 an e-mail inviting her to meet him on the following Friday night. On 6 December 2002, N6 called N1, who was with N2 at the time, and arranged to meet him at a bar. N6 claimed, however, that whilst he attended the bar that evening, he left just before they arrived.

N6 stated that, on the following day, he was in Adelaide. At the time, he sent an SMS to N1, asking him to arrange two girls for the next Saturday night, but on a basis that would involve his paying only for dinner and drinks. That evening, N1 telephoned N2. They complained that N6 was losing his money by gambling and expected favours "for free". On 13 December 2002, N6 sent N1 a further SMS, asking whether he had been able to organize any girls for the following night. NI replied that it was difficult with Christmas approaching, but that N6 should go to the bar. N6 replied with an SMS that included "thanks I really owe you...". On the same day, N1 sent an SMS to N2 advising her that N6

would be in town and suggesting that she meet him and obtain payment from him. N6 gave evidence that he could not remember whether he met N2 that evening.

28 AND 29 JANUARY 2003

In January 2003, it was decided to subject N6 to an integrity testing programme and, as will be described, a situation was created in which N6 was provided with an information report containing fictitious information, the contents of which were passed to N1 by N6's wife. Shortly afterwards, N6 travelled to Perth, and it was suspected that he may have brought the document with him. Accordingly, on 28 January 2003, Royal Commission investigators searched a room occupied by N6 at the Mercure Hotel, Perth, where they located \$1,000, but they failed to find the information report.

At the time of the search, N6 was with N2 at the Burswood Casino. Royal Commission surveillance cameras recorded N6 and N2 returning to N6's hotel room shortly before midnight. A surveillance camera also recorded N6 counting out money and giving it to N2 whilst she was in a suggestive position on the bed. N2 left the hotel early the following morning. N2 gave evidence that she was paid for that evening, but could not recall how much. She went on to say that she would not have spent the evening with N6 if he had not paid her.

N6 denied putting \$1,000 aside for the payment of N2. He claimed that he often left money in the hotel as a "fall back" in case he lost money gambling. N6 did not deny paying N2 \$1,000, but said it was a gift, because N2 was a "good luck charm".

FURTHER CONTACT

N2 gave evidence that, since the meeting on 28 and 29 January 2003, she had been telephoned by N6 who asked to meet her at the Mercure Hotel. She agreed to do so. She stated that, when she arrived, he was drunk and asked her to take her clothes off to prove she was not "wired". N6 told her that he was being investigated by the Royal Commission and that, if anyone asked her, she should say that the previous payments to her were gifts.

He also told her that if she said to the Royal Commission "that the money was for sex...[they] would both get into trouble". She agreed, however, that N6 subsequently called her and said, "just tell the truth, tell them the truth". It was suggested to N2 that when she met N6 on this occasion, she attempted to extort him by demanding he send her a cheque for \$2,000. N2 agreed she made the request, but she claimed that it "related to the way [N6] had treated me".

N2 agreed that she asked N6 to obtain marijuana for her “when he did a raid”, but she denied asking him for “speed”.

N2 said she had received payment from N6, on occasions, as gifts. N2 also agreed that N6 gave her money when she was in financial difficulties and gave her money as a birthday present. She maintained, however, that she would not have had sex with N6 unless he paid her.

N6 did not deny meeting N2 in the Mercure Hotel, but stated that he was very drunk. He agreed that he made N2 take her clothes off, because he thought he was “being set up by somebody”. N6 admitted that the Royal Commission was discussed and that he said to N2, “don’t lie to them”.

11.3 UNLAWFUL DISCLOSURE OF CONFIDENTIAL INFORMATION

AUTHORIZED INTEGRITY TESTING PROGRAMME

Because of the nature of N6’s relationship with N1, a suspicion arose about his capacity to enforce the law with honesty and propriety. To test his integrity, an integrity testing programme was authorized, on the basis that N6 would be given apparently sensitive information concerning N1 in order to test N6’s reaction to the provision of the information.

The information report created for the integrity testing programme, stated that an anonymous person had telephoned the police service to advise that OMCG members were using N1’s employees to bring drugs to Perth. The information report was given to N6 at his station by an officer from another law enforcement agency (“LEA”). The meeting was covertly recorded. N6 told the other officer of his relationship with N1, claiming that he knew N1 had been a person of interest to WAPS and that his girls had been linked to the Coffin Cheaters OMCG and had possibly been involved in criminal activity, although he expressed his personal doubts that anyone was directly involved.

Several minutes after the officer had departed, N6 received a call from his wife. She asked whether they had gone, and N6 advised her that the other officer had just left and implied that what he had been told was interesting, but could not be discussed on the telephone. He indicated that he would meet her shortly.

N6 accessed N1’s name on the WAPS Name Inquiry System (“NIS”) computer database, which contains information such as personal details and criminal records. A short time later, N6’s wife called N1 from a public telephone box and told him that she had learnt that his

associations with certain people and his business were under suspicion as a result of an anonymous telephone call. She advised him that, if he was doing anything unlawful, he should be really careful, but N1 denied that there was any problem, and they discussed the prospect that an associate had mischievously fabricated information against him.

Six minutes later, N6's wife called N6 and asked whether the telephone of N1 may be "bugged". N6 told his wife that, in the light of information given to him by the law enforcement officer, he would make a request for further information about N1. He also indicated to his wife that he had checked the criminal history of N1 and that, although he had some convictions, they were not major.

Three minutes later, N6 sent an e-mail to an intelligence officer at the District Intelligence Service Centre, requesting information about N1 and other persons. On 22 January 2003, the officer replied that N1 was "a reasonably big fish he is involved in Brothels and possibly money laundering in Perth and drug movement through the [name deleted] Hotels".

On the basis of the conversation with the LEA officer, N6 had been in contact with the WAPS Bureau of Criminal Intelligence ("BCI") and was aware of the Reports on file about N1. In his evidence before the Royal Commission, N6 claimed that he had lied when speaking to the officer, and that he knew that there had been a BCI investigation into N1. He claimed that he had no intelligence information about N1 or his girls. However, he said that there had always been a rumour that some of N1's girls were associated with the OMCGs.

N6 gave evidence that, when he said to his wife, "[W]ow this is quite interesting", he was referring to the information he had received from the LEA officer. He said that after the telephone call he went out the back door of the police station and met his wife at the fence line. He told her that she should not contact N1 or have anything further to do with him. He said he could not explain why he could not give her this information by telephone.

N6 denied disclosing the contents of the information report to his wife or telling her the source of information that caused him concern.

N6's wife gave evidence that she had previously worked for N1 as a skimpy in about 1998. N1 later attended her wedding and he remained her friend. Her husband also became a friend of N1 and occasionally had separate contact with him. She said that, on 21 January 2003, following the departure of the LEA officer, she called her husband from their home, next door to the police station. She stated that her husband came home and recommended they have nothing to do with N1. She said she asked him why, but he said he could not tell

her and was very busy and had to get back to work. Shortly afterwards, she went across to the police station and, while her husband was “towards the back” of the office, she read a document on his desk. She then called N1 from a public telephone. She denied that her husband had told her about the information report or instructed her to inform N1 of its contents.

11.4 GENERAL COMMENTS

In the light of the recorded conversation, little regard can be had for the evidence of N6, and his lack of candour in explaining his actions aggravates his previous conduct. That is not surprising. The events described, and those that follow, starkly reveal the intrinsic defects in his character.

N2 has no criminal record and was not offered any inducement by way of reward or promise for giving evidence before the Royal Commission. She had no apparent motivation to lie and has no sense of grievance against N6. Indeed, in her evidence, she stated that she considered N6 “a nice bloke” and “doesn’t deserve this”. N6’s explanation that he believed that N2 was a stripper, but not a prostitute, is implausible. Whilst he may have provided N2 with money for personal reasons on occasions, such as for her birthday, it is clear N2 would not have had sexual intercourse with him unless he paid her. If there was any doubt, the payment of money to N2 on 28 January 2003, which is clearly depicted on electronic surveillance, confirms the true nature of the relationship between N6 and N2.

It is noted that N6 showed a degree of caution in his dealings with N2, which revealed his awareness that he knew his dealings with her would be perceived by others to be improper. This included warning her to be careful in e-mail correspondence, as it may be monitored by the IAU; not calling or sending SMS communications to her directly, but through N1; and meeting N2 at the Mercure Hotel and making her “strip” to prove that she was not recording their conversation and instructing her initially to say to anyone who asked, that the money he gave her was a gift. It is to be taken into account that N1 did not give evidence, and he was not available for cross-examination. However, intercepted SMS messages clearly indicate N6 attempted to take advantage of his relationship with N1 to procure prostitutes without fee or at discounted prices. His conduct is made worse by the fact that he knew, as of 21 January 2003, that there was intelligence from another LEA that:

- N1 was of interest to law enforcement authorities;
- N1’s “girls” were drug users and possibly involved in the distribution of amphetamines; and
- N1’s business was suspected to be a front for prostitution.

On any view of it, N6 failed the integrity test. Either he was telling the truth to the LEA officer, and knew of the intelligence about N1, yet continued to deal with him or, on his version, he lied to a fellow LEA officer who was consulting him on official business. It is reasonably clear that the former was the case. The explanation as given by N6 and his wife for the telephone conversations at the time, are nonsensical and the clear inference is that once N6 was handed the document by the LEA officer concerning N1, he immediately conveyed the contents to his wife. Whether he instructed his wife to ring N1, or whether she did so on her own initiative, is not as clear. Whilst his wife stated in the call that N6 did not know that she was ringing N1, that could simply have been said to protect N6, given her expressed concern about telephone interceptions at the time. The suggested explanation that N6's wife had, by chance, sighted the information report on a desk is farcical in view of the conversation that took place. The integrity testing programme was directed at ascertaining whether N6 would act responsibly when presented with information concerning N1, and he failed the test.

11.5 IMPROPER AND UNLAWFUL USE OF WAPS COMPUTER SYSTEMS

Apart from obtaining evidence relating to the relationship between N6 and N1, the investigation also produced evidence that N6 routinely, improperly and unlawfully used WAPS computer systems. Whilst these accesses were unrelated to the allegations involving N1, they amounted to substantial breaches of administrative policies and possible criminal conduct. N6 was one of a number of officers who improperly accessed WAPS databases for information and disseminated it without authority. The broader issues associated with this conduct are the subject of a more detailed commentary in Volume II of this Report.

The use of the WAPS e-mail system is regulated by Administrative Direction 52.21.3 (COPs Manual, 2002), which provides, among other things, that e-mail is to be used to send and receive business related messages. Provision is also made for personal messages to be sent and received, but not in a manner that amounts to misuse or abuse of the system. In particular, the Administrative Direction provides:

Police Service employees shall not use Email to:
- communicate information of an obscene nature...

Twenty five e-mails involving communications between N6 and female associates on the WAPS system were tendered. The e-mails represented a sample of obscene messages sent and received by N6 during November and December 2002. N6 acknowledged in his evidence that the e-mails contained sexually explicit communications between himself and female associates, as well as obscene visual images.

Three “group” e-mails were sent to N6’s WAPS e-mail address, which contained e-mail addresses of persons outside WAPS.

N6 claimed that he was not aware of any Administrative Direction or policy on e-mail use. He said he knew he should not have sent obscene and offensive material, but that he did so because he was “bored and naïve”. N6 claimed that e-mails containing sexually explicit language were “just two friends talking on the e-mail system”, but he conceded others might view such interchanges as obscene.

Access to information contained on WAPS databases is restricted to police personnel and persons authorized by the Commissioner of Police. The policy in respect of the use of the WAPS computer system is contained within Administrative Direction 17.6, which provides:

To maintain security of information contained within the Police Service computer system ... access by all users is limited to that information which has a direct relationship to their work area and associated work functions ... unauthorised access of information ... will be viewed very seriously and may result in prosecution under the Criminal Code with penalties ... including, a term of imprisonment.

A similar warning is displayed prior to opening the WAPS computer system. Each time a user enters the system he/she is required to enter his/her identification number as an acknowledgement that they understand the conditions of confidentiality and authorized use.

Administrative Direction 17.6 also prohibits the unauthorized communication of information held on WAPS computer systems:

With the exception of notices and advertisements placed in the Social bulletins for general publication, dissemination of computer accessed information is prohibited to persons or agencies outside the Police Service unless authorised.

Section 440A(2)(a) of *The Criminal Code* provides it is an offence for a person without proper authorization to gain access to information stored in a restricted access computer system. This provision applies to members of WAPS who access the police computer system.

N6 claimed that he was not aware of relevant criminal provisions concerned with unauthorized access, and that he had never read the “warning” message on the computer mainframe. He stated he was aware, however, that the system was only to be used for business and not for personal purposes.

A confidential exhibit was tendered that summarized certain accesses to information on the WAPS computer system by N6 including those of:

- His partner (and later, wife);
- Female associates; and
- Persons suspected to be strippers and skimpies.

The above accesses included interrogations of the Names Inquiry System ("NIS"), Vehicle Inquiry System ("VIS") and Central Names Inquiry ("CNI") databases.

WAPS records reveal 21 accesses of his wife by N6 on CNI, NIS and VIS systems between October 1999 and January 2003. N6 gave evidence that he could not specifically recall why he accessed his wife's details, other than it may have been in response to queries from her about loss of demerit points or as to whether her car was registered.

N6 was also examined about accesses to the details of a female referred to by the initials "CN". These accesses included interrogation of the NIS database on 16 March 2000 and 10 October 2002, and interrogation of the VIS database on 1 October 2000. N6 stated that "CN" worked with his wife as a dancer and that the accesses would have been in response to a query about demerit points, whether her car was registered or when her licence was due. N6 stated that this person would not have been capable of ascertaining these matters herself.

N6 was also examined about 29 accesses of three sisters between the period June 1999 and July 2002. N6 could not explain the reason for the accesses, other than that "it could have been for the same thing".

When it was pointed out to N6 that an access on 12 July 2002 related to one of these sisters, who did not reside in his area, N6 stated that the woman was a previous girlfriend who may have requested information about her licence or vehicle over the telephone.

N6 conceded that he improperly used the WAPS e-mail system for unauthorized private purposes. This conduct amounts to a substantial breach of WAPS policies on the use of the e-mail system and was inappropriate behaviour. N6's conduct in respect of computer systems demonstrates an unprincipled attitude toward, and irresponsible treatment of, confidential information.

11.6 ABUSE OF POWER AND OTHER DISHONESTY

Evidence was led of an instance where N6 improperly sought to use his influence as a police officer to encourage another person to breach liquor licensing laws. Further evidence was led in respect of a series of allegedly fraudulent applications for credit from financial institutions. These matters also reflect poorly upon N6's honesty and integrity and capacity to properly enforce the law.

PURCHASE OF BOTTLE OF SCOTCH CONTRARY TO LIQUOR LICENSING LAWS

On 25 December 2002, N6 telephoned a resort in the town in which he was stationed and spoke to one of its employees. He identified himself as a police officer and, although he confirmed with the employee at the liquor licence that it did not permit the sale of liquor to non-guests, he asked if he could come to the resort in order to buy a bottle of Scotch.

N6 gave evidence that he knew his request was contrary to the terms of the liquor licence of the resort, which prohibited the sale of alcohol to non-guests on Christmas Day. He agreed that he had prevailed on the employee to obtain liquor, but he denied that he had sought to circumvent the conditions of the resort's liquor licence by arranging for her to purchase the bottle of Scotch on her account. He stated that he "probably should have thought more about it", but he could not understand that the purchase compromised his ability to enforce the law in respect of liquor licensing.

Although the purchase of a bottle of Scotch may seem a minor matter, it is an example of a lack of ethical standards and integrity expected of a police officer.

N6's response demonstrates a lack of insight into his behaviour, and the seriousness of his conduct. Indeed, N6's remark to the employee of the hotel, "[T]hanks...I owe ya" suggests that he would be faced with a difficult dilemma if in the future he was required to investigate any breaches of liquor licensing by the hotel.

FALSE CREDIT APPLICATIONS

On five occasions during 2000 to 2002, N6 failed to provide truthful information about his financial liabilities in applications to financial institutions for credit.

In October 2000, N6 made an application for finance to the Police and Nurses Credit Society Ltd. A document called a "Fact Sheet", dated 4 October 2000, was completed, purporting to include relevant details about N6's financial affairs. In a column headed "liabilities", credit

cards were listed. However, the balance recorded for each account is "0". Records obtained from other financial institutions reveal that credit card debts amounting to \$27,800 were not recorded as liabilities on the Fact Sheet.

On 1 February 2001, N6 made an application for finance to the Police and Nurses Credit Society Ltd for "general expenses". Records obtained from financial institutions reveal, that at that time, N6 had credit card debts in excess of \$30,000. These were not recorded as liabilities on the Fact Sheet.

On 19 July 2001, N6 made an application for finance to the Police and Nurses Credit Society Ltd to extend his credit card limit. Records obtained from financial institutions reveal that, at that time, N6 had credit card debts amounting to over \$17,000. These debts were not recorded as liabilities on the Fact Sheet.

On each application, N6 signed the Fact Sheet and declared statements contained in it to be true and complete, and that he had "no financial obligations other than those stated in this document". N6 acknowledged the debts referred to were not recorded on the Fact Sheets, but said that he thought he supplied the Credit Society with all relevant information. He claimed that he signed the declaration without reading it.

In August 2001, N6 applied for finance to lease a motor vehicle as part of a salary packaging arrangement. The application was made on a document entitled "Statement of Assets and Liabilities". The Statement contained a heading, "Details of what you owe". Two personal loans were recorded. No entry was made under the heading "credit/store cards". Records obtained from financial institutions reveal that at that time N6 was the holder of a credit card with an outstanding balance of \$9,922. N6 could not explain why this debt was not recorded in the Statement of Assets and Liabilities, other than that his wife was responsible for paying his credit cards and he was not aware a debt was owing.

N6 was also examined in relation to details on the form recorded under the heading "Details of what you own". N6 agreed that he had recorded on the form that he owned property valued at \$105,000. However, he accepted that he only had a 50 per cent share in the property, which had been purchased for \$94,500 in January 2001.

N6 claimed in his evidence that he had not misrepresented the value of the property on the application and, in fact, its value may have risen to \$210,000 from January to August 2001 by reason of renovations to the property. He said he obtained the price of the property from "brochures or something like that".

On 25 March 2002, N6 signed a document entitled "On line lending – Enquiry for consumer lending". The document related to an application by N6 to Bank West for credit, and purported to include relevant information about his financial affairs. In a column headed "Assets", a motor vehicle was listed at a market value of \$34,500. The vehicle referred to was leased by N6 through the Commonwealth Bank of Australia and as such constituted a liability.

N6 gave evidence it was a "mistake" that the loan from the Commonwealth Bank of Australia was not recorded on the form as a liability. He claimed that he did not mean to deceive the Bank and denied having deliberately made a false statement.

N6 engaged in serious misconduct by making false statements on finance applications. The amounts that he understated were substantial and frequent, consistent with a deliberate attempt to conceal his debts and liabilities in order to obtain finance. His explanations that omissions on application forms were due to administrative error or lack of knowledge of his own financial affairs are implausible and must be rejected.

11.7 WAPS INVESTIGATIONS OF N6

In view of the evidence gathered by the Royal Commission in relation to N6's conduct, demonstrating his lack of suitability to be a police officer, it was considered appropriate to examine the information available to, and previous actions taken by, the IAU.

Evidence was given before the Royal Commission of investigations conducted by the IAU into N6. IAU records reveal that information had been received about N6 since April 1997. In particular, serious allegations against him were made whilst he was stationed in a country town. Information was forwarded to the IAU, alleging that N6 associated with prostitutes and OMCG members, organized strip shows, and on one occasion, requested a junior officer to convey his girlfriend to licensed premises in a marked police vehicle. On 10 April 2000, information was forwarded to the IAU alleging that the words "[N6] Gero Cop" and a phone number were discovered in the diary of a person searched by police and found to be in possession of amphetamines. The person was known to be an active drug dealer. Research confirmed the number to be N6's home telephone number.

On 8 June 2000, whilst N6 was still based at the country station, an operation, code-named "Harding", was approved by the IAU, to investigate alleged misconduct by N6. Shortly after the Operation was approved, N6 transferred to another police station. At this time, the investigating officer assigned to the matter was engaged in another major matter and, as a result, the investigation of N6 was temporarily suspended. IAU records reveal that some

intelligence work was conducted during 2000 and 2001. This included placing a "trap" on N6's use of the WAPS computer system, the analysis of call charge records and the financial analysis of his gambling habits. In June 2001, a report was prepared by the IAU in respect of further allegations that N6 had met with three OMCG members. This report noted that his previous supervisors had concerns that he was passing WAPS intelligence holdings to OMCG members.

An IAU report, dated 7 August 2001, revealed that call charge records showed contact between N6 and N1's business and "on going contact" with persons in the adult entertainment industry. This is described as "maybe cause for concern".

On 2 October 2001, a Tasking and Co-ordination Group Business Case Submission in relation to N6 was approved, recommending that covert surveillance be conducted on N6. That surveillance never took place. Indeed, it was not until August 2002 that the matter was reactivated, following N6 having been monitored on surveillance cameras at the Burswood Casino. An IAU inspector advised that the suspension in activity between October 2001 and August 2002 was due to resources being committed to other investigations and because N6 was thought to be in an environment where he was no longer at risk. The inspector stated that the IAU is graduating to more proactive and intelligence-led investigations that require more technical resources and staffing. He observed that, with such resources, the IAU would have had a greater capacity to conduct an investigation into N6.

Another inspector gave evidence that he had a supervisory responsibility for the country police station to which N6 was transferred in August 2000. He said that he was aware that N6 had been transferred from another country police station, but he was not aware that N6 was under investigation by the IAU. The inspector noted that there was no formal procedure that enabled disciplinary files and other paperwork to accompany officers when they transferred from one district to another.

The IAU has been aware of concern about N6's conduct since April 1997. Although an investigation was commenced in 2000, aside from some financial and analytical work, an in-depth inquiry was not conducted due to a lack of resources.

By any criteria, N6 was a high-risk officer. Not only was he the subject of disturbing allegations, but it would have been apparent to the most casual observer that he had a significant gambling problem. Whilst the Royal Commission had the advantage of the capacity to conduct an integrity testing programme, the most superficial investigation would quickly have revealed that N6 was a person of such character that he had no place in the

police service. It is noted with concern that the system was such that N6's supervisors were not informed that there were concerns about his integrity and ethics when he was transferred. Consequently, his behaviour was not closely scrutinized and he had the opportunity to engage in misconduct including substantial abuse of WAPS computer systems. Had his new supervisors been made aware that he was a risk, obvious measures could have been put in place, not necessarily to bring about a result by way of prosecution or disciplinary processes, but possibly to implement managerial measures in an endeavour to counsel him and to save his career.

PART III
HISTORICAL ISSUES

CHAPTER 12

STEPHEN WARDLE

12.1 INTRODUCTION

Stephen John Wardle died in the East Perth Lockup during the morning of 2 February 1988. Serious allegations of police misconduct were raised following his death. Those allegations have persisted in the years that have followed, notwithstanding that there have been three inquiries, including a Coronial Inquiry, into the circumstances of his death. The Royal Commission held public hearings with a view to determining what issues remained and then resolving them, and investigating whether there had been corrupt or criminal conduct by any Western Australia Police Service ("WAPS") officer.

The circumstances preceding Wardle's death were as follows. On the afternoon of 1 February 1988, Wardle and his companions, Brett Gillies and Tania Zuvella travelled to Fremantle, where they consumed alcohol. At about 4.30 pm they went together to a doctor's surgery and obtained prescriptions for Rohypnol, Valium and Doloxene, the latter being a trade name for propoxyphene. The three of them then took the prescriptions to a pharmacist, who dispensed 50 Rohypnol tablets and five ampoules of Valium (benzodiazepine) to Wardle, 50 Rohypnol tablets to Gillies and 50 Doloxene (propoxyphene) tablets to Zuvella. At 6.00 pm that evening, Wardle and his companions were observed at a bus shelter on Canning Highway injecting themselves with a substance. One witness observed Zuvella assisting Wardle to inject himself in both arms.

Wardle and his companions then travelled to the Entertainment Centre in Perth to attend a concert. At the Entertainment Centre, the party met up with Wardle's brother, Bradley Wardle, and another friend, Jason Manners. According to evidence given at the Coronial Inquiry, Zuvella and Wardle were together for a time. They injected themselves with Valium. Wardle had access to Zuvella's bag, in which a quantity of the prescribed propoxyphene tablets was later found. Manners saw Wardle take some tablets from Zuvella's bag and swallow them with beer. These recollections are somewhat vague because, by all accounts, the members of the group were very intoxicated by this time.

At 9.30 pm, Sergeant Ronald Seiler and Constable Mark Mackin arrested Wardle at the Entertainment Centre, having observed his physical condition and having found him in possession of Rohypnol tablets and Valium ampoules. Wardle was placed in a police car by Mackin and taken to the East Perth Lockup for processing. The processing included the completion of a Prisoner Processing Card and an Inventory of Property Sheet, and the

making of an entry in the Occurrence Book. None of the documents recorded that Wardle had possession of Rohypnol tablets or Valium ampoules, although the inventory did list seven codiphin tablets. Seiler telephoned the Criminal Investigation Branch ("CIB") duty sergeant seeking information about the nature of the drugs found in Wardle's possession. The information obtained by him was not recorded, and the officer in charge of the East Perth Lockup, Senior Sergeant William Ramshaw, was not made aware by the arresting officers that Wardle had been found in possession of drugs.

The Rohypnol tablets and the Valium ampoules were retained by Seiler in his personal possession and he took them with him when he finished his shift at 11.00 pm. The drugs should have been recorded in a drug register and retained at the Lockup. What had happened with respect to these drugs was not revealed until some days later, after the death of Wardle had become known.

Wardle remained in the vicinity of the charge bench in the Lockup until approximately 10.40 pm, at which time he was placed in cell 73. Later that evening, Manners, Gillies, Bradley Wardle and Zuvella were also arrested at the Entertainment Centre and processed at the East Perth Lockup. Manners and Gillies were placed in cell 75 and Bradley Wardle was apparently placed in cell 76. Zuvella was not placed in a cell, due to the concerns about her condition held by officers who had been alerted to her possession of prescription drugs. During the night, cell checks were made of each prisoner, including Wardle.

Gillies, Manners and Bradley Wardle maintain that they each raised concerns in relation to the health of Wardle during the night. The officers at the Lockup claimed that they were not alerted to any problems relating to Wardle until a cell check at approximately 5.00 am revealed that Wardle had died.

There have been three previous inquiries into these events. A brief outline of the inquiries assists in identifying which issues have been ventilated previously, and resolved, and which require further examination.

CORONIAL INQUIRY

A Coronial Inquiry was conducted between 15 and 26 May 1988. In the course of that inquiry, evidence was heard from 112 witnesses, including a number of people who had been with Wardle prior to his arrest and were able to describe his condition. They also included a number of people who had seen him being arrested at the Entertainment Centre. A large number of prisoners who had been detained at the Lockup on the night in question were also called. Medical practitioners and forensic experts, who had examined Wardle's

body after his death and conducted tests, gave evidence. In addition, 17 police officers were summoned to attend the inquiry.

A significant deficiency in relation to the Coronial Inquiry was that the 17 officers declined, on legal advice, to answer any questions on the ground that their answers could incriminate them. The officers prepared written statements, which were tendered in evidence, but no attempt was made to examine those officers. This deficiency has, over the years, become somewhat notorious. It has fostered an understandable perception that the officers were seeking to conceal criminal conduct on the part of themselves and their colleagues.

The finding of the Coroner was that Wardle died as a result of the toxic effects of propoxyphene, benzodiazepine (Valium) and alcohol. The Coroner determined that:

Following further tests and examinations, the Chief Forensic Pathologist came to the conclusion that the Deceased died as a result of the combined effects of alcohol, propoxyphene and benzodiazepine, alcohol having been found to be present in the blood and urine of the Deceased, and the latter two drugs having been found in the blood and tissues of the Deceased.

The blood alcohol level of the Deceased at the time of his death was 0.078% and the urine alcohol level was 0.141%.

There is evidence that the Deceased and others had consumed alcohol prior to being taken into custody, that he had injected himself with Valium (benzodiazepine), or had been assisted in doing so, and fifty Doloxene (propoxyphene) capsules had been dispensed to the Juvenile and that twelve "Doloxene tablets" [sic] had been found in the possession of the Juvenile when she was taken into custody. It is clear, therefore, that the Deceased had access to the drugs, which, it is believed, brought about his death.

No Rohypnol was detected in the body of the Deceased. There was no natural disease present nor any evidence of trauma, which would explain the death of the Deceased.

Further evidence was given by a Consultant Physician and Toxicologist who reviewed the available information concerning the death of the Deceased. It was his view that the benzodiazepine had been introduced into the body of the Deceased by a needle and that the propoxyphene had been taken orally. It was also his view that it was likely that the Deceased had taken at least twenty four capsules of Doloxene which represented a fatal dose.

The Coroner commented that:

If a person has taken a potentially fatal dose of propoxyphene, the chances of recovering depends upon early treatment. If a patient suffering from an overdose was delivered to a hospital while breathing then there was a likelihood of survival.

It should be recognized that those witnesses who were called and gave evidence at the Coronial Inquiry did so within four months of the event taking place. For that reason, it was determined not to call those people before the Royal Commission as they had been extensively examined and cross-examined on oath or affirmation at that time. The transcript of the Coronial Inquiry was important to the Royal Commission's inquiry, however, and for that reason it was received as an exhibit. The approach of the Royal Commission was to rely upon and to build upon the evidence that was given at the Coronial Inquiry. The aim was to resolve those matters that remained, either because they were new, or because they related to witnesses who had not previously been examined.

INTERNAL INQUIRY CONDUCTED BY WAPS

In 1989, an internal police inquiry was conducted, arising out of the complaints received from Wardle's mother and step-father, Mrs Rosslyn Tilbury and Mr Raymond Tilbury. The particular allegations that were considered by the internal police inquiry were as follows:

- That the police on duty failed to provide the necessities to maintain Wardle's life;
- That police officers had assaulted Wardle, whilst in custody, as evidenced by bruises on his arm and head, and that the assault led to his death;
- That the body of Wardle, once found dead, had been moved two or three times by police in order to conceal evidence;
- That Wardle had been taken out of the charge room two or three times to be interrogated and assaulted;
- That police had conspired to cover up the assault and murder of Wardle; and
- That the police failed at an early time to inform the parents of the death of their son.

By a letter dated 19 July 1989, Mr and Mrs Tilbury were advised by WAPS that none of their allegations had been upheld.

INQUIRY OF PARLIAMENTARY COMMISSIONER FOR ADMINISTRATIVE INVESTIGATIONS

On 16 October 1989, Mrs Tilbury complained in writing to the Parliamentary Commissioner for Administrative Investigations ("the Ombudsman"), concerning her dissatisfaction with the internal investigation conducted by the police. The Ombudsman conducted an investigation, over 15 hearing days, between 2 February 1990 and 11 April 1990. Those hearings were held in private, and only the witnesses, their legal representatives and

members of the Ombudsman's Office were present. The 17 officers who had declined to give evidence before the Coronial Inquiry gave evidence on oath before the Ombudsman. The Ombudsman produced a report that was tabled in Parliament. The report dealt with the specific allegations that had been raised by Mrs Tilbury, which closely reflected those that were the subject of the WAPS internal investigation.

In relation to the allegation that Wardle had been assaulted in custody, which was said to be evidenced by bruises on his arm and head, the Ombudsman reviewed the evidence, and interviewed the forensic pathologists concerned. In his report, the Ombudsman noted:

However, no-one on the information before me, witnessed any assault on Stephen Wardle while he was in police custody. All officers interviewed denied that any assault took place. The medical evidence before me does not support the allegation, and I do not sustain it.

In relation to the allegation that Wardle was murdered, and that there was a conspiracy to hide that fact, the Ombudsman concluded:

Stephen Wardle was not murdered. He died as the result of the toxic effects of propoxyphene, benzodiazepine and alcohol. There is no evidence to support an allegation that Stephen Wardle was beaten.

In relation to the suggestion that Wardle had been moved from the cell in which he had originally been placed, the Ombudsman found:

I have no basis to say that Stephen Wardle was taken out of the cell in which he was originally put at any time prior to or after his death until his body was officially removed. On the evidence before me there is nothing to suggest that Stephen Wardle's body was handled in an improper manner. I do not sustain this allegation.

The Ombudsman considered the question as to whether the fact that drugs were found in Wardle's possession at the time of his arrest should have alerted the police to the need to take particular care in terms of assessing his health, and in observing him whilst he was in police custody. In relation to those issues the Ombudsman concluded that:

I am unable to determine whether the arresting officers and/or other afternoon shift officers on duty had actual knowledge that Stephen Wardle may have been affected by drugs.

The Ombudsman made the following observation with respect to the failure of the arresting officers to recognize that Wardle had taken drugs, and therefore had not passed that information on to the officers at the Lockup:

The information might then have been available to the night shift officers so that greater care could have been taken with the observation of Stephen Wardle's condition during the night. Had this been done, Stephen Wardle may not have died.

In relation to the performance of cell checks, the Ombudsman concluded that Wardle, being a person believed by the officers to be heavily intoxicated, had been left for too long a period without being aroused and that the nature and extent of the inspections of Wardle were inadequate in the circumstances. The Ombudsman observed that, if proper attempts had been made to arouse Wardle, his condition might have been recognized and medical assistance obtained.

As a result of his inquiry, the Ombudsman made a number of recommendations, one of which was that a permanent nursing post be immediately established at the East Perth Lockup and that it be staffed 24 hours a day by qualified nurses.

In relation to an allegation that records had been altered, the Ombudsman found that there was some cause for concern, and recommended that the use of correction fluid be discontinued. He noted that it was inappropriate, and that the practice did not comply with the existing standing orders of the Commissioner of Police, which required that any alterations be ruled out, but that the original entry should remain legible.

In his general comments, the Ombudsman said:

During my interviews with the Complainants, they advanced many theories and made many allegations against police officers relating to their son's death which were without substance. In my view, (a view shared by both Professor Hilton and Dr Pocock), there is every indication that this resulted from an exacerbation and transference of the Complainant's natural grief beyond the actual cause of death.

Notwithstanding this, I hold the view that the death of Stephen Wardle was an unnecessary death in custody. It might well have been avoided if there had been in place in the Lockup a full-time nurse, a better system of inspections of detainees and increased awareness on the part of the officers.

Despite the apparent thoroughness of the Ombudsman's investigation, the report was subjected to some criticism, because the hearings had been conducted in private. This constraint was imposed upon the Ombudsman by ss. 19 and 23 of the *Parliamentary Commissioner Act 1971*. Concern was also expressed regarding the extent to which the evidence of the 17 officers had been tested, and as to the inability of Mr and Mrs Tilbury to cross-examine witnesses through counsel.

AMNESTY INTERNATIONAL

On 17 November 1996, Amnesty International published a report entitled “Too Many Open Questions: Stephen Wardle’s Death in Police Custody”. This report suggested that there were still a number of questions which should be answered at a public inquiry. The report raised the following outstanding issues:

- Whether there existed an eye witness who had not been examined;
- The fact that police records state that Wardle had “no visible injuries” at the time he was placed into his cell but that the post-mortem report noted that there were a number of bruises and abrasions to his body;
- Whether the family physician was excluded from the post-mortem examination;
- The failure to respond to the concerns raised by other inmates as to the state of Wardle’s health;
- The failure of the police properly to record drugs found in the possession of Wardle at the time of his arrest and why the drugs were never produced at previous inquiries;
- The reason for alterations to the police records at the Lockup;
- Whether Wardle’s body was removed from one cell to another cell after his death; and
- Whether photographs have been concealed and why this issue has never been examined.

The Royal Commission endeavoured to distil from previous inquiries, and from further information that has been obtained since the other inquiries were conducted, the salient allegations and issues for public examination. These allegations and issues are as follows:

- Whether police officers contributed to the death of Wardle, either by providing him with, or by administering, the drug propoxyphene, which resulted in his death;
- Whether police officers assaulted Wardle, either at the time of his arrest or at the East Perth Lockup, and whether the assault materially contributed to the death of Wardle;
- Whether police officers concealed and falsified evidence by moving Wardle’s body in an effort to delay disclosing that Wardle had died, and by amending and falsifying documents which recorded his incarceration, in order to conceal the circumstances of his death;

- Whether evidence was destroyed in order to frustrate the proper examination of the circumstances of the death. There have been allegations that photographs of an injury, and body samples, were destroyed. In particular, liver and urine samples were not available to an independent examiner who was engaged to conduct further tests. The inference is that evidence was removed or destroyed in a deliberate attempt to hide the true circumstances surrounding the death of Wardle;
- Whether the officers who were required to ensure the welfare of prisoners at the Lockup failed in their duty of care in respect of Wardle, that is, whether the officers neglected signs that Wardle was severely ill as a result of taking drugs, other than alcohol, and thereafter failed to respond appropriately to the warnings given, both by a Justice of the Peace and by other prisoners who held concerns as to Wardle's state of health; and
- Whether the 17 police officers declined to give evidence at the Coronial Inquest because they wished to conceal the true circumstances of the death.

12.2 ALLEGATION OF UNLAWFUL ADMINISTERING OF PROPOXYPHENE

OVERVIEW

It has previously been determined that Wardle died from propoxyphene and alcohol intoxication. That finding is not a matter in dispute. However, the quantity of propoxyphene, when it was taken and whether the drug was taken orally or intravenously by Wardle, have been questioned by Mr and Mrs Tilbury. Propoxyphene is a synthetic narcotic analgesic that is normally prescribed for pain relief, with its primary effect being in the brain. On 1 February 1988, Zuvela, whilst in company with Wardle, had gone to a pharmacy and obtained 50 propoxyphene tablets on prescription.

It is apparent that Wardle had access to propoxyphene on the evening in question. However, an allegation was made that Wardle could have been injected with a substantial amount of propoxyphene against his will while he was incarcerated at the East Perth Lockup. A consideration of this allegation requires a comprehensive outline of the medical evidence that addresses various examinations and tests conducted immediately after death, and examinations and tests conducted at a later period, pursuant to requests made by members of Wardle's family.

MEDICAL EVIDENCE*JOHN MILLAR NAPIER HILTON*

Professor Hilton, an Associate Professor of Forensic Pathology at the University of Sydney, and the Director of the Department of Forensic Medicine at Glebe, was the Chief Forensic Pathologist in Western Australia at the time of the death of Wardle. Professor Hilton attended at the East Perth Lockup at 6.00 am on 2 February 1988 to conduct an initial examination of Wardle's body. He subsequently conducted the post-mortem examination and prepared the written post-mortem report.

Professor Hilton expressed the opinion that Wardle's cause of death was the combined effects of propoxyphene, alcohol and benzodiazepine (Valium). In respect of the propoxyphene, there was a reading of five milligrams per litre in Wardle's blood, and 33 milligrams per litre in his liver. Propoxyphene was also found in his stomach and in his small intestine, which indicated to Professor Hilton that propoxyphene had been taken orally.

Propoxyphene is not a drug of which Wardle was found to be in possession when he was arrested by Seiler and Mackin. Professor Hilton expressed the opinion that, if Wardle had ingested propoxyphene prior to his arrest at 9.30 pm, it was possible that death occurred between 2.00 am and 5.00 am on the following morning. Professor Hilton noted that the unusually large quantity of urine present in the bladder tended to indicate a long period of fairly profound coma or unconsciousness prior to Wardle's death. Whilst the lividity that was observed was consistent with the body having been in the same position for some time, it was not possible for Professor Hilton to provide a more precise estimate, given that the onset of lividity is quite variable. Lividity is the pooling of blood in the lowest parts of the body following death. It can have the appearance, to a lay person, of bruising, and is considered later in that context.

Professor Hilton gave evidence that, by reason of the rigor mortis being generalized and very well established, it was likely that death occurred several hours prior to his initial examination.

Professor Hilton noted that whilst there were petechial (pin point) haemorrhages on the left upper eyelid, the limited distribution of these haemorrhages indicated that there had not been physical asphyxiation from an external source, but rather that the symptom was consistent with death resulting from respiratory depression caused by an overdose of propoxyphene. Professor Hilton's evidence was that the minor bruising and abrasions were not serious, and they were not suggestive of any assault.

DEREK ALAN POCOCK

Dr Pocock, a former Senior Forensic Pathologist in Western Australia, now practising on a locum basis throughout Australia, was requested by Wardle's aunt to review the post-mortem report prepared by Professor Hilton. Dr Pocock, having conducted a review, though not having had the opportunity to inspect the body of Wardle, concluded that the cause of his death was primarily acute propoxyphene poisoning, with probably some added complication resulting from the alcohol and perhaps a small amount of Valium. Dr Pocock expressed the view that the propoxyphene had been taken in tablet form, and with the levels of propoxyphene being five times the minimum fatal level, there would have been progressive respiratory depression as the mechanism leading to death. Dr Pocock formed the opinion that the propoxyphene was taken orally, due to the presence of that drug in the stomach. He noted that, due to the oral administration of the propoxyphene, there would be a period of some hours between ingestion and death. The estimated time of death, being between 2.00 am and 3.00 am, was considered by Dr Pocock to be consistent with an oral ingestion of propoxyphene prior to arrest. The estimated time of death was based upon Professor Hilton's observation of the presence of rigor mortis, lividity, and to some extent, the photographs. Dr Pocock agreed that estimating the time of death is a very variable skill, "if it is a skill at all", he added. He did not agree with Professor Hilton's estimate of the time of death. He said that if death had occurred at 5.00 am, and Wardle had been found dead at 6.00 am, it would be a remarkably speedy onset of rigor mortis. He conceded that it would not be unheard of, but that it would be most unusual.

BRYAN SMITH FINKLE

Dr Finkle is a forensic toxicologist, who has practised as such since 1956. He was formerly a Professor at the University of Utah Medical Centre in the United States of America. He now has a courtesy faculty post at that university. Dr Finkle conducted a review of the relevant medical reports, including the post mortem report, at the request of Mr and Mrs Tilbury. He prepared a report dated 27 November 1990.

In his report, Dr Finkle expressed the opinion that, having reviewed all the relevant documents, "it is clear that Stephen Wardle's death was caused by propoxyphene and alcohol intoxication. The concentration of diazepam (Valium) in his blood and liver was not toxicologically significant, but would have some additive effect in combination with the propoxyphene and alcohol". Dr Finkle expressed his opinion that the only additional post-mortem analytical toxicology that might add to the findings would be to determine the concentrations of propoxyphene metabolites, especially norpropoxyphene, and the metabolite of diazepam, being nordiazepam, in the blood, liver and urine of Wardle.

Metabolites are produced in the body and are the breakdown products of the parent drug. Dr Finkle noted that the “concentration of these metabolites relative to the parent drugs might permit some interpretation regarding the time of ingestion of the drugs and whether it was an acute single injection or multiple ingestions over time”.

On 4 March 1992, Dr Finkle was provided with a sample of the brain tissue of Wardle from the Western Australian State Mortuary Forensic Department. The brain tissue was analysed for propoxyphene and its principal metabolite, norpropoxyphene. Dr Finkle, in his report, dated 29 June 1992, found that the brain tissue contained 5.2 micrograms per gram of propoxyphene, but that no norpropoxyphene had been detected. This result caused Dr Finkle to express the opinion that “these results confirm that the deceased died from an acute overdose of propoxyphene”. He went on to say that “the absence of the metabolite nor-propoxyphene strongly suggested that the drug was ingested shortly before death, and that the dose was a large single amount and could have been injected, rather than taken orally”.

Dr Finkle’s conclusion was based upon an assumption that, if propoxyphene had been orally ingested it would have risen to a toxic level over time as it was digested, and after having passed into the bloodstream and through the liver, where it is metabolized. He also assumed that the metabolite would be detectable in a brain sample stored for several years. Conversely, he assumed that, if a toxic amount of the drug were injected into the bloodstream, it could cause death before there was time for detectable quantities of the metabolite to be produced. At the time he advanced his opinion, Dr Finkle was unaware that tests had been conducted on Wardle’s urine and liver samples by the Chemistry Centre of Western Australia in 1988.

Dr Finkle was provided by the Royal Commission with the results of mass spectrometry testing undertaken on samples taken from Wardle’s body shortly after the post-mortem examination. Mass spectrometry is a technique that allows the specific identification of components of a fluid. The mass spectrometry tests established that propoxyphene metabolites were present in the urine and liver of Wardle.

Dr Finkle gave evidence at the Royal Commission hearing by video link from the USA and he accepted that, given that propoxyphene metabolites had been produced, it was established that some significant period of time had elapsed between the ingestion of the propoxyphene and Wardle’s death, that is to say, the presence of metabolites indicates that the propoxyphene had been in the blood for a sufficient period to allow it to metabolize in the liver and kidneys. Furthermore, Dr Finkle agreed that the fact that there was

norpropoxyphene in the urine and liver samples tended to indicate that the propoxyphene had been taken orally and had not been injected.

In addition, Dr Finkle accepted that the finding of a Toxicology Report dated 2 March 1988, that there were 22 milligrams of propoxyphene in the stomach and 7.4 milligrams in the small intestine, was also strongly suggestive that the drug entered the body orally rather than by intravenous injection.

The discrepancy between the presence of norpropoxyphene in the liver and urine, and its absence in the preserved brain sample was, in part, explained by subsequent testing conducted by the Chemistry Centre of Western Australia. Mr RC Hansson and Dr CT Cooke gave that evidence.

ROBERT CHARLES HANSSON

Hansson is the principal chemist in charge of the toxicology section of the Forensic Science Laboratory at the Chemistry Centre of Western Australia, formerly the Government Chemical Laboratories. Hansson personally conducted the original toxicology tests on the samples obtained from Wardle's body. The purpose of conducting toxicology tests is to identify the presence and quantity of drugs to assist in determining the cause of death.

He confirmed that the amount of propoxyphene in the samples was conclusive that propoxyphene, together with alcohol, was an overwhelming contributing cause of death. Hansson confirmed that, the fact that the toxicology tests showed the presence of norpropoxyphene in the urine and liver, indicated that there had been a process of metabolism in the body.

Hansson was subsequently requested to conduct further toxicology tests, which required an examination of ten preserved brain samples from deceased persons who were known to have had propoxyphene and its metabolite norpropoxyphene in their bodies at the time of death. The Chemistry Centre of Western Australia had preserved the ten samples by immersing them in formalin, being the same substance in which the brain sample of Wardle was preserved. Two of the samples were control specimens, with low to undetectable amounts of propoxyphene. The other eight samples, including the sample from Wardle, tested positively for propoxyphene; but there was no trace of norpropoxyphene. Hansson confirmed that norpropoxyphene should have been present, and by way of explanation, postulated that the norpropoxyphene had reacted to, or had leached out into, the formalin.

CLIVE TREVOR COOKE

Dr Cooke has been the Chief Forensic Pathologist in Western Australia since 1991. Dr Cooke considered that Dr Finkle's opinion was based on two assumptions, the first being that norpropoxyphene could be detected in brain tissue that had been preserved in formalin and the second that the ratio, if it were detected as between the norpropoxyphene in brain tissue and in other tissues, for example, liver tissue, it could assist in establishing the time when propoxyphene was taken. Accordingly, Dr Cooke arranged for the testing of the samples by Hansson, referred to earlier.

Dr Cooke considered the results of the testing conducted by Hansson and suggested that the explanation for the absence of norpropoxyphene in the brain samples may be a chemical change caused by exposure to formalin. The absence of norpropoxyphene in Wardle's brain sample was entirely consistent with the situation in respect of other persons who were known to have died from orally ingested propoxyphene poisoning. Accordingly, it was not possible to draw any conclusion as to the manner in which the propoxyphene was given from the absence of the metabolite in the brain sample. Nor was it possible to draw any inference as to the time of death from such absence.

DAVID ANTHONY JOYCE

Dr Joyce, a toxicologist employed at the Western Australian Centre for Pathology and Medical Research, prepared a report in 1988 for Mr and Mrs Tilbury. Dr Joyce expressed the opinion that the amounts of propoxyphene present in the stomach were consistent only with the taking of the drug orally. Dr Joyce noted that, whilst small amounts of propoxyphene were found in tissue adjacent to injection sites on Wardle, the concentrations were congruent with concentrations in other tissues, and further, that there was not present the gross elevation that sometimes identifies an injection site. There was nothing, therefore, to indicate that the injection sites were consistent with the injection of propoxyphene. The obvious explanation for the injection sites was that they were caused by the intravenous injection of Valium.

Dr Joyce confirmed that it was extremely difficult to produce a soluble solution from the particular preparation of propoxyphene (Doloxene tablets) that had been available to Wardle, and that he had never encountered a case of that drug being injected.

Dr Joyce expressed the opinion that it was entirely plausible for a person, such as Wardle, who had the determined amounts of propoxyphene and alcohol in his blood, to have completed ingestion by 9.30 pm and to have died sometime between 2.00 am and 5.00 am

the following morning. The level of norpropoxyphene was not considered a factor that assists in determining the time between ingestion and death unless the liver, blood and urine are entirely free of norpropoxyphene, which may then indicate that the drug was given intravenously and that the person died within minutes. That, however, was not the case here. Dr Joyce's estimate was that Wardle consumed between 12 and 24 capsules and that the drug, being intrinsically toxic, is likely to have produced respiratory depression resulting in death. Dr Joyce indicated that this was consistent with the other known facts.

OLAF HINO DRUMMER

In 1995, Mr Tilbury requested Professor Drummer, a professor of forensic medicine at Monash University, to examine the brain samples of Wardle and to express an opinion with respect to the death of Wardle. Professor Drummer formed the opinion that the absence of norpropoxyphene in the preserved brain sample was probably uninterpretable. He was of the view that any concentration of norpropoxyphene was likely to have been lowered, either because of leaching out from the brain into the formalin, or from a slow chemical decomposition or both. Professor Drummer also suggested that the brain may not absorb the same levels of the metabolite as other organs of the body, due to the brain having features that, in many ways, hinder the entry of complex chemical substances.

As he described it, in the case of Wardle, the post mortem interpretation of drug toxicity was dependent on a number of factors. These included an interpretation of blood and other tissue results measured relatively shortly after death, and a brain result produced some four years after death in formalised tissue.

Professor Drummer expressed the opinion that the total of 29 milligrams of propoxyphene found in the stomach and intestine, whilst not entirely excluding the possibility of intravenous consumption, does strongly indicate that there was oral consumption.

When first retained by Mr Tilbury, Professor Drummer had been told that Wardle was taken into custody at 8.30 pm and that, when taken to his cell at 10.40 pm, he had been sufficiently lucid to ask why his shoes has been removed. Given the quantities of propoxyphene ingested, Professor Drummer said that it would be his expectation that if the tablets had been taken prior to 8.30 pm, the effects of the drug would have been at their maximum by 10.40 pm and that such effects should have been readily observable. This was relied upon by Mr Tilbury as being an indication that the fatal dose of propoxyphene must have been administered after Wardle was taken into custody.

To the extent that this was based upon apparent lucidity at the time Wardle's shoes were removed, the evidence is somewhat vague. In fact, other evidence of Wardle's condition while he was waiting on the charge bench (between 9.50 pm and 10.40 pm) described him as being incoherent and trance-like. This suggests that he had, in fact, begun to display the effects of propoxyphene. However, it should be noted, several expert witnesses had said that these effects were very like those produced by alcohol, and probably to a lay person were indistinguishable. On this basis, it would be unsafe to assume that, at 10.40 pm, Wardle was "lucid" in the sense that he was not showing any signs that could indicate propoxyphene ingestion.

There was clear evidence, in any event, which showed that Wardle was taken into custody at 9.30 pm (rather than 8.30 pm) and that he arrived at the Lockup at 9.50 pm. When giving evidence, Professor Drummer said that this made a difference to his earlier expressed opinion. He had discounted the possibility that Wardle could be lucid at 10.40 pm if he had taken an overdose of propoxyphene at or before 8.30 pm. However, if the overdose was taken at or before 9.30 pm, as the evidence indicated was possible, he accepted that Wardle may not have absorbed enough of the drug to have the maximum observable effect. Accordingly, the evidence was consistent with an oral ingestion of propoxyphene at a time prior to arrest.

ANALYSIS OF EVIDENCE

The Royal Commission undertook a comprehensive examination of all available medical evidence. The only reasonable conclusion that is open on all the medical evidence is that Wardle died from the combined effects of propoxyphene, alcohol and benzodiazepine, and that the propoxyphene was taken orally by Wardle. The allegation that Wardle received the propoxyphene intravenously while in custody is without any foundation. Professor Drummer was of the opinion that the benzodiazepine concentrations were consistent with the therapeutic use of Valium, or a similar medication, and that significant toxic effects resulting from it were unlikely.

Dr Finkle initially gave evidence that it was open to conclude that Wardle had received one large dose of propoxyphene intravenously. After considering the toxicology reports, however, Dr Finkle resiled from this conclusion. That is understandable. The medical evidence conclusively determines that Wardle took the propoxyphene orally and that it was clearly open to find that the drugs were taken prior to his arrest at 9.30 pm. Unfortunately, Dr Finkle did not initially have all the available information. There is no basis for any allegation that police officers were responsible for administering the drugs that caused Wardle's death.

12.3 ALLEGATION THAT WARDLE WAS ASSAULTED BY POLICE OFFICERS

OVERVIEW

At the Coronial Inquiry, a witness gave evidence that, at the time of Wardle's arrest, he observed Wardle's head coming down towards the top of the police car and then appearing to rise quickly, leading the witness to believe that his head had come into contact with the door of the police car. He went on to say that he could not be sure that he saw Wardle's head hit the door. The Royal Commission examined witnesses to determine if any such contact had been made and, if so, whether it was inadvertent or a deliberate assault. The allegation of the striking of the head is also of significance, given that the contact may serve to explain a large bruise that Professor Hilton found on Wardle's head.

In addition, allegations were made that police officers had assaulted Wardle at the Lockup. In determining whether Wardle had been assaulted, the Royal Commission received evidence from Professor Hilton and examined all relevant police officers.

In particular, an allegation was made that, at the time of processing Wardle, one officer had said to him, "Do you want some more?". Further, that at the time of his processing, Wardle was taken into another room and assaulted, so that the officers could obtain information concerning the drugs found in his possession. Given that the arresting officers, Mackin and Seiler, processed and interviewed Wardle, their testimony is of most significance. However, all officers present, prior to taking Wardle to the cell at 10.40 pm, were examined before the Royal Commission and denied that Wardle had been assaulted at the Lockup.

MEDICAL EVIDENCE AS TO THE POSSIBILITY OF AN ASSAULT

Professor Hilton gave evidence that there was no indication, apart from a bruise on his scalp that Wardle may have been subjected to an assault. He confirmed that there was no evidence of any significant bruising consistent with an assault to the facial area. Some concern had been aroused by the purplish colour and bloated appearance of Wardle's face, back and buttocks in the post-mortem photographs. Professor Hilton pointed out that this had been caused by the onset of lividity and not by any external force. As already explained, lividity is a consequence of the settlement of blood to the lowest available point after death. It is commonly mistaken for bruising by those unfamiliar with it. An examination of the internal organs of the body indicated clearly that there was no evidence of external trauma.

Professor Hilton confirmed that his post mortem report notation that there was minor bruising, abrasion and scarring of the legs, knees, the dorsum of the right foot, and the sole of the left foot, was not indicative of an assault. Rather, the bruising was consistent with normal, vigorous day-to-day activities. Mrs Tilbury has referred to a split lip, however, no inquiry as to a split lip is referred to in the post-mortem report, nor is it apparent from the post-mortem photographs.

Professor Hilton did, however, observe a substantial bruise, some 6 centimetres x 3.5 centimetres in dimension, that was located towards the top of Wardle's head, and was only a matter of hours old at the time of death. The bruises were consistent with the head coming into contact with a fairly straight, or flat, surface. The injury, whilst possibly consistent with the head coming into contact with an open car door, was equally consistent with other causes. Significantly, Professor Hilton concluded that there was no injury to the skull or to the brain, and that the bruise had not contributed materially to the death of Wardle.

Consistently with his normal practice, Professor Hilton re-examined the body of Wardle on 3 February 1988. He then noted two fresh bruises, less than one centimetre in diameter, in the deep layers of the scalp in the right frontal region adjacent to the hairline. Professor Hilton accepted that the bruises were also possibly consistent with Wardle coming into contact with a car door, although the injuries were equally consistent with a number of other potential causes.

With respect to Mrs Tilbury's statement that, having attended at the mortuary the day before, she had observed a large swelling on the left-hand side of the base of Wardle's skull, being the size of half a tennis ball, Professor Hilton confirmed that he had not made any such observation. His evidence was that, if such a swelling had been a bruise, it would have been obvious to him, and it would have been recorded by him. Professor Hilton was not able to account for Mrs Tilbury's observations, other than to observe that there is a general redistribution of fluid in the blood vessels following death that could have been mistakenly assumed by Mrs Tilbury to be a swelling caused by an injury.

Professor Hilton acknowledged that, during the post-mortem examination, he had noted "some bloody froth issuing from the nose and mouth". This was the consequence of a pulmonary oedema. The fluid had come up the air passages and was emerging from the bodily orifices. Professor Hilton gave evidence that this symptom was observed very frequently in people dying from the inappropriate use of drugs. In particular, a propoxyphene overdose would cause death by respiratory depression, a by-product of

which would be the gradual accumulation of blood and fluid in the lungs. The presence of blood in the lungs in this case did not indicate any physical trauma.

Professor Hilton also discovered numerous puncture wounds on the body of the deceased. Some of the wounds appeared to have been made hours before death, and others were somewhat older and appeared to be healing. They had been made within days of Wardle's decease. The number, location and appearance of the wounds indicated that there had been a somewhat crude, inexperienced attempt at an injection. However, there was no other evidence that Wardle was an habitual user of intravenous drugs.

ASSAULT AT THE TIME OF ARREST

Seiler and Mackin commenced duties at 3.00 pm on 1 February 1988. At approximately 9.30 pm Seiler and Mackin were conducting a foot patrol near the main entrance to the Entertainment Centre, where they both observed Wardle, who was described as being "in an advanced stage of intoxication". Seiler formed the opinion that Wardle, given his level of intoxication, should be arrested primarily for his own safety and protection. A search of the body of Wardle located a foil of Rohypnol pills and some ampoules of Valium. This reinforced Seiler's decision to arrest Wardle.

Both Seiler and Mackin walked Wardle towards the police car that was only a short distance from the point of apprehension. Seiler denied that any physical force was used in order to take Wardle to the police car, other than an arm to guide him. Upon arriving at the police car, Seiler recalled observing Mackin placing his hand on the top of Wardle's head and pushing his head down at the time of Wardle getting into the police car. Seiler denied that Wardle's head made contact with the car.

Mackin gave evidence that he placed his hand on Wardle's head to guide his head into the car so as to avoid possible injury, and that Wardle's head did not strike the car upon entry. Mackin denied that Wardle had been assaulted at the time of his arrest with the only other "touching" involved being to hold Wardle's arm to guide him to the police car at the Entertainment Centre.

ASSAULT AT THE STATION

After their arrival at the East Perth Lockup, Mackin escorted Wardle to a small interview room, G24, in order to complete the P18 Apprehension Information Form. Mackin confirmed that he obtained the personal details from Wardle, with no other person being present. Mackin denied that Wardle was screaming during the taking of his personal particulars. He

said that Wardle was placid and was standing in the room with his arms folded, propped up against a corner of the room. Mackin did not hear any officer saying "Do you want some more" and he denied either committing or observing, any assault on Wardle.

In the meantime, Seiler had been seeking information about the prescription drugs Wardle had taken from him at the Entertainment Centre. Seiler said he was unsuccessful in those inquiries and he rejoined Mackin and Wardle in the room G24. The three of them then returned to the area in front of the charge counter. It is noted that Seiler must have been in error in believing that Wardle had been taken to room G8.

Seiler accepted that, initially, Wardle had declined to sit down on the bench facing the charge counter. The bench was described by Seiler as being wide. He said that "some force had to be used. Not undue; just basically downward pressure on his shoulders to get him down onto the bench". He went on to say that he had not pushed Wardle in the chest, and certainly not with a great degree of force. Seiler denied ever saying, or hearing an officer say, "Do you want some more?". He denied committing or observing any assault upon Wardle.

Dean Fletcher was arrested at the Entertainment Centre for street drinking between 8.30 pm and 9.00 pm on 1 February 1988 and was taken to the charge bench at the East Perth Lockup. Fletcher's evidence was that he had observed Wardle leaving a small room with four or five policemen and, subsequently, a sergeant who must have been Seiler, pushing Wardle four or five times to force him to sit on the bench.

It is not possible to accept Fletcher's evidence that four or five policeman in addition to Wardle were together in the small room. Furthermore, it is unlikely that he was able to see four or five police officers leaving the room G24 from his position. It is inconsistent with his later evidence that he observed Wardle only at the bench area.

In his statement prepared for the Coronial Inquiry, Fletcher expressed the view that "the policeman wanted him to sit down. He wasn't being violent, but he was insistent to get Stephen to sit down". During his evidence at the Royal Commission, Fletcher asserted that the last couple of pushes were over-aggressive and resulted in Wardle's back coming into contact with the wall. The change in Fletcher's evidence from Seiler not being violent to being over aggressive and resulting in Wardle's contact with the wall cannot, on the totality of the evidence, be accepted. The officer, he said, was telling Wardle to sit down. After being processed, Fletcher was taken to a holding cell prior to being bailed and he was released some 45 minutes later.

Ramshaw was the OIC at the Lockup on the shift that was on duty when Wardle arrived. Ramshaw was asked about the likelihood that a person could have been screaming in a room at the Lockup while being assaulted, without being heard. Ramshaw gave evidence that such noise would not only be heard at the charge counter, but throughout the whole building. Constable Gregory Boxshall, who was taking fingerprints at the Lockup at the time of Wardle's attendance, gave evidence that he recalled Wardle sitting on the charge bench. He said that he did not see Wardle being assaulted.

Constable Rodney O'Bree gave evidence that the only touching of Wardle that he observed was when Seiler placed his hand on Wardle when he requested that Wardle sit on the charge bench. Constable Raelene Longden gave evidence that she had not observed Wardle leaving the charge bench and that no assault was observed by her.

ANALYSIS OF THE EVIDENCE

A critical assessment of the evidence reveals that there exists no realistic basis for concluding that Wardle was assaulted at the time of his arrest outside the Entertainment Centre or at the East Perth Lockup. Professor Hilton conducted an examination of the body at the Lockup at 6.00 am on 1 February 1988 and a comprehensive post-mortem examination in the afternoon of that day. Professor Hilton determined that, apart from the bruise on Wardle's scalp there was no other indication of a possible assault.

The bruise on the scalp was consistent with a striking of the head on the door of a car. Both Seiler and Mackin gave evidence that Wardle was placed in the car with due care. Whilst one may speculate whether there was an inadvertent striking of the head of Wardle, the allegations that Wardle was subjected to sustained assaults by officers at the Lockup or elsewhere cannot be upheld. The bruise did not contribute materially to the death of Wardle.

12.4 ALLEGATIONS OF CONCEALING AND FALSIFYING EVIDENCE

OVERVIEW

The Royal Commission examined the various allegations that evidence was fabricated or concealed to protect police officers. An issue which arises is whether the body of Wardle, when discovered by the officers, was moved from one cell to another at any stage and, if so, why such movement occurred, and who authorized it or carried it out. The Royal Commission examined relevant witnesses, not only to determine whether the body of Wardle was moved from a different location, but whether there was some minor movement

within cell 73, prior to the photographer, Constable Steven Pavlovich, attending at the Lockup.

A further issue is the accuracy of the records at the Lockup that are designed to record the personal details of all prisoners, including property in the possession of the prisoner at the time of his or her incarceration. In February 1988, the documentary records used were the Prisoner Processing Card, that was ordinarily completed by the arresting officers, and the entry in the Occurrence Book, that was completed by the Reserve Officer, based primarily upon the information noted on the Prisoner Processing Card. The seizure of a prisoner's property was recorded on a carbonized Property Sheet, which was completed in triplicate.

Various additions and deletions to the documents that recorded Wardle's incarceration have given rise to speculation that officers were involved in a cover-up, after realizing that Wardle had died in his cell. In relation to the Property Sheet, an issue arises as to the complete failure to record the drugs, and the later inclusion of the words, "very intoxicated" on the sheet after it had been completed. Those words appear to have been added later, and it was suggested that the alteration was an attempt to justify the failure of the police on the night to take Wardle to hospital. There is an issue regarding the Prisoner Processing Card and the "whiting out" on the Occurrence Book, in relation to bail. There has been a suggestion that the amount of bail was deliberately increased from what appears to have been the norm of \$20 to \$50. This, it was alleged, was done to provide an explanation for Wardle not having been released from custody earlier.

MOVEMENT OF BODY

Senior Constables Alexander Gibson and David Lucas each gave evidence that Wardle was placed in cell 73 at approximately 10.30 pm, prior to the change in shift which was scheduled for 11.00 pm. The checks of cell 73 conducted during the night are detailed and analysed later. There was no evidence that, during the night, Wardle was moved to another cell. Constables Mark Ridley and George Brouwer, the officers who conducted the cell checks, gave evidence that the person whom they checked in cell 73 during the evening was the same person who was later discovered dead in that cell at 5.00 am on the morning of 2 February 1988.

Professor Hilton gave evidence that he attended the Lockup, and first examined the body of Wardle at 6.05 am on 2 February 1988. The post-mortem report notes that his body was lying on a bed in a cell in the right semi-prone position and that rigor mortis was well established. There was marked suffusion of the face, neck and upper chest. Professor Hilton

confirmed that Wardle was found with his face turned to one side. This had caused some distortion of the soft tissues of the face.

Whilst Professor Hilton accepted that the body might have been moved prior to his attendance, given its lividity, he estimated it had been in the position described for some time. He was not able to provide a precise timeframe for this, because the "onset of lividity is...quite variable".

Sergeant Kenneth Wells gave evidence that, upon being advised of the cell death, he immediately went to cell 73, where he observed Wardle on the bed in a semi-coma position, with his right arm tucked alongside his back and his left arm to the front in a "crouched, crunched" position. Wells said that he had moved Wardle's body within cell 73 to assist Professor Hilton to conduct his examination, and at the conclusion of that examination, Wells returned Wardle to the position in which he was subsequently photographed. Wells confirmed that, whilst there was some minor shifting of Wardle's body on the bed in cell 73, at no stage was Wardle moved between cells. The movement that occurred at the time of the examination is sufficient to explain a line of fluid which, on the photographs of the body in situ, appears to go upwards. It is entirely possible that this fluid flowed out when the body was turned for the purposes of examination, and remained when the body was placed back in the original position.

ALTERATION OF THE PROPERTY SHEET/OCCURRENCE BOOK

The Occurrence Book recorded the name "Stephen John Tilbury" and then the words "also known as Wardle". A previous entry, near the entry of Professor Hilton's name and the time, 6.30 am, was deleted using correction fluid. Constable Christopher Paton confirmed that he had entered the additional information concerning the name of Wardle and that he was relying upon information received from Ridley. Paton also confirmed that the other corrections must have been made by him. In explanation, he considered it possible that he may have made an error in spelling.

With respect to the Property Sheet, it was noted that the blue and pink copies had the words "very intoxicated" next to the entry stating "no visible injuries", yet the yellow copy of the carbonized page did not have such an entry noting the level of intoxication. Constable Jeremy Edwards, who conducted the search and completed the Property Sheet, confirmed that he had originally completed the carbonized form without making the entry "very intoxicated", but prior to leaving his shift at 10.30 pm he checked his paperwork and then entered those words. Edwards confirmed that an entry on the Property Sheet, noting that a prisoner was intoxicated, was normal procedure. He gave evidence that his entries

with respect to the level of Wardle's intoxication, and there being no visible injuries, reflected his observations on the evening of 1 February 1988.

PRISONER PROCESSING CARD – BAIL AMOUNT

The Prisoner Processing Card is ordinarily completed by the arresting officers, and then presented to the Reserve Officer at the Lockup, who enters the information into the Occurrence Book. Wardle's Card recorded personal bail of \$50. A previous entry had been deleted, using correction fluid.

Seiler confirmed that he had made the entries with respect to the bail amount, but he was unable to recall the reason for the amendment. He assumed that the amendment reflected the usual amount of bail that was required at the Lockup. It is to be observed, however, that on that night all other persons arrested for being intoxicated in public had their bail set at \$20.

The issue as to the amount of bail, and whether the amount of bail was increased, has been the subject of unnecessary speculation. The amount of bail had no effect on the ability of Wardle to leave the Lockup. The bail was a personal bail undertaking that required no actual deposit of money. Rather, the amount of money was set at a nominal amount that would be forfeited if the person failed to attend at the subsequent court hearing. A cash deposited bail requirement may affect the ability of a prisoner to depart from the Lockup if the money is not readily available, but that does not apply to a personal bond, which is no more than a promise to pay at a future time in the event of non-compliance with the requirements of the bail bond.

ANALYSIS OF EVIDENCE

It is beyond doubt that Wardle was placed in cell 73 and remained in that cell until his death was discovered at 5.00 am on 2 February 1988. The only evidence of movement that may have taken place was the small amount of shifting required to enable Professor Hilton to perform his initial examination. That movement did not involve shifting the body from the bed in cell 73.

The use of correction fluid had the effect not merely of assisting in correcting the documents, it also obscured the earlier entries. Whilst not undertaken for nefarious purposes, this has led to speculation as to why the entries were changed, and what the previous entries had been. The officers at the Lockup, including the OIC, Ramshaw, claimed that they were unaware of a standing order that any incorrect entry was to be crossed out

by hand so as to be legible, with the correct entry being inserted alongside the original entry. There is no basis in the evidence, however, for concluding that the records were altered to conceal or fabricate evidence.

12.5 ALLEGATION THAT EVIDENCE HAD BEEN DESTROYED OR IGNORED

OVERVIEW

This segment considers allegations that various pieces of evidence that should have been available to assist the inquiry into the death of Wardle, had been destroyed. In particular, it is said that photographs recording evidence of assault have not been produced, and that the liver and urine samples were not available at the time when Dr Finkle conducted his testing. A further issue is whether Mr Geoffrey Waldock, the Justice of the Peace who was present at the Lockup, made entries in a notebook recording his concerns regarding a prisoner and, if so, why the notebook was not produced to investigators or to the subsequent inquiries.

The Royal Commission also considered the request of the Wardle family for their family medical practitioner to attend the post mortem examination, and the failure of that medical practitioner to be informed of the time when the examination was conducted, which led to his not being present. In addition, the Royal Commission considered whether previous inquiries had failed to obtain evidence from a witness who was said to be present on the night, and who, it was suggested, was able to provide relevant testimony.

FAILURE TO ENSURE FAMILY MEDICAL PRACTITIONER PRESENT

Professor Hilton gave evidence to the Royal Commission that he had no recollection of whether he knew at the time of conducting the post-mortem examination that the Wardles wanted their family physician to be present during the examination. Although he did have some recollection of meeting with the family physician after the examination, and discussing it with him, Professor Hilton was certain that he had not misled anyone about the time when the post-mortem was to take place and he expressed the view that he would have welcomed the family physician's presence, as he explained that it was his practice then, and it is his practice now, to have a doctor nominated by the family, or another party, present at the post-mortem.

Former Sergeant Michael Rae, who conducted an internal police investigation into the circumstances surrounding the death of Wardle, was present at the post-mortem examination. Rae gave evidence that the examination was delayed awaiting the attendance

of the Wardle family's physician. Rae recalled that Professor Hilton commenced the examination but only after a delay to allow the family physician further time to arrive. Rae said that he was subsequently advised by his assisting officer, that the family physician had arrived, but had been told by an unidentified person, erroneously, that the post-mortem was going to be conducted on the following morning.

MISSING PHOTOGRAPHS

Professor Hilton recalled that he had asked for the photographer to take a photograph of the bruising on Wardle's scalp. He was not able to say whether such a photograph was taken. He has never seen such a photograph.

Pavlovich, who was attached to the Forensic Branch in 1988, attended at the East Perth Lockup on 2 February 1988, and took a series of six photographs of Wardle in cell 73 and a further 22 photographs during the post-mortem. At the post-mortem, Pavlovich took photographs as directed by Professor Hilton. Pavlovich identified the negatives of all the photographs taken, and confirmed that he had asked for all photographs to be printed. Pavlovich confirmed that no other photographs were taken and all photographs that were taken were properly printed and retained. All of these photographs were produced at the Royal Commission hearing and Pavlovich confirmed that none was missing and no others had been taken.

Rae, who conducted the internal investigation into the death of Wardle, confirmed that, during his investigation, there was no suggestion that any photographs had gone astray.

MISSING JUSTICE OF THE PEACE NOTES

Waldock, the Justice of the Peace on duty at the Lockup on 1 February 1988 gave evidence that he held concerns for a particular prisoner during the night. The nature of Waldock's concerns are outlined and analysed later. Waldock recalled that he made a note of his concerns in his Justice of the Peace notebook and that the notebook was retained at the Lockup. Waldock stated that he went overseas immediately after 1 February 1988 and that, upon his return, he was unable to locate the notebook. He said that he raised this matter with the internal investigators. No mention of the notebook was made by Waldock in his statement taken by the investigators.

Rae gave evidence that at no stage while he was conducting the investigation did Waldock raise with him any concerns with respect to a missing diary or notebook. Rae recalled that Waldock made his statement to the investigators, relying upon what was referred to as the

running sheet. Rae said that Waldock never requested investigators to inquire into a missing notebook or diary.

BLOOD AND LIVER SAMPLES

In November 1990, when Dr Finkle made a request to be given the body samples of Wardle, in order to undertake further tests, he was only provided with brain samples. The liver and the urine samples had been destroyed. Hansson confirmed that, in the normal course, these samples are only kept for six to 12 months before being destroyed, having regard to the limited refrigeration facilities at the Chemistry Centre of Western Australia. According to Hansson, the samples in respect of Wardle were treated in the same manner as other samples taken with respect to other deceased persons.

NEW WITNESS

Another allegation raised was that a new witness was available to provide highly significant testimony with respect to the events at the Lockup on the night of Wardle's death. That person was identified to Royal Commission staff by Mr and Mrs Tilbury as Mr Shane Morrison. The Commission heard evidence from Morrison, who claimed to have been in the Lockup on the night of 1 February 1988 and to have witnessed a person, whom he believed to have been Wardle, being carried by police officers from a cell. He also claimed that he heard choking sounds.

The Occurrence Book, which records the names of all prisoners in the Lockup, indicated that Morrison was arrested on the night of 5 February 1988 and not on 1 February 1988. Other documents conclusively established that Morrison was at the Lockup on 5 February 1988 and not on 1 February 1988. The Occurrence Book entry for the night of 1 February 1988 recorded the name Timothy Morrison whom Morrison identified as his uncle. He also confirmed that he had never discussed the Wardle case with his uncle. Under examination, Morrison accepted that he had not come forward to give evidence previously, because he was unsure that the person whom he observed at the Lockup was Wardle. Accordingly, whatever Morrison believed he saw it could be of no assistance in determining the circumstances of Wardle's death.

ANALYSIS OF THE EVIDENCE

There is no basis for the allegation that evidence was destroyed. All photographs taken by Pavlovich have been accounted for and Hansson gave a full explanation for the existing practice regarding the destruction of blood and liver samples. Given the evidence of Rae, it

is difficult to conclude that Waldock kept a record other than the running sheet maintained by the Justice of the Peace who was on duty at the time. In any event, Waldock was available to be examined regarding the nature of his concern, which he maintained he had entered in his notebook. That concern is considered later.

The failure of the family medical practitioner to attend the post-mortem examination was regrettable, but seems to have been the result of a genuine misunderstanding. It must be stressed that the post mortem examination, whilst conducted in the absence of that medical practitioner, was conducted by an eminent, independent pathologist, Professor Hilton.

The evidence of the new witness, Morrison, was examined in order to determine whether he was able to provide significant evidence. The examination clearly established that Morrison was not at the Lockup at the relevant time and was unable to assist the Royal Commission's inquiry.

12.6 ALLEGATIONS RELATING TO DUTY OF CARE

OVERVIEW

The Royal Commission also examined the quality of the care provided by the police officers at the Lockup and whether concerns raised by other persons, including inmates, were ignored. Consideration was also given to whether any failure to properly record and handle the drugs found on Wardle at the time of his arrest contributed to a lack of appropriate care.

The Royal Commission received evidence from Waldock, the Justice of the Peace, that he raised concerns with respect to a prisoner during the night of 1 February 1988. Accordingly, the Royal Commission examined witnesses to determine the nature of those concerns and for whom they were held. The significant question for the present purposes is whether Waldock was identifying Wardle, or another prisoner.

A further issue is whether the police officers had any knowledge of any connection between Wardle and Zuvela, who was a companion of Wardle and who was subsequently arrested outside the Entertainment Centre. Zuvela, having been found in possession of drugs, was kept under continual supervision due to concerns about her state of health.

An allegation was raised that Seiler, whilst on duty, had been intoxicated by alcohol. In the event that Seiler was intoxicated, a significant question would arise as to what effect, if any, his intoxication had on his ability to undertake his proper role as the arresting officer.

FAILURE TO RECORD DRUGS

Upon his arrival at the Lockup, the processing of Wardle was commenced by Mackin questioning Wardle, and subsequently completing the Prisoner Processing Card. Seiler contacted the CIB duty sergeant to determine the nature of the Rohypnol found in Wardle's possession. Seiler was advised by the duty sergeant that Rohypnol was a drug, similar to morphine, and that it was available on prescription. Seiler did not inform the OIC, Ramshaw, that Wardle had been in possession of prescription drugs. Seiler maintained that he asked other officers whether they knew of the nature of Rohypnol, but that there was no formal recording of possession. In particular, Wardle's possession of the prescription drug was not recorded on the Prisoner Processing Card. Seiler claimed that he now accepts that the possession of the drugs by Wardle was a matter of importance that should have been formally recorded and raised with the OIC.

Seiler claimed that he did ask Wardle on three separate occasions whether he had taken any of the drugs that night and that Wardle had denied that he had taken any drugs. Seiler rejected the suggestion that he had made the inquiries because he had formed the view that Wardle was under the influence of drugs other than alcohol.

Seiler was required to properly record the seizure of the drugs. He failed to have the drugs entered on the Property Sheet and in the drug register, which records all drugs seized. Instead, he placed the Rohypnol tablets in the back pocket of his trousers and retained possession of them on his person after ceasing duties at 11.00 pm. The ampoules of Valium were also retained by Seiler, but he said that he had dropped them in the car park after having left the Lockup that night and that they had smashed. He said he did not report this to anyone at the time, as he knew he would be "in trouble". He said that he forgot that he still had the Rohypnol tablets in his pocket.

Some days later, after Mackin had raised the question of the whereabouts of the seized drugs, Seiler said this caused him to recall the Rohypnol and he then informed his superiors that he had erroneously retained the drugs and, accordingly, that he had failed properly to account for them. An investigation into this matter was conducted, with the result that Seiler received a disciplinary penalty. It is to be observed that it was the propoxyphene which was responsible for Wardle's death and not the Rohypnol or Valium.

With reference to the allegation that was made that Seiler was intoxicated whilst on duty on 1 February 1988, former Sergeant Anthony Lewandowski gave evidence that he had met with Seiler at the "muster" prior to the commencement of the shift, and that he believed

that Seiler was obviously intoxicated. Lewandowski formed the belief that Seiler was so affected, based on Seiler's boisterous behavior and his smelling of alcohol.

Other officers who had contact with Seiler on the night denied that Seiler was intoxicated. Seiler's partner on the patrol, Mackin, maintained that he believed Seiler was acting normally and was not intoxicated. Ramshaw, the OIC of the Lockup, gave evidence that he considered that Seiler was a normal operating police officer who was not intoxicated with alcohol. Seiler also denied that he had been intoxicated. He did concede that he had not gone to his home that night, but had gone to the house of a friend in Victoria Park where he had drunk alcohol. He said that he then went to the house of another friend "around the corner" where he slept on a couch as he did not want to run the risk of driving home whilst he was affected by alcohol.

Ramshaw said that he had not been informed by Seiler that Wardle had possession of Rohypnol or of any other drug. His evidence was that if, as OIC, he was made aware that a prisoner may have taken drugs prior to his arrival at the Lockup, he probably would have made arrangements for the prisoner to be escorted to hospital. Seiler claimed that he had asked officers at the Lockup whether they knew about Rohypnol. Ramshaw himself had never come across it nor, it seems, had any of the officers whom Seiler had asked about it. He had therefore telephoned the CIB Duty Sergeant who was in possession of some information about the drug. He was told that it was a prescription drug and he and Mackin decided to "put Wardle in for drunkenness". He did not consult Ramshaw as to what he should do in the circumstances.

Wells, who commenced his shift as OIC of the East Perth Lockup at 11.00 pm, was not informed that Wardle had been arrested while in possession of drugs. For Wells, that was a deficiency that could not be corrected by checking the relevant documentary records by reason of Seiler's failure properly to note the Rohypnol and Valium ampoules.

CONNECTION BETWEEN THE PRISONERS

Zuvela was arrested at the Entertainment Centre by Lewandowski on the night of 1 February 1988 and was found in possession of drugs including Doloxene (propoxyphene) tablets and Valium, together with a syringe. Lewandowski was concerned about her condition and believed that, as a young female, she may have been at risk. Zuvela was taken to the Lockup and processed by Constable Jane Trinder, who was not made aware that there was any connection between Zuvela and Wardle. No other officer at the Lockup made inquiries of Zuvela to determine if she had been in the company of other persons at the Entertainment Centre. Wells confirmed that he was unaware that Zuvela and Wardle

had been in company earlier in the night and that this connection was only established after the death of Wardle. Accordingly, the drawing of the inference that Wardle may have received and taken prescription drugs from Zuvela earlier in the evening was not a possibility readily apparent to the officers at the Lockup.

Even taking into account her age, the quality of the care given to Zuvela may be contrasted with the manner in which Wardle was processed. Trinder formed the view that Zuvela may have required hospital treatment due to her possession of drugs and, accordingly, Zuvela was kept separate for monitoring purposes. Her mother was contacted, and she came to the Lockup. On her arrival she was advised to take her daughter to hospital, which she did. To some extent this level of care was influenced by the fact that Zuvela was obviously a juvenile. However, had it been appreciated that Wardle was affected by drugs and had he been taken to hospital, there is a real possibility that he may not have died.

QUALITY OF CELL CHECKS

During the night, the cellsman, Ridley, and the fingerprint officer, Brouwer, conducted various cell checks. There was no procedure by which relevant information concerning the prisoners was brought to the attention of the cellsman. In any event, the other officers did not know of Wardle's possession of drugs and accordingly, even had a procedure been in place, the cellsman would not have been informed of the issue. The manner of conducting the cell checks and their quality is of particular concern.

At 1.50 am Brouwer went into cell 73 to check who was in the cell. Brouwer aroused two other prisoners, who identified themselves as Jones and Coley and then he attempted to arouse Wardle, who was lying on his side, by placing his foot on Wardle's hip and gently rocking him. Brouwer gave evidence that Wardle, whilst not opening his eyes, did stir and he was breathing. Given that only the cellsman, Ridley, had the key for the lights in the cell, this inspection was conducted without the aid of those lights, but with some, albeit limited, illumination from the corridor. Brouwer said that he had absolutely no reason to think of Wardle as being other than a drunk person in a drunk cell. He claimed that there was absolutely nothing about Wardle that made him think he was anything more than a person sleeping off a few drinks. Brouwer made a note on the back of the Prisoner Processing Card, "Couldn't be woken".

Whilst Ridley did not then attempt to go into the cell, he appears to have been outside the cell at 2.00 am. He did not make an attempt to arouse Wardle, although he could not see him breathing.

At 2.45 am Brouwer returned to cell 73 and retrieved Jones to make arrangements for his fingerprinting. At that time, Brouwer did not inspect Wardle. He said he did not see anything out of the ordinary.

At 3.20 am Ridley who was essentially relying upon his earlier statement, indicated that, at that time, Wardle was breathing, as his chest was moving up and down. He had one into cell 73 in order to release the prisoner Jones, who was then ready to be bailed.

At 4.00 am Brouwer and Ridley entered cell 73 for a further inspection and, in particular, to see whether Wardle could yet be fingerprinted. Brouwer once more attempted to arouse Wardle, who was still on his side, by again rocking his body by placing a foot on his Wardle's hip. Wardle was not aroused but both Brouwer and Ridley gave evidence that, at that time, he was breathing. For Brouwer, the fact of Wardle not being aroused after being in the cell for nearly six hours did not cause him any concern. For Ridley, it was simply a case of allowing an intoxicated person to "sleep it off". At this time Brouwer did not remember the light being turned on in the cell. His recollection was that the only light was from the corridor. Having failed to arouse Wardle, Ridley and Brouwer left the cell.

At 5.00 am Brouwer and Ridley approached cell 73 to check on Wardle once again. Brouwer, relying upon the natural light and corridor lighting noticed the colouring of Wardle's hand and immediately entered the cell, only to find that Wardle was dead. Brouwer said that Wardle was then in a different position from that which he had been in before. He described it as a dramatically different position. In particular, the skin colouring on his hand was not normal.

Wells gave evidence that he considered that two failed attempts to arouse Wardle indicated a serious problem, but he was not informed of this by the officers conducting the cell checks. There was a suggestion that Wardle may have been dead at the time of the earlier inspections, and that the officers' denials of this were attempts by them to conceal the inadequacy of their earlier checks. However, it is consistent with the medical evidence that Wardle could have been breathing, although not able to be aroused, at 4.00 am, and to have died a short time afterwards.

CONCERNS OF THE JUSTICE OF THE PEACE

Waldock gave evidence that he had observed a sergeant shouting at a prisoner, whom he now believes to have been Wardle. At approximately 10.15 pm, immediately prior to his leaving the lockup, Waldock requested that he be taken to see the prisoner. Waldock was shown a cell, the number of which he was unable to recall. From the outside of the cell,

Waldock recalled looking inside and confirming to his satisfaction that a person inside was the prisoner whom he had previously observed with the sergeant.

Waldock was unable to confirm whether any prisoner was on the charge bench while he was walking past the bench to see the prisoner in the cell. He was asked to consider the evidence of Ramshaw that he had shown Waldock an Aboriginal man in cell 73 and that, at that time, Wardle was still on the bench and had not been placed in a cell until after Waldock had departed. Nevertheless Waldock adhered to his testimony.

Senior Constable David Lucas confirmed that, prior to taking Wardle to his cell, the Justice of the Peace had been taken by him, with Ramshaw, to check on another prisoner in cell 73. That particular prisoner had previously been rowdy, and had been placed in the cell earlier. Lucas gave evidence that, when escorting Waldock to cell 73 in company with Ramshaw, he passed close to Wardle, who was sitting on the charge bench.

Ramshaw confirmed that Waldock had approached him and asked to see a prisoner whom Waldock said he had observed earlier. Ramshaw recalled that, when escorting Waldock to the cells, he passed by Wardle, who was still on the charge bench, and that he asked Waldock whether Wardle was the person whom he wished to see. Waldock answered that he was not. Ramshaw confirmed that Waldock was satisfied, after going to cell 73, that his request to the officers had been met.

CONCERNS OF OTHER PRISONERS

Bradley Wardle, the brother of Wardle, attended the concert at the Entertainment Centre and was arrested some time after the concert had finished. During the early hours of the morning of 2 February 1988, Bradley Wardle recalled waking in his cell and hearing Manners, who was in another cell, calling "Stephen". Bradley Wardle asked Manners why he was shouting and was told by him that Wardle did not look well. Bradley Wardle gave evidence that he then commenced shouting, "What's wrong with him?", "Can you check him?" and "He may be OD-ing". Bradley Wardle claimed that he received no response from the police officers to his call. All officers who were in attendance at the Lockup were questioned at the Royal Commission hearing as to whether they had heard the concerns being raised by Bradley Wardle and others. All the officers gave evidence that they had not heard anything of the sort.

Rae said that, during his internal investigation, sound testing was conducted at the East Perth Lockup to determine whether persons shouting from the cells for assistance could be heard at the charge counter and at all other levels within the East Perth Lockup. The test

demonstrated that anyone calling out from the cell area could be heard “everywhere” in the Lockup, including as far away as the third floor of the building. This does not necessarily mean that the alleged shouting did not occur. It may have occurred, but may have been ignored or dismissed as general rowdiness.

Gillies gave evidence at the Coronial Inquiry that he raised his concerns regarding Wardle with the officer who attended at his cell to arrange for his fingerprinting. The fingerprint records indicate that this officer was Brouwer. Brouwer denied that Gillies had conveyed his concerns to him when he retrieved him for fingerprinting.

Manners said at the Coronial Inquiry that, when he was retrieved from his cell by an officer to have his fingerprints taken, he passed Wardle’s cell. At that time, he grabbed the bars and shouted Wardle’s name and demanded that the officer check on Wardle. Manners recalled that the officer, who was alongside him, expressed his view that Wardle was all right and simply moved Manners towards the area for fingerprinting. Brouwer denied that Manners raised with him any concerns when he retrieved Manners for fingerprinting.

ANALYSIS OF THE EVIDENCE

The conduct of Seiler in failing properly to record the seizure of the drugs or to inform the OIC, resulted in the other officers who were to have contact with Wardle being uninformed regarding the possession of the prescription drugs, and consequently were unable to make an informed decision as to the cause of his apparent illness, other than being intoxicated by alcohol.

The officers did not understand the nature and effect of the substances which had been in the possession of Wardle. Each of the officers who came into contact with Wardle proceeded on the basis that he was simply another young man who was heavily intoxicated by alcohol. Whilst no propoxyphene tablets were found on Wardle, the fact that any prescription drugs were in his possession ought to have alerted the arresting officers to the need to advise the Lockup personnel that particular care was required.

Whether Seiler’s capacity to undertake his duties was affected by alcohol is impossible to resolve. Whilst Lewandowski gave credible evidence to suggest that Seiler was intoxicated, it is not possible to determine the issue due to conflicting evidence given by a significant number of other police officers who dealt with Seiler that night. Nevertheless, it should be said that Seiler’s conduct, by failing properly to record the seizure, and by retaining possession of the drugs, falls well short of what was required of an experienced policeman in the circumstances.

Whilst Wardle was not provided with the level of care necessary, given his physical condition, the officers at the Lockup accorded him the attention that they believed appropriate in all the circumstances. There is no evidence to suggest that the officers deliberately ignored Wardle, or that they did anything to deliberately aggravate his condition. They did not appreciate the signs that indicated Wardle was in need of medical assistance. In this regard, and in fairness to those officers, it should be noted that the medical evidence was that the symptoms of propoxyphene toxicity can be difficult to distinguish from alcohol intoxication, particularly where, as here, both have been ingested.

Whether the other prisoners, including Bradley Wardle, raised concerns, or the extent to which they did so, cannot be conclusively determined. The officers, when asked to consider whether they heard such concerns, denied that those matters were raised, and also confirmed that, if they had been aware that a prisoner was in difficulty, they would have taken immediate action. It is, perhaps, to be expected that this would be said, given what happened subsequently. It is not unusual for inmates in the Lockup to yell out complaints or demands for attention. The sound testing conducted by Rae does tend to support the view that all officers present at the Lockup would have been able to hear any call for help. Even if calls were made, however, the recollections of all persons present may now be affected by the tragic death which followed. How loud or clear any such calls were, and whether they were heard or understood by officers on duty, are matters it is now impossible to resolve.

The cell checks conducted were cursory, and in all the circumstances deficient. However, the officers conducting the cell checks undertook them consistently with the current procedure and according to the standards of 15 years ago. Given that the officers did what they believed to have been required, the procedures at the East Perth Lockup (which is now known as the Perth Watch House) were subsequently reviewed and very considerable changes have been implemented. Those changes include both structural and procedural changes, the latter covering such matters as arrests, the detention of persons in need of medical treatment or who are intoxicated, and the forbidding of the use of correction fluid to erase incorrect entries. It is noted that, whilst a nursing post has been established, it is not staffed on a 24-hour basis as was recommended by the Ombudsman. However, the other procedural changes would appear to cover the immediate problems.

12.7 FAILURE OF POLICE OFFICERS TO GIVE EVIDENCE AT THE CORONIAL INQUEST

At the Coronial Inquest, 16 serving police officers were summoned to attend to give evidence. All of them declined to do so, for the reason that their evidence might have had

the tendency to incriminate them. Another officer was called subsequently and made the same claim, which was acceded to.

The 17 officers each undertook various roles at the Lockup on the night of 1 February 1988. The following table outlines the respective officers and their designated roles.

Name of Officer	Designated Role
Constable Mark Mackin	Arresting Officer
Sergeant Ronald Seiler	Arresting Officer
Constable Alexander Gibson	Reserve Officer –Entering details in Occurrence Book
Constable Gregory Boxshall	Fingerprinting and photographing prisoners
Constable Jeremy Edwards	Assist Reserve Officer – taking details of property
Senior Sergeant William Ramshaw	Officer in Charge of Lockup (to 11.00 pm)
Constable Rodney O'Bree	Bail Bonds Officer – compiling paperwork for Justice of the Peace
Constable Christopher Paton	Reserve Officer (commencing at 11.00 pm) – Entering details in Occurrence Book
Constable Raelene Longden (nee Bartle)	Care of female prisoners
Constable Paul Simpson	Assist Reserve Officer – taking details of property
Constable Jane Trinder	Care of female prisoners
Constable Clayton Cheeseman	Bail Bondsman – compiling paper work for Justice of the Peace
Constable George Brouwer	Fingerprinting and photographing prisoners
Constable Mark Ridley	Cellsman – conduct cell checks
Sergeant Kenneth Wells	Officer in Charge of Lockup (after 11.00pm)
Senior Sergeant Kevin Constantine	Officer in Charge – Central Police Station
Senior Constable David Lucas	Cellsman – conduct cell checks

On a review of the statements of the officers and of the evidence given at the Royal Commission, it is difficult to comprehend how any of the officers could have incriminated themselves if the respective officers at the Coronial Inquiry had given evidence consistent with their evidence in the Royal Commission. Each of them was asked at the Royal Commission his or her reasoning for declining to answer questions at the Coronial Inquiry. All the officers, except one who was on leave at the relevant time, confirmed that they were advised by the same legal practitioner, at a meeting at which all officers were in attendance, that the Coroner had the power to commit any of the officers for trial and had indicated that such a possibility was open, and that, accordingly, all officers should decline to give evidence. All of them followed that advice.

In each case, the officer was called before the Coroner, his or her statement was tendered and the officer then stated that he or she declined to answer further questions. This was

accepted, notwithstanding that any such claim could only ever relate to the officer's own conduct, and not to that of others, and then only in answer to a specific question. There were, accordingly, many questions that could usefully have been asked, to which no valid objection could have been taken. This point was not pressed at the Coronial Inquiry and the impression was left that, by standing together, the officers were able to frustrate the hearing and to protect one or several of their colleagues.

The failure to give evidence at the Coronial Inquiry was a decision that affected the ability of the Coroner to properly conduct the inquiry. The Coroner noted:

The absence of an oral examination of these officers leaves a number of questions unanswered, not all of which may be relevant to the question of the death of the deceased.

Moreover, the failure of the serving officers to give highly relevant testimony led to much public disquiet and speculation as to the events leading up to the death of Wardle, and the possibility that police officers had committed unlawful acts. The years of speculation as to the nature of the events leading to Wardle's death may not have eventuated if the officers had made themselves available for public examination before the Coroner. The failure to give evidence, and the speculation it caused, was no doubt a source of further grief for Wardle's family. A proper disclosure at the Coronial Inquiry would have assisted the Coroner, and may have led to a more decisive resolution for the family. Instead, it was widely assumed that the officers had "something to hide".

The decision not to give evidence was recognized by several of the officers as being a source of much regret. One officer, when asked why he had declined to answer questions at the Coronial Inquiry, said that he had held the wish to answer that question for 15 years, and that it was the most stupid mistake he had made in his police career. All of the officers expressed the view that, at the time, they did not believe that their evidence would have the tendency to incriminate them. All officers confirmed that each was acting on legal advice not to give oral evidence at the Coronial Inquiry, and that, accordingly, the decision of the respective officers must, as a matter of fairness, be judged with that important fact in mind.

CONCLUSION

The passage of time, and its impact upon witnesses and prospective witnesses has inevitably given rise to difficulties, it now being more than 15 years since the death of Stephen Wardle. The Royal Commission has sought to deal with the outstanding issues, which were considered to be of significance in this segment. They have now been

thoroughly examined and tested in the public forum of Royal Commission hearings. The Royal Commission has no authority under its terms of reference to go beyond the determination of whether or not there has been corrupt or criminal conduct by any police officer with respect to the death of Stephen Wardle. The evidence does not sustain any contention that there was corrupt or criminal conduct by any police officer or officers in relation to his death.

CHAPTER 13

ANDREW NICHOLAS PETRELIS

13.1 INTRODUCTION

On 11 September 1995, Andrew Nicholas Petrelis was found dead in an apartment in Queensland. The apparent cause of death was an overdose of heroin. At the time, he was registered in the Witness Protection Programme ("WPP") of the Western Australia Police Service ("WAPS"), due to concerns for his safety pending evidence he was to give at a forthcoming District Court trial in Perth. He had been assigned a covert identity, which was entered into the WAPS mainframe computer system. He had been moved to Queensland in order to minimize any risks from any person in Western Australia who might not wish him to testify at the trial.

Four months prior to Petrelis' death it was known by WAPS that two officers had unlawfully accessed his covert personal and vehicle details on the police computer system. Those officers were former members Murray John Shadgett and Kevin Davy. It was further suspected that, shortly after the accesses, the information was communicated by these officers, directly or indirectly, to persons of interest to law enforcement authorities.

Because Petrelis was registered in the WPP at the time of his death, public speculation has arisen that he may have been murdered and that police may have been implicated. Some of the issues were investigated by the Anti-Corruption Commission ("ACC") but, of course, not in a public hearing. Media conjecture has continued up to the time of the Royal Commission and it was decided that the Royal Commission would examine the matter in a segment of its public hearings. Determination of the cause of Petrelis' death, however, was not the subject of Royal Commission hearings, there being a coronial inquiry in Queensland in that regard which remained incomplete as at the date of this Report.

The Royal Commission hearings were directed at three issues. First, did police officers improperly access and disclose Petrelis' covert details? Secondly, were any such accesses linked to the death of Petrelis? And thirdly, did WAPS fail to take appropriate and timely action in respect of Shadgett?

The third question relates to disciplinary issues involving Shadgett. Prior to the Petrelis related accesses made by Shadgett, the Internal Affairs Unit ("IAU") was aware of numerous alleged past disclosures of confidential information by him to suspected criminals. Internal investigations into those matters and the Petrelis accesses were suspended,

however, as it was believed that such inquiries could potentially compromise ongoing police operations. An investigation by the IAU into the Petrelis accesses did not commence until November 1999, following public disquiet generated by media reports. Although a notice for Shadgett to show cause why he should not be removed from WAPS was prepared, it was never served, and Shadgett was permitted to resign on medical grounds.

These matters raise questions about the management of competing considerations between operational policing and internal investigations, and further, whether in this case the IAU failed adequately to consider alternative means of investigating Shadgett, which would not have compromised operational activity.

13.2 UNAUTHORIZED ACCESS AND RELEASE OF INFORMATION

P2 AND SHADGETT

Shadgett was a police officer for 29 years and seven months. From the time when he joined the Police Force (as it then was) on 12 April 1971, he served at various metropolitan and regional police stations as a general duties officer, including Traffic Branch, Port Hedland, Northam, Carnarvon, Tom Price, Kalgoorlie, Kambalda and Victoria Park Police Stations, the Transport Section and Central and Albany Police Stations.

In 1987, a joint Australian Federal Police ("AFP")/WAPS task force investigated a number of persons in relation to suspected heroin importations. Shadgett was suspected of forming improper associations with the principal targets of that investigation. One of those targets was P2.

In the 1990s, P2 was a Perth speedway and racing car driver and the proprietor of an engine reconditioning and automotive repair business. P2 gave evidence that he knew Shadgett and that Shadgett attended P2's workshop when he was in Perth and helped with repair work on P2's car. Shadgett gave evidence that he first became a friend of P2 over 20 years ago. He said that he attended P2's workshop occasionally, and that he was interested in the sprint cars that were kept there. He also attended the Speedway on Friday nights with P2 and did repair work in the pits.

Between 1992 and 1994, P2 was the principal target of further drug trafficking investigations by the AFP and the National Crime Authority ("NCA"). As part of those investigations, conversations on telephones used by him were intercepted, including a number of conversations he had with Shadgett.

On 3 December 1992 P2 called Shadgett and had the following conversation:

P2: Mate I need some a, ah, info on a guy...the guy's name [named person] ...
MS: What's the rego?
P2: [Car registration number given] ...
MS: Yeah, [address stated] ...
P2: [G]ot any form? ...
MS: [N]othing outstanding, no P 18 details or no record ...
P2: Thank you sir.

It is clear that Shadgett must have been at a computer terminal during this conversation and that he accessed personal details, which he then supplied to P2.

On 4 December 1992, Shadgett was observed at P2's workshop in company with P2 and an unidentified male. Whilst at the premises, Shadgett answered the telephone and spoke with a male person, saying, "You remember me, I am friend of Tony". "Tony" is believed to be a person who was then serving a term of imprisonment for possession of heroin with intent to supply.

On 17 December 1992 Shadgett called P2 and had the following conversation:

MS: [G]ot a message here to ring ya.
P2: Yeah, mate. I just wanted to see if you could, do you know anyone in the Fraud Squad?
MS: It won't take me long to find out, why?
P2: I just want to find out a bit about [named person], what they got on him and shit ...
MS: Alright, I'll try to find out.
P2: Yeah, I just want to try and see what's going on whether they've got, whether they've really got him or fuckin you know ... they've charged him but you know what I mean?
MS: Oh, yeah, he's got big dollars too but you never know ... Alright I'll find out
P2: Thanks mate.

A little later on the same day, Shadgett called P2 and told him of the circumstances of the alleged offence committed by the male person. In that conversation P2 asked how the police had caught him. Shadgett replied that "someone give him up ... from the inside".

At 2.04 am on 6 November 1994, P2 called the East Perth Lockup and asked to speak to Shadgett but was told that he was not on duty. P2 told the officer that his shop had been broken into and that he wanted to find out the names of the offenders. The officer, very properly, told him that such information could not be released.

Two minutes later, P2 called a female person and asked for Shadgett's home number, which he was given. Two minutes after that, at 2.08 am, he called Shadgett and the following conversation ensued:

P2: Murray, [P2] here mate how ya going? ... You asleep?
MS: Yeah ...
P2: I'm in my shop ... And ah the Wormald Security just caught a couple of guys here breaking into my shop ... And the cops just took them away.
MS: Yeah.
P2: So I rang Central I thought that you might be working there.
MS: Yeah I was, no I was off tonight, I am normally yeah.
P2: Oh yeah I know that's why I called. Ah but I wanted to find out who the fuck they are. They just broke the locks and that of my shop.
MS: Yeah. Well can you leave it till the morning and I'll find out for ya?
P2: Yeah ... no drama ... Can you call me at home ... I wanna know who the fuck they are.
MS: Yeah that's not a problem, just leave it, I'll fix that.

P2 admitted that on several occasions he had contacted Shadgett to obtain information from the police computer. He said that the reason he did this was, "sometimes", to obtain names and registration details in order to collect debts that were owed to his business. What is clear is that there was an ease and familiarity about the relationship and it is reasonable to suppose that the foregoing incidents were only examples of contacts of this nature. They were detected only fortuitously because, from time to time, P2 was subject to covert interceptions. No reasonable internal investigator could suppose that these incidents were only isolated events and, therefore, not indicative of a serious behavioural and security problem.

Shadgett stated that he could not recall P2 calling him and asking him for information. He claimed that he had had a breakdown and could not remember three quarters of his police career. He later admitted, however, after listening to recordings of intercepted telephone calls, that he had provided P2 with information from the police computer. When asked whether it was proper for him to disclose information to P2, Shadgett replied:

I take it bloody seriously and I - if that is what's happened, I'm not real happy with meself. I'll give you the drum now. But no, that's something I wouldn't just give out willy-nilly. There must be something. I don't know what it is, but - I don't know.

By the final comments it is understood that Shadgett was suggesting that he would not have released information without a proper reason. He was, however, unable to advance any such reason. That is hardly surprising. The only reasonable inference that can be drawn from the evidence is that, from at least 1992, Shadgett had a friendly relationship with P2

that included providing confidential information on a regular basis, on request and without any authorization to do so.

PETRELIS

On 10 February 1995, Petrelis was granted an indemnity by the Director of Public Prosecutions in respect of drug offences, subject to the condition that he co-operate in the prosecution of two persons facing drug charges in Western Australia. As a result of concerns for Petrelis' safety, he was provided with formal witness protection status and a new identity under the covert name of Andrew Parker. His place of residence was said to be in Mandurah.

Shane Wilson, Principal Investigator at the ACC, gave evidence before the Royal Commission that, in January 2000, the ACC appointed a Special Investigator to investigate, among other things, whether members of WAPS engaged in criminal or serious improper conduct in relation to the accessing and disclosure of Petrelis' covert details when he was in the WPP.

On 20 April 1995, Petrelis' vehicle, a white Commodore sedan, was registered on the WAPS computer mainframe system under his new identity. The vehicle had previously been a police car that Petrelis had purchased the day before.

Petrelis' covert details were protected on the police computer network by a trap. The trap provided an audit trail of identification numbers of any police officers who accessed Petrelis' covert details. The trap was not effectively placed, however, until 18 May 1995, and any access to those details before that date would not have been detected. The covert details initially had been incorrectly entered by the Witness Protection Unit ("WPU").

Audit records reveal that, during the period from 18 May to 1 September 1995, 13 police officers accessed Petrelis' covert details on the WAPS mainframe. ACC inquiries determined that eleven of the officers were found to have justifiable reasons to access the details. Two officers had no apparent legitimate reason to do so. Those officers were Shadgett and Davy.

EVENTS AT THE TIME OF PETRELIS ACCESSES: 18 TO 26 MAY 1995

P3 was a drug dealer in May 1995 and gave evidence regarding his contact with Petrelis. He said that, in 1995, he was contacted by a prostitute named Nicole who wanted to buy "speed" for a friend who could not obtain drugs elsewhere because his dealer had been

"busted" or was "out of commission". P3 met Nicole at the Victoria Park shopping centre and supplied her with between half an ounce and a full ounce of amphetamine mixture. He could not recall being told the name of the friend.

A few hours later, P3 received a call from Nicole, who requested that P3 sell her another ounce of speed. P3 agreed to do so and met her at the same location. At that time, he saw Nicole get out of what he believed to be an ex-pursuit car that he thought belonged to the police. P3 said that he suspected he was being set up. Through a pair of binoculars he had in his car, he observed the registration number and wrote it down. It should be noted that Petrelis was still in Perth at this time and had been driving the car during the relevant period.

P3 stated that he then phoned P2 and asked him to do a check on the registration of the vehicle. He said that it was "virtually common knowledge" that P2 could obtain registration, name and address details, and that his own source was Shadgett. P3 said that he had known Shadgett himself since 1986 or 1987 and that Shadgett was an "acquaintance".

P1 gave evidence that, in 1995, she was working as a secretary at P2's automotive repair business. She said that she knew Shadgett was a police sergeant and that he attended the workshop on occasions to "chat" with P2 and sometimes he would work on his own vehicle. P1 stated that on occasions she would telephone Shadgett on behalf of P2. She said she gave him vehicle registration details and obtained from him the name and address details of the person to whom the car was registered. She estimated that she made such requests of Shadgett "more than half a dozen times". She would call his home telephone number and the Albany Police Station when Shadgett was stationed in Albany. P2 confirmed that he "probably" requested P1 to contact Shadgett on his behalf.

During this period, a number of telephone calls were made between P2, P3 and Shadgett. On 18 May 1995, a male person telephoned P2 at 10.44 am and at 12.14 pm requesting information. At 12.52 pm a call was made from P2's workshop to Shadgett's home telephone number. At 4.40 pm P2 called P1 and asked her "did you get them regos" and enquired whether "Murray" had called her. P2 then instructed P1 to call Shadgett. P1 asked whether he would be at "work or home", to which P2 replied "I don't know ... I think he starts at four o'clock". Call charge records ("CCRs") reveal that at 4.44 pm a telephone call was made from P2's workshop to an unlisted "police only" line at Albany Police Station. At 4.45 pm a call was made from P2's workshop to Shadgett's home number. At 4.46 pm, P2 told P1 that "I have to ring [P3]". At 4.46 pm P1 called P2 and said "he's not starting work until tomorrow".

CCRs reveal that at 7.38 pm on 18 May 1995 a call was placed from Shadgett's home telephone to P3's mobile telephone. At 8.06 pm Shadgett accessed Petrelis' vehicle registration on the police Vehicle Inquiry System ("VIS") database. At the same time, he accessed the name "Andrew Parker" on the police Name Inquiry System ("NIS") database. At 3.09 pm and 3.10 pm on 19 May 1995, Shadgett accessed the vehicle registration again on VIS. At 3.10 pm he accessed the name "Andrew Parker" on NIS. At 1.29 am on 24 May 1995, Shadgett again accessed the vehicle registration of Petrelis' vehicle on VIS.

At 11.18 am on 20 May 1995, P2 asked the male person spoken to on 18 May 1995, "You got that info alright did that help ... that rego?" The male replied, "yeah". P2 accepted that it was "more than likely" that calls were made by P1 to Shadgett to obtain car registration numbers for the male person. It is also likely that the male person was P3 or someone acting on his behalf.

At 9.06 am on 18 May 1995, a person identifying himself as "Peter Clay" called Police Operations and the following conversation ensued:

PO Police Operations.
 PC Yeah, g'day mate. Um, I was just, well I'm just doing a check to see if you've got a stolen car on your list, ah, [registration number of Petrelis' vehicle given], white Commodore?
 PO Yeah, it's a stolen vehicle. Ah, whereabouts is it?
 PC It's a stolen vehicle?
 PO Yep.
 PC Um, we, we followed it last night, it went to [an address in Mandurah]. It was running around like an absolute maniac.
 PO It went to [street number and name]?
 PC [Address in Mandurah].
 PO Where did it go there from though?
 PC It stayed there. It stayed there for the night by the looks of things.
 PO Where was it, where was it running around beforehand though?
 PC In Mandurah, just up and down the streets, chucking wheelies, things like that, so we thought ah, this might be stolen so we turned our lights off and followed it, about 2 o'clock in the morning and it went back to that address and stayed there. When I went to work this morning ah, it was still there.
 ...
 PO Yeah, I think, I think that they dumped it and then the, the owner picked it up.
 PC You sure about that?
 PO Well, that's what it looks like according to this, 'cause that's where the car's from.
 PC It's from Mandurah?
 PO Yeah, so if it was just driving normal back to its home, its from [address in Mandurah].
 PC But has, oh, well has he told youse that he's found it yet?
 PO I don't know. I'll, I'll have to make a few enquiries. What's your name mate?

PC My name's Clay, Peter Clay.
PO Clay and your phone number?
PC I'm not on the phone, I'm just using a friend's phone.
PO How can we contact you if we have to?
PC Well you can't really unless I ring you back. I don't really want to be involved, I just thought that it might have been a stolen car and you's need to find it.
PO Oh I see, yep. Ok, well I'll make a few enquiries to find out what the story with that is.
PC Thanks a lot.
PO Ok, bye bye.
PC Bye.

P3 admitted that he was the person who called Police Operations. He could not recall the conversation, but said that he possibly made the call to clarify whether the vehicle belonged to an undercover police officer. He agreed that he did not see the car driving recklessly in Mandurah.

Wilson gave evidence that Thomas Peter Clay was the name of the case officer from the WPU assigned to Petrelis. His name appeared on an offence report on the police computer system in relation to Petrelis' vehicle, which had been broken into between 9.00 pm on 4 May 1995 and 7.00 am on 5 May 1995 from outside Petrelis' parents' home. Petrelis reported the matter to Clay, who completed an offence report and recorded "Thomas Peter Clay, police officer", as the complainant.

P3 stated that he could not recall being told about a police officer named Clay or having been shown a printout or given information about that person. He claimed that the name came from the top of his head. This is, of course, inherently unlikely.

In a signed handwritten statement, Petrelis told the police that, at about 9.00 am on 24 May 1995, six minutes before the call to Police Operations, he received a telephone call on his mobile telephone from a male person who identified himself as "Senior Constable Shark". Petrelis stated:

The caller asked me if I was Andrew Parker? I replied "Yes", but it struck me as an odd question under the circumstances. To my knowledge only a few certain people are aware of my new name. I said "Why?" He said "Your vehicle was used in a ram raid overnight". Straight away I knew that wasn't correct because my car was on a truck heading to the eastern states. I personally delivered my vehicle to the car transport company about midday. I asked him who he was. He hesitated and said "Senior Constable Shark".

...

I thought that it all didn't add up, something was amiss. I know where that car was, the name that he gave me seemed bogus and the way he gave it to me. It

seemed that he wasn't prepared for me when I asked his name. He gave the impression that he plucked the name out of the air, he had to think about it and hesitated.

I was also suspicious that he rang me on my mobile phone. The call was terminated, he appeared anxious to get away.

I felt that he was just trying to find out about me and not really interested in the car.

Petrelis stated that, later, he was invited to listen to a tape recording of a conversation between P3 and Police Operations. He said that he listened to the tape only the once but had no doubt whatsoever that the caller on the tape and "Senior Constable Shark" were the same person.

P3 said that he was "pretty sure" that he did not make the call to Petrelis. When asked whether he could exclude the possibility that he called Petrelis and gave the name "Senior Constable Shark" he said he was very sure it was not he who had done so.

At 10.28 am on 26 May 1995 P2 called P3 and had the following conversation:

P2 Mate that car.
P3 Mm.
P2 Them people, that guy's undercover.
P3 Eh?
P2 That guy is undercover.
P3 Yeah?
P2 Yeah.
P3 Holy shit.
P2 So and the whole deal alright?
P3 So forget everything?
P2 Yeah.
P3 Fuck me.
P2 I just got the word.
P3 That's um, down, down south?
P2 Nah, from someone else.
P3 Dead set?
P2 Yep.
P3 Whoa.
P2 Okay.

P2 gave evidence that he had known P3 for years and would describe him as a friend. He said that P3 may have been a drug dealer at this time. P2 said that he thought P3 had asked him to obtain information from the police computer, although he did not remember P3 having told him that he was dealing in drugs and that he, P3, was concerned that the person he was supplying might be an undercover police operative.

P2 agreed that the reference to "down south" would have been to Shadgett, but claimed that when he said he "got the word ... from someone else" he meant that either the information did not come from Shadgett or that he, P2, did not want P3 to know from where he obtained the information.

P2's evidence was that, in May 1995, he did not know the name Andrew Petrelis or of anyone using the covert identity "Andrew Parker". He denied providing information to the persons against whom Petrelis was to give evidence.

P3 said that when he received the information from P2, he took his advice and had nothing more to do with the person who had been driving the former pursuit car. He denied passing the information on to anyone else, including the persons against whom Petrelis was to give evidence. He claimed that he did not know Petrelis by that name. When he told Nicole that the person who was later known to be Petrelis was an undercover police officer, she said he was not. She had telephoned from Petrelis' mobile telephone. It is apparent that P3 would now say that Petrelis must have been the friend of Nicole to whom he sold amphetamines or, at least, the person driving Petrelis' car.

P1 gave evidence that she recalled P3 requesting car registration details from P2. She also remembered an occasion when P3 told her a car was parked in his street and that he was suspicious, and gave her the registration details. She said that she obtained information from Shadgett that the vehicle was a police vehicle and that she would have passed it on to P2. P1 said that she could not recall the name "Andrew Parker" being referred to in respect of any request made to Shadgett. Nor had she heard of the name Andrew Petrelis until P2 received a call that he had been found dead. P2 told her that "they can find you even if you're a protected witness", making a joke of it.

Shadgett's evidence was that, in May 1995, he was stationed at Albany Police Station. He denied ever having conducted a police investigation involving a person by the name of "Andrew Parker". He could not advance any legitimate explanation for accessing the name "Andrew Parker" on the police computer system.

Shadgett stated he could not understand how a telephone call was made from his home telephone number to P3. He said he met P3 once at P2's home, once at P2's workshop and on another occasion when he removed him from the Victoria Park Police Station. Shadgett stated that "I hate the man's guts. I wouldn't bother talking to him". Shadgett also claimed that he had never supplied P2 with his home telephone number. Shadgett stated that he did not know that "Andrew Parker" was the covert identity of Petrelis until 2000, when it was broadcast on the news.

EVENTS AT THE TIME OF PETRELIS ACCESSES: 31 MAY 1995

P3 gave evidence that he spoke with an acquaintance, Sidney Frank Brennan, whom he believed had a friend who was "high up" in the police force. He told Brennan he suspected that a person to whom he was selling drugs might be an undercover police officer. He had this suspicion because he recognized the car driven by this person as an ex-police vehicle. P3 could not recall Brennan supplying him with information, but saw that it was "possible" that he told Brennan the names "Thomas Clay" and "Andrew Parker".

Brennan gave evidence that, in 1995, he was the proprietor of a taxi management company. He recalled having a conversation with P3 and telling him his business was "going down the tube" and that he needed a business partner to invest in his company. Brennan said that P3 told him that he knew some people who would be prepared to buy into the business. Brennan could not recall the precise names of those people, but he agreed that one of the surnames was "Clay" and that the other name was "Andrew Parker" when those names were put to him.

Brennan said that he conducted inquiries of his own to check the bona fides of these people. He also spoke with a person who drove a taxi for him, Dennis Finnegan, about the names given to him by P3. Three or four days later, Finnegan told him to steer well clear of P3 and the other two. He knew Finnegan had gained this information from an associate with whom he drank at a tavern. Upon being given this information, Brennan did not enter into a business partnership with the names suggested by P3. Brennan said he had no idea who either of the persons was, and he did not know "Andrew Parker" was a covert name for a witness in the WPP until he came to give evidence before the ACC.

Finnegan gave evidence that, in 1995, he was working as a taxi driver for Brennan and that Brennan told him the business was in financial difficulties but that he had some people interested in investing in the company. Finnegan recalled that Brennan asked him whether he knew any police officers who might do a simple clearance check. Finnegan knew Davy socially, and occasionally drank with him at the Winning Post Tavern ("the Tavern") and told Brennan he would make inquiries about the names Brennan had given him. Finnegan could not now remember the names, but agreed that they were "Thomas Clay" and "Andrew Parker" when those names were suggested to him.

Finnegan gave evidence that he did not set out to speak to Davy, but met him by chance at the Tavern, and asked him whether it was possible for Davy to do a clearance check to see if the persons were reputable. He gave Davy a piece of paper with the names written on it and Davy told him that he would look into the matter.

Finnegan said that he did not hear back from Davy immediately, but was later contacted by him and told to tell Brennan that the persons named were "bad news" or not of good character. He later passed this information on to Brennan, who thanked him, but told him that he had already found out this information.

In May 1995, Davy was a first class constable at the Police Operations Centre. An audit of the WAPS computer system revealed that, on 31 May 1995, Davy accessed the following details:

7.38 am: "Clay, Thomas Peter Mark" (NIS)
7.42 am: "[the registration number of Petrelis' vehicle]" (VIS)
7.56 am: "Parker, Andrew Nicholas" (NIS)

Davy agreed that he had accessed the name "Parker" after meeting with Finnegan. He saw on the computer system that "there was an inquiry out under Clay", but denied accessing the offence report that was filed by Clay. He claimed that, as soon as he accessed the name "Parker", an inspector approached him and said that the name had been tagged at "Internals". When questioned, Davy sought to explain his access to the name "Andrew Parker" by saying that he was merely practising on the computer and had put up the name Parker because he was an Elvis Presley fan and this was the surname of Presley's manager, Colonel Tom Parker.

Davy said that he later met with Finnegan, and told him that "it was too hot to handle. I can't tell you anymore". He said that this was simply a feeling that he had as a consequence of triggering the trap and being approached by the inspector. Davy agreed that he had lied when he told the IAU investigators he had accessed the name "Parker" because that was the surname of Elvis Presley's manager. He said he made this up because he "didn't want to be in trouble".

Davy claimed that he did not know the name Petrelis at the time of the accesses. Nor did he know that he was in witness protection or that there was a connection between "Clay" and "Parker" in this context. He said he became aware that "Parker" was the covert identity of Petrelis three weeks after his death, when he was told by his solicitor. He denied passing information from the police computer system to persons against whom Petrelis was to give evidence.

ASSESSMENT OF THE EVIDENCE

Intercepted telephone calls of conversations concerning P2, Shadgett and other persons reveal that between 1992 and 1995 Shadgett was accessing and disclosing confidential

police information to P2 at a time when P2 was the subject of concerted investigations by law enforcement agencies. The intercepted conversations reveal that Shadgett did not simply disclose name and registration details for the purpose of collecting debts, as P2 suggested, but also the names of criminal suspects and information relating to the strength of the evidence in a criminal prosecution of a person associated with P2.

It is beyond dispute that Shadgett accessed the vehicle registration details and the name of the covert identity assigned to Petrelis on 18, 19 and 24 May 1995. Shadgett agreed he could not advance any legitimate explanation for making these inquiries on the police computer system and in the absence of any such explanation there is credible evidence that the accesses were unauthorized.

Intercepted telephone conversations, CCRs and audit results also provided credible evidence that the name "Andrew Parker" of [address in Mandurah], the vehicle registration number and the name "Clay" were disclosed to P2 and P3, and in a manner that suggested that "Parker" was in some way covertly involved in law enforcement. There is clear evidence that those disclosures were made by Shadgett.

The timing of the accesses made by Shadgett are particularly relevant: first, the accesses on 18 May 1995 were made 28 minutes after Shadgett called P3 on his home telephone; secondly, the call placed by P3 to Police Operations referring to [address in Mandurah], the white Commodore [and registration number] and "Clay" was made less than eight hours after the accesses by Shadgett to the name "Andrew Parker" and the registration number on 24 May 1995.

P3's explanation that he invented the name "Peter Clay" is highly improbable and must be rejected. The probability is that Shadgett interrogated the offence report filed by Clay on the police computer system and told P3 that the vehicle had a connection to a police officer with that name. This caused P3 sufficient alarm to contact Police Operations that morning to check the address and details of "Andrew Parker". It would also provide him with a reason to call Petrelis that same morning to endeavour to ascertain whether he was an undercover police officer.

Although P2 told P3 he did not get the word from "down south", seemingly excluding Shadgett as the source of his information, as P2 noted, this may have been because he did not wish P3 to know from where he received the information.

It is not known whether P3 was of the view that the owner of the Commodore was undercover when he first spoke to Brennan. In all likelihood, he had approached Brennan to confirm the information he had earlier acquired from P2 when they spoke on 26 May 1995.

Davy did not dispute that he had accessed Petrelis' covert identity without authorization. But he denied accessing the name "Clay". This claim should be rejected. No challenge was made to the reliability of the audit facility and the access to the name "Clay" is consistent with Finnegan's confirmation that the names he gave Davy were "Clay" and "Andrew Parker".

For these reasons, it is clear that Davy and Shadgett unlawfully accessed the police computer system and disclosed information from it. There is no evidence that those accesses were motivated by a desire to locate Petrelis. Rather, they occurred because P3 wished to determine whether the person to whom he had been selling drugs was an undercover police officer. Some information was received through P2, and P3 then made other telephone calls and inquiries in an attempt to confirm whether either "Parker" or "Clay" was a police officer.

No evidence was given that the disclosures led directly or indirectly to the death of Petrelis. However, it is observed that the disclosures made by Shadgett were particularly serious as they were made to persons suspected of being involved in serious criminal activity. Of course, it is also a serious circumstance that the individual whose personal details were released was a protected witness, though the evidence does not establish that this was known by either Davy or Shadgett at the relevant time. Nonetheless a protected witness, it can reasonably be assumed, is a person whose safety can be compromised by the inappropriate access to and release of information from the police computer. This illustrates the potentially serious consequences that may flow from such conduct. Whilst ultimately no connection can be made between the release of confidential information and Petrelis' death, the potential for those releases to compromise his safety was very real and deserved to be treated with a speedy and decisive response from WAPS.

13.3 IAU INVESTIGATIONS INTO SHADGETT

The IAU records reveal that Shadgett had an extensive disciplinary history within WAPS. As at June 1994, he was known to have had more defaulter sheets (disciplinary charges) than any other current member of WAPS.

In particular, Shadgett was suspected of disclosing confidential police information to known criminals and persons of interest to law enforcement agencies. For example, in 1987, during

a joint WAPS/AFP operation into large scale heroin importation and distribution, Shadgett was regularly recorded on a listening device speaking with targets of the investigation and often heard to be "indiscreet" in relation to knowledge he obtained in the course of his employment. IAU files record that no action was taken against Shadgett at that time for "operational reasons".

In 1992, Shadgett was on a final warning, after having being advised in writing by both the previous Commissioner of Police and the then current Commissioner that "any transgressions whatsoever" would result in his immediate dismissal. Shadgett apparently acknowledged those directives in writing.

In July 1992, the IAU received information that a target in a drug operation had access to records from the police computer. The target's source was suspected to be Shadgett, but inquiries were discontinued when an informant refused to co-operate with police.

On 19 January 1993, the Bureau of Criminal Intelligence ("BCI") received intelligence information concerning Shadgett from the NCA, which was discovered in the course of an investigation into P2. The information included intercepted telephone conversations between P2 and Shadgett in December 1992 ("the 1992 accesses"). The information was communicated to WAPS "for ... information ... and any further inquiries ... deem(ed) necessary". It was pointed out, however, that any reference to intercepted telephone conversations as the source of the information could compromise the NCA investigation.

In June 1994, further information was received from the NCA that a known drug dealer and associate of P2 had telephoned Shadgett at his home, possibly to obtain confidential police information.

On 28 April 1995, 17 days before Shadgett is known to have accessed the details of Petrelis' covert identity ("the Parker accesses"), information was received that a male person on work release from the Albany Regional Prison was apparently living with Shadgett.

On 26 May 1995, the AFP communicated intercepted telephone conversations between Shadgett and P2 of 6 November 1994. No caveat was placed on the use of the intercepted product.

On 14 June 1995, the NCA formally disseminated two information reports to the IAU. The information reports contained summaries of intercepted telephone conversations referred to above in relation to Petrelis, as well as other intelligence information. No caveat was placed

on the use of the information and it was disseminated to the IAU for "information and any further action you deem necessary".

The running sheet further records that, on 8 August 1995, IAU attended a meeting with the NCA which was reluctant to release the 1992 telephone intercept material.

Petrelis died on 11 September 1995. No action had been taken by that date to dismiss Shadgett, as had been adverted to earlier.

On 16 April 1996, Acting Inspector Longden wrote to Acting Superintendent Syme following a request that Shadgett's file be reviewed. Both were officers serving in the IAU. Longden wrote:

Shadgett has conducted registration checks on [P2's] behalf and these have been intercepted on an NCA telephone intercept and IAU computer traps. This information has not been able to be used because whilst NCA have disseminated the information, it has been with the strict proviso that it not be revealed as their operation was ongoing.

Longden stated that the current situation was that P2 was "assisting with an NCA and Drug Squad long term operation" and that his status could not be revealed as the ongoing operation might be compromised. Nevertheless, he said that "information obtained about [Shadgett's] unauthorized release of information from the police computer system [has] destroyed his integrity to the point that he has forfeited his right to remain a member of the Police Service". He suggested that the options were to continue to wait for authority to use the NCA telephone intercept product or to "act now". He recommended that Shadgett be dismissed and that the file be forwarded to the Assistant Commissioner (Professional Standards) for his consideration and advice as to what material would be required to commence dismissal proceedings.

No express reference was made in this memorandum to the "Parker accesses". On 4 December 1996, Acting Inspector McCagh wrote a memorandum to Superintendent Tovey, the Officer in Charge of the IAU. Although the memorandum ostensibly dealt with issues involving Davy and the circumstances dealing with Petrelis' death, McCagh addressed some issues relevant to Shadgett. McCagh stated:

[T]here is corroborative evidence that telephone intercept product which identifies Shadgett's involvement in disclosing restricted computer secrets to [P2]. Shadgett is the subject of an on-going investigation relating to these issues and it is anticipated he will be charged in the near future. (Original emphasis)

On 23 December 1996, the Assistant Commissioner (Professional Standards), Jack Mackaay, wrote to Tovey and inquired why, if there were other holdings on Shadgett's release of information by WAPS and the AFP, reliance had only been placed on the retrieval of telephone intercept material from the NCA, and whether there was sufficient other evidence to prefer charges.

On 4 March 1997, Acting Inspector Hill of the IAU wrote a memorandum to Tovey for the purpose of assessing "the extent of the information on hand at the IAU, together with the issues which should be taken into consideration when determining what action, if any, [should] be taken against ... Shadgett". Hill stated that there was "information" that Shadgett had obtained the particulars of persons and vehicles and passed those details on to criminal associates. He referred to 1992 and the "Parker accesses".

In respect of the "Parker accesses", Hill expressed the opinion that he believed that there was insufficient evidence for a prima facie case without corroboration. He noted that P2 could corroborate the allegations, but if it was revealed to him he was under surveillance, this would compromise ongoing operations. Hill stated that "at the present time, the sequence of events which occurred in November/December 1992 represents the best opportunity of charging Shadgett either criminally or departmentally".

Hill noted that fresh allegations had emerged indicating that in October 1996 Shadgett had personally threatened a Regional Commander. Hill ventured that this incident, taken in conjunction with Shadgett's "appalling disciplinary record", might be used as a basis to dismiss him from the Police Service.

Two days later, Tovey forwarded this memorandum to Mackaay. In a covering letter he observed that the IAU investigations "cannot proceed until ... [P2] is interviewed". He suggested that the "issues" concerning P2 should be discussed between Mackaay and the Assistant Commissioner (Crime).

In a joint memorandum signed by Mackaay on 24 May 1997 and by the Assistant Commissioner (Crime) on 26 May 1997, it was stated that Shadgett faced disciplinary and/or criminal charges, but that pursuit of those charges might compromise investigations currently being conducted by the State Crime Squads. The State Crime Squads were to advise when those investigations were complete.

On 30 May 1997, Tovey forwarded Mackaay's memorandum to Hill and added in a handwritten memorandum that "the A/C advised that no set time frame has been set for

this issue". On 31 July 1997, Hill wrote to Tovey and suggested that "the matter be filed pending the receipt of advice that inquiries can be recommenced".

On 8 May 1998, Hill sent Tovey a handwritten memorandum stating, "[A]s requested by Mr Mackaay, for his consideration my earlier report as to the current information held re Sgt Shadgett". Tovey forwarded the memorandum to Mackaay who responded on 17 May 1998.

Following this correspondence, on 9 June 1998, Hill prepared a memorandum in respect of the alleged 1992 disclosures. In reviewing the matter, he concluded that there was insufficient evidence to prove any criminal charges, and further, stated that even if a prima facie case existed, there were public interest factors that militated against commencing criminal proceedings. These included:

- The offence was "stale"; a prosecution of Shadgett might be counter productive to the interests of justice if it revealed P2's telephone had been intercepted over a long period of time;
- The disclosure appeared to be a "single instance"; and
- The prosecution would not necessarily have a deterrent effect as "there has already been a significant change in attitude towards computer security since this incident occurred in 1992".

In all the circumstances these conclusions seem to be very dubious.

The memorandum concluded that "notwithstanding there has been no comprehensive investigation of this incident, the circumstances are such that Mackaay might reasonably order the termination of any further inquiries and not seek to bring about the prosecution of Shadgett or P2". No reference was made in the memorandum to the "Parker accesses".

On 13 June 1998, Mackaay wrote to Tovey, endorsing Hill's conclusion and instructing that the matter be discontinued and filed "for reference only". He stated that a computer audit should be maintained "to determine whether his [Shadgett's] previous pattern was continuing".

EVIDENCE OF MACKAAY

Mackaay was the Assistant Commissioner (Professional Standards) between April 1996 and August 1999. He gave evidence that, when he took command of the IAU, he received a briefing that there was a file on Shadgett and that the NCA was in possession of telephone

intercept material that had not been released to WAPS. He stated that there was no plan as to how to manage or investigate Shadgett at that time.

Mackaay recalled meeting with the Assistant Commissioner (Crime) and the Deputy Commissioner (Operations) in April 1997 with regard to Shadgett and the issue of “operational expediency”. He agreed that at this time any operation undertaken by Professional Standards was to be deferred and that the Crime operation was to be given priority. He believed that the decision was made by the Deputy Commissioner (Operations).

Although his recollection of the meeting was unclear, he stated that he did not think he agreed with the decision, and that, from the perspective of Professional Standards, the outcome was unsatisfactory, because it was not apparent how long the Crime portfolio operation would take. Mackaay agreed that his expectation was that the matter would be reviewed proactively by the IAU.

Mackaay acknowledged that, with the benefit of hindsight, the matter could have been handled differently and that the ability of Professional Standards to deal with the conduct of Shadgett was effectively rendered impotent. He said he could not readily recall another time when he had been asked to abstain from an internal inquiry for operational reasons in relation to Crime operations, and that there was no policy in respect of such matters.

IAU INVESTIGATIONS INTO PETRELIS ACCESSES

Graeme Lienert gave evidence that, on 19 October 1999, he took up the position of Assistant Commissioner (Professional Standards), and on 13 November 1999 he became aware of the matter involving Shadgett, following publicity in the local media that there had been a police “cover up” in respect of Petrelis’ death.

Lienert said that he had discussed the matter with the Commissioner of Police and was tasked with causing an inquiry into the matter to be undertaken. He stated that he personally examined the files in relation to Shadgett and was able to form a view as to the course of action that should be taken. He agreed that “on the face of it, [WAPS] should have acted earlier” in respect of Shadgett, who was an officer who “stood out with an exceptional track record” and a “sustained course of ... misconduct”. Lienert indicated he was concerned about the longevity of the matter and the absence of timelines to guide the investigation.

On 23 November 1999, Lienert wrote a memorandum to the Commissioner of Police and recommended that the investigation into Shadgett be brought to a conclusion with a view to

a criminal prosecution, that all holdings be examined with a view to action being taken under s. 8 of the *Police Act 1892*, and that notice of the matter be given to the ACC in accordance with s. 14 of the *Anti-Corruption Commission Act 1988*.

On 30 June 2000, the IAU prepared an Information Report stating that there was evidence of telephone contact between P2, P3 and Shadgett and computer access in respect of the 1992 and "Parker accesses". The report stated that the IAU had commenced investigations into these matters, but that the ACC had taken over all investigations involving Petrelis. A s. 8 notice under the *Police Act* was prepared on disciplinary grounds, but it was "held in abeyance" in the expectation that Shadgett would be medically discharged.

Shadgett retired on medical grounds on 6 July 2000. In June 2000, he received a letter from the Director of Human Resources stating that the "Commissioner of Police acknowledges your faithful service to the community of Western Australia over the past 29 years and expresses regret that your medical condition has necessitated your early retirement". The letter, whilst no doubt standard in its form, was unintentionally ironic and clearly inappropriate. The Royal Commission has been advised that the standard letter has since been amended.

ASSESSMENT OF IAU INVESTIGATION INTO SHADGETT

The summaries of corrupt conduct by WAPS officers in this Report are often accompanied by accounts of ineffective responses by the IAU, not only in the past, but relatively recently. This is a further example.

It is evident that, in the circumstances described above, WAPS failed to take appropriate and timely disciplinary action in respect of Shadgett. Shadgett posed a real and continuing risk to police investigations and the safety of other officers and witnesses by his persistent conduct in releasing confidential information.

CONCLUSION

The management of the IAU investigations raises questions about relevant matters to take into account when there are competing considerations between internal inquiries and criminal operations. It must be accepted that, on occasions, there may be legitimate reasons why internal investigations should yield to operational considerations. However, in such circumstances, procedures and criteria should be applied for decisions to be made. Relevant matters to take into account might include:

- The seriousness of the alleged corrupt conduct;
- The risk of the conduct continuing or spreading to others;

- The nature and extent to which operational matters might be affected; and
- The viability of other forms of investigation that would not jeopardize operational matters.

If an internal investigation is to be delayed or deferred in response to criminal investigations, it nevertheless should be proactively monitored. Plainly, this did not occur in respect of Shadgett, where, notwithstanding the frequency and seriousness of his conduct, internal investigations were allowed to drift without regular review.

It is noted that Professional Standards have since implemented a case management system that requires periodic review of files, and that collaborative relationships with other law enforcement agencies have been established. One of those agencies is the ACC, with which fortnightly meetings have been held to discuss outstanding files.

However, no formal guidelines or procedures are in place to deal with police officers suspected of corrupt or criminal conduct in situations where such actions might impact upon police operations. WAPS has pointed out that, as part of the procedures now in place within the Professional Standards portfolio, a tasking and co-ordinating group meets regularly to assess and prioritize matters under investigation. A standard operating procedure exists to guide the tasking and co-ordinating group, but that document does not deal specifically with how conflicts of the type referred to here are to be resolved. WAPS has submitted that flexibility is important and decisions must be made in the circumstances pertaining to each case. That could hardly be disputed, but it does not appear adequately to address the suggestion that it is desirable to set out criteria that will guide decision making in cases such as this and, hopefully, prevent their reoccurrence.

