



ROYAL COMMISSION

**INTO WHETHER THERE HAS BEEN CORRUPT OR
CRIMINAL CONDUCT BY ANY WESTERN
AUSTRALIAN POLICE OFFICER**

FINAL REPORT

VOLUME I

**Commissioner: The Hon G A Kennedy AO QC
January 2004**



ROYAL COMMISSION

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CRIMINAL CONDUCT BY ANY WESTERN AUSTRALIAN
POLICE OFFICER

30 January 2004

The Hon. D. K. Malcolm AC
Lieutenant Governor of the State of Western Australia
Government House
PERTH WA 6000

Your Honour

Pursuant to the Commission issued to me on 12 December 2001, as subsequently varied, I now have the honour to present to you my Final Report relating to my inquiry into the matters the subject of my Terms of Reference.

Yours sincerely

A handwritten signature in black ink, appearing to read 'G. A. Kennedy'.

G A Kennedy AO QC
COMMISSIONER

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EXECUTIVE SUMMARY

VOLUME I

INTRODUCTION

Term 1 of the Commission establishing this inquiry requires me to inquire into, and to report on whether, since 1 January 1985, there has been corrupt or criminal conduct by any Western Australian police officer. There have already been several inquiries into the conduct of police officers in other jurisdictions in Australia and overseas during the same time period. The reports of these investigations have revealed a consistent pattern of corrupt or criminal conduct by police officers, and particularly by detectives. Human nature being what it is, there is an element of inevitability about corruption in law enforcement agencies, and there is no reason to presume that the position in Western Australia over that period has been different.

The Fitzgerald Commission of Inquiry in Queensland in 1987 revealed that corruption had taken place in relation to the policing of vice and gaming. In 1994, the Mollen Commission of Inquiry in New York exposed police involvement in stealing, robbery, drug dealing and extortion. In 1997, the Wood Royal Commission into the New South Wales Police Service revealed entrenched and systemic corruption involving a wide range of criminal conduct by police. In March 2000, a report of the Board of Inquiry into corruption in Rampart, Los Angeles detailed extensive corruption in the Los Angeles Police Department. In the same year, evidence led before the Police Integrity Commission in New South Wales showed that detectives in that State were still engaging in corrupt or criminal conduct, such as stealing and drug dealing. In 2003, in a report published through the Home Office in the United Kingdom, "Police Corruption in England and Wales: An Assessment of Current Evidence" (Miller, 2003), reference is made to recent cases investigated by the Metropolitan Police Service and other forces, drawing attention to officers, often in specialist squads, profiting from their position through the theft of money, the resale of seized drugs and the protection of criminals.

The evidence obtained by this Royal Commission has revealed the existence of similar practices by officers of the Western Australia Police Service ("WAPS") since 1985. Examples of the full range of corrupt or criminal conduct from stealing to assaults, perjury, drug dealing and the improper disclosure of confidential information have been examined. That in itself is not surprising. The inquiry has covered a period of nearly 19 years and in the light of experience elsewhere, it would have been quite remarkable if that evidence had not emerged.

What is of more significance is the extent to which WAPS has been ineffective in monitoring those events and modifying its procedures in order to deal with that conduct and to prevent its repetition. Much has been done in other jurisdictions to improve the strategies used to manage the police services and to prevent corruption, and the Royal Commission has examined the performance of WAPS in those areas. It is difficult to express a precise conclusion on those matters, particularly due to the long period of time that the inquiry has covered, but the general impression is that the Service was slow to react to the events that occurred. However, in recent times, more substantial progress has been made, or is now being made, to put in place appropriate measures to improve its resistance to corruption.

SCOPE AND PURPOSE

The establishment of this Royal Commission arose from persistent public concern and foment over several controversial outcomes of investigations by WAPS and an abiding public doubt over the integrity of the Police Service. This was reflected by the Terms of Reference, which required both an inquiry into factual matters and an examination of the effectiveness of procedural issues.

The approach of the Royal Commission has therefore been multifarious. It has been necessary to inquire into those historical matters in order to ascertain whether the concerns were valid, to examine evidence of other past police activities, to conduct operations to test the current integrity of serving police and to study past and present practices of WAPS for the prevention and handling of corruption.

The initial response of the Royal Commission was the recognition that the existing external oversight agency for WAPS, the Anti-Corruption Commission ("ACC"), was ineffective, essentially by reason of its lack of the necessary powers, and that it should be replaced. The Government substantially adopted the Interim Report of this Commission on that issue, and a new organization, the Corruption and Crime Commission, has commenced to operate.

Investigating police corruption is a challenging and time and resource consuming task. To exhaustively pursue each allegation of corruption that came to the attention of the Royal Commission was never feasible. Priority was given to the establishment of the major factual themes in the context of the priority of the Royal Commission to ensure that there will be processes in place that provide enduring benefits to the community as a result of the work of the Royal Commission.

Time will tell whether that objective will be achieved. What has not been the aim of the Royal Commission is the institution of prosecutions of individual officers. The conduct of a

Royal Commission, the purpose of which is to establish facts for the basis of reform with informality and without the requirement for compliance with the rules of evidence, is not concomitant with the function of the gathering of admissible evidence as a preparation for prosecution proceedings. The Commissioner of Police established a Royal Commission Investigation Team ("RCIT") for the purposes of advancing the investigations conducted by the Royal Commission in order to determine whether prosecution or disciplinary action could be taken. The Royal Commission has disseminated relevant evidence to the RCIT and has endeavoured to provide such assistance as is appropriate. Whether prosecution or disciplinary action will follow will be a matter for the Director of Public Prosecutions or the Commissioner of Police, and will depend upon the admissible evidence obtained as a result of the consequential investigations.

HEARING SEGMENTS

The Terms of Reference broadly required an inquiry into police corruption or criminal conduct since 1985 and, as a result, issues about the admissibility of evidence were determined by the relevance to that wide topic. For convenience, and for the better order of the business of the Royal Commission, where possible, the hearings proceeded in discrete segments loosely defined by reference to particular times, squads or individuals, or procedural or strategic issues. The primary source of the views expressed in this Report is the evidence given in the public hearings. To some extent, evidence taken in private hearings has assisted in forming a clearer picture of the relevant activity.

The sequence of the segments was without significance. Their timing was largely a product of the readiness for hearing of each segment at the relevant time. Indeed, the latest segments dealt with events that were earliest in time. However, when the evidence is assembled in chronological order, as it has been in Part II of Volume 1 of the Report, it provides an interesting study of conduct that mirrors the conduct revealed by the earlier inquiries in Queensland and New South Wales and overseas.

Some segments were particularized with the intention of determining whether the long standing public concerns about previous investigations were well founded. In each of those segments, it has been determined that corruption was not revealed. To demonstrate that conclusion it has been necessary to enter into more detail, as set out in Part III of Volume 1 of this Report.

In addition, the Royal Commission has conducted a review of a number of previous corruption investigations by WAPS, without hearing evidence. These have also been informative. They will be referred to in Part IV of Volume 1 of this Report.

FACTUAL ISSUES

Notwithstanding the adopted approach of hearing the evidence in segments, it is not proposed to proceed to dissect the evidence in each segment by reference to each officer and each allegation. That is a function that more meaningfully falls to the authorities who have the responsibility for determining whether future action can be taken against the officers mentioned in the evidence.

Some segments were remarkable for the fact that many witnesses, some civilians and some police, came forward to give evidence of a wide range of corrupt or criminal conduct by police, in circumstances where the evidence could not be explained by collusion or other mischief, yet almost without exception, the police officers named vehemently denied the accusations. In the main, the Royal Commission has accepted the truth of the evidence given by those witnesses, and accepts that there has been corrupt or criminal conduct by officers in WAPS since 1985. The fact that there remain in WAPS a number of officers who participated in this conduct, and who not only refused to admit it, but also uniformly denied it with vehemence, is a matter of concern.

VOLUME II

INTRODUCTION

Volume II of the Report is delivered in satisfaction of the requirements of Terms of Reference 3 and 4 of the Royal Commission issued by His Excellency the Governor of Western Australia on 12 December 2001. Those Terms call for a report on the effectiveness of the existing procedures and statutory provisions in investigating and dealing with corrupt and criminal conduct by officers of WAPS and as to whether changes in the laws or in investigative or administrative procedures are necessary or desirable for the purpose of investigating or dealing with, preventing or exposing, such conduct. The ambit of the Royal Commission thereby created to examine the administration and operation of WAPS is extensive. The prevention and exposure of corrupt and criminal conduct is affected, not only by the operational procedures put in place, but also by the prevailing culture in the Police Service. Its culture is in turn influenced by a wide range of administrative arrangements that determine its corporate style and the attitude of its officers, commencing with the recruitment of officers, the manner of their deployment and through to the process of termination. It has not been feasible for the Royal Commission to explore all of these issues, but the Royal Commission has endeavoured to focus upon those that bear most directly on corrupt and criminal conduct prevention and detection.

SOURCES OF INFORMATION

Where possible, the hearings of the Royal Commission were selected and conducted with a view to exposing strategic issues of concern, as well as examining the conduct of the particular officers involved. The evidence was revealing, not only in relation to corrupt conduct, but also in the context of identifying the prevailing culture of WAPS.

WAPS has co-operated in the production of documents on Notices given under s. 6 of the *Royal Commission (Police) Act 2002* and many officers and ex-officers made themselves available to Royal Commission staff for briefings in relation to WAPS past and current practices. The Round Table Conferences held by the Royal Commission were also a useful means of exchanging information and views between WAPS representatives, stakeholder organizations and officers from similar agencies elsewhere in Australia.

The issues associated with policing and corruption have become topical in national and international conferences, and in academia, and there is now a proliferation of discussions and writing on topics concerned with police corruption, and with its causes and prevention. These publications have been invaluable in determining current benchmarks and standards, not only in Australia, but also across the world, and in assessing the comparative effectiveness of the measures in place in this State.

PROFILE OF WAPS

WAPS does not compare favourably on a statistical comparison with the police services of other States on issues of civilian support, gender diversity, reputation, public confidence and other performance indicators. Appropriate allowances must be made for the inconsistencies in the collection and classification of data and for the possibilities that various demographic factors may distort the comparisons; but neither would account for the consistently low ratings across a range of issues, and the conclusion is inescapable that WAPS lags behind the reform processes and management standards of policing across a number of measures. The difficulty does not seem to arise as much in the implementation of structural and procedural changes, as in the delivery of reforms in the more challenging areas of culture, management and technology.

GENDER ISSUES

WAPS has the lowest number of female officers of any police service in Australia. This is notwithstanding positive efforts by the current Commissioner to remedy the situation. Unfortunately, the resistance to change may well be a statement about the culture of the

organization and it will require a positive change in culture before the position significantly improves. What is of immediate concern is that, for no apparent valid reason, WAPS is behind the other States of Australia on this issue, as it is on a number of others.

HISTORY OF REFORM

WAPS has not been idle over the last decade during which police corruption has emerged through various inquiries around the western world as an issue that the administrators of police services are required to address. In 1994, the Delta Reform Programme was launched by WAPS with the aim of introducing a wide range of strategies directed at changing the culture and business efficiency of the organization. In 1997, a major Investigative Practices Review ("IPR") was conducted to improve the investigative capacity of WAPS. Following the 1997 Report of the Wood Royal Commission into the NSW Police Service, a number of its key reform proposals, such as the devolution of the major crime squads, were adopted by WAPS. Since the commencement of this Royal Commission, a number of further measures have been introduced. In September 2002, consultants retained by WAPS, Ron Bogan and Stuart Hicks, delivered a significant report ("Bogan and Hicks Report"), entitled "WA Police Service - A Qualitative and Strategic Review of Reform - The Way Ahead", which reviewed the reform process to that time, and identified substantial areas of inadequacy that still needed to be addressed. A Strategic Reform Programme was then established, and additional initiatives have been implemented while the Royal Commission has been in progress.

The position that has been reached has presented challenges to the Royal Commission in meeting its obligation to recommend changes that will contribute to the prevention of corrupt and criminal conduct. Most of the obvious structural and strategic measures appear to have already been implemented, yet problems remain. There is no simple solution to those problems. Like many public sector organizations, the role of the Police Service has changed substantially in recent times and it has to effect profound changes to many aspects of its administration in order to be able to meet its contemporary commitments.

Systems ranging from recruiting to education to management and leadership to technology and even basic wages and conditions of employment, all need to be reassessed in order to transform an organization with over a century of settled traditions and practices into a modern and progressive Police Service.

WAPS is in the process of making that transition, but the balance of the journey will take time. The Royal Commission has endeavoured to identify procedures that will assist the

process, but the detail that has often been necessary to explain the reasons for the recommendation, is a reflection of the complexity of the issues involved.

The Royal Commission has drawn upon the New South Wales experience with police corruption. It would appear that, guided by the Wood recommendations, the NSW Police Service has established bench-marks for management and corruption prevention. Its experience in reaching that level has been a useful guide to the formulation of the recommendations contained in this report.

The Delta reform programme has been its source and the Royal Commission should be the occasion for a fresh start to reform within the standards suggested.

CORRUPTION PREVENTION

The procedures of a police service that influence its ability to prevent or expose corruption, are both diverse and profound, and WAPS has made progress in implementing reforms that are designed to change its culture and improve the level of delivery of police services. Apart from the matters already mentioned, since the appointment of the Royal Commission, WAPS has commenced the process of introducing a number of contemporary management practices designed to improve the level of supervision and accountability. These practices include Organizational Performance Reviews ("OPR"), a system for performance assessments, a corruption prevention plan, a succession plan and an executive development programme.

There is now international recognition of a number of strategies for corruption prevention. WAPS has some of them in place, but what is also recognized is that there is a need for the processes to be co-ordinated for maximum effectiveness in the form of a corruption prevention plan. It is a measure of the limited development of corruption resistance in WAPS that it has not had a corporate corruption prevention plan. In its Strategic Plan 2001 – 2006, reference is made to a commitment to "Foster Corporate and individual commitment to the higher standards of professionalism, integrity, and Codes of Conduct". The Police Service has recently published a new Code of Conduct. WAPS has signalled its progress towards incorporating these and other strategies into a comprehensive corruption prevention plan. Depending on the content of the corruption prevention plan, when finalized, with the implementation of these strategies it is hoped that WAPS will have in place a blueprint for corruption resistance, matching contemporary models in place elsewhere.

The effectiveness of these measures will depend upon the “traction” achieved. There is increasing support for the view that police services are reasonably adept at the formulation and publication of plans and strategies, but not so capable in achieving the implementation of them. Procedural and structural changes are not difficult to accomplish, but those modifications are limited in their capacity for bringing about fundamental change in the character of the organization. Structural changes must be accompanied by improvements in the quality of recruits, the training and education of officers and the development of expertise at middle management and executive levels.

Not only is it important that the processes that WAPS has commenced to “roll-out” be made effective in the manner envisaged in each case, but it is also necessary that the various processes should be integrated for maximum benefit. The Strategic Plan and the Annual Business Plan will have more likelihood of being effective if the Operational Performance Reviews, the Business Area Management Reviews, the performance assessment programme and the corruption prevention plan are united into one consistent framework.

Furthermore, in order to justify the demand for a commitment by officers of the service to a higher level of integrity and professionalism, changes must be supplemented by improved administrative and technical support for operational functions. The attempts of WAPS to enhance its communication and information technology have a sad history and it must finally deliver to its staff a modern and effective communications and information technology system.

CHANGES TO WAPS

It is universally accepted that the corporate role of delivering police services, and the individual officer’s role in that process has become increasingly complex and challenging. Important issues therefore arise in relation to the qualifications, training and management of police service personnel to meet those challenges.

The Royal Commission recommends that the qualifications of recruits be upgraded to ensure that the appropriate persons are being employed by WAPS in both sworn and unsworn capacities. It is to be borne in mind that it is from the current recruits that the leaders of the future will emerge. Improving the calibre of recruits is a certain measure in providing a long-term improvement in the quality of the delivery of police services.

The above observation does not overlook the undeniable fact that in the history of WAPS there have been thousands of fine police officers, who have provided police services to the satisfaction of the community in their time, but the equally undeniable fact is that the future

policing of this State will require a level of expertise superior to that which is provided at present. Persons recruited by WAPS must have the capacity to rise to that level.

The system for training, continuing education and personal development of WAPS officers is critical in meeting the demands of the future. The system for the ongoing education of current staff is inadequate, and requires improvement. Incentives should be provided for officers to undertake further study inside and outside the Police Service in an endeavour to raise the corporate intellect of the organization.

WAPS does not have an Executive Development Programme. That position should be amended. There should be a better process by which the executive capacity of the service is raised. Those in command should be given greater opportunities to broaden their management skill by participating in external tertiary courses and secondments. The procedure of lateral entry or exchange should be more than the token opportunity that currently exists.

All of the foregoing needs to be complemented with a proper arrangement for recognition and rewards that reflects the increased expectations as to qualifications, commitment and expertise. This may well require a reshaping of wage levels and other conditions to recognize the differing standards and competencies in the various branches of the Police Service.

The middle management structure of WAPS requires review. The process of change is driven by middle managers, and for that and other reasons, the arrangement is critical. One of the areas in which WAPS is out of line with other police services in the country is that it has the lowest number of commissioned officers against total sworn members. This confirms the impression of the Royal Commission that there are issues of responsibility at the level of inspector, and the Royal Commission considers that there is a need to review staffing arrangements with a view to increasing the number of officers at that level in police stations in order to bolster its middle management resources.

CIVILIANIZATION

A recurring theme of this review of WAPS is the need to rationalize the roles of its sworn and civilian members. WAPS has close to the lowest percentage of civilian employees in the Australian police services, and there must be the liberation of sworn officers from administrative and technical functions that can be executed by civilian staff to enable police to concentrate on those duties that require the exercise of police powers. In that regard,

WAPS should be free from direction as to the minimum number of sworn officers it is to engage.

The issue of civilian support has been current within WAPS for nearly ten years, and the situation has gone backwards rather than forwards. Efforts that have been made to deal with the issue over that period have been neutralized, to some degree, by union resistance. It does not serve the interests of the members of the WA Police Union to be engaged in clerical, rather than operational, functions and there needs to be a co-operative and vigorous review of the Police Service in order to identify clerical, managerial or specialist tasks appropriate to civilian employees so that systems for recruitment, fixing wages and conditions, and deployment can be rationalized in a manner that is not only more efficient for the delivery of police services, but is also more satisfying for the personnel involved.

LEADERSHIP, MANAGEMENT AND SUPERVISION

The level of police corruption is a reflection of the quality of management and supervision. Improving management not only limits the opportunities for corruption, but also lifts the standard of delivery of police services. Improving the quality of leadership should be a priority for WAPS.

In some respects, the executive of the Police Service may feel aggrieved that their work should be subject to such public scrutiny and criticism when the management of no other public sector organization receives anything like the same treatment. That position is due partly to the Police Service history of unresolved allegations of corrupt conduct, and partly to the unique position of police officers with their capacity to exercise the powers and privileges of their office, which call for greater supervision and managerial accountability. Notwithstanding what might appear to be a number of negative statements concerning WAPS, the aim of this Volume of the Report is not to criticize, but to identify areas of improvement that will assist in accelerating the process of improvement that is already underway.

CHANGE MANAGEMENT

The issues with culture, corruption and service delivery confronting the executives of police services are now reasonably well defined and the primary requirement is for an executive team with the capacity for effective change management. In that context the Bogan and Hicks Report was telling. It identified critical deficiencies in the management of WAPS, in the areas of strategic planning ("corporacy") and policy implementation ("traction").

Those deficiencies are inherent in many of the areas identified for improvement in this Report. The Executive Command of WAPS has already moved to remedy the situation through its Strategic Reform Programme, but there are further measures, such as the creation of an additional position of Deputy Commissioner (Strategic Policy), the adoption of an Executive Development Programme, the greater use of Operational Performance Reviews and the enhancement of the performance assessment programme, which are identified by the Royal Commission for enhanced effectiveness in this critical area of strategic planning and implementation.

CHANGES TO STATUTORY PROVISIONS

Laws impact upon police in a number of different ways. Apart from providing the framework for their law enforcement functions, both in terms of the laws to be enforced and the procedures by which that process is to occur, laws can also contribute to the formulation of the culture of a police service and to the creation of risks of corrupt conduct.

The fundamental requirement of laws pertaining to policing is certainty. There should be no ambiguity in the effect of laws, or about the circumstances in which they are to operate. Uncertainty is corruptogenic - a breeding ground for corruption.

Legal regulation impacts on the culture of the police service by imposing on police statutory limitations upon their actions in activities such as interviewing suspects or searching premises. Police do not always immediately welcome such measures. However, in the long term, their reputation benefits by the certainty of stipulated procedures, which results in the minimizing of controversy when followed. It is also to be noted that on some occasions, the imposition of too many barriers can spawn "noble cause" corruption out of a sense of frustration.

In this regard, this Report identifies a number of laws that require urgent amendment in order to reflect contemporary standards, and in order to provide the certainty that is necessary if a high level of integrity is to be demanded of police. At the forefront is the *Police Act 1892*. It is an antiquated parody of modern legislation that not only brings the law into disrepute, but to some extent renders criticism of police hypocritical. A further example can be found in the vagaries of the current policing of the laws regarding prostitution. If police are not given contemporary legislation by which to act, it is difficult to demand of them exemplary standards of management and behaviour.

COMPLAINTS MANAGEMENT

Wood (1997) was firmly of the view that a police service should endeavour to move from the formal adversarial model of internal regulation when dealing with complaints about police conduct to a more managerial or remedial approach that places the responsibility on those in command. Others have expressed similar views since, and such an approach is undoubtedly appropriate in this day and age. WAPS has made movements in that direction, but should continue actively to pursue that objective. However, the transformation is blocked by s. 23 of the *Police Act*, which perpetuates a formal, inefficient and punitive disciplinary process of a type that is condemned by almost all recent reviews. That section, along with many anachronistic provisions of the *Police Act*, should be repealed and replaced with a contemporary management-based system.

For several years, WAPS has adopted a process for Local Complaint Resolution (“LCR”). The objective is said to be to use the process as an educative tool, rather than as a means of affording punishment for minor errors in judgment. This process is appropriate for complaints in the customer service category. For any complaint more serious than customer service, there should be a simple classification of the allegations into two categories. If the complaint relates to conduct, which, if proven, would amount to criminal conduct, then the full investigative process should follow, with the consequence of a prosecution if the evidence is sufficient for that purpose. For other allegations, falling short of complaints of criminal conduct, a managerial process should be adopted, rather than disciplinary procedures. Sanctions should have a remedial focus and include counselling, education or transfer. Dismissal would be the ultimate remedy in extreme cases that come within s. 8 of the *Police Act*.

The process of devolution of authority to investigate complaints should continue to the point that District Officers should have responsibility for all complaints within the District. Similarly, those in command of specialist units should be granted authority to deal with complaints about officers under their command. The Commissioner of Police should deal with complaints concerning District Officers, or those in command.

INTERNAL INVESTIGATIONS

In almost every segment of the hearings, the Royal Commission received evidence of internal investigations that were clearly unsatisfactory. It is accepted that a number of these examples were historic, and that since then improvements have been made to the system for internal investigations by WAPS. However, there have still been examples of current officers who had significant complaints histories but who have remained in the

Police Service notwithstanding the indications of their corrupt tendencies having come to the attention of the Internal Affairs Unit ("IAU"). The explanations given indicate that the IAU has been under resourced and has lacked expertise or commitment, although the Royal Commission recognized the cooperation and assistance of the current staff.

Internal investigations present a challenging task. A proactive approach is essential. To be successful, that strategy requires substantial resources that permit efficient systems for gathering, storage, and analysis of intelligence, a high-level surveillance capacity and the allocation of skilled investigators. An urgent review should be conducted to identify the needs of the IAU to ensure that appropriate resources are provided and skilled investigators are attracted in this area.

The Royal Commission heard evidence that officers of WAPS who had complained about the conduct of other officers were dissatisfied with the protection provided to them. The handling of whistleblowers is also a complex matter. Legislation has now been passed creating statutory obligations for their protection, and WAPS has appropriate procedures in place. However, those procedures have not been well used and there is a clear need for increased sensitivity in the handling of whistleblowers, if there is to be any expectation that officers will continue to come forward to expose the misconduct of their colleagues.

INFORMATION TECHNOLOGY/UNAUTHORIZED ACCESS

The Royal Commission also received evidence of a number of instances of WAPS officers obtaining access to information on databases maintained by WAPS without authority, and improperly disclosing the information obtained. Little or no action was taken in relation to those instances that were already known to WAPS. The situation is of concern to the Royal Commission.

The collection of information and intelligence, and the capacity of officers to have access to it, is vital to the effective delivery of police services. However, much of the information is personal and private, and unless otherwise warranted, should remain confidential. Unauthorized access to the information and the disclosure of it is a serious matter.

WAPS needs to substantially improve its system for control of access to information collected by it, and to take stronger action, including prosecution, when breaches of its procedures are detected. The legislation should be amended to clarify the ambit of criminal culpability for unauthorized disclosure.

EXTERNAL OVERSIGHT

The Royal Commission published an Interim Report in December 2002 recommending the replacement of the Anti-Corruption Commission ("ACC") by a new agency, to be known as the Corruption and Crime Commission ("CCC"). The *Corruption and Crime Commission Act 2003* was assented to on 3 July 2003. The *Corruption and Crime Commission Amendment and Repeal Act 2003* Part 2 and Part 3 Division 7 were assented to on 22 December 2003. The commencement date in each case was 1 January 2004. On 24 December 2003 the Attorney General, the Hon. Jim McGinty MLA announced the appointment of Chief Judge Kevin Hammond as Commissioner and Mr Malcolm McCusker QC as the independent Parliamentary Inspector of the Corruption and Crime Commission.

The Interim Report recommended the incorporation of the functions currently carried out by the Ombudsman in reviewing internal investigations by WAPS, in the new body. It is the expectation that the high level of scrutiny currently carried out by the Ombudsman will continue in the CCC, with the added advantage of greater capacity for strategic review in view of the CCC's involvement in investigations into police corruption, and its important research and education function.

EXTERNAL AUDIT OF REFORM PROCESS

One of the key recommendations of Wood (1997) was the appointment of an external auditor upon engagement to the Police Integrity Commission ("PIC"), to carry out a qualitative and strategic audit of the reform process recommended by Wood. That recommendation was adopted with the engagement of consultants to work in consultation with PIC, in a process known as QSARP. The Royal Commission considers that this process was highly successful and resulted in a sophisticated and detailed analysis of the progress of the adoption of the Wood (1997) recommendations. Whilst the retainer by WAPS of Messrs Bogan and Hicks to audit its reforms was a commendable initiative, it suffered from the deficiency of the consultants being retained by the organization it was to audit. The retainer of consultants by the CCC to carry out a similar function would allow for a more independent and transparent assessment of progress. Accordingly, this Royal Commission recommends that there be a similar process with the CCC appointing and working with consultants to monitor the progress of reform in WAPS.

RECOMMENDATIONS

The issues canvassed in Volume II of this Report are often linked or overlap, and the recommendations made in the course of dealing with the various topics have been distilled in short form in the final chapter in the following Key Reform Areas:

Right People for the Right Jobs

- Recruitment
- Civilianization
- Lateral Entry
- Education and Training
- Management and Leadership
- Human Resource Management

Doing the Job Right

- Information Management and Technology
- Internal Investigations
- Complaints Management and Discipline
- Corruption Prevention Plan and Strategies

Making It Happen

- Reform Agenda Implementation and Change Management
- Law Reform

It is the hope of the Royal Commission that the opportunity will be taken to introduce not only contemporary best practices, but also innovations that will achieve levels of excellence that will establish WAPS as a leader in policing in Australia. The cost in fiscal terms of achieving the desired improvement is not substantial. What is required is leadership and commitment from within WAPS, the Union and Government.

It is acknowledged that there are many challenges ahead for individual police officers, but it is the expectation of the Royal Commission that improvements to the culture and management of WAPS will advance the professionalism of the police service and enhance the working environment of its staff.

PART I

BACKGROUND

CHAPTER 1

INTRODUCTION

1.1 COMMISSION'S TERMS OF REFERENCE

On 12 December 2001, His Excellency Lieutenant General John Murray Sanderson, AC, Governor of the State of Western Australia, appointed the Honourable Geoffrey Alexander Kennedy AO QC to be a Royal Commission. The Terms of Reference of the Commission are as follows:

By this commission under the Public Seal of the State, I, the Governor, acting with the advice and consent of the Executive Council –

1. appoint you to be a Royal Commission to inquire into and report on whether since 1 January 1985 there has been –
 - (a) corrupt conduct; or
 - (b) criminal conduct,by any Western Australian police officer;
2. declare that the phrases in clause 1(a) and (b) include, but are not limited to, the meanings given to them by section 3 of the *Anti-Corruption Commission Act 1988*;
3. require you to inquire into and report on the effectiveness of existing procedures and statutory provisions in investigating and dealing with conduct of the kind referred to in clause 1 by police officers;
4. require you to inquire into and report on whether changes in the laws of the State or in investigative or administrative procedures are necessary or desirable for the purpose of investigating or dealing with, preventing or exposing, conduct of the kind referred to in clause 1 by police officers;
5. declare that you are to inquire into and report on those matters which you consider significant to the extent practicable in the time available to the Royal Commission;
6. declare that you are to report by 31 August 2003;
7. declare that, by virtue of this commission, you may in the execution of this commission do all the acts, matters and things and exercise all the powers that a Royal Commission may lawfully do and exercise, whether under the *Royal Commissions Act 1968* or otherwise;
8. declare that section 18 of the *Royal Commissions Act 1968* applies to the Royal Commission;

9. declare that in conducting the inquiry you may –
 - (a) do anything that you consider appropriate in order to avoid prejudice to pending or prospective criminal proceedings, including taking evidence or otherwise proceeding in private, precluding the publication of evidence or deferring the taking of evidence; and
 - (b) during the course of the inquiry refer any matter to an appropriate authority, where you consider that delaying that action until the completion of your report would be undesirable;
10. declare that in your report you may make any recommendations you consider appropriate.

On 22 July 2003, His Excellency the Governor amended the Commission by extending the date for the Report to 30 November 2003. On 25 November 2003, His Excellency further extended the date for the Report to 30 January 2004.

1.2 DEFINITION OF CORRUPTION

As the Terms of Reference establish, the expressions “corrupt conduct” and “criminal conduct” include the meanings given to them by s. 3 of the *Anti-Corruption Commission Act 1988*.

The expression “corrupt conduct” is defined in s. 3(1) of the *Anti-Corruption Commission Act* to mean “conduct referred to in s. 13(1)(a)(i) or (ii)”, that is to say, as a public officer, (i) corruptly acting or corruptly failing to act in the performance of the functions of his or her office or employment, or (ii) corruptly taking advantage of his or her office or employment to obtain any benefit for himself or herself or for another person.

The expression “criminal conduct” is defined in s. 3(1) of the *Anti-Corruption Commission Act* to mean “conduct referred to in s. 13(1)(a)(iii), (iv), (v) or (vi)”, that is to say, as a public officer, (iii) committing a scheduled offence whilst acting or purporting to act in his or her official capacity; or (iv) committing an offence under s. 552 of *The Criminal Code* by attempting, whilst acting or purporting to act in his or her official capacity, to commit a scheduled offence; or (v) committing an offence under s. 553 of *The Criminal Code* by inciting, whilst acting or purporting to act in his or her official capacity, the commission of a scheduled offence; or (vi) committing an offence under s. 558 of *The Criminal Code* by conspiring, whilst acting or purporting to act in his or her official capacity, to commit a scheduled offence. The “scheduled offences” are set out in Schedule 1 to the *Anti-Corruption Commission Act*. They comprise offences under ss. 60 or 61 of *The Criminal Code*, relating to any member of the State Parliament receiving or attempting to receive

bribes and to any person bribing or attempting to bribe a member of the Parliament, or any section in Chapter XII, XIII, XVI, XX, XXXIII A, XXXVI, XXXVII, XL, XLI, XLII, XLIVA, XLIX or LV of *The Criminal Code*.

As was observed by the Hon Justice JRT Wood, at p 32, para 2.2 in the First Interim Report (1996) of the Royal Commission into the New South Wales Police Service:

2.2 'Corruption' is notoriously difficult to define, and its reach may vary depending upon whether it is defined according to deviation from legal, public interest, or public opinion norms. Even within one of those possible sets of criteria it may change from setting to setting, and from time to time, according to variations in community standards and expectations. Any attempt at a universal and precise definition is, in fact, likely to present more problems than it would resolve.

For the purposes of his Inquiry, his Honour took corruption to be "deliberate unlawful conduct (whether by act or omission) on the part of a member of the Police Service, utilizing his or her position, whether on or off duty, regardless of its motivation" (para 2.3). He then went on to identify a number of examples of police corruption. They were as follows:

2.4 It includes participation by a member of the Police Service in any arrangement, or course of conduct, as an incident of which that member, or any other member:

- is expected or encouraged to neglect his or her duty, or to be improperly influenced in the exercise of his or her functions; fabricates or plants evidence; gives false evidence; or applies trickery, excessive force or threats, or other improper tactics to procure a confession or conviction; or improperly interferes with or subverts the prosecution process;
- conceals any form of misconduct by another member of the Police Service, or assists that member to escape internal or criminal investigation; or
- engages himself or herself, as a principal or accessory, in serious criminal behaviour.

In each case, the relevant conduct is considered to be corrupt, whether motivated by an expectation of financial or personal benefit or not, and whether successful or not.

2.5 Without being exhaustive, this approach embraces well-known forms of corruption such as the receipt of bribes; green-lighting; franchising; protecting or running interference for organized crime; releasing confidential information and warning of pending police activity; gutting or pulling prosecutions; providing favours in respect of bail or sentencing; extortion; contract killings; stealing; supplying drugs; and other forms of direct participation in serious criminal activity, the commission of which is facilitated by virtue of the office held.

2.6 In addition to these activities which are directly inimical to the suppression and prosecution of crime, the approach taken by the Commission embraces those forms of conduct sometimes referred to as 'noble cause corruption', but better

categorised as 'process corruption', in which police powers are abused, evidence is fabricated or tampered with, or confessions are obtained by improper means in order to procure the conviction of persons suspected of criminal or anti-social conduct, and others.

1.3 SCOPE AND PURPOSE OF ROYAL COMMISSION

A Royal Commission takes its character from its terms of reference. Royal Commissions often are established because the existing machinery of government appears not to be capable of dealing with the issues that become the subject of the inquiry. In those cases, a primary function of a Royal Commission is to investigate the issues identified for the purpose of formulating recommendations for improvements in the processes of Government to enable similar issues to be dealt with appropriately in the future. Accordingly, the fact finding role of a Royal Commission is directed to the establishment of facts to a sufficient degree to ascertain whether there are issues that remain unresolved, and to provide a basis for the formulation of recommendations for reform. This Royal Commission is an example of such an inquiry.

It is not the function of the Royal Commission to gather evidence for the purpose of instituting prosecutions or disciplinary proceedings. Such a process may be undertaken if it is coincidental with the primary purpose of the inquiry, but it should not be allowed to deflect the Royal Commission from its task of gathering information, with the assistance of powers of compulsion, and without the requirement for complying with the rules of evidence, in order to identify the pathway of reform.

This has been the focus of the Royal Commission. The Royal Commission embarked upon an examination of allegations of possible police corrupt and criminal conduct, first, by ascertaining the substance of the allegations, and secondly, by determining whether the existing agencies involved in investigating police corruption, namely, the Internal Affairs Unit ("IAU") of the Western Australia Police Service ("WAPS") and the Anti-Corruption Commission ("ACC"), required reform. As a result of adopting that approach, it was soon ascertained that problems associated with the investigations into police corruption existed, and that the ACC, in its present form, is not capable of satisfying community concerns about those issues. This in turn led to the presentation of the Royal Commission's Interim Report to His Excellency the Governor, on 20 December 2002, in order to initiate the process of reform through the establishment of a Corruption and Crime Commission ("CCC") with enhanced functions and powers.

The continuing work of the Royal Commission has also been directed toward the identification of deficiencies within WAPS that have contributed to the failure to prevent or expose or deal with corrupt or criminal conduct by police officers. Again, the aim has been

to formulate proposals for improvement and reform designed to develop the capability of the Police Service to achieve that objective. This is consistent with the view of the Royal Commission that its fundamental aim is to bring about permanent change to the system for preventing or controlling corruption, rather than the collection of admissible evidence for the purposes of prosecution or disciplinary action. Whether the evidence gathered is sufficient for the purposes of a prosecution or disciplinary action against individual officers will be determined by the Commissioner of Police or the Director of Public Prosecutions ("DPP") in the light of the evidence ultimately available. The Commissioner of Police has established a Royal Commission Investigation Team ("RCIT") dedicated to investigating matters raised by the Royal Commission. Members of that team have been, and are continuing to be, provided with evidence obtained by the Royal Commission, and the function of the team is to investigate those matters further with a view to obtaining admissible evidence. The newly created Corruption and Crime Commission will have the opportunity of overseeing the investigation of the RCIT.

It is unlikely that there will be a significant number of prosecutions or disciplinary proceedings launched as a result of the matters investigated by the Royal Commission. A substantial proportion of the alleged corrupt or criminal conduct occurred a number of years ago, and gathering contemporaneous evidence can be very difficult indeed. In addition, the evidence obtained by the Royal Commission has usually been obtained pursuant to an inducement or under compulsion, and it would not be admissible in a criminal court. This does not prevent the DPP and RCIT officers from making further attempts to obtain the same evidence in admissible form, but a number of witnesses have intimated to the Royal Commission that they are only prepared to speak under compulsion, and will not co-operate with any other inquiry.

The Royal Commission has had the benefit of the capacity to determine facts on the basis of the analysis of a large volume of evidence covering many officers and many incidents. Any prosecution or disciplinary proceedings would need to be more stringent in confining conclusions to a consideration of the evidence strictly relevant to the individual or incident concerned.

Consistent with the foregoing, it is not the function of this Royal Commission to make any findings of fact as to the corrupt or criminal conduct of individual police officers. The Royal Commission into Commercial Activities of the Government of Western Australia and Other Matters (Kennedy, Chairman, 1992) ("WA Inc Royal Commission"), the terms of reference of which were amended by s. 4 of the *Royal Commission into Commercial Activities of Government Act 1992*, was required to inquire and report whether there had been –

- (a) corruption;
- (b) illegal conduct; or

- (c) improper conduct,
- by any person or corporation in the affairs, investment decisions and business dealings of the Government of Western Australia or its agencies, instrumentalities and corporations in respect of the matters referred to in Schedule 1, and to report whether –
- (d) any matter should be referred to an appropriate authority with a view to the institution of criminal proceedings; or
- (e) changes in the law of the State, or in administrative or decision making procedures, are necessary or desirable in the public interest.

The approach of the WA Inc Royal Commission with respect to its findings was considered in its Report at paras 1.2.6 and 1.2.7:

1.2.6 It would now seem to be perfectly clear that the Commission is required to inquire and report whether there has been, in the context of the specified terms of reference, corruption, illegal conduct or improper conduct. Nevertheless, these words require careful consideration. The Commission believes it to be imperative, if the interests of justice are to be observed and protected, that proper notice be taken of the nature of this Commission. It is an administrative body, or perhaps now, in the light of the Act, an administrative body with a statutory flavour. It is not a court of criminal justice charged with the determination of the guilt or innocence of persons prosecuted for breaches of the law. It is not bound by the rules of evidence. The fact that this Commission has been conducted by present and former members of the judiciary should not be seen as constituting it a 'judicial' inquiry or giving it the status of a court. While it is the function of a judge or a jury to determine issues, at least as far as the law is concerned, the purpose of a Royal Commission is to find facts and report them, and often, as in this case, to make recommendations. It has no power to affect the legal rights of individuals.

1.2.7 In these circumstances, the Commission has sought to determine, through the words of the Act, the true intention of the legislature. Careful consideration has led us to conclude that we are required, by the Commission as affected by the Act, *inter alia*, to report whether there is material which should be considered by the appropriate authority charged with responsibility for the institution of criminal proceedings. It is for that authority, not this Commission, to determine whether there is a *prima facie* case warranting prosecution. Far less is it the task of this Commission to make an express finding of the commission of a criminal offence. Such a finding would have no consequence in law and could be highly prejudicial.

The WA Inc Royal Commission went on to indicate at 27.1.2 that, although it had made a number of findings of serious impropriety, the Commissioners had refrained from detailing any findings in respect of illegal or corrupt conduct, reserving those matters for an Appendix to their Report, which they recommended should be received in confidence and passed to the DPP for his consideration, with a view to the institution of criminal proceedings. This course was recommended in order to safeguard against any prejudice that might otherwise arise. Whether or not criminal proceedings would eventuate was to be a matter for the prosecuting authorities. In so doing, the Commissioners were indicating

that they were doing no more than drawing attention to evidence that in their view, warranted the DPP's consideration. They recognized that there were many factors, including questions of hearsay, corroboration, and the prospects of a conviction that are required to be taken into account in considering the exercise of a prosecutorial discretion.

In the Royal Commission into the Finance Broking Industry, Commissioner Ian Temby QC (2001: 13), adopted the opinion expressed by the WA Inc Royal Commission – see p 13, para 2.6, of his Report. The Hon Terence Cole QC also adopted this view in his Final Report of the Royal Commission into the Building and Construction Industry (2003: 57-60, paras 55-64).

Mr G E Fitzgerald QC, as he then was, succinctly observed in the Fitzgerald Commission of Inquiry in 1987:

“[T]he most important thing about the evidence, and the purpose of the summary of it contained in this report, is not the truth or falsity of particular allegations, but the pattern, nature and scope of the misconduct which has occurred.

The main object of this report and its recommendations is to bring about improved structures and systems.”

Wood (1997: 18-19, para 1.48) expressed a similar view. He set out his reasons for his not bringing in specific findings of corrupt or serious misconduct against any individual, whether or not they made admissions in that regard. These reasons included:

- [T]here is little use, and a measure of unfairness, in bringing in specific findings requiring determination of issues of credit and disputed facts in circumstances where members of the Service concerned were required to give evidence and to produce documents under coercive power, and in circumstances where such material could not be used against them in criminal proceedings;
- [T]he ability of the Royal Commission to engage in the wide inquiry required would have been severely curtailed had it been necessary to examine specific cases, to the extent necessary to bring in conclusions in conformity with a standard required of the criminal law or in conformity with that recognized in *Briginshaw v Briginshaw* [(1938) 60 CLR 336];
- [F]indings by the Royal Commission of criminality would not stand as convictions for the purposes of the criminal law and would be of no relevance to any prosecutions commenced as a consequence of its investigations; and

- [I]n the absence of a specific statutory power to make such findings, there is real doubt as to the jurisdiction of the Commission to do so.

Clearly, it is not for this Royal Commission to determine issues which will be binding as between individuals, nor to make decisions which will directly affect the rights or status of individuals. In the circumstances, the Royal Commission has made “no determination carrying legal consequences and no exercise of authority of a judicial nature *in invitos*”. See McGuinness v Attorney General of Victoria (1940) 63 CLR 73 per Dixon J at 102. See also Victoria v Australian Building Construction Employees’ and Builders Labourers’ Federation (1982) 152 CLR 25 per Gibbs CJ at 52-53.

1.4 PROCEDURAL FAIRNESS

It is readily acknowledged that the rules of procedural fairness are applicable to the Royal Commission. Those rules are well known, commencing with the advice of the Judicial Committee of the Privy Council in *Mahon v Air New Zealand* [1984] 1AC 808 at 820-821. However, the rules of procedural fairness are not universal. They must be adapted to the procedures that are appropriate to the circumstances of the particular case, as to which see *National Companies and Securities Commission v News Corporation Ltd* (1984) 156 CLR 296, at 311-312, 310-320 and 326 and *Kioa v West* (1985) 159 CLR 550 at 555.

In his Report as the Royal Commissioner into Productivity in the Building Industry in New South Wales, Mr Roger Gyles QC (as he then was), at p ix, wrote:

I can say that I do not accept that in this type of inquiry an *adverse finding* is the equivalent of a finding of disputed fact, of any criticism of a party, or of the exposure of evidence or material which might reflect badly on a person. Nor do I accept that a warning must be given of all possible ramifications of each piece of evidence before it can be referred to in the Report. I do agree that a party should not be confronted for the first time in the Report with a true adverse finding upon a totally new point or issue which it could not have reasonably anticipated. I do not accept that this anticipation can only come from an express statement or warning by the Commissioner or Counsel Assisting.

This passage was adopted with approval by the WA Inc Royal Commission (at 1.6.31) and by the Hon Justice Neville Owen in his Report on the HIH Royal Commission (p 19, para 1.4.2):

The rules of procedural fairness do not require that, at the time when the evidence is given, the witness receive prior notice of every proposition, every question and every document that might be put against them or that might be contrary to their interests. In the case of this Commission, that would have been a practical

impossibility: this was a dynamic inquiry in which new issues and new material were constantly emerging.

The Royal Commission is in agreement with those statements.

1.5 ROYAL COMMISSION (POLICE) ACT 2002

At an early stage of the Royal Commission's inquiries, it became apparent that, in order for it successfully to complete its task, powers in addition to those conferred by the existing *Royal Commissions Act 1968* would be required, and a request was made to the Government for the conferring on the Royal Commission of a number of additional powers, including:

- The power, by written notice served on a public authority or public officer, to require the authority or officer to produce a statement of information;
- The power to obtain documents;
- The power to enter public premises to inspect any document or thing;
- Expanded powers of securing the attendance of witnesses;
- The power to restrict the publication of evidence;
- The power to take over police investigations and investigations by the Parliamentary Commissioner for Administrative Investigations ("Ombudsman");
- The power of the Commissioner to grant approval for the acquisition and use of assumed identities by officers of the Royal Commission;
- The power to conduct controlled operations and integrity testing programmes;
- The granting of authority to operate under the *Surveillance Devices Act 1998*; and
- Certain powers of telecommunication interception.

The Government readily acceded to the Royal Commission's request and, on 28 June 2002, having passed both Houses of Parliament, the *Royal Commission (Police) Act 2002* was assented to. The additional powers conferred upon the Royal Commission by this Act were not new to Australia. They were based upon and, in many instances, replicated, legislation containing powers that in the course of the Royal Commission into the New South Wales Police Service had been employed to great effect. With respect to the Police Integrity Commission ("PIC"), the Independent Commission Against Corruption ("ICAC") and the NSW Crime Commission ("NSWCC") in New South Wales and the Crime and Misconduct Commission ("CMC") in Queensland the powers have continued to be employed to great effect. The powers so granted to the Royal Commission formed part of an overall

investigative regime, each power in its deployment generally being dependent upon other investigative activities.

1.6 ESTABLISHMENT OF THE ROYAL COMMISSION

It was apparent that the task entrusted to the Royal Commission was substantial, and that significant resources would be required to enable it to meet its obligations. Adequate funding was made available to the Commission. The arrangements for the accommodation, recruiting and resourcing of an organization such as the Royal Commission takes time, as does the acquisition of information and preparation for hearing. On 25 March 2002, the Attorney General appointed Mr PS Hastings QC as Senior Counsel Assisting the Commission, Mr KM Pettit SC and Mr SD Hall as Counsel Assisting the Commission and Mr MJ Byrne as General Counsel and Director Operations. Mr MA Cashman took up the position of Commission Solicitor and Mr GJ Ross the position of Manager of the Research, Policy and Reform Unit. At its peak, the Royal Commission employed 102 personnel.

The contribution made by Mr Michael Johnson as the initial Executive Director of the Royal Commission in relation to the securing of accommodation and its adaptation to the needs of the Royal Commission was outstanding. When Mr Johnson resigned to take up the position of Director, Magistrates Courts and Tribunals, the Commission was fortunate to have Mr Alex Rimkus act in his place, while continuing to serve as the Manager Finance.

Over six months elapsed before the Royal Commission was in a position to conduct public hearings. The terms of reference initially required the Commission to report by 31 August 2003, and it was planned that the hearings would conclude by 30 June 2003. As it transpired, it was not possible to conclude the hearing of the issues selected for investigation within that period and, for this reason, the reporting time was extended to 30 November 2003 and was subsequently extended to 30 January 2004, having regard to the delay in the establishment of the CCC. Public hearings eventually concluded on 1 September 2003. The Commission sat in public hearings on 161 days and heard evidence from 356 witnesses. The transcript of public hearings ran to 17,883 pages, while 2643 exhibits were tendered in evidence.

The Royal Commission pays tribute to the contribution made by each and every member of the Royal Commission team. They have worked tirelessly in the performance of their various roles, often under considerable pressures. The Royal Commission is most grateful to them. Their names appear in Appendix 1 in Volume II of this Report.

1.7 AMNESTY

At the formal opening of the Commission's hearings on 28 March 2002, with the approval of the Attorney General, the Director of Public Prosecutions, the Commissioner of Police and the Anti-Corruption Commission, and with the support of the Western Australian Police Union, an offer of amnesties was announced, whereby, subject to certain exceptions and conditions, police officers and former police officers who had been guilty of corrupt or criminal conduct might avoid prosecution, and serving police officers might be permitted to resign from the Police Service. The offer of amnesties remained open until 31 May 2002. No amnesties were sought or granted during the period from 28 March 2002 until 31 May 2002 or subsequently.

1.8 ROYAL COMMISSION METHODOLOGY

As a newly created agency, without existing sources of information, the first task of the Royal Commission was to put in place processes for the acquisition of information about possible police corruption or criminal conduct both previous and current.. The Royal Commission established a system of electronic access to the databases of WAPS and the ACC and embarked upon a process of analysis of the information available for the purposes of identifying particular officers and strategic issues that warranted investigation.

It was never feasible that the Royal Commission would be able to investigate all the allegations or suspicions of corrupt or criminal conduct by police officers. A selection had to be made concerning the issues to be investigated. Not only did the Terms of Reference initially require a report to be submitted by 31 August 2003, but in any event, it was highly desirable that the Royal Commission conclude its business of formulating proposals for reform as soon as possible in order to enable permanent systems to be put in place to deal with the issues exposed.

The Royal Commission heard the evidence obtained as a result of its investigations in segments, usually defined by reference to particular officers or groups of officers, or by strategic issues. It was not possible to organize the hearing of the segments in chronological order of the events under investigation, as the commencement of segments was usually determined by circumstances outside the control of the Commission, such as the availability of evidence and witnesses, and the state of preparation of the segments. However, as will be seen from the summaries of the evidence in the various segments described in the subsequent chapters of this Report, at the conclusion of the hearing process, the evidence examined allegations of corrupt conduct throughout almost the entire period specified in the Terms of Reference, namely, from 1 January 1985 to date.

Apart from conducting public hearings in order to receive evidence gathered from the investigations of the Royal Commission into police corruption or criminal conduct, other hearings were conducted to examine matters of public controversy of long standing, in order to ascertain whether concerns of possible police corruption or criminal conduct were justified. The evidence received during those hearings is also summarized in this Report.

In addition to the investigations carried out as described, the Royal Commission reviewed other issues which were the subject of public disquiet, but which had already been the subject of previous inquiries. In those matters, it was decided that the Royal Commission could not usefully add to the outcome of those inquiries, and the Report provides summaries of the previous investigations and the basis for the decision of the Royal Commission not to reinvestigate those matters.

At the same time, the Royal Commission carried out research in relation to issues associated with the investigation and prevention of police corruption and criminal conduct, and those matters are the subject of detailed report in Volume II.

1.9 ROYAL COMMISSION AND THE MEDIA

In the Interim Report of this Commission, reference was made to the advantages of public hearings of inquiries into corruption. Those benefits accrue not only because members of the public can observe the hearings (in fact only a relatively small number do attend) but more because the access of media representatives to the hearings can result in widespread publicity to the broader community. Provided that appropriate safeguards are in place to protect the rights of individuals, where appropriate, the publicity generated is important, because it may lead to other witnesses coming forward, and to a general feeling of public confidence that the issues are being dealt with.

In establishing the facilities of the Royal Commission, provision was made for accommodation and other resources for media representatives. A media liaison officer was appointed to assist the media by the provision of copies of transcript and exhibits tendered in public hearings, and with compliance with the many orders restricting publication of the identity of witnesses or specific portions of evidence. It is acknowledged that, whilst non-publication orders are of benefit to the Royal Commission and to witnesses, they create a burden for the media, and the Royal Commission is grateful for the co-operation of reporters who regularly attended the hearings for their endeavours to comply with the orders and for their responsible coverage of the hearings of the Royal Commission.

1.10 LEGAL REPRESENTATION

The Government provided funding to the Legal Aid Commission for the grant of legal assistance to former and serving police officers who were summoned to appear before the Royal Commission. The officers were entitled to choose their own representatives, and financial assistance was then provided by the Legal Aid Commission. As a result, all police witnesses who were called before the Royal Commission were legally represented. The Royal Commission acknowledges the efforts of the officers of the Legal Aid Commission in the efficient implementation of these arrangements. It was necessary for the legal representatives to seek leave to appear, which was generally granted. On some occasions when the legal representative sought to represent more than one officer, leave was not granted. As with other Royal Commissions and inquiries, situations arise where it is inappropriate for a lawyer to act for more than one witness before the Royal Commission, particularly where evidence may be given in private or otherwise restricted. A challenge was made to such a ruling by the Royal Commission, but it was dismissed in the Supreme Court of Western Australia (see *re Kennedy: ex parte Crozier and Ors* [2002] WASC 190). As the hearings of the Royal Commission progressed, however, such rulings were rare.

1.11 COUNSELLING

The Royal Commission was sensitive to the stress that can occur with officers who are subject to scrutiny as a result of the investigations or hearings of the Commission. Arrangements were made at the commencement of the Commission to ensure that police witnesses had access to counselling services through the Royal Commission Unit of WAPS or through the Western Australian Police Union.

The Royal Commission also retained the services of consulting psychologists, who were available for consultation by police officers with whom the Royal commission dealt directly.

1.12 THE REPORT

This Report of the Royal Commission is in two volumes. Volume I contains an outline of the evidence of corrupt conduct or criminal conduct by Western Australian police officers in satisfaction of Term 1 of the Commission. Volume II reports on issues associated with Terms 3 and 4 concerning the effectiveness of existing procedures and laws in dealing with corrupt conduct or criminal conduct by police officers.

Volume I is in five parts. Part I deals with the background to the Royal Commission, including a summary of previous inquiries into police corruption in other jurisdictions. Part II

contains a summary of the evidence of corrupt conduct obtained as a result of investigations by the Royal Commission. This evidence covers a period from 1985 to 2003. Consistent with the role of the Royal Commission, as outlined above, the names of the officers involved in that conduct have not been included. In many instances, the publication of their names was not restricted during the public hearings, as it was important that there was publicity of the matters under investigation, in order to attract further witnesses on those issues. However, given that it is not intended that this Report should make binding findings, and the Royal Commission has no power to do so, nor does it have the power to affect the legal rights of individuals, it was considered inappropriate to use the names of police officers in the outlines of the evidence described in the Report. It is recognized that such an approach may cause some temporary unfairness to other officers who worked in the same squads or stations at the time, and had nothing to do with the conduct described. Any such prejudice is regretted.

Part III of Volume I describes the outcomes of investigations by the Royal Commission into historical matters of continuing controversy. As part of the aim of investigating those matters was to provide police officers, who were previously regarded with suspicion, with the opportunity to answer the criticisms of them, it seems appropriate that their names appear. In any event, the police officers concerned with the controversial matters have been publicly known for some time and there is little point in now avoiding the use of their names.

Part IV of Volume I summarizes the large number of complaints received by the Royal Commission, in respect of most of which no hearings were conducted.

Part V of Volume I sets out the results of a number of reviews by the Royal Commission of previous investigations of possible corrupt conduct which have been the subject of ongoing community disquiet, but which the Royal Commission decided did not require further investigation, or would not be assisted by further investigation. Again the names of the officers involved have been on the public record for some time and have therefore been included in the Report.

CHAPTER 2

PREVIOUS CORRUPTION INQUIRIES

2.1 INTRODUCTION

The pathway of police reform is now well trodden. In recent years, inquiries into police corruption have been a regular occurrence and have consistently reported similar patterns of corrupt police conduct, accompanied by recommendations for reform. It is informative to observe the history of those inquiries in other jurisdictions. There is a commonality of circumstances in which inquiries have been established, of the nature of the findings and of the proposals for change, all of which are relevant to the matters upon which this Royal Commission is required to report. Furthermore, it is possible to draw upon experiences in the aftermath of those inquiries to refine the recommendations for the augmentation of the current process of the reformation of the Western Australia Police Service ("WAPS").

As referred to in the Interim Report of this Royal Commission, Commissions of Inquiry have a long history of association with public policy reform, dating back to at least the Domesday Book of 1086 (Hallett, 1982: 16; Gilligan, 2002: 290), and their use as mechanisms of criminal justice reform can be traced to the Inquests of Sheriffs in 1176 (Donaghue, 2001: 5). Consistently since those times public inquiries have been used as a mechanism of change. The increasing popularity of Royal Commissions during the nineteenth and twentieth centuries is attributed by Cartwright (1975: 32) as being due to the continuing passing of power from the Crown to the State, and to the increasing sophistication of social issues to be considered in the wake of the industrial revolution. In modern times, the provision of police services has been a regular topic of inquiry.

Not all public inquiries are Royal Commissions and a number of other different forms can be used, including:

- Commissions of Inquiry;
- Inquiries under particular statutes;
- Committees of Inquiry;
- Parliamentary Committees; and
- Boards of Inquiry.

The Royal Commission has been much favoured in Australia. Indeed, there were 74 Royal Commissions in this country between 1970 and 2001, whereas in the United Kingdom over the same period there were 11 (Gilligan, 2002: 291).

Royal Commissions have been held into such matters as railway disasters (Granville), bridge collapses (Westgate) and shipping accidents (Voyager), where the role of the Royal Commission is to determine the facts of the matter as to what went wrong. Still other Royal Commissions have been established with a view to arresting the concerns of the public over the inability of government institutions to carry out their responsibilities in an appropriate manner. Examples include the Royal Commission into Aboriginal Deaths in Custody (Johnston, 1991) and the Royal Commission into Commercial Activities of Government and Other Matters (Kennedy, Chairman, 1992). In many of those inquiries the conduct or systems of police have come under scrutiny and comment, even though they may not have been the principal issue under investigation.

Commissions of Inquiry have a role beyond establishing the facts, as it is expected that they will also make recommendations for reform and, in more recent times, there have been a number of Commissions of Inquiry both within Australia and overseas that have considered many of the same issues, for example, that of possible police corruption which confronted this Royal Commission, and from which valuable guidance can be obtained. In order to set the scene for the Report on the investigations of this Royal Commission, a summary of the history of inquiries in other jurisdictions follows.

2.2 QUEENSLAND

The Fitzgerald Inquiry into police and political corruption in Queensland in 1987 was preceded by earlier inquiries touching on the same or similar issues in that State. The Gibbs Royal Commission into the National Hotel in 1963 investigated aspects of police corruption, as did the 1975 Inquiry into the Southport Betting Case by O'Connell. Little in the way of permanent change came of these inquiries, as they were largely contained by the police service and the government (Ransley, 2001). They were followed in 1976 by a Committee of Inquiry into the Enforcement of Criminal Law in Queensland undertaken by Lucas. The Lucas Inquiry identified that police officers were participating in the verballing of suspects and in the fabrication of evidence on a wide scale, but again little seemed to change (Ransley, 2001).

In 1985, two years before Fitzgerald, an inquiry into allegations relating to the policing of prostitution was conducted by the Director of Public Prosecutions, Desmond Sturgess QC. Sturgess found that prostitution was occurring at a significantly higher rate than were the reported figures of the Licensing Branch, and that operators of brothels and illegal gambling establishments seemed to have immunity from prosecution. Sturgess also noted that the Lucas Inquiry, a decade earlier, had made similar findings, but that the recommendations arising had not been adopted (Fitzgerald, 1989). The unwillingness of governments to

accept the advice of inquiries that have been established for the purpose of providing such recommendations has been a disturbing occurrence.

On 11 May 1987, a documentary entitled “The Moonlight State” by investigative journalist Chris Masters was shown on the *Four Corners* programme on ABC television. The documentary followed a series of articles in *The Courier Mail* newspaper earlier that same year, during January and February. The topic of these publications was the level of vice occurring in Queensland – brothels, prostitution, gambling and drug trafficking – and, more particularly, the inactivity of police in response to these matters. The Moonlight State programme featured a whistleblower who made sensational allegations of police corruption. Similar claims of police inactivity had been made over preceding years, but they had largely been ignored, or countered by denials and attacks on the persons making the complaints. On this occasion, however, the response was different.

The Government of Queensland at that time was led by the Minister for Police, the Hon William Gunn, who announced that an inquiry would be held into the allegations raised. It was intended that the inquiry be conducted over three weeks for the purpose of identifying whether there was any substance in the allegations. As with similar previous inquiries, the terms of reference were limited, reflecting the Government’s intention that it be a short affair, a view shared by the Opposition and most other observers (Prasser, Wear & Nethercote, 1990). Ransley (2001) believes that this decision by Gunn was intended to deflect political criticism, to evidence his suitability as the next Premier, but not to produce any great result.

The inquiry that followed was headed by Mr GE Fitzgerald QC, who, contrary to the belief of many, was not afforded the status of a Royal Commission, instead being appointed by Order in Council, gazetted on 26 May 1987. The report of that inquiry notes that, as soon as it was appointed, efforts were made to curtail its sphere of inquiry, and to limit its terms of reference and the availability to it of police documentation. However, before accepting his commission, Fitzgerald had sought and obtained a commitment from Gunn that he would be able to conduct his inquiry in an unfettered manner. Examples of his success in ensuring that his inquiry was comprehensive, included:

- Ensuring that total access was afforded to his inquiry to obtain both parliamentary and police documents;
- Gaining of extensions of the terms of reference;
- Appropriate resourcing;
- Selection of his own staff; and
- Gaining increased powers through legislative changes.

The terms of reference of the Fitzgerald Inquiry were twice extended and extra resources were provided, together with increased powers by virtue of amendments to the *Commissions of Inquiry Act 1950* and to the *Commissions of Inquiry Amendment Act 1987*, the *Commissions of Inquiry Amendment Act 1988*, the *Commissions of Inquiry Act and Other Acts Amendment Act 1988* and the *Commissions of Inquiry Act Amendment Act 1989*, (Ransley, 2001), as well as the waiver of Cabinet secrecy provisions. The Commonwealth also amended the *Income Tax Assessment Act 1936*, the *Royal Commissions Act 1902*, and the *Telecommunications (Interception) Act 1979* in order to provide access to additional information. The provision of additional powers being granted to inquiries to enable them to respond to allegations of police corruption, and the recognition of their increasing sophistication, have been a feature of Commissions of Inquiry both within Australia and overseas.

In August 1987, a breakthrough occurred when a "rollover witness" admitted corruption and was granted conditional immunity from prosecution in exchange for giving evidence at a public hearing. News of this rollover sent a shockwave through the police and political circles, particularly as more witnesses emerged to add their testimony to that of the first witness (Fitzgerald, 1989). Immunities from prosecution and protection from retribution instilled confidence that the inquiry was more than a "rubber stamp" or "whitewash", and as a result a number of major outcomes were achieved:

- Evidence was obtained that had hitherto been impossible to extract from police;
- Support of the public and the media was gained; and
- Others were encouraged to come forward with additional information (Ransley, 2001).

Fitzgerald was to find that there had been entrenched corruption within the Queensland Police Service at all levels, including that of Commissioner, and that politicians were also involved in corrupt and illegal conduct. His recommendations for reform were wide ranging and dealt with such matters as:

- The influence of organized crime in police corruption;
- Police culture and its corruptogenic nature;
- Management and supervision requirements within the Police Service;
- Changes required to recruitment and training;
- The need for improved information and support systems; and
- A revamping of police discipline and the disciplinary system.

It is worth making the point now that these same issues were later the subject of scrutiny and recommendations by the Wood Royal Commission in New South Wales (1997), and they have been the concern of this Royal Commission, 14 years later. Some characteristics are obviously hard to change, and history indicates that there are fundamental aspects of police services that require review if the cyclical nature of corruption is to be broken. More will be said about these issues in Volume II of this Report.

The objective of the inquiry conducted by Fitzgerald was “the need for public exposure rather than to maximise prosecutions” (Ransley, 2001: 194). Hence he elected to conduct hearings with an “emphasis of providing a cross-section of problems rather than determining the role of guilt of any individual” (Fitzgerald, 1989: 357). In some quarters, this stance was to be criticized, much in the same manner as the Royal Commission into Aboriginal Deaths in Custody (Johnston, 1991) was criticized for failing to recommend prosecutions against all but a few police and prison officers (Whimp, 1994: 89). The same approach was adopted by Wood, as the passages from his report quoted in the previous chapter show, and for the reasons there given, this Royal Commission has adopted the same approach.

Despite the foregoing, the value of the report of Fitzgerald can be seen in the policies that arose from his recommendations for “administering cures” (Finn, 1994: 35). As is to be expected, with the passage of time, the details of his recommendations have been refined, but the fundamentals of his vision for improvement in policing still remain valid. Perhaps the lasting legacy of Fitzgerald in respect of police corruption can be seen in his recommendation for, and the establishment of, an independent civilian external oversight agency, the Criminal Justice Commission (“CJC”) (now the Crime and Misconduct Commission (“CMC”)), to monitor anti-corruption activities. His exposure of widespread systemic political and police corruption put to rest any notion of corruption in Queensland being attributable to a “rotten apple” in an otherwise “healthy barrel”, an analogy which, for some time, senior police used as an excuse for the exposure of police corruption in order to avoid accountability for the misconduct revealed. As Goldsmith (2001) points out, inquiries that have taken place around the world after Fitzgerald (Mollen, 1994; Wood, 1997; Patten, 1999) have reinforced this finding, as, too, have many academics writing on the subject (see, for example, Goldsmith, 1990; Chan, 1997; Newburn, 1999).

Given the preponderance of evidence to counter the notion of the rotten apple theory, it is disturbing that it has continued to survive until recently, and was used to justify failing to take action to overcome systemic failings in law enforcement organizations.

An analysis of the circumstances leading up to the Fitzgerald Inquiry indicates that it was a product of the confluence of three major factors: the involvement of media organizations that created the necessary awareness within the general public of the basis of concern about the Queensland Police Service; a political situation which resulted in the Acting Premier, Gunn, establishing the inquiry; and the encouragement and use of whistleblowers and rolover witnesses to instigate the process of revealing the extent of corrupt and criminal behaviour. Indeed, Sarre and Prenzler (forthcoming) attribute the genesis of the Fitzgerald Inquiry to dogged investigative journalists, courageous police whistleblowers and a renegade police minister.

As will be seen from the summary of the inquiries that follow, one or more of these three factors feature prominently in the genesis of a number of other Commissions of Inquiry, and seem to be a condition precedent to police corruption inquiries being established. It is worrying that communities otherwise seemed incapable of generating the impetus necessary to bring about an inquiry into matters of concern relating to police conduct.

The Queensland position is particularly interesting in that the establishment of the CJC, with jurisdiction to investigate police corruption and to oversight the police service, has coincided with a significant diminution of public controversy concerning the conduct of police in that State. The CJC had a commendable record of prompt action in investigating allegations of police misconduct, and has also produced a number of significant reports dealing with strategic issues associated with policing. That is not to say that Queensland is, or will ever necessarily be, free of police corruption, or that the CJC, and now the CMC, has been exempt from criticism, but it does appear that the position for a number of years has been that there is a higher level of public confidence in the system for the regulation of the conduct of police. The external agency becomes the conscience of the community with regard to police misconduct and provides the momentum that otherwise only occurs on the rare occasions that the necessary external circumstances come together to compel public scrutiny.

2.3 NEW YORK

New York has had a number of inquiries into police corruption, approximating a 20-year cycle of scandal, reform and backslide (Mollen, 1994). The most renowned of the earlier inquiries is the Knapp Commission, which in 1972 was formed in response to the publicity generated by Detective Frank Serpico, which was to spawn an eponymous film and television programme – “Serpico”. Detective Serpico, together with Sergeant David Durk, took their allegations of corruption to an adviser to the Mayor of New York, John Lindsay. Despite disclosing widespread and systemic police corruption, there was a failure to act.

Being unable to obtain a suitable response from the Police Department and the Mayor's Office to his many complaints of corruption, Serpico took his story to *The New York Times*, which publicly exposed the corruption scandal (Durnham, 1971). Serpico was vilified by his colleagues after testifying against a former partner, and the extent of the animosity towards him was reflected in the fact that after he had been shot in the face while making a drug arrest, police colleagues did not call for help for him, nor did they assist him themselves.

The revelations of police misconduct exposed in *The New York Times* led to Lindsay appointing an independent commission, chaired by Whittman Knapp (the "Knapp Commission"), to investigate police corruption within the New York Police Department (NYPD).

Knapp revealed that there was widespread systemic corruption to which a blind eye was turned by those in authority in exchange for a share of the proceeds, which he termed "pad corruption". Knapp found that these arrangements were formalized between patrol officers, detectives, supervisors and commanders (Wood, 1999). Knapp highlighted the manner in which corruption passed from an individual or isolated act and became adopted by the others as common practice. In doing so, he also dispelled the "rotten apple" theory, and criticized the NYPD's continued adherence to this theory, about which he said:

According to this theory, which bordered on official Departmental doctrine, any policeman found to be corrupt must promptly be denounced as a rotten apple in an otherwise clean barrel. It must never be admitted that his individual corruption may be symptomatic of underlying disease (1972: 6).

Despite the changes brought about in response to the Knapp Commission, including concentrated efforts to eliminate the problem of pad corruption, police corruption did not diminish. Wood (1999) diagnosed this failure as resulting from the absence of a mechanism being implemented to sustain the integrity controls or the new code of ethics.

A further scandal arose in 1986, resulting in the indictment of 13 officers for stealing and selling drugs. The officers involved persisted with a story of innocence, assisted by fellow officers who notified them in advance of internal investigations being made against them. As a result of this support, the group of officers had the sobriquet, the "Buddy Boys", given to them. One of the measures that resulted from the scandal was the implementation of a job rotation plan for patrol officers in an attempt to break up corrupt associations. This strategy eventually had to be abandoned as a consequence of an orchestrated "go slow" by officers.

Corruption problems continued within the NYPD and in 1992 six New York detectives were arrested on narcotics charges by another police force. The press coverage of this incident disclosed that one of the detectives, Michael O'Dowd, had an extraordinary complaints history spanning six years, highlighting the inability of the NYPD Internal Affairs Division to adequately investigate and convict officers suspected of corruption. The questions raised by the press in relation to the ability and willingness of the NYPD to investigate and regulate itself, gave rise to the establishment of the Commission to Investigate Allegations of Police Corruption and the Anti-Corruption Procedures of the Police Department (New York), which was commenced in September 1992 under the chairmanship of Milton Mollen, who delivered his findings in July 1994.

The principal findings of Mollen (1994) were that there was systemic corruption involving police officers committing theft, trafficking in drugs, using drugs themselves, executing searches without warrants, giving false testimony, and protecting corrupt officers by failing to report corrupt activities. There had been an elevation in the gravity of the corruption compared with that found by Knapp in that, rather than simply taking money from criminals, police were now actively involving themselves in criminal conduct, especially in respect of drugs. These actions were premeditated and highly organized and could not be explained away as opportunistic or isolated.

The Mollen Report identifies a great many of the now familiar areas for reform including:

- Improving screening and recruitment;
- Improving recruit education and in-service training;
- Strengthening first-line supervision;
- Reinventing the enforcement of command accountability;
- Attacking corruption and brutality tolerance;
- Challenging other aspects of police culture and conditions that breed corruption and brutality;
- Enhancing sanctions and disincentives for corruption and brutality;
- Strengthening intelligence gathering efforts;
- Preventing and detecting drug abuse;
- Soliciting police union support for anti-corruption efforts;
- Minimising the corruption hazards of community policing; and
- Legislative reforms. (Mollen, 1994: 7)

The report also advocated the establishment of a permanent external independent oversight body to ensure that the reform measures were introduced and became effective, and to "watchdog" the operations of the Internal Affairs Unit ("IAU"), with the additional

capacity to undertake its own inquiries. The Commission to Combat Police Corruption (“CCPC”) was established in 1995 in response to this recommendation.

The efforts of *The New York Times* in creating the pressure to force an inquiry provided the driving influence for the establishment of the Mollen Commission. In response to this pressure, the Mayor appointed Milton Mollen, a former Justice of the Supreme Court, to head the inquiry. Mollen recognized that the work of uncovering corruption was made more difficult by the code of silence that pervades police services. However, contrary to the belief that corrupt officers will not inform on their brother officers when confronted with serious criminal charges, many officers were eager to assist prosecutors in exchange for sentence relief. It was the enlistment of police witnesses that provided the resources for Mollen to trawl the depths of corruption within the NYPD.

The similarities between Fitzgerald and Mollen are quite significant, but not merely coincidental: media pressure, a government prepared to respond, use of rollover witnesses, and the legacy of a permanent body to continue the oversight once the Commission of Inquiry had ended. The reform recommendations of Mollen also continue to receive respect for their current relevance to contemporary policing issues.

2.4 NEW SOUTH WALES

The Royal Commission conducted by Justice James Wood (1997) was not the first such inquiry into New South Wales Police. Indeed there have been many inquiries involving police in that State, dating back as far as the Bigge Royal Commission of 1822. Inquiries that involved examinations of corruption and impropriety by police in NSW in the last 30 years include those conducted by:

- Moffit – Royal Commission into Organised Crime in Clubs in New South Wales, commenced in 1973;
- Woodward – Royal Commission into Drug Trafficking, commenced in 1977;
- Lusher – Royal Commission into New South Wales Police Administration, commenced in 1979;
- Stewart – Royal Commission into Drug Trafficking, commenced in 1981;
- Cross – Special Commission of Inquiry into Certain Allegations by R Bottom, commenced in 1984; and
- Nagle – Special Commission of Inquiry into the Police Investigation of the Death of Donald Bruce Mackay, commenced in 1986 (extracted from Prasser, 1994).

Some years after the Fitzgerald Inquiry had concluded, Wood received Letters Patent in May 1994 to investigate corruption within the NSW Police Service and the efficacy of its investigative and administrative practices. Although Justice Lusher in his inquiry into police administration in 1981 found corruption and cronyism to be rife, Wood's was the first inquiry in NSW that looked specifically at police corruption.

The inquiry arose at the instigation of an Independent Member of Parliament, John Hatton, who gained the support of two other Independent Members of Parliament and the Opposition to force a Royal Commission into police corruption. Hatton was to face trenchant criticism from the Government and from the NSW Police Service itself (Dixon, 1999: 2). Dixon reported that Hatton's motion for a Royal Commission was considered by the then Police Minister as "an attack on the very institutions of our State that have achieved direct results in cleaning up the Police Service which may ultimately jeopardize the future of policing in New South Wales". Additionally, and in what came to be seen as a flagrant case of denial, the Police Commissioner, Tony Lauer, claimed that there was no institutionalized corruption in his police service and hence no need for an inquiry. The overwhelming evidence that was subsequently revealed, contrary to his claim, eventually was to leave Lauer with no real option other than to resign before the end of the Royal Commission.

NSW Legislative Assembly Hansard for 11 May 1994 records that Hatton's allegations of corruption within the NSW Police Service included information that had been provided directly to him by a number of police officers including Kimbal (Kim) Cook and Deborah Locke, who had claimed to have suffered harassment as a result of complaining of misconduct. Hatton also drew upon the experiences of officers Anthony Katsoulas and Mick Drury, both of whom had been shot following their making allegations of wrongdoing within the police service. It was the information of these whistleblowers and others (not all of whom emerged with their reputations unscathed) that provided the real-life stories that Hatton used to highlight his speech to Parliament.

As with the findings in Fitzgerald and Mollen, Wood uncovered a state of corruption that was widespread, longstanding, systemic and entrenched (Irwin, 1999). Mollen earlier had observed that corruption flourished in the NYPD:

...not only because of opportunity and greed but because of a police culture that exalts loyalty over integrity; because of the silence of officers who fear the consequences of 'ratting' on another cop, ... because of willfully blind supervisors who fear consequences of a corruption scandal more than corruption itself; because of the demise of the principle of accountability that makes all commanders responsible for fighting corruption in their commands; because of hostility and alienation between police and community...(and the abandonment of) responsibility to ensure the integrity of its members.

Wood believed these comments to be equally applicable to the situation within the NSW Police Service (1997: 204).

The Wood Royal Commission was able to use to dramatic effect video evidence of corrupt police officers exchanging money and discussing their corrupt activities. This was achieved by the use of a rollover witness, Trevor Haken, a sergeant at Kings Cross. The NSW Crime Commission had taped Haken on telephone interceptions, including incriminating conversations with serious crime figures in Sydney. When this evidence was put to him, he agreed to confess his corrupt past, to co-operate and to wear a listening device in order to trap other corrupt officers and to turn them into informers. After almost a year working in this undercover role, he was called as a surprise witness before the Wood Commission and the vision of Haken paying bribe money to his supervisor, Detective Inspector Graham "Chook" Fowler, was tendered at a hearing of the Royal Commission and released to the media. It made compelling television. The electronic evidence gathered with the co-operation of Haken was the trigger for the rollover of a number of other corrupt police and the result was an overwhelming portrayal of entrenched corruption among NSW police, including those who had risen to the senior ranks of the Service.

Wood (1997: 23) was also to find that the explanation for corruption could not be found in the rotten apple theory, and said that "the findings of this Royal Commission must dispel, for all time, any explanation based upon individual deviance or opportunistic corruption".

Significantly, Wood found that the existing external agencies having oversight of the operations and functions of the NSW Police Service, the Ombudsman and the Independent Commission Against Corruption ("ICAC"), had been unable to deal effectively with the corruption that had become exposed during the course of his inquiry. Consequently, Wood recommended the establishment of the Police Integrity Commission ("PIC") to oversight investigations into serious acts of misconduct or criminal behaviour committed by police, with the capacity to conduct investigations itself when desired. In doing so, Wood maintained that the NSW Police Service should continue to have primary responsibility to investigate its own complaints, subject to the oversight of the external body, PIC. This was a marked departure from the model advocated by Fitzgerald, in which he had recommended the removal of the ability of the Queensland Police Service to investigate complaints of police corruption.

The Wood Royal Commission traversed similar ground to other inquiries in that, following years of allegations of corruption that were refuted by the police service, whistleblowers provided the opportunity that allowed a member of parliament to gain sufficient support for the establishment of an inquiry. It should be noted that the Government was not in favour

of a Royal Commission, but had one forced upon it due to its minority status when the Independents and the Opposition voted together.

The role played by the media was considered by Wood (1997: 203) in a different context when he attributed, in part, the limited disclosure of corruption to the "successful manipulation of the media by the Service, the Police Associations and by some high-profile police, in times of potential crisis". In an interesting analysis of the role of the media, Dickie (1990: 51) noted that journalists involved in exposing corruption have "generally worked outside the usual police rounds". Wood did, however, recognize that it was the exposure by journalists of unhealthy links between criminal elements and the police that created the climate of concern that resulted in the Royal Commission (Wood, 1999). A journalist of *The Daily Telegraph* newspaper is cited by Locke (2003) as being a central figure in supporting the police whistleblowers and in exposing police corruption.

Wood, too, enunciated principles for reform, with particular emphasis upon the need to change the culture and improve the quality of the management of the police service. His work has also earned enduring respect, and his statements of principle and the identification of the causes of corruption, remain the basic tenets of corruption prevention to this day. Appendix 31 to his Report, about which more will be said in Volume II of this Report, set out in short form appropriate canons of management for a police service that became the standard reference for the reform of police services in Australia. Recommendation 174, the last of the reform proposals in the Report was also vital, in that it recommended that there be put in place a group of external consultants, retained by PIC, who were to survey and audit the action taken by the Police Service to implement the recommendations of the Report and itself report each year for three years on its findings. This led to the establishment of a partnership of private consultants (the Hay Group) and PIC, who undertook a "Qualitative Survey and Audit of the Reform Process" ("QSARP") and to the subsequent publication of three analytical reports setting out the results of critical examination of the reform of the NSW Police Service. These findings did not always meet with the approval and acceptance of the Police Service or the Government, which was not necessarily a bad thing. The important factor was that Wood had ensured that there was in place a mechanism by which there could be external scrutiny of, and a public report upon, the reform process with a view to avoiding the experiences of the past, when recommendations for reform had gone largely unheeded, and the history of corruption had repeated itself.

In NSW, PIC continued the work of Wood in investigating police corruption and in identifying police strategies that call for improvement, and has produced a number of operational reports into aspects of policing and instances of corruption. In one way or

another, each of the reports has complemented the work and writing of the previous inquiries into police corruption, and added to the state of knowledge of the causes of corruption and the means by which it can be reduced. Although it has yet to report on the matter, under the operation name Florida, PIC has revealed evidence resulting from an investigation of allegations of serious corruption and misconduct by members of the NSW Police Service stationed at the northern beaches suburbs of Sydney. The public hearings revealed evidence obtained by a covert inquiry by police who had rolled over, and who produced evidence of a network of detectives involved in the so-called “green-lighting” of drug dealing in exchange for regular cash payments, stealing from drug dealers, perjury and other characteristics of police corruption (PIC Transcript, 8.10.2001).

The subject matter and frequency of these reports illustrate the importance of the ongoing role of external civilian oversight of the police service. PIC has maintained a continuing role as part of QSARP in monitoring the adoption of the Wood reform proposals for the NSW Police Service.

The corrupt conduct revealed by Wood, and subsequently by PIC, was of a familiar pattern, with the majority connected in one way or another to drug trafficking. However, a disturbing trend was observed in that police had moved from activities that “taxed” drug dealers, by relieving them of their illegal profits, to actually participating in the drug trafficking themselves.

What is also notable is that, since the Wood Royal Commission, and during the time of PIC, public controversy concerning corruption by police has diminished. This would seem to be in part due to the adoption of many of the reform recommendations made by Wood for the police service, and partly because of the role of PIC in the oversight of the police service, and the threat posed by its independent investigations.

2.5 LOS ANGELES

Problems between the Los Angeles Police Department (“LAPD”) and the community it serves have a lengthy history, with perhaps the low water mark being the Watts Riots in August 1965. The Watts neighbourhood erupted in riots following the routine arrest of a drunk driver. The riots, which were to last for six days, resulted in the death of 34 people (mostly Afro-Americans) and the arrest of almost 4000. The inquiry that followed, conducted by John McCone, highlighted the depressed conditions of the area and the poor relationship between police and the residents. Notwithstanding a number of recommendations for radical reform, there was little indication in the years that followed that the standard of police integrity in the area improved.

The 1991 Independent Commission on the Los Angeles Police Department, conducted by Warren Christopher, was established following publicity regarding the beating of a suspect, Rodney King. Despite there being a great many officers who witnessed the beating, no-one attempted to stop the four officers inflicting the beating, and no-one reported the matter. Christopher was to find that the most difficult aspect of his inquiry was overcoming the code of silence adhered to by all those involved (Skolnick, 2002).

The beating had been captured on a home video and was broadcast widely and repeatedly throughout the USA and the world by CNN, and covered extensively by the *Los Angeles Times*. Skolnick (1991: 7), in his analysis of the event at the time, remarked that:

This time, the police witnesses, knowing about the videotape, will probably not compound their offence by lying about what really happened. But can we believe that they would have told the truth without the tape?

Despite the subsequent failure of the prosecutions of the four officers involved, the Christopher Commission of Inquiry demonstrated again both the important role of the media, and the value of technology to overcome the seemingly impenetrable "blue code of silence".

The Christopher Commission's findings were extremely critical of the operations of the LAPD and included a number of adverse findings. The comment was later made that the failure of the LAPD to make use of intelligence available to it was gross in that, of approximately 1800 officers who had a complaint history of excessive force, 183 had four or more such allegations, 46 had six or more, 16 had eight or more, and one in fact had 16 such allegations (Human Rights Watch, 1998). The failure to take action against those officers with multiple allegations was inexplicable.

The Christopher Commission made recommendations for changes to particular LAPD issues and also in relation to other issues that have become customary:

- The problem of excessive force;
- Racism and bias;
- Community policing;
- Recruitment;
- Training;
- Promotion, assignment and other personnel issues;
- Personnel complaints and officer discipline; and
- Implementation.

The wide-ranging recommendations are a further reminder of the breadth of issues that fall to be addressed in considering the agenda of reform for a police service. It was also felt that full implementation would require a process for monitoring of the reform with evaluations of progress being made every six months.

Subsequent to the Christopher Commission, the issue of the integrity of the LAPD was again under scrutiny during the Board of Inquiry in 2000 into what was known as the "Rampart Area Corruption Incident". This Inquiry was an investigation into an anti-gang unit of the LAPD, part of a strategy under the name "Community Resources Against Street Hoodlums" ("CRASH Unit").

The Inquiry arose primarily from three incidents that occurred in late 1997 and early 1998. The first occurred in November 1997 when two armed offenders robbed a branch of the Bank of America. The investigation into the robbery revealed that it had been carried out by a police officer, David Mack, from the Rampart Area and another unknown person. It was established that, in the days after the robbery, Mack travelled to Las Vegas, accompanied by two other police officers from the Rampart Area. Although nothing was found to connect these two officers to the robbery, one of them, Rafael Perez, was soon to be in difficulties of his own. The second incident involved the false imprisonment and beating of a suspect by two officers from the Rampart Area. The beating took place with the knowledge of another officer who was present, but who made no effort to intercede, to report the matter, or to obtain medical assistance for the injured man. The third incident involved the theft of three kilograms of cocaine from the LAPD property storage. The cocaine was checked out of storage by an officer who gave the reason that it was required for a court hearing. An investigation was conducted when the cocaine was never returned. It was found that there had been no court requirement for the production of the drug and that the officer's name, which appeared on the Property Division records, was not the person who had checked it out. The signature had been forged. The investigation established that the cocaine had been stolen by Perez. In the face of the substantial evidence against him, Perez elected to make a guilty plea and accepted a reduced sentence in exchange for providing information on corrupt practices in the Rampart Area.

Interestingly, the Joint Standing Committee on the Anti-Corruption Commission of Western Australia ("JSCACC") reported that its members visited the LAPD in 1998 and were told that, although the LAPD had previously had a reputation of being a corrupt organization, it had developed into a police force with high standards of professionalism and integrity. It was reported that, when questioned as to its need for sophisticated covert surveillance techniques in conducting corruption investigations, the LAPD responded that it placed much less reliance on such techniques, as the level of corruption did not warrant such aggressive

techniques (JSCACC, 1999: 28). In the face of the subsequent Rampart Inquiry, it is evident that it was another occasion when the confidence expressed by a police organization as to its integrity was seriously misplaced.

A Task Force was established in May 1998 to investigate the matters revealed by Perez and continued until September 1999 when the Chief of Police, Bernard Parks, convened a Board of Inquiry to assess the totality of corruption within the Rampart Area. The Board of Inquiry was an internal body without the independence of an external commission of inquiry, but gave the appearance of being a complete success. As at September 2000, the rollover witness, Perez, had reviewed over 1,500 cases which led to the courts setting aside around 100 convictions, five officers being charged criminally, 70 officers being charged with disciplinary offences, and others retiring (Shuster, 2000).

However, the outcome did not satisfy some observers. In a critique of the findings and recommendations of the Board of Inquiry, Professor Erwin Chemerinsky (2000) of the University of Southern California claimed that the report was merely the management account of the Rampart Area scandal and that it reflected the views of the LAPD's leadership, consequently greatly understating the serious management problems that existed, and sparing management from criticism.

Partly as a consequence of a lack of independent scrutiny, the Rampart Area scandal continued to fester and the Board of Inquiry itself became the subject of examination. A number of official reports have now reviewed the situation, including investigations by the Los Angeles County District Attorney's Office and the US Attorney's Office, and have been critical of the Board of Inquiry.

The failings of the Board of Inquiry into the Rampart Area scandal and the dissatisfaction with it, eventually led to the City of Los Angeles and the LAPD entering into a Consent Decree through the Department of Justice in June 2001 for a five-year period. The Consent Decree is a mechanism by which specific guidelines are developed for the implementation of new policies and procedures and to reform the conduct of the LAPD. The Consent Decree continues to be administered by an Independent Monitor to ensure that the reform programme is implemented in a timely and efficient manner.

The role of the Independent Monitor providing external oversight of the reform process is a further substantiation of the need for external vigilance in the light of the limited capacity of police services independently to guarantee that recommended strategies for reform will be implemented.

2.6 UNITED KINGDOM

In the United Kingdom, the integrity of police and the quality of police services have been the subject of much attention, albeit by a different process. The Royal Commission on Criminal Procedure (1981) undertaken by Sir Cyril Phillips between 1977 and 1981 stands as a major milestone in the development of policing in that jurisdiction. The principal recommendations of that Royal Commission related to:

- The codification of police powers;
- The creation of a separate prosecuting authority;
- A binding code of practice; and
- Police/community relations.

The outcome of these recommendations was the enactment of the *Police and Criminal Evidence Act 1984* ("PACE"), which McDonnell (1999) believes has had a greater effect on controlling police investigatory practices than any other piece of legislation that preceded it, and the enactment of the *Prosecution of Offenders Act 1985*. Reference will be made later to the significant capacity of legislation to bring about a change in the culture of a police service and the UK experience is a persuasive example of that phenomenon. PACE increased police powers, or codified those that had been assumed, and extended the supervisory responsibilities of the middle ranks whilst redirecting the upper ranks towards a more managerial orientation (Wall, 2002). The *Prosecution of Offenders Act 1985* took prosecutions from police and created the independent Crown Prosecution Service. These measures came to be seen as important steps in combating "over zealous" policing and in corruption prevention, and in changing the relationship between police and the community.

Despite the changes brought about by this legislation, in April 1993, Stephen Lawrence, an 18-year-old black student, was stabbed to death by a gang of five white youths. Police investigations failed to produce the necessary witnesses to mount a prosecution. In 1995, Lawrence's parents took out a private prosecution that failed due to the lack of supporting evidence against the accused. A subsequent coronial inquiry in 1997 ruled that the death of Stephen Lawrence was an unlawful killing caused by a racist, unprovoked attack.

Acting on complaints from the deceased's parents, an investigation under the auspices of the Police Complaints Authority ("PCA") into the original investigation by the Metropolitan Police Service ("MPS") roundly criticized many aspects of the investigation. Although the accused could not be retried, the Home Secretary, Jack Straw, established an Inquiry at the request of the deceased's parents to look further at the circumstances of the death and the police investigation that followed.

The Inquiry, led by Sir William McPherson, commenced in 1997 and concluded in 1999 with the finding that the murder was motivated by racism (McPherson, 1999). Whilst this outcome was bad enough, the findings in respect of the police investigation of the murder were damning. McPherson concluded that there were fundamental flaws in the investigation, which was marred by a combination of professional incompetence, institutional racism and a failure of leadership by senior officers. A number of the issues raised during the Inquiry were highlighted in a report by the Home Office entitled "Police Disciplinary and Complaints Procedures", resulting in key changes that came into effect on 1 April 1999.

Flowing from the recommendations of this Inquiry and other concerns, a White Paper on police reform was unveiled in December 2001. The reform programme – "Policing a New Century: A Blueprint for Reform" (Home Office, 2001) – set out a ten point plan for the modernization of police services, including;

- Raising standards to bring all police services up to the standard of the best and to reduce unacceptable variations;
- Introducing new powers to tackle persistent under-performance;
- Increasing the number of police officers and increasing the number of civilian support staff and Special Constables;
- Devolution of power to Basic Command Unit level;
- Cutting red tape to free up staff and the assigning of clerical duties to civilians;
- Fairer rewards and conditions, together with better training and improved working conditions;
- Training of a new corps of Specialist Detectives; and
- New occupational health strategy to prevent sickness and swiftly return to fitness and full duties those who are sick or injured. (Home Office, 2001)

Many of these policy initiatives were captured in the *Police Reform Act 2002* (UK), which made provisions regulating the supervision, administration, functions and conduct of police forces and police officers.

Another significant recent Inquiry in the United Kingdom was the 1999 Report of the Independent Commission on Policing for Northern Ireland chaired by the Right Honourable Christopher Patten ("the Patten Inquiry"). This report, entitled "A New Beginning: Policing in Northern Ireland", was the product of an agreement of April 1998, known as the "Belfast Agreement" or "Good Friday Agreement", whereby it was established that there needed to be "...a new beginning to policing in Northern Ireland with a police service capable of

attracting and sustaining support from the community as a whole”. Problems had been identified in the way in which the police service interacted with the divided sections of the community and it was determined that the style of policing significantly contributed to the disharmony present in the community.

The Patten Inquiry developed a set of 175 recommendations that were felt necessary to provide the “new beginning” that was required. These recommendations were grouped under the following headings:

- Human rights;
- Accountability;
- Policing with the community;
- Policing in a peaceful society;
- Public order policing;
- Management and personnel;
- Information technology;
- Structure of the police service;
- Size of the police service;
- Composition and recruitment of the police service;
- Training, education and development;
- Culture, ethos and symbols; and
- Co-operation with other police services;

Whilst the precise recommendations are heavily influenced by the political setting in which the police services are to be delivered, the Patten Report is a further useful analysis by an independent observer of the appropriate police practices for current times, with the familiar emphasis on issues associated with culture and on recruitment, training and management.

Speaking on the need to have independent oversight of the reform programme, Patten argued that the necessary independence should be obtained by the appointment of an “Oversight Commissioner” who would be an eminent person, from a country other than the United Kingdom or Ireland.

2.7 VICTORIA

The State of Victoria is an interesting study as a large jurisdiction in Australia with its share of police corruption, but which has not had a recent comprehensive inquiry into its police service. The last major Commission of Inquiry into corruption within the Victoria Police was conducted in 1975 by Barry Beach QC. The Beach Inquiry ran for 15 months, commencing

in February 1975 and occupying 250 days of hearings. In his "Report of the Board of Inquiry into Allegations against Members of the Victoria Police Force" (1976), Beach made adverse findings against 55 police officers in respect of matters ranging from trivial breaches of Standing Orders to serious criminal matters, including:

- Conspiring to give false evidence;
- Assault;
- Harassment and intimidation;
- Perjury and fabrication of evidence;
- Failing to investigate complaints;
- Suppression of evidence; and
- Unlawful arrest. (Anderson, 1995)

Following the tabling of the Beach Report, 17 police officers faced committal hearings, with 15 being assessed as having no case to answer. Despite the depth of the Inquiry and the seriousness of Beach's findings against 55 officers, not one conviction was secured. In the period following the Report being tabled, police officers threatened strike action and imposed a "work to rule", which hampered the operations of both police and government business.

The continued pressure exerted by police on the Government resulted in a Government Committee of Review being established two years after the Beach Inquiry to consider its findings. The Committee, chaired by J Norris QC, overturned a great many of the recommendations that Beach had made for procedural change (Norris, 1978). Two of the criteria that the Committee adopted in reviewing the recommendations are perhaps informative of its attitude:

- The police should be subjected to no unnecessary hindrance in their task of preventing and detecting crime; and
- The maintenance of the morale of the Police Force at the highest level is necessary if it is to be efficient and if it is to have the respect of the public (Norris, 1978: 1).

As a result, many of Beach's recommendations for changes in relation to improved procedures for criminal investigation and the exercise of police powers came to naught. The situation provides an object lesson for modern corruption inquiries.

In 1986, the Police Complaints Authority ("PCA") was established to investigate complaints against police. The PCA was disbanded in 1988 due to perceptions that it was not working,

and its functions were transferred to the newly established position of Deputy Ombudsman (Police Complaints). Although a separate statutory office, the Deputy Ombudsman (Police Complaints) was subordinate to the Ombudsman, had no staff or budget of its own, and had to rely on the Ombudsman for resources.

In 1995, the position of Deputy Ombudsman (Police Complaints) was subsumed into the position of Ombudsman and continues in this form. The Office of the Ombudsman itself is small, the Annual Report 2001/2002 identifying just 23 staff members employed to handle both police and public sector complaints. The Office has no independent research capacity and must rely on that provided by the Research and Risk Unit of the Victoria Police for those services. Nevertheless, in recent years the Ombudsman's Office has reported on several major inquiries into police conduct.

Of these, Operation Bart, which took place in 1998, has been the most noteworthy for the number of officers involved. Operation Bart was an investigation of allegations that police had bypassed the authorized police Shutter Service Allocation system and referred jobs to companies in exchange for money. The investigation was commenced as a result of information received from a junior member of the police service and eventually saw approximately 550 police officers charged with disciplinary offences, and one member charged and convicted of a criminal offence (Perry, 1998a).

The Ombudsman, (Perry, 1998b), found that the cause of the unethical behaviour was the creation of a working environment for police where rule breaking was acceptable and normalized. He described an environment characterized by poor management and supervision, with some supervisors "lazy and inept", and still others who were tolerant of low standards and more concerned with chasing suspects and being popular than supervising their staff. The Ombudsman was also highly critical of a number of sergeants and senior sergeants who, in the face of evidence to the contrary, continued to deny their unethical behaviour and to collude to obstruct the investigation and pressurize junior staff to do likewise.

The most recent report of police corruption by the Ombudsman is under the name "Ceja Task Force", with an Interim Report being tabled in May 2003. The Ceja Task Force investigated the unauthorized purchase of chemicals by members of the Victoria Police via the Police Drug Squad Chemical Diversion Desk, the unauthorized delivery and supply of chemicals, allegations of theft, evidence fabrication and drug use by members of the Drug Squad. This operation was substantially undertaken by the Victoria Police with oversight from the Ombudsman's Office.

The Drug Squad has featured in a number of serious allegations over the past decade including:

- October 1991 – the alleged theft of 1.3 kilograms of methylamphetamine from a locked and alarmed storeroom located at the Drug Squad’s then office in the Russell Street Police Complex;
- June 1992 – the alleged theft of drugs and precursor chemicals from the Attwood Storage Facility;
- August 1996 – allegations of further thefts of chemicals from the Attwood Storage Facility;
- December 1996/January 1997 – the alleged burglary and theft of documents and tapes relating to Operation Phalanx from the Drug Squad Office; and
- October 1999 – a police firearm missing from a safe at the Drug Squad Office.

The Ceja Task Force Report also lists a number of other corruption investigations conducted over recent years:

- Operation Keck – this investigation resulted in the arrest of a former member who pleaded guilty to attempting to obtain property by deception and to use false document;
- Operation Poker – this investigation resulted in the arrest of a serving member and two other persons who have now been charged with conspiracy to pervert the course of justice;
- Operation Marah – this investigation resulted in the arrest of a member who has been charged with the theft of nine motor vehicles and nine counts of handling stolen goods;
- Operation Laity – this investigation resulted in charges of drug trafficking and theft against three serving members, an ex-member and two civilians; and
- Operation Barranca – this investigation resulted in charges relating to conspiracy to pervert the course of justice against a serving member and three civilians.

While Victoria has not had a major inquiry into police corruption in recent years, there are all the signs of similar problems existing there as elsewhere.

The Victoria Police Service was the subject of an administrative review in 2000 – 2001, which looked at resourcing, operational independence, human resource planning and associated issues. The review was conducted by John Johnson (former Commissioner of Police, Tasmania), assisted by a Direct Consultation Group, comprised of Victoria Police Command, the Police Association, the Community and the Public Sector Union, and the Department of Justice. The review examined a wide range of administrative practices, but did not hold hearings or inquire into possible corruption.

2.8 COMMENTARY

There are a number of observations that can be made from the history of the corruption inquiries set out in this chapter:

- (a) There are similarities in the circumstances in which the usual resistance to the investigation and exposure of police corruption have been circumvented. The combination of media pressure and political will has been an essential combination of factors to cause the establishment of the inquiry.
- (b) The recruitment of a co-operative police officer has been a common catalyst for the emergence of the truth concerning the extent of the corruption.
- (c) The reports show a consistent analysis of the causes of corruption and the prescription for the measures for the control of it. The “rotten apple” theory is long gone and there is now no room for doubt that culture and poor management are principal factors in allowing corruption to continue unimpeded. Consistently, the focus of recommendations for increasing the corruption resistance of police services has been the improvement of the administration of the organization, across a wide range of functions, not necessarily concerned with the occurrence of misconduct, but directed more at the improvement of the culture of police.
- (d) A regular feature of the recommendations of the inquiries is the provision of an arrangement for the supervision and audit of the implementation of the reform process. Whilst in the past this may have been seen as necessary to ensure the commitment of the police service to the project, it should not be overlooked that the supervisory agency has the potential to adopt a positive role in assisting the service in the difficult task of change management.
- (e) An evaluation of the outcome of the inquiries referred to above leads to the conclusion that police corruption is an inevitable and universal characteristic of a

police service. It is never likely to be entirely eliminated, although much can be done to increase the corruption resistance of a police service. WAPS, whilst faced with slightly different challenges from some of the police services in the jurisdictions referred to above, has not been materially different in its recruitment, structures and police methodology, and it would be unrealistic to expect that it has escaped the blight of corruption as revealed elsewhere. That is not to indicate that the Royal Commission carried out its task with a predetermined view. However, it does mean that when the evidence of corruption did start to emerge, its similarity to the evidence of police corruption in other jurisdictions was immediately striking, and the implications of the allegations that there had been corrupt conduct or criminal conduct by any Western Australian police officers were more readily appreciated.

- (f) The inquiries show that the task for WAPS is now no longer one of endeavouring to identify the causes of corruption and the theory of corruption prevention, but one of acknowledging the reality of the risk and of devising a programme of change management to better ensure that the theory of corruption prevention becomes a fact.

PART II
ROYAL COMMISSION INVESTIGATIONS

CHAPTER 3

OPERATION LEAST SAID

3.1 INTRODUCTION

Towards the end of the hearing schedule of the Royal Commission, evidence was led of the results of an extensive investigation conducted by the Royal Commission under the name Operation Least Said. The focus of the investigation was the conduct of a number of detectives over a period from 1985 until the early 1990s. The evidence was consistent with evidence given in earlier segments of the Royal Commission hearings relating to later time periods, and it was alleged, revealed a pattern of conduct by a number of officers of the Western Australia Police Service ("WAPS") who engaged in assaults, the theft of money and property, perjury and perverting the course of justice. This evidence depicted ongoing corrupt practices from 1985 to date, which were largely unaffected by the investigative practices in use over that period.

Operation Least Said came about because the Royal Commission had been made aware at an early stage of its investigations that a former detective had previously given useful information to the Anti-Corruption Commission ("ACC"). The ACC subsequently provided the Royal Commission with transcripts of the interviews it conducted with the witness. Investigators from the Royal Commission approached him and, although initially reluctant, he eventually agreed to assist the Royal Commission. He gave evidence later under the code-name "L5".

Initially, the operation name Least Said was applied only to the investigation by the Royal Commission of the various matters about which L5 had given information. As Operation Least Said progressed, approaches were made to other officers and former officers whom L5 named. Following those approaches, two other persons agreed to assist the Royal Commission. They subsequently gave evidence under the code-names "L1" and "L6".

L1 gave the Royal Commission information about the alleged use by detectives of an electric device on suspects in an investigation at Claremont Criminal Investigations Branch ("CIB"). That information, along with information from L5, led to hearings in respect of the CIB investigation of a robbery at the Dalkeith home of Mr and Mrs S Lee. Royal Commission investigators searched for, and found, other records of complaints involving an electric device. One of those complaints involved the same officer said to have used the device at Claremont. Those other complaints led to hearings in respect of an investigation by the

Wanneroo CIB, involving Arran Reynolds and Robert Wilson, and an investigation by Morley CIB concerning Colin Irvine.

L1 also identified a source of information in respect of assaults on other suspects. Publicity of Royal Commission hearings led other witnesses to volunteer similar information. Those two sources led to additional hearings in respect of Morley CIB.

The Royal Commission's inquiry into the Wanneroo investigations led investigators to interview the former officer in charge of Wanneroo CIB. He agreed to give evidence about one particular matter, and subsequently did so under the code-name "L4".

After the evidence of L4 was reported in the press, and his identity became known to another officer, that officer decided that he too would co-operate with the Royal Commission. He approached the Royal Commission and later gave evidence under the code-name "L8".

The Wanneroo matter also led the Royal Commission investigators to a former officer who had reported to the Internal Affairs Unit ("IAU") his observation of separate corrupt conduct in respect of the same Wanneroo investigation. That person also co-operated and gave evidence under the code-name "L2".

Two other persons who later gave evidence under the code-names "L3" and "L7" were of interest to the Royal Commission because of, among other things, their earlier willingness to report instances of corruption to relevant authorities. Each readily co-operated with the Royal Commission.

A great deal of information was eventually provided to the Royal Commission by the eight former police officers who gave evidence under a code-name in Operation Least Said. Further witnesses emerged in respect of the matters that the Royal Commission had begun investigating under Operation Least Said. Despite the volume of information, the period of time and the sometimes disparate nature of the various matters uncovered, a decision was made to continue Operation Least Said as a single operation, and as a discrete segment of the hearings. One reason for doing so was that it became apparent to the Royal Commission that some cogency might be lost from the evidence if similar allegations of police impropriety were examined in isolation from each other. Eventually, the investigation gathered evidence against over 50 serving or former officers of WAPS.

During the hearings, initially the names of some of the officers who were adversely mentioned were allowed to be published. As the segment progressed, however, for various reasons, a number of restrictions on publication were imposed with respect to the names of

other officers mentioned. In this Chapter, officers names have not been used, but have been substituted with code-names using the initials "LS". This is in accordance with the practice adopted in Chapter 1 of avoiding the use of the names of officers when reporting on the evidence of corrupt or criminal conduct that was presented during the hearings of the Royal Commission. Similarly, a number of civilian witnesses requested a restriction on the publication of their names. Their requests were acceded to and, accordingly, they were referred to under code-names using the initial "M".

3.2 CREDIBILITY OF L SERIES OF WITNESSES

Typically in cases of alleged police impropriety, the only witnesses to the facts are persons with criminal backgrounds and the officers who are the subject of the allegations. Typically also, when such allegations are made, the response of officers includes an attack on the character and credit of the complainants. Sometimes, the person making a complaint has a vested interest in sustaining his allegation or at least in causing significant doubt. Those are some of the difficulties of agencies charged with oversight of police conduct.

In that context, it is noteworthy when a person complains of police impropriety without apparent malice or other motive for giving false evidence. It is all the more noteworthy when that person happens to be a serving or former officer. That is not to say, of course, that officers and former officers are beyond giving false evidence concerning the corrupt conduct of their colleagues.

L1, L5, L6 and L8 admitted to various acts of impropriety, including giving false evidence in criminal trials, or withholding evidence that might have thrown doubt on a confession. L1, L5 and L8 also gave false information to investigators at the IAU or to the ACC. Ordinarily, such willingness to lie, especially on oath, would be telling in respect of the general credibility of a witness. While it is, of course, relevant to credit that some of the L series of witnesses have lied on earlier occasions, including under oath, it would be an error to allow this to incline heavily against their evidence in the context of an investigation into allegations of police corruption.

First, there is considerable evidence to the effect that lying under oath, in pursuance of "noble cause" corruption, was not uncommon among officers in the CIB, at least in the earlier part of the period within the Royal Commission's Terms of Reference. On the evidence of some of the L series of witnesses, officers under investigation by IAU investigators lied in order to exculpate both themselves and other officers. In some cases, the evidence that other officers had done so was compelling.

An example is the McGrath matter to be examined in more detail later. A civilian complainant and two of the L witnesses, L6 and L8, said that police stole money. L6 and L8

said that they lied to an internal investigator about the matter. It could not plausibly be said that, because L6 and L8 admitted to the Royal Commission that they had earlier lied, the evidence of the other implicated officers should be preferred on the grounds that L6 and L8 are self-confessed liars whereas the other officers are not. The same point applies at a more general level. It is no easy solution to the task of assessing the credit of the L witnesses simply to point to their confessions of corruption and lying.

Secondly, in the light of the evidence, it is generally implausible that any of the L witnesses came to the Royal Commission to honestly confess his own corruption, but to dishonestly implicate others. That is to say, subject to certain considerations, little reason emerged for the Royal Commission to suspect that an L witness sought to advantage himself by falsely implicating others in the instances of corruption that he recounted. Countervailing considerations include the following possibilities.

An L witness might bear a grudge against a particular officer sufficient to motivate him to include in his evidence a false allegation against that officer. L1 agreed that he harboured resentment in respect of a particular officer against whom he also made allegations, but denied giving false evidence. That resentment is a cautionary consideration for the Royal Commission in respect of the particular officer. There was no credible suggestion that any of the other witnesses in the L series were influenced by similar resentment to give false evidence.

There may have been an inclination on the part of a witness to falsely include other officers in various improprieties in order to spread responsibility, and thereby to diminish his own culpability. Apart from a tendency in L1 to overstate his observations, the Royal Commission saw little to sustain a suspicion that evidence was given under such an influence.

One aspect of credibility concerns the approach taken by a witness when his memory of details of an event is not clear. Whether a witness honestly confesses the lack of clarity or attempts to give detail from assumptions or speculation or fabrication is of significance to credibility.

CREDIBILITY OF L5

The assessment of the credibility of L5 is one of the more important of the fact-finding tasks of the Royal Commission. His evidence touched on the alleged conduct of dozens of his former colleagues. The issue is considered under the following headings:

- L5's motive in approaching the ACC;
- Implicating other officers;

- Corroboration of L5's evidence;
- Proof that L5 has given incorrect evidence;
- The nature of evidence from L5; and
- Collateral evidence from L5 that may be doubted.

L5'S MOTIVE IN APPROACHING THE ACC

There is ample evidence for the inference that L5 offered information to the ACC in return for payment, and that he refused to proceed unless payments were made. He acknowledged that the ACC could not pay rewards for information, but his request for money was nevertheless made, couched in references to his inability to effectively continue to assist the ACC because of his disquiet mind and inability to take time off work, both of which related to financial difficulties.

While L5's reasons had some validity, there is little doubt that he was astute enough to couch his difficulties in terms that would enhance his prospects of payment. The question is to what extent his credibility is damaged by the fact that, in effect, he traded his information to the ACC in exchange for financial reward.

L5 was in severe financial difficulty at the time of his approach to the ACC, due primarily to a failed business venture. He owed approximately \$150,000. He made a request to the ACC for \$20,000 and, of that amount, he said he had a pressing, immediate need for \$7,000. L5 said that, despite his request for assistance, his motive was to clear his conscience, which had been troubling him for some time. He continued to provide information following payment of only \$7,882.80, and apparently he did not press the ACC for further payment, which is some support for his evidence that his conscience played a part in his decisions at the time.

The Royal Commission need not make findings about the relative degrees to which L5 was motivated by his pressing financial needs and by his desire to clear his conscience. It can be accepted for present purposes that L5 was motivated to approach the ACC primarily by his urgent need for money, and only secondarily by his conscience. However, the Royal Commission does not accept that L5's motive sustains an inference that he had reason to provide false information to the ACC to incriminate his former colleagues. Rewards are not uncommon in criminal investigations. Rewards may be relevant to credibility, but their weight in assessing credibility varies with the circumstances.

IMPLICATING OTHER OFFICERS

It was suggested in the hearings that L5 falsely named other officers as being involved in corrupt activity, initially to satisfy the ACC and, later to satisfy the Royal Commission, because he was then forced to adhere to what he had already told the ACC.

That L5 implicated many officers in corrupt, criminal and improper conduct does not itself suggest that his evidence is suspect. His accounts of corruption by other officers fell into several categories:

- His observations of the conduct of others;
- Accounts of his own corrupt conduct including reference to those with whom he acted; and
- Accounts of conversations he had with officers in which officers incriminated themselves.

Some of that evidence has been corroborated. In other cases, L5's evidence concerned the corrupt conduct of other officers, not including himself. However, in the context of all of his evidence, there was no suspicious disproportion between L5's evidence incriminating himself and that implicating others.

There were several cases in which L5 gave evidence that threw suspicion upon other officers, but did not directly incriminate them. In the Schwab matter, L5 said that he received money from another officer but could not say that any other officer did. He saw other officers purchase diamonds shortly afterwards, from which an inference might be drawn, but added that he thought the purchases proved little. Here was an opportunity to falsely incriminate others, were it L5's inclination to do so. L5 did not do so. Another example arose in the M4 matter. L5 said that he saw an envelope passed to LS10, which he thought contained money, but he added that he could not be certain. In the Anne Liddon matter, L5 could have said, but did not say, that one or other of the officers had explained the improper purpose of their trip to Geraldton. There were many further instances in which L5 could have "improved" his evidence against officers but did not do so. The Royal Commission did not draw from the number of officers implicated by L5, or the nature of L5's evidence, any inference adverse to his credit.

CORROBORATION OF L5'S EVIDENCE

There were many instances in which the evidence of L5 was confirmed in some details by documents or corroborated as to impropriety by the evidence of others. Of particular

significance is the corroboration by L1, L6 and L8 and by M15, M1, M3, John and Margaret Ford and M4. There is no basis in the evidence for suggesting that there was either an opportunity or a motive for collaboration between any of those witnesses and L5. The Royal Commission regards that corroboration as a reliable indication that his evidence generally was given in an effort to be truthful.

VERIFIABLE NATURE OF SOME ALLEGATIONS

One way to test the proposition that L5 fabricated evidence for a purpose associated with obtaining payment from the ACC, or for any purpose, is to ask whether the ACC could have disproved his allegations and potentially discredited him. If a person such as L5 intended to fabricate evidence for reward, it is a safe assumption that he would generally invent stories dependent on facts that the ACC could not conclusively disprove. However, there were segments of L5's information in respect of which avenues of inquiry could have been pursued by the ACC to disprove the facts he alleged. Indeed, the understanding was that the ACC would pursue lines of inquiry based on L5's information.

Examples of such matters are the alleged theft of money by officers from Mt Hawthorn CIB, the thefts of money from Jack Ammoun and in respect of the M4 matter, the theft of money from John and Margaret Ford and impropriety on the part of police in their dealings with M19 and M18. In each case, the occasion and the suspect could be identified. In each case, had the suspect denied the allegation made by L5, the ACC would have generally regarded L5's information with scepticism. That in turn would have disinclined the ACC from making further payments to L5 and may have led to L5 being charged under the *Anti-Corruption Commission Act 1988*.

The fact that those allegations were susceptible of disproof, that L5 knew that they were and that he expected the ACC to investigate, strongly indicate that L5 was unlikely to have fabricated allegations. This consideration supports L5's credibility generally.

INCORRECT AND INCONSISTENT INFORMATION OR EVIDENCE

In the Royal Commission, L5 had no access to the transcripts of his interviews with the ACC and was not shown any other documents. In particular, he was not shown offence reports or the journals of other officers. The Royal Commission adopted this approach in respect of L5 in order to minimize any potential for L5 to tailor his evidence to the documents, and in order to maximize the Royal Commission's chances of exposing any inconsistency between the information he gave to the ACC and to the Royal Commission, which might have been indicative of untruthfulness or an unreliable memory. The disadvantages of that practice

were that a good deal of detail fell to be determined after, rather than before, he gave evidence, and some of the detail he ventured from memory proved unreliable.

The ACC transcripts were made available to Counsel for persons adversely mentioned. L5 was examined by Counsel Assisting and was cross-examined by other Counsel on certain inconsistencies between his evidence in the Royal Commission and the information he gave to the ACC, and on some other apparent errors. For the purposes of assessing L5's credit, the inconsistencies may be referred to in a general manner.

As mentioned, L5's evidence was given from raw memory. He gave evidence of many cases of corrupt and criminal conduct ranging over a period of more than 20 years. In those circumstances, his recollection was impressive, and so too was the degree of consistency between his evidence in the Royal Commission and the information he gave to the ACC three years earlier. The identified inconsistencies were not of such significance that the honesty of his evidence could be discounted. There was reason to conclude that L5 may have named an officer as having been involved in corrupt conduct solely on the basis of his recollection that the officer served at the relevant office at the relevant time. In at least two cases, L5 was shown to have been mistaken. In one of those cases, L5 told the ACC a detail of a conversation that could not have been correct. As could be expected in the circumstances, the inconsistencies sound a cautionary note about the reliability of his recollection of detail, particularly in respect of earlier events. Speaking generally, however, L5 displayed an impressive memory.

OTHER MATTERS GOING TO CREDIT

L5 said to the ACC and the Royal Commission that the 1985 bombing at the construction site of Observation City in Scarborough could have been carried out by members of the SAS Regiment. It was suggested that his theory was highly implausible and that his adherence to it demonstrated an inadequate grasp of reality. However, in first mentioning the matter to the ACC, L5 qualified his information with the words "as ludicrous as it sounds". That observation discounts to a large extent any inference that he had lost touch with reality in this regard. In relation to the remainder of his evidence, the Commission is confident that L5 did not show any failure to grasp reality. Indeed he had a particularly astute appreciation of circumstances.

L5 had a gambling problem during his service as a detective, for which he sought treatment. His gambling habit led to debts and borrowings from others. This may be relevant to his motivation for the various thefts to which he admitted in his evidence. Otherwise, however, his gambling habit and the debts he incurred do not reflect adversely

upon the truthfulness of the information he gave to the ACC or upon the evidence he gave before the Royal Commission.

Some attention was given to the suggestion that on an occasion in the company of several male officers at Scarborough CIB, L5 made and won a \$50 wager with a colleague that he would perform a particular “party trick”. This was said to be relevant to his mental stability. The Royal Commission rejects the suggestion that the making of such a wager or performing the party trick in the particular circumstances is indicative of mental instability in L5 or of L5’s lack of capacity for truthful evidence, however repugnant the “trick” may have been to others.

COLLATERAL EVIDENCE OF L5 THAT MIGHT BE DOUBTED

The foregoing conclusions as to the general credibility of L5 are subject, however, to certain issues in respect of which it was more difficult to accept his evidence.

On the evidence, it has to be accepted that L5 did perform the party trick for a wager. However, L5 denied in evidence that he did so. In the light of his otherwise clear recall of events, this denial indicated that, at least in matters touching his own dignity, L5 may have been prepared to give false evidence.

Before being shown the transcript of his interviews with the ACC, L5 gave evidence that he did not recall whether it was he or an officer of the ACC who first raised the possibility that the ACC would make payments for his benefit. It is clear that it was L5 who raised and pursued the issue during the recorded interviews. However, the transcript also shows that the matter had been raised before interview. The Royal Commission is not prepared to conclude that his evidence was deliberately untruthful. First, it was by then clear to him that a transcript was available and was likely to show who in fact raised the issue, so that lying on the point would be unwise. Secondly, L5 may have had in mind that he attempted, in effect, to manoeuvre the ACC into first suggesting payment, but was unable to recall whether he was successful. L5 was also asked whether he was prepared to continue to assist the ACC in the event that the ACC declined to make payment. He insisted that he was prepared to do so. However, the transcript shows that L5 issued an ultimatum to the ACC to the effect that, unless payment was made, he would not be able to continue to provide information. There was also some cause for doubt about L5’s reasons for the urgency of his need for \$7,000. These may show a disinclination by L5 to volunteer the whole truth about the issue of payment from the ACC unless forced to do so by precise questioning.

L5's evidence in those respects did not appear to have been open and frank and necessarily limits the confidence with which his evidence can be approached. However, it would be inaccurate to say that those matters tainted his evidence generally.

CONCLUSION ON CREDIBILITY OF L5

Overall, the Royal Commission's impression of the credibility of L5 was that in all respects touching on corrupt and improper conduct, whether his own or that of others, L5 both attempted to give honest evidence and did in fact give generally reliable accounts. His memory was impressive. He nevertheless showed his appreciation that his memory had its limits and did not attempt to press his evidence beyond those limits. On several occasions, he qualified his statements by saying that he "thought" a fact to be true. In such cases, he was wrong at least three times, but often correct. The degree of corroboration and the relative lack of demonstrated error gave the Commission some confidence in his evidence.

CREDIBILITY OF L1

L1's memory was not particularly reliable for detail such as dates, the names of suspects, officers present on particular occasions, the terms of conversations or the nature of items stolen. Much of his evidence was in general terms and lacked detail. He had no hesitation in admitting that his memory for detail was not good.

The issue of L1's credibility is dealt with under the following headings:

- Motivation;
- Corroboration;
- Consistency;
- Inconsistency with other evidence;
- Previous evidence on oath; and
- Breadth of allegations

MOTIVATION

L1 was not minded to assist the Royal Commission until after an approach was made to him by Royal Commission investigators. He eventually agreed to co-operate, primarily because of his concern that being publicly named in hearings might affect his employment. There is little in that motivation to damage his credibility. It might be suspected that an anxiety to keep his employment could incline L1 to minimize his own culpability at the expense of

other officers. However, no such trend was apparent in his evidence. He explained his own corrupt conduct at least as extensively as he detailed the corrupt conduct of other officers.

L1 left WAPS after an IAU investigation into a serious allegation made against him by a detective at the Major Crime Squad. L1 then denied the allegation but took the advice of a colleague to resign. That colleague, on L1's evidence, was a co-offender in the particular act of impropriety for which he was then under investigation.

Some time after resigning, L1 took the view that the former colleague had deliberately manoeuvred him to resign in furtherance of his own interests. Accordingly, L1 became and remained embittered by what he saw as his colleague's betrayal. That person was the subject of various allegations by L1.

L1 denied that his allegations were motivated by revenge and said that, were he to give vengeful false evidence, he would do so with more serious allegations than he had made.

The Royal Commission did not pursue the allegation by L1 that the person was a co-offender in the matter that led to L1's resignation. Rather, the matter was pursued in the Royal Commission hearings to the limited extent that it related to L1's credit.

L1's confession as to his own conduct was made notwithstanding his knowledge that, as in a previous forum, the hearing would resolve into a contest between his word and that of his accuser. It seems that L1 deferred his decision whether to tell the truth in the Royal Commission about that matter until a couple of days before being called to give evidence. On the one hand, that deferral shows a preparedness to withhold the truth in a hearing under oath but, on the other hand, shows that he told the truth notwithstanding that the chances of his unequivocal exposure were low. The Royal Commission's conclusion is that L1 did enter the witness box with the intention of telling the whole truth to the best of his ability, and that his earlier reservation was, in the result, less important.

In other respects, L1's evidence did not appear to have been biased in his own favour. There was no aspect of his motivation that called into question the honesty of his evidence.

CORROBORATION

L1's evidence was corroborated on three occasions by former officers and lay witnesses. First, the somewhat general evidence of L1 was corroborated by the more detailed evidence of L5 in respect of the seizure of property in a 1992 investigation by Claremont CIB of local burglaries.

Secondly, his evidence in respect of an investigation in 1990, also conducted by Claremont CIB, into the robbery at the Dalkeith home of Mr and Mrs Lee was corroborated in different respects by the evidence of L5, Mr Lee, other officers involved and other lay witnesses. It is extremely unlikely that both L1, L5 and the lay witnesses in the Lee investigation could have independently given false or mistaken evidence to the same effect. As reported later, L1's account of the investigation has to be accepted.

Thirdly, L1's account of T2's admission that he stole clothing was later confirmed in evidence from T2.

Elaboration on each of these matters appears later in this Chapter.

CONSISTENCY

Transcripts of an interview of L1 by the ACC were made available to Counsel. L1 was not co-operating with the ACC at the time of that interview and he did not give truthful answers to ACC questions. For the purpose of assessing his credibility in the Royal Commission, no significant inconsistency arose between the information L1 gave to the ACC and his evidence to the Royal Commission.

INCONSISTENCY WITH OTHER EVIDENCE

L1 gave evidence that police took jewellery from the property seized from Diep Nguyen and Pham Tuyet. He also recalled that, because of his resignation, he thought that he would never receive his share of the proceeds of the sale of his stolen jewellery. The latter seems unlikely since the relevant seizure was in 1990 and L1 did not resign until 1992. L1 accepted in evidence that it was unlikely that proceeds from a sale by police of stolen jewellery would be outstanding in 1992 and offered the explanation that he may have confused two separate events.

He also said that he originally thought that the item of jewellery that he said was substituted by police was a ring, but that, having read the evidence of other witnesses, he accepted that it was a diamond. The nature of the container in which the diamond (or clear stone) was stored could have given a casual observer the impression that it was attached to a ring.

Both these aspects of the evidence of L1 show a memory lacking in clarity of detail, which L1 readily agreed was the case. Neither example shows malice or deliberate untruthfulness.

PREVIOUS EVIDENCE ON OATH

The matter that led to L1's resignation from WAPS is the subject of a non-publication order by the Royal Commission. In general terms, the evidence L1 gave to the Royal Commission was an honest account of his involvement in that matter, although he appears to have described one crucial conversation in terms more favourable to him than was the case on the evidence of the other witness involved in the matter. Nevertheless, L1 admitted the central allegation arising from that conversation.

It is also clear on the evidence that L1's previous lies about the matter included lies under oath. Corrupt acts frequently lead to subsequent lies in order to avoid exposure, including lies on oath. The fact of such earlier lies did not in this Royal Commission cause the same degree of misgiving, or result in the same degree of discredit, as might occur in litigation.

BREADTH OF ALLEGATIONS

One aspect of L1's approach to evidence that caused the Royal Commission concern was the propensity to state his impressions as if they were direct evidence. That resulted in statements in evidence such as those to the effect that "everyone" at a CIB knew of a certain matter when, on further questioning, it became clear that L1 assumed rather than knew it to be the case. That tendency also sounds a caution in respect of such statements from him in evidence. However, the trait is not evidence of malice or dishonesty so much as undisciplined inferences.

CONCLUSION ON CREDIBILITY OF L1

L1's evidence was given honestly. It was not coloured by malice. While there was an obvious self-interest in L1 assisting the Commission, that was not of significance to his credit since, as he well knew, his self-interest would be entirely defeated should it be shown that he lied to the Royal Commission. With the two qualifications that his memory was not good and that he showed a tendency to overstate his impressions as fact, the Royal Commission found that his evidence was generally reliable.

CREDIBILITY OF L6

L6 assisted the Royal Commission for various reasons, none of which affected his credibility. He had not previously been interviewed by the ACC or by the IAU and, accordingly, there was no material upon which the Royal Commission could assess the consistency of his

evidence with earlier statements. The aspects of his credibility that fall for consideration are:

- L6's memory;
- Corroboration; and
- Friendship with L5.

L6'S MEMORY

L6 did not have the benefit of resorting to his police journals or other documents. Royal Commission investigators did not prompt L6 with detail from documents or from other informants in order to sharpen his recollection of dates or detail of events. Rather, as with other L series witnesses, L6's evidence was left to his unaided powers of recollection. For the majority of his evidence, there was little reason to doubt that the evidence he did give was accurate, albeit not given in great detail.

He told the Royal Commission that he was present at a Drug Squad search in the Seabird area at the end of which, later in the afternoon, a picnic was organized. During the picnic he observed three officers smoke cannabis, to the knowledge of a sergeant. He said that a police helicopter was used in the search, but was unable to assist with more detail. The Royal Commission inquiry canvassed several possibilities in its attempt to find a date for the occasion, without success.

In respect of the McGrath matter, some of the detail given in evidence by L6 appears incorrect. For example, he said that Tracy Ward took hold of the empty beer cans at Scarborough, whereas L8 was sure that they had been discarded earlier. L6 said that he went to the self-storage unit and dealt with the caretaker prior to the entry by detectives of McGrath's unit. However, the reports indicate that he went there later. He thought that the investigating inspector was Fred Zagami, whereas it was L4.

L6's memory for detail was not as keen as that of L5 or L8, but was better than L1's. The Royal Commission was not given an impression that the gist of his evidence was unreliable on account of faulty memory for detail.

CORROBORATION

L6 was corroborated:

- By L5 in respect of smoking cannabis at Scarborough CIB, the Yen matter, the second (and to a limited extent the third) search of the Ford premises; and
- By L8 in respect of the presence of cannabis at Scarborough CIB and the McGrath matter.

Putting to one side for the moment the denials of wrongdoing by officers implicated by L6, there was no matter in which it was shown in evidence that L6 was untruthful.

FRIENDSHIP WITH L5

It was suggested that L6 and L5 had a friendship that might explain, for example, why only he and L5 knew about the theft by police of Japanese currency. L8 also recalled the matter, albeit not in detail. There is nothing about the friendship at the time between L5 and L6 that suggests that either or both would falsely implicate others.

CONCLUSION ON CREDIBILITY OF L6

There was no reason for doubting the honesty of the accounts given in evidence by L6. Nothing in his motives, either for giving evidence or otherwise, suggested that his evidence was tainted. Any inaccuracies in his evidence were more likely to be due to failure of memory for detail.

CREDIBILITY OF L8

L8 had no earlier confessional or incriminating interviews with the ACC or the IAU by which his account to the Royal Commission could be measured for consistency.

L8's credibility has been assessed under the headings of:

- Reason for L8's approach to the Royal Commission;
- L8's memory; and
- Corroboration.

REASON FOR L8'S APPROACH TO THE ROYAL COMMISSION

The circumstances of the approach by L8 to the Royal Commission were particularly persuasive in respect of his credibility. When he learnt that L4 had co-operated with the Royal Commission, he assumed that L4 had told the Royal Commission about a bribe paid to him by L8 in respect of the McGrath matter. L8 gave evidence to the Royal Commission that he did in fact pay such a bribe to L4, and related the circumstance in which the bribe arose. It follows, therefore, that it is highly unlikely that L8's evidence in the McGrath matter was false. This aspect of L8's involvement enhanced his credibility in respect of the McGrath matter and generally.

There was no other aspect of L8's motivation for giving evidence that has caused the Royal Commission to doubt his credibility.

L8'S MEMORY

L8 gave clear evidence in reasonable detail. He indicated those questions the answers to which were beyond his recall and he did not attempt to improve his evidence by making assumptions or otherwise. No aspect of his evidence was shown to be faulty on account of poor recall.

CORROBORATION

The Royal Commission received a substantial degree of corroboration for the evidence of L8, and little evidence that contradicted L8, other than from officers whom he adversely mentioned. L8 was corroborated:

- By L6 in respect of the McGrath matter;
- By L5 and L6 in respect of cannabis stored at Scarborough CIB;
- By Smith in respect of the Katanning matter; and
- By L7 in respect of the sale of safes at the Break and Enter Squad.

CONCLUSION ON CREDIBILITY OF L8

There was no reason to doubt the honesty of the evidence given by L8. There was no credible suggestion of malice or other motivation to indicate that he gave deliberately false evidence. He displayed a sound understanding of the limits of his own powers of recollection, and did not appear to press his evidence beyond his actual recall.

CREDIBILITY OF L7

L7 fell into a different category from the foregoing witnesses. On his evidence, he did not act corruptly, but spent some of his time in WAPS attempting to avoid corruption. He reported his observations of corruption to the IAU in 1993 and gave evidence of corruption to the ACC in 1996. His impression was that nothing came of either effort. These experiences formed part of the reasons for his resignation.

His credibility fell to be assessed under the headings:

- L7's motivation;
- L7's memory;
- Inconsistency with other evidence; and
- L7's work habits.

L7'S MOTIVATION

The Royal Commission approached L7 with the knowledge that he had given evidence to the ACC, but did not learn until much later that he had also spoken to the IAU. His motive in both cases seems clearly to have been his concern about the corruption he believed he had witnessed. There is nothing in his assistance to the Royal Commission to cast doubt upon the honesty of his evidence.

L7'S MEMORY

L7 did not have access to journals or other documentation in the period immediately prior to his evidence in the Royal Commission.

In one matter, an important detail in the account by L7 was shown to have been in error. In the matter of the burglary at Morley Fruit Market, L7 said that he recalled that the stolen money was found under a brick in the backyard of a residence in North Perth, he thought perhaps in Charles Street. Other evidence has established that some keys to the burgled premises were found in those circumstances, but the money was found elsewhere. L7 became aware of this inconsistency during his perusal of the transcript of subsequent Royal Commission hearings. He contacted the Royal Commission, accepted that he was in error and agreed with the evidence of LS26 on the point.

It is clear that, had L7 access to his journals or those of other officers, he would not have made that error in his evidence. LS26 and LS27 each had access to his own and to each

other's journal prior to giving evidence. It would not be fair to contrast the memory of L7 with the memories of those officers in that circumstance.

The Royal Commission was satisfied that L7's initial failure of memory in this regard was innocent, that the incident shows no more than a lapse of memory and that it does not cast doubt on his credibility.

INCONSISTENCY WITH OTHER EVIDENCE

A review of L7's earlier statements to the IAU and to the ACC did not reveal significant prior inconsistent statements.

L7'S WORK HABITS

Some officers mentioned by L7 gave evidence in respect of the work habits of L7, including claims that he often arrived late, read the paper at work and studied for examinations during working hours. L7's personal file, however, disclosed nothing but laudatory comments. L7 requested that he be recalled to rebut the allegations. The Royal Commission declined to recall him because, even if the allegations were true, they would not have assisted on the question of his credibility.

CONCLUSION ON CREDIBILITY OF L7

The Royal Commission finds nothing in the circumstances of the assistance given by L7, or in his earlier dealings with oversight bodies, and nothing in the evidence to suggest that he did not give an honest account of his recollections.

CREDIBILITY OF L4

Royal Commission investigators approached L4 in the course of a particular inquiry. He assisted on the basis of an understanding about the extent of the Royal Commission's interest in him. He gave evidence adverse to Detectives LS31 and LS32.

L4's evidence concerned the allegation that an electric device was used on suspect Arran Reynolds. That allegation had been the subject of the preceding hearings and its nature was known to LS31 and LS32 and their Counsel. Counsel for LS31 and LS32 were given the opportunity to cross-examine L4 on the day he gave evidence. Counsel for LS32 cross-examined. However, Counsel for LS31 declined to cross-examine, and complained in correspondence months later that he would have wished to cross-examine had he "prior

knowledge of his allegations and access to records of interview and other documents relating to L4's conduct". As mentioned, Counsel certainly had prior knowledge of the allegation. The Royal Commission had made its position plain that internal documents such as interviews with witnesses would not be revealed except in the event of significant inconsistency with their evidence. In the circumstances, the Royal Commission declined to summons L4 for additional cross-examination.

After L8 had implicated L4 in the McGrath matter, L4 was invited to give evidence in response, but declined.

In summary, there was insufficient evidence from or interaction with L4 for the Royal Commission to gain an informed impression of his credibility. For the moment, the sole question is whether he should be believed on the one matter in respect of which he gave evidence, namely his own use of an electric device upon Reynolds at the request of LS31 and in the presence of LS31 and LS32. No reason has emerged to suspect that L4 falsely confessed to that assault or that he gave false evidence as to the identity of officers present at the time. Reynolds earlier complained of such an assault and later gave evidence of it and, to that extent, the evidence of L4 was corroborated.

CREDIBILITY OF L3

L3 was called to give evidence of a certain interaction with LS3. The Royal Commission was led to L3 because he had given evidence to the ACC in respect of the particular matter. He gave his evidence to the Royal Commission consistently with his earlier account. LS3 did not dispute the essence of L3's evidence, but gave an exculpatory explanation. To that extent, there is no need to assess the credibility of L3.

L3 was mentioned in a separate matter. L1 told the Royal Commission that L3 had assaulted an unco-operative young witness to demonstrate to junior officers the means to overcome a lack of compliance. This was said to have occurred in the late 1980s. L3 denied that allegation. Either L1 or L3 appears to have given incorrect evidence to the Commission. It was not possible to resolve that conflict of evidence and ultimately it was not necessary to do so. As mentioned, the evidence of L3 in respect of LS3 was not disputed. Whether he would or did falsely deny on oath, or had honestly forgotten, an assault occurring about 14 years ago does not have to be determined.

COMBINED CREDIBILITY

The above observations refer to the credibility of each of the individual witnesses. In addition, it is appropriate to note the probative force of the totality of their evidence due to the circumstances in which the evidence emerged. This was not a situation in which the evidence of one witness was dependent upon the evidence of others. Witnesses came from different situations for different reasons. Some were police officers and some were civilians, often with a criminal background. This unlikely liaison adds force not only to the totality of the evidence, but also to the evidence of each individual.

The process of locating and interviewing witnesses began by using the information provided by L5, but in due course a number of witnesses were discovered from other sources of information and they in turn led back to L5 or other witnesses identified by or through him.

3.3 DENIALS BY POLICE

The evidence of the witnesses referred to above implicated over 50 serving or former police officers. Not all of them gave evidence, but nearly all of them, either through the evidence they gave or the cross-examination on their behalf, denied the allegations against them. Some claimed that their memories had failed, that they could not recall the occurrences in question and that they were unable to respond to the allegations made. Most of these denials and claims of memory loss were less than convincing. The acceptance of the truth of the substance of what was said by the L series of witnesses leads to the conclusion that the denials were false.

This state of denial, including as it does a number of officers who are still in the police service, is a matter of serious concern. It is likely that, with the application of appropriate caution and the rules of evidence, few prosecutions or disciplinary charges will follow from the evidence given. When considering the adequacy of evidence against the individual officers, it will not be possible to adopt the broad observations made earlier concerning the cumulative effect of the credibility of the evidence as a result of the process by which it was obtained.

3.4 SUMMARY

The difficulties of investigating allegations of police corruption are well-known, and are many. Typically, the victims are themselves criminals who are disinclined to complain at all. Those who do complain often find themselves outnumbered by officers whose versions of events uniformly contradict the complainants. Those who choose to complain are often

perceived to do so for some self-interested motive, the revelation of which is used to further undermine their credibility. It works to the advantage of corrupt officers that there is a public perception that criminals often, and unjustly, make allegations of police impropriety. The difficulties are compounded by the fact that some criminals do indeed make false allegations.

In that context, in Operation Least Said, the evidence of several former police officers not only has supported the complaints of many civilian witnesses, but also in several cases it has supported other officers' evidence of corruption.

In several cases, an officer has been named in respect of certain corrupt conduct by an L series witness and a lay witness. In some cases, an officer has been named by two L series witnesses and a lay witness in respect of a certain event. Several officers have been named independently by two or more L series witnesses in respect of separate corrupt acts. Some examples are as follows:

- LS1 was named by L5 and L7;
- LS3 was named by L3, L5, L6 and L8;
- LS4 was named by L5, L6 and L8;
- LS11 was named by L5 and L8;
- LS14 was named by L5, L6 and L8;
- LS15 was named by L5 and L8;
- LS18 was named by L5 and L6;
- LS27 was named by L7 and L8;
- LS28 was named by L7 and L8;and
- LS31 was named by L1, L4 and L5.

The evident degree of independent allegations of corrupt or criminal conduct among named officers generally enhanced the strength of the allegations made by the L series witnesses.

The reaction on the part of some impugned officers has been to attack, in personal and bitter terms, the character of L series witnesses. Such reactions are not atypical. The Royal Commission heard similar counter-attacks in respect of witnesses in other operations. The majority of those attacks upon the L series witnesses did not detract from the reliability of their evidence.

It may now be the case that other officers with relevant information have come to expect such personal attacks should they come forward. It is to be sincerely hoped that any such

expectation among other officers does not deter them. The community and WAPS need them to summon the courage to speak up about corruption.

The evidence in this segment was significant, because it provided the beginning of a timeline from 1 January 1985 to 2003 covered by the evidence before the Royal Commission. It demonstrated a continuing pattern of police misconduct throughout that period that had proceeded largely unimpeded and unpunished by the investigative practices in place during that period. What follows is a summary of the conduct revealed by the evidence.

The summary is not exhaustive. It is not a judgment. As explained in Chapter 1 of this Volume of the Report, the purpose of this Report is to inform the Government of issues that have existed concerning police corruption, as a basis for the formulation of proposals for reform. This Report is not intended to express findings against individuals, which is one of the reasons why names in this Chapter have not been used. The summary does not include instances where the Royal Commission could not form a view about whether the conduct alleged had occurred. Lengthy submissions were received on behalf of a number of the officers involved and those submissions have been considered. However, it is not intended to refer to them specifically, nor is it intended to purport to justify conclusions that are implicit in the description of the events. It is for that reason that some general observations have already been made concerning the credibility of the witnesses.

3.5 SEARCH WARRANTS

In Western Australia, search warrants are most frequently obtained pursuant to s. 711 of *The Criminal Code* and s. 24 of the *Misuse of Drugs Act 1981*. A Justice of the Peace has power to issue a warrant to search a nominated place and seize property located in that place. The officer requesting the warrant must have reasonable grounds for suspecting that property will be located that relates to an offence or will provide evidence about the commission of an offence.

Pursuant to WAPS Operational Procedure – 39.6 “Search Warrants (Issue)”, a police officer is required to document the grounds for his or her suspicion and to consult a superior officer, independent of the inquiry, for review of those grounds.

EVIDENCE OF L5

L5 gave evidence that the signatures of local Justices of the Peace were regularly forged on warrant forms at Scarborough CIB. He named LS3 as the detective who was the most proficient in forging signatures on search warrants.

L5 explained that a warrant might be forged if it was needed quickly or if a search was to be conducted for an illegitimate purpose, in which cases the forged search warrant was later destroyed.

If it appeared that charges might be laid as a result of a search pursuant to a forged warrant, an ostensibly valid search warrant was obtained from a Justice of the Peace dated the same day as the illegal search. This was possible, because the time of day at which warrants were obtained was rarely recorded. One local Justice of the Peace did record the time and date and, accordingly, his services were not used in these circumstances.

In cases where an officer had searched premises without a warrant, or had used a forged warrant, and the matter went to Court, one option available was to give false evidence that the occupant gave permission for the search, but purported to withdraw consent after items of significance had been found. L5 said that this was common practice and that any allegation by the suspect of impropriety could be met by denials from the officers involved.

L5 also witnessed Justices of the Peace sign several blank search warrants for the convenience of police. Later, when a warrant was required, an officer simply filled out the relevant details and executed the warrant.

One improper purpose for executing a search warrant was to steal property. L5 said that undercover officers from the Drug Squad occasionally provided information to Scarborough CIB about premises, a search of which might be profitable for officers. Officers then executed search warrants at those premises with a view to stealing money or other items of property. If money were taken during the search, the Drug Squad officer who provided the information usually received a share. He recalled a specific incident in which a Drug Squad officer was given \$100 from such a theft.

EVIDENCE OF L6

L6 said that he forged warrants and observed each of L5 and Detectives LS3 and LS4 forge warrants at Scarborough CIB. Warrants were often forged late in the day when officers

wished to conduct a search before finishing work, and no Justice of the Peace was readily available.

If an arrest was made or property seized pursuant to an unauthorized search, an ostensibly legitimate search warrant was obtained from a Justice of the Peace, either on the way back to the CIB office, or on a later date, in which case it was backdated. His recollection was that there was rarely a need to backdate warrants because a "legitimate" search warrant could usually be obtained on the same day as the search.

L6 forged warrants by signing a fictitious name or making indecipherable marks, rather than attempting to copy the signature of a Justice of the Peace. He recalled witnessing LS4 copy the signature of Justice of the Peace, David Manners.

EVIDENCE OF L1

L1 said that officers from Claremont CIB often executed search warrants primarily for the purpose of obtaining goods and money for themselves. If detectives became aware that drug dealers were in the area, they attempted to execute search warrants before the Drug Squad did, with a view to locating and stealing cash.

L1 was not aware of officers forging search warrants. He said that, in his experience, warrants were easily obtainable. An officer was required merely to state that he had a reasonable suspicion, not including the grounds upon which that reasonable suspicion was based. L1 recalled that officers applied for warrants if they had information that drugs might be present at particular premises, sometimes merely on the basis of the criminal record of the occupant.

EVIDENCE OF L8

L8 could recall only one instance of an officer forging a search warrant. At Morley CIB he saw a detective forge the signature of a particular Justice of the Peace. He said, though, that the search was otherwise pursuant to a legitimate policing objective and he could not recall why a valid warrant was not obtained.

EVIDENCE OF T2

T2 gave evidence in another segment relating to Operation Tirari of an incident in which officers, having conducted a search at particular premises, needed to search different premises urgently. Because officers did not have time to approach a Justice of the Peace, a

warrant was handwritten and the signature “Sidney H. Bridge” forged. The forged warrant was taken to the search, but was not shown to an occupant.

T2 also said that a Justice of the Peace offered to provide Morley CIB with signed, but otherwise blank, search warrants because he was going on holidays. His offer was not accepted.

EVIDENCE OF OTHER OFFICERS

Each of the officers adversely mentioned in evidence denied having forged a warrant, having obtained a warrant improperly and having executed a warrant for improper purposes.

LS5 and LS4 said that one local Justice of the Peace recorded details of search warrants he witnessed and would have noticed if a warrant had been backdated.

CONCLUSIONS

There is little doubt from the evidence of L5 and L6 that search warrants were forged, obtained by misleading Justices of the Peace and used for improper searches and to “legitimise” improper searches. Their evidence was supported in some respects by that of L1, L8 and T2.

There was also evidence that some Justices of the Peace kept inadequate records and were too ready to accommodate the convenience of detectives, but no evidence that any shared in the detectives’ improper purposes. Similar evidence was led in other segments of the Royal Commission’s hearings. There is no doubt that routine recording by Justices of the Peace of the details of warrants issued, including the time of day, would make more difficult some of the improper practices mentioned in the hearings.

It is not possible to gauge from the evidence the extent to which warrants were forged or otherwise improperly obtained throughout WAPS. However, it is clear that, where it occurred, there was little effort by those acting improperly not to disclose the forgery to colleagues. That indicates that there was a culture of expectation among those officers that improperly obtained warrants might be used in certain circumstances.

3.6 PETTY THEFT OF PROPERTY AND CASH

TOOLS

L8 said that an assortment of tools was kept in a cupboard at the Break and Enter Squad between 1986 and 1989. The tools were acquired by seizure from suspects or by confiscation during a search or other form of investigation. These items should have been recorded in the WAPS system for lost, found or stolen property. Instead, tools were sometimes simply placed in the cupboard and used by officers for police and for private use and sometimes permanently taken by officers.

T2 also told the Royal Commission that stolen property located by officers was sometimes taken by officers.

JEWELLERY

L8 was present in LS11's office with other officers when LS11 said words to the effect that if one of the officers got hold of any jewellery, LS11 could "get rid of it". L8 said that no one took him seriously at the time. However, when some recovered jewellery was later spread out on a desk in LS11's office, LS11 took a ring. LS11 denied the allegation.

THE SALE OF SAFES

In the late 1980s the Break and Enter Squad was responsible for investigating large burglaries, including those involving stealing from safes. In the course of this work, officers from the Break and Enter Squad sometimes took possession of safes and parts of safes. When an investigation was completed, the safe or part was offered to the owner or relevant insurance company. On some occasions, neither party accepted the item and the officers of the Break and Enter Squad became responsible for its disposal.

The Break and Enter Squad had an arrangement with a private business under which officers delivered to the business unwanted safes and safe parts recovered by officers during investigations. The business paid officers for these items and those payments were placed in the Break and Enter Squad social fund.

Since the safes and parts of safes were never the property of the officers concerned, their private sale by officers was unlawful and ought not have been sanctioned by the officer in charge ("OIC").

In this matter, as in others, there appeared to be an attitude among officers that payments made by persons to police were less improper if paid into a social club fund than if paid directly to an officer. That cannot be the case. Sharing the benefit of such payments, whether by way of a social club fund or otherwise, is not a mitigating factor.

REMOVAL OF A CAMERA FROM THE BREAK AND ENTER SQUAD

L7 executed a search warrant on a jeweller's premises and seized two or three cameras. He left the cameras on his desk in the Break and Enter Squad office. After a day or two, the best camera disappeared. L7 suspected that another officer had taken the camera and, after some effort to locate it, L7 announced that he would submit an offence report unless it was returned. A day or so later, Detective LS1 told L7, in abusive terms, that the camera was under L7's desk, which it then was. LS1 added that it had probably been there all the time. L7 was sure in his evidence that it had not.

Detective LS1 is mentioned again in other matters contained in this Report. Within Operation Least Said, he is alleged to have arranged for the sale of a portion of a cannabis crop seized from Ivan Jack Marinovich and is also alleged to have been involved in the theft of money during the Morley City Fruitland investigation.

L7 told the Royal Commission that, as a result of the matter concerning the camera, he was given the "cold shoulder" from the majority of the other detectives in the Break and Enter Squad.

LS1 gave evidence that he did take the camera from L7's desk, but denied that he had done so with any improper intent. He said that he was concerned that L7 had left the cameras on his desk, rather than secured in the property room. Accordingly, he decided to teach L7 a lesson by removing a camera. After a period, LS1 returned the camera.

L7 was sufficiently concerned by the incident to report it later to the IAU, to give evidence to the ACC about it and, ultimately, to give evidence before the Royal Commission. It is clear that he was never told that LS1 removed the camera to teach him a lesson.

The explanation from LS1 is not convincing. There is an obvious lack of proportion in trying to teach an officer the lesson that seized property ought not be left on his desk by a means that gave him the clear and enduring impression that a fellow officer, indeed the "teacher", stole it. Further, it might be wondered what lesson was intended if, as LS1 suggested at the time, the camera was at L7's desk at all times, that is, it had not been removed, much less stolen. In any event, once the shock of the loss of the camera had registered with L7, it

would have been extremely unwise of LS1 not to reveal to him the “real” reason for the removal of the camera, for the obvious reason that L7 may report an impropriety, as he did.

L7’s conduct showed that he would not suffer what he took to be police corruption. As a result of this stance, L7 was ostracized to some degree by his peers. The ostracism is difficult to understand on any basis other than disapproval of L7’s readiness to report a suspected theft by a fellow officer. For LS1 to have taken the risk that his “lesson” would cause a degree of ostracism of L7 also seems a grossly disproportionate means of correcting a procedural omission. The inference to be drawn is that LS1 returned the camera only because L7 threatened to lodge an offence report.

THEFT OF MONEY FROM A MONEY BOX

L1 gave evidence of his stealing money for the first time in his police career. Shortly after he arrived at the City CIB, as a probationary detective, he was counting coins from a money box that had been recovered by the City CIB, intending to enter the amount in the property book. A more senior detective saw L1 engaged in this task and said to him “[d]on’t be daft. It’s not worth it”. L1 and the other officer each then took half the money. L1 said that he had heard rumours about corrupt practices in the CIB and this event, although his first encounter with corruption, was not a huge shock. He said he took the money because he wanted to be accepted and to remain in the CIB.

INVESTIGATION OF THEFTS FROM SPORTS STORES

In about 1988, officers from the City CIB were involved in the investigation of a group of juveniles who were thought to be stealing from sports stores.

A complaint was made that the officers involved in the investigation had stolen some of the recovered clothing. L1 said he was present when one of the officers, T2, told him and others that he had been interviewed regarding the complaint and that, while he was being questioned, the only clothing that he was wearing that belonged to him was his underpants. The point of the joke was that all his attire except for his underwear was stolen.

T2 later gave evidence in the Operation Tirari segment that he did indeed receive stolen clothing that had been recovered by police.

SEARCH OF A STOLEN VEHICLE BY CLAREMONT CIB

At a time when L1 was stationed at Claremont CIB, a stolen vehicle was recovered by uniformed officers during a night shift and parked at the rear of the CIB offices.

L1 said that, the following morning, he and other detectives searched the vehicle and located a large number of cartons of cigarettes in its boot. They were able to ascertain that the uniformed officers were not aware of the boot's contents and they then decided to steal a number of cartons. L1 received between six and ten cartons. He said that the cartons were shared between detectives at Claremont CIB. Each of the other officers asked about the matter denied having received any cigarettes.

THEFT OF A CORDLESS TELEPHONE

On 9 July 1990, officers from Scarborough CIB executed a search warrant in Clement Drive, Karrinyup. The property seized was entered into the property books and most items were returned to the owners. However, L8 said that a cordless telephone was confiscated by officers and installed at the Scarborough CIB office where officers used it until it was eventually discarded.

SEARCH AT THE HOME OF WILLIAM MCKEGG

L6 assisted in a Drug Squad search at the home of William McKegg. Officers searched through McKegg's collection of compact discs for any drugs hidden inside the compact disc cases. L6 took some of the discs and placed them in the police vehicle. He made no effort to keep secret from his colleagues the fact that he had stolen compact discs because, he said, it was accepted that such thefts would occur. L6 told one officer that he was going to take some compact discs and that officer made no effort to dissuade him. He said that other officers also took discs.

This was one of two or three occasions on which L6 observed property taken from domestic premises by officers.

SEIZURE OF PROPERTY AT THE HOME OF GARFIELD BARRY

On 9 January 1991, officers from Scarborough CIB attended a unit in Weaponess Road, Scarborough in respect of a suspect, Garfield Barry. Barry subsequently escaped through the rear of the property, but was located the following day and charged with several offences.

A large number of items of property were seized from Barry's unit and taken to Scarborough CIB. L8 told the Royal Commission that he and other officers appropriated kitchen utensils for use at the Scarborough CIB offices. He also said that he took a tent, which he kept at Scarborough CIB offices for a while before he took it home. Another officer knew that L8 intended to and did take the tent.

BREAK AND ENTER AT TIMEZONE, INNALOO

Scarborough CIB detectives investigated a break and enter committed on 8 May 1991 at business premises trading as Timezone in Innaloo. A vehicle was identified in connection with the offence and police were led to the offenders' residence. Officers recovered a number of hessian bags containing coins and arrested the offenders. L6 said that LS4 and LS3 helped him count the coins. Approximately fifteen or twenty dollars in 20 cent coins were counted out for each of the detectives who regularly played cards at Scarborough CIB. The rest of the recovered money was returned to Timezone.

ARREST OF SUSPECT

On 20 November 1991, officers from Scarborough CIB executed a search warrant in Fletcher Street, Yokine and located a quantity of cannabis and amphetamine. Two males were arrested in respect of the drugs located.

L8 questioned a third male who arrived with \$100 to purchase drugs on behalf of another person. L8 decided not to charge him, but took possession of the money and told him "[y]ou've just been fined". L8 added the \$100 to the social club fund tin at Scarborough CIB that was located in LS3's desk drawer. Subsequently L8 spoke to LS3 and L5 to explain how the sum of \$100 had been obtained.

QUESTIONING OF A SUSPECT AT JOONDALUP CIB

In about 1993, officers held a particular suspect at Joondalup CIB for questioning. The suspect's wallet was taken from him and given to L8. L8 took \$50 from the wallet in the presence of two junior officers and the wallet, containing the remainder of the money was returned to the suspect. This incident had a significant effect on L8. The two junior officers were stunned by his act. One naively asked what L8 intended to do with the \$50. In fact, he used it for lunch that day in company with the two junior officers but said that they would not necessarily have been aware of that.

L8 said that he was troubled by the position in which he had placed the two junior officers and partly by their reactions. This was the last occasion on which he stole property. The inference from the reaction of the two junior officers may be that the acceptance of petty theft was by then in decline. It is noteworthy, nevertheless, that neither reported L8.

3.7 ASSAULTS

L8, L5 and L4 gave evidence that they had each assaulted suspects. L1, L5 and L8 said that they had observed or had knowledge of other officers assaulting suspects. L6 also gave evidence relating to assaults by police.

A number of witnesses who were questioned by police in the late 1980s and early 1990s said that they were assaulted by detectives, sometimes quite seriously. Most of those allegations are dealt with elsewhere in this Report. They include the events relating to the:

- Investigation of a robbery at 23 Jutland Parade, Dalkeith on 7 August 1990;
- Interview of suspects and witnesses by officers at Morley CIB during the period 1 November 1990 to 7 March 1991; and
- Investigation of a robbery at Supa Valu Supermarket, Heathridge on 5 May 1988.

The evidence suggests that assaults of suspects during questioning occurred for the purpose of intimidation, usually to elicit admissions or obtain other forms of co-operation from suspects. The assaults ranged in severity from a “clip across the ear” to the administration of an electric shock and beatings with a length of hose. There was evidence also of attempts to humiliate suspects.

EVIDENCE OF L5

L5 estimated that he was involved in between 20 and 50 assaults, involving a “clip across the ear”, slaps and sometimes punches. On a couple of occasions, he lost control of the situation and found himself “wrestling on the floor with somebody, punching and kicking”.

L5 explained that the nature of an assault depended on the situation, the type of crime under investigation and the nature of the person being questioned. A seasoned criminal, with a history of contact with the police, was likely to receive more severe treatment in order to obtain a confession.

L5 described the use by police of telephone books as "very effective" because it spread the impact of blows across a wider area of the suspect's body, reducing the risk of observable bruising. Normally, a few police officers were required to assault an offender using a phone book. One officer held the book, one the suspect and another administered the blows. L5 also saw suspects hit with the flat blade of a cricket bat.

L5 said that officers who were prepared to verbal suspects and assault suspects acquired that reputation within the CIB. Only those officers would be taken on inquiries where there was a likelihood that such tactics may be required. His perception was that those officers progressed more quickly within WAPS.

L5 gave evidence in criminal trials on several occasions in which the accused truthfully alleged that he had been assaulted by police. When questioned under oath in respect of such allegations, L5 and other officers routinely denied any assault.

L5 described the worst assault he had witnessed. It occurred during an interview of a suspect in relation to a safe break when L5 was stationed at Scarborough CIB. He could not recall the suspect's name. He said that Detectives LS7 and LS6, who were stationed at the Break and Enter Squad at the time, attended at Scarborough CIB and conducted the interview. The suspect was knocked to the ground and LS7 and LS6 "stomped" on his broken arm, which was in plaster. The suspect was in excruciating pain. The suspect was M15 and the date he was allegedly assaulted was 26 June 1984. Subsequently, at his trial on 20 February 1985, M15 accused LS6 and others of assault, and was acquitted. LS6 gave evidence in that trial that no assault occurred. Accordingly, the matter fell within the Royal Commission's Terms of Reference.

THE ASSAULT OF M15

The offence for which M15 was tried was committed on 29 March 1983 at the premises of Hayway Marine in Perth, where M15 had previously been employed. On 26 June 1984, M15 was arrested by officers from Scarborough CIB in relation to a different matter. They later realized that he was wanted for questioning about the Hayway Marine offence. A member of the Break and Enter Squad was contacted and some detectives attended at Scarborough Police Station to question M15.

M15 said that, at the time of this interview, he already had a black eye and a sutured puncture wound above his left ankle. Those injuries resulted from an earlier incident unrelated to police conduct.

According to M15, he was taken to a back room, questioned for approximately eight to eight and a half hours and assaulted. He described a tall officer with dark hair who held him around the throat. He said that a couple of officers hit him on the side of his face. While he was lying on the ground, officers kicked him on the sutured injury. He said that his ankle was not strapped or bandaged when police questioned him, and that the stitches must have burst because there was blood on the floor after the assaults.

M15 thought there were approximately six officers present at the time. He identified LS6 as one of the officers who kicked him.

M15 said that police wanted him to make a confessional statement and, although he did not want to, eventually he had "had enough" and agreed to sign a statement if he was given personal bail.

M15's mother, M16, said that, when she and her husband saw M15 at the police station at 8.15 pm on 26 June 1984, he told her that police had detained him all day and had assaulted him. She recalled that M15 mentioned that officers had punched him and had stood on his feet. She also recalled that his leg was bleeding, and that she and her husband took M15 to Royal Perth Hospital.

The doctor who examined M15 at Royal Perth Hospital was told and noted that M15 "... was kicked in the right upper arm, gripped around the throat and punched in the kidneys, and had both feet stood on by the Police Officer". The doctor identified recent bruises in the left loin, the dorsum of the left foot and the right upper arm just below the deltoid. On 28 June 1984 M15 saw his family doctor, Dr Cluett, who noted that M15 had bruises and swelling on the right ankle and right wrist consistent with having been kicked and punched.

LS6 and LS7 denied inflicting any injuries on and any assault of M15. At his trial in February 1985, M15 alleged that officers from the Break and Enter Squad, including LS6, assaulted him during questioning on 26 June 1984. LS6 was cross-examined by M15's counsel and denied any knowledge of or involvement in an assault on M15. The Royal Commission located M15 after L5 had given his evidence. There was no risk that L5 and M15 collaborated prior to presenting their evidence. While there are some inconsistencies, M15 corroborated L5's account in respect of the nature of the investigation, the officers involved, the nature of the assault upon M15 and the fact of a pre-existing injury that was a focus for police assaults.

The evidence was persuasive that M15 was assaulted by Break and Enter Squad officers, including LS6, at Scarborough CIB on 26 June 1984 and that LS6 failed to truthfully answer questions relating to the assaults at M15's trial in 1985.

EVIDENCE OF L8

L8 claimed that his assaults usually consisted of a slap to the side of the head, around the ear or the back of the head, administered to intimidate a person and to make it clear that the person had no one but the detectives upon whom to rely for safety. L8 observed other officers assault suspects with "a quick shock, a slap across the head". He did not observe any assaults severe enough for him to characterize them as torture.

L8 agreed with the evidence of L5 that the decision whether to assault a suspect was made after assessing his character.

REVEL KICKETT

While stationed at the Break and Enter Squad, L8 interviewed a suspect, Revel Kickett, in respect of a series of safe breaks. During the interview, he hit Kickett a couple of times on the side of the head and punched him two or three times in the stomach.

ASSAULT BY LS62

L8 described an incident involving the attendance at Morley CIB of two officers from the Motor Squad. He recalled that one of the officers, LS62, asked to use an office at Morley to interview a young male suspect then in custody.

During the interview, L8 heard shouts, a scream and some "banging". LS62 came out of the interview room very upset and told L8 "I've killed him". L8 went to the room and saw the suspect apparently unconscious on the floor. LS62 explained to L8 that he had punched the suspect and, as he fell to the floor, had kicked him in the head. The situation was explained to LS62's superior officer by telephone.

The suspect recovered while still at Morley CIB. L8 spoke to him and ascertained that his trail bike had recently been stolen. In an effort to placate him, L8 offered police assistance in locating the trail bike. In the end, the young man appears not to have officially complained and the Royal Commission was unable to identify him.

LS62 denied that he had attended Morley CIB to interview a young suspect. He denied that he had ever assaulted a suspect who had fallen unconscious.

This incident shows not only that some officers engaged in physical violence to secure admissions from suspects, but also that some more senior officers could be relied upon not to report knowledge of assaults and, in some cases, to shield other officers from allegations of assault.

INVESTIGATION OF AN UNLAWFUL WOUNDING AT KATANNING

On the evening of 15 June 1989, a physical altercation between groups of residents broke out in Katanning. The altercation resulted in charges of unlawful wounding and unlawful assault against Gifford Eades and his nephew, Colin Smith.

Initially, uniformed officers from Katanning Police Station dealt with the complaint, but they had obtained no admissions. Detectives from the Perth Break and Enter Squad happened to be present in Katanning to investigate safe breaks and thefts of large amounts of copper wire from railway infrastructure. The detectives were L8, LS5, LS26, and LS27. At 11.50 pm, the uniformed officers contacted the detectives for assistance. At about midnight, L8 and LS5 interviewed Eades, and LS26 and LS27 interviewed Smith. Eades and Smith each made confessions to the detectives.

L8 gave evidence that a detective who interviewed Smith told him, in effect, that officers physically assaulted Smith and forced him to strip naked in order to obtain a confession. L8 expressed no disapproval and did not disapprove.

COLIN SMITH

Smith gave evidence that he and Eades were taken to the Katanning Police Station for questioning on 15 June 1989. Smith was placed in an interview room and was told to take his clothes off. He did so, although he was not sure if he also removed his underwear. He said that he was hit on two occasions. He was slapped twice across the ears by an officer standing behind the chair on which he was seated. Later, when he was standing, a detective punched him in the stomach. He was unable to recall whether a uniformed officer was present when he was assaulted.

LS27 and LS26 denied having struck Smith or unlawfully obliged him to strip, and denied knowing that any other officer had done so. Each denied telling L8 anything to the effect that Smith was assaulted or stripped. LS5 said that nothing was said in his presence about untoward treatment of Smith.

The evidence of Smith and the evidence of L8 came to the Royal Commission independently, at least in the sense that neither knew what the other had said or would say. There is little chance that L8 and Smith each gave mistaken or false evidence in respect of both the assault and stripping of Smith. In L8's case, there is no plausible motive for such false evidence.

GIFFORD EADES

Eades said that detectives interviewed him in the back room of the Katanning Police Station and that, at some stage during the questioning, he was told to take all of his clothes off. Initially, he said that he was naked for about one or two hours, but later would not commit to a period other than to say that it was more than 15 minutes. He said that he was told to stand up and, when he did, LS5 kicked him on the shins a couple of times. He also said that when he refused to co-operate, the police brought an electric fan into the room and threatened to douse him in water, presumably to cause him to become uncomfortably cold.

LS5 said that Eades was not kicked or asked to take his clothes off, and that he did not see Eades naked that night. LS27 and LS26 each denied any knowledge of improper treatment of Eades. L8 did not give any evidence indicating an assault upon Eades or that he was obliged to strip.

No plausible explanation emerged for the evidence of Eades. The Royal Commission accepts that, had L8 participated in an assault upon Eades, or been aware that Eades was assaulted, he would have said so in evidence. The possibilities include that other officers assaulted Eades without L8's knowledge and without later informing L8, or that Smith told Eades what had happened to him and Eades has repeated a version of the story as his own.

EVIDENCE OF L1

SCORECARDS

L1 gave evidence that, while he was stationed at the General Crime Squad (which later became City CIB), LS7 and LS26, both also from the General Crime Squad, took a person into an interview room. L1 then heard the sounds of "a human body being bounced off the wall", the noises of "somebody being hit" and cries of pain.

79 Division was located on one side of the office building and the General Crime Squad was on the other, each with windows facing outside the building. There was a thin wooden partition between the two offices, at the top of which was a pane of glass. On this occasion,

L1 said that officers from 79 Division held numbered cards up to the glass pane, “as in when diving judges give a score”. The effect of L1’s evidence was that, presumably as a joke, the 79 Division officers gave mock assessment scores for the assault.

LS26 and LS7 denied the alleged assault. LS26 said that he had never worked with LS7.

Whether or not the two officers concerned were correctly identified by L1, the incident shows in the clearest terms, and consistent with the evidence of L5 and L8, that there was widespread acceptance by detectives of assaults committed on suspects.

ENGLISHMAN AT CLAREMONT

L1 remembered a suspect of English origin who had been using false documentation to purchase goods from Bunnings stores. L1 said that the suspect was aged in his mid-30s, had no prior record and had “an attitude”. During the interview of the suspect, according to L1, LS39 “whacked him across the back of the head”.

LS39 said that he recalled the person suspected of committing frauds on Bunnings and volunteered to the Royal Commission that the person’s name and address were in his police journal. LS39 denied any assault. Subsequently, from the journal details, Royal Commission investigators located M17. M17 gave evidence that detectives from Claremont CIB questioned him in relation to frauds committed on Bunnings stores in 1990. He said that one of the officers “head butted” him on the forehead. He described the officer in terms that did not match the appearance of LS39.

L1’s evidence that an Englishman was accused of a fraud on Bunnings and assaulted was corroborated by M17, but his evidence of the form of the assault and the identity of the officer were not. As earlier mentioned, L1’s memory for detail was not impressive and could not be accepted given that those details had been contradicted by M17. However, there is little chance that both L1 and M17 independently gave false or mistaken evidence that M17 was assaulted in some manner.

EVIDENCE OF L6

L6 did not directly observe any assault by a police officer. While stationed at the Drug Squad, he saw a male suspect lying on the floor after an interview, holding his chest as if he had been hit solidly. At Claremont CIB, he was told about a stained chair jokingly referred to as the “something Clark memorial chair” because of bloodstains from an interview. At Scarborough CIB, L6 saw an officer take a cricket bat into an interview.

L6 was in the CIB for nearly six years, during which he had very limited exposure to assaults by police. It was not possible to determine whether the better inference is that few assaults occurred at his postings or that, as L5 intimated sometimes occurred, L6 was an officer whose reputation did not include a willingness to assault suspects and was therefore excluded from investigations in which that was likely.

CONCLUSIONS

There was evidence of assaults of suspects at various squads and offices. The assaults varied in severity but severe assaults seem uncommon.

3.8 THE PRACTICE OF VERBALLING

L1, L5, L6 and L8 all gave evidence to the Royal Commission concerning the practice of “verballing”. Verballing is the false attribution of a confession or admission to a suspect. On the evidence before the Royal Commission, the practice of verballing ranged in degree between the fabrication of an entire record of interview or statement, in which a full confession is made, to a subtle change of words to cast greater suspicion on a suspect. Ultimately, if the verbal were contested in court, the police officer involved might commit perjury in support of the false statement.

Some witnesses before the Royal Commission admitted verballing, and said that the practice was commonly used, even encouraged, within the CIB. Others denied having verballled a suspect and denied having seen it done by other officers.

It was explained to the Royal Commission that an officer might verbal a suspect whom he believed was guilty in order to secure a conviction and that, on other occasions, an officer might verbal a suspect in order to disguise a breach of policing procedures or a failure to take adequate notes of a conversation.

The practice of verballing has some serious implications for the administration of justice. An accused may be convicted wholly or in part on the basis of fabricated evidence, bypassing the checks and balances of the law designed to ensure that each accused has a fair trial.

The introduction of s. 570D of *The Criminal Code* in November 1996 appears to have reduced the practice of verballing in relation to serious offences. The section provides that admissions to police in respect of serious offences (a defined term) are not admissible in evidence unless recorded on videotape. The section has two exceptions under which unrecorded admissions may be received in evidence, namely, where there exists a

reasonable excuse for not doing so and where there are exceptional circumstances that justify the admission of the evidence.

Due to the two exceptions noted above, there are situations in which verballing may remain a problem. First, there is no similar legislation in respect of summary offences that may carry significant penalties, including imprisonment. Secondly, the factual circumstances that constitute a reasonable excuse under s. 570D of *The Criminal Code* may be open to manipulation by police officers so inclined. Thirdly, a court might be persuaded by a sufficiently cogent, but false, admission that there are exceptional circumstances that, in the interests of justice, justify the reception into evidence of an unrecorded admission.

EVIDENCE OF L5

L5 admitted to having verballled suspects between twenty and seventy times, and to lying at trials in support of verbals.

L5 said that he was first taught the art of verballing by a detective during his probationary period at Warwick CIB. This involved turning an innocent conversation into a plausible admission that would withstand scrutiny.

The method adopted by L5 was to sit with the suspect and have a general conversation, after which he made a note of mannerisms of speech, other idiosyncrasies and general points about the suspect's life. These details were blended into a verballled statement to assist in making them seem plausible in court.

L5 also explained the development of different techniques to avoid exposure. One of these included saving blank sheets of paper from the same ream as the paper used to take the suspect's statement. This meant that, if there was a need to prepare a second set of notes containing a verbal, it could be prepared on paper the same age as the original. That was done because scientific processes could be used to determine the approximate age of paper. Another safeguard was to discard a typewriter ribbon used to type an original statement if a second statement, containing a verbal, was prepared. This was done because indentations on the original ribbon could reveal what had actually been said.

L5 passed on his knowledge concerning verbals to other officers to assist them in evading detection and, if he was working with another officer, to avoid his own exposure.

Other techniques used by L5 and other officers accused in Court of verballing were to deny the allegation, state their version of events and claim that their colleague would corroborate

their version of events. This could be done, safe in the knowledge that the officer or officers involved had previously discussed their evidence and learnt the verballed statements of the accused by heart so as to avoid inconsistencies.

L5 recalled a specific instance where an accused suspect had been verballed and convicted. The suspect had been extradited from Western Australia to New South Wales, where L5 had been called to give evidence. L5 was asked by New South Wales officers to assist in providing a false statement, as it was their belief that there was insufficient evidence available to convict the accused. L5 agreed, and prepared an unsigned record of interview containing admissions that the accused had not made.

In the opinion of L5, officers were subjected to pressure to participate in verballing in order to succeed in the CIB, although the pressure varied between squads and depended on the personality of an officer. The officers who refused to participate in verbals often found their careers hampered by this attitude. L5 gave the example of LS50, who received an adverse performance report during his time as a probationary detective. LS50's refusal to participate in verballing resulted in a lower incidence of pleas of guilty in his cases relative to other detectives at Scarborough CIB. This was disapproved of, hence the unfavourable report.

LS50's predicament illustrated a broader difficulty in the CIB. Probationers began with what could be classed as menial tasks and were expected to work their way into more responsible roles by gaining the confidence of and acceptance among more senior officers. In L5's opinion, acceptance depended in some degree upon whether the probationer participated in verbals and assaults. A personal reputation, passed by word of mouth, in those respects was very important, perhaps crucial, to an officer's advancement in the CIB. An officer reputed as not being prepared "to do the hard things" would not be included on inquiries in which such things might be required. L5's evidence was echoed by L6 and was cited as a reason for his initial participation in improper conduct.

L5 also provided a valuable insight into the ethics of verballing. He began verballing because he thought it was the right thing to do and he believed that other officers had a similar outlook. When officers believed that a suspect had committed the offence, the attitude among them was that verballing was for the benefit of society. He agreed, however, that this attitude may have created its own difficulties. For example, laziness may have later come to play a part in a decision whether to verbal a suspect or not. Generally, it was easier to verbal a suspect, and have the court decide the matter, than to thoroughly investigate.

According to L5, the extent of verballing did not become common knowledge in the community, because of the police culture of loyalty to one another and also because of intimidation, whether intentional or unintentional.

L5 said that the introduction of videotaped interviews reduced the incidence of verbals, but he was not able to say that it was the end of the practice. L5 said that he had verballled suspects after the introduction of videotaped records of interview, either to see whether the courts would accept the evidence, or if the suspect was going to plead guilty anyway. To L5's knowledge, other officers also continued the practice of verballing after videotaped interviews were introduced, albeit to a lesser degree.

EVIDENCE OF L1

L1 told the Royal Commission that he regularly observed verbals, but was unable to provide specific examples. He said that verbals were usually written after the accused had entered a plea of not guilty and an officer was required to prepare the brief for prosecution.

The brief included notes taken by officers at the time of the interview, referred to by officers as an "I said, he said". These notes of interview were sometimes fabricated almost entirely and at other times were merely made more "colourful". L1 both fabricated direct admissions of guilt and made subtle, but incriminating, changes to records of interview. Sometimes, when an accused unexpectedly pleaded not guilty, L1 had to extensively fabricate notes because only a few rough notes, or none, had been taken at the time. L1 estimated that he verballled suspects, to varying degrees, on about 70 per cent of the occasions in which he participated at interview.

In L1's opinion, verballing was standard practice within the CIB. He referred to the expression "throwing in a handful of blue metal", which referred to the strengthening of the case against a suspect by verballing him.

Although he could not recall a specific example, L1 said that he gave false evidence in court in support of verbals on many occasions. He said that the issue was present throughout his service including, although to a lesser extent, when he was a uniformed officer.

L1 also corroborated the evidence of L5, in that he said it was common, in cases of verballing, for officers to confer before giving evidence to ensure that their evidence would be consistent. In the event that a question was asked that had not been canvassed by the officers, the standard tactic was to reply, "I don't recall" rather than to attempt to give additional information.

EVIDENCE OF L6

L6 said that most of the interviews conducted while he was at Scarborough CIB, Claremont CIB and the Drug Squad were videotaped. His experience of verballing came when records of interview were typed, which may have been while he was on probation. Although L6 said he was aware that this practice occurred, he could not say that he observed other officers doing it.

EVIDENCE OF L8

L8 admitted that he had verballled suspects in order to obtain convictions.

L8 identified one notable example involving an investigation into a series of safe breaks in the Lancelin and Gin Gin areas. This matter was memorable for L8 as it was the only time he had fabricated an entire record.

L8 said that he had not verballled a suspect, fabricated evidence or perjured himself except when he believed that the suspect was guilty. He had never verballled a suspect in circumstances that caused him later misgivings about the guilt of that person. His attitude was that, if there was enough information on a suspect to indicate guilt, but there were no admissions, then L8 would consider falsifying statements.

In L8's experience, it was not common practice for police to verbal suspects.

Of the suspects verballled by L8, some were acquitted, but the majority were convicted. In general, L8's practice of verballing was restricted to adding short passages to strengthen the case for the prosecution.

In L8's opinion, the introduction of videotaped records of interview considerably reduced the incidence of false statements but did not terminate the practice. Preliminary interviews or conversations still occurred and still provided an opportunity for a verbal.

ANTHONY LEWANDOWSKI

Anthony Lewandowski was a detective in 1982 and was then involved in the investigation of a theft of gold from the Perth Mint. In 2002, Lewandowski swore an affidavit in which he admitted that he and Detective Sergeant Don Hancock had verballled Raymond, Peter and Brian Mickelberg, and that the two detectives gave perjured evidence in support of the verbals at trial and at several subsequent appeals.

EVIDENCE OF OTHER OFFICERS

No other witness admitted to the Royal Commission that he had verballled a suspect, or that he had seen another officer do so. Several denied having verballled any suspect.

OTHER LAY EVIDENCE

The Royal Commission did not attempt to identify or interview persons who might give evidence that he or she had been verballled by police officers. However, some witnesses, who gave evidence for other reasons, also mentioned that they had not made the statements attributed to them by officers.

In addition to giving evidence concerning assaults by police officers, M15 said that, at his trial in 1985, officers gave evidence that he had made admissions in a statement when he had not done so. His evidence was corroborated by L5. The statement in question, although said to be false, was signed by M15. He said that he signed the statement because he had been assaulted and wanted to be released from the CIB office.

CONCLUSION

It is clear on the evidence that verballing was practised by some members of WAPS CIB in the period under investigation by the Royal Commission. In the light of that evidence, it is difficult to resist the conclusion that, before the introduction of videotaped recording, verballing was a widespread tactic in the CIB. There was less evidence of the practice after the introduction of videotaped recording, and some evidence that the practice thereafter declined substantially, but not to the point that it should be assumed that the practice passed into history.

3.9 SMOKING CANNABIS

EVIDENCE OF L5

DRUG SQUAD

Within the first few years of joining WAPS, L5 worked with two others as an undercover officer at the Drug Squad. On several occasions, the three officers were supplied with and used drugs other than for legitimate policing purposes.

Although L5 was not a cannabis smoker when he joined WAPS, he said that it was explained to him that it was necessary to do so to add credibility to his role as an

undercover officer. However, following that early exposure, L5 later smoked, and observed what appeared to him to be cases of officers smoking, for the pleasure of doing so.

SCARBOROUGH

L5 subsequently smoked cannabis when he was stationed at Scarborough CIB. So too, on his evidence, did LS3, LS4 and L6. The cannabis was kept hidden in the chimney section of the back office, and was replenished from time to time with cannabis seized during searches carried out by the officers.

EVIDENCE OF L6

DRUG SQUAD SEARCH AT SEABIRD

The first occasion on which L6 witnessed other officers smoking cannabis was on a Drug Squad search at Seabird. He recalled that LS18, LS51, LS52, LS53 and LS54 were present.

Officers had located and removed a crop of cannabis, after which, later in the day, they gathered for a barbeque on a riverbank not far from the crop. Other Drug Squad officers, who had not been involved with the seizure of the crop, also attended. L6 said that his team leader, LS18, came up to him and asked how he felt about the smoking of cannabis. L6 replied that he had never touched it but that he had friends who smoked cannabis and that it never bothered him. LS18 then said words to the effect "Well, you might see something that will surprise you this afternoon".

L6 presumed that LS18's reference was to smoking cannabis because L6 had heard from other officers of other social functions at which police smoked cannabis. L6 said he later saw LS55, LS56 and LS57 smoke cannabis at the gathering.

DRUG SQUAD SEARCH AT GREY

The second occasion on which L6 witnessed Drug Squad officers smoke cannabis was on a trip to execute a search warrant at Grey, a fishing village north of Lancelin. L6 recalled that LS18, LS51, LS52, LS58 and LS59 attended.

L6 said that he, LS18, LS51 and LS59 smoked cannabis the night before the search. He thought either LS18 or LS51 supplied the cannabis.

The former Drug Squad officers said by L6 to have been involved each denied smoking cannabis or observing others smoking cannabis.

SCARBOROUGH CIB

L6 also gave evidence that he and other officers at Scarborough CIB smoked cannabis in the backyard of the office on one or two occasions. The cannabis was kept hidden in the chimney section of the back office shared by L6, LS3, LS4 and, occasionally, L5. All the detectives at the CIB office were said to know that cannabis was hidden in the office.

L6 recalled that, one Friday night, when officers from Scarborough CIB were drinking at the White Sands Hotel, L5 produced a small amount of cannabis. L5, L6, LS3 and LS4 went outside to where their car was parked, either on the beachfront or opposite the hotel car park, and each of them smoked cannabis.

EVIDENCE OF L8

L8 gave evidence that he was aware that cannabis was stored at Scarborough CIB behind the heater. The existence of cannabis hidden in the fireplace was common knowledge at Scarborough CIB. It was kept in case it was required to be “planted” on a suspect. He added that, earlier in his career, some foils of cannabis were kept at Morley CIB for the same reason. L8 was not aware that other officers at Scarborough CIB smoked some of the cannabis. L5 and L6 agreed that L8 was not involved in smoking cannabis, and was probably not aware that others did.

EVIDENCE OF OTHER OFFICERS

All officers said by L5 and L6 to have smoked cannabis at Scarborough CIB denied having done so, and further denied being aware that cannabis was stored on the CIB premises. In the light of all the evidence, those denials carry little weight.

3.10 THE ARREST OF IVAN JACK MARINOVICH FOR CANNABIS CULTIVATION

These events occurred at a time outside the Terms of Reference of the Royal Commission. However, the evidence was received on two bases. First, it formed part of the history of L5’s early exposure to and his embrace of corruption where the Royal Commission’s interest lay in understanding the pressures and influences that might lead a novice detective into

corruption. Secondly, the allegation involved Detective LS1, who was the subject of other allegations, and this matter assumed significance in respect of his credit.

In July 1979, members of the Drug Squad performed surveillance duties on a large cannabis crop site at Wanneroo, in respect of which Ivan Jack Marinovich was later arrested and charged, but acquitted.

L5 was assigned to the surveillance. He alleged that, in the presence of LS2, LS1 suggested that some cannabis be taken and sold for the officers' benefit. L5 agreed to participate, but LS2 declined. L5 said that some plants were taken and placed in the boot of a police car. LS1 and L5 later took the plants to be dried in a shed on a property in the Byford area that L5 thought was owned by a member of LS1's family or by a friend. Sometime later, L5 received between \$200 and \$300 from another officer in the Drug Squad. He understood that this money was from the sale of the cannabis plants.

LS1 recalled the investigation into Marinovich, but he denied that he had participated in any surveillance of the crop. His evidence was that he did travel to the crop site to conduct surveillance but, on arrival, found that several suspects, including Marinovich, had already been apprehended. LS1 denied conducting surveillance with L5, or taking any cannabis or engaging in any conversation about cannabis. He said that he did not travel to a rural property with L5 in relation to this investigation. He agreed, however, that in 1979 his father owned a rural property in Jandakot, which included a shed. He denied any knowledge of cannabis from the crop site having been sold by or on behalf of any Drug Squad officers.

LS2 gave evidence by way of affidavit. He denied conducting surveillance with L5 or LS1 and denied L5's evidence in relation to his part in a conversation about stealing cannabis.

L5's experience in this matter came shortly after his experiences as an undercover officer, where he had already been exposed to police impropriety. Although he was shocked by LS1's suggestion, it appeared that his shock related more to LS1's seniority. A recurring theme in Operation Least Said, evident also here in respect of L5, was that junior detectives participated in corruption in order to be accepted, or at least not rejected, by other detectives.

L5's evidence in respect of LS1 was clear and definite. He had no discernible motive to lie in respect of either LS1 or LS2. LS1 and LS2, on the other hand, each had a motive for denying L5's allegations, even if true. The incident showed that, first, some officers were prepared to engage in seriously corrupt conduct, while others were not, and, secondly, that

some of the latter, while courageous enough to decline participation, did not report the participation of others. The matter assumed significance in respect of the credibility of LS1 in other matters, since persons other than L5 also made allegations concerning his conduct.

3.11 BREAK AND ENTER AT BP GNANGARA SERVICE STATION

M4 and M3 broke into the BP Gnangara Service Station on Sunday 1 July 1984. They used oxy-acetylene equipment to cut open a floor safe inside the service station. Before doing so, either M4 or M3 poured water into the safe to prevent its contents being burnt. Despite this, both M4 and M3 said that one bundle of banknotes inside the safe was partly burnt. They decided that it was too risky to steal that bundle of notes because its presentation to a bank would immediately draw suspicion. They therefore tossed it back into the water in the safe.

The owner of the service station notified police early in the morning of 2 July 1984 that his safe had been cut open. He did not touch the safe because he realized that police forensic officers would not want the scene to be contaminated.

In due course, the Break and Enter Squad was called into the inquiry. Detectives LS6, LS7 and other officers attended early in the morning. At this time, the safe was about three quarters full of water. LS6 plunged his hand into the water and later gave evidence at the trial of M4 that he found nothing except some welding slag in the safe. He did not give evidence, or otherwise bring to the attention of the court, the prosecutor or Defence Counsel, that any money had been recovered by police.

At the trial, the owner of the service station gave evidence that the takings from the "roster" weekend were approximately \$16,000, all but a couple of thousand of which was in cash. The takings were locked in the floor safe. He said that, the following morning, he had a look inside the safe, before calling the police and the safe was "full of water". He later confirmed to the Royal Commission that he did not make any effort to discover whether there was anything but water in the safe.

The owner of the service station said that he was not with LS6 the whole time he was at the service station and did not see LS6 put his hands inside the safe.

M4 denied involvement in the offence at his trial, but was nevertheless convicted. He was sentenced on the basis that none of the cash stolen in the robbery had been recovered.

L5 was a junior detective stationed at the Break and Enter Squad at the time of the offence. His recollection was that a safebreaker, named M4, had cut the safe, that slag had gone

into the safe and that money was burnt in the process. As there is no evidence that L5 attended at the service station or was involved in any interview of M4, it appears that L5 was told the offender's name and either was told or assumed the details.

L5 told the Royal Commission that he saw LS6 sorting through burnt and wet money on the carpet of the squad room floor to see how much could be taken or stolen, and that he appeared frustrated during the exercise. He also recalled that LS7 may have worked on the inquiry, and that LS8 and LS9 may have been present.

It was L5's impression that the unusable, burnt money was being sorted from usable money. He thought the burnt money was put to one side, photographed and properly recorded by police, possibly by himself. The Royal Commission found police photographs relating to the inquiry, but they did not include photographs of money, burnt or otherwise. The apparent fact that no photographs of burnt money were taken was a surprise to L5.

L5 told the Royal Commission that the rest of the money was not entered in the property book, from which he concluded that officers had stolen it. In other words, L5's evidence in respect of the money he saw on the floor of the squad room was given under his impression, or under colour of his inference, that the money was being sorted so that the undamaged money could be stolen by police, but the burnt money used as evidence. He was unaware that the trial of M4 was conducted on the basis that no money was recovered. L5 erroneously assumed, or incorrectly recalled, that M4 had been apprehended with burnt money in his possession. He could recall that M4 was brought into the Break and Enter Squad, but he could not say whether that was on the same day as the sorting of the burnt money.

In the Royal Commission hearings, L5 was unsure whether he received any money obtained by police during the M4 inquiry. He told the ACC that he may have received an amount, perhaps \$50 or \$60.

After the offence, M4 and M3 drove to M4's home, where they divided the money and dried it in an electric clothes dryer. M4 hid his share of the notes in the laundry and took a bag of coins with him to work. At work, he was notified by telephone that police had searched his home and he went into hiding at Yanchep. A few days later, he decided to return to Perth. He was apprehended on 12 July 1984 and charged by LS6 and others.

M3 agreed that a bundle of notes was burnt in the process of cutting open the floor safe and was thrown back into the safe. One roll of notes, secured by an elastic band, was not in a calico bag, but was loose in the safe. M3 estimated that ten to twenty per cent of each

note in that roll was burnt along one of its long borders. He thought the notes would have been legal tender, but he regarded it as too dangerous for him to try to use the money.

M3 said that M4 told him that he later returned to the service station without M3 and stole some tools. M3 suggested it was not beyond M4 to have also retrieved the burnt money. However, the evidence of M4 and L5 was inconsistent with that suggestion.

The evidence of each of M3, M4, LS6, LS7 and LS10 was to the effect that no money in the form of banknotes was recovered from the money taken from the service station in the offence. M4 and M3 both said that the stolen money was dried shortly afterwards. If L5 is to be believed when he said that he saw police with burnt, wet money referable to the M4 inquiry, that money could only have come into police possession by reason of its discovery by police, either in the floor safe or on M4's person. In either case, the burnt money was not recorded or mentioned in evidence at M4's trial.

LS6 denied all of the allegations made against him in relation to locating, sorting and counting any burnt or wet money referable to the M4 investigation.

The confluence of the evidence of M4 and M3 with that of L5 is persuasive. There is little chance that L5, on the one hand, and M4 and M3, on the other, could have independently given false or mistaken evidence as to the fact of the existence of a bundle of wet, burnt money.

L5 could not have invented the story to falsely accuse LS6 and others because, at the time he first recounted his story, all documentation, including that arising from M4's trial, indicated that no money was recovered. M4 and M3 made no complaint at the time. In other words, had L5 not seen or been told about the burnt money, he could not have known that any money was recovered. In addition, it was not until the Royal Commission approached M4 and M3 that there was any information to indicate that money had been burnt during the offence. They were not approached until after L5 gave his evidence.

There is no doubt that L5 has recalled as fact some details that have turned out to be erroneous assumptions. They include his evidence that the burnt money was taken from M4 and that the burnt money was entered into the property book. It was further suggested that his evidence that photographs were taken of the burnt money was erroneous. The fact that the Royal Commission located photographs from the M4 investigation but which did not include photographs of burnt money casts doubt on L5's recollection. Those errors do not warrant the rejection of L5's evidence on the crucial point that he saw burnt, damp money in the possession of officers at the Break and Enter Squad.

3.12 SEARCH OF RESIDENCE OF ANDREW WINTERS

In 1985, L5 was a probationary detective stationed at Scarborough CIB. A search took place on 15 January 1985 of a unit in West Coast Highway rented by Andrew Winters, also known as Milan Joseph Popovic.

L5 recalled that information concerning a person he referred to as Popovic was received on the morning of the search, possibly by LS11, the OIC of Scarborough CIB, and that Detectives LS11, LS12, LS13 and L5 attended Winters' unit at about 8.00 am or 9.00 am. Two officers went to the front door while the other two went to the rear. L5 was later told that Winters escaped through the back door. L5 also recalled that Winters was later located in the Eastern States.

Inside the unit, officers located a large amount of stolen property. L5 recalled diving equipment, liquor, a gold watch, clothing and camouflage equipment. He said that the gold watch was found by LS12 in an alcove in or near the ceiling of the unit. Police records subsequently obtained by the Royal Commission were consistent with L5's recollection of the offender, his address, the nature of the property found and his escape to another State.

L5 told the Royal Commission that some of the property was unlawfully retained by police. L5 took some goggles, a snorkel, flippers and perhaps some liquor. He said that LS13 took camouflage and camping gear, but he could not recall anything taken by the other two officers. L5 earlier told the ACC that LS11 took diving equipment.

L5 also said that officers from Scarborough CIB kept a vehicle that he thought belonged to Winters and used it until the registration ran out. He described the car as a white Holden utility. The Royal Commission established that, when Winters made his escape, he left a car at a local service station. However, that car was a 1976 green Mazda. When L5 was shown relevant documents, he mentioned that there were two vehicles involved. Other detectives recalled their use of a white utility, but not that it had belonged to Andrew Winters.

While L5 agreed with other evidence that LS11 arranged a Justice of the Peace to attend the unit, he explained that officers had already selected the property to be stolen before the Justice of the Peace arrived.

The other officers mentioned by L5 all denied that any property was stolen.

There were several other discrepancies in the evidence. LS11 and LS13 said that they alone originally went to the unit at about 6.00 am, that Winters escaped from them, that L5 went

there later and only to conduct surveillance and that LS12 never attended. LS12 himself could not recall anything of the day. His journal entries do not mention a search in the morning, but do not preclude his attendance. L5 had a clear recollection that LS12 found a watch at the unit.

L5 also told the Royal Commission that he and LS12 went to the front of the unit and LS13 and LS11 went to the back. That version accords in part with the evidence of other officers that LS11 and LS13 were together. Previously, however, L5 told the ACC that LS11 and LS12 went to the back of the unit and that he and LS13 went to the front. He was clear in evidence to the Royal Commission that that was a mistake.

From some of those discrepancies, it is tempting to conclude that L5 was partly mistaken in his understanding, in that the first attendance by L5 and LS12 was at about 8.00 am, when LS11 and LS13 were either still in attendance or on their second attendance and that L5 was then told of Winters' escape. There was some support for that in LS13's recollection that he may have gone to collect a Justice of the Peace and that, when he returned to the unit, other officers from Scarborough CIB had arrived. There was some support also in the evidence of other officers that L5 did attend later, although they suggested that his attendance was after that of the Justice of the Peace, and in L5's recollection that he was told of Winter's escape after the event.

It is not necessary that the Royal Commission resolve each contested detail thrown up in evidence. A central question is whether L5 attended at the unit in West Coast Highway on the morning of 15 January 1985 and was there in company with LS11, LS12 and LS13, prior to the transfer of the stolen property to Scarborough CIB.

L5 gave evidence that he did attend. He gave the location of the unit, the name of the suspect, the fact of the suspect's escape, the nature of some of the stolen property, and the attendance of LS11 and LS13, all of which were correct, notwithstanding that L5 had no recourse to his journal or other documents. L5 also recalled the later attendance of a Justice of the Peace. Further, L5 had a specific recollection of having himself stolen property and LS12 finding a watch. That is not the recollection of a person who is confused on the question of his attendance at a time when the stolen property was still in Winters' unit.

The evidence disclosed that a Justice of the Peace was called to Winters' unit and that a second Justice of the Peace attended at the CIB office, both in respect of the same stolen property. LS11 offered several explanations, generally to the effect that their attendance assisted to ensure either that police dealt properly with the stolen property or to guard against unfounded allegations that they did not. It was clear, however, that the attendance

of either Justice of the Peace would not have prevented or revealed an earlier theft of property by police.

3.13 SECURITY ESCORTS

The Royal Commission heard evidence from various witnesses about the performance of private security work by officers of the CIB. One such case is dealt with elsewhere in this Report. It concerned security work performed by Scarborough CIB for Mr John Roberts in 1987.

Witnesses described the involvement of police officers in escorting personnel from Observation City, the White Sands Hotel, Hannibal's Nightclub and the Chelsea Tavern to banks, as well as performing security work at a veterans' rugby function and at a birthday party for a well-known businessman.

Regulation 608(1)(b) of the Police Regulations has provided since 1979 that a "member ... shall not ... directly or indirectly solicit or receive any gratuity, present, reward, subscription or testimonial", without the necessary approval.

WHITE SANDS HOTEL AND OBSERVATION CITY ESCORTS

L5 and other officers gave evidence of an arrangement under which officers from Scarborough CIB escorted personnel from two local hotels to conduct the hotels' banking. While there were a few inconsistencies in their evidence concerning some details of the arrangements, their general nature was clear. Scarborough CIB officers referred to these escorts as "the run".

The escorts from both the White Sands Hotel and Observation City took place during working hours and required the use of a police vehicle and, usually, two officers. The escort of Observation City personnel usually took place every weekday whereas the escort of White Sands personnel occurred less frequently.

As a reward for this service, the White Sands Hotel gave officers one or two cartons of beer and a small amount of mixed spirits each week, and allowed them free drinks at the hotel bar on a Friday afternoon. The cartons of beer were either kept in the CIB office refrigerator and consumed by officers or put aside in a storage room at Scarborough CIB for its Christmas function.

Observation City rewarded detectives by making available a free meal at one of its restaurants every Friday and a night's free accommodation for two people once a week. L6 said that detectives' attendance at the Friday lunch was dependent on their work commitments. L8 agreed, and said that six months would sometimes pass between lunches.

L5, L6 and L8 said that the arrangements with Observation City were terminated following an allegation that the relationship compromised the duty of Scarborough CIB. L6 and L8 both said that officers from the Armed Robbery Squad later performed the escort work for Observation City. L8 agreed that a perception could have arisen that the White Sands Hotel and Observation City enjoyed some form of police protection, but denied any protection in fact. There was no evidence of favourable treatment for the hotels in other ways.

No officer recorded details of the run in his journal. LS14 offered the explanation that the run was "insignificant", took a maximum of 15 minutes, the distances involved were minimal and he didn't participate every day. LS4 said the run was a "trivial thing" and a waste of time. LS5 said it was "fairly insignificant" and LS3 said it was not recorded because it happened on an everyday basis.

L8, on the other hand, said that, while no specific instructions were given for officers to omit details of the run from their journals, the reason it was not recorded was the understanding that the Police Service would have disapproved. LS14 denied that his failure to record the run in his journal was for that reason. Indeed, he said that it was his understanding that commissioned officers knew about the run.

Some attempt was made by witnesses to justify the run. LS14 referred to the long hours worked by Scarborough CIB and the relatively short period of time spent at lunch. LS5 mentioned the rapport that developed between the hotels and the police as a result of the run, which he characterized as "a partnership with a stakeholder". LS15 likened it to a "strategic alliance". LS11 described the run as part of the officers' duty.

HANNIBAL'S NIGHTCLUB ESCORTS

L8 also gave evidence of a similar arrangement that existed in earlier times between the Consorting Squad and Hannibal's Nightclub. That arrangement existed, on his evidence, before 1985. It was nevertheless examined briefly by the Royal Commission for its relevance to the Scarborough escort work that was said to have been taken over by the Armed Robbery Squad (formerly the Consorting Squad).

L8 said that officers rostered on night shift usually attended at the nightclub at about 3.00 am, collected bank bags and took them to a bank night safe. In return, the nightclub provided free drinks. In addition, during squad lunches, the team leader discreetly gave other officers envelopes containing several hundred dollars, which L8 assumed was a reward for the nightclub run. He estimated that such envelopes were distributed every four to six months for the first few years that he was stationed at the Consorting Squad. After a few years, the practice of distributing envelopes terminated, although officers continued to conduct the Hannibal's run.

THE CHELSEA TAVERN

L8 also gave evidence that officers from the Consorting Squad transported money from the Chelsea Tavern to a bank on Stirling Highway, Nedlands each Sunday evening. The reward for officers was a meal at the tavern.

This arrangement was also said by L8 to have existed prior to 1985. It too was examined by the Royal Commission briefly because of its relevance to the Armed Robbery Squad's conduct at Scarborough.

SECURITY WORK AT A VETERANS' RUGBY FUNCTION

Some detectives at Scarborough CIB also performed security work at a rugby veterans' function held in the underground car park at Observation City on 26 May 1991. L6 said that the payment offered was either a room or cash. He elected to take payment of \$100.

SECURITY WORK PERFORMED BY CLAREMONT CIB

Officers from Claremont CIB performed security work at a birthday party for a well-known Perth businessman on 8 June 1991. L1 said that LS16 was "instrumental" in negotiations with the businessman's wife and her personal assistant. L1 and LS16 both had associations with the household that facilitated such an arrangement.

The officers arrived at approximately 5.30 pm or 6.00 pm on the day of the party and worked until 3.00 am or 4.00 am the next day. L1 was present after the party when the wife's personal assistant gave LS16 an envelope of cash as payment. L1 received several hundred dollars and was told that other officers received the same. He said that LS16 told him that the money was divided equally among the five or six officers involved, less some money for the divisional inspector.

L1 could not recall any discussion with other officers from Claremont CIB as to whether their involvement in paid security work for the businessman and his wife could compromise the impartial discharge of their duties. It seems that officers had little concern about the propriety of the work because they allowed a photograph of themselves taken at the party to appear in news media.

However, the potential for such compromise became clear soon after the party. On 10 June 1991, when L1 was on leave, he was told by LS16 that a pharmacist had alleged that the businessman's wife was involved in the attempted uttering of a forged prescription.

L1 said that he recommended to LS16 that the inquiry be transferred to another CIB office. However, when he returned to work, it was clear to him that LS16 was trying to ensure that the wife was not charged. LS16 denied that, and maintained that the investigation was filed but not written off. Whether one prefers the evidence of L1 or LS16, the potential for compromise in the circumstances that arose at Claremont CIB is obvious.

CONCLUSION

The run at Scarborough was conducted during working hours for reward. If the run was part of the detectives' duty, reward for it was in breach of the Police Regulations. If the run was not within their duty, it was improper to conduct it with police vehicles during hours of duty. In either event, it also carried the risk of compromising officers' duties, albeit perhaps not as gravely as occurred in respect of the dealings between Claremont CIB and the businessman's household.

The Royal Commission does not accept that officers genuinely regarded the run, conducted for reward, as officially sanctioned by senior officers. It was never recorded in journals and the reason for that was, as suggested by L8, that WAPS would have disapproved. In any event, in view of the regulations, official sanction was unlikely.

Similar considerations apply to the conduct by the Armed Robbery Squad of escort services for one hotel at Scarborough.

3.14 EXPLOSION AT OBSERVATION CITY CONSTRUCTION SITE

In 1985, Observation City was under construction at Scarborough by Multiplex Constructions, a company associated with Mr John Roberts. On 29 August 1985, an explosion occurred at the construction site and officers from Scarborough CIB investigated.

Some time later, an anonymous telephone caller made a threat to the personal safety of Roberts and his family. The threat was reported to police and conveyed to Scarborough CIB. LS11, the OIC of Scarborough CIB, discussed the threat with Roberts. They came to an arrangement under which officers from Scarborough CIB conducted security work for Roberts at his residence. Roberts made payments for the work to LS11. Cash was given directly to L5 and L7. LS11 maintained that the balance was placed into the Scarborough CIB social fund.

L5 gave evidence that he made the anonymous threatening telephone call, that he did so on the instructions of LS11 and that the purpose in doing so was to obtain paid security work. L5 did not say that any officer, other than LS11, was aware that he had made the call.

L5 performed some of the security work at Roberts' home and some at Roberts' property in the Guildford or Middle Swan areas. L7 and LS12 also performed some of the work.

LS11's version of events differed substantially from that of L5. Shortly after the explosion, a number of calls were made falsely reporting another bomb at the construction site. Detectives and Multiplex officers thought those calls were hoaxes. LS11 told the Royal Commission that, some time after the bombing, L5 reported to him details of a personal threat to Roberts. Because of its personal nature, this threat was treated more seriously. LS11 said that he met with a project manager from Multiplex, and later with Roberts, to discuss security issues. Security work was suggested by a Multiplex officer and agreed by LS11. After the meeting, LS11 reported to superior officers who did not authorize overtime but did authorize the conduct of privately paid security work. LS11 denied any knowledge of or involvement in the origin of the threatening call to Roberts' office.

On the evidence, the Royal Commission accepts that L5 made the call to the office of Mr Roberts and that he did so with the intention of creating the conditions in which it could be arranged that he at least could perform privately paid security work.

When giving evidence that L5 reported to him that a threat had been made, LS11 did not say that L5 suggested security work be proposed to Roberts or to Multiplex. On the contrary, LS11 said that a Multiplex manager made that proposal and that he, LS11, cleared the arrangement with superior officers in WAPS. On LS11's version, the Multiplex manager and LS11 fortuitously made the very arrangement that L5 secretly had in mind when making the call. That seems too coincidental to be fact. It is more plausible that LS11 was aware of the plan when he spoke to Roberts or to the Multiplex manager. It is to be noted

also that LS11 was named in respect of corruption in other contexts, including by witnesses other than L5.

In this matter, as in others, there appeared to be an attitude among some witnesses that a payment made to police and placed into a social club fund was less improper than a payment made directly to officers. The Royal Commission does not accept that that attitude is valid. An improper payment is no less improper for being shared among officers, whether by way of a social fund or otherwise.

3.15 THE ARREST OF JACK AMMOUN

A break, enter and steal offence occurred at Varsity Pharmacy in Nedlands on the night of 14 October 1985. An offender took cash and some drugs as well as various other items. The offenders' vehicle, a Volkswagen Kombi van, was identified and a general alert issued to police. The following day, Detective LS12 from Scarborough CIB observed the suspect vehicle. He stopped it and took the suspect and the vehicle to Scarborough CIB. In the engine compartment of the vehicle, detectives found a calico bag containing cash and other items believed to have been stolen from the pharmacy. The driver of the vehicle, Jack Ammoun, was charged with break, enter and steal offences and subsequently convicted. The documents relating to his conviction indicated that over \$5,000 in cash was stolen and that only \$1,342 was recovered.

At the time of Ammoun's arrest, L5 was stationed at Scarborough CIB, but was on leave. He had no involvement in or knowledge of the matter until he returned from leave. He told the Royal Commission that he was then asked by LS12 whether he had received his share of some money stolen by police during his absence. LS12 explained to him that a search of a Volkswagen van had taken place in Royal Street, Yokine, and that money was found hidden in the vehicle's engine compartment. L5 thought it had been found in its air filter. LS12 raised the matter with L5 because he had been told by LS11 that LS11 would give L5 a share on L5's return from leave. When L5 told LS12 that he had not received any money, LS12 became concerned that LS11 would find out that he had spoken to L5. Although L5 never received any payment, his understanding was that other officers received approximately \$1,000 to \$2,000. L5 did not approach LS11 in relation to this event.

LS12 gave evidence that he did not recall the incident when he heard it described by L5 in Royal Commission hearings, but later identified the 15 October 1985 entry in his police journal. The journal records that \$5,000 was stolen but does not contain a reference to the amount of money recovered during the search of the vehicle. His explanation was that the

crime was handled by the Break and Enter Squad and that he may have had no further involvement once that Squad was notified.

LS12 said he had no knowledge of money having been stolen by police. He said he did not discuss with L5 whether L5 was to receive any money and did not ask L5 not to raise the issue with LS11. He disputed that the Kombi van was searched in Yokine, that the money was found in the air filter and that he feared LS11.

LS11's journal entry confirmed his involvement in the search of Ammoun's van, but he did not independently recall the event and did not recognize Ammoun, the vehicle or the bag or recall that money was located in the engine compartment. He too denied knowledge of any officer stealing money from the vehicle. He said that his understanding was that officers from the Break and Enter Squad ran the inquiry and LS12 was responsible for contacting them to collect Ammoun and the money, and to assume control of the investigation. Ammoun and two brothers who were involved in the offence were interviewed by Royal Commission investigators, but could shed no light on the allegations of L5.

In this matter, the evidence of L5 as to improper conduct by police was by way of admissions by LS12 in a conversation. The relevant conversation was in 1985 or 1986. L5 did not observe improper conduct and did not receive stolen money. The Royal Commission heard no corroboration of the allegation of theft of money by officers or lay witnesses. The single issue is whether L5 is to be believed in his evidence that LS12 told him that money had been taken and shared between some officers.

L5 had no involvement in the investigation but accurately recalled most of the salient facts, namely that money was found in the engine compartment of a Volkswagen van and that the event occurred while he was on leave. In the light of L5's credit in general, there is little reason to doubt his evidence in this case.

3.16 USE OF MAJOR CRIME SQUAD ROOM TO COUNT MONEY

L5 told the Royal Commission of an occasion at the Major Crime Squad office on which he and LS17 were approached by LS18 from the Consorting Squad. LS18, who was carrying a bag, asked LS17 if he could borrow a room to count some money recovered from an armed robbery. LS18 went into the room alone for 10 or 15 minutes, immediately after which he gave LS17 \$200. L5 took the incident as evidence that LS18 intended to do something illegal with the recovered monies. Both LS17 and LS18 denied any involvement in this matter.

Use of that room by LS18 rather than offices used by his own squad, together with the payment of money for its use, strongly point to some improper purpose by LS18. The payment of money is particularly suspicious. However, it is not possible to identify any particular purpose or to conclude that it was effected, other than that the \$200 given to the Major Crime Squad was not LS18's own money.

L6 gave evidence of a separate incident in which LS18, then his team leader at the Drug Squad, handed him money.

3.17 EVENTS FOLLOWING THE FATAL SHOOTING OF JOSEPH THOMAS SCHWAB

On 9 June 1987, Marcus and Lance Bullen were shot dead by an unknown person at Victoria River in the Northern Territory. Five days later, Phillip Walkemeyer, Julie Warren and Terry Bolt were shot dead by an unknown person at the Pentecost River Crossing in Western Australia. On 16 June 1987, seven police officers from the Tactical Response Group ("TRG"), and an officer from the forensic division, Sergeant LS19, chartered an aircraft from Perth to Kununurra to assist Kimberley Police with the investigation. Detective Sergeant LS20 and L5 from the Major Crime Squad, also travelled from Perth to Kununurra. The following day, Detective Chief Inspector LS21 travelled to Kununurra to head the investigation team.

On 19 June 1987, at approximately 8.20 am, a suspect vehicle was sighted near Fitzroy Crossing. TRG officers approached the vehicle and, following an exchange of gunfire, shot dead the suspect who was later identified as Joseph Schwab. During the encounter, grass in the area was set alight as a result of which TRG officers moved Schwab's vehicle. Schwab was shot at 1.15 pm when only TRG officers were present. At 3.40 pm, LS22 advised LS21 at Kununurra that Schwab had been shot. At 7.00 pm, LS5, LS19, LS20, L21, LS23 and other officers arrived at Fitzroy Crossing. They then travelled to the scene, arriving at 8.30 pm. On arrival, LS19 took control of the scene from the TRG. He initially allowed only LS21, LS22, and Senior Constables LS24 and LS25 to enter the scene. The forensic examination was suspended at approximately midnight due to poor light and recommenced the following day at 10.53 am.

A black leather wallet was found in Schwab's vehicle containing \$353.75 in notes and coins. Personal items belonging to Warren and Bolt, including drivers' licences, cheque books and bank cards were found in the glove box. The exhibit list compiled at the scene did not mention any cash having been found in the glove box.

L5's role was to examine Schwab's vehicle and list every item contained in it. He recalled some travellers' cheques in the glove box but could not recall handling or finding any money. He said that while the forensic examination was underway, LS20 approached him, gave him some money and said "Here. Here's some spending money for you while you're up here". When L5 asked where the money had come from, LS20 said that it had been recovered from the glove box of Schwab's vehicle but he did not say who had taken it. From the evidence of L5 it may be assumed that at least two or three officers received money. There was some evidence that other officers later purchased diamonds at Kununurra, but no adverse inferences were possible from that fact.

3.18 THEFT AT MORLEY CITY FRUITLAND

Morley City Fruitland was owned and operated by the parents of M5, although he too owned an interest. M5 and his parents had a disagreement as a result of which he moved out of the home and terminated his employment at the shop. He also determined to take some money from the premises and, to that end, enlisted the aid of M6 with whom he then resided in Loftus Street, Leederville.

M5 and M6 used keys that were still in M5's possession to enter the shop, unlock a safe and remove \$5,348 in cash and two bank cheques.

M5 and M6 then returned to the Loftus Street house. M5 placed the bag in a closet in his room overnight and went to work in the morning. He hid the keys to the shop under a brick at the rear of the house but was unsure if he also hid the stolen money under a brick. M6 could not recall what happened to the money or the keys when the pair returned to the house.

M7 was a friend of M6, and knew M5. He had no involvement in the theft. He told the Royal Commission that M6 came to his home in Glencairn Way, Parkwood and asked if he could hide a bag. M7 agreed and the bag was hidden in M7's bedroom. Shortly after, M6 returned with a detective to collect the bag.

Detectives LS26 and LS27 commenced duty at 7 am on Friday, 25 September 1987. They attended at Morley City Fruitland and at Morley CIB to pick up the offence report. M5 was immediately a suspect because he was one of the few persons who held keys to the premises and the safe. He was apprehended and taken to the Break and Enter Squad office.

LS27 remained at the office to interview M5. M5 initially denied involvement but later confessed and mentioned M6. He also told detectives where he had hidden the keys to the

shop and safe. In the meantime, LS26 and L7 attended at Loftus Street, searched the premises but found nothing. M6 was interviewed but denied any involvement. Although not said in evidence, it is likely that, after police attended and searched the premises, M6 removed the stolen money to M7's home.

When LS26 received information that M5 had admitted the offence and hidden the keys and money, he and L7 returned to Loftus Street and located the keys under a brick in the backyard, but did not find the money. At that time, M6 had returned from M7's home. He then admitted his involvement and took LS26, and possibly L7, to retrieve the stolen money.

L7 assisted in a search at Loftus Street. He recalled that one of the suspects directed police to a brick paver at the rear of the house. L7 was present when the recovered money was counted at Loftus Street. He said that the amount counted was the same as that reported stolen.

Later, at the Morley CIB office, as L7 walked past Detective Senior Sergeant LS1's office, he overheard an exchange between LS1 and one of the suspects. LS1 referred to \$1,500 in the suspect's wallet and to the fact that \$1,500 was missing from the money recovered from the robbery. L7 knew that all the money was recovered and that the suspect could account for the money in his wallet. At the time, initially at least, L7 thought LS1's comment was a ploy to obtain admissions from the suspect. However, L7 eventually realized that LS1 had taken the \$1,500. LS1 instructed L7 and LS27 to speak to the parents about the charges and about the missing money. Once LS1 had given that instruction, L7's suspicion was confirmed that the "missing" money was to be stolen by police. However, he did not then know what to do about his circumstances, and he did attend with LS27 as instructed. Accordingly, on the Friday evening, LS27 and L7 told the parents at their home that there was \$1,500 missing and that, because the parents did not want charges laid against their son, police had no legal avenue to pursue the missing money.

The following morning, Saturday, L7 went to work and found a \$50 note in his drawer that he believed was part of the "missing" \$1,500. He slipped the \$50 into a drawer in LS27's desk. He also noticed an envelope behind a mirror in the office, in which he found a little more than \$1,000 in cash. L7 suspected that the 10 officers stationed at Morley CIB had each received \$50 and that the remaining \$1,000 was in the envelope behind the mirror.

On Monday, LS26 asked L7 if he received his money. L7 replied that he had. L7 suspected that LS26 had been told that LS27 had found two \$50 notes in his desk which aroused LS26's suspicion. Later, L7 overheard a conversation between LS1 and LS28 referring to "a

win" on the weekend. According to L7, LS28 said in reply, "Oh, that's good. We were due to come good".

Consistent with the evidence of L7, each of M5, M6 and M7 denied retaining any significant amounts of cash from the stolen money. Apart from L7, all officers mentioned in connection with the matter denied taking money or knowing that money had been taken by colleagues.

At the time L7 made an allegation to the IAU, and again when speaking to the Royal Commission, he could not have known whether M5, M6 and M7 would be found and interviewed. L7 gave evidence that all the stolen money was recovered, that he was given \$50 and that he found \$1,000 in an envelope. Were it the case that, in fact, L7 knew only that about \$1,500 was missing, but not that police took it, and decided to concoct his allegations on that basis, L7 would have faced the risk that one or more of M5, M6 and M7 might tell the IAU or the Royal Commission that he or they took the missing money. In that event, L7 would be at risk of a charge of "false report", and would have been thoroughly discredited. L7 would have known that risk were he to give false evidence. It is highly improbable that he would have done so, and done so in the circumstance of no discernible benefit to himself. Indeed, he appears only to have suffered for his principled approach.

In the circumstances that about \$1,500 was "missing" and that the inquiry was completed within one day, 25 September 1987, it is noteworthy that M7 was not questioned and his home not searched in an effort to find the missing cash. LS26 was aware that there was a discrepancy between the money reported stolen and the money recovered and that the money had been in the possession of M7. It is not easy to explain why M7 was not questioned about the "missing" money and his house not searched, other than upon the basis that police knew no money was missing.

THE INTERNAL AFFAIRS INVESTIGATION

In 1993, L7 advised the Deputy Commissioner of this matter. He later gave this evidence to the ACC. The IAU received this investigation on 18 November 1993 and it was allocated to LS30. The allegation by L7 then was that LS28 and LS1 from the Break and Enter Squad stole \$1,500 cash from the proceeds of a safe break and that each member of the Break and Enter Squad received \$50. L7 had then also alleged that the safe break occurred at Morley Growers Market, that \$5,000 to \$6,000 cash was stolen from the safe and that the owner's son was involved. All of this information is consistent with his evidence to the Royal Commission.

The investigation was filed by the IAU on 8 May 1994 on the grounds that the victims could not be identified. This was just one of a series of inadequate investigations by the IAU that came to the attention of the Royal Commission.

3.19 ROBBERY AT SUPA VALU SUPERMARKET, HEATHRIDGE

A robbery occurred at a Supa Valu supermarket in Heathridge after late-night shopping on 5 May 1988. After driving to the supermarket in company with four others, Arran Reynolds waited at the rear of the store until the store manager, Alan Wilson, left at the close of business. As Wilson attempted to place the day's takings into his vehicle, Reynolds struck him on the head with an iron bar and stole \$16,792. The store's assistant manager, Robert Wilson (no relation to the manager) heard Alan Wilson cry out and went to his assistance. Robert Wilson then telephoned the police from a nearby restaurant. Subsequently, the investigation was conducted by Detective LS31, assisted by Detective LS32 and Probationary Detective LS33, all stationed at Wanneroo CIB. The OIC at Wanneroo was L4.

Police spoke to Robert Wilson at Supa Valu shortly after the robbery and took a statement. Robert Wilson was then taken to Wanneroo CIB for further questioning and was released in the early hours of the morning. Reynolds evaded police until he was apprehended at Glendalough on 20 May 1988. Robert Wilson and Arran Reynolds each separately alleged that he was assaulted by police during the investigation.

ROBERT WILSON

At the time of the offence, Reynolds and Robert Wilson both resided with their girlfriends at the same address, a fact that interested police. Wilson gave evidence that, on 6 May 1988, LS31, LS32 and LS33 attended at Supa Valu, spoke to him for 10 to 15 minutes and then took him to a car park at Heathridge. He said he was handcuffed in the rear of the car and shortly afterwards punched in the stomach. He was then taken to Wanneroo CIB, questioned and released approximately two hours later. On 17 May 1988, he was again taken to Wanneroo CIB and this time he said he was threatened in the following ways:

- He was left in a small room for a couple of minutes. On the back of the door to the room was a wire coat hanger threaded inside a section of garden hose and arranged in a noose;
- During his interview, LS31 pointed a shotgun at Wilson and one of the other officers present yelled out loudly and told Wilson to open his mouth. When he did, LS31 stuck the end of the shotgun barrel into his mouth and said, "You're not going to give us any trouble"; and

- When Wilson disagreed with what was being put into his statement, one of the detectives told him that they could take a person to a quarry and shoot him, and that the body would never be found.

Subsequently, Wilson signed a statement typed by LS33, in the presence of LS34 (from Mt Hawthorn CIB), in which he admitted his role in the offence. He was charged as a party to the robbery and went to trial. At trial, he repudiated his statement and alleged an assault by detectives. He was acquitted.

ARRAN REYNOLDS

Reynolds was arrested during the search of a unit at Glendalough on 20 May 1988 and taken to the Wanneroo CIB office for questioning.

Reynolds alleged that he was assaulted during questioning. The assaults included electric shocks applied to his back at least seven times, which caused burn marks. Reynolds thought that there were at least three officers present when he received the electric shocks. He named L4 and LS31 but could not name the third officer. He said that an officer also threatened him with a silver-coloured firearm, which was wrapped in a tissue, ostensibly to avoid leaving fingerprints. He was told that police could organize for him to be shot.

Following the assaults, Reynolds signed a statement admitting his role in the robbery. He was charged on 20 May 1988 and was later convicted on his plea of guilty.

Reynold's partner at the time, Dawn Whyman, gave evidence that she attended Wanneroo CIB on the evening of Reynolds' arrest and saw three red marks on each side of his chest, which he explained had been caused when police "electrocuted" him. Several years later, Reynolds was interviewed by the IAU in relation to separate allegations. During this interview, he alleged that he had been "electrocuted".

The record of interview held with Reynolds on 20 May 1988 confirms that LS31, LS32 and LS33 were present. LS31 gave evidence, however, that he was only present at the commencement of the interview and that he left shortly after. He denied leaving the interview of Reynolds for the purpose of obtaining a device to administer an electric shock or being present while a shock was administered. LS31 said that he had no knowledge of any such event. LS32 and LS33 also denied any knowledge of electric shocks being applied to Reynolds.

L4, however, gave evidence to the contrary. He said that he had purchased a “stun gun” in the USA that he had shown to LS31 on a previous occasion. He said that LS31 asked him to use the stun gun to shock Reynolds during questioning because Reynolds was being uncooperative. L4 said that he entered the interview room and shocked Reynolds twice on his back in the presence of LS31 and LS32.

Reynolds’ account of the use of the device has been consistent from his complaint to Whyman, through the IAU investigation and during the Royal Commission investigation. Despite inconsistencies between the accounts from Reynolds, Whyman and L4, and the denials of other officers concerned, the evidence supports the conclusion that electric shocks were applied to Reynolds by a detective in the presence of two other detectives at Wanneroo CIB.

It is also noteworthy that independent allegations were made that LS31 introduced an electric “cattle prod” into an investigation at Claremont CIB to elicit the co-operation of a suspect.

LS31 and at least one other officer have failed to give truthful evidence to the Royal Commission in this respect. In those circumstances, it was difficult for the Royal Commission to accept their evidence in answer to Reynolds’ allegation that he was threatened with a firearm and told that he could be shot if he did not co-operate. Further, while Robert Wilson’s allegations of assault were not directly corroborated by another witness, his allegations were consistent with Reynold’s allegations of the tactics used by the same Wanneroo CIB officers to elicit self-incriminatory statements.

3.20 SEARCH AT 30 GNANGARA ROAD, LANSDALE

L8, while stationed at Scarborough CIB, attended a search at 30 Gnangara Road, Lansdale with Detectives LS4 and LS15 and possibly a probationary detective. Before the detectives had gained entry, suspicious sounds were heard from the occupants of the house and L8 was obliged to smash a large glass panel to gain immediate access.

No drugs were found during the search. However, LS15 told L8 that he had found money in the freezer section of the refrigerator in the house. L8 thought the amount was between \$400 and \$800. The money was placed in the social club fund by LS15 to be shared with others at Scarborough CIB.

LS4 recalled attending 30 Gnangara Road, Lansdale on 28 June 1990 with L8. He said that he did not remember any discussion about money being found or placed into the social fund

and denied receiving any money. LS15 claimed that he could not recall the search or locating money in a freezer. He denied in general terms having taken money during a search.

Royal Commission investigators identified the two suspects residing at 30 Gnangara Road, Landsdale at the time of the search but could not arrange for them to give evidence in the time available. The Royal Commission was satisfied, however, that L8 was a witness of truth with a generally reliable memory.

3.21 ROBBERY AT JUTLAND PARADE, DALKEITH

THE ROBBERY

On 7 August 1990, at about 3.50 pm, three offenders broke into the house of Mr and Mrs Simon Lee in Dalkeith. The offenders, James Bong, Hung Huynh Nguyen ("Hung") (now deceased) and Rory White, threatened Mrs Lee and her daughter, Cheryl, with a machete and forced Mrs Lee to open a safe located in the main bedroom of the house. From the safe, they stole two bars of gold, three watches, two diamond rings, two bracelets and a necklace. The offenders left the premises in a Mercedes Benz vehicle owned by Mr and Mrs Lee. They soon abandoned the Mercedes and left the area in a blue Suzuki sedan owned by Bong.

The two stolen gold bars weighed approximately 100 ounces and 60 ounces. Mr Lee estimated the total value of the gold bars to be \$75,000 and the total value of the jewellery to be \$75,000.

The day after the robbery, Hung and an associate, Quang Minh Le (who was not involved in the robbery), sold the larger gold bar to a jeweller, Ngoc Diep Nguyen ("Diep") for \$26,000. Later that day, Hung gave James Bong the three watches stolen in the burglary plus \$8,000 cash as his share of the proceeds of the sale of the SAM1 gold bar.

Also on 8 August 1990, Rory White visited Hung at a flat in Girrawheen that Hung was sharing with Rory's brother, Craig White. There is no evidence that Craig White was involved in the robbery. Rory White received \$8,000 as his share of the proceeds of sale of the gold bar together with a piece of the smaller gold bar from Hung.

A few days after buying the gold bar on 8 August 1990, Diep cut the bar in two. He sent one piece to the Perth Mint to be refined and placed the other piece in the safe at his home at 225 Brisbane Street, Northbridge.

CLAREMONT CIB

The officers from Claremont CIB who were involved in the investigation of the robbery were Detectives LS35 (the OIC), LS36, LS37, LS38, LS39 and L1. At the time of the robbery, Detective LS40 was stationed at the Dealers Squad. However, in August of 1990, he was transferred from the Dealers Squad to the No. 8 Division Mobile, based at the CIB Divisional Office at Wembley, and on the same date he was transferred to Claremont CIB to assist in the investigation. Detective LS31 was also attached to the No. 8 Division Mobile at the time of the robbery and was sent to Claremont CIB. He had the conduct of the inquiry with LS39.

THE INVESTIGATION

On 13 August 1990, Detectives LS37, LS39, LS40 and L1 located Craig White and Quang Minh Le in a unit in Tuart Hill. They were both taken back to Claremont CIB and interviewed. As a result of those interviews, police obtained search warrants for two addresses in Girrawheen. Detectives LS31, LS36, LS39, LS40, L1 and two members of 79 Division executed search warrants simultaneously. Hung was located and taken to Claremont CIB where he was interviewed by LS36 and LS40. Hung denied knowledge of the robbery. Once their interviews had been completed, Le, Craig White and Hung went home together at about 2 am on the morning of 14 August 1990.

On 14 August 1990, detectives executed a search warrant at a jewellery shop at 147 Palmerston Street, Northbridge known as Duc Tin Jewellery. The owner of the shop was Diep, the jeweller who had purchased the gold bar from Hung on 8 August 1990. When the detectives arrived, the only person present in the shop was Pham Thi Tuyet ("Tuyet"), Diep's wife. The detectives took Tuyet to her home in Northbridge. Diep, who was still at home, was made to open a safe in the main bedroom. Inside the safe, police located the piece of gold bar.

Diep was taken to Claremont CIB and was interviewed by L1 and LS31. Initially, Diep told the police that he had bought the gold from the Perth Mint. That was disproved on information from the Mint. That afternoon, Mr Lee identified the gold as his from the bar. It weighed 8.3 ounces. Diep was later charged by police with unlawful possession of gold.

While Diep was taken to Claremont CIB to be questioned by police, Tuyet was taken back to the shop. Detectives seized jewellery and some cash for which an interim receipt was given. The Royal Commission was unable to locate the interim receipt.

Bong was arrested by LS39, LS40 and L1 in the company of his flat mates, Chris Chua and Mark Wee on the evening of 17 August 1990. Bong and Chua were taken back to Claremont CIB in a police vehicle and Mark Wee followed them in the rented car he was using. LS39 and L1 interviewed Bong and LS36 and LS40 interviewed Chua.

Hung was interviewed again by LS36 and LS40 at Claremont CIB on 20 August 1990. He denied any involvement in the robbery and refused to sign a record of interview.

It was not until 24 August 1990 that the third offender, Rory White, was located by police at Royal Perth Hospital. Rory White took LS31 and LS39 to North Perth where another section of a gold bar was recovered from under a cement slab. Later that evening, Mr Lee identified that piece of gold bar as his from the smaller bar. It was returned to him on 5 September 1990. Its weight was not recorded on the property receipt but, at the trial of Rory White on 9 November 1990, the Crown Prosecutor, apparently relying on LS39's précis of evidence, said that it was valued at \$15,000.

LS31 and LS39 attended Diep's house again on 12 November 1990 and arrested Diep after learning that he had sold six strips of gold weighing 15.7 ounces to the Perth Mint on 3 October 1990. This gold was identified as part of the larger gold bar.

The 8.3 ounces of gold recovered on 14 August 1990 from Diep and Tuyet's house and the 15.7 ounces later recovered from the Perth Mint total 24 ounces. The gold recovered from Rory White weighed between 20 ounces and 30 ounces. The remainder of the SAM1 gold bars, being approximately 76 ounces and approximately 30 or 40 ounces respectively, have never been recovered.

ASSAULTS ON SUSPECTS

CRAIG WHITE

At the time of the robbery, Craig White shared a house with Hung in Tuart Hill. Craig White gave evidence of a police search on 13 August 1990, after which he and Le were taken to Claremont CIB to be questioned about the robbery. At this time, Craig White knew that his brother and Hung had committed a robbery but told police that he knew nothing about it.

Craig White's evidence was that he was first taken into a room and questioned by an "Italian" officer and two other officers. He was asked questions about the robbery and was "slapped around a bit" by more than one officer. The assaults consisted of blows to his face with an open hand and punches to his stomach and back.

He also said he was given three or four electric shocks with a black and yellow instrument. The shocks were administered on his legs and back and left “a roundish, red mark” like a snake bite. He described the experience as very painful. He said that “they just wanted me to admit to doing the robbery”. Apart from referring to an Italian officer and another officer with white to grey looking hair, Craig White was unable to describe any of the three officers in the room at the time of the assaults.

When Craig White was allowed to leave the CIB office, he went home with Le and Hung. He did not recall discussing with Le and Hung what had happened at the CIB office, nor did he show anyone the red marks or make a formal complaint for fear of more trouble with the police.

Craig White later spoke to Bong in Casuarina prison about his interview with police on 13 August 1990. Bong testified that Craig White had told him that he and “Ming” (presumably Quang Minh Le) had been questioned by police in relation to this matter before Bong was arrested. Craig White told Bong that police had put a rubbish bin on his head and hit it in order to hurt his ears.

THE USE OF A CATTLE PROD

L1 gave evidence that LS31 brought a cattle prod with him to the Claremont CIB office for use in the investigation. L1 described LS31’s cattle prod as black, 30 centimetres long, held like a wand and touched on the skin. L1 testified that he had witnessed LS31 using the cattle prod and that the reaction of the suspect was to jump, start, and scream.

Prior to LS31’s arrival, there was no cattle prod at Claremont CIB and L1 had never seen one used. According to L1, LS31’s methods were looked upon as the way to get results. He said that everyone in the office, with the possible exception of LS35, knew that the cattle prod was being used.

Each detective involved in the inquiry, except L1, denied knowledge of the use of a cattle prod during the investigation.

There was other evidence of the use of a device capable of administering an electric shock at Wanneroo CIB. That matter is referred to elsewhere in this Report. In that case, LS31 disputed the evidence of Arran Reynolds that an electric device was used during his interview. L4, however, gave evidence that Reynolds was indeed given an electric shock and claimed that LS31 was not only present but had requested the use of the device. In the

light of the evidence of L1, L4, Reynolds and Craig White, LS31's denial of knowledge of the use of an electric device on suspects could not be accepted.

It is very unlikely that L1 and Craig White independently gave false or mistaken evidence that a cattle prod was used in this investigation. There is no reason to suspect any collusion, or motive for collusion, between L1 and Craig White. In the circumstances, particularly the independent evidence of L1 and Craig White, along with the evidence of LS31's involvement in the use of an electric device at Wanneroo CIB, it is difficult to resist the contention that such a device was used at Claremont CIB during the questioning of Craig White.

It is not possible to identify the officer who actually administered the electric shocks. However, the evidence is that LS31 brought the device to Claremont CIB, that several officers, including LS31 and L1, discussed it, that it was used on Craig White to the knowledge of at least three officers, and that most officers at Claremont CIB knew of the use of, or at least the intended use of, the device.

NGOC DIEP NGUYEN

Diep was arrested on 14 August 1990. He was taken to the CIB office and questioned from early in the afternoon until about 7 o'clock in the evening. He said that he was asked repeatedly where the other part of the larger gold bar was located, and was assaulted by police when he did not tell them.

Diep said he was made to strip naked and was pushed around and hit by police, enough to make his mouth bleed. Four police officers were involved in this assault. He described the use of a Yellow Pages telephone book. He said that one officer was at the back of him, two held the Yellow Pages and the other hit him approximately three times. Diep did not see these officers again on the two or three other occasions he went to Claremont CIB and he concluded that the officers involved in this assault were not stationed at Claremont.

Diep said that, after being assaulted using the telephone book, and while he was still naked, the officers put a tin bucket over his head. The bucket was then hit with a tool. The officers repeatedly asked him questions concerning the whereabouts of the remainder of the gold bar. Although not painful, the effect, he said, was to make him feel very uncomfortable.

After continued refusals to co-operate, Diep was taken to the bathroom at the CIB office. The bath was filled with water and two detectives held his shoulders, while another

detective held his head under the water. This happened on about three occasions, during which the detectives continued to ask about the gold bar. Diep was unable to identify any of the officers involved in this assault.

Upon release from the CIB office, Diep caught a taxi home. His wife noticed that something was wrong and that his mouth was bleeding. Later that evening, a friend of Diep's, Gene Tobin, called a locum doctor, Dr Scott Isbel. Diep told Dr Isbel that police had assaulted him at Claremont. The doctor's report indicates that Diep had sustained injuries that day consistent with an assault.

L1 was not able to recall seeing anyone naked. However, he was party to a discussion amongst police officers in which it was said that Asians find it particularly demeaning to be naked and stripping was a tactic that would make them more likely to confess.

L1 heard the bath running and sounds coming from the bathroom, which he thought were those of someone being held under water, being brought up gasping for air and screaming before being held under again. Although he did not witness anyone being immersed in water, L1 remembered that it was LS31, LS36 and LS40 who were in the bathroom. This account is consistent with Diep's evidence. The journals and statements show that those three officers were present at Claremont CIB on the night.

BONG

At the time of Bong's arrival in Australia, he was 23 years old. He came to Australia from Malaysia to study. However, he began to gamble and slowly became a compulsive gambler. Bong met Hung at the Burswood Casino and through Hung met Rory White. At the time of the robbery, Bong resided with Mark Wee and Chris Chua in a flat in Victoria Park.

Bong gave evidence that, after he was arrested at a McDonalds restaurant, he was taken to Claremont CIB with Wee and Chua. When his interview commenced, only one police officer was present, but he was later joined by another officer. Bong could not identify either officer.

During the first half hour of his interview, Bong said that he denied any involvement in or knowledge of the robbery. During this time, he heard screams from Chris Chua and Mark Wee.

Bong refused to answer any further questions for approximately two hours. One of the officers left the room and a short time later four or five officers rushed in. One held the

back of his trousers and lifted him from the floor while another restrained his arms. Whilst he was being held in this way, Bong said one of the officers hit him in the stomach. Officers then released their hold on Bong. He was unable to stand up due to the effect of the blow and fell to the ground. He also lost control of his bladder.

Bong thought that this assault was the beginning of what he described as "an interrogation". To avoid further questioning, and, presumably, further assaults, he tried to injure himself by running into a glass partition. He was restrained by LS39 and was tied up with cotton fabric to prevent him from attempting further self-harm. He was then placed on a chair in a corner of the room and kept under observation.

After being tied up for approximately one and a half hours, Bong asked to go to the toilet. He was untied and taken to the toilet where he drank his own urine. He said that his grandfather had told him that it was medicinal to drink one's own urine after an assault to the abdomen or stomach. A short time later, he was taken to another room and asked to walk around. He assumed that this was for the purpose of identification by Mrs Lee since he could hear a woman's voice outside the room.

L1 and LS39 recalled that Bong had tried to harm himself and had been restrained. L1 also recalled that Bong had drunk his own urine because of a sore stomach. His memory, however was that Bong had been assaulted with the cattle prod and that later in the evening he had complained of feeling ill and wanted to drink his own urine. He was unable to recall Bong being assaulted in the way Bong described.

At 2.30 am, L1 and LS31 sat with Bong and typed up his statement. The interview concluded at 4.40 am before Bong was taken to the East Perth Lockup and remanded in custody.

Whilst on remand, Bong was visited by officers who had interviewed him on 17 August 1990. The purpose of their visit, he said, was to obtain his co-operation in helping them to locate the gold and the diamond rings that were still missing. In exchange, he was offered a lower sentence. He was unable to help them, however, as he did not know where Hung had put the gold bars and the rings. He did tell them the name of the third offender, Rory White.

Bong was released on bail. He failed to appear in the Supreme Court of Western Australia on 16 January 1991. He was later extradited from Queensland and pleaded guilty to the five offences committed on 7 August 1990 and also to breaching his bail undertaking. He was sentenced on 15 September 1999 to eight years and eight months imprisonment.

On the evidence of Bong, four or five officers were present when he was assaulted. He said they did not include LS35. It is accepted that L1 was not involved in the assault alleged by Bong. Since all other detectives denied knowledge of any assault, it was not possible to determine with any certainty which of the officers was present at the relevant time.

HUNG

L1 initially gave evidence that he recalled seeing Hung at Claremont CIB hanging with his arms entwined on a broomstick that was supported by two lockers. He thought he either saw someone hitting Hung in the stomach or heard sounds consistent with that occurring. He was unable to recall which officers were with Hung. When cross-examined on this point, he said that he did not think he actually saw Hung being hit, but he recalled LS36 and LS40 being in the room with Hung.

On 13 August 1990, his first day on duty at Claremont CIB, LS40 was involved in locating Hung and transferring him back to the CIB office. Hung denied involvement in the robbery and, since the police were not in a position to prove otherwise, he was released. LS40's journal indicates that, on 20 August 1990, Hung was again spoken to by police in relation to the robbery. He was apprehended in Girrawheen by LS36 and LS40 at approximately 9.00 am and taken to Claremont CIB to be interviewed. A record of interview was prepared which Hung refused to sign. At one point, the interview of Hung was suspended and LS31 was brought in to read the record of interview to Hung. Despite this, Hung still refused to sign and the interview was terminated at 12.39 pm.

Hung's trial took place on 9 and 10 May 1991. He pleaded not guilty to charges of breaking and entering with intent, stealing with violence, two counts of deprivation of liberty and unlicensed use of a motor vehicle. He was found guilty on all counts and was sentenced to eight years and eight months imprisonment. He made no complaint of assault. Hung died before the commencement of the Royal Commission.

RORY WHITE

Rory White was apprehended by Claremont CIB on 24 August 1990 at Royal Perth Hospital where he had been taken for treatment for a broken jaw. He provided a detailed confession to police. He then took officers to North Perth where more of the stolen property was recovered.

White pleaded guilty to five charges. He was sentenced on 13 December 1990 to seven and a half years imprisonment.

Rory White was not called to give evidence to the Royal Commission because, since the events of August 1990, he has suffered a severe head injury that has affected his memory. There is no evidence that he was mistreated by police.

QUANG MINH LE

Le gave evidence to the Royal Commission that he was arrested at Casserley Avenue, Girrawheen and taken to the Claremont CIB with Hung and Craig White. He was interviewed by LS31 and LS39. Although he knew about the armed robbery, he did not tell the police anything of relevance. He was released at approximately 3.00 am the next morning and was asked to return to the police station the following day.

On 15 August 1990, Le was again interviewed. During the second interview, Le was assaulted by LS39 in the presence of LS31. Le said the assault consisted of a punch to the chest and that LS39 later apologized. LS39 denied having punched Le, and said he had merely shoved Le in the chest. LS39 agreed that he later apologized to Le, but only in respect of the shove. It is unlikely that LS39 would feel the need to apologize for a mere shove in the chest, particularly on an occasion some time later. The assault was of sufficient moment to impress upon LS39 the need to later apologize.

JEWELLERY AND MONEY

EVIDENCE OF DIEP AND TUYET

Tuyet gave evidence that police came to the jewellery store three times in 1990. On the first occasion, officers merely asked Diep if he had bought a bar of gold and did not seize any property. This visit must have occurred between about 10 and 13 August 1990.

On the second occasion, 14 August 1990, Tuyet was alone in the shop when police arrived. She was asked to close the shop and was taken home. At home, Diep opened the safe in the bedroom and police found a portion of the gold bar.

After the house had been searched, Diep was taken away by police and Tuyet was taken back to the shop. At the shop, police seized a briefcase, jewellery and a black box. Tuyet's evidence was that inside the briefcase was more than \$20,000, bundled into two lots of \$10,000 and approximately \$3,000 in loose notes. Also in the briefcase were seven to eight ounces of gold from the Perth Mint. Tuyet gave evidence that police also seized a one carat diamond inside a small box. The diamond was worth approximately \$6,500.

Tuyet's memory does not accord with police documents in respect of the \$20,000. On 14 August 1990, police seized a black briefcase containing US, Hong Kong currency, Singapore and Malaysian currency, but not the \$20,000 in Australian that she mentioned. However, about \$20,000 Australian in a black briefcase was seized from Diep and Tuyet on 12 November 1990, after Diep had tried to sell some gold to the Perth Mint. The gold was entered into the property book but despite LS39's journal entry to the contrary, the black brief case and the sum of approximately \$20,000 were not. This matter is dealt with below.

Tuyet's evidence was that, at the shop, the police list recorded that a "diamond" had been seized. LS39's journal records that an interim receipt was given to Tuyet, but no interim receipt could be located by the Royal Commission. LS39 agreed in evidence that it was likely that the interim receipt recorded a "diamond".

Either later on 14 August 1990 or early on 15 August 1990, LS39 entered in the property book over 100 items of jewellery seized from Diep and eight items seized from Tuyet. The property book entry records a "diamond" but that word is struck through and "clear stone" inserted, all in LS39's writing. The book does not reveal when that alteration occurred.

On 15 August 1990, Diep attended Claremont CIB, in company with his friend, Gene Tobin, and was given the black briefcase and its contents without incident. The receipt indicates that the property returned included all the cash seized. Diep was not then given the "diamond" or the rest of the seized property. Property Receipt No. 034680 listing items seized from Diep contains a notation "property checked in presence of witness Gene Tobin 15/8/90". LS39 was the officer who listed all of the jewellery seized from Diep and Tuyet and who signed as the witnessing officer for the return of the items.

On 16 August 1990, Diep and Tuyet again went to Claremont CIB, to collect the remaining property. Diep noticed that the diamond had been substituted with a zircon imitation and refused to take receipt of the property. After a discussion, they again refused to collect the property. Tuyet noted that the original receipt she had been given by police at the shop indicated that a diamond had been seized. The second police receipt showed that a "clear stone" had been seized. When Tuyet asked the officer about this, he advised that he had originally written "diamond" but had then brought the stone back to the office, checked it and determined that it was not a diamond. LS39 recorded Diep's query in his diary, but not the specific nature of his complaint.

When Diep and Tuyet continued to question the substitution of the diamond, an officer told them that they could either take all of the property then or they would lose it all. They elected to take the property, including the imitation stone.

Tuyet said that she was certain about the money and the zircon for the diamond. Because she had been unsuccessful with the police in respect of the money and the diamond and, although she was not sure that other property had not been stolen, she decided it was impossible to pursue the matter. Diep said that he did receive all of the property back from the police, apart from the diamond.

EVIDENCE OF L1

L1 said that he was present on searches of Diep's house and of the shop. He was unable to recall what was seized from the house and could only recall that some tools and jewellery were taken from the shop.

However, L1 did remember that Diep came to Claremont CIB to claim property seized from him by police and that Diep argued that a diamond had been replaced with a fake stone. He initially recalled that the dispute was over a substituted ring but, after reading other evidence, accepted that it was a single diamond. L1 was the most senior officer present at the CIB at the time. LS40 approached him and made a joke of the fact that, as senior officer, L1 would have to deal with the problem. L1 said that he became irritated with Diep and took offence at the suggestion that police officers had substituted a fake diamond for a real one.

L1 was unable to recall whether Diep took the fake diamond, but he did recall that as soon as Diep left the office, LS40 and the other officers started laughing. Someone told him that he had done a great job, and that he even had them convinced. He understood that the reason for the mirth was that the stone had indeed been substituted. However, L1 was unable to recall details of what was said or by whom.

L1 said that some of the jewellery taken by Claremont CIB was kept by officers and, he presumed, sold. L1 presumed that the diamond was among the jewellery sold. He did not receive any proceeds from the sale of the jewellery. However, he did recall receiving a necklace and said that "all of the guys got a piece of jewellery or two each".

L1's memory in this instance is questionable. When he read that Diep had not alleged theft of additional jewellery, L1 admitted that he may have been mistaken in his recollection that the necklace was from these events. He also had in mind that his resignation from WAPS probably meant that he would not share in the proceeds. He did not leave WAPS until September 1992 and the events the subject of the investigation took place in mid to late 1990. It is improbable that it would have taken nearly two years for any stolen jewellery to

be sold and the proceeds shared. Accordingly, it is likely that any recollection by L1 of obtaining a necklace, and of other officers obtaining jewellery, related to another incident.

EVIDENCE OF CLAREMONT CIB OFFICERS

LS40 recalled that there was “confusion” about the nature of the property being returned to Diep and Tuyet. LS36 recalled that there was a dispute regarding some of the jewellery but could not remember any more detail of the incident. LS39 also recalled a dispute between Diep and police regarding the return of property. However, all officers except L1 denied that a diamond had been substituted or stolen by police. LS39 said that the use of the word “clear stone” or “white stone” was standard procedure. That can be accepted for obvious reasons. However, it is not accepted that LS39 then applied the standard procedure. First, he was inconsistent in the property book. Property Receipt No. 034678, relating to the seizure of the diamond in question, shows the word “diamond” has been crossed out and the words “clear stone” inserted. Property Receipt No. 034681 records “clear stone” for three entries. However, Property Receipt No. 034680 records “diamond earrings”, a “diamond strand” and a “diamond ring” being seized by police. Secondly, the stronger inference is that the interim receipt used the word “diamond”, which is not in accordance with the policy. Thirdly, his departures from procedure were not corrected except in respect of the subject stone.

It is difficult to find an alternative explanation for the concurrence of evidence from L1 on the one hand and Diep and Tuyet on the other in respect of the alleged substitution. There was no collusion between them. Substitution of a jewel is so unusual as to rule out concurrence by chance or false evidence from the two sources.

The third occasion on which police attended Duc Tin jewellery was 12 November 1990. Detectives were alerted by an officer of the Perth Mint that Diep had supplied some gold to the Mint. On this occasion, detectives seized a black briefcase. The case and its contents were recorded in the property book. Along with some foreign currencies, \$20,578.77 in Australian currency was recorded as seized.

Tuyet’s evidence was not precise in this regard. She was not sure how much cash was in the briefcase in addition to the bundled \$20,000. Her evidence that cash was stolen seemed to hinge on her recollections that there was cash in addition to the bundled \$20,000, that she told detectives there was “about \$20,000”, and that they recorded “\$20,000”. From those recollections, she appears to have drawn the conclusion that only \$20,000 was returned. The receipts show that her recollection is not sufficiently reliable in this respect to find that any money was seized by police and not returned to her.

PAYMENT BY SIMON LEE*EVIDENCE OF SIMON LEE*

Mr Lee gave evidence that an arrangement was made when some property (including gold) was returned to him by police. He told the police that he wanted the stolen jewellery back but was not concerned about the return of the gold bars. He told the police they could keep the gold. He was unable to recall exactly when the offer was made to the police. The offer to keep the gold was made to LS39 who said that he was unable to keep the gold. Lee then offered to give him the monetary value of any recovered gold.

Lee rejected the suggestion that the arrangement with the police was that the more gold they located, the more money they received. In his eyes, the payments to the police were more in the form of a reward.

Payment was made to police in two separate amounts. Each payment related to a separate amount of gold being returned to Lee. He calculated the value of the recovered gold on the particular day and paid police accordingly. He thought that payment was made in cash and that the arrangement was made while the investigation was on foot. It is unclear, on his evidence, why Lee rejected the suggestion that the more gold that was recovered, the more he was to pay police.

EVIDENCE OF L1

L1 was not involved in any discussion with Lee about payment. He never heard it said that Lee had first offered detectives the gold itself. His first recollection was that LS31 and LS39 came to the office one day and announced that it had been arranged that Lee would give them the cash equivalent of any gold recovered. He thought that this took place before any gold was recovered, although he was not entirely sure. He was clear that the connection between the payment and the gold was that Lee was going to pay the market value of the amount of gold recovered. Lee's evidence was to that effect also. L1 also said that everyone involved in the investigation knew of the arrangement with Lee.

L1 also said that there were two payments, one for each of two amounts of gold recovered, and that, on each occasion, he and LS39 went to Lee's office to collect a cheque. On one of these occasions, they cashed the cheque at the Westpac Bank in St George's Terrace on the way back to the Claremont CIB. His recollection was that both cheques were for \$5,000, \$6,000 or \$7,000, perhaps more. The first payment for gold was before Christmas 1990. He was unable to recall when the second payment was made.

L1 was clear that the money was paid directly to the detectives and not into the social club fund. He dismissed other officers' evidence that money had gone into the social club as "absolute nonsense" because he specifically recalled meeting with other officers around a table and counting out money into separate piles, one for each detective involved in the investigation. L1 said that he, LS36, LS37, LS38, and LS39 were present and that there were two piles of money to be given later to LS31 and LS40 (who were no longer stationed at Claremont CIB). The detectives later went to the Bugatti Bar at the Criterion Hotel where they met LS31 and LS40 and gave each his share of the money. He could not be sure whether LS35 had received any money.

L1 could not recall a division of money in relation to the second cheque, but assumed a similar procedure was followed. His impression was that the second cheque was not going to be paid until the trial of Hung had finished. Hung's trial took place on 9 and 10 May 1991.

At the time of receiving the second cheque, LS35 was no longer the OIC of Claremont CIB, having been replaced by LS16. L1 recalled a discussion as to whether or not LS16 should receive some of the anticipated money. It was decided that he should. L1 also recalled that LS16 told him and LS39 that they were stupid to have received the money by way of cheques, because cheques were easily traced.

EVIDENCE OF L5

L5 was stationed at Claremont CIB on two occasions between December 1990 and September 1991. When he arrived at Claremont CIB to relieve LS16, the Lee investigation was completed, but some money promised by Lee had not yet been paid. After he had been there for several weeks, a discussion took place between him and the other officers about whether he should receive a share of the money to be paid by Lee.

LS39 told L5 that he had been in touch with LS16 (who was on leave) and that LS16 thought that L5 was not entitled to any money. L5 was also told that LS16 rang the office on a regular basis to check on the status of the anticipated payment from Lee.

PAYMENTS TO OFFICERS

LS36, LS37, LS38 and LS40 each said that he received about \$200 cash which he understood came from Lee. LS31 denied receiving any money. LS39 claimed that about \$1,600 to \$1,800 was paid and placed into the Claremont CIB social club fund from which he later received \$200 or \$300. He denied that he made the original arrangement with Lee.

DATE OF ARRANGEMENT

Lee's evidence was that some property, including gold and watches, was shown to him for identification. Some time later, property was brought back to be returned to him and it was at this time that the arrangement was made. He said that his offers of, first, the gold and, secondly, its worth in money, were made to LS39 on the same occasion.

It is clear enough that there were two payments by Lee. For some reason, at least one was deferred until after the trial of Hung. Were it the case that all payment was deferred until after that trial, there would have been no need for two separate payments. The gold seized from Diep's home and the gold seized from the Perth Mint were not returned to Lee until 25 February 1992. LS39 witnessed Lee's signature on the receipt. However, the gold seized from Rory White was returned to Lee on 5 September 1990. LS39 witnessed Lee's signature on that receipt also.

Also on 5 September 1990, LS39 returned two bracelets, a charm and three watches. Those watches had been shown to Lee for identification on 17 August 1990 and the gold had been shown to Lee on 24 August 1990. That sequence accords with the evidence of Lee that property, including some gold, was shown to him, and at some time later, that gold was returned to him. On the latter occasion, the arrangement was made.

It seems likely, therefore, that the arrangement with Lee was made on 5 September 1990, and that it was made in circumstances relating to the gold recovered from Rory White. The gold recovered from Diep's home was in police possession at that time, but was not returned to Lee until 1992. The different dates of return may be related to the fact that Rory White confessed early and went on to plead guilty.

Some of the officers claimed that the payments by Lee went into the social club fund and were used for the CIB Christmas function and only the remainder shared. While that evidence is not accepted entirely, it does confirm that Lee made a payment prior to Christmas 1990, prior to the return to him of the gold recovered from Diep and from the Perth Mint. It confirms that the arrangement was made, not in respect of the return of that gold, but in respect of the return of gold on 5 September 1990.

Based on the evidence of Lee and the dates relating to the seizure and return of gold, it is clear that the arrangement was made between LS39 and Lee on or before 5 September 1990, before the inquiry was terminated, before the termination of court proceedings and before efforts to recover more gold were suspended. LS39's evidence that he was not a party to the arrangement finally agreed with Lee, and his evidence that he was not aware

of pending payments until L1 brought money to the Claremont CIB was contradicted by L1 and by Lee.

AMOUNT OF PAYMENT

On the evidence of Lee that he paid the then value of gold recovered, even the single piece of gold returned to him on 5 September 1990 was worth \$11,800 (or about \$15,000 according to LS39's précis of evidence). Divided among seven officers (L1, LS31, LS36, LS37, LS38, LS39 and LS40) that would yield about \$1,700 each. It could not be accepted that the majority of that money was used, via the social club, for the 1990 Christmas function or that monies left after Christmas were sufficient only for officers to have received \$100, \$200 or \$300 each. In any event, Lee's payments for the other two pieces of recovered gold are still to be accounted for.

The gold recovered from Diep's house weighed 8.3 ounces and was worth approximately \$3,800 on 25 February 1992 when it was returned to Lee. The gold recovered from the Perth Mint weighed 15.7 ounces and was worth about \$7,300 when returned to Lee on 25 February 1992.

On the evidence that the money paid by Lee was the value of the gold, the first payment, probably of about \$11,800 (or \$15,000 according to LS39), was shared between officers L1, LS31, LS36, LS37, LS38, LS39 and LS40. The second payment, probably about \$11,000, was shared between those officers and LS16. In total, on that evidence, officers other than LS16 received over \$3,000 each.

PROPRIETY OF ARRANGEMENT

The acceptance by an officer of an arrangement with a victim of crime under which the officer benefits financially in proportion to the success of his investigation is highly undesirable. That is recognized in the Police Regulations. Police Regulation 608(1)(b) provides that a member or cadet "shall not directly or indirectly solicit or receive any gratuity, present [or] reward ... without the approval of the Commissioner". The Routine Orders in force as at April 1990 directed that "members should avoid circumstances in which the acceptance of gifts could give even the appearance of a conflict of interest (past, present or future) with public duty; or in which the offer of a gift could be interpreted as having been made with the objective of securing, or in return for, favour or preferment". Clearly, the acceptance of the promise of payment of money from Lee by police officers in 1990 was contrary to the relevant Regulation and exposed each officer to possible disciplinary charges.

The reasons such an arrangement is undesirable include the following. First, the prospect of reward naturally inclines an officer to expend more effort and police resources on the particular investigation, possibly at the expense of other investigations. If unchecked, the result could be that wealthy victims might "buy" a better service from police than less wealthy victims. If such an arrangement became common, it would be but a short step away from some police suggesting to a victim that a reward might give his complaint greater priority. Secondly, such arrangements compromise the ability of a police officer to properly investigate any breaches of the law by the victim, a not uncommon experience. For example, it may occur that the victim of a robbery offers a reward to police and meanwhile, fraudulently exaggerates his insurance claim. The reward offer, coupled with the impropriety of its acceptance by police, might discourage proper investigation of the fraud. Thirdly, in cases such as this, where the prospect is that up to \$75,000 might be earned as reward, there is an incentive for police to depart from proper procedures in order to secure a result. For example, that prospect might incline an officer to use violence during an interrogation or to falsely swear grounds for a search warrant. As it turned out, the evidence here did not support a finding that the arrangement with Lee was made before the alleged assaults on Craig White, Bong and Diep. Nevertheless, the arrangement carried the danger that such assaults were made more likely. The dangers inherent in the arrangement with Lee were real, whether or not Lee ultimately made full payment.

It appeared to be the attitude of some officers that the propriety of a payment to police was affected by whether the money was paid directly to officers or into the social club fund. That cannot be accepted. It is no mitigation of the impropriety of a payment to police that the payment is shared among officers, whether via a social club fund or otherwise.

3.22 THE INTERVIEW OF SUSPECTS AND WITNESSES AT MORLEY CIB

This part of the Royal Commission's Report relates to the interviews of suspects and witnesses in the course of various investigations by police officers stationed at Morley CIB between 1 November 1990 and 7 March 1991. The allegations that gave rise to the Royal Commission's inquiry were that police assaulted the following persons:

- M8;
- M9;
- Gavin Irvine;
- Philip Stiggants;
- M11;
- Glenn Ashby; and
- Colin Kovacs.

During this period, LS41 was the OIC of Morley CIB. Other officers who were stationed at Morley CIB and who were involved in one or more of the investigations were Detectives LS42, LS43, LS44, LS45, LS46, and Probationary Detectives LS47 and LS48.

M8 AND M9

BACKGROUND

In 1990, a break and enter offence was committed at the premises of Broughton and Broughton in Bayswater, in which tools were allegedly stolen. During the investigation, Morley CIB interviewed a number of suspects. Two brothers, M8 and M9, were identified as suspects and, at about 8.30 am on 1 November 1990, a search warrant was executed at their home. Property was seized and the brothers were apprehended, conveyed to Morley CIB and interviewed. Craig McCartney, a friend of the brothers, was apprehended between 7.30 am and 8.30 am on the same day and taken to Morley CIB. He was present in the CIB office at the time that the brothers were questioned.

The brothers and McCartney were released later in the day. They were taken to the brothers' home by LS41 and LS44 at approximately 6.20 pm on 1 November 1990. None of the three was charged.

M8

M8 was separated from his brother for most of the day at Morley CIB. Aside from one period when they were together in a waiting room, M8 was seated in an interview room with the door closed.

He was questioned about tools stolen from Broughton and Broughton, and about the involvement of another person whose name he could not recall.

He said that, after he denied any involvement, he was handcuffed to a chair and a tea towel was placed around his head, covering his face. The tea towel was secured with tape around his neck and forehead. He said that his shoes were removed, his feet were dampened with water, and the arches of his feet were "tickled" and hit approximately ten times with what felt like a rubber hose. He said that he understood that he was "tickled" as a warning that the officers "had something there for [him]". He was taken out of the chair, placed on the floor and tapped lightly around the face with the hose a couple of times.

At the time, M8 suffered with asthma. He complained to the officers that he could not breathe properly with the tea towel over his face, but it was not removed.

Upon his release that evening, his brother told their parents what had happened. On 17 November 1990, in the course of an internal investigation, M8 made a statement consistent with the evidence that he gave at the Royal Commission. He then said as well that he "got a couple of biffs in the head with an open hand from one of the detectives" when he said that he didn't know anything about the break and enter, and that he was hit on the right testicle with a light tap of the hose.

M9

M9 was separated from his brother and taken to an interview room where he was questioned by LS41.

He said he was handcuffed to a chair with his hands behind his back. A tea towel was placed over his head and secured with masking tape wound around his head from his eyes down to his neck. As a result, he was not able to breathe comfortably. His chair was tipped backwards, his legs were held around the shins and water was poured onto his bare feet. The arches of his feet were then hit with what he said felt like a rubber hose. He did not see the hose, but he imagined that it was a clear rubber hose and thicker than a standard garden hose. He did not remember how many times he was hit, but he did recall that the pain was excruciating and enough to cause him to cry. He thought it would have been futile to cry out. He said that this process occurred at least three or four times during the day and that he was hit on the feet numerous times.

He also said that he received a couple of punches to the stomach while he was handcuffed in the chair and that he received a "few taps" around the chest and head. At one point during the questioning, an officer ran towards him and jumped on him while he was handcuffed to the chair. He fell backwards and was then left on the floor in the room, still handcuffed to the chair, with his legs in the air.

He said that, at one stage, an officer came into the room, said "oh no, what have they done?" removed the tea towel and told M9 that he needed to tell the officers what they wanted to know or he would have to let them back in. In a statement that M9 made on 2 November 1990, he named this officer as LS44.

M9 told the Royal Commission that, by the end of the day, he could hardly walk. He told his parents what had happened. The family engaged a lawyer and made a formal complaint.

OTHER EVIDENCE

M10, M9's mother, observed broken veins, swelling and redness on M9's feet when she arrived home on 1 November 1990. She took photographs of his injuries the next day.

M10 took M8 and M9, with their friend McCartney, to Morley Police Station to seek an explanation of what had happened. Subsequently, a formal complaint was made in relation to M9, but not in relation to M8, because his injuries were less severe.

M9 saw his general practitioner, Dr Hames, on 2 November 1990. Dr Hames said that he remembered M9 "coming to [him] saying that he had been beaten across the soles of the feet with a rubber hose by the police". Dr Hames' notes recorded that M9 had been handcuffed, had a tea towel tied around his face, and that the soles of his feet were beaten with a rubber hose. In Dr Hames' view the injuries were consistent with the account of their cause given to him by M9. In fact, he formed the view that "... there is no other possible way in which he could have obtained the injuries seen, other than a person or persons striking his feet with an object similar to that described, and using similar force".

Dr Hames also saw M9 on 3 and 12 November 1990. On 3 November 1990, Dr Hames recorded that M9 had "found more marks in shower this morning, bruises probably from fingers prodding". He said that the bruises matched the size and shape that he would have expected from a finger-type bruise.

McCartney said that he noticed that M9 was in a bit of pain and was limping at the Morley CIB. In his statement made on 21 November 1990, McCartney said that, while he was at Morley CIB on 1 November 1990, both of the brothers told him that the detectives had been "giving them a hard time". He also recalled that, when LS44 saw M9 limping, he asked M9 whether he had "kicked a brick".

Julie Ann Avery (nēe Fogarty), an administrative officer who worked at Morley CIB in 1990, gave a statement to the Internal Investigation Unit ("IIU") that included that she saw nothing untoward. She accepted that her statement read as though she was present the whole time, but that possibly she was not. LS42 had taken her for a drive to his home to collect some items, although she could not see any reason for her presence on the trip. She told the Royal Commission that she was concerned about signing the statement for the IIU because she was not sure whether she was in the office at the time that it was alleged that M9 was assaulted.

It was put to LS42 that he took Avery out of the office while the assaults occurred because she was new and could not be relied upon not to report an assault. He denied the suggestion.

THE INTERNAL INVESTIGATION

Detective Inspector LS28 conducted an internal investigation into the allegation that detectives at Morley CIB assaulted M9. He concluded that the complaint was unfounded. His reasons included that all detectives denied that the assault occurred, administrative staff and police witnesses said that they never heard anyone being assaulted or screaming out, other suspects interviewed on that day were not mistreated and a search of Morley CIB failed to locate a rubber hose.

Eight detectives provided reports to LS28 for the internal investigation. LS28 gave evidence that he informally interviewed all of the officers and then asked them to submit a report. However, the investigation file contained no notes of any interviews.

Large parts of the officers' reports are worded identically. It is quite apparent that they were jointly prepared. The final paragraph of each report is phrased in virtually identical terms, namely:

I have been shown a series of photographs purporting to be that of injuries to M9's feet. These alleged injuries were not inflicted on M9 whilst he was at the Morley CIB office.

LS44 said that this was a standard write-off. However, of the eight officers who provided reports, some indicated that they were not present at the Morley CIB for extended periods during the time the brothers were being questioned, and were not in a position to reach the stated conclusion. Whether this was a "standard write-off" or not, it was misleading and was an unsatisfactory basis for LS28's finding.

The Royal Commission does not accept that police training or "jargon" satisfactorily explains the use of phrases such as "walked with a slight limp", "they all appeared calm and cheerful", and "light conversation", which appear in more than one officer's report.

Some of the detectives who gave evidence said that they "may" have discussed their recollections prior to the preparation of the report, but they either could not recall whether there was an exchange of draft reports for the purpose of copying or they gave evidence that they definitely did not do so. At best, the collaboration simply assisted officers in the preparation of accurate statements, albeit not from their own memory. At worst, the

collaboration was for the purpose of preparing consistent, but false, accounts. As is obvious, the reports should contain an officer's independent recollection. Only in that event could it be said later that the officers' corroboration of each other was reliable.

M8 and M10 each gave evidence that M9 had no injuries to his feet prior to his arrest. The primary complaint was that M9 had been hit with a rubber hose on the soles of his feet. A doctor's report and photographs were provided to LS28. An essential part of the investigation was to determine whether M9's feet were injured prior to his arrest. If not, then the fact that they were injured upon his release would have indicated that he had been assaulted while in police custody.

This issue was not addressed in the statements taken by LS28 from M8 and M10 and there is no evidence that LS28 pursued this issue with M9. Further, other evidence in relation to this issue was not sought from the father of M8 and M9, or neighbours who saw the brothers being arrested.

In their reports, LS41, LS42 and LS44 recorded that M9 was "limping slightly" at the time of his arrest. However, LS45 and LS47 who were also present at the time of his arrest did not include any reference to M9 limping at that time. There was no reference to this important discrepancy in LS28's investigation.

McCartney gave evidence that LS28 was a family friend. During the internal investigation, McCartney had a conversation with LS28 about the allegation of assault made by M9. LS28 told him that he would have picked out M9 for a "roughing up" because he looked like the weakest of the three. LS28 denied that this conversation occurred. The comment suggests in LS28 an attitude that assaults were acceptable and makes his findings more suspect.

POLICE EVIDENCE IN RELATION TO M8 AND M9

Each officer involved in the investigation denied knowledge of the alleged assaults. LS44 had no recollection of interviewing M9, of the search of the brothers' home or of the brothers being at Morley CIB. He denied that M9 was beaten. LS44 further denied that he had ever threatened violence to a suspect or witness or observed another officer doing so. LS41 retired medically unfit. He destroyed his journals shortly after retiring. He claimed to have "washed" his policing career from his memory. The journals were not his to destroy.

CONCLUSION

There is corroboration for the alleged assaults of both M8 and M9. It is notable also that other allegations of assaults by officers from Morley CIB during this period were made by persons unknown to M8 and M9. In particular, M11 told the Royal Commission that he was beaten on the soles of his bare feet by detectives from Morley CIB.

GAVIN IRVINE

BACKGROUND

During the investigation of a homicide in January 1991, officers at Morley CIB interviewed Gavin Irvine in respect of the whereabouts of his brother, Colin Irvine, the prime suspect. The detectives obtained some useful information from Gavin Irvine. Colin Irvine was subsequently located by officers of the Tactical Response Group on 9 January 1991 and was shot dead. In September 1991, a Coronial Inquest was held into the death of Colin Irvine at which Gavin Irvine gave evidence.

Gavin Irvine apparently blamed himself to an extent for having provided information that led the police to his brother and, as a consequence, to his death. Gavin Irvine took his own life some time later.

ALLEGATIONS OF ASSAULT

At the Coronial Inquest, Gavin Irvine said that he was taken to the Morley CIB, questioned about his brother and kept at the station until after police had located and shot him dead.

Gavin Irvine said that officers transported him to Morley CIB. On arrival at Morley CIB, one officer told him that they were going to have "fun" with him. He said he was placed in a small interview room and pushed against the wall. He was then handcuffed and a bucket was placed over his head. The officers hit the bucket with an open hand and punched him in the stomach, chest and back. He said that he was thrown to the floor and that his pants were pulled down, his genitals were sprayed with water and LS44 threatened to "zap" him on the genitals with a "little buzzer thing".

Gavin Irvine identified LS41 and LS44 as two officers who were present.

M12 AND M13

Before the relevant events, M12 had been Gavin Irvine's girlfriend. At the time of the relevant events they still saw one another regularly. M12's sister, M13, was Colin Irvine's girlfriend at the time.

M12 said that in January 1991 she, Gavin Irvine and M13 were approached by police and taken to Morley CIB, where she and M13 were separated from Irvine. When she met Gavin Irvine one or two days later, he told her that he had been assaulted at Morley CIB. He told her that police put a bucket over his head, applied an electric shock to his testicles, and hit him with a phone book. M13 also said that she saw Gavin Irvine one or two days later and that he told her that police put a bucket over his head, hit him several times and applied an electric shock to his testicles.

John Irvine, Gavin's father, said that on 9 January 1991 he tried to see Gavin while he was in police custody but that police would not allow him to do so. He was later told by his son that police put a bucket on his head and "bashed him around" and that police stuck wires to his genitals but he did not say that he was "electrocuted".

POLICE EVIDENCE TO THE ROYAL COMMISSION RELATING TO IRVINE

LS41, LS43 and LS44 denied that Gavin was assaulted. Other officers denied knowledge of any assault. LS42, LS45, LS46, LS47 and LS48 each said that he had never seen a suspect assaulted by a police officer.

CONCLUSION

The Royal Commission was first interested in this matter because Gavin Irvine's complaint involved the threat of electric shocks with a device of some kind, similar to the allegations involving Claremont and Wanneroo CIB officers at about the same period.

There is no corroboration of the assaults Gavin Irvine alleged, including that relating to the electric device. While the inclusion of an electric device is remarkably similar to tactics used by detectives at Claremont and Wanneroo CIBs, there is no officer involved in the Gavin Irvine matter who was also involved in either of the other two. On the other hand, complaints were made by Stiggants and by M11 of the threatened or actual use of electric shocks by Morley CIB in about the same time period.

M11 AND KOVACS*M11*

M11 and Colin Kovacs were arrested by officers from Bayswater Police Station while sitting in a stolen vehicle in the early hours of the morning on 28 February 1991. They were transported to Morley CIB for interview at the start of the working day. M11 gave evidence that he was placed in an interview room at Morley CIB. He said that each of his hands was separately handcuffed to an arm of the chair in which he was seated. When he gave the false name of "Schultz", he "copped this boot in the chest" from an officer who was sitting on a desk in front of him. M11 said that he went flying backwards and, as a result, was disoriented for a few minutes.

After being kicked in the chest, M11 said that an officer came in with a firearm and said that they had shot Colin Irvine after telling him that they would, and that M11 should co-operate. After continuing to be unco-operative, M11 was "knocked down off his seat again" and the handcuffs were removed. He said that, while he was on the floor, the soles of his feet were hit repeatedly with a leather strap and a torch. M11 said that he thought "this was it, that's the end of me. I'm gone".

He said that he had his shirt, shoes, and socks taken off and that a detective took an extension cord, plugged it into a socket and dunked the other end into a bowl of water. The officer then threatened M11 with an electric shock.

M11 said that he was assaulted in 15 to 20 minute sessions and that, after about the fourth session, he started confessing because it was the only way to stop the beating. He said that he could hardly walk because of the injuries to his feet.

He was allowed a shower and was then taken by police in a vehicle. He said that he was extremely afraid that he was going to be executed because police told him that he was heading down the same path as Colin Irvine. In fact, the trip was to Margaret River to assist police to locate property M11 had stolen in the area.

COLIN KOVACS

Kovacs was with M11 when they were arrested. Kovacs heard M11 tell police that they had been walking, it was cold and, when they saw the car, they decided to sit in it to keep warm. Kovacs recited this false account to police during his interview.

Kovacs gave evidence he was seated in a chair during his interview and that a police officer, who was sitting on the table, hit him in the face with the back of his fist. Kovacs said that this was repeated half a dozen times after he told police the false story. He said that another officer joined in and between them he was “back-fisted” at least another half a dozen times. He said that, while the assaults caused bruises, they were more shocking than painful.

He said that a different officer put him into a headlock and gave a couple of twists. He told the officer that he had broken ribs, but the officer replied “that doesn’t matter, we’ll just throw you through the window and say you did it while you were trying to escape”. Kovacs gave evidence that one officer said, “[W]e killed Colin Irvine and we’ll kill you too”.

Kovacs heard “not quite screams but definitely wails of pain” coming from the interview room next door to his at Morley CIB, and said that the voice sounded like M11’s. He said that the wailing happened several times and that it went on for a long time because he recalled thinking that M11 was “a pretty hard man to stand up to this”.

Kovacs also said that police tried to “set him up”. They brought a bag of powder into the interview room and, before placing it in his hands, said, “what do you think you’ll get this time Col?”

Kovacs said that, about a week to a month after their release, M11 told him that he had been handcuffed to a table and given, or threatened with, electric shocks, but he had no recollection of being told anything about M11’s feet. M11 told him that the police took him to Margaret River. He said that he travelled in fear of his life and that police tried to push him out of the car.

POLICE EVIDENCE RELATING TO M11 AND KOVACS

LS42 and LS43 drove M11 to Margaret River because the Margaret River police could not locate a stolen vehicle that M11 had hidden. LS42 claimed that M11 had agreed to go to Margaret River to locate the car. The officers all denied that M11 had been assaulted, or that he had cried out in pain. They denied all knowledge of these matters.

CONCLUSION

M11’s evidence of assaults was corroborated by Kovacs to the extent that Kovacs heard his cries of pain. There was also an early complaint of assault by M11 to Kovacs. In the context of M11’s claim that he was threatened with an electric shock and was beaten on the soles

of his feet, it is significant that M8 and M9 had alleged that the soles of their feet had been beaten, Gavin Irvine complained of a threatened electric shock and Stiggants said he was given an electric shock, all by Morley detectives, all in the years 1990 and 1991.

PHILIP STIGGANTS AND GLENN ASHBY

BACKGROUND

Philip Stiggants came under suspicion during the investigation of a break and enter and associated receiving charges in February and March 1991. Police obtained two search warrants for Stiggants' address in Embleton, where he lived with Glenn Ashby. The warrants were executed on 28 February 1991 and 5 March 1991. Stiggants was present at the first search but was "on the run" from police at the time of the second. Ashby was questioned regarding Stiggants' whereabouts. On 7 March 1991, police located Stiggants at the home of his friend, Rose Hanna, in Dianella.

PHILIP STIGGANTS

Police found Stiggants trying to hide in the false floor of a cupboard in Hanna's bedroom. Officers from Morley CIB pulled him out of the cupboard. Stiggants said that, as they were doing this, he was hit "a few times". The officers who were present, however, claimed that he had hit his head during their efforts to remove him from the cupboard. Stiggants was then taken into a room at Morley CIB, strip-searched and handcuffed tightly to the extent that his hands turned blue. He was left handcuffed and with his pants around his ankles. Stiggants said that he remained naked for a couple of hours.

While he was naked and handcuffed, Stiggants claimed he was punched in the ribs, head, arm, and shoulder between four and ten times and a plastic garbage bag was tied over his head. He said that while he was on the floor during the interrogation, one of the officers kicked his testicles, and that he was subsequently sodomised with a torch or a baton. An officer entered the room with an electric prod while he was still lying naked on the floor and "prodded [him] a few times".

Stiggants said that, at one stage, one of the officers had to take him to the toilet because he had defecated through fear.

Stiggants also said that an officer pointed a gun at his head and said something to the effect: "No one knows you're here and if I blew your brains out no one would know where you were". Stiggants said that, in response, he punched his fist through a window and said

“Oh I’ll do it for you then, if you like” and “I’ll just slash my wrists to save you pulling your trigger”. He said that, after he had broken the window, the police “went a little easier” on him and that he then co-operated with the police to some extent.

He denied that he attempted to throw himself through the window. He later pleaded guilty to a charge of wilful damage to the window. The Statement of Facts read to the court in mitigation made reference to his throwing himself through the window. The explanation put to the court on his behalf was that he had been subjected to “quite some time of vigorous questioning”. The sentencing Judge relied on the incident as evidence of Stiggants’ mental instability.

Stiggants had several marks on his body after his questioning by Morley detectives. He had black eyes, bruises and broken ribs. On the evening of 7 March 1991, officers from the East Perth Lockup took him to Royal Perth Hospital for assessment and treatment. His lawyer, M14, took photographs of the injuries.

GLENN ASHBY

Ashby said that he first knew that Stiggants was in trouble with the police when police searched their home. Ashby was then at home, but Stiggants was not. This must have been the second police search of the home. Ashby was taken to Morley CIB after the search and asked as to Stiggants’ whereabouts. Thereafter, Ashby said, police apprehended and questioned him about Stiggants’ whereabouts each day until they caught him.

He said that, at Morley CIB, he was handcuffed to the drainage pipes at the back of the CIB, and left there for about half an hour. As he was being walked back through the hallway, an officer hit him in the chest with his shoulder. He was taken to the middle room and handcuffed to a desk by his right hand. Three detectives were present. They hit him in the head about six times. When he was released that day, he returned to the house in Embleton, packed his and Stiggants’ belongings and went to his parents’ home. However, two detectives arrived at his parents’ home the next morning and he was taken back to Morley CIB and held there for the entire day. At Morley CIB, he was again taken to the middle room, handcuffed to the desk and punched in the head several times by detectives. The next day, the detectives picked him up once more. He thought that this occurred four days in a row. However, because of the relevant dates, he could not have been questioned more than three times. He said he was told by the police that if he did not reveal Stiggants’ whereabouts he would be charged with a \$17,000 break and enter offence. Ashby claimed that he had no knowledge of the break and enter, but he was subsequently charged with

the offence. He pleaded guilty because he said he was afraid and wanted the matter finished.

OTHER EVIDENCE

Royal Perth Hospital records indicate that Stiggants claimed that police assaulted him. In particular, it was recorded that Stiggants "claims to have been beaten repeatedly around the chest/head". The records support that Stiggants had "multiple bruises" and "pain on ribs".

Stiggants came to Ashby's parents' house after he had been released. Stiggants told Ashby that he had been stripped naked, had a bag put over his head, had been punched and "electrocuted" with an "electric jigger". Ashby said that Stiggants' face was black and blue, he had skin off his head, and he could hardly walk.

M14, Stiggants' lawyer, attended at Ashby's home to take photographs of Stiggants' injuries after he telephoned her regarding his complaints of assault by Morley CIB officers. M14's note of the call recorded:

[LS41] – hit him. Bags over head. Shocks – electric. Cow prod. Smashed windows. Cracked ribs. Believe him. Statement duress. No complaint. No marks on him. RPH. Thursday night. Casualty. Cops took him. ?Car accident. ?Fight. Female doctor, and Gary O'Reilly. Bring camera. Take photos of injuries. Remind of Nemuth.

M14 also noted her visit to Stiggants. The note included Stiggants' complaints that he was handcuffed to the table for half an hour; that he asked to have his handcuffs loosened on many occasions and, when they were finally removed, his hands were purple and had no feeling; that a plastic bag was placed on his head and someone started to tape around the bottom of the bag; an electric prodder was used on his arms, legs, and head; an officer "laid into him" and that he put his fist through a window because he had had enough.

M14 said that Stiggants originally told her that he tried to "slash his wrists" by putting his fist through the window.

M14 saw Stiggants a few days later. She recalled "his face being bruised and ... marks to his body".

Rose Hanna, the friend at whose house Stiggants was found on 7 March 1991, was not in the bedroom when Stiggants was located, but she heard banging and crashing. She heard Stiggants say "don't" and "ahh" and she heard crashing. She then left the kitchen and "took

off up the hallway and said 'stop it, leave him alone'. A detective told her to go away. She did the same thing a second time after hearing more crashing and yelling. Hanna said that she saw Stiggants after he was found in the bedroom and that he then had a graze on his head.

She also saw Stiggants the day after he had been questioned by Morley CIB. She said that he could "barely walk", had bruising, mainly to his right side, over his back, arm, and on his legs. Stiggants showed her deep handcuff marks on his wrists. He told her that police had put a plastic bag on him and taped it up so that he could not breathe. They stripped him naked on the floor, and one of them took a baton or a torch and "put it up his backside". He said that he had been "zapped" with a cattle prodder and showed her blood blisters on his back.

POLICE EVIDENCE

Several detectives gave evidence. Some denied any recollection of dealing with Stiggants or Ashby. All denied knowledge of any assault on either man.

Stiggants has not subsequently attempted to deflect criminal charges by alleging those assaults and did not volunteer this information to the Royal Commission.

SIMILARITY OF COMPLAINTS

It is of some assistance in assessing Stiggants' allegations that, in the same period, several other allegations of assault by Morley CIB were made. In particular, the use, or threatened use, of an electrical device has been independently alleged by M11 and Gavin Irvine, as well as by Stiggants. There was a similarity in the nature of the alleged assaults on persons being interrogated.

CONCLUSION

There was substantial corroboration of Stiggants' evidence that he carried injuries at the time he attended Royal Perth Hospital and when he arrived at the home of Ashby's parents. None of the police witnesses said, and no documentation suggested, that he carried these injuries at the time of his apprehension. There is evidence of a graze on his head caused during his apprehension. Otherwise, however, Hanna's evidence is to the effect that he did not then have the injuries that she saw after his release.

One important issue is whether some of Stiggants' injuries were caused when he broke the window at Morley CIB. Stiggants pleaded guilty to a damage charge. The Statement of Material Facts from police included that he attempted to throw himself through the window. In evidence at the Royal Commission, it was suggested that Stiggants' attempt to throw himself through the window could have caused the injuries to the right side of his body. There was conflicting evidence whether this was in fact possible, by reason of a security grille covering the window. However, no officer recalled being present when Stiggants broke the window and none was able to assist on how the window was broken. Hanna's evidence was that she was unsure whether Stiggants told her that he punched the window or tried to throw himself through the window. Significantly, in an original file note of a conversation that M14 had with Stiggants shortly after the incident, she recorded that Stiggants told her that he punched the window. Stiggants gave evidence at the Royal Commission that he only punched the window. He felt he "didn't really have a choice" but to plead guilty to the particulars alleged and that "he decided it wasn't worthwhile" to exercise any other option.

3.23 SEIZURE OF AMPHETAMINE BY SCARBOROUGH CIB

In August 1991, information received by Scarborough CIB led them to an address in Balcatta. During the search, a quantity of amphetamine was found in the handbag of M18, a resident in the house. M19, M18's partner, also lived in the house.

L5 gave evidence that, pursuant to an arrangement made between the officers and M18, a small quantity of the amphetamine was left behind. L5 was not sure whether he or LS15 initiated the arrangement, but said that LS15 subsequently dealt with M18. L6 also gave evidence that LS15 dealt with the matter.

M18 and M19 gave evidence to the Royal Commission. Both M18 and M19 said that approximately one ounce of amphetamine had been purchased the previous day and divided into 30 packets of one gram each. Some had been used in the meantime, so that about 26 grams remained when the detectives arrived. However, in information supplied to another agency on a previous occasion, M19 estimated that 16 grams remained. M19 did not adequately explain the discrepancy. According to M19, the arrangement with the police included the reduction of any charges against M18 on condition that M19 provided information to Scarborough CIB in respect of drug dealers. As a result, M18 did provide information and neither person was arrested or charged.

Both M18 and M19 recalled a discussion with police about whether an amount of amphetamine could be left for their personal use. One said that none was left and the other

could not recall. M19 said, however, that about one or two grams were returned to him after he had provided some assistance to the police.

M18 was under the impression, until the Royal Commission hearing that M19 had been charged in respect of the amphetamine, but on reduced charges. That fact and the other evidence referred to strongly suggest that a detective retained at least some of the drugs. However, no record of amphetamine or other drug was made in respect of the seizure, either at the Drug Room or in the Scarborough CIB P11 book.

In evidence, LS15 claimed that he could not recall any conversation about the return of drugs and denied returning any drugs to either witness.

There were a number of inconsistencies between the recollections of M18 and M19, and other inadequacies, that made firm conclusions difficult in this matter. The principal concern is that an amount of amphetamine seized by detectives was not accounted for in any documentation and its fate was not otherwise explained.

3.24 STOLEN PROPERTY RECOVERED BY CLAREMONT CIB

While L5 was relieving OIC at Claremont CIB, the office received several reports of burglaries on premises in the Claremont and Mosman Park areas. He received information about the offenders and arranged for search warrants to be obtained and executed on various premises.

Claremont detectives executed the first search warrant in East Perth on 20 February 1992. They seized property and arrested one of the suspects, a female juvenile. Receipts at Claremont CIB indicate that the property was recorded in the property books by L5 on 27 February 1992, seven days after the search.

Two further search warrants were executed in Maylands on 9 March 1992, and more stolen property was recovered. Probationary Detective LS61 recorded that property on 9 and 12 March 1992.

L5 said that it was difficult to trace owners for much of the property. To assist in tracing owners, police arranged for the local newspaper to photograph the recovered items and publish an article concerning their recovery. The property was set out on a table in preparation for the photograph. However, before the photograph was taken, officers took some of the property. L5 said that the occasion was referred to as a "lucky dip".

L5 initially said that every detective at Claremont CIB at the time took something, and he named several. He later conceded that, although he recalled that LS37 and LS39 were present in the lunchroom, he did not see either officer take any property.

L5 took a household item and a watch from the table. L5 recalled that LS16, an officer who was on leave at the time, attended Claremont CIB in company with L4, a senior officer, to look through the property. L5 specifically recalled that LS16 took a lady's gold watch and L4 took jewellery. He said that L1 took a boxed antique English silver cutlery set.

L1 recalled that there was an office full of property on one occasion during his time at Claremont CIB, but he was unsure if it was the incident in question. More generally, L1 said that, in his experience, detectives at Claremont CIB did take property that had been seized from offenders. He said that he too had taken property, including a leather jacket, other clothing, a CD and cash every now and again. He was asked by Royal Commission investigators whether he recalled an antique cutlery set. Initially, he did not. However, after speaking to his former wife, L1 was able to confirm in evidence that he had taken a cutlery set, although not an antique set. At the time L5 gave this information he was unaware that L1 was assisting the Royal Commission. The confirmation by L1 assisted the Royal Commission in its assessment of L5's credibility.

Each detective adversely mentioned by L5 or L1 in this matter denied having stolen property. Nevertheless, the evidence was generally persuasive that the "lucky dip" referred to by L5 occurred as he alleged.

3.25 ARREST OF MICHAEL McGRATH

SEIZURE OF PROPERTY

Michael McGrath was arrested by L6, L8, LS3, LS4 and LS14 in a motel room on 13 February 1992 in connection with the manufacture of "home bake" heroin. During a search of his room, officers located a key for a room in another motel. LS3 and LS4 went to the second motel and conducted another search. They found a document relating to a storage unit in Wembley. They also found a key to the lock at the self-storage unit.

The following day, a warrant was obtained and LS3 and LS4 searched the storage unit. LS3 advised L6 by telephone that there was a large quantity of chemicals and other property in the unit and asked him to attend with a van, which he did. L8, LS3 and LS4 searched through the property after it had been transported to Scarborough CIB office.

Some time during the morning of 14 February 1992, Tracy Ward, McGrath's girlfriend, contacted L8 by phone and asked him about the hire car that McGrath was using. L8 advised her that it was in police possession and that, if the hire company agreed, she could take it with her on the following Monday, when she could also collect McGrath's personal property.

On Monday, 17 February 1992, Ward attended Scarborough CIB. L8 took her to the back verandah of the office and showed her the property. Her immediate reaction was to say, "[W]ell for your sake then the money better be there". L8 asked her what she was looking for and she said, "[T]here was \$6,000 in that storage unit, it had better be here". She then removed four cans of beer from a plastic container, held them up and said, "[I]t's gone. Where is it?" Ward mentioned two missing beer cans. She said that one can contained US currency, belonging to McGrath, and that there was also Australian currency she had saved for an ice-skating carnival. L8 told her that no money had been found.

Later that day, L6 and L8 attended at the Canning Vale Remand Centre where they spoke with McGrath who confirmed that Ward had kept money in the storage unit. As L6 and L8 were leaving the prison complex, Ward and McGrath's mother drove into the car park. Ward made some insulting remarks and alluded to police having taken money.

COMPLAINT BY WARD

Ward telephoned the Ombudsman's office that day. She made a written complaint to the Ombudsman by a letter, which is undated, but date-stamped 27 February 1992 by the Ombudsman's office. Ward stated in her letter that she had "\$6,750 Australian dollars, give or take a dollar" in the storage unit hidden in a six-pack of beer cans. She said that "the two cans in the centre were weighed so they felt full but they had trick lids that could be unscrewed, inside was a red tube down the center where the money was rolled up".

Ward also referred to some US currency that she said McGrath had in the storage unit, which he had told his mother to collect to pay for a solicitor.

The complaint to the Ombudsman was referred to police and L4 commenced an investigation. L4 took statements from Ward, McGrath and McGrath's mother. Ward's statement is generally consistent with her letter to the Ombudsman. McGrath's statement also refers to a six-pack of beer cans, which he specified as Tooheys beer. He stated that the two cans in the middle were empty and had screw top lids and that one can contained \$400 US, which belonged to him. The other can, he said, "[w]as full of money".

EVIDENCE OF L8

L8 told the Royal Commission that he, L6, LS3 and LS4 started to sort through the property returned to Scarborough from the Wembley self-storage unit. L6 and L8 wandered away. After some time, L8 heard LS4 exclaim "Yes, yes, yes!" L8 returned and saw LS4 holding a can of "Eastern States beer", which had its lid off. He saw a roll of banknotes in the can. LS4 pulled the money from the can. He then took a second can and pulled out a roll of US currency banknotes.

L8 and LS3 took the money into the bathroom and counted it on the floor. L8 explained that the bathroom was used so that no one other than the officers concerned could observe what was to take place.

L8 said that he, LS3, LS4, LS14, and "probably" LS5, spoke about the money and agreed to take it. It was decided that, rather than replace the imitation cans with real cans of beer, they would leave the four cans of beer and dispose of the two imitation cans. There was also a discussion about the US currency. LS3 was due to visit the USA and offered to take the US currency with him and reimburse other officers later. L8 said that LS3 did later place Australian currency in the Scarborough CIB social club fund.

L8 said that the Australian currency found on the day was divided so that the officers concerned and the social club fund each received an equal share. The total amount found by officers was approximately the same as the amount Ward had complained was stolen.

L8 gave further evidence in respect of one of the detectives. He said that, in about 2001, in a discussion at a junior sporting function, LS3 said of his dealings with the ACC, "Just be careful. They haven't mentioned McGrath but it might come later".

EVIDENCE OF L6

L6 gave evidence that he assisted in transporting the property seized from the storage unit in Wembley back to Scarborough CIB. He helped search through the property for a short period, but then left. He heard LS4 yell "Yes, yes, yes!" three or four times very loudly. L6 left his office, walked to the porch where he too saw LS3 reveal money stashed inside a beer can. L6 told the Royal Commission that the money found was disbursed among the officers at Scarborough CIB.

L6 also told the Royal Commission about the attendance of Ward at Scarborough CIB. He recalled that she told officers that the money had been saved for, L6 thought, a skiing or skating trip. He said that Ward opened a beer can to see if there was money in it. That

evidence could not be correct on either L8's version that only the four real cans of beer remained with the property or on Ward's statement that the two false beer cans were missing. L6 also said that he thought he was given \$200. He volunteered that, although he thought that Ward complained that \$5,000 was missing, his estimate was that only about \$2,000 was found. That evidence is also inconsistent with the evidence of L8 and with Ward's complaint.

In certain other respects, the recollection of detail by L6 was not as accurate as that of L8. Accordingly, on the issues of Ward's inspection of the beer cans and the amount of money found and distributed to officers, the Royal Commission preferred the evidence of L8 to that of L6.

CONCLUSION

The allegation in this case that Scarborough detectives found money, and kept it, is among the more easily resolved issues before the Royal Commission. There is no little likelihood that each of Ward's complaints, the evidence of L8 and the evidence of L6 was mistaken or false. Each was independent of, but consistent with, the others. There is no reason to suspect collusion between any of Ward, L8 or L6 and no discernible motive for collusion. The fact that money was hidden in false beer cans is such a specific and unusual fact that there is little possibility that both L8 and L6 have confused events. L8 was able to describe the false cans. The fact that L6 and L8 independently recalled LS4's exclamation "yes, yes, yes!", and were each then shown the money, are compelling evidence that money was found. L8 said he was "100 per cent" certain of this, and that the utterance "yes, yes, yes!" became a standing joke at Scarborough CIB.

INVESTIGATION BY L4

L4 investigated Ward's allegations by, among other things, requiring each officer concerned to prepare a report. That is obviously an undesirable approach because it allows officers to collude in the preparation of a consistent, and exculpatory, version of events. In this case, officers did collude, did prepare consistent versions of events and did consistently, but falsely, deny Ward's allegations.

L4 and L8 saw each other once a week in this period. Weekly meetings were held at L4's office, along with other officers in charge of suburban CIB offices. On the evidence of L8, on an occasion when L4 came to Scarborough CIB office, he said to L8 words to the effect: "[S]hame about the American dollars, because I'm going to the States. It might have helped smooth things a little bit".

L8 understood that, if L8 gave the US currency to L4, he would have written off Ward's complaint in his report. L8 then discussed with LS3, LS4 and LS14 whether to give L4 some of the money. LS3, LS4 and L8 agreed that they should give some money to L4, but not the US currency, which by then was no longer available. LS14 was opposed to the idea on the grounds that payment to L4 would be an admission of guilt. L8 did not consider that a problem, "knowing L4 at the time as we did". It was decided that L4 would be paid from money in the social club fund. L8 took \$300 to the next weekly meeting with L4 at Wembley CIB and, on L4's instruction, placed it in a drawer of his desk.

L8's view was that, even without the payment to L4, it was unlikely that Ward's complaint would be substantiated, but there was sufficient possibility of substantiation to make it seem to him "safer" to "bring L4 into the loop".

In respect of the payment to L4, the evidence of L8 stands alone. It is not corroborated by other evidence and is contradicted by the evidence of other detectives. L8's recollection of detail rules out any confusion in his mind about the circumstances in which relevant conversations were conducted.

L8's approach to the Royal Commission arose from his understanding that L4 had confessed to Royal Commission investigators that he had accepted money from L8. L8's reason for approaching the Royal Commission, and the circumstances of his approach, are persuasive support for the truth of his evidence that money was paid. He assumed, from L4's evidence to the Royal Commission, that L4 had decided to tell the truth, even where that implicated fellow officers.

In the light of their evidence in respect of finding Ward's money, less confidence could be placed in the truthfulness of the evidence of the three detectives said by L8 to have been involved in conversations about a payment to L4.

3.26 SEARCHES OF THE HOME OF JOHN AND MARGARET FORD

INTRODUCTION

Three searches were conducted by police at the home of John and Margaret Ford at Wilton Place, Scarborough between October 1992 and February 1993. The first search, on the morning of 12 October 1992, was organized and conducted by officers from Scarborough CIB. Detectives seized approximately \$4,500 and a small quantity of white powder believed to be either cocaine or amphetamine. The Royal Commission heard evidence that an officer

came to an understanding with the Fords that they were not to be charged with possession of drugs, but that the police would retain all or part of the money seized.

The second search took place on 18 November 1992. It was organized and conducted by officers from the Drug Squad, although officers from Scarborough CIB were called in to assist. A large amount of stolen property was located, including air conditioners, power tools and hi-fi equipment. L5 and L6 said that officers from the Drug Squad and Scarborough CIB stole some of the property. Small amounts of cocaine and amphetamine were also seized during the search of the house. Ford was charged in respect of the drugs and also with receiving stolen goods, but only in respect of the air conditioners.

Officers from Scarborough CIB conducted a third search of the Fords' home on 18 February 1993. When they arrived, Mrs Ford was home alone. Evidence was heard that officers located a small quantity of amphetamine and \$1000 during the search, and that L5 agreed not to charge the Fords with possession of drugs but retained the money seized and shared it between officers at Scarborough CIB. Apart from L5 and L6, each of the former Scarborough and Drug Squad detectives who gave evidence denied knowledge of the improprieties alleged.

FIRST SEARCH – 12 OCTOBER 1992 AND THIRD SEARCH, 18 FEBRUARY 1993

EVIDENCE OF MR AND MRS FORD

Ford gave evidence that, on the first search, a small bag containing three or four grams of cocaine was found by an officer in an ivy bush where Mrs Ford had placed it the previous night. Ford gained the impression that the officer already knew where the drugs had been hidden, from which Ford assumed the involvement of an informant. Police also seized some jewellery and \$4,500 in cash from a small box on the dressing table in a bedroom.

The Fords were taken to the Scarborough CIB office. According to Ford, he then had a discussion with L5. L5 asked about the money and Ford told him that he was not concerned about the money, but was concerned about the prospect of being charged with possession of cocaine. L5 left and spoke to a colleague. When he returned, he told Ford that police would keep \$2,500, \$2,000 would be returned, and Ford would not be charged. Ford was also asked to provide L5 with the name of a drug dealer, which Ford agreed to do.

L5 then counted out \$2,000 and returned it to Ford, along with the jewellery. Police retained \$2,500 and the cocaine. No charges were laid against either Mr or Mrs Ford.

Mrs Ford recalled the first search in similar terms to her husband. In particular, she said that Ford told her shortly after they left Scarborough CIB that they would not be charged and that police had kept \$2,500.

L5, LS3, LS5 and LS14 conducted the third search on 18 February 1993. When officers arrived, Mrs Ford was at home but Ford was at his workshop. Police located approximately two grams of amphetamine in Mrs Ford's handbag. They also found \$1,000, which Mrs Ford told them was for her daughter's dental treatment. One of the officers told her not to worry about the money and that it would be safe with him.

Mrs Ford was then taken to the Scarborough CIB office by L5 who, she said, made threatening remarks to her. At the office, she asked another officer about the money. That officer spoke to L5 who then came into the room and told her to "shut up and not say anymore about the money". L5 telephoned Ford and asked him to attend the CIB office. After Ford arrived, L5 told Mrs Ford that police would not charge her with possession of amphetamine. Mrs Ford again raised the issue of the \$1,000, this time with Ford. He told her to forget about it. L5 then returned the drugs to Mrs Ford.

Ford's recollection of the event is similar to that of Mrs Ford. He recalled being asked by L5 to attend Scarborough CIB because his wife was hysterical. When he got there, Mrs Ford told him about the money and he told her to forget about it. L5 returned the amphetamine to Mrs Ford but not the money.

EVIDENCE OF OTHER OFFICERS

LS3, LS5 and LS14 (who were known to have been involved in the two searches) each denied that money was taken or shared, that drugs were returned to the Fords or that any arrangements were made to reduce charges.

During a private hearing, LS5 recalled that a white powder, which he believed was amphetamine, was seized from Mrs Ford on the third search. However, several months later, during the public hearing, he told the Royal Commission that, after seeing Mrs Ford's records, which stated she had been charged with possession of cannabis on 18 February 1993, he now believed that his original evidence in the private hearing was incorrect. It was put to him that his original recollection was correct, and that his altered recollection was tailored to avoid adverse inferences. This he denied.

EVIDENCE OF L5

L5 was uncertain about the sequence of the three searches. He recalled what he thought was one search. He said that officers from Scarborough CIB seized approximately \$4,000 from the Fords in addition to a quantity of amphetamine. They also found jewellery, some of which Mrs Ford admitted had been stolen and had been exchanged for drugs. The seizure of drugs and jewellery and the amount of cash found are generally consistent with Ford's account of the first search.

However, other aspects of L5's evidence in relation to the search he recalled were consistent with the Fords' account of the third search but not consistent with the accounts given by the Fords of the first search. In particular, L5 said that:

- Mrs Ford was home alone when police arrived and Ford was at his workshop;
- During the search, and later at Scarborough CIB, Mrs Ford was upset about police taking the money as a result of which Ford was contacted and attended Scarborough CIB;
- L5 brought the Fords together in the same room, Mrs Ford was still upset but Ford told her to "forget about the money";
- L5 kept all the money found at the Fords' home and put it into the social club fund; and
- When Mrs Ford asked about the drugs, L5 gave them back to her.

According to L5:

... it was decided – not by me, but by everybody in general – that we were going to keep the money and I just told him [Ford], because his wife was under the influence of drugs. She was coming down off heroin. That's why she wanted the speed, to get back up again, pick herself up ...

This evidence from L5 is also consistent with journal entries of LS3, LS5 and LS14 in relation to the search conducted by Scarborough CIB on 18 February 1993.

EVIDENCE OF L6 – THIRD SEARCH

L6 recalled attending the Fords' house on two searches while he was stationed at Scarborough CIB. One of those searches, the second, he said, involved the Drug Squad. His recollection of the other search is generally consistent with the Fords' account of the third search on 18 February 1993. In particular, L6 said that Mrs Ford was home alone when the

search was conducted. He recalled that amphetamine was found, possibly in the kitchen, in a small press-seal bag. L5 brought to his attention some US and Australian dollars that he had found. L6 could not recall the amount, although he thought it was not as much as \$4,000.

At Scarborough CIB, Mrs Ford admitted possession of the amphetamine. L6 typed up a summons and other paperwork for a brief of evidence. About a month later, Ford telephoned Scarborough CIB. He spoke to L6 and said to him words to the effect that "Margaret never got the summons because of an agreement with L5". L6 did not discuss the telephone call with L5.

L6 could not recall if he was present when L5 and Ford made an agreement. However, about two days later he received approximately \$200 Australian from L5. L6 did not see any other officer receive money from L5.

L6's evidence seems incorrect as to sequence. The search by Scarborough detectives must have occurred after the Drug Squad search, not before, as he recalled it.

CONCLUSION – FIRST AND THIRD SEARCHES

The Fords' evidence was clear and, for the most part, consistent. Apart from an error as to sequence, the evidence of L6 was relatively clear, and was consistent with the Fords' account of the third search.

The confusion in the evidence of L5 is a reason for caution in respect of the central allegations, but is not determinative. First, some lapse of memory is understandable given the regularity with which suburban CIB officers conducted searches, and it is to be expected that they could not recall each search in detail, particularly since ten years had passed since the searches took place. Further, as noted earlier, L5 and L6 did not retain their journals and did not have resort to other documents. They relied on raw memory to recount the incidents.

Secondly, and more importantly, it is to be expected that a degree of confusion may have arisen because there were three searches of the Fords' home within a few months and the circumstances of the two corrupt arrangements were similar. According to the Fords, in both the first and third searches, officers found drugs and cash, kept the cash or part of it following a discussion with L5, and no charges were laid. In both cases, only L5 and Ford were present when deals were made.

Whatever the reason for L5's confusion about the first and third searches, it is clear from the evidence of the Fords and L6, and to a lesser extent from the evidence of other detectives, that L5 has conflated the details of the two searches. That error, however, does not lead to a complete rejection of his evidence. The evidence in relation to the first search is nevertheless persuasive that police found about \$4,500 and drugs, that L5 made a deal with Ford in which the Fords would not be charged with possession of drugs and that L5 took part of the money seized during the search.

In respect of the third search, the evidence is also persuasive that officers found amphetamine and about \$1,000 cash at the Fords' home. L5 seized the \$1,000 and returned the amphetamine to Mrs Ford. No charges were laid against Mrs Ford in respect of the amphetamine. L5 could not specify officers to whom he distributed money, and no specific conclusion could be made in that regard, except that L5 and L6 received a share of money from the third search.

SECOND SEARCH – 18 NOVEMBER 1992

L8 and L6 gave evidence that a search was organized by the Drug Squad and that Scarborough CIB was asked to provide assistance. L5, L6, LS5 and LS14 from Scarborough CIB attended the search.

EVIDENCE OF MR AND MRS FORD

Ford recalled that the Drug Squad operation commenced at approximately 6.30 am or 7.00 am and continued until about 5.00 pm. Officers found a small amount of cocaine in a bedside drawer and, later in the day, police discovered some amphetamine hidden in the curtains.

Police also recovered a large amount of stolen property, including air conditioning units, power tools and a stereo sound system. Ford told officers that he also stored property at a rented lock-up. Police took him there and recovered more property. Ford said that the property was loaded into police vans and taken to Scarborough CIB.

Ford was subsequently charged with possession of the drugs found. He was also charged with receiving stolen goods, but only in relation to the air conditioning parts. There were no charges in relation to the other items of stolen property seized.

Mrs Ford recalled less detail of the search than Ford. Mrs Ford did, however, remember police officers from the Drug Squad and Scarborough CIB coming to her house and seizing a large amount of property.

EVIDENCE OF L5, L6 AND L8

L5 recalled that a large amount of stolen property was recovered, including power tools and stereo equipment. Although L5 was not certain, he thought that 10 or 12 air conditioning units had been seized at the previous search. That appears not to be correct. The property book lists air conditioners in respect of the search in November 1992.

L5 recalled LS58, an officer from the Drug Squad, placing a piece of stereo equipment or videocassette recorder into the back of a police car. He could not recall any other particular officer taking property at the house.

About three vanloads of property were taken back to Scarborough CIB and initially placed on the verandah. Officers stole much of that property before the remaining items were listed in the property book. LS3 took a mitre saw.

L6 agreed that a large amount of property was seized, including computer equipment and tools, during the Drug Squad search. After the property was taken to Scarborough CIB, he saw Drug Squad officers coming and going. He specifically recalled LS58 carrying an electric typewriter away. Although he did not see any other officer steal particular property, the amount of property at Scarborough CIB "virtually halved" over a day or so.

L8 was asked to provide assistance to the Drug Squad and sent L5 and other officers to assist, but did not personally attend the search. L8 did not see an officer take property for personal use. However, he recalled that L6, or a probationary detective, told him later that LS58 had placed an electric typewriter in the boot of his car. He also said that he took LS3 home in a police car shortly after the search and that LS3 took a drop-saw from the boot of the car.

L8 also asked L5 why Ford had been charged with receiving in relation only to the air conditioning units. L5 told him that Ford was "doing some work for us". L8 accepted the explanation.

EVIDENCE OF OTHER POLICE OFFICERS

Each of the former Scarborough and Drug Squad detectives who gave evidence denied knowledge of any thefts of property by police.

CONCLUSION – SECOND SEARCH

L5's evidence was that officers stole property seized during the search. L6 was clear that the quantity of property stored at Scarborough CIB "virtually halved" over a day or so because officers took items of property. It is improbable that two of the detectives at Scarborough CIB at the time gave similar false or mistaken evidence on the issue.

3.27 SEIZURE OF YEN BY SCARBOROUGH DETECTIVES

On 26 January 1993, Sumura Masahiko, a golf professional, reported to Police Communications that his home in Innaloo had been burgled and a number of items taken. The items included a Sony Walkman, a gold ring, a dress ring, a pendant and a large sum in Japanese Yen. The offence report indicated that 1.5 million Yen had been taken. However, that sum was an error, according to L5, and only 100,000 Yen had been stolen.

INVESTIGATION BY SCARBOROUGH DETECTIVES

On 27 January 1993, the offence report was allocated to Scarborough and L5 took command of the investigation. He was assisted by L6 and other Scarborough detectives. On 28 January 1993, they searched two premises and made a number of arrests. During the searches, a Walkman, a watch and a ring were recovered. These items were recorded on a property receipt, before being returned to Masahiko. Also recovered was an amount in Yen.

L5 and L6 gave evidence to the effect that some of the recovered Yen were taken by L5, converted to Australian currency and shared among officers at Scarborough CIB.

L5 said that, because it was his inquiry, it fell to him to convert the Yen to Australian dollars. It was some time before he felt he could safely attend at Burswood Casino and at Perth International Airport to convert the Yen having regard to an alert that had been issued to currency dealers as part of the inquiry. He converted small amounts of Yen on a number of different occasions so that he did not draw attention to a transaction involving a large amount of Yen. He estimated that he converted in total the equivalent of approximately \$4,000.

L5 said that the money was distributed equally between all members of Scarborough CIB. He remembered giving an envelope of money to LS3, LS4, LS5, LS6, LS14 and LS60. He said that L8 also received an envelope even though he was not working at Scarborough CIB at the time.

L6 recalled the investigation into the theft of the Yen. His recollection was that some of the Yen were recovered, a portion was retained by L5 and he was later given an amount of money, which he presumed was from the Yen investigation because no other job had been conducted in the meantime. L6 also recalled that, before he received the money, LS3 and LS4 spoke to him of their concern that L5 might keep the money for himself.

L8 said that, while he had a vague recollection of the investigation into the theft of Japanese currency, and of talk about the Burswood Casino, he did not recall if he or other officers received money in respect of the matter. However, from his experience in working at Scarborough CIB, money taken by an officer was always shared.

Apart from L5, L6 and L8, no officer accepted that Yen had been converted and the proceeds paid to detectives at Scarborough CIB. Each denied that he received money.

CONCLUSION

In this matter L5 and L6 corroborate one another's account. On the evidence of L5, L6 and L8, the theft of money by Scarborough CIB officers was not unknown. In the circumstances the evidence was persuasive that some Yen were taken by L5, converted by him into Australian dollars and shared between other officers who were based, or had recently been based, at Scarborough CIB.

3.28 SEARCH OF THE HOME OF M1 BY MT HAWTHORN CIB

Members of the Mt Hawthorn CIB conducted a search on 21 September 1993 at the home of M1. The search was initiated upon information in respect of cannabis. An amount of cash was also found and seized. Documentary evidence showed that M1 was given a receipt for the seizure of \$4,400 and that a cheque for that amount was paid to him on his release from prison.

EVIDENCE OF L5

In September 1993, L5 was acting in the role of OIC of Mt Hawthorn CIB, replacing LS9. He attended the search with LS14 and one or two other detectives, including a probationary detective, LS49. LS49 had earlier resigned from WAPS and recently rejoined.

During the search, money was found in a bedroom belonging to one of the brothers who lived in the house with their mother. L5 said that LS14 initially searched the room but did not locate the money. He said that LS49 later saw it during his search of the same area. L5 could not recall the amount found, but thought it was between \$4,000 and \$8,000.

The money was taken to the Mt Hawthorn CIB office before being counted. According to L5, LS49 counted the money. He said that it was at this time that police retained a portion of the money and entered the remainder into the property book. L5 denied that he had possession of the money en route to the CIB office, because the inquiry and the money, he said, were the responsibility of LS49.

L5 said that, on the following day, M2, the brother of M1, attended at Mt Hawthorn CIB with another person and asked that the seized money be returned. He recalled that, despite initially being upset, they left after speaking to LS49 and made no allegation about a theft of money. He thought the recorded amount of cash was returned at this time. It is evident that L5 is mistaken in this regard, because the money recorded in the property book was returned to M1 months later, in the form of a cheque.

L5 received between \$100 and \$150 from the amount seized from M1's house. He said that, following LS9's return from leave, he was also given an envelope that contained a share of the money stolen from M1.

EVIDENCE OF M1

M1 said he was living with his mother at the time of the search but was not present when the Mt Hawthorn officers arrived. He returned to the house as a result of a telephone call. He recognized LS49 as the officer who had attended the home a couple of months earlier and introduced himself by name as an officer from Mt Hawthorn CIB.

M1 said that, on the day of the search, he had left \$6,000 in a wallet in a drawer in his bedroom. He accepted that he could not be certain of the exact amount, but was definite that it was more than \$4,400. When he arrived home during the search, M1 discovered that the money had been removed.

M1 travelled to Mt Hawthorn CIB in company with LS49. On arrival, he saw another detective counting his money. He was asked how much money he had left and he replied: "Six thousand". The detective then told him that only \$4,000 had been found. M1 participated in a typed record of interview at Mt Hawthorn CIB with LS49 and the detective he had seen counting the money. The detective who assisted at interview was L5, but he denied having counted the money earlier.

EVIDENCE OF LS14

LS14 gave evidence that he attended on the search in company with L5 and LS49 and possibly one other officer. Cannabis was observed in a neighbouring property and he became involved in searching that address. He thought L5 and LS49 remained at M1's house. LS14's journal entry for this date records an attendance at both addresses and the seizure of cannabis and subsequent arrest of both M1 and the neighbour.

LS14 said that prior to departing M1's home to attend at the neighbour's, he located an amount of money in M1's bedroom, which he believed to be about \$2,000. He said he left the money where he found it because M1 and his brother gave a satisfactory explanation for it. After his departure to search the neighbour's premises, LS14 had no further involvement with M1, the search of M1's home or any subsequent seizures. He claimed that he never became aware that the money had been seized from M1's house as a result of this search and denied that he had received any amount of money from another officer relating to the matter.

EVIDENCE OF LS49

LS49 gave evidence that he attended at M1's home on 21 September 1993 with L5 and LS14. He could not recall attending at an earlier date, as described by M1, but could not say for certain that he did not.

LS49 located cannabis in the rear yard but could not recall whether he participated in the search of the house. He was aware that an amount of money was found in the house but could not recall the circumstances of the find or the subsequent arrangements for travelling between M1's home and the Mt Hawthorn CIB office.

Similarly, LS49 could not recall counting the money, but he was certain that he would have done so at the office because he entered it into the property book. He said he did not recall M1 suggesting that money was missing. As far as he was aware, money from the search was entered correctly into the property book. He denied taking or receiving any money.

EVIDENCE OF OTHER DETECTIVES

Other detectives who were at Mt Hawthorn CIB at the time denied any knowledge of additional money being seized and denied receiving money in respect of this matter.

DISCREPANCIES

There were significant discrepancies in the evidence of various witnesses, that were not capable. In particular, the evidence of L5 to the ACC differed in significant respects from his evidence to the Royal Commission. However, none of the discrepancies detracted from the core evidence of L5 and M1 that police stole money from M1. The evidence of each was entirely independent of the other.

It was suggested that L5 acted alone in stealing the money. On other occasions when L5 was the principal offender, however, he has said so in evidence. In this matter there is no apparent reason why he would alter his approach in this case.

3.29 TENDER OF MONEY TO L3

L3 was stationed at the Drug Squad between 1994 and 1996 as the OIC. He said that LS3 approached him, asked him to go into L3's office, produced a \$100 note and offered it to L3. L3 said that, at the time, he did not know LS3 well. There was no legitimate reason for the offer of money.

L3 was initially shocked by LS3's action, but soon became angry. He told LS3 to put the money away, get out of the office and put in for a transfer. About half an hour later, L3 reported the incident to his superintendent. The superintendent asked what he wanted to do about it. L3 realized that it was his word against LS3's, and that the allegation was not "going anywhere". He advised his superintendent, however, that he had told LS3 to apply for a transfer and asked the superintendent to make sure that it occurred. As it happened, however, L3 was transferred out of the Drug Squad first.

LS3 agreed that he had offered L3 \$50 or \$100, but claimed that he did it to test L3's integrity. He said that he had heard that L3 was suspected of leaking information to Drug Squad targets.

The explanation offered by LS3 is extraordinary. He was unable to explain why he took it upon himself to conduct an integrity test of a superior officer, why he did not involve any senior officers or where he heard that L3 was a suspect. He did not make a record of the

integrity test and did not report his suspicion or his intention to any other officer. Additionally, he could not clarify how L3's acceptance of \$100 would be probative in respect of culpability for leaking information. Nor was it apparent, however, if L3 had accepted the money, that L3 could have proved that he had.

3.30 OTHER MATTERS

Certain matters, which were raised in the Operation Least Said hearings, have not been included in the preceding narrative. They include the following:

- Some L series witnesses gave evidence of conversations with a colleague, which suggested corruption, but which were denied by the colleagues concerned. In the absence of additional evidence in respect of the subject of those conversations, the matters were not included;
- An allegation was made that detectives from the Drug Squad used an agent provocateur to set in train events that justified the arrest of Anne Liddon, their primary motive being to discredit her in an imminent trial at which she was to give evidence against police officers. The Royal Commission was interested in this matter solely for the light it may have shed on the credit of certain detectives. However, despite the suspicion entertained by L5 in this matter, he could not give evidence that any of those detectives admitted the ulterior motive, and his circumstantial evidence was not specific to those officers;
- In respect of the M4 matter, evidence was led from L5 of the delivery of an envelope to a particular detective. L5 was not able to say that the envelope contained money and his evidence did not satisfactorily establish a connection between the M4 matter and the delivery of the envelope;
- L2 alleged that, while an amount of money was recovered during a particular investigation, detectives later reported that substantially less was recovered. The person from whom it was allegedly taken, Arran Reynolds, gave an account that varied substantially from L2's account;
- L1 suggested that detectives attempted to have him alter his notes of a suspect's responses to questions. As the matter progressed, it became clear that L1 may have misunderstood the detectives' intentions;
- Various allegations were made about a certain officer who had been attached to the Drug Squad, but who later moved to the uniformed branch. After investigation of those allegations had begun under Operation Least Said, substantially more information was received and the Royal Commission was obliged to separate those matters from Least Said;

- L8 mentioned the search of premises in Southlakes in terms that implied, but fell short of, an improper purpose; and
- L1 said that an officer had made a jocular but nevertheless inappropriate comment during a lecture to detectives. This claim could not be substantiated. There was uniform denial by other members of the class of trainees that the joke had been made.

3.31 COMMENT

The broad picture established by the evidence in this segment is distressing. It is true that the conduct occurred some years ago and undoubtedly the culture of the Police Service has come a long way since then, but unfortunately a number of the officers referred to in the evidence continue to serve in the Police Service. From the evidence described in other Chapters of this Report, it will be seen that in some areas of WAPS the same attitudes continue until the present time.

As explained in the introduction to this Report, the Royal Commission has had the advantage of not being bound by the rules of evidence. Despite the evidence presented, it is unlikely that there will be many successful prosecutions because of the need by other agencies, in those matters, to follow the rules of evidence. The fact that officers denied most of the allegations, notwithstanding the cogent evidence against them in many cases, is a further note of concern.

CHAPTER 4

OPERATION FLORIDA

4.1 INTRODUCTION

The conduct described in the previous chapter dealing with the evidence obtained in Operation Least Said revealed improper practices of general application among certain detectives of the Western Australia Police Service ("WAPS") from 1985 until the early 1990s. Those practices, which included the fabrication of evidence and perjury, were similar to those revealed by police corruption inquiries elsewhere, including the Wood Royal Commission (1997) in New South Wales, which commenced in the mid 1990s. It would therefore not be unreasonable to expect that there could be a risk of corrupt practices being employed in cases in which members of both Police Services operated together. Evidence obtained by the Royal Commission showed that risk to be real.

In public hearings the Royal Commission heard evidence to the effect that officers of the Western Australia and New South Wales Police Services combined resources to fabricate evidence. One of the allegations arose out of the extradition of a prisoner from Western Australia to New South Wales in 1987. The other involved the extradition of a prisoner from the United States of America to Western Australia via New South Wales in 1989. The two matters are quite separate, but similar in that, in both instances, it is alleged that verbal admissions were fabricated in order to strengthen the cases against the prisoners.

The investigation was based upon information provided to the Royal Commission by the Police Integrity Commission ("PIC") in New South Wales as a result of its Operation Florida. In 1998, a member of the New South Wales Police Service started to co-operate with the New South Wales Crime Commission ("NSWCC"). In the weeks that followed, this officer embarked upon a process of debriefing, during which he revealed many instances of corrupt conduct in which he had been a participant with others. This officer, in co-operation with the NSWCC, continued in his duties as a police officer for a period of twelve months, during which time he had a number of conversations with colleagues that were recorded. In particular, a number of incriminating conversations with a colleague were recorded. Some of the recorded conversations were later led in evidence in the PIC hearings. The police officer and his colleague were referred to in the Royal Commission as F2 and F1 respectively.

During the course of his debriefing process, F2 nominated the 1989 extradition matter as one in which misconduct had occurred. As investigations continued, and further information

was gathered, F1 then also co-operated with the authorities. He admitted to the fabrication of evidence against the prisoner, and provided information in respect of another matter, which turned out to be the extradition of another prisoner in 1987. The investigation had become a joint operation between the NSWCC and the PIC, which eventually conducted a series of public hearings in relation to the corruption that had been revealed.

These matters were appropriate for a public hearing by the Royal Commission, as both of the accused men were convicted, and sentenced to substantial terms of imprisonment as a result of the evidence which was led, a significant component of which was fabricated evidence. From a strategic point of view, this segment also focused on the possible association at a national level of police from different States engaging, jointly, in corrupt conduct.

4.2 THE PROSECUTION IN 1987

OVERVIEW

The prisoner in the first matter was arrested in Perth on 8 December 1987 by three detectives from the WAPS Consorting Squad. The prisoner had recently travelled to Perth from Sydney by bus and was staying with a woman, referred to in the Royal Commission as F4. The most senior of the police officers, a detective sergeant, had featured in the evidence in the previous chapter.

The WAPS officers gave evidence at trial that:

- They attended the prisoner's hotel room, where there was some conversation in the room between officers and the prisoner and a search of the room was carried out;
- During this search, a firearm was located after removing the bottom drawer of a wardrobe;
- The prisoner admitted that the firearm belonged to him, and that he had brought it with him from Sydney;
- During the search, some clothing was also found and the prisoner was shown photostat copies of photographs taken at the time of the robberies of a bank and of a building society;
- The prisoner admitted robbing a bank and a building society;
- One of the detectives made contemporaneous notes of the conversations in which admissions were made;

- Various items were seized during the search, including the firearm, tracksuit pants and a pair of runners (shoes). Exhibit labels were later completed and attached to the items; and
- The prisoner then signed the labels, witnessed by each of the detectives.

F1 and another detective from New South Wales extradited the prisoner from Perth to Sydney. They gave evidence at the trial that took place in Darlinghurst in Sydney in December 1988. The prisoner had made admissions to them while they were in the office of the Consorting Squad in Perth.

The prisoner was convicted and was sentenced in July 1989 to eight years' imprisonment, with a non-parole period of five years, both dating from his arrest in December 1987. The WAPS officers flew to Sydney and gave evidence at the committal hearing and at the trial.

EVIDENCE OF F1, F4 AND THE PRISONER

THE PRISONER

The prisoner has consistently denied that a firearm was found in his hotel room, and claimed at the trial in 1988 that the first time he had seen it was at the Central Law Court during the committal hearing. He also said at his trial that he had not seen the detective write a record of a conversation in the hotel room or, later, at the police station. He further denied that any conversation occurred in which he had admitted to ownership of the firearm or to committing any robbery.

More recently, after seeing some media reports about proceedings in the PIC, including references to the conduct of F1, the prisoner brought his allegations to the attention of a friend at the Justice Action Group, who then referred him to the PIC. The PIC disseminated the available information to the Royal Commission.

The prisoner gave evidence to the Royal Commission via a video link from a Sydney gaol, where he is currently in custody on unrelated matters. He accepted his trial evidence as true, and again denied that he had made the admissions that were the subject of evidence by the police at his trial. He claimed that the two detectives had not interviewed him.

The prisoner stated that there had not been a search of the hotel room and its wardrobe during the time the police had been in the room with him. There had not been a firearm anywhere in the hotel room during the time that he had occupied it. He clarified that at the

time police attended, F4 was not in the room with him. As he was being escorted from the building, F4 was returning to it, after having bought some lunch.

He also stated that, at the request of the detectives, he had signed the back of a tag, having been told that it was to be attached to his bags to accompany them to Sydney. He said he did not realize that it was an exhibit tag, as it was presented to him face down. The next time he saw the signed tag was at his committal hearing, and it was at that time attached to a weapon, which had been produced in evidence as having been located during a search of his hotel room in Perth.

He stated that the NSW detectives later interviewed him at the Consorting Squad Office in Perth but he denied making any admissions, and said he was not shown any weapon for the purpose of identifying it. He claimed that the NSW detectives provided the firearm, because no gun travelled back from Perth to Sydney.

The prisoner said that he had previously told PIC investigators he had overheard a conversation between the WA officers and the NSW officers. The WA detectives had come out to the Perth Airport to farewell the NSW officers. The prisoner claimed that what was said was, "We've had a great time over here, and when you come over, you know, we'll make sure you are looked after".

F4

F4 was the *de facto* partner of the prisoner at the time he was arrested in Perth. She gave evidence from a remote location via video link. F4 was a reluctant witness, and does not have a high opinion of the prisoner, stating that she has now "moved on" from that time in her life and that she did not want to be involved, including giving evidence before the Royal Commission.

The prisoner was withdrawing from heroin during their bus trip from Sydney to Perth in 1987. The bus had to stop and an ambulance was called. He received some treatment in the nearest town, and they were then able to rejoin the bus trip to Perth.

In relation to the day of the prisoner's arrest, F4 substantially corroborates his version of events. She had left him in their hotel room, and gone out to get some food. When she returned, about 15 to 20 minutes later, he was being walked down the stairs by two "guys" who, she later became aware, were police officers. One of the officers told her that they would be back in an hour. She was not able to recall whether, at the time, the police officers were carrying anything.

After they had left, she said she went back up to their hotel room. The room was in exactly the same state as she had left it. F4 left the hotel to go up the road to a Post Office, from where she telephoned her mother and told her what had happened. F4 then went back to the hotel and waited. Some time later, police officers returned to search the hotel room. Two of the officers were those who had taken the prisoner away about an hour earlier. They started to search the room. During the search, F4 recalled that the following occurred:

After a little while someone had said, "Did [the prisoner] bring anything from Sydney or New South Wales that he shouldn't have?" and I said "What, needles?" and they said, 'No, this' and they just went like that

F4 then described the officer extending his palm and "it looked like there was a gun or something silver or something". F4 described it as smaller than the officer's palm.

When the detectives left the hotel room, they also took some other items, including some shoes, bags and clothing. F4 was then taken by the police officers back to the police station. They asked her to make a statement about the trip to Western Australia and about financial matters. After she had made her statement she was allowed to see the prisoner for a few minutes.

F4 later gave evidence for the defence in the prisoner's trial. Her relationship with him was over by that time. F4 was involved with another person, and was expecting his child. F4's assessment is that her evidence at trial was not designed to protect the prisoner.

At the trial, F4 said that she had unpacked entirely the clothing of both of them at the hotel, and that there were no clothes remaining in the bags. In her evidence to the Royal Commission, F4 said that she did not think that she had unpacked everything, saying that she had lots of suitcases.

F4 had not previously seen the gun, which was a sawn-off rifle, which was produced at the trial, and said she had not previously seen a gun in the prisoner's possession. Whilst saying that she had not seen a gun in the room, she did go on to say that this did not mean it was not there.

F1

F1 told the Royal Commission that he and the other NSW officer had "verballed" the prisoner.

He had been advised that the prisoner had been apprehended in Perth, and that an interview had been conducted with him by the WA police officers. He and the other NSW officer had travelled to Perth to escort the prisoner back to Sydney. When they arrived in Perth, the NSW officers were told that the admissions, recorded by WA officers in relation to the ownership of the firearm, were fabricated, and that "the prisoner had been inveigled to sign (the) tags". This information became known to F1 from general conversations at the time.

The senior WA detective advised F1 as to the circumstances of the search, and told him that a sawn off .22 firearm had been found. F1 also gave evidence that "there was some talk of it at a later stage, of it (the gun) having been a plant". F1 had been sceptical about this suggestion and could not recall who the conversation had been with. He gave evidence that he had discussed the issue of the gun with other officers at a later time, and with one of them on another occasion. F1 was not able clearly to recall the substance of that conversation.

When the NSW police arrived, the prisoner was unco-operative. An attempt was made to elicit admissions from him, but he was not co-operative. While the other NSW officer was asleep in an adjacent office, F1 sat down in the offices of the Consorting Squad and wrote out the "incriminating passages" in his official notebook, as a concoction of an interview. The notes were then used to create a statement, which was dated 14 December 1987, some five days after the alleged conversation with the accused. At the time when F1 was fabricating his notes, he was aware that the admissions the WA police were purporting to have obtained were in fact fabrications, and used the information to "link the two together to create a solid sort of a picture".

F1 did not have a precise memory of other details surrounding the case built against the prisoner. He recalled that there was some concern about the exhibit tags, and that there had been some sort of a ruse, but he was unable to recall the precise issue.

THE PROSECUTION EVIDENCE

There were a number of curious aspects of the police investigation:

- The police alleged that the prisoner admitted his involvement after being told that the gun found in the room was similar to that used in the hold-ups. The photographs which were the basis of the assertion did not display a firearm of any discernable shape which would have enabled an identification of the weapon;

- It was also alleged that the confession followed the prisoner being told that he had been identified as the person who committed the robberies. Again, the photographs were so indistinct that it was not possible to identify the prisoner as the offender;
- No photographs were taken of the firearm located *in situ* in the hotel room, or later when photographs were taken of the hotel room;
- Neither the brand nor the serial number of the firearm was ever recorded. Reference was made on a PP130 form to the weapon having been located, but there was no information recorded that identified the weapon and that would enable any attempts to be made to trace its origin;
- Even though the prisoner had engaged in criminal conduct in Western Australia through his alleged possession of the sawn off firearm and provision of a false name, he was not charged with any offences in Perth. However, it was argued that, when extradition was involved, a charge of this nature would not be brought;
- On a P18 form completed by the police, in the box headed "type of personality", the prisoner was described as "unco-operative", despite the allegations that he had made admissions and assisted police in their inquiries; and
- The exhibit tags to the weapon and the clothing were only secured by string, and the prisoner's signature appeared on the blank reverse sides of the tags, with the printed and written details appearing on the other sides.

EVIDENCE OF THE POLICE

The senior detective had been a member of WAPS for 27 years. During the period between 1987 and 1989 he was a detective sergeant in the Consorting Squad, as it was then known. He denied that he had fabricated evidence in the case against the prisoner, and claimed that there was nothing sinister in the matters referred to above. He could offer no explanation for the coincidence that the prisoner and F1 coincidentally had given testimony as to the fabrication of evidence. He said he could only describe the evidence of F1 as "an absolute disgrace".

Another of the detectives involved remains in WAPS. He too denied that he had participated in the falsification of any evidence in the case against the prisoner. He said that he took contemporaneous notes of the conversations in which the prisoner had made admissions and that these notes had been produced at the trial. However, the prisoner did not sign the notes, although he had been invited to do so, and although, allegedly, he was prepared to sign exhibit tags for the gun and the clothing.

The third member of the party that searched the hotel room was a detective senior constable in the Consorting Squad. He claimed that the reason for the absence of a photograph of the firearm in the position in which it was found was that he had been unable to secure the attendance of photographers on the day. His explanation for the assertion by F1 that an admission by the prisoner was fabricated was that he was surprised, but that F1 was a drunk who was regularly affected by alcohol. He had been with F1 on social occasions some four or five times since the matter, the most recent being in June 2001 at a hotel in Sydney. He said he had no recollection of the matter being discussed.

EFFECT OF THE EVIDENCE

The second NSW officer was not called as a witness before the Royal Commission, and it is accepted that he would deny the allegations by F1 and the prisoner.

The prisoner is central to the allegation and his credit requires careful assessment. It is not in dispute that he has a lengthy history of drug abuse and criminal behaviour. He has admitted that, over time, he has struggled with an addiction to heroin, and has engaged in various illegal activities to support it. At the time of giving his evidence, he was a prisoner, serving a three and a half year sentence, with a minimum term of two years and four months, for the supply of amphetamines. The prisoner has a lengthy criminal history, which extends back to his teenage years. At the time of his arrest in 1987, he had a problem with heroin, and had commenced a course of Methadone.

At the time he was interviewed by PIC investigators, the prisoner could not recall that he had given evidence at his trial. He told the Royal Commission that his recollection about the trial is still very vague, but the trial transcript provides an accurate record of his evidence.

The prisoner and F4 have had no opportunity for collusion. F4 was a reluctant witness, and has no sense of loyalty towards him. Their relationship continued for only eight or nine months after his arrest in Perth, and the last time they had any contact was ten years ago. He has had no contact with F1 since the trial.

The evidence of the prisoner and F4 is generally consistent and she provides some measure of corroboration for the allegations that no firearm was found, and to a lesser extent, that the purported admissions were not made. Their description of the events at the hotel is similar, and cannot fit with the police officers' version.

F1's evidence of his own corrupt conduct implicates himself in fabricating the confession. F1 has independently nominated this matter as one in which he was involved in corrupt conduct, and there is no logical reason known now why he would falsely make that claim.

If the evidence of the WAPS officers as to the finding of the weapon and the prisoner's admissions were *bona fide*, no such fabrication would appear to have been necessary.

4.3 THE 1989 MATTER

OVERVIEW

The background to this evidence is that F2, when being debriefed as described earlier, named the second prisoner as a person in respect of whom evidence had been fabricated by him and other New South Wales police officers. The records relating to the prosecution of this prisoner were obtained, and it was revealed that F1 was one of the officers who also gave evidence of an admission. During the period that F2 was co-operating with the NSWCC and recording conversations with other officers, F1 had been recorded making incriminating statements about corrupt conduct in the past, but not in reference to this particular prosecution. After F1 was approached, and he too commenced to co-operate with the authorities in the course of his debriefing, he mentioned a Western Australian case in which false evidence had been given, but he did not specifically nominate this prisoner. When he was later shown his duty book entries relating to the proceedings against the second prisoner, his memory was refreshed and he recalled that it was a matter in which false evidence had been given.

The records reveal that the suspect was investigated by WAPS officers, led by the same detective sergeant who was involved in the 1987 matter, for an armed robbery at the Raffles Hotel, Applecross, in June 1988. Shortly after the offence, the suspect travelled to the United States, and in September 1989 two WAPS officers flew to the United States to extradite him back to Australia. The travel from the United States to Australia occurred in September 1989. The prisoner and the officers spent two nights in Sydney, on their way back to Perth. The prisoner was duly convicted as a result of his trial in the Supreme Court of Western Australia, and in April 1990 he was sentenced to eight years' imprisonment.

The evidence at the trial included the following:

- During the stay in Sydney the two WAPS detectives had a conversation with the prisoner in an office at the Sydney Police Centre, where he was being held in custody. They claimed that he asked them what the case

against him was, and they showed him some notes of their conversation with an accomplice. After he had seen this, the police said that he remarked, by way of an implied admission, that he had thought they had something good and that he would have to get his life in order as a result;

- The officers said that the prisoner was shown a statement of a detective who conducted a fingerprint analysis, after a print had been found on some newspaper in the getaway car. He made another indirect admission that the finding of his fingerprint was incriminatory;
- F1 purported to authenticate the admission made to the WA detectives by way of an "adoption statement". This was the practice at the time in New South Wales. F1 gave evidence that he entered the room after they had spoken to the prisoner, and that a conversation had taken place, in which the prisoner was said to have confirmed to F1 that he had been interviewed by the WA police officers; and
- When the prisoner was later being taken to his cell by NSW police officers, F2 and a detective constable, he made further indirect admissions to the effect that he was in trouble and would need to make the appropriate arrangements with his family.

THE PRISONER

The prisoner did not give evidence before the Royal Commission, but the transcript of the evidence at his trial was tendered. He was located in the United States and appeared to be co-operative, but attempts to have him give evidence before the Royal Commission were not successful.

At his trial, he repudiated much of the police evidence:

- He denied that he had made any admissions in the form alleged by the police officers;
- He denied that he had requested to speak with the WA officers while he was in Sydney, but said that the NSW detectives did come and get him from his cell and took him up to the interview room where he met with the WA police officers;
- He denied that he was shown the fingerprint evidence, and said that the first time he saw it was at his election date in November 1989, when he viewed the "hand up brief";
- He alleged that F2 and F1 had "got their heads together" with the senior WA officer, and that he had not made any admissions;

- He denied that an adoption interview had been conducted in the form asserted by F1 at trial. No interview was read back to him. During his cross-examination at trial, he stated that F1 came into the interview room and said, "I believe they've interviewed you", referring to the WA detectives. The prisoner said that he replied, "No, I'm not prepared to make a record of interview". At that time the WA detectives were present in the room. F1 did not make any mention of notes;
- He said that he had told the WA officers, in Sydney, that he would only give them a record of interview if they arranged for another named person to be present, and it was conducted on video, otherwise he would agree to submit to a polygraph test; and
- He gave evidence at his trial that the WA detectives did not make any notes while they were in the interview room together.

F1

F1 is now a former member of the NSW Police and at one point in his career he was stationed, with F2, at the Northern Region Major Crime Squad, Armed Hold-up Unit in Sydney.

F1 now admits that the "adoption" process with regard to the WAPS interview of the prisoner did not occur. He particularly recalled that, at trial, he overheard the prisoner tell his lawyer that he had never seen F1 before.

F1 gave evidence that after the WA detectives arrived from the United States they assembled in the Sydney Police Centre and had a general discussion about the deficiencies in the case. It was decided to enhance the evidence by fabricating some oral admissions.

F1 claims that he was the main author of the version given, which was crafted so that the three aspects of it would fit together, and that those involved went about preparing notes in order to fabricate the oral admissions, which in fact did not take place. The three parts were:

- Conversations between the prisoner and the two WA detectives;
- F1's adoption; and
- The communication between F2, the other NSW officer and the prisoner.

F2

F2 gave evidence that the NSW officers were "looking after" the WA detectives before they left to fly to the United States to extradite the suspect in relation to the armed robbery in Western Australia. On their return to Australia, the WA officers stayed overnight in Sydney before flying on to Perth. F2's recollection is that the events to come had been worked out by F1 and the senior WA detective. These were:

- Comments would be made by the NSW officers in the process of the prisoner's being escorted up to and back from the interview room;
- These comments would relate to a fingerprint which had allegedly been found in the getaway car involved in the robbery; and
- F1 was to oversight an interview that the WA detectives were allegedly going to have with the prisoner.

F2 did not recall having discussions with the WA officer about the evidence that was fabricated in this case, but believed his instructions came from F1. F2 gave evidence that, from time to time, this matter was discussed with F1. During those conversations, the fingerprint evidence was discussed. It is F2's recollection that "there was something wrong in relation to the fingerprint or how it was involved in the brief", but F2 had no direct evidence of that.

Generally, F2 gave evidence that being involved in the fabrication of evidence with police from another State did not concern him. He indicated, "It was an accepted practice. It was extensively practised".

In relation to the junior WA officer's awareness of the fabrications, F2 stated that, "I don't believe that he could not have been aware of it". The junior officer gave a statement that he was present at all three interviews of the prisoner in the United States, in Sydney and in Perth and that he corroborated the evidence of the senior WA detective. F2 explained that he did not think that the events could have transpired in such a way that the junior WA officer did not know about the plan. F2 conceded, however, that in his opinion, the senior WA detective had played a greater role.

THE TRIAL PROCESS

In the light of what is now known about the nature of the prosecution evidence, the spurious case may be discerned from the documentation created for the purposes of the extradition and trial. In the course of the extradition process for the return of the prisoner

from the United States, the senior detective briefed the Crown Law Department in order that a formal request be made through the Attorney General's Department in Canberra to the United States authorities. After the process had commenced, a co-accused went to trial. The first jury was unable to agree, and the co-accused was retried but was ultimately acquitted. Following this acquittal, the Attorney General's Department in Canberra sought confirmation of the continued request for the extradition, and an explanation as to why the prisoner's case was more likely to succeed. The response from the Crown Law Department set out the reasons why the evidence was stronger, but made no reference to the evidence as to the existence of the fingerprint evidence.

After the prisoner had returned to Perth, he was granted bail and the Crown made an application for revocation. The senior detective swore an affidavit in support of that application. The affidavit purported to summarize the case, but there was no reference in the summary to the prisoner having made admissions, as was later alleged.

Prior to the trial the prosecution were provided with a document headed "Précis of Evidence", which contained a summary of the evidence under the signature of the senior detective. The précis made no reference to the admissions made in Sydney, although it did list the names of the NSW and WAPS officers to be called as witnesses.

Prior to the trial, an application was made by the prosecutor for internal approval of expenditure to bring a witness from the United States. The letter essentially reproduced the précis, and again made no reference to the evidence against the prisoner, including admissions made in Sydney, and in fact stated that "no admissions have been made".

THE POLICE EVIDENCE

The WAPS senior detective denied that he was party to any fabrication of evidence. He said that the fingerprint evidence and the admissions were valuable evidence, but he could not give a cogent explanation as to why that evidence was not included in the various documents which purported to set out the prosecution case. He, of course, had also denied the allegations of similar conduct in other matters made by L5, L7 and L8, as described in the previous chapter.

The junior officer has been a member of WAPS since 1978 and is still serving. He was emphatic that there was no fabrication of evidence, and denied that he was a party to any decision in Sydney to supplement the prosecution case by fabricating evidence of confessions. The junior officer claims that his dealings with the prisoner were affable and that, subsequent to the trial, the prisoner communicated with him. Indeed, he telephoned

the officer recently to discuss the attempts by the Royal Commission to contact him in the United States. The junior officer had brought this contact to the attention of the Royal Commission contemporaneously.

The junior officer was unable to assist in explaining the absence of references to important parts of evidence in the summaries provided in the various documents, but indicated that he had been on leave after returning from the United States, and that he may not have had any part in the preparation of the documents or instructions given to the prosecution.

ANALYSIS OF THE EVIDENCE

The third NSW officer involved was not called as a witness before the Royal Commission, and it is accepted that, if he had been called, he would have denied the allegations.

It is noted that F1 and F2 are central to the allegations and therefore their credit requires careful assessment. In that regard, it is acknowledged that, as a result of becoming informants, and implicating themselves in extensive corrupt activities, F1 and F2 are self confessed perjurers.

By providing evidence against other officers, however, it is noted that F1 and F2 have stepped outside an accepted code of behaviour, and in so doing they had placed themselves at risk, although they understood that the evidence provided by them could not be used against them.

Efforts were made to have the prisoner provide evidence before the Royal Commission. This was not possible, and, the rules of evidence not applying before a Royal Commission, the transcript of his trial evidence is relied upon. Although he was cross-examined by the prosecutor at the trial, the officers adversely mentioned in his evidence did not have the opportunity to cross-examine him in the Royal Commission hearings, and his trial evidence therefore had limited weight. Nevertheless, his version is now independently corroborated by F1 and F2. At the time of his trial, it is to be noted that he already had an extensive record of criminal convictions.

Notwithstanding the appropriate allowances for the low credibility of each of the key witnesses, what is striking is that they have made identical allegations, quite independently, and their accounts cannot simply be dismissed as the product of collusion. The likelihood of the prisoner making admissions at the time seems low, given the admitted reluctance on his part previously to talk to the police. There seems to be no good reason why F1 and F2 would independently falsely confess to the fabrication of evidence. The conclusion that the

evidence about the prisoner's admissions was invented may readily be arrived at. Once it is accepted that their evidence was a concoction, it is difficult to see how that process could have occurred without consultation with the WAPS officers in charge of the investigation. It is highly probable that those officers not only were aware of the false evidence by the NSW police, but similarly gave false evidence of the incriminating statements allegedly made to them. There is no logical reason why the NSW police would have acted alone in fabricating evidence in an investigation in which they otherwise had no role.

Neither F1 nor F2 could be specific that the junior WA detective was present during the conversation in the course of which the agreement to fabricate the evidence was formed, or when he otherwise joined in the conspiracy to pervert the course of justice. However, once it is accepted that the NSW officers gave false evidence and that the admission to the WAPS officers was similarly fabricated, a conclusion that he also gave false evidence, would appear to follow.

GENERAL OBSERVATIONS

The Wood Royal Commission (1997) established that there was widespread and long-standing corruption by officers of the NSW Police. F1 and F2 were undoubtedly two officers who were involved in that corruption. They had nominated these matters as involving corrupt conduct. The victims of their misconduct support their allegations. It is significant for the purposes of this inquiry that they had no qualms about engaging in corrupt conduct in matters while involved with WAPS officers. It showed that it would be unwise to assume that WAPS officers were any different from those in other States.

It is interesting that in the Least Said segment, the former officer L5, among the many acts of corruption described by him in his evidence, referred to an occasion in the late 1980s, early 1990s when he gave evidence in a trial in Wagga Wagga in New South Wales, in which a confession had been fabricated in consultation with police from New South Wales, after the offender had been extradited from Perth.

