

# Operation Prospect

Volume 2

Chapters 6-8

Mascot investigations – 1999

Report of the Acting NSW Ombudsman

A special report to Parliament under s. 31 of the  
*Ombudsman Act 1974* and s. 161 of the *Police Act 1990*

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## Abbreviations

AAT	Administrative Appeals Tribunal
AFP	Australian Federal Police
AHU	Armed Hold Up Unit or Squad
ASIO	Australian Security Intelligence Organisation
CAR	Contact Advice Report
CIS	Complaints Information System
CMT	Complaints Management Team
COP	Commissioner of Police
COPS	Computerised Operational Policing System
COU	Covert Operations Unit
DEA	Drug Enforcement Agency
DPC	Department of Premier and Cabinet
DPP	Director of Public Prosecutions
DTC	Davidson Trahaire Corpsych
ERISP	Electronic Recorded Interview of Suspected Person
HOD	hurt on duty
IA	Internal Affairs
ICAC	Independent Commission Against Corruption
IPC	internal police complainant
IR	Information Report
ITTU	Information Technology and Telecommunications Unit
ITU	Integrity Testing Unit
IU	Investigations Unit
IWI	Interception Warrant Information
LAC	Local Area Command
LECC	Law Enforcement Conduct Commission
LD	listening device
LII	lawfully intercepted information
LRO	Legal Representation Office
MCSN	Major Crime Squad North
MCSS	Major Crime Squad South
MOU	Memorandum of Understanding
MSO	Mascot Subject Officer
NCA	National Crime Authority
NSW	New South Wales
NSWCC	NSW Crime Commission
NSWPD	NSW Parliamentary Debates
NSWPF	NSW Police Force
NSWPS	NSW Police Service
OAG	Operational Advisory Group
OCC	Operations Coordination Committee
ODPP	Office of the Director of Public Prosecutions
OIC	officer in charge

PCB	Police and Compliance Branch, NSW Ombudsman
PIC	Police Integrity Commission
PID	public interest disclosure
PODS	Police Oversight Data Store
POI	person of interest
PSC	Professional Standards Command
RMS	Roads and Maritime Services
R/N	Registered Number
SAP	Product name for the human resources information system of the NSWPF
SASC	Strategic Assessments and Security Centre
SCIA	Special Crime and Internal Affairs Command
SCU	Special Crime Unit
SPU	Special Projects Unit
SOD	Schedule of Debrief
SOP	Standard Operating Procedure
STIB	Special Technical Investigation Branch
TI	telephone interception
TIB	Telephone Interception Branch
UB	Undercover Branch
UCO	undercover operative

## Common abbreviations of legislation

CAR Act	<i>Criminal Assets Recovery Act 1990</i> (NSW)
CO Act	<i>Law Enforcement (Controlled Operations) Act 1997</i> (NSW)
CO Regulation	Law Enforcement (Controlled Operations) Regulation 1998 (NSW)
Crime Commission Act	<i>Crime Commission Act 2012</i> (NSW)
Crimes Act	<i>Crimes Act 1900</i> (NSW)
Criminal Procedure Act	<i>Criminal Procedure Act 1986</i> (NSW)
LD Act	<i>Listening Devices Act 1984</i> (NSW) (Repealed)
LECC Act	<i>Law Enforcement Conduct Commission Act 2016</i> (NSW)
NSWCC Act	<i>NSW Crime Commission Act 1985</i> (NSW) (Repealed)
Ombudsman Act	<i>Ombudsman Act 1974</i> (NSW)
PIC Act	<i>Police Integrity Commission Act 1996</i> (NSW)
PID Act	<i>Public Interest Disclosures Act 1994</i> (NSW)
Police Act	<i>Police Act 1990</i> (NSW). This Act was previously called the - <i>Police Service Act 1990</i> (NSW)
Royal Commissions Act	<i>Royal Commissions Act 1923</i> (NSW)
SD Act	<i>Surveillance Devices Act 2007</i> (NSW)
TI Act	<i>Telecommunications (Interception and Access) Act 1979</i> (Cth). This Act was previously called the <i>Telecommunications (Interception) Act 1979</i> (Cth).
TI (NSW) Act	<i>Telecommunications (Interception and Access) (New South Wales) Act 1987</i>

# Glossary

The terms listed below describe those used in this report and are included to assist the reader.

affidavit	A sworn statement that can be used to support an application, in particular for a listening device or telecommunication intercept warrant.
Armed Hold Up Unit	The Armed Hold Up Unit (AHU) was attached to the Major Crime Squad North of the NSWPF. Between approximately 1987 and 1997 the AHU consisted of two teams of approximately four officers each. Evidence was given in Operation Florida that the division into teams was based largely on the geographic location of officers' residences. Officers who lived on or near the central coast formed one team and officers from the Northern Beaches area of Sydney (including Sea) formed the other. The teams were only loosely defined and it was common for officers from different teams to assist each other.
Contact Advice Report	A report that is an account of any contact with an informant to be completed by the case officer.
controlled operation	A police operation conducted for the purpose of obtaining evidence and/or arresting any person that involves activity that, but for section 16 of the <i>Law Enforcement (Controlled Operations) Act 1997</i> would be considered unlawful.
covert operation	An operation where the role of the police is concealed from the targets of the operation and that utilises investigative methods such as undercover operatives, listening devices and telephone intercepts.
deployment	Tasking an informant or undercover operative to undertake a particular activity to assist an investigation.
deponent	A person who swears (or deposes) that the contents of an affidavit are true and correct to the best of their knowledge.
Duty Book	Duty Books may be issued to NSW police officers on criminal investigation or specialist duties. Officers are required to record the following in pen: <ul style="list-style-type: none"> <li>• time commencing and completing each duty</li> <li>• places visited, people spoken to and actions taken</li> <li>• start, finish and meal times and rest days.</li> </ul> Entries are required to be signed by the officer and checked regularly by supervisors.
c@ts.i	The complaints management system of the NSWPF. It is used to record, manage and report on complaints about police officers and local management issues.
exculpatory evidence	Evidence that suggests or points towards the innocence of a person.
e@gle.i	The investigation management system of the NSWPF that allows police officers to capture and report information gathered during the investigation of a crime.
green-lighting	When police permit people to undertake criminal activities such as robberies or drug dealing, in return for money and/or information. That is, it is not a controlled operation and is unlawful.
GyMEA reference	In 1996 the GyMEA reference was referred by the NSWCC Management Committee to the NSWCC to investigate organised crime (including drug trafficking and money laundering), and the associated involvement of corrupt police. The GyMEA reference was reissued on a number of occasions between 1996 and 2003. It was initially staffed by NSWCC officers but expanded in 1997 to involve the Special Projects Unit of the NSWPF Internal Affairs Command.
handler	Officer assigned as the main contact point for a registered police or NSWCC informant.
hot spot	Location where a check conducted by a handheld battery operated device indicates a listening device may be installed.
inculpatory evidence	Evidence that suggests or points towards the guilt of a person.
[Ind]	Indistinct or indecipherable audio that is unable to be transcribed.
indemnity	Under section 32 of the <i>Criminal Procedure Act 1986</i> , police may apply to the Attorney General via the Director of Public Prosecutions for an indemnity from prosecution to be granted to a person for a specific offence or in respect of specified acts or omissions. The indemnity formally protects the person against prosecution for specified matters in exchange for assistance provided to investigators.
induced statement	An 'induced statement', or one taken following 'an inducement', is a formal statement taken from a person on the basis that the information provided will not be used against the person making the statement in any criminal proceedings.
Information Report	A written report completed by Mascot officers as a formal record of actions that occurred.
integrity test	Part 10A of the <i>Police Act 1990</i> empowers the NSWPF to conduct integrity testing of its own officers. Under section 207A a designated person may offer a police officer the opportunity to engage in certain behaviour to test the officer's integrity. The behaviour of the officer being tested is assessed against NSWPF policy and legislative requirements. The objectives of integrity testing are to test for corrupt conduct, deter corrupt behaviour and analyse NSWPF systems, processes and procedures to reduce potential corrupt activity.

Internal Affairs	The investigations unit within Special Crime and Internal Affairs, established in 1999.
letter of assistance	A letter provided by the NSWPF or the NSWCC to a sentencing judge that details assistance given by an offender to police with a view to seeking a sentence reduction for that offender. This practice is enshrined in section 23 of the Crimes (Sentencing Procedure) Act 1999.
listening device	Any instrument, apparatus, equipment or device capable of being used to record or listen to a private conversation simultaneously with its taking place (LD Act, s.3). The device could either be body worn or installed on premises, vehicles or an item such as a briefcase.
load/loading	To plant false evidence on a person suspected of criminal activity. Also, to 'load up', or 'load'.
Major Crime Squad North	The Major Crime Squad North (MCSN) of the NSWPF was located in Chatswood, Sydney from approximately 1985. There were a number of Units attached to the MCSN in this period including an Armed Hold Up Unit, a Homicide Unit, a Child Mistreatment Unit and an Arson Unit.
Major Crime Squad South	The Major Crime Squad South (MCSS) of the NSWPF was located at the Sydney Police Centre, Surry Hills. As with the Major Crime Squad North, there were a number of units attached to it including an Armed Hold up unit and a Homicide Unit. The MCSS is occasionally referred to as the "South Region" squad in this report.
Mascot reference	On 9 February 1999 the NSWCC Management Committee referred the Mascot reference to the NSWCC to investigate drug offences, money laundering and conspiracies to pervert the course of justice by a number of people including serving and retired police officers. The allegations under investigation initiated from the disclosures by a serving police officer code-named Sea regarding his involvement in corrupt and criminal activities and that of his colleagues. NSWCC staff and members of the Special Crime Unit of the NSWPF were utilised for this investigation.
Mascot Subject Officer	A person who was a serving police officer when named in Mascot's Schedule of Debrief as being involved in corrupt or criminal conduct and who was subsequently investigated by Mascot investigators.
Mascot target	A person who was investigated by Mascot investigators.
Mascot II reference	On 9 November 2000 the NSWCC Management Committee referred Mascot II to the NSWCC. This reference was broader than Mascot. It expanded the list of potential people to be investigated to include all former and serving police officers and the scope of the reference was extended to include the investigation of larceny and corruption offences. NSWCC staff and members of the Special Crime Unit of the NSWPF were utilised for this investigation.
NSWCC Management Committee	The NSWCC Management Committee is constituted under Part 3 of the New South Wales Crime Commission Act 1985 (NSWCC Act). During the Mascot references the Management Committee was made up of the Minister for Police, the NSWCC Commissioner, the Commissioner of Police, the Commissioner of the Australian Federal Police and the chairman or another nominated member of the then National Crime Authority, or from June 2003, the chair of the Board of the Australian Crime Commission. The principal functions of the Management Committee are set out in section 25 of the NSWCC Act and include referral by written notice matters relating to relevant criminal activities to the NSWCC for investigation.
Oberon and Oberon II references	The Oberon reference was granted in 1999 requiring the NSWCC to investigate a number of murders committed between 1970 and 1999. Also in 1999, the Oberon II reference was granted requiring the NSWCC to investigate the murder and conspiracy to murder a number of specified people.
Operation Boat	Operation Boat was a subsidiary of the Mascot investigations that used Sea to investigate allegations that officers had fabricated evidence.
Operation Boulder	Operation Boulder was established by the PIC in 2006 following an allegation by a target of Operation Orwell/Jetz, that Special Crime and Internal Affairs investigators had used false or misleading information to obtain telephone intercept warrants, and misused the information obtained by telephone interception. The PIC found there was no evidence to support the allegation and no further action was taken.
Operation Florida	In October 2001 the PIC commenced a public hearing program named Operation Florida based on the evidence collected by Mascot investigators. Operation Florida is also referred to as being the overt phase of Mascot. The PIC reported to Parliament in June 2004.
Operation Jade	In March 1997 the NSWCC notified the PIC of their suspicion that a former Task Force Bax investigator had disseminated confidential police information to a convicted criminal in the course of Task Force Bax. The NSWCC and PIC jointly established Operation Jade and held public hearings from November 1997. The PIC reported to Parliament in October 1998.
Operation Naman	In 2001 Operation Orwell was established by the NSWPF and located in SCIA to investigate allegations that police officers were involved in the corrupt manipulation of the NSWPF promotion system. Assistance was sought from PIC and in June 2001 the PIC established Operation Jetz. A taskforce of SCIA and PIC officers was set up and a report to Parliament was presented by the PIC in 2003.
	Operation Naman was established in 1999 by the NSWPF to investigate police misconduct in the 1994 arrest of Mr O, Mr M, and Paddle for the attempted armed robbery of a club in Coffs Harbour in 1994. Operation Naman was located in Internal Affairs.
Operation Orwell/Jetz	In 2001 Operation Orwell was established by the NSWPF and located in SCIA to investigate allegations that police officers were involved in the corrupt manipulation of the NSWPF promotion system. Assistance was sought from PIC and in June 2001 the PIC established Operation Jetz. A taskforce of SCIA and PIC officers was set up and PIC reported to Parliament in 2003.

Operation Pelican	In 2000 the PIC commenced an investigation into the police investigations of the death of Phillip Dilworth at Petersham in 1986, the shooting and wounding of Gary Mitchell at Concord in 1988, and the subsequent murder of Mitchell at Armidale in 1996. The PIC reported to Parliament in 2001. Operation Pelican was a joint investigation between PIC, SCIA and the NSWCC.
plant/planting	Police corruptly placing evidence of wrongdoing in a person's house, possession or vehicle, so they can then claim the evidence belongs to that person and arrest them. Examples include placing illicit drugs or guns in a person's home.
Professional Standards Command	The NSWPF established the Professional Standards Command (PSC) in 2003. It amalgamated three commands, including Special Crime and Internal Affairs. The PSC has responsibility for setting standards for performance, conduct and integrity within the NSWPF and is responsible for investigating serious criminal allegations and corrupt conduct by NSW police officers. It is the main point of contact for external agencies such as the NSW Ombudsman, the PIC, the NSW Coroner and the ICAC.
registered informant	A person formally registered with the NSWCC or the NSWPF who supplies information to assist investigations.
rollover warrants, applications or affidavits	A 'rollover' warrant is a colloquialism that means a warrant that effectively repeats or extends an earlier warrant. Affidavits supporting the extension of previous warrants were also known as 'rollover affidavits' or 'rollover applications'.
the Royal Commission	Royal Commission into the NSW Police Service was established by Letters Patent dated 13 May 1994. The Hon Justice James Wood was appointed as Commissioner. The terms of reference of the Royal Commission authorised and required it to investigate the existence and extent of systemic or entrenched corruption in the NSW Police Service as it was known then. The Royal Commission delivered its final reports in 1997.
Schedule of Debrief	The schedule that details the allegations made by Sea in his initial debrief about police corruption including details of offences, dates of offences, and the identities of individuals involved. The first Schedule of Debrief was handwritten and was completed on 13 January 1999, using information from the original debrief interviews with Sea between 7 and 11 January 1999. It was then converted into an electronic document in late January 1999 and was added to and altered throughout the Mascot investigations. Each allegation was allocated a number, referred to as 'SOD' by Mascot investigators.
Special Crime and Internal Affairs	In 1999 Special Crime and Internal Affairs (SCIA) replaced the Internal Affairs Command of the NSWPF in a restructure. The primary focus of SCIA was to investigate organised crime groups and any links with corrupt police. SCIA was divided into two divisions – Command and Operations – each made up of smaller units. The Command division included units responsible for liaising with the PIC and providing legal, advisory and support services. The Operations division contained five units – the Investigations Unit (known colloquially as Internal Affairs), the Integrity Testing Unit, the Special Crime Unit, the Strategic Assessment and Security Centre, and the System and Process Inspection Unit.
Special Crime Unit	In 1999 the NSWPF replaced the Special Projects Unit with the Special Crime Unit (SCU) in a restructure. The Special Crime Unit was located within SCIA.
Special Projects Unit	The Special Projects Unit (SPU) was established within the Internal Affairs Command of the NSWPF in 1997. Its role was to investigate organised crime groups that may have been assisted by corrupt police as part of the NSWCC Gynea reference.
Strategic Assessments and Security Centre	The Strategic Assessments and Security Centre of the NSWPF was located within SCIA and undertook a range of intelligence based work, such as compiling profiles of people of interest to investigations and risk assessments.
Strike Force Banks	Strike Force Banks was established by the NSWPF in 1997 to investigate complaints received about the activities of SCIA that were not related to Mascot.
Strike Force Emblems	In July 2003 the NSWPF established Strike Force Emblems to investigate a range of matters relating to the investigations conducted under the NSWCC Mascot and Mascot II references. Strike Force Emblems advised that it was unable to make a finding on many of the matters that fell within the investigation as it had been denied access to relevant source material by the NSWCC. The final report of Strike Force Emblems was never made public.
Strike Force Jooriland	Strike Force Jooriland was established in 2012 by the NSWPF within the Professional Standards Command to investigate a number of complaints received by the NSWPF regarding the Mascot investigations and the dissemination of confidential NSWCC and NSWPF records. The Professional Standards Command did not complete Strike Force Jooriland as it was taken over by Operation Prospect in 2012.
Strike Force Sibutu/ Operation Ivory	Strike Force Sibutu was established by the NSWPF in 2001 to investigate allegations by a former Integrity Testing Unit officer, that false and misleading information had been used by officers of that unit in LD and TI affidavits, and search warrant applications. Management and cultural issues within the Integrity Testing Unit were also investigated. The PIC's Operation Ivory concurrently investigated the allegation that false and misleading information had been used in LD and TI affidavits. The work of Strike Force Sibutu was included in the matters referred to the Ombudsman by the PIC Inspector in 2012.
Strike Force Tumen	Strike Force Tumen was established in 2002 by the NSWPF to investigate a series of complaints made by two former undercover police officers about the failure in duty of care and mismanagement by the Covert Operations Unit of the NSWPF. The work of Strike Force Tumen was included in the matters referred to the Ombudsman by the PIC Inspector in 2012.
supporting affidavit	An affidavit sworn in support of an application for a LD or TI warrant.

sweep	A check for the presence of any listening devices, using a handheld battery operated device. Also known as a 'scan'.
tasking	A piece of work assigned to a person.
Task Force Ancrum	Task Force Ancrum was established by the NSWPF in 1997 to investigate the conduct of Task Force Magnum investigators following allegations made by police officers during the Royal Commission. It was located in Internal Affairs.
Task Force Bax	Task Force Bax was established by the NSWPF in 1996 to investigate criminal activity in Kings Cross, Sydney following the emergence of evidence during the Royal Commission of corrupt relationships between police and organised crime in that area.
Task Force Borlu	Task Force Borlu was established by the NSWPF in 1997 to investigate the importation and distribution of cannabis by two individuals. Task Force Borlu was commanded by a Mascot Subject Officer.
Task Force Magnum	Task Force Magnum was established by the NSWPF in 1991 to investigate a series of armed robberies of armoured vehicles and other robberies. The Task Force Magnum team included police officers who later became targets of the Mascot investigations and of Operation Florida.
Task Force Volta	Task Force Volta was established in 2002 by the NSWPF to investigate 199 medium to low risk allegations that were not resolved by the Mascot investigations. It was located within Special Crime and Internal Affairs.
undercover operative	A person whose real identity is confidential and who is covertly deployed by a law enforcement agency to gain evidence of criminal activities as part of an investigation.
verbal/verballing	False evidence given by police that a suspect had confessed or made inculpatory remarks at the time of arrest or during an interview.

## Chapter 6. Investigation of Officers A and B

### 6.1 Chapter overview

This chapter considers Mascot's investigation of two police officers – Officer A and Officer B – who were named on some of the earliest warrant applications made by Mascot.

On 5 February 1999 Sergeant Troy Kaizik – a Mascot investigator – swore two affidavits in support of an application for listening devices (LDs) to be used by Mascot. The first affidavit (LD affidavit 062-068/1999) was for LDs on Sea's property and vehicle and a body worn device. This was the sixth affidavit sworn to obtain LDs for the Mascot investigations.

The other affidavit (LD affidavit 069-071/1999), also sworn by Kaizik on the same day, sought three LDs on the premises of a police officer who Sea alleged was involved in a number of instances of corruption (referred to in this report as Mascot Subject Officer 1 (MSO1)). This affidavit included information about other officers, but the focus was on alleged instances of corruption involving MSO1. This was the seventh LD affidavit deposited under the Mascot investigations.

The associated warrants authorising the use of the LDs were granted on 8 February 1999. They permitted the use of LDs to record 18 people, which was a significant increase on the number of people named in the earlier Mascot warrants. This was because the affidavits included additional allegations to those in earlier affidavits. Officers A and B were both mentioned in the warrants issued on 8 February 1999. The warrants marked the beginning of considerable investigative action into both officers.

Officer A continued to be named in Mascot affidavits and warrants until 2002, when the allegations against him were ultimately written off as unsubstantiated in 2002 and 2003. In total, Officer A was named in 253 LD warrants supported by 36 affidavits. He was also named in the annexure of a further 15 affidavits (but not in the corresponding warrant applications or warrants). Over the period of investigation, Officer A was recorded by LD on three occasions and by telephone intercept (TI) in three telephone conversations he had with Sea. While those intercepts were authorised by warrant, Officer A was not a target of the TI. Information about Officer A's alleged conduct was included in a TI affidavit in late 2001, but he was not the target of that TI.

Officer B was named in affidavits and warrants until 2002. The investigation of the allegations against him were not finalised until December 2004, when they were found to be unsubstantiated. The investigation appears also to have delayed Officer B's promotion to Inspector. In total, Officer B was named in 168 LD warrants supported by 47 affidavits and in 11 TI warrants supported by two affidavits. The 'facts and grounds' paragraphs of an additional 13 LD affidavits contained information about the alleged conduct of Officer B. He was recorded by LD on four occasions. He was also named in a further 15 TI affidavits as a person involved in the offences for which intercepts were sought (but which did not support applications to intercept his telephones), and eight affidavits that did not name him as a person involved in the offences – but nonetheless included details of his alleged involvement in offences in the facts and grounds upon which the TI warrant was sought. Over the period of investigation, Officer B was recorded on four occasions via a LD and on four occasions by a TI.

As this chapter shows, a number of poor work practices were evident in the way Mascot approached the investigation of these two officers. These practices were not unique to the investigation of Officers A and B, but were systemic defects that pervaded Mascot for its duration. One such practice was a tendency to present Sea's allegations inaccurately when they were imported into affidavits supporting LD warrant applications. The inaccuracies included the exaggeration of facts, the presentation of Sea's claims as if they were facts, and the failure to include exculpatory evidence or information that tended to contradict or undermine Sea's allegations. The omission of relevant information in affidavits was another defect. For example, LD affidavit 062-068/1999 sworn on 5 February 1999 did not include material about Sea that was in previous Mascot affidavits. References to his depression, sick leave, self-admission to hospital shortly after making his initial induced statement on 19 December 1999, and his ongoing mental health problems during this early stage of



the Mascot investigations were removed. This information would most likely have been relevant for a judicial officer who was considering whether to authorise a LD warrant based on information given by Sea as an informant and for the purpose of permitting him to use a covert LD.

It is also clear from the way the allegations against Officer A and Officer B were investigated that Mascot placed heavy reliance on the tactic of deploying Sea to record evidence on body worn LDs. The fact that Mascot was a covert investigation offers some justification for this approach. Nevertheless, the investigation of Officer B in particular suggests that opportunities for alternative investigative tactics – such as checking documents – may have been missed or ignored.

Another matter of concern that is evident in the investigation of Officers A and B was the length of time taken by Mascot to put the allegations to rest when no further investigative action was planned or after evidence had been found which contradicted or undermined an allegation. This topic is touched on in this chapter, and given more detailed consideration in Chapter 17.

## 6.2 The investigation of Officer A

Officer A had worked with Sea in the NSW Police Force (NSWPF)'s Crime Agencies in the late 1990s. A number of officers who Sea alleged to be involved in corruption had also worked in Crime Agencies.

### 6.2.1 Sea's allegations about Officer A during his debrief

During Sea's initial debrief on 9 January 1999, Mascot investigators asked Sea whether Officer A had been implicated in any criminal activity or misconduct. Sea said that nothing came to mind, but he briefly recalled an instance when "[Officer A] made a suggestion that we put a photostat of the actual recipe used in a particular job in a crook's property or something like that".<sup>1</sup> Sea said that he was not sure if that suggestion was an integrity test, noting:

*People were coming up to me and trying to sort of get me to do or say the wrong thing all the time and I don't know what the reason is behind that but it just became fairly stressful after a while and trying to do the job at the same time.<sup>2</sup>*

Later in the debrief interview, Sea was asked about his work on Operation Jagtail.<sup>3</sup> Initially Sea could not recall any criminal activity or misconduct involving officers associated with Operation Jagtail, but later in the same interview he volunteered the following piece of information about the execution of a covert search warrant associated with the operation:

*I mean I remember when the money was in the garage. There was a \$120,000 in there and when I came out [Officer A] said to me "how'd you go?"? I said "what do you mean?" He said, "the money". I said "mate, listen. I don't need anymore dramas. I've got enough". You know what I mean. Like it was as if they were sniping all the time.<sup>4</sup>*

At this point the interview was suspended for the day. When it resumed on 11 January 1999 Sea was asked to elaborate on the reference to Officer A and Operation Jagtail. Sea recalled two incidents:

*Well, I didn't know quite how to take [Officer A]. I confided in him towards the end there a fair bit because he was a trusted person as far as [Mascot Subject Officer 3 (MSO3)] was concerned and they go back, they went back a long way. But there was a couple of occasions when the ... When I did a covert search warrant on a garage at Bondi to do a money count on cash that had been recovered, we did do it as per what we were supposed to do. The only thing that didn't happen, what I thought had been organised, was a independent person. But I regarded the two fellows from Drugs Production as being the independents*

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1 NSWCC, Record of interview between Detective Inspector Catherine Burn and 'Sea', 9 January 1999, p. 69.

2 NSWCC, Record of interview between Detective Inspector Catherine Burn and 'Sea', 9 January 1999, p. 69.

3 Jagtail was the operation code name for a major police investigation of drug matters between 27 July 1998 and 27 January 1999.

4 NSWCC, Record of interview between Detective Inspector Catherine Burn and 'Sea', 9 January 1999, p. 71.



*basically because I didn't know them. Anyway the money was counted. There was a \$120,000 there approximately, because we couldn't do a, obviously a proper count. It was counted bundle by bundle and when I got out [Officer A] said "how did you go?" I said "what do you mean?" He said "the money?" I said "well mate ..." and I, I thought he was inferring "did you take any". And I said "mate I've got enough dramas in my life I don't need anymore." The other one related to the particular way that this cook, amphetamine cook was done, was being done was, we had a recipe for which came off the Internet and it was proposed by [Officer A] that we might be able to get a copy of that into the, one of the main offender's belongings or find it during a search or something and I said to him "it's not a bad idea but I wasn't going to be part of it ...".<sup>5</sup>*

Sea also told the Mascot investigators in that interview that he did not know whether Officer A acted on the idea of planting an 'internet recipe'.<sup>6</sup>

## 6.2.2 Sea's allegation described in the Schedule of Debrief

Following the debriefing interviews with Sea on 9 and 11 January 1999, the two allegations about Officer A were itemised in Detective Inspector Catherine Burn's handwritten Schedule of Debrief dated 13 January 1999,<sup>7</sup> and described as follows: "Operation Jagtail - \$120,000 - covert search warrant - possible suggestion by [Officer A] re money - conversation re putting recipe of lab. in suspect's property - didn't happen".<sup>8</sup>

As discussed elsewhere in this report, the Schedule of Debrief was converted into an electronic format and became a 'living' document to which numerous officers contributed. There was no version control on the Schedule of Debrief and no records kept of changes made to the document or who made them. It is clear from a dated copy of the Schedule of Debrief that by 31 August 2000 the entry in the electronic document relating to Officer A read:

*Conversation between Sea & [Officer A] after the warrant led Sea to believe [Officer A] may have taken some money. [Officer A] also suggested planting a drug recipe in the main suspect's property, or having it found during a search warrant. Sea declined.<sup>9</sup>*

This changed wording was reflected in other (and earlier) Mascot documents, notably affidavits that are discussed below. The wording change transformed the tenor of the two allegations against Officer A and, in time, resembled a statement of fact about improper practices by Officer A.

A third allegation against Officer A (SOD137) was added to the Schedule of Debrief at a later stage of the Mascot investigations. On 24 February 2000, in a conversation recorded on Sea's body worn LD between Sea and Mascot Subject Officer 2 (MSO2), the latter alleged that Officer A had assaulted a detainee over 20 years ago.<sup>10</sup> This allegation was added to the Schedule of Debrief, for the ostensible purpose of examining whether Officer A had assaulted a person at the Mosman Police Station on 8 February 1979.<sup>11</sup> This allegation was never included in any of the affidavits that mention Officer A, and it appears it was never actively investigated by Mascot. However, it remained on the Schedule of Debrief as an allegation against Officer A until 2003.<sup>12</sup> This issue can be dealt with summarily at this stage by commenting that it was seemingly inappropriate to include this allegation in a Schedule of Debrief when the allegation was 20 years old, no complaint had been received from the victim, and the source had credibility issues.

5 NSWCC, Record of interview between Detective Inspector Burn, Detective Senior Sergeant Henry and 'Sea', 11 January 1999, p. 5.

6 NSWCC, Record of interview between Detective Inspector Burn, Detective Senior Sergeant Henry and 'Sea', 11 January 1999, p. 5.

7 NSWCC, Information Report, *Schedule of Debrief with SEA, 91 matters outlined*, reporting officer: Burn, 13 January 1999, p. 21.

8 NSWCC, Information Report, *Schedule of Debrief with SEA, 91 matters outlined*, reporting officer: Burn, 13 January 1999, p. 21.

9 NSWCC, SOD088 Operation Jagtail - \$120 000 - covert search warrant on a garage at Bondi, 31 August 2000, p. 39.

10 NSWCC Transcript, Tape No. 99/378, 24 February 2000, p. 13.

11 NSWCC, SOD137, 16:39 24/02/2000 [MSO2] talks to Sea about old arrest of two offenders for AHU ... Allegation by [Mascot Subject Officer 2 (MSO2)] captured on LD re assault by [Officer A] during interview process, as at 31 August 2000, p. 63.

12 NSWPF, Complaint number [number] SOD137, Investigator's Report, SCIA Task Force Volta, 31 March 2003.

## 6.2.3 Chronology of Mascot's investigation into Officer A

### 6.2.3.1. Listening device affidavits and warrants naming Officer A

In his original debrief, Sea alleged that a number of other police officers – including MSO3 – had been involved in police corruption.

On 22 January 1999 the NSW Crime Commission sought and obtained LD warrants 031-035/1999. These were for devices to be placed in Sea's motor vehicle and property and for a body worn device. The warrant named 10 officers whose conversations could be listened to and recorded, including MSO3. Officer A was not named in the application for these warrants.

On 29 January 1999 Officer A spoke on the telephone with Sea three times in the early afternoon to discuss welfare issues and organise the collection of Sea's medical certificates. During the course of the conversations they arranged to meet at a golf club on the northern beaches of Sydney, and Sea was informed that MSO3 would be attending.<sup>13</sup> The three conversations between Officer A and Sea were captured on a lawful TI on Sea's telephone and were the only times Officer A was recorded by Mascot via telephone interception.

Soon after the conversations with Officer A, Sea met with his handlers – Detective Sergeant Damian Henry (a Mascot senior investigator) and Detective Inspector Catherine Burn (Mascot team leader). They “briefed and fitted [Sea] with a listening device”<sup>14</sup> for the golf club meeting. Sea attended and recorded his conversations at the golf club with four police officers, including Officer A and MSO3. After the meeting, Sea met with Burn and Henry and returned the tapes. This was the first time Officer A was recorded by a Mascot LD. On this occasion he was not named on the LD warrant that permitted Sea to record conversations with a body worn device, but MSO3 was.

On 2 February 1999 a junior Mascot investigator went to Officer A's home address to assess the suitability of the vicinity for surveillance of Officer A's home.<sup>15</sup> Following this, Dolan made arrangements to have a video camera installed near Officer A's home, which he envisaged “would be operative for between 1 and 3 months”.<sup>16</sup> There is no evidence that the camera was installed, but the junior Mascot investigator returned five further times in February to report on the vehicles in the vicinity of the property.<sup>17</sup>

Officer A was recorded on a LD for a second time on 5 February 1999, at a social gathering in which a number of police officers, including Officer A, were present.<sup>18</sup> There is no record to indicate that Mascot investigators knew that Officer A would be in attendance or that Sea would record his conversations.

On 8 February 1999, Kaizik made an application to the Supreme Court to revoke the LD warrants in force at that time (LD warrants 031-035/1999), and obtain new warrants (LD warrants 062-068/1999) naming nine additional officers – including Officer A.<sup>19</sup> The reason stated in the affidavit for the 8 February 1999 warrants was that “Commission investigators have identified further persons whose private conversations Commission investigators intend to record or listen to by means of the listening devices concerned”.<sup>20</sup> This suggests that Mascot investigators had realised that the existing warrants did not authorise Sea to record the conversations of additional targets who Sea either might record or had recorded. Kaizik's affidavit for this application was sworn

13 NSWCC, Information Report, *Meeting between Sea and other* [northern beaches golf club] 29.1.99, reporting officer: Henry, 1 February 1999.

14 NSWCC, Information Report, *Meeting between Sea and other* [northern beaches golf club] 29.1.99, reporting officer: Henry, 1 February 1999.

15 NSWCC, Information Report, [Officer A address], reporting officer: [junior Mascot investigator], 3 February 1999.

16 NSWCC, Information Report, *Report by D/S Dolan re camera device re* [Officer A], reporting officer: Burn, 3 February 1999; Letter from Detective Superintendent John Dolan, NSW Police Force to [name], 2 February 1999.

17 NSWCC, Information Report, [Officer A address], reporting officer: [junior Mascot investigator], 4 February 1999; NSWCC Information Report, [Officer A address], reporting officer: [junior Mascot investigator], 5 February 1999; NSWCC Information Report, *Continuation surveillance of* [Officer A address], reporting officer: [junior Mascot investigator], 8 February 1999; NSWCC Information Report, [Officer A address], reporting officer: [junior Mascot investigator], 15 February 1999; NSWCC Information Report, [Officer A address], reporting officer: [junior Mascot investigator], 19 February 1999.

18 NSWCC Information Report, *Debrief with Sea re LD 5.2.99. Meeting at* [northern beaches hotel] *with* [Mascot Subject Officer 3 (MSO3)] *& others*, reporting officer: Henry, 9 February 1999.

19 Under s. 16(5) of the *Listening Devices Act 1984* (repealed) (LD Act), a warrant could be revoked by an eligible Judge at any time before it expired.

20 LD affidavit 062-068/1999, p. 11.

on 5 February 1999 (LD affidavit 062-068/1999) and was the first to list Officer A as an active target of Mascot's investigation. It described the allegations against Officer A as follows:

*In 1997, whilst working on Operation JAGTAIL, police covertly executed a search warrant on premises. In the course of that search, \$120,000 cash was located. [Officer A] suggested to the search party that they should steal the money. Later, when a suspect was apprehended for related amphetamine manufacture matters (name unknown), [Officer A] suggested that police 'plant' an amphetamine manufacture recipe in the suspect's property.<sup>21</sup>*

This paragraph was reproduced exactly in two subsequent affidavits – first in a rollover application sworn by a junior Mascot investigator on 19 February 1999<sup>22</sup> and then in another affidavit sworn by Kaizik on 12 March 1999.<sup>23</sup>

On 10 February 1999 Officer A was recorded by Sea's body worn LD – along with MSO2.<sup>24</sup> The use of that device was authorised by LD warrant 67/1999, which named Officer A and MSO2 among other Mascot targets. This was the third time Officer A was recorded by a Mascot LD. Operation Prospect has not located any Mascot documents that detail the content of that recorded conversation.

On 11 May 1999 Burn and the junior Mascot investigator – who initially attended Officer A's home address to assess its suitability for surveillance activity – set up a surveillance vehicle to conduct 24-hour video surveillance of people entering and leaving Officer A's home.<sup>25</sup> This surveillance was initially planned to continue until 21 May 1999,<sup>26</sup> but continued until 26 May 1999.<sup>27</sup> Burn tasked the junior Mascot investigator to review the video footage obtained, but this plan was eventually suspended.<sup>28</sup> There is nothing to indicate that this surveillance informed the investigation of the allegations against Officer A.

On 14 May 1999 a senior Mascot investigator swore an affidavit that repeated the two allegations in Kaizik's affidavit of 5 February 1999 – but slightly varied and with the deletion of the reference to "(name unknown)", that was in Kaizik's affidavit referring to the person apprehended for drug manufacture. The new affidavit read:

*In 1997, whilst involved in a police operation codenamed 'JAGTAIL', [Sea] and other police officers covertly executed a search warrant on premises and located \$120,000 in cash, [Officer A] suggested to the search party that they should steal the money. Later, when a suspect was apprehended for related amphetamine manufacture offences, [Officer A] suggested that police officers 'plant' an amphetamine manufacture recipe in the suspect's property.<sup>29</sup>*

The redrafted paragraph was then 'rolled over' in 47 further LD affidavits (in near identical form) sworn by seven different Mascot officers, which resulted in the authorisation of 233 warrants that named Officer A. These deponents all swore the affidavits (including the allegations against Officer A) to be true and correct. In all of these affidavits, the only justification for listening to Officer A was the paragraph above.

On 24 February 2000, Sea recorded a conversation (referred to earlier) with MSO2 in which he alleged that Officer A had assaulted a person at Mosman. Although this allegation was recorded in the Schedule of Debrief and given the Mascot reference number SOD137, the affidavits sworn after this date did not include this allegation and it appears it was never investigated.

On 27 October 2000, a Mascot investigator swore an affidavit that did not include the paragraph about Officer A in the body of the affidavit, but placed it in Annexure A of the affidavit under the heading '[Sea's] allegations'. Officer A was not a subject of this warrant application, even though he was included in Annexure A.<sup>30</sup>

21 LD affidavit 062-068/1999, p. 9.

22 LD affidavit 081-087/1999, p. 9.

23 LD affidavit 105-111/1999, p. 10.

24 NSWCC, *Report in Accordance with Section 19(1) of the Listening Devices Act 1984*, LD 67 of 1999, signed by [a NSWCC officer], 22 March 1999.

25 NSWCC, Information Report, *Vehicle hire for video surveillance* – [Officer A address], reporting officer: [junior Mascot investigator], 28 April 1999; NSWCC, Information Report, *Collection of surveillance vehicle – (NSW) – [registration number] from STIB*, reporting officer: [junior Mascot investigator], 13 May 1999.

26 NSWCC, Information Report, *Vehicle hire for video surveillance* – [Officer A address], reporting officer: [junior Mascot investigator], 28 April 1999.

27 NSWCC, Information Report, *Battery Change for surveillance vehicle [registration number] – vicinity of [Officer A address]*, reporting officer: [junior Mascot investigator], 26 May 1999.

28 NSWCC Spreadsheet, *Analyst and investigator taskings*, entry for 27 May 1999.

29 LD affidavit 185-191/1999, p. 7.

30 LD affidavit 322/2000.

The same approach was adopted in an affidavit sworn by a Mascot investigator on 7 November 2000, in which Officer A was not named as a subject of the warrant application.<sup>31</sup>

After this date, Mascot investigators swore a further five affidavits that included this annexure in support of warrant applications to listen to or record Officer A's private conversations.<sup>32</sup> In total, Officer A was named in 35 LD warrants supported by these five affidavits.

Officer A was not named in any warrant applications sought after 22 January 2001. Nevertheless, 13 affidavits sworn after that date in support of LD applications included the 'Officer A paragraph' in either Annexure A or B.

### 6.2.3.2. Review of Mascot records on Sea allegations

In mid-2001 Mascot officers conducted a review of Sea's early allegations.

On 18 May 2001 a NSW Crime Commission (NSWCC) analyst reviewed Sea's Duty Book and identified the date of the covert search of premises by Officer A and others where the money was found. This review appeared to have related to the compilation of a 'collection plan' (a documented plan to collect any available evidence on the matter) relating to the allegations about the covert search of premises where money was found.<sup>33</sup> The analyst recorded Sea's account as follows:

*... when he returned from the search [Officer A] questioned him, implying that there may have been an opportunity to take some of the money from the search.*<sup>34</sup>

At around the same time, a Mascot investigator was given responsibility for investigating the allegation against Officer A.<sup>35</sup> His assessment (undated, circa 2001) states:

*[The matter] relates to an allegation by SEA that [Officer A], SEA and two other officer from Drugs Production did a covert search warrant on a garage at Bondi. There is no evidence that SEA or anyone saw any theft of monies during the covert search. After the search [Officer A] makes a passing comment similar to "How did you go?" SEA takes this to mean that he stole money. In my opinion this comment could be taken a number of ways and is not evidence of an apparent theft. Further later [Officer A] allegedly suggests to SEA to plant a recipe for making drugs in one of the suspects property to be found later during a search warrant. SEA declines. There is no suggestion from the allegations from SEA that this plan was carried out or anything further happened after the initial offer. Again it seems to me be fall well short of any criminal or departmental charges.*

**CONCLUSION: NO FURTHER ACTION.**<sup>36</sup>

The same Mascot investigator reassessed this allegation shortly after (on 21 May 2001), following the receipt of new information:

*Recently further information has come to light in this matter. [Name] and [name] have now been identified as being the subjects of Operation JAGTAIL. Both of these persons will now need to be interviewed when the operation becomes covert, as to the allegations raised by SEA. It appears from the most recent information that they are both in custody.*

**CONCLUSION: FURTHER INVESTIGATION REQUIRED.**<sup>37</sup>

It does not appear that any further investigation occurred at this time.

On 13 June 2001 Detective Senior Constable Arpad Szabo and another Mascot officer (both of whom had been deponents of affidavits naming Officer A) interviewed Sea under an inducement which promised that anything he said would not be admissible against him. The purpose of the interview was to explore if there were

<sup>31</sup> LD affidavit 334/2000.

<sup>32</sup> LD affidavits 338-344/2000, 362-368/2000, 391-397/2000, 01/00056-00062, and 01/00183-00190.

<sup>33</sup> NSWCC, *SOD088 Collection Plan Operation Jagtail - covert search warrant on garage at Bondi – Sea & [Officer A]*, undated; NSWCC Information Report, *Identification of incident referred to in SOD088 from Sea's duty book*, reporting officer: [NSWCC analyst], 18 May 2001.

<sup>34</sup> NSWCC, Information Report, *Identification of incident referred to in SOD088 from Sea's duty book*, reporting officer: [NSWCC analyst], 18 May 2001.

<sup>35</sup> NSWPF Duty Book, D043448, [Mascot Detective Senior Constable], SCU, 13 February 2001, 10 April 2001 and 29 May 2001, pp. 66, 102 and 125.

<sup>36</sup> NSWCC, *SOD088, Operation Jagtail*.

<sup>37</sup> NSWCC, *Summary of SOD088*, 21 May 2001, Detective Senior Constable [name].

further instances of corruption about which Sea had not yet told Mascot. Sea was given a copy of his Duty Book to review and was asked to comment on any instances of corruption or misconduct noted in it. Szabo prompted Sea to consider his entries for 24 and 25 August 1998. Sea stated:

A *Well nothing jumps out. Anything ... Now is there anything I've missed put it that way?*

Q37 *24th or the 25th August '98?*

A *24th [Pause] Yeah that's when we did the Bondi garage.*

Q38 *The operation [Jagtail]?*

A *Yeah, the coverts.*

Q39 *Yeah. Just ...*

A *What, is that in relation to what [Officer A] said to me?*

Q40 *Yeah, it's just got the 24th or the 25th, just want to see is there a date or is it like an overnight job?*

A *Oh they were late jobs, like ...*

Q41 *Started on the 24th and ended on the 25th?*

A *Umm, no, it was just part of [Jagtail] which was an ongoing operation. Now what happened was, um, a garage had been located at North Bondi off Ocean Street, North Bondi, and a covert was done there, um, and I'm just trying to see.*

*(IND WHISPERED CONVERSATION BETWEEN DETECTIVES SZABO AND [NAME])*

*[PAUSE WHILST READING] Right, what d'ya want to know about that?*

Q42 *Okay, just from your duty book it looks like there's two covert warrants executed?*

A *Yeah, we did one and some samples were done.<sup>38</sup>*

Sea went on to state that he did not go into the garage on the first occasion when the money was found, but the officers who did guessed it was \$120,000. Sea then stated there were conferences and it was decided officers should return inside the garage and do a better check or count. Sea then provided an account of what occurred on the second occasion:

A *And we bundled and counted it. I went in that time with [officer name] and [officer name]. We bundled and counted it and it was a hundred and twelve ... the bundle and counting came to 120,000.*

Q49 *Yeah.*

A *And, er, basically it never came out. I couldn't work out why [Officer A] had ducked it away but, um, anyway when I came out he said, how did you go, I said well what d'ya mean, he said the money. And I took that to mean, well you know, did you take some?*

Q50 *Uh-hmm.*

A *And I said, no, I just told him, Mate I just don't need any dramas, you know, so I've got enough ... not that it crossed my mind to do it anyway. And that was about it really.*

Q51 *Thank you.<sup>39</sup>*

The investigators did not ask Sea any further questions about the search warrant or Officer A's actions on that occasion. Szabo and the Mascot officer prepared an Information Report the same day (13 June 2001) that documented Sea's retelling of this incident, as follows:

<sup>38</sup> NSWCC, Record of interview between Detective Sergeant Szabo and 'Sea', 13 June 2001, p. 5.

<sup>39</sup> NSWCC, Record of interview between Detective Sergeant Szabo and 'Sea', 13 June 2001, p. 6.



*After the search Sea was approached by [OFFICER A] who asked Sea how he went, which Sea took to mean how much money did Sea take.<sup>40</sup>*

Szabo swore an affidavit on 9 July 2001, a month after this interview with Sea. An appendix to the affidavit included the incorrect statement that Officer A “suggested to the search party that they should steal the money”.<sup>41</sup> Officer A was not listed in the affidavit as a person who Mascot proposed to record or listen to, and nor was he named in the associated warrant. This error in the affidavit was rolled over into an affidavit sworn by another Mascot officer on 30 July 2001.<sup>42</sup>

On 31 July 2001 two different Mascot investigators met with Sea to discuss an indemnity for the matters he was divulging to the NSWCC and other matters. The draft indemnity application and related documents were given to and reviewed by Sea. He clarified the information relating to Officer A regarding the execution of the search warrant. This correction was noted in an Information Report, along with an extract of the original statement made by Sea during his debrief in January 1999:

*Sea disagreed with the description of his recollection as summarised and repeated his initial disclosure indicating that he believed [Officer A] had inferred, during an off-the-cuff remark to Sea after the search warrant, a question of whether Sea had stolen money or not. There is no suggestion that [Officer A] stole money on this occasion.*

*Sea, “There was a \$120,000 [sic] there approximately, because we couldn’t do a, obviously a proper count. It was counted by bundle by bundle and when I got out [Officer A] said “how did you go?” I said “what do you mean?” He said “the money?” I said “well mate ...” and I, I thought he was inferring “did you take any”. And I said “mate I’ve got enough dramas in my life I don’t need anymore” (MATR0005 – Q27).*

*This version was corroborated by Sea during contact with Det’s Szabo and [name] on 13/6/01 (MAIN03683). [Name] has now amended the discrepancy on the schedule.<sup>43</sup>*

The final line in the above indicated that the electronic Schedule of Debrief document had also been corrected.

On 8 August 2001 Szabo and another investigator met with Sea. Sea was given a full copy of the Schedule of Debrief (dated 30 May 2001), which he reviewed. The Information Report compiled by Szabo recorded comments made by Sea that corrected the allegations concerning Officer A:

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*[Officer A] asking whether Sea had stolen any money. Not ‘conversation between Sea and [Officer A] after the warrant led Sea to believe [Officer A] may have taken some money.’<sup>44</sup>*

Two weeks after Sea made these corrections Szabo swore another affidavit on 20 August 2001 that had an annexure that contained the same incorrect information as in earlier affidavits – suggesting that Officer A had raised the option of stealing money from the premises.<sup>45</sup> Szabo repeated this error in two further affidavits he swore in September 2001 and February 2002.<sup>46</sup> None of those affidavits sought authority to listen to or record Officer A’s private conversations.

On 2 October 2001, a TI affidavit was sworn by a Mascot officer which contained the same information as the LD affidavits – that Officer A suggested to a search party that they should steal money and plant an amphetamine recipe in the suspect’s property. Officer A was not the subject of the application for the TI, nor was he listed as an officer involved in the offence. It is unclear why this paragraph was included in this affidavit.

40 NSWCC Information Report, *Informant Contact with Sea 13/06/2001*, reporting officer: Szabo and [Mascot officer], 13 June 2001.

41 LD affidavit 01/05255-05261, p. 30.

42 LD affidavit 01/05980-05986.

43 NSWCC, Information Report, *Informant contact with Sea, Tuesday 31/7/01*, reporting officer: [Mascot investigator], 1 August 2001.

44 NSWCC, Information Report, *Contact with informant Sea on the 8-8-01*, reporting officer: Szabo, 9 August 2001.

45 LD affidavit 01/06753-06759.

46 LD affidavits 01/07478-07482 and 02/00547.

### 6.2.3.3. Finalisation of allegations against Officer A

In 2003 the allegations about Officer A were referred to Task Force Volta. Task Force Volta was established by the NSW Police force (NSWPF) in September 2002 to finalise the outstanding medium to low risk allegations from Mascot's Schedule of Debrief. Task Force Volta is further discussed in Chapter 3.

On 14 July 2003 Task Force Volta found the allegations about Officer A to be unsubstantiated. A Task Force Volta report stated the allegations had been "[a]ssessed by Burn & [name]. Agreed NFA [no further action] at this time. SEA believes, no other information. NFA: no complaint".<sup>47</sup>

The historical allegation of assault had been assessed and referred to Task Force Volta in 2002, then reassessed in March 2003 as "NFA: no complaint; age of matter; intelligence only". The report noted that the PIC agreed with this resolution.<sup>48</sup>

## 6.2.4 Analysis and submissions

### 6.2.4.1. Recording of Officer A's conversation with Sea at the golf club meeting

A question arising is whether the LD recording of Officer A on 29 January 1999 was in breach of section 5 of the *Listening Devices Act 1984* (repealed) (LD Act), which made it an offence to use or to cause a LD to be used to record a private conversation – unless the use and recording came within an exception listed in the Act. As discussed in Chapter 5, this may be a strict liability offence that does not require proof of intention but does allow a common law defence of honest and reasonable mistake.

As noted earlier, in a telephone conversation with Sea earlier that day that was lawfully recorded, Officer A arranged to meet Sea at a golf club and mentioned that MSO3 – who was under active investigation by Mascot at that time – may be present. Based on that information, Burn and Henry fitted Sea with a body worn device to record Sea's conversations at the golf club. The warrant that authorised the body worn device nominated only Sea and MSO3 as people who could be recorded. Three other police officers (including Officer A) were in fact recorded in the conversations that occurred at the golf club.

The recording of the conversation with Officer A at the golf club would not be unlawful if it was "the unintentional hearing of a private conversation by means of a listening device" (LD Act, s. 5(2)(d)). The obvious difficulty in applying that exception is that Burn and Henry were aware that Officer A would be meeting with Sea at a time that he would be wearing a body worn device to record conversations.

Burn and Henry both made submissions to Operation Prospect on this issue. Burn submitted that, based on her review of the documents and her general recollection of the investigative priorities of January 1999, the reason she and Henry decided to fit Sea with the LD was because Officer A had told Sea that MSO3 would be in attendance – and it was Sea's conversation with him that they sought to have recorded. The recording of that conversation was intentional, but the recording of Officer A's conversation with Sea was entirely inadvertent. She further submitted that, as she was not involved in applying for or supervising LD warrant applications, she was not aware that Officer A was not named on the warrant. Burn also submitted that she may have assumed at the time that Officer A, who was named in the original Schedule of Debrief, "would also have been appropriately named in the legal documents, such that recording his conversations would be authorised".<sup>49</sup>

Henry made a similar point in his submission, that:

*During my time on the Mascot investigation, I do not recall ever seeing a LD or TI warrant. It was the practice that the warrants were retained, secured and filed by NSWCC staff.*<sup>50</sup>

<sup>47</sup> NSWCC, *Operation Mascot/Florida Allegation Summary Report*, 14 July 2003, p. 45.

<sup>48</sup> NSWCC, *Operation Mascot/Florida Allegation Summary Report*, 14 July 2003, p. 66.

<sup>49</sup> Burn, C, Submission in reply, 25 September 2015, p. 134.

<sup>50</sup> Henry, D, Submission in reply, 10 August 2015, p. 5.

Henry further submitted that there is no evidence that he or Burn actively encouraged Sea to record his conversations with Officer A.<sup>51</sup>

The Information Report relating to the golf club meeting is not inconsistent with those submissions. It does not indicate the details of the briefing given to Sea, nor any instructions or advice as to who to record and what inquiries should be made with any particular attendee.<sup>52</sup>

Based on the evidence and submissions, it can be accepted that the recording of Sea's conversation with Officer A was not unlawful – as it fell within the exception in section 5(2)(d) of the LD Act as an unintentional recording of a private conversation. A compelling consideration is that, unless Burn and Henry had consulted the text of the relevant warrant before fitting the LD to Sea, they could have reasonably assumed that Officer A was named in that warrant. Those matters would also be relevant if a defence of honest and reasonable mistake was relied upon. Chapter 16 of this report, which deals with systemic failures in Mascot operations, raises a broader issue that Mascot officers deployed informants or operatives without direct reference to what was authorised on the applicable warrants.

#### **6.2.4.2. Inaccuracies in the affidavits for warrants naming Officer A**

The decision to make Officer A a preliminary target of investigation was based on ambiguous comments by Sea that fell short of clear allegations of corruption or misconduct. It was nevertheless open to Mascot at that time to decide to investigate Officer A's apparent willingness (according to Sea) to discuss corrupt conduct, and for Officer A's name to be included on Mascot warrants.

The main deficiency was not the decision to investigate, but the manner in which Sea's original comments about Officer A were recorded and altered over time – and then repeated in a more damning form.

The first Mascot summation (by Burn) of Sea's remarks after the debrief noted a "possible suggestion by Officer A re money"<sup>53</sup> and – as to the suggestion that a bogus document be planted in a suspect's property – commented "didn't happen".<sup>54</sup> This was a tenable construction of Sea's information. On numerous occasions after that, Sea's comments were presented in more definitive and damning terms. Starting with Kaizik's affidavit on 5 February 1999, Officer A is said to have suggested to others that they should steal the money and that police 'plant' an amphetamine manufacture recipe in the suspect's property.

That was not a fair and accurate recitation of what Sea had said. The debrief information did not support the inference in the affidavit that Officer A was a corrupt person who had suggested illegal activity. Nor did the affidavit refer to important contextual information from the debrief interview – that Sea "did not know how to take [Officer A]", and that there were instances where Sea thought that integrity tests were being conducted on him (Sea) while he was in that unit. These potentially exculpatory factors should have been included in the affidavit. However, there is no evidence that the omissions were deliberate or intentional, or that Kaizik knowingly swore a false affidavit in breach of section 29 of the *Oaths Act 1900* (Oaths Act).

In evidence to Operation Prospect, Kaizik agreed it was important to be accurate in an affidavit in communicating what Sea had said<sup>55</sup> and that he (Kaizik) had probably misinterpreted the source material.<sup>56</sup> He later submitted that his affidavits were all prepared in good faith, he worked collaboratively with and relied on other NSWCC staff and lawyers, his general practice was to have his work checked and cleared by others, and he cannot recall receiving instruction or training on affidavit preparation.<sup>57</sup>

Mascot practice in preparing affidavits is discussed in detail in Chapter 16. A recurring criticism taken up in that chapter is that Mascot processes did not adequately recognise that it is the legal responsibility of a deponent who swears that the information in an affidavit is a true and correct record to approach their work on that basis. For example, it is possible that another officer reviewed or did work on Kaizik's affidavit (such as the NSWCC

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51 Henry, D, Submission in reply, 10 August 2015, p. 14.

52 NSWCC Information Report, *Meeting between Sea and other [northern beaches golf club] 29.1.99*, reporting officer: Henry, 1 February 1999.

53 NSWCC Information Report, *Schedule of Debrief with SEA, 91 matters outlined*, reporting officer: Burn, 13 January 1999, p. 21.

54 NSWCC Information Report, *Schedule of Debrief with SEA, 91 matters outlined*, reporting officer: Burn, 13 January 1999, p. 21.

55 Ombudsman Transcript, Troy Kaizik, 8 August 2014, p. 1299.

56 Ombudsman Transcript, Troy Kaizik, 8 August 2014, p. 1300.

57 Kaizik, T, Submission in reply, 11 June 2015, p. 1.



solicitor or the NSWCC Director of Investigations) and, in the process, tweaked the wording in the affidavit. It is not known whether that occurred and, in any case, it was Kaizik's responsibility to check any amendment that may have been made by others to an affidavit that he would sign.

A particular problem with the affidavits that mention Officer A is that they paraphrase Sea's words rather than quote him directly. A judicial officer who is asked to grant a warrant should be able to form their own view on what was said, not have to rely on an interpretation or inference drawn by the author or deponent of the affidavit. This too is a recurring criticism of Mascot affidavit preparation that is noted in other chapters.

The content from Kaizik's affidavit about Officer A was rolled over or repeated in identical or similar terms in the body or an annexure of a further 51 affidavits sworn by Mascot officers. These were:

- 35 affidavits sworn in support of 254 LD warrants that authorised Mascot to listen to or record Officer A's private conversations
- 15 LD affidavits and one TI affidavit that did not name Officer A in the associated warrants.

The inaccurate information was repeated in affidavits sworn as late as September 2001 and February 2002, even though Sea had by that time disagreed with the interpretation placed on his words. Six of the affidavits post-dated Sea's interview of 13 June 2001 in which he clarified Mascot's recording of his allegation about Officer A. Four of these were sworn by Szabo and are discussed below.

The rolling over of warrant applications with affidavits that essentially copied previous affidavits was an accepted work practice in Mascot investigations. Although the NSWCC LD Manual specifically required a warrant application to "commence with an original proforma not an earlier document",<sup>58</sup> this did not occur in relation to Officer A nor in other instances discussed in this report.

As for Officer A, the officers who rolled over the affidavits for warrant applications did not check the source information and simply relied on the wording in preceding affidavits – starting with Kaizik's. This practice was misplaced and dangerous. A common theme in the submissions that Operation Prospect received from the deponents of rollover affidavits that mentioned Officer A was that it was impractical for them to check every statement of fact, they did not have ready access to relevant source documents that were securely stored elsewhere in the premises, there were intense work pressures on Mascot investigators who were conducting sensitive and covert operations, and the investigators relied on the preparation and assistance of experienced professionals in the NSWCC. This is an understandable view – given the number, frequency, length and factual complexity of the affidavits sworn as part of the Mascot investigations. The point remains nevertheless that the inaccurate content, which unnecessarily prolonged the investigation of Officer A, was unlikely to have persisted if one or more of the deponents had checked the content against source documents, such as the debrief interview with Sea.

This conduct demonstrated a failure by the individual officers who swore the affidavits that mentioned Officer A to meet their legal obligations as deponents. It is clear, however, that their failure was illustrative of an accepted and known practice in Mascot of copying previously authorised affidavits without confirming or verifying the original statements – a systemic failure discussed in Chapter 16. Some officers readily conceded in their evidence and submissions to Operation Prospect that this was a flawed practice that led to serious problems occurring in the Mascot investigations. Individual naming and censure of all deponents is not therefore justified and these officers are not identified in this report.

The same general criticism can be made of the related practice of including a paragraph concerning Officer A in numerous affidavits when he was not named in the associated warrants. This was unnecessary and unwarranted, but is the product once again of the accepted practice of copying of affidavit content.

An adverse finding is made below against Kaizik because the affidavit he swore on 5 February 1999 was the first affidavit that was sworn in support of a warrant for a LD to investigate Officer A's conduct. Debrief allegations by Sea were described in the affidavit in a misleading and adverse form that did not accurately reflect the information available to Kaizik and that omitted relevant exculpatory factors. In those circumstances, there is a special responsibility on the deponent of the affidavit to ensure the accuracy and reliability of information stated in the affidavit.

<sup>58</sup> NSWCC, *Listening Devices Manual*, December 1999, p. 2.

### 6.2.4.3. Inaccuracies in affidavits after Sea's comments were corrected

The inaccurate presentation of Sea's information about Officer A was perpetuated in key operational documents – such as the Schedule of Debrief, the indemnity documentation and multiple LD affidavits. The inaccuracies persisted even though the allegations against Officer A had been assessed, reviewed and corrected in the interim – for example, in the reviews conducted in mid-2001. Those corrections were recorded in Information Reports and eventually in the Schedule of Debrief, but not in all operational documents. There was also no mechanism in place at this time to ensure that Mascot investigators who could be deponents in the future were alerted to the need to include the corrected information in any future affidavits. They followed the accepted practice of copying previous affidavits which led to repeating misleading and incorrect information.

A significant change in Mascot's assessment of Officer A was first recorded by a NSWCC analyst in an Information Report on 18 May 2001. After reviewing Sea's Duty Book, the analyst concluded that the question Officer A asked Sea ("how did you go?") could be taken a number of ways and did not necessarily indicate an apparent theft. The analyst also noted that the suggestion of planting a drug recipe on an unidentified person was not carried out. However, given that Mascot practices involved the voluminous production of operational documents about targets with a lack of clear processes for ensuring that all relevant information was checked and noted by deponents of affidavits, it is reasonable to assume that Szabo – like the other deponents – was not made aware of the analyst's assessment. As a result, Szabo and other deponents appear to have followed the established practice of copying earlier paragraphs into their affidavits without confirming the original statements. A distinguishing consideration though in Szabo's case is that he did become directly aware of the corrected allegations about Officer A through two events:

- Szabo interviewed Sea with another Mascot officer on 13 June 2001, where Sea recounted what occurred and what was said about the search of the garage. Sea stated that Officer A had asked him how he went, and that he (Sea) interpreted that as Officer A asking him if he took any money.
- Szabo and another Mascot officer met with Sea on 8 August 2001, where he corrected the description of the allegations in the Schedule of Debrief about Officer A. In particular, Sea corrected that it should read 'Officer A asking whether Sea had stolen money' and not that Officer A's comment led Sea to believe that Officer A had taken some money.

Szabo swore affidavits on 9 July 2001, 20 August 2001, 10 September 2001 and 11 February 2002 that contained the same incorrect paragraph about Officer A in annexures. None of those affidavits sought authority to listen to or record Officer A's private conversations. In his submission to Operation Prospect, Szabo agreed that the affidavits contained unacceptable errors – but stressed that this was not done deliberately or wilfully and was a consequence of the circumstances in which Mascot affidavits were prepared.<sup>59</sup> The incorrect information was in an annexure that contained a large segment of a previous affidavit that had been copied and appended to new affidavits, without proper checking or review.

It is accepted that there is no evidence that Szabo deliberately or intentionally included incorrect information in the four affidavits, or that he knowingly swore a false affidavit contrary to section 29 of the Oaths Act. It was nevertheless unreasonable for Szabo to have sworn those affidavits containing information that he should reasonably have known was incorrect. After participating in two conversations in which Sea corrected the allegations that were ascribed to him, Szabo could reasonably be expected to review the content of any affidavit that he subsequently swore to ensure that it accurately recorded information known to him at that time.

### 6.2.4.4. Delays in finalising the matters concerning Officer A

The allegations against Officer A remained 'live' on Mascot records for a considerable period and were only finalised after Task Force Volta. The broader issue of delay in concluding investigations is considered in Chapter 17.

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<sup>59</sup> Szabo, A, Submission in reply, 10 August 2015, pp. 9-10.

## 6.2.5 Findings

### 1. Kaizik

Kaizik's conduct as the deponent of LD affidavit 062-068/1999 sworn on 5 February 1999, in support of an application for a LD warrant to listen to or record Officer A's private conversations, was unreasonable conduct in terms of section 122(d)(i) of the *Police Act 1990*. As discussed in sections 6.2.4.1 and 6.2.4.2, the affidavit did not accurately record the allegations against Officer A and omitted information that could potentially be exculpatory.

### 2. Szabo

Szabo's conduct as the deponent of four affidavits sworn between 9 July 2001 and 11 February 2002 (LD affidavits 01/05980-05986, 01/06753-06759, 01/0748-07482 and 02/00547) that included allegations against Officer A, was unreasonable conduct in terms of section 122(d)(i) of the *Police Act 1990*. As discussed in sections 6.2.3.2 and 6.2.4.3, Szabo was directly aware from meetings with Sea in June and August 2001 that a paragraph in the affidavits describing the allegations against Officer A was incorrect.

### 3. NSW Crime Commission

The NSW Crime Commission was responsible for the unreasonable conduct of the members of the Mascot Task Force in naming Officer A in 51 LD affidavits and one TI affidavit between 5 February 1999 and 11 February 2002, based on ambiguous comments that fell short of clear allegations of corruption or misconduct. As discussed in sections 6.2.4.2 and 6.2.4.3, information about Officer A was inaccurately presented in all the affidavits, the paragraphs naming Officer A were copied into multiple affidavits without proper checking and review, and he was named unnecessarily in some affidavits.

The NSW Crime Commission was responsible for the Mascot and Mascot II references and for the supervision of members of the Mascot Task Force. The actions taken by the Mascot Task Force with respect to Officer A indicate a lack of administrative rigour at the time in NSW Crime Commission document preparation processes. This was contrary to NSW Crime Commission policies, practices and procedures that should have been followed in the conduct of the Mascot references and in the preparation of affidavits and warrant applications. The conduct of the NSW Crime Commission in carrying out functions related to the administration of the *Listening Devices Act 1984* was unreasonable and otherwise wrong within the meaning of section 26(1)(b) and (g) of the *Ombudsman Act 1974*.

The general deficiencies that have been described in relation to the investigation of Officer A arose partly from the failure of the NSW Crime Commission, during the period January 1999 to January 2002, to ensure that affidavits were properly prepared and that the NSW Crime Commission's own policies, practices and procedures in relation to the obtaining of listening device warrants were properly implemented.

The NSW Crime Commission failed to ensure that staff under its control properly complied with the *Listening Devices Act 1984* and the *New South Wales Crime Commission Act 1985* – and with NSW Crime Commission policies and procedures relating to those Acts – in preparing 52 affidavits that contained inaccurate and incomplete information about allegations that Sea had made about Officer A.

## 6.3 The investigation of Officer B

### 6.3.1 Allegations against Officer B in the Schedule of Debrief

Officer B was a NSWPF Detective Senior Constable who worked with Sea in the Major Crime Squad in the early 1990s. Sea mentioned Officer B in his initial debrief interviews in January 1999, in relation to four matters that were then recorded in the Schedule of Debrief. Officer B was subsequently named in other matters that were recorded in the Schedule of Debrief – based on further interviews with Sea or information obtained by Mascot from the use of LDs. The allegations listed in the Schedule of Debrief were:

- ‘verballing’ a suspect (SOD020)
- fabricating evidence suggesting that Officer B had been driving a police vehicle at the time of an accident – in order to protect another police officer (SOD020)
- agreeing to dispose of unlawfully obtained firearms by dumping them into a river (SOD028)
- planting firearms on suspects (SOD018 and SOD103)
- receiving a corrupt payment of \$400, being part of reward monies obtained by another police officer and distributed by Sea (SOD036)
- failing to take appropriate action in relation to a suspect in the police cells (SOD131)
- receiving money stolen during the execution of a search warrant (SOD178)
- assaulting suspects (SOD035 and SOD115).

Officer B was first named in a Mascot affidavit sworn by Kaizik on 5 February 1999.<sup>60</sup> In total, Officer B was named in 168 LD warrants supported by 47 affidavits and in 11 TI warrants supported by two affidavits. The facts and grounds paragraphs of an additional 13 LD affidavits contained information about the alleged conduct of Officer B. He was also named in a further 15 TI affidavits as a person involved in the offences for which phone intercepts were sought (but not named as a target whose phone would be intercepted), and in the facts and grounds paragraphs of a further eight TI affidavits. Over the period of the Mascot investigations, Officer B was recorded on four occasions by a LD and on four occasions by a TI. It appears that a voicemail message that Officer B left on the phone of another Mascot target was also intercepted.<sup>61</sup>

Mascot did not investigate all the allegations against Officer B in great depth. The allegations that he verbally a suspect and disposed of firearms received the most attention. The strategies used by Mascot to investigate Officer B relied heavily on the use of LDs to gather corroborating evidence, but also included an integrity test. He was interviewed by Mascot investigators in June 1999 and by the Police Integrity Commission (PIC) in June 2002 as part of Operation Florida. He was also the subject of a risk assessment in 2002 in relation to an allegation that was being investigated by Mascot, which was later referred to Task Force Volta for finalisation. Officer B told Operation Prospect that he was advised in a letter received in December 2004 that none of the allegations against him had been sustained.<sup>62</sup>

The Mascot investigations of Officer B shows shortcomings in its methods – including representing allegations as substantiated fact in LD supporting affidavits, failing to follow policy guidelines on the use of integrity tests, failing to use alternative methods of investigation, and leaving allegations on Mascot records even after evidence refuting the allegations had been gathered.

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<sup>60</sup> LD affidavit 062-068/1999.

<sup>61</sup> TI affidavit 122-125/1999 refers to a voicemail message that Officer B left on the phone of MSO1 on 7 April 1999. Operation Prospect has not located any transcript for that intercept.

<sup>62</sup> Letter from Officer B to Operation Prospect, 28 February 2013.

## 6.3.2 Investigation of the allegation that Officer B verbally Paddle (SOD020)

### 6.3.2.1. Sea's allegation

During his debriefing with Burn and Henry on 8 January 1999, Sea alleged that in April 1994 Officer B had verbally a suspect – who later became a NSWCC informant codenamed Paddle.<sup>63</sup> The alleged verbal occurred when Paddle was arrested and charged with four offences that occurred in Coffs Harbour in early 1994. These offences were possession of a prohibited weapon, detaining persons with intent to hold them for advantage, break and enter with intent, and robbery being armed and in company.<sup>64</sup> In this chapter, these charges are referred to collectively as the 'attempted armed robbery'.

Paddle's co-accused (Mr M and Mr O) were also arrested on the same day in relation to the same incident. Two armed offenders wearing balaclavas entered the home of the duty manager of a Coffs Harbour club and held him and his wife at gunpoint, intending that the duty manager be taken to the club and compelled to open the club safe. The armed offenders left the duty manager's house after he explained that the safe was controlled by a time delay lock.<sup>65</sup> This attempted armed robbery is discussed further in Chapter 14, which includes details about the arrests and trials of the accused, Mascot's investigation of Sea's allegations relating to Paddle's arrest, and Mascot's handling of Paddle as an informant. Ultimately, Mr M and Mr O were acquitted in the District Court of the charges they faced in relation to this attempted armed robbery and the proceedings against Paddle were discontinued.

Sea told Burn and Henry that his knowledge of the alleged verballing came from Officer B and another officer, Mascot Subject Officer 4 (MSO4) – who were both involved in Paddle's interview and arrest. Sea also stated that the officer who conducted the 'adoption' interview<sup>66</sup> with Paddle, Mascot Subject Officer 5 (MSO5), would have also known about the verballing.<sup>67</sup> Sea was not questioned further during that debrief interview about these statements, and he did not provide any specific details about what the alleged verbal was. This allegation was recorded in the original Schedule of Debrief under SOD020:

OFFENCE	DATE	LOCATION OF SEA	INCIDENT
20. Assault Fabrication False Statement Perjury Falsifying records	87-91	Nth Region AHU [Armed Hold Up Squad]	[Mr O], [Mr M] & [Paddle] arrested For kidnapping manager of Coffs Harbour Hotel to Open safe – AHU called out to assist. [Mr M] assaulted [Mr O] – [officer] and [officer] verbally [Mr O] – [officer] recorded fabricated admissions in [officer's] notebook false statements, perjury [Paddle] – [officer] & [officer] – verbally [Paddle] – Drove to Coffs with weapon in car in case they needed to plant it – false statement perjury (trial pending) [an unrelated allegation]. <sup>68</sup>

63 NSWCC, Record of interview between Detective Inspector Burn, Detective Senior Sergeant Henry and 'Sea', 8 January 1999, p. 15.

64 Coffs Harbour Local Court, *Charge sheet*, [Paddle] [date] 1994; NSWPF, 'Facts in the matter' of the accused [Paddle], [Mr O] and [Mr M], [MSO3], [date] 1997, p. 1.

65 NSWPF, 'Facts in the matter' of the accused [Paddle], [Mr O] and [Mr M], [MSO3], 22 October 1997, pp. 1-2.

66 When an accused person's interview is recorded by notebook entry only, an independent officer reviews those entries with the accused in the absence of the arresting officer and asks if the offender accepts the written record as accurate and if he/she was coerced or intimidated. The adoption officer would also provide a statement for the criminal brief in relation to the adoption interview.

67 NSWCC, Record of interview between Detective Inspector Burn, Detective Senior Sergeant Henry and 'Sea', 8 January 1999, p. 16.

68 NSWCC, Information Report, *Schedule of Debrief with SEA, 91 matters outlined*, reporting officer: Burn, 13 January 1999, p. 5.

### 6.3.2.2. Paddle's arrest and Officer B's written statement and evidence at court about the 1994 arrest

Paddle and his co-accused were arrested separately on 7 April 1994. Paddle and Mr O were jointly interviewed by Officer B and MSO4 – as note taker and interviewer respectively. Officer B made separate written statements in relation to the arrests and the questioning of Paddle (dated 8 April 1994) and Mr O (dated 12 April 1994).<sup>69</sup> The statement about Mr O indicated that he gave a 'no comment' interview<sup>70</sup> to police.<sup>71</sup> The statement about Paddle contained admissions that he allegedly made and information he allegedly gave in response to questions asked by MSO4.<sup>72</sup>

- Paddle stated initially he had no involvement in the attempted armed robbery.
- MSO4 put to Paddle that a call was made to his mobile number at 4:00 am on the morning of the attempted robbery. Paddle stated he could not remember receiving a call.
- Paddle admitted that he knew both Mr O and Mr M and he was with them during that period in Coffs Harbour motel A. Paddle was asked if he stayed at the Coffs Harbour motel B and he said he had not. Paddle was advised that police found the firearms they suspected were used in the crime in a vacated room of Coffs Harbour motel B on 10 January 1994, and they had been advised that Paddle may have been one of the men staying in that room. Paddle was then advised that one victim identified one of the firearms as being used during the attempted armed robbery on 3 January 1994. Paddle was advised the victim identified it from distinguishing scuff marks on the barrel of the weapon.
- Paddle was told that a hire vehicle had been seen in the vicinity of the Coffs Harbour club at 1:00 am on 2 January 1994 (the day before the attempted armed robbery). Paddle stated that Mr O had hired it and Paddle had returned it to the hire car company later that day.
- Paddle was then asked again if he had anything to do with the crime, and he admitted he was the driver of the vehicle – but that he did not enter the house and was not involved in what occurred inside. Paddle stated that the attempted armed robbery was the idea of Mr O and Mr M and they knew where the manager lived.
- Paddle stated that he dropped Mr O and Mr M around the corner from the manager's home, and was then going to pick them up from the Coffs Harbour club after they had made the manager drive them to the club in his own car.
- Paddle confirmed that he received a phone call from Mr O at 4:00 am to pick up him and Mr M around the corner from the manager's home, and that Mr O had told him there was no money in the club.
- MSO4 then indicated to Paddle that he would now ask more questions about the matter and have the interview recorded by way of video and audio recording. Paddle said he did not want to participate.
- Paddle was read the complete entry of the conversation written in the police notebook by Officer B. Paddle confirmed that it was a correct record of the conversation/interview. Paddle was asked if he wished to sign the notebook record and he declined because he did not want Mr O or Mr M to know that he had given them up.
- Paddle refused to sign the receipt for his copy of the notebook entry which Officer B then gave to the custody officer.

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69 NSWPF, Statement by [Officer B] in the matter of [Paddle] and others, Coffs Harbour Police Station, 8 April 1994; NSWPF, Statement by [Officer B] in the matter of [Mr O] and others, Grafton Police Station, 12 April 1994.

70 Meaning that questions were put to Mr O who responded to all questions "no comment".

71 NSWPF, Statement by [Officer B] in the matter of [Mr O] and others, Grafton Police Station, 12 April 1994.

72 NSWPF, Statement by [Officer B] in the matter of [Paddle] and others, Coffs Harbour Police Station, 8 April 1994.



In a court hearing on 4 August 1994 in relation to the charges, Officer B was cross-examined by counsel for Paddle. Officer B gave evidence that he and MSO4 also had a conversation with Paddle at the Macksville Police Station after Paddle's arrest on 7 April 1994. He took contemporaneous notes of that conversation, but it was not a formal record of interview.<sup>73</sup>

### 6.3.2.3. Investigation and collection of additional information about the verballing allegation

The Mascot investigations of the verballing allegation started on 21 January 1999, when Mascot investigators served a Notice to Produce Documents on the DPP in relation to the brief of evidence for the prosecutions of Paddle, Mr O and Mr M for the attempted armed robbery.<sup>74</sup>

The first Mascot LD affidavit that named Officer B was sworn by Kaizik on 5 February 1999, and the associated warrants were granted on 8 February 1999. That affidavit and several that followed did not mention the verballing allegations. Instead they mentioned the allegations against Officer B of receiving a corrupt payment of \$400, fabricating evidence to protect another officer who was driving a police vehicle at the time of an accident, and agreeing to dispose of unlawfully obtained firearms by dumping them in a river. The paragraphs referring to Officer B were copied into LD affidavits dated 19 February 1999 and 12 March 1999.

The next significant event was that Paddle was interviewed on 12 April 1999 by two Mascot investigators, Detective Sergeant Boyd-Skinner and Detective Senior Constable McFadden.<sup>75</sup> Paddle told the investigators that when he was arrested for the 1994 attempted robbery he was never offered the chance of doing an Electronically Recorded Interview of a Suspect Person (ERISP), nor was he interviewed by the two main arresting officers (Officer B and MSO4). Instead, Paddle said the arresting officers asked him some questions while he was being transported in the police vehicle – but no-one kept any notes or wrote down his responses. Paddle alleged that MSO5 later showed him a police notebook that belonged to Officer B, which contained a record of a 'notebook interview'. Paddle said he started to read it and realised that it was a false record. Paddle's comments were recorded in the Record of Interview with Boyd-Skinner and McFadden as follows:

*At Coffs Harbour I was put in a small holding cell for an amount of time where the detectives disappeared and when they eventually came and got me I was placed in a room with [MSO5] who then asked me whether I'd been induced or threatened or in any way led into giving a statement, to which I replied that I hadn't given one. He then proceeded to hand me a police notebook which had an amount of writing in it ... he asked me to read it so I took the book from him. I started reading and about a paragraph into reading the book realised that it was a written conversation that had never taken place in the context that it was written in, to which I got annoyed at the time and threw the book back across the table at [MSO5] and I think my words were along the line of 'this is a heap of bullshit. This fuckin' thing never took place' and got out of the chair to stand on my feet, at which time the two detectives came back in and took me back out to the small holding cell.<sup>76</sup>*

The Record of Interview summarised Paddle's view as being that the written statements made by MSO4 and Officer B (about what Paddle had allegedly admitted), and by MSO5 (about Paddle accepting the notebook interview as a true and accurate record), contained false information.<sup>77</sup> Paddle's comments were consistent with Sea's allegation during his debrief interview that Paddle had been verballled.

73 Transcript of Proceedings, *Director of Public Prosecutions v [Mr M], [Mr O] & [Paddle]*, [Officer B] examination Coffs Harbour Local Court, DPP number [number], file number [number], Magistrate [name].

74 This was compiled with on 27 January 1999. NSWCC Information Report, *Full brief of evidence re: [Mr O], [Mr M] & [Paddle] – armed holdups*, reporting officer: [a junior Mascot officer], 27 January 1999.

75 NSWCC, Record of interview between Detective Sergeant Boyd-Skinner, Detective Senior Constable McFadden and [Paddle], 12 April 1999.

76 NSWCC, Record of interview between Detective Sergeant Boyd-Skinner, Detective Senior Constable McFadden and [Paddle], 12 April 1999, pp. 4-5.

77 NSWCC, Record of interview between Detective Sergeant Boyd-Skinner, Detective Senior Constable McFadden and [Paddle], 12 April 1999.

On 20 April 1999, a TI affidavit in support of an application to intercept the phones of MSO1 was sworn by a junior Mascot investigator.<sup>78</sup> The TI affidavit contained the following information about the allegation that Paddle had been verballled, even though MSO1 was not implicated in this allegation:

*[Officer B] and [MSO4] interviewed [Paddle] about the home invasion. [Paddle] was allegedly shown two balaclavas which were said to have been recovered from [Paddle]'s home. In the course of the interview, [Paddle] allegedly made admissions concerning his involvement in the home invasion, which were recorded by [Officer B] in his ([Officer B]'s) police notebook. [Paddle] allegedly declined to sign the notebook. The interview with [Paddle] was allegedly adopted by [MSO5] ...*

*[Sea] also asserted in [Sea]'s induced statement that [Officer B] and [MSO4] 'verballled' [Paddle] in relation to the notebook interview which is said to have been conducted with [Paddle]. [Sea] further asserted that despite his ([MSO5]) not having spoken with [Paddle], [MSO5] later made a statement to the effect he ([MSO5]) spoke with [Paddle] about the notebook interview.<sup>79</sup>*

Officer B was listed in the TI affidavit as a person involved in the offences that Mascot sought to investigate, but he was not named as a target whose phone would be intercepted. Among the corrupt conduct mentioned in the affidavit in which Officer B was allegedly involved was the allegation that he had fabricated evidence to protect MSO1 who was driving a motor vehicle at the time of an accident.

The first LD affidavit to mention the verballing allegation about Officer B was sworn on 29 April 1999.<sup>80</sup> It described the police investigation of the attempted robbery in exactly the same terms as quoted above in the TI affidavit sworn on 20 April 1999.

The description of the verballing allegation in both the TI affidavit and the LD affidavit was correct, except in one instance. Sea had not asserted that MSO5 adopted the notebook interview without first speaking to Paddle. Sea had said only that MSO5 was aware that Paddle had been verballled. Sea did not indicate whether Paddle had been interviewed by MSO5. The record of Paddle's interview with Boyd-Skinner and McFadden on 12 April 1999 had also described this matter differently. Paddle stated that he had started an interview with MSO5, but discontinued it when he realised that the notebook record shown to him by MSO5 described his interaction with Officer B and MSO4, which Paddle alleged had not occurred.<sup>81</sup>

The extract from the TI affidavit quoted above was repeated in two LD affidavits sworn by Kaizik on 21 May 1999<sup>82</sup> and 1 June 1999.<sup>83</sup> The 1 June 1999 affidavit and associated warrants did not name Officer B as a person who may be listened to and recorded. The extract, or very similar words, also appeared in a further seven affidavits between June and August 1999.<sup>84</sup> The extract also appeared in a TI affidavit supporting an application to intercept Officer B's phones, dated 30 April 1999.<sup>85</sup> It also appeared in the same form in eight subsequent TI affidavits up to 26 October 2000. Officer B was not listed in those eight affidavits as a person whose phone may be intercepted, but he was named in five affidavits as a person involved in the offences that Mascot was investigating. The other three affidavits did not list Officer B as an involved officer, but nevertheless included the details of the verballing allegation in the facts and grounds section upon which the TI application was based.<sup>86</sup>

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78 TI affidavit 114/1999.

79 TI affidavit 114/1999, pp. 8, 9.

80 LD affidavit 143-144, and 167-168/1999.

81 NSWCC, Record of interview between Detective Sergeant Darren Boyd-Skinner, Detective Senior Constable Brett McFadden and [Paddle], 12 April 1999, pp. 4-5.

82 LD affidavits 192-195/1999.

83 LD affidavits 211, 214-215/1999, p. 5.

84 LD affidavits 218-224/1999, 226-227/1999, 241-247/1999, 251-252/1999, 262-268/1999, 279-295/1999, and 302-308/1999.

85 TI affidavit 122-125/1999.

86 TI affidavits 099-104/2001, 107/2001, and 132-135/2001.



On 25 June 1999 Officer B was interviewed by Boyd-Skinner.<sup>87</sup> He denied falsifying his notes and stated that he had written down the conversation with Paddle as it took place.<sup>88</sup> He told Boyd-Skinner that Paddle had “told us stuff which I later learnt that wasn’t known by the investigating police”.<sup>89</sup> Officer B said that Paddle had assisted police in identifying which of the offenders had been at a motel where guns were ultimately found.

A LD affidavit sworn by Kaizik on 17 September 1999 changed the wording of Sea’s allegation that Paddle had been verballled by Officer B, presenting it as substantiated fact rather than a claim made by Sea, stating “[Officer B] and [MSO4] verballled [Paddle] in an entry in [Officer B]’s notebook, which [MSO5] formally adopted”.<sup>90</sup> This representation of the allegation was repeated in all subsequent Mascot LD affidavits that named Officer B until May 2001 (a further 36 affidavits after September 1999). It also appeared in six TI affidavits between January and April 2001, only one of which supported an application to intercept Officer B’s phones.<sup>91</sup>

On 7 December 1999 Paddle gave an induced statement to Boyd-Skinner and Detective Sergeant Greg Moore, a Mascot investigator. This was the first induced interview provided by Paddle to investigators in relation to the attempted armed robbery. The effect of the inducement meant that any self-incriminating evidence provided by Paddle could not be used against him in criminal proceedings. In this interview he admitted his involvement in the attempted armed robbery and provided the following account:

- Paddle had been on the Gold Coast with Mr O and Mr M over the Christmas and New Year period 1993-1994, during which he and Mr M made a failed attempt at a bank robbery.
- The three then went to Coffs Harbour and stayed in a motel. Paddle told Mr O and Mr M that a security guard at the Coffs Harbour club had indicated it might be possible to rob the safe of the club.
- Paddle indicated that he acted as ‘mediator’ between the security guard (who had necessary information about the club and the managers for the proposed robbery) and Mr O and Mr M. The security guard had wanted a cut of the stolen money in return for his information.
- Paddle described the equipment that Mr O and Mr M had for the attempted armed robbery – which included walkie-talkies, balaclavas and guns. The equipment was kept in the car Paddle was driving. He had borrowed the car from a friend in Coffs Harbour. He had seen and handled the guns. He said that he did not use a hire car.
- Mr M and Mr O initially proposed to stay back in the club after it closed, so they could rob the safe – but that plan fell through and Mr O called Paddle and asked him to follow the manager when he left the club upon closing.
- Paddle followed the manager (who was driving home) back to his street, but did not see which house he went into. Paddle then went back to the club to pick up Mr O and Mr M, and drive them back to where he had last seen the manager’s car.
- Mr O and Mr M worked out which house was the manager’s and broke into it, wearing balaclavas. They abandoned the plan to rob the safe, as the safe required two keys to open it (of which the manager only had one) and it opened on a time delay.
- Soon after, Mr O and Mr M called Paddle and asked to be picked up. Paddle did so and drove to the motel.
- Paddle was staying at Coffs Harbour motel A. After the attempted armed robbery, Mr O and Mr M had mistakenly left the guns they had used for the attempted armed robbery in the Coffs Harbour motel B where Mr O and Mr M had been staying.
- Paddle stated that he had refused to participate in the attempted armed robbery (other than driving the car), stating he had never pointed a gun at anyone and did not think he could go through with that aspect of the plan.<sup>92</sup>

87 NSWCC, Record of interview between Detective Sergeant Boyd-Skinner, [another Mascot officer] and [Officer B], 25 June 1999.

88 NSWCC, Record of interview between Detective Sergeant Boyd-Skinner, [another Mascot officer] and [Officer B], 25 June 1999, pp. 7-8.

89 NSWCC, Record of interview between Detective Sergeant Boyd-Skinner, [another Mascot officer] and [Officer B], 25 June 1999, p. 8.

90 LD affidavit 324-330/1999, p. 7.

91 TI affidavit 199-216/2001.

92 NSWPF, Record of interview between Detective Sergeant Boyd-Skinner, Detective Sergeant Moore and [Paddle], 7 December 1999.

Paddle's admissions tended to undermine the allegation that Officer B had falsified his police notebook entry and his subsequent written statement based on the notebook. There are key similarities in Paddle's admission and what Officer B<sup>93</sup> and MSO4<sup>94</sup> stated in their 1994 statements that Paddle had said when he was arrested. In particular he knew Mr O and Mr M, they stayed together in Coffs Harbour at the time of the crime, he was involved as a driver, he received phone calls from Mr O and Mr M during the crime including a request to be picked up near the manager's house, he gave details of the two motels at which they stayed, plus the fact that the guns were found in Coffs Harbour motel B.

On 23 November 2000 – 11 months after Paddle's induced statement – Sea arranged to meet Officer B at a regional NSW golf club and lawfully recorded their conversation.<sup>95</sup> During the recorded conversation, they discussed Paddle's arrest. Sea asked: "What's fucken [Paddle] bluin' about, he only got a fucken gobful".<sup>96</sup> Officer B commented in response: "In fact there was nothin', nothin' said that he didn't say".<sup>97</sup> That comment is at odds with the allegations of both Sea and Paddle that Paddle was verbally by Officer B and MSO4.

Information from that recorded conversation was incorporated into a LD affidavit sworn by Szabo on 7 December 2000 that sought to listen to or record Officer B's private conversations.<sup>98</sup> The affidavit incorrectly stated that the conversation "corroborated [Sea's] initial allegations" – contrary to Officer B's comment that his written statement recorded what Paddle had said. The incorrect statement in the affidavit was rolled over in a further nine affidavits after 7 December 2000 and up to June 2001.

#### **6.3.2.4. Analysis and submissions**

The TI affidavit of 20 April 1999 and LD affidavit of 29 April 1999 correctly stated that Sea had "asserted" that Officer B had verbally Paddle, but incorrectly stated that Sea had also "asserted" that MSO5 adopted the interview between Paddle and Officer B without first speaking to Paddle. This information appeared in the same form in a LD affidavit sworn by Kaizik on 21 May 1999, and was rolled over into subsequent affidavits. Five months later, an affidavit sworn by Kaizik on 17 September 1999 represented the allegation inaccurately as substantiated fact. This inaccuracy was copied into a further 36 affidavits after that date up to May 2001.

As the investigation continued, information came to light that did not support Sea's allegation. This information included Officer B's denial of 25 June 1999, Paddle's admission in December 1999 that he was involved in the 1994 attempted armed robbery, and the conversation recorded between Sea and Officer B at the regional NSW golf club in November 2000. None of this information was added to the LD affidavits. In fact, the golf club conversation was inaccurately portrayed in Szabo's affidavit of 7 December 2000 as corroborating Sea's allegation, even though Officer B had commented that there was "nothin' said that [Paddle] didn't say".<sup>99</sup>

It is a significant concern that the affidavits Mascot relied on to support applications for LD warrants contained inaccuracies, excluded information that tended to exonerate Officer B, and presented Sea's claims as facts. The omission of relevant information from an affidavit that tended to undermine the allegation and the misrepresentation of conjecture as fact may affect the integrity of the process for independent judicial authorisation of a surveillance warrant – as discussed elsewhere in this report.

There is no evidence that the deponents deliberately intended to mislead or include inaccurate information in their affidavits. As noted elsewhere in this report, it was not uncommon for Mascot investigators to present information in documents in a way that seemed to confirm suspicions about targets. While this may have been an inadvertent mistake, it was clearly unfair to those who were the targets of investigations.

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93 NSWPF, Statement by [Officer B] in the matter of [Paddle] and others, 8 April 1994.

94 NSWPF, Statement by [Mascot Subject Officer 4] in the matter of [Paddle], 15 April 1994.

95 NSWCC Chronology Database, Document ID 6001.

96 NSWCC Transcript of LD 342/2000, Tape T99/926, 23 November 2000, p. 12.

97 NSWCC Transcript of LD 342/2000, Tape T99/926, 23 November 2000, p. 12.

98 LD affidavit 362-368/2000, p. 28.

99 NSWCC Transcript of LD 342/2000, Tape T99/926, 23 November 2000, p. 12.

Paddle's admission on 7 December 1999 that he was involved in the attempted armed robbery in 1994 provided a basis to conclude the investigation of the allegation that Officer B had verballled Paddle. Paddle's admission confirmed specific details that Officer B had included in his written statement after Paddle's arrest in 1994 – as Officer B pointed out to Boyd-Skinner in his interview on 25 June 1999. This suggests that Officer B was telling the truth in that interview, when he denied the allegation that he had verballled Paddle. Assessed objectively, the evidence held by Mascot suggested there were insufficient grounds to continue the investigation of the verballing allegation against Officer B. Nevertheless, the investigation of Officer B was not finalised until July 2004.

There is also the question of why the verballing allegation was included in 16 TI affidavits. Only two of those affidavits supported applications to intercept Officer B's phone, and another one supported an application to intercept MSO5's phone. The other 13 affidavits supported applications to intercept the phones of officers who were not involved in the alleged verballing incident. In short, those 13 TI affidavits appear to have included information that was not relevant to the offences that Mascot sought to investigate by using a TI – the information was not relevant to the application that was being made.

A related concern is that four of those TI affidavits did not name Officer B as an officer involved in any of the offences that Mascot sought to investigate using a TI. There could therefore be no reason to refer to him in the facts and grounds upon which the TI application was based.

It is likely that the inclusion of this irrelevant material resulted from the accepted practice of copying and pasting from previous affidavits, without due attention from the deponents as to what material was essential to the application at hand. This practice meant that the TI affidavits were longer and more complex than necessary as they included irrelevant material.

An adverse finding is recorded below against the NSWCC for the actions of the Mascot Task Force in continuing to investigate – after December 1999 – the allegation that Officer B had verballled Paddle. The NSWCC did not make a submission on that particular finding – beyond a general submission that the NSWCC was denied procedural fairness in the conduct of Operation Prospect, and had limited legal supervision and responsibility for the actions of NSWPF officers working at Mascot. Those matters are dealt with in Chapter 4.

An adverse finding is also recorded against Szabo for the incorrect statement in the affidavit that he swore on 7 December 2000. Szabo acknowledged the inaccuracy in his submission to Operation Prospect,<sup>100</sup> but – as summarised in section 6.2.4.3 of this chapter – submitted that this was not done intentionally and was a consequence of the circumstances in which Mascot affidavits were prepared. This included relying on other NSWCC staff to prepare and check affidavits and working in a high-pressured environment in which a large number of affidavits were being prepared. The impact of those circumstances on the work of individual Mascot officers is acknowledged and discussed in section 6.2.4.3.

### **6.3.3 Investigation of the allegation that Officer B fabricated a report about a motor vehicle accident (SOD020)**

#### **6.3.3.1. Sea's allegation**

Sea alleged in his debrief interview on 8 January 1999 that a report of a motor vehicle accident was falsified. The accident involved MSO1 and occurred during the investigation of the attempted armed robbery by Paddle and others. Sea said:

<sup>100</sup> Szabo, A, Submission in reply, 10 August 2015, pp. 7-8.

*I think, [MSO1] was driving the police car, I think it was this occasion and he, not sure if it was at this time or court proceedings afterwards, but I think he was full of grog one night and he put a police vehicle sideways into a gutter and damaged the front of the vehicle. I think he borrowed it from [name] who was in charge of the Drug Squad. In any event, I think what happened was that [Officer B] was actually put down as the driver of that vehicle, 'cause [MSO1] had had another one, similar, in similar circumstances and I think it was attributed to the vehicle being damaged on the, the road going onto the property. So that would be it, it was at the time, not later.<sup>101</sup>*

This allegation was first recorded in the handwritten Schedule of Debrief under SOD020, in the following terms:

*Whilst at Coffs, [MSO1] in car accident, [Officer B] recorded as driver because [MSO1] had previous traffic history.<sup>102</sup>*

The first Mascot LD affidavits to refer to this allegation were both sworn by Mascot investigator Kaizik on 5 February 1999:

*[MSO1] was involved in a motor vehicle accident. At the time, [MSO1] had a poor traffic record and, because of this [Officer B], who was a passenger in the vehicle, claimed to have been driving the vehicle at the time of the accident.<sup>103</sup>*

This account of the incident was used in nine affidavits that were sworn in support of applications for LD warrants targeting Officer B, and in another four LD affidavits that supported applications for LD warrants naming other people. The last LD affidavit to include the allegation was dated 27 August 1999. The account was also used in two affidavits sworn in support of applications for TI warrants to intercept MSO1's phones, dated 17 March and 20 April 1999.

The account was also included in the material Phillip Bradley, Commissioner of the NSWCC, provided to the NSWCC Management Committee on 9 February 1999 to support the creation of the Mascot reference (see Chapter 3).<sup>104</sup>

A similar account of the incident was included in an affidavit sworn by Moore on 30 April 1999 in support of an application to intercept Officer B's phones.<sup>105</sup> The affidavit stated:

*In [Sea's] induced statement, [Sea] stated that [MSO1] was driving the police vehicle at the time of the accident. [Sea] further stated that [MSO1] had been involved in another traffic accident just a short time before the Coffs Harbour accident and therefore, had 'a bad driving record'. [Officer B] completed an accident report concerning the Coffs Harbour accident in which he claimed he ([Officer B]) was the driver of the police vehicle at the material time.*

*In [Sea's] induced statement, [Sea] stated that [Officer B] and [MSO1] told him [MSO1] was driving the police vehicle at the material time.*

*Boyd-Skinner is currently obtaining the accident report and other independent information with a view to interviewing [Officer B], [MSO1] and other police who had knowledge of the Coffs Harbour accident.<sup>106</sup>*

The reference to Officer B's involvement in this incident was included in another Mascot TI affidavit dated 19 May 1999, after which time it no longer appeared in Mascot TI affidavits. Mascot investigators appear to have abandoned this issue and begun targeting police other than Officer B in relation to an earlier vehicle accident mentioned by Sea in his initial debrief interview in which MSO1 allegedly drove and crashed a police vehicle.

It does not appear that Mascot obtained any information about this alleged fabrication of a motor vehicle accident report from any of the LDs or TIs that were used to investigate the allegation.

<sup>101</sup> NSWCC, Record of interview between Detective Inspector Burn, Detective Senior Sergeant Henry and 'Sea', 8 January 1999, p. 17.

<sup>102</sup> NSWCC, Information Report, *Schedule of Debrief with SEA, 91 matters outlined*, reporting officer: Burn, 13 January 1999, p. 5.

<sup>103</sup> LD affidavit 062-068/1999, p. 4, and LD affidavit 069-071/1999, pp. 6-7.

<sup>104</sup> NSWCC, *Proposed Reference – Mascot*, Phillip Bradley, Commissioner, 9 February 1999.

<sup>105</sup> TI affidavit 122-125/1999.

<sup>106</sup> TI affidavit 122-125/1999, p. 9.

### 6.3.3.2. Analysis and submissions

Mascot investigators appear to have relied almost exclusively on obtaining LD and TI evidence to confirm or disprove the allegation that Officer B had fabricated a motor vehicle accident report. They do not appear to have pursued other methods to test or clarify Sea's claim, such as checking documents or putting the allegation to Officer B. The TI affidavit of 30 April 1999 acknowledges that by that time – nearly three months after the allegation was first mentioned in a LD affidavit – investigators had not obtained the accident report or other relevant documentation. This would ordinarily be regarded as a basic investigatory step that should be completed before resorting to using a LD or TI.

Officer B was not questioned about the issue when he was interviewed by Mascot investigators on 25 June 1999.<sup>107</sup> Nor does he appear to have been interviewed about the incident on any other occasion. It is not clear why Mascot investigators did not ask him about this allegation.

Other documents examined by Operation Prospect indicate that Mascot investigators had not located the allegedly falsified forms by February 2002 – and, indeed, that the documents may not have existed.<sup>108</sup> A Mascot collection plan dated 21 February 2002 outlined the evidence Mascot sought to collect for a brief of evidence in relation to the investigation of police involvement in the arrests of Paddle, Mr O and Mr M. The plan stated that the collection of police duty books from Officer B and others was “Incomplete” and “Not deemed appropriate at this point in time”.<sup>109</sup> The collection plan further noted that the method available to the NSWCC to collect Officer B's Duty Books and notebooks was to issue a Direction under section 10 of the *New South Wales Crime Commission Act 1985 (repealed)* (NSWCC Act). As Mascot was a covert investigation until October 2001, it may not have been possible for the NSWCC Act to issue a Direction before that date without risking the exposure of the Mascot investigations. It is not clear whether there was any impediment to issuing a Direction after the Mascot investigations entered an overt phase in October 2001.

Another significant concern with the investigation of the allegation that Officer B falsified a police record was that information about the incident was inaccurately presented in LD and TI affidavits. In his debrief interviews, Sea did not say that Officer B was a passenger in the vehicle at the time of the accident or that Officer B claimed to be the driver. Kaizik's 5 February 1999 LD affidavit<sup>110</sup> wrongly states these as facts. The affidavit also omits Sea's uncertainty in his account of the incident – Sea used the words “I think” six times while recalling the events. This may indicate that his memory of what occurred was hazy. Despite this, these inaccuracies were copied into multiple subsequent affidavits.

Kaizik's affidavit implies, and Moore's TI affidavit states, that Officer B completed the accident report form naming himself as the driver. Sea stated only that “Officer B was actually put down as the driver”. This is ambiguous and consistent with Officer B being named without his knowledge.

Moore's submission to Operation Prospect claimed that, during Sea's debrief interview with Burn and Henry on 8 January 1999, Sea had accepted the proposition put to him by Burn that Officer B had completed a form falsely claiming that he had been driving the vehicle.<sup>111</sup> Operation Prospect does not accept that the transcript of the debrief interview supports this claim. According to the transcript, Burn repeated this allegation to Sea in the context of asking him whether he knew of other misconduct involving Officer B. Burn's restatement of the allegation was not precise, but could be read as suggesting that Officer B had put his name down as the driver of a motor vehicle in a manner that constituted fabrication of evidence. Sea did not correct Burn's formulation of the allegation. That does not necessarily mean that Sea accepted Burn's formulation or had altered the view he had earlier expressed in the debrief interview. It also does not confirm that Officer B claimed to be driving the vehicle when it was damaged, as suggested in Moore's affidavit. Operation Prospect is still of the view that Moore's affidavit of 30 April 1999 contained misleading or inaccurate information, yet accepts that this was not intentional and was due to Moore misconstruing the debrief transcript.

107 NSWCC, Record of interview between Detective Sergeant Boyd-Skinner, [another Mascot officer] and [Officer B], 25 June 1999.

108 NSWCC collection plan, *SOD020 Plan – 1994 Arrest of [Mr O], [Mr M] and [Paddle]*, 21 February 2002.

109 NSWCC collection plan, *SOD020 Plan – 1994 Arrest of [Mr O], [Mr M] and [Paddle]*, 21 February 2002, p. 6.

110 LD affidavit 062-068/1999.

111 Moore, G, Submission in reply, 25 November 2015, pp. 94-96.



In general, the affidavits paint Officer B's conduct in a more culpable manner than the facts support. This aligns with other criticisms in this report that Mascot investigators had a tendency to present information in a way that reaffirmed suspicions against targets, exaggerated claims and allegations, and excluded exculpatory information. The overstatement of this allegation against Officer B also suggests that deponents failed to confirm the accuracy of claims made in their affidavits against the relevant source documents. There is no evidence before Operation Prospect that the deponents intentionally or deliberately included false information about this allegation in their affidavits.

An adverse finding is nevertheless recorded against Kaizik for the incorrect statement in the affidavit that he swore on 5 February 1999. As discussed earlier in section 6.2.4.2, Kaizik made a submission to Operation Prospect that his affidavits were prepared in good faith, he worked collaboratively with and relied on other NSWCC staff and lawyers, his general practice was to have his work cleared by others, and he cannot recall receiving instruction or training on preparing affidavits.<sup>112</sup>

### 6.3.4 Investigation of the allegation that Officer B agreed to dispose of unlawfully obtained firearms

#### 6.3.4.1. Sea's allegation

Sea provided information in his debrief interview on 8 January 1999 about an incident of disposing of unlawfully obtained firearms:

Q431 *You've mentioned instances relating to [MSO1], anything further you [sic], criminal activity or corruption whilst at this period of time?*

A431 *There's probably two matters. The first one is that, talking about that particular gun cabinet before, the, when the Royal Commission was in progress and it was common knowledge that the guns, how ever [sic] many of them were there had to be disposed of and all the, all the Unit knew about that particular, that particular problem that we had I think [Mascot Subject Officer 24 (MSO24)] and [Officer B] were supposed to that [sic] at one stage and they didn't do it and, sorry not [MSO24], [Mascot Subject Officer 9 (MSO9)] and [Officer B] were going to borrow [MSO24]'s boat to do it. But in the end it was left to [MSO1] and myself, I was approached by [MSO1], he told me that we would be borrowing [Mascot Subject Officer 17 (MSO17)]'s boat and we would take the gear and dispose of it, which we did. In the Hawkesbury River.<sup>113</sup>*

On 20 January 1999, Sea directed Mascot investigators to the location where he and MSO1 had dumped the firearms. Divers recovered five firearms in various states of decomposition.<sup>114</sup>

The first Mascot LD affidavit to refer to this incident was sworn by Kaizik on 5 February 1999:

*In 1995, during the Royal Commission into the New South Wales Police Service, [Sea] and [MSO1] took a cabinet containing as many as 100 firearms from the MCSN AHU [Major Crime Squad North / Armed Hold Up Unit] office and dropped the firearms, one-by-one, into the Hawkesbury River. [MSO9] and [Officer B] had agreed to assist [Sea] and [MSO1] in disposing of the firearms, but withdrew at the last moment ... Investigators intend to attempt to recover those firearms.<sup>115</sup>*

Officer B was listed in this affidavit as one of the officers Mascot sought to listen to or record by LD, and was named in three LD warrants associated with this affidavit.<sup>116</sup>

<sup>112</sup> Kaizik, T, Submission in reply, 11 June 2015, p. 1.

<sup>113</sup> NSWCC, Record of interview between Detective Inspector Burn, Detective Senior Sergeant Henry and 'Sea', 8 January 1999, p. 38.

<sup>114</sup> NSWPF, Complaint number [number] SOD028 Finalisation Report, by [name], SCU, 17 March 2003, p. 4.

<sup>115</sup> LD affidavit 062-068/1999. The AHU (in which Sea worked) was attached to the MCSN during the relevant period. The AHU was co-located with other units in the MCSN open-plan office in Chatswood.

<sup>116</sup> LD warrants 066/1999, 067/1999, and 068/1999.

A second affidavit sworn by Kaizik on the same day included the information in the first sentence but not the second – that is, the sentence referring to Officer B.<sup>117</sup> This affidavit was in support of applications for three LDs to be installed on MSO1's premises, and did not name Officer B as a person that Mascot sought to listen to or record. Similarly, six subsequent LD affidavits that included the allegation did not refer to Officer B's alleged involvement.<sup>118</sup> However, 46 other LD affidavits that were sworn between February 1999 and May 2001 included the reference to Officer B being involved and withdrawing at the last moment.

The first TI affidavit to refer to the allegation that Officer B was involved but withdrew at the last minute was sworn by Kaizik on 29 October 1999.<sup>119</sup> It supported an application to intercept the phones of three officers other than Officer B, although he was named as an officer involved in the relevant offences. The affidavit stated that between 1987 and 1991, Sea observed the accumulation of rifles, replica weapons and knives by the MCSN and AHU which they locked in a cabinet in the MCSN office. The affidavit also stated that Mascot Subject Officer 17 (MSO17) was a senior officer with the MCSN based at Chatswood in 1995, and that he decided the cache of weapons should be disposed of – and MSO9 and Officer B agreed to assist in doing so but withdrew at the last moment.<sup>120</sup> This presentation of the allegation in Kaizik's TI affidavit was rolled over into two further TI affidavits, on 2 November 1999<sup>121</sup> and 31 October 2001.<sup>122</sup>

A paragraph outlining the allegation in slightly different terms appeared in a TI affidavit sworn by Moore dated 2 January 2001:

*Sea alleged that [MSO17] initially approached [MSO9] and [Officer B] to assist in disposing of the weapons, but they withdrew at the last moment, and the task was given to Sea and [MSO1].<sup>123</sup>*

The primary difference between this and the previous presentation is that it states that MSO17 approached MSO9 and Sea. The same or similar wording appeared in a further 10 TI Affidavits up to October 2001.

#### 6.3.4.2. Use of LD product in affidavits about the disposal of the firearms

On 31 October 2000, Sea (lawfully) recorded a conversation he had with some Mascot targets (former colleagues in the AHU attached to MCSN in the course of an extended drinking session at a Sydney CBD hotel.<sup>124</sup> The conversation between Sea, MSO9 and Mascot Subject Officer 8 (MSO8) discussed the planned disposal of firearms retained by the AHU:

[MSO8] (... ind ...) just go and do it mate. [Sea] just go and do it.  
 Sea Only because these weak cunts wouldn't do it.  
 [MSO8] Just go and do it [Sea].  
 Sea You and [Officer B] were supposed to fuckin' get rid of those fuckin' three months, five months, six months before we had to fuckin' get rid of 'em.  
 [MSO8] [Sea] just go and do it.  
 [MSO9] Bull shit.  
 [MSO8] Fuckin' oath.  
 [MSO9] [Officer B] was gonna ...  
 Sea You rang fuckin' [nickname for MSO24] and said I need your fuckin' boat, we're gunna get rid of these fuckin' ... this fuckin' ...

117 LD affidavit 069-071/1999, p. 5.

118 LD affidavits 112/1999, 121/1999, 122-123/1999, 145-147/1999, 172-174/1999, and 457-459/1999.

119 TI affidavit 70-74/2000, p. 8.

120 TI affidavit 70-74/2000, pp. 7-8.

121 TI affidavit 076/2000, pp. 9-10.

122 TI affidavit 199-201/2002, pp. 6-7.

123 TI affidavit 180-182/2001, p. 7.

124 NSWCC Transcript of LD 317/2000, Tape 99/747A, 31 October 2000.



- [MSO9] *We didn't go fishing so [Officer B] was gunna ... on the way to Gosford.*
- Sea *Yeah he was gunna yeah ...*
- [MSO9] *Hoick them into the river.*
- Sea *And they were still fuckin' in the fuckin' office in six months.*
- [MSO9] *You know why, I didn't want to lose some of them because ...*
- [MSO8] *They were all mine.*
- [MSO9] *Not all of them.*
- Sea *A couple of really special ones there [MSO9], a couple of real carbines.*
- [MSO9] *There was a couple of nice carbines.*
- Sea *Nice fuckin' guns.*
- [MSO8] *(... ind ...)*
- Sea *Nice guns. You know what we did to 'em, we smashed 'em.*
- [MSO9] *Yeah you know ... and then we ended up ...*
- [MSO8] *There was a bag ...*
- [MSO9] *When we come to [name]. We had to ... we had to go and get that old Colt 38 from Parramatta.<sup>125</sup>*

This conversation appears to support Sea's original allegation that Officer B was involved in and knew about plans to dispose of the firearms, but did not participate in the actual disposal.

On 14 November 2000, Detective Sergeant Glenn Trayhurn, a Mascot investigator, prepared a memorandum addressed to a NSWCC solicitor that provided "some information for Sea's LD rollovers expiring 16/11/00, information commencing from 26/10/2000".<sup>126</sup> It was the practice in Mascot for memos of this kind to be prepared for LD applications, particularly rollover applications.<sup>127</sup> Trayhurn's memo commented that LD product corroborated allegations made in Sea's induced statements, and referred to the recorded conversation from 31 October 2000 as an example (the transcript of that conversation appears not to have been attached to the memo). His memo stated:<sup>128</sup>

*An example of such corroboration occurred at 4.30pm during the [Sydney CBD] Hotel luncheon when Sea told [MSO8] and [MSO9] that he 'felt like going up to [MSO17] and saying, listen [MSO17] remember the night we borrowed you [sic] boat to dump the guns in the Hawkesbury, have you still got that boat. [MSO8] just go and do it. SEA only because these weak cunts wouldn't do it. You and [Officer B] were supposed to get rid of those three months, five months, six months before we had to get rid of them. [MSO9] bullshit. SEA fuckin' oath. [MSO9] [Officer B] was going ... SEA you ring [nickname for MSO4] and said we need your boat to get rid of these fuckin' guns. [MSO9] we didn't go fishing so [Officer B] on the way to Gosford wack them into the river. SEA yeah fuckin' in the office six months. [MSO9] you know why because I didn't want to loose [sic] some. [MSO8] they we [sic] all mine. [MSO9] not all of them. SEA couple of special ones [nickname for MSO9], couple of real carbines. [MSO9] there were a couple of carbines. SEA Nice guns you know what we did to them we smashed them. [MSO9], and then we ended up, when it came to [name], we had to go and get that old dirty old Colt.<sup>129</sup>*

<sup>125</sup> NSWCC Transcript of LD 317/2000, Tape 99/747A, 31 October 2000, pp. 89-90.

<sup>126</sup> NSWCC internal memorandum from Detective Sergeant Glenn Trayhurn, Investigator, to [a NSWCC Solicitor], 14 November 2000, p. 1.

<sup>127</sup> An example is the memo to the NSWCC solicitor discussed in Chapter 9.

<sup>128</sup> NSWCC internal memorandum from Detective Sergeant Glenn Trayhurn, Investigator, to [a NSWCC solicitor], 14 November 2000, p. 1.

<sup>129</sup> NSWCC internal memorandum from Detective Sergeant Glenn Trayhurn, Investigator, to [a NSWCC solicitor], 14 November 2000, p. 1.

Trayhurn's memo was misleading as to Officer B's role in disposing of the firearms. The comment in the memo – "so [Officer B] on the way to Gosford wack them into the river" – was contrary to Sea's earlier allegation (noted in the memo) and his comment at a Sydney CBD hotel that Officer B withdrew from the firearms disposal plan.

On 16 November 2000 – two days after Trayhurn's memo was sent to the NSWCC solicitor – Szabo swore an affidavit in support of an application for seven LD warrants that repeated the allegation against Officer B as phrased in Trayhurn's memo. The affidavit refers to a Sydney CBD Hotel conversation and states that Officer B had dumped the weapons in the river. The affidavit read as follows:

*At approximately 4:30pm on 31 October 2000, during the lunch at the [Sydney CBD] Hotel, [MSO9], [MSO8] and [Sea] discussed the cache of weapons at the Crime Squad office and the subsequent disposal of the weapons (see Annexure B (k) and (l)). [Sea] used words to the effect, "I felt like going up to [MSO17] and saying, 'Listen [nickname for MSO17], remember the night we borrowed your boat to dump the guns in the Hawkesbury, have you still got that boat?'" [MSO8] then used words to the effect "Just go and do it, you and [Officer B] were supposed to get rid of those three months, five months, six months before we had to get rid of them. [MSO9] responded to the effect "Bullshit." [...] [MSO9] used words to the effect "We didn't go fishing so [Officer B] on the way to Gosford wacked them in the river." [Sea] then said that the guns were in the office for six months and [MSO9] responded to the effect "You know why, because I didn't want to lose any." [MSO8] used words to the effect "They were all mine," and [MSO9] added words to the effect "Not all of them." [...] That conversation corroborated [Sea's] original allegations.<sup>130</sup>*

This paragraph was repeated in the same or a substantially similar form in a further 18 LD affidavits up to 11 February 2002. It was also included in four TI affidavits, the first, dated 4 July 2001, was sworn by Szabo.<sup>131</sup>

On 23 November 2000, Sea had a conversation with Officer B at a regional NSW golf club that was recorded on Sea's body worn LD:

*Sea: Oh yeah. (...indistinct...) that's what [MSO9] was talking to me about the other day. All the guns were out in the lockers and that and he said blah, blah, blah. I said you, you cunt, I said you were supposed to get rid of those. He said when? I said oh you and [nickname for Officer B] were gunna get rid of those, you know you were gunna (indistinct) [nickname for MSO24]'s boat and that, you know, borrow the boat and then months, months went by, and nothin' happened and ... so in the end I had to fuckin' do it with fuckin' [MSO1].*

[Officer B]: *Really.*

*Sea: You and him were supposed to get rid of them up the Central Coast. [MSO9] rang fuckin' [nickname for MSO24] and said mate we need your boat, we've gotta go on a fishing trip you know. Months went by. The Royal Commission's on '95. [Nickname for MSO17] comes to fuckin' [MSO1] and says get rid of those fuckin' things out of the fuckin' cupboard. [MSO1] comes to me and says mate, I need ya, I need ya for a job. I said yeah but I don't even know about this fuckin' shit you know. I didn't really want to know about it.*

[Officer B]: *It wasn't a job I remember.*

Sea: *Eh?*

[Officer B]: *It wasn't a job I remember getting.*

Sea: *No you didn't do it.*<sup>132</sup>

This conversation suggests that Sea was attempting to implicate Officer B in the plan to dispose of the firearms. Officer B's response indicates that he was unaware of any such plan, and Sea comments that he and MSO1 disposed of the firearms in the river.

<sup>130</sup> LD affidavit 338-344/2000, pp. 27-28.

<sup>131</sup> TI affidavits 005/2002, 142/2002, 146-159/2002, and 199-201/2002.

<sup>132</sup> NSWCC Transcript of LD 342/2000, Tape 99/770, 23 November 2000, p. 13.

The first Mascot affidavit to include reference to this conversation was sworn by Szabo on 23 January 2001.<sup>133</sup> The affidavit repeats Officer B's comment that he did not remember the job, and includes Sea's subsequent comment – "No, you didn't do it". That comment is ambiguous, but could be read as an acceptance by Sea that Officer B had not played a role in the firearms disposal incident. Szabo's affidavit incorrectly states that the conversation occurred on 23 October 2000 rather than 23 November 2000. This incorrect date was copied into two LD affidavits and eight TI affidavits that referred to the conversation.

There were 16 LD affidavits<sup>134</sup> and four TI affidavits<sup>135</sup> sworn after this recorded conversation at the regional NSW golf club that do not mention the conversation, but do refer to the allegation that Officer B was involved in the plan to dispose of weapons. This was a serious omission as the conversation shows Officer B's denial of involvement and had an exculpatory effect. The fact that the conversation had been picked up in Szabo's affidavit should have meant that it was picked up in later affidavits. An example of a later TI affidavit that does not refer to the conversation in connection with the firearms disposal allegation was an affidavit sworn by Szabo on 24 January 2001 – the day after he swore the LD affidavit referred to above. The TI affidavit was in support of applications for 10 TI warrants. The affidavit named Officer B (along with some others) as a target:

*Sea alleged that [MSO17] initially approached [MSO9] and [Officer B] to assist in disposing of the weapons and [MSO24] was to supply the boat, but they withdrew at the last moment, and the task was given to Sea and [MSO1]. Sea and [MSO1] arranged to meet at a boat ramp near Mooney Mooney Point on the Hawkesbury River, Brooklyn.<sup>136</sup>*

This version of the allegation suggests that former police officer, MSO17 – who had been an Inspector at the Major Crime Squad North at the time – had approached MSO9 and Officer B to dispose of the guns. It is unclear where this information came from. It was not recorded in Sea's debrief interview on 8 January 1999,<sup>137</sup> nor in conversations he recorded on 31 October and 23 November 2000.<sup>138</sup> This version of the allegation in Szabo's TI affidavit was included in 10 TI affidavits (up to October 2001) and two LD affidavits (in January and February 2001) but was not included in five other LD affidavits sworn after January 2001.

### 6.3.4.3. Integrity test on Officer B about firearms disposal allegation

In January 2001 Mascot investigators prepared an integrity test for Officer B. A member of the NSWPF Water Police would contact Officer B to say he had discovered three firearms purportedly at a location near a bridge over the Hawkesbury River. The officer would also make a false entry in the COPS database about the discovery of the firearms.<sup>139</sup> The firearms were deliberately corroded to make it look like they had been in the water for years.<sup>140</sup> A controlled operation was conducted concurrently with the integrity test to allow Mascot personnel to obtain and corrode the firearms.<sup>141</sup> The purpose of the integrity test was to see if Officer B and other targets would talk about the weapons and corroborate Sea's allegations.<sup>142</sup> To support the integrity test, Mascot obtained 10 TI warrants targeting telephone services used or likely to be used by Officer B.<sup>143</sup> The test was also mentioned in 11 LD affidavits.<sup>144</sup>

133 LD affidavit 01/00204-00206, p. 5.

134 LD affidavits 362-368/2000, 391-397/2000, 01/00056-00062, 01/00183-00190, 01/00640-00646, 01/01175-01181, 01/01795-01801, 01/02271-02277, 01/02769-02775, 01/03510-03516, 01/04222-04228, 01/05255-05261, 01/05980-05986, 01/06753-06759, 01/07478-07482, and 02/00547.

135 TI affidavits 005/2002, 142/2002, 146-159/2002, and 199-201/2002.

136 TI affidavit 01/199-216, p. 10.

137 NSWCC, Record of interview between Detective Inspector Burn, Detective Senior Sergeant Henry and 'Sea', 8 January 1999, p. 38.

138 NSWCC Transcript of LD 317/2000, Tape 99/747A, 31 October 2000; NSWCC Transcript of LD 342/2000, Tape 99/770, 23 November 2000.

139 NSWCC Information Report, *Operational plan for integrity test IT 01/001, SOD028*, reporting officer: Szabo, 13 February 2001, pp. 1-2.

140 NSWCC Information Report, *Operational plan for integrity test IT 01/001, SOD028*, reporting officer: Szabo, 13 February 2001, p. 1.

141 NSWCC Information Report, *Operational plan for integrity test IT 01/001, SOD028*, reporting officer: Szabo, 13 February 2001, p. 2.

142 NSWCC Information Report, *Operational plan for integrity test IT 01/001, SOD028*, reporting officer: Szabo, 13 February 2001, p. 1.

143 TI warrants EO976/00/00, EO978/00/00, EO979/00/00, EO980/00/00, EO981/00/00, EO982/00/00, EO983/00/00, EO984/00/00, EO985/00/00, and EO986/00/00.

144 LD affidavits 01/00640-00646, 01/00676-00677, 01/01175-01181, 01/01795-01801, 01/02271-2277, 01/03510-03516, 01/04222-04228, 01/05255-05261, 01/054980-05986, 01/06753-06759, and 01/07478-07482.

On 5 February 2001<sup>145</sup> the Water Police officer called Officer B saying he had found three firearms in a river and asked if Officer B could “go out and check out an address for us” for one of the firearms.<sup>146</sup> Officer B advised the Water Police officer to “send us the job up on COPS”<sup>147</sup> and stated “I’ll give it to someone to go and do for you”.<sup>148</sup> Two days later, the Water Police officer called Officer B and advised him that it was no longer necessary to take any action about the firearms as police had found a serial number unrelated to the person they had suspected.<sup>149</sup> There is no evidence that Officer B discussed this incident with any other Mascot target.

This sequence of events suggests that Officer B passed the integrity test. However, there is no Mascot documentation that notes a result for the test. The results of the integrity test were not disclosed in subsequent affidavits and reports relating to Officer B – even though Mascot investigators continued to swear LD affidavits (until May 2001) and TI affidavits (until October 2001) that referred to Officer B’s involvement in the weapons disposal allegation. It also does not appear that Mascot ever informed Officer B that he was the subject of an integrity test and that he passed.

#### 6.3.4.4. Analysis and submissions

The first of the two affidavits sworn by Kaizik on 5 February 1999<sup>150</sup> did not accurately record the information provided in Sea’s induced statements. Sea did not state that Officer B had agreed to assist in disposing of the firearms. His comment that “all the Unit knew about that particular, that particular problem that we had”<sup>151</sup> may suggest that Officer B knew about firearms held by the AHU, but it is not specific and does not convey that he agreed to help in disposing of them. The affidavit also omits that by 5 February 1999 Mascot investigators and police divers had found five guns in the location directed by Sea. The omission of that fact from this and subsequent affidavits may suggest that the deponents either were not informed of this development or had not checked the accuracy of the information to which they were attesting.

This inaccurate presentation of the allegation was then copied into 54 subsequent LD affidavits sworn by a number of Mascot investigators.

The same inaccurate statement – that Officer B had agreed to but later withdrew from being involved in disposing of the firearms – was present in Kaizik’s TI affidavit of 29 October 1999, and in two further TI affidavits. Another 11 TI affidavits implied that Officer B had agreed to assist without explicitly stating that he did so. Neither representation accurately reflects Sea’s words in his debrief interviews.

Another possible source of error in the affidavits was Trayhurn’s memo of 14 November 2000 of the conversation recorded at Sydney CBD hotel on 31 October 2000, which was sent to the NSWCC solicitor ostensibly for the purpose of being relied upon in affidavit preparation. One of the recorded comments made by MSO8 is misattributed to Sea. The sentence in Trayhurn’s memo – “[MSO9] we didn’t go fishing so [Officer B] on the way to Gosford wack them into the river. SEA yeah fuckin’ in the office six months”<sup>152</sup> – could also be read as implying that MSO9 and Sea confirmed that Officer B disposed of the firearms. This is inconsistent with Sea’s induced statement of 8 January 1999, which indicated that Sea and MSO1 disposed of the firearms.<sup>153</sup> The summary also recorded the date of the meeting as “31/8/00”<sup>154</sup> rather than 31 October 2000.

145 NSWCC Transcript of TI 01/05980-05986, E0976/0, 7 February 2001.

146 NSWCC Transcript of TI 01/05980-05986, E0976/0, 5 February 2001, p. 2.

147 NSWCC Transcript of TI 01/05980-05986, E0976/0, 5 February 2001, p. 2.

148 NSWCC Transcript of TI 01/05980-05986, E0976/0, 5 February 2001, p. 3.

149 NSWCC Transcript of TI 01/05980-05986, E0976/0, 7 February 2001, p. 2.

150 LD affidavit 062-068/1999.

151 NSWCC Transcript of interview between Detective Inspector Burn, Detective Senior Sergeant Henry and Sea, 8 January 1999, p. 38.

152 NSWCC internal memorandum from Detective Sergeant Glenn Trayhurn, Investigator, to [a NSWCC solicitor], 14 November 2000, p. 1.

153 NSWCC, Record of interview between Detective Inspector Burn, Detective Senior Sergeant Henry and ‘Sea’, 8 January 1999, p. 38.

154 NSWCC internal memorandum from Detective Sergeant Glenn Trayhurn, Investigator, to [a NSWCC solicitor], 14 November 2000, p. 1.

A LD affidavit sworn two days later by Szabo on 16 November 2000 repeated the same form of words used in Trayhurn's memo – that Officer B disposed of the firearms. The affidavit also intimated incorrectly that MSO8 had corroborated Sea's allegations about the disposal, and that MSO9 had confirmed that Officer B had disposed of the firearms. At most, MSO9's statement corroborated Sea's original allegation that Officer B knew of the firearms retained by the AHU and of plans to dispose of them. In the Sydney CBD hotel conversation, Sea makes it clear that the firearms remained in the AHU offices for several months and that Officer B did not dispose of them.

Trayhurn submitted to Operation Prospect<sup>155</sup> that the misrepresentation of the allegation against Officer B in his memo was accidental and not deliberate. He pointed out that the conversation at a Sydney CBD hotel spanned nine hours. The transcript was 321 pages long, it was not completed at the time his memo was prepared, and it was not verified until a year later. Though he could not recall whether he had access at the time to either a draft of the transcript or a summary of the conversation, it is possible that he prepared the memo by listening to a poor quality tape recording of the conversation. Another possibility is that he cut and pasted the paragraph in his memo from another document prepared by Szabo that contained a similar summary of the Sydney CBD hotel conversation.<sup>156</sup> There were also wording differences between his memo and Szabo's affidavit, which may indicate that the affidavit was not prepared based on his memo.

That explanation is largely accepted. The finding that is made below against Trayhurn is that his conduct in relation to his memo of 14 November 2000 included a mistake of fact. That finding is made as the events do underline the care that Trayhurn should have taken in preparing or submitting a memo that could be (and quite possibly was) relied on by other officers in preparing and deposing to affidavits in support of LD warrant applications. If the memo was unreliable – for example, because the transcript of a conversation referred to in the memo was not available – this should have been noted more expressly than was done so. Trayhurn acknowledged in evidence to Operation Prospect that it could be difficult for a NSWCC solicitor to identify inaccuracies in investigative material provided to them by police working at the NSWCC.<sup>157</sup>

For similar reasons, the same adverse finding is made against Szabo in relation to his affidavit of 16 November 2000, that is, that the affidavit was based in part on a mistake of fact. The origin of the error on Szabo's part is not altogether clear, and was apparently an accidental not a deliberate error. The general criticisms that are made in this and other chapters of Mascot affidavit preparation also apply in this instance (for example, see section 6.2.4.2 and Chapter 16).

Another deficiency in the LD and TI affidavits relating to this allegation was the failure to note that the conversation recorded at the regional NSW golf club on 23 November 2000 had exculpatory value. In that conversation, Officer B denied involvement in or recollection of the plan to dispose of the firearms. However, 16 LD affidavits<sup>158</sup> and five TI affidavits<sup>159</sup> that were sworn after that conversation and that referred to the allegation did not refer to the 23 November 2000 conversation. This served to paint a much more damning picture of Officer B's alleged involvement in disposing of the firearms.

Yet another deficiency in the LD and TI affidavits was that several different versions of the firearms disposal allegation were copied into Mascot affidavits up to October 2001. The differences were often minor, but together undermine the integrity of the affidavit preparation process. All versions of the allegation contained inaccuracies. The versions chop and change so that – even quite late in the investigation – earlier versions of the allegation were copied into affidavits, and key pieces of information were included in one affidavit but not another or were included in an inconsistent manner.

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155 Trayhurn, G, Submission in reply, 26 August 2015, pp. 15-18.

156 NSWCC Information Report, *Review of LD Product CD/086 27-10-00 to 31-10-00*, reporting officer: Szabo, 1 November 2000, pp. 2-28.

157 Ombudsman Transcript, Glenn Trayhurn, 6 August 2014, pp. 1169-1170.

158 LD Affidavits 362-368/2000, 391-397/2000, 01/00056-00062, 01/00183-00190, 01/00640-00646, 01/01175-01181, 01/01795-01801, 01/02271-02277, 01/02769-02775, 01/03510-03516, 01/04222-04228, 01/05255-05261, 01/05980-05986, 01/06753-06759, 01/07478-07482, and 02/00547.

159 TI affidavits, 005/2002, 142/2002, 146-159/2002, and 199-2-1/2002.



There is no evidence that these multiple and repeated errors and mis-statements in the affidavits were intentional or that the deponents deliberately included false information in their affidavits. The repetition of inaccurate information is another example of the accepted Mascot practice of copying and pasting information from earlier affidavits – a systemic problem in Mascot processes that is discussed further in Chapter 16. Deponents appear not to have checked source documents to confirm that the information in the affidavits was correct, they relied unquestioningly on the accuracy of material included in previous affidavits sworn by other Mascot investigators, and they swore to the truth of matters that were outside their personal knowledge without first checking the accuracy of the information. These deficiencies could affect the integrity of the process for independent judicial authorisation of LD warrants.

There appears to have been reasonable grounds for conducting an integrity test on Officer B. Sea's allegation that Officer B knew about the disposal of firearms would, on its face, constitute an offence under section 200 of the *Police Act 1990* (Police Act), with a maximum penalty of seven years' imprisonment. TI can lawfully be used to investigate such a criminal offence. Sea's allegation had also apparently been corroborated in a recorded conversation between Sea, MSO9 and MSO8 on 31 October 2000 – although the conversation that Sea covertly recorded with Officer B on 23 November 2000 did not support the allegation.

There are nevertheless two problems with this integrity test. The procedure followed in conducting and reporting the test was irregular, and proper action was not taken to record and report that Officer B apparently passed the integrity test. To explain those matters more fully it is necessary to outline the integrity testing regime (see also Appendix 3, Volume 1).

The legal basis for conducting integrity tests is found in section 207A of the Police Act. It provides that an officer's integrity can be tested by being offered an opportunity to engage in behaviour in contravention of the principles of integrity required of a police officer. In short, the goal is to test whether the officer will act ethically or unethically in a scenario.

The procedures for conducting integrity tests were spelt out in the NSWPF Integrity Testing Unit Policy and Guidelines<sup>160</sup> (Integrity Testing Policy). All tests were to be conducted by the Integrity Testing Unit – which was part of the Special Crime and Internal Affairs (SCIA) division of the NSWPF. The result of a test was to be recorded as pass, fail or inconclusive. Under section 207A of the Police Act, an integrity test was to be authorised by the Commissioner of Police or the Commissioner's delegate. A certificate issued by the Commissioner – or by a Deputy Commissioner or Assistant Commissioner acting under authorisation from the Commissioner – is conclusive evidence that an integrity test was appropriately authorised. Under section 207A(7) of the Police Act, the Commissioner of Police has to report to the PIC quarterly on all integrity tests carried out during that quarter.

At the time, Assistant Commissioner Malcolm Brammer – Commander of SCIA – had been delegated the power to authorise an integrity test. A signature on the integrity test operational plan suggests that Mascot's integrity test of Officer B was approved by Brammer. The signature is accompanied by a note stating 'as per verbal agreement', although the details of the verbal agreement are not noted on the document.<sup>161</sup> The fact that Mascot did the integrity test appears to be contrary to the requirement of the Integrity Testing Policy that integrity tests are to be done by the Integrity Testing Unit. It is important to note that integrity tests are a function or power conferred on the Commissioner of Police (or his/her delegates) under section 207A of the Police Act. It is not a function that the NSWCC – and therefore Mascot investigators – could use independently of NSWPF involvement. This point was accepted by the NSWPF in its submission to Operation Prospect.<sup>162</sup>

Mascot's actions in conducting this integrity test appear to be in conflict with the stated view of the Commissioner of the NSWCC, Bradley – that he communicated to staff in Mascot – that he did not approve of NSWCC staff conducting integrity tests (Bradley's views are detailed in Chapters 10 and 17).

<sup>160</sup> NSWPF, *Integrity Testing Unit Policy and Guidelines*, 22 May 1997.

<sup>161</sup> NSWCC Information Report, *Operational plan for integrity test IT 01/00. SOD028*, reporting officer: Szabo, 13 February 2001, p. 2.

<sup>162</sup> NSWPF, Submission in reply, 16 November 2015, p. 10.



It appears that Officer B passed the integrity test. However, this result was not recorded in any Mascot documentation nor notified to relevant officers within the NSWPF or the PIC. There is also no reference to the integrity test in the finalisation report for the allegation prepared by Task Force Volta in May 2003. The fact that Officer B was later summonsed to give evidence on the firearms allegation at a PIC hearing in June 2002 as part of Operation Florida suggests that the PIC was not informed of the result of the integrity test – possibly because it was carried out by Mascot and not the NSWPF.<sup>163</sup> Operation Prospect has been unable to find any reference to this test in any quarterly report to PIC, as required by section 207A(7) and the Integrity Testing Policy. There was also no mention of the integrity test when the PIC later examined Officer B as part of the Florida hearings, nor in the Florida final report (see 6.3.9). This further suggests the PIC may never have been informed of the test.

The failure to abide by proper procedures in conducting and reporting the integrity test of Officer B meant that an opportunity was lost to stop the investigation of this particular allegation as early as February 2001.

Chapter 17 contains a detailed analysis of the integrity testing regime, as well as the conclusions and findings reached by Operation Prospect about the use of integrity tests by Mascot and the NSWCC. For this reason, no findings are made against the NSWCC in this chapter in relation to the irregularities relating to Mascot's use of an integrity test for Officer B.

### **6.3.5 Allegation that Officer B was involved in planting firearms (SOD018 and SOD103)**

After his initial debrief interviews in January 1999, Sea was interviewed a number of times by Mascot investigators to see if he could provide further details about the historical corruption he had witnessed and participated in throughout his career.

One such interview occurred on 23 August 1999 with Burn and Henry.<sup>164</sup> Sea provided details of an alleged incident in 1994 when police officers planted a gun on a suspect, resulting in the suspect being charged with possession of a shortened firearm. Sea alleged that certain police officers – MSO3, Mascot Subject Officer 16 (MSO16), MSO9 and Officer B – were involved in this incident.<sup>165</sup>

This allegation was not investigated by Mascot in any detail, and was not referenced in any LD or TI affidavits. It was also not taken up by the PIC when they later interviewed Officer B as part of Operation Florida in June 2002. Officer B was nevertheless recorded as an 'involved officer' for this matter in Mascot documentation – until the SCIA completed a risk assessment of Officer B in November 2002 (see 6.3.10).<sup>166</sup>

### **6.3.6 Allegation that Officer B was involved in receiving corrupt payments (SOD036)**

#### **6.3.6.1. Sea's allegation**

During his debrief interview on 8 January 1999, Sea was asked by Burn whether any officers who worked with him at the AHU were involved in corrupt or criminal conduct.<sup>167</sup> Sea alleged that MSO9 had handed out money that had come from reward money paid to an informant, saying:

*A535 [...] To cut a long story short, [MSO9] put in for a reward for [name] and [MSO9] apparently took half of what [name] was paid and distributed some money to a few of us. I think anybody who was on the Hold Up Squad at that time or involved in the brief, I think. Was a couple of hundred dollars. I'm not sure of the exact amount, but was informant situation.*

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<sup>163</sup> NSWPF, Submission in reply, 16 November 2015, p. 10.

<sup>164</sup> NSWCC, Record of interview between Detective Inspector Burn, Detective Senior Sergeant Henry and 'Sea', 23 August 1999.

<sup>165</sup> NSWCC, Record of interview between Detective Inspector Burn, Detective Senior Sergeant Henry and 'Sea', 23 August 1999, pp. 4-5.

<sup>166</sup> NSWPF, SCU, *Legal Services Risk Assessment Documentation for [Officer B]*, [name], Analyst, SCU, 14 November 2002, p. 3.

<sup>167</sup> NSWCC, Record of interview between Detective Inspector Burn, Detective Senior Sergeant Henry and 'Sea', 8 January 1999.

Q536 *Was that a couple of hundred that you received?*

A536 *Yeah.*

Q537 *Did you talk to [MSO9] about that? Have conversations?*

A537 *Yeah, well I didn't even know it was going to happen. That was, he just took him over and came back, said "Right, I've done this". Oh and I sort of "oh right". He just went, just handed it around.<sup>168</sup>*

Immediately before providing this information, Sea was asked in his debrief interview about corruption matters involving Officer B. Sea commented that he could not remember any matters about Officer B other than the allegations discussed about verballing Paddle and fabricating documentation relating to MSO1's traffic accident – discussed at 6.3.2 and 6.3.3.<sup>169</sup>

The following day, when questioned further about the allegation of distributing money to officers, Sea said about \$400 was "given to me to give [MSO4] in fact and [Officer B] I think. Something along those lines".<sup>170</sup> When asked if he was positive about Officer B receiving the money, he added "No. I'm, I, I'm just trying to recollect. I know that it was given to me to give to them and I passed that on".<sup>171</sup>

This allegation was recorded in the handwritten Schedule of Debrief compiled by Burn after Sea's initial debrief interviews.<sup>172</sup>

### 6.3.6.2. Mention of the allegation in affidavits

This allegation was first mentioned in the Mascot LD affidavit deposited by Kaizik on 5 February 1999:

*A male [Sea] knows only as [name] was an informant of [MSO9] in 1991. [Sea] [Officer B], [MSO4] and [MSO9] arrested [another person] as a result of information provided by [name]. [MSO9] put a reward request in for [name]. [MSO9] kept half the reward money paid to [name], which he divided between himself, [Sea], [MSO4] and [Officer B]. Each officer received \$400.00.<sup>173</sup>*

That paragraph was routinely reproduced in substantively the same form in Mascot LD affidavits until 18 February 2000. The allegation was also repeated in LD affidavits sworn after that date and up to 11 February 2002, but with the date of the alleged incident corrected to 1993. It appears that research done by another Mascot investigator revealed the correct date of the incident.<sup>174</sup> In total, the allegation appeared in 53 LD affidavits. It also appeared in seven TI affidavits (that all used the correct 1993 date) – the first being a TI affidavit sworn by Szabo on 24 January 2001.<sup>175</sup>

Mascot does not appear to have devoted significant resources to investigating this allegation against Officer B. It was included in affidavits principally to enable Sea to obtain corroborating statements using LDs. Mascot did not question Officer B about this allegation when he was interviewed on 25 June 1999, even though it had been included in affidavits as a matter relevant to the investigation since February 1999.<sup>176</sup>

In May 2002 MSO9 provided information about the allegation to Operation Florida. Officer B was not named as being involved in any way.<sup>177</sup>

168 NSWCC, Record of interview between Detective Inspector Burn, Detective Senior Sergeant Henry and 'Sea', 8 January 1999, p. 47.

169 NSWCC, Record of interview between Detective Inspector Burn, Detective Senior Sergeant Henry and 'Sea', 8 January 1999, p. 46.

170 NSWCC, Record of interview between Detective Inspector Burn, Detective Senior Sergeant Henry and 'Sea', 9 January 1999, p. 50.

171 NSWCC, Record of interview between Detective Inspector Burn, Detective Senior Sergeant Henry and 'Sea', 9 January 1999, p. 50.

172 NSWCC Information Report, *Schedule of Debrief with SEA, 91 matters outlined*, reporting officer: Burn, 13 January 1999, p. 9.

173 LD affidavit 062-068/1999, p. 5.

174 NSWCC Information Report, *Sections of MATR0002, MATR0003 & MATR0075 that relate to SOD036*, [name], 10 April 2000, p. 1.

175 TI affidavit 199-216/2001.

176 NSWCC, Record of interview between Detective Sergeant Boyd-Skinner, [a Mascot officer] and Officer B, 25 June 1999.

177 NSWCC, Record of interview between [Mascot Subject Officer 9], [a Mascot officer], [an officer], and [an officer], 10 May 2002, pp. 19-20.

### 6.3.6.3. Analysis

The information given by Sea provided a meagre basis to investigate if Officer B had received a corrupt payment. Sea did not mention Officer B the first time he recounted this allegation, and was uncertain if he was involved at a later stage in the debriefing interviews. Mascot did not seem to think the allegation was strong enough to warrant deep investigation.

However, the weakness of the allegation was not reflected in the affidavit sworn by Kaizik on 5 February 1999 – nor in later affidavits for LD and TI warrants that reproduced the allegation in substantively similar terms. In them it is stated as a fact that Officer B and others had received \$400 each. If it was thought relevant to refer to the allegation in these affidavits, Sea's equivocal account should have been presented more accurately and not paraphrased. The account presented of Sea's information was misleading and could affect the integrity of the process for independent judicial authorisation of a surveillance warrant.

### 6.3.7 Allegation that Officer B failed to take appropriate action in relation to a suspect in police cells (SOD131)

On 16 December 1999, Sea used a LD to record a conversation with several Mascot subject officers. In the conversation, MSO6 mentioned an assault by a chef at a Sydney hotel that he had witnessed while off duty. MSO6 and Sea arrested the chef, and it appears that Mascot investigators inferred from the recorded conversation that the chef was then assaulted during the arrest. During the conversation, the officers mentioned an incident that is unclear – but it appears to imply that Officer B ignored the chef when he was held in the police cells and was “going berserker”:<sup>178</sup>

[Officer B], *They've dragged him in to the police station in the dock and his fuckin' going berserker (...ind...) and fuckin' [Officer B] goes nothings happening here, thank you (...ind...) everything's alright...*<sup>179</sup>

This allegation was not summarised in any Mascot affidavits supporting applications for LD or TI warrants that named Officer B as a target, and it does not appear that Officer B's private conversations or telecommunications were recorded or intercepted in relation to it.

On 19 June 2001 Mascot investigators interviewed Sea and asked him for clarification about this incident. Sea stated that MSO6 assaulted the chef:

Q18 *There's also mention in the transcript ah of another officer named [Officer B]. Do you know if he had any involvement in this incident?*

A *I'm not sure where [Officer B] comes into it. I think he may have been working over ah at Chatswood Detectives. I think. And maybe he was in there when we brought him. I'm not ... I'm not sure.*<sup>180</sup>

Mascot investigators attempted to locate the hotel owner, the chef and any witnesses to the arrest but were unsuccessful.<sup>181</sup>

### 6.3.8 Allegation that Officer B received money stolen during the execution of a search warrant (SOD178)

On 7 September 2000, Sea was interviewed by Mascot investigators about his involvement in a police operation codenamed 'Operation Bar' in March 1994.<sup>182</sup> Sea indicated that money had been stolen during the execution of a search warrant at Narrabeen. He said that a number of officers involved in executing the warrant had met up at the [northern Sydney club], where Sea had learnt that about \$30,000 had been 'missed' during

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178 NSWCC, Transcript of LD432/1999, Tape T99/317, 16 December 1999, p. 96.

179 NSWCC, Transcript of LD432/1999, Tape T99/317, 16 December 1999, p. 96.

180 NSWCC Record of Interview, [Mascot investigator], [Mascot investigator] and 'Sea', 19 June 2001, p. 3.

181 NSWPF, SOD131 Complaint number [number], Finalisation Report by [name], SCU, 21 February 2003, pp. 2-3.

182 NSWPF, Record of interview between [Mascot investigator], [Mascot investigator] and 'Sea', 7 September 2000, p. 2.

the search. Sea recalled Officer B being present at that meeting.<sup>183</sup> He also claimed that \$2,000 taken during the search was divided up between the officers from the AHU who had participated in the search:

*Anyway I think we had a couple of drinks there and I had to drop [MSO6] home and, er, on the way there he told me that he'd received some money from, er, [name] and I think the amount was two thousand dollars (\$2,000) in fact I'm pretty sure it was \$2,000. We went back to [MSO6]'s place where, um, there was a discussion between us about who'd get it and it was basically [MSO6] saying that well it'll only be the people that were involved in the job, which was four of us, and he then sort of did a bit of a ... I can't remember whether they were fifties, hundreds or whatever but the money was divided up into four lots of 500 and, um, he kept his, he gave me mine and I ... and I'm just trying to remember whether he asked me to fix the other two blokes up and that could have been the case because I have a recollection of speaking to [MSO4] the next day. In actual fact I think I did give the money to [MSO4] and I said well you look after [nickname for Officer B] as well, which is [Officer B] because I .... and just thinking on that now because I do ... I was concerned that [Officer B] actually got the money off [MSO4] and I think I might have asked ... I think I said to [nickname for Officer B] at one stage, did [MSO4] see you, and he said yeah, thanks very much, or something along those lines. And basically that was it.<sup>184</sup>*

This allegation was not summarised in any Mascot affidavits for LDs or TIs that named Officer B as a target, and it does not appear that Officer B's private conversations or telecommunications were recorded or intercepted in relation to it. While it appears that Mascot took no action to investigate the allegation, it remained on Mascot's records and was eventually investigated under Task Force Volta.

### 6.3.9 Officer B examined by PIC as part of Operation Florida in 2002

On 6 June 2002, Officer B was examined by the PIC as part of Operation Florida – about the allegations of verballing Paddle, disposing of firearms, and planting firearms on suspects.<sup>185</sup> Officer B denied knowledge of any of those matters in evidence.<sup>186</sup> The PIC appears to have accepted Officer B's evidence, and the Operation Florida final report made no adverse findings about him.<sup>187</sup> Although the PIC had implicitly cleared Officer B of suspicion of these allegations, the allegations against him remained on Mascot records as unresolved.

### 6.3.10 Risk assessment by SCIA in 2002

SCIA had a risk assessment process that could be used to determine the risk to which the NSWPF would be exposed while unresolved allegations were finalised. SCIA weekly reports throughout 2002 referred frequently – under the heading 'Proposed Activities' – to 'Review Risk Assessments upon adversely mentioned serving officers arising from the Mascot Reference'.<sup>188</sup>

In November 2002 a civilian analyst in SCIA did a risk assessment of Officer B – summarising all the Mascot allegations and evidence against him.<sup>189</sup> The risk assessment noted that much of the evidence against Officer B was hearsay that could not be relied on in criminal or civil proceedings<sup>190</sup> or was uncorroborated.<sup>191</sup> The risk assessment reached the following conclusions about the allegations against Officer B:

- Allegation that he had verballing Paddle (SOD020) – there was sufficient material to draw an inference that Officer B had acted corruptly, but no direct evidence. Paddle had made admissions to his involvement in the offence, and Sea's statement could not be relied on in civil or criminal proceedings.<sup>192</sup>

183 NSWPF, Record of interview between [a Mascot investigator], [Mascot investigator] and 'Sea', 7 September 2000, p. 2.

184 NSWPF, Record of interview between [a Mascot investigator], [Mascot investigator] and 'Sea', 7 September 2000, pp. 2-3.

185 PIC, Transcript of Proceedings, Operation Florida, [Officer B], 6 June 2002.

186 PIC, Transcript of Proceedings, Operation Florida, [Officer B], 6 June 2002, pp. 3253-3254, and pp. 3261-3263.

187 PIC, *Report to Parliament - Operation Florida*, Volumes 1 and 2, 2004.

188 For example, NSWCC/SCU, *Weekly Operational Report*, 29 April 2002, p. 2; NSWCC/SCU, *Weekly Operational Report*, 6 May 2002, p. 2; NSWCC/SCU, *Weekly Operational Report*, 13 May 2002, p. 2.

189 NSWPF, SCIA, *Risk Assessment – Status of Involved Officer*: [Officer B], [name], 14 November 2002.

190 NSWPF, SCIA, *Risk Assessment – Status of Involved Officer*: [Officer B], [name], 14 November 2002, p. 1.

191 NSWPF, SCIA, *Risk Assessment – Status of Involved Officer*: [Officer B], [name], 14 November 2002, p. 4.

192 NSWPF, SCIA, *Risk Assessment – Status of Involved Officer*: [Officer B], [name], 14 November 2002, p. 2.

- Allegation that he had fabricated a police report on a vehicle accident to protect another officer (SOD020) – this matter was not finalised and was the subject of ongoing investigation.<sup>193</sup>
- Allegation that he agreed to dispose of unlawfully obtained firearms by dumping them into a river (SOD028) – Officer B had denied the allegations in evidence to the PIC.<sup>194</sup>
- Allegation that he had planted firearms on suspects (SOD018 and SOD103) – this matter was referred to Task Force Volta for further inquiries.<sup>195</sup>
- Allegation that he had received a corrupt payment of \$400, being part of reward monies obtained by another police officer and distributed by Sea (SOD036) – no direct corroborative evidence had been found to support the allegation, but inquiries were to continue under Task Force Volta.<sup>196</sup>
- Allegation that he failed to take appropriate action in relation to a suspect in the police cells (SOD131) – this matter was not finalised as investigators proposed to interview Officer B about the matter (although an interview on this allegation did not eventuate). If no further evidence was to be located, it was anticipated the matter would be concluded as ‘not sustained’.<sup>197</sup>
- Allegation that he had received money stolen during the execution of a search warrant (SOD178) – while no information had been found that suggested Officer B had been directly involved in the theft of money, inquiries were to continue under Task Force Volta.<sup>198</sup>
- Allegation that he had assaulted suspects (SOD035 and SOD115) – there was no evidence to suggest that Officer B had participated in any improper behaviour.<sup>199</sup>

The pre-formatted risk assessment matrix<sup>200</sup> included both a risk rating and a consequence rating. The combination of these two ratings resulted in a pre-determined ‘Level of risk’.

The risk rating was categorised at the second lowest rating level, as the allegations against Officer B were serious in nature but were uncorroborated allegations to which he had not been given a chance to respond. The consequence rating involved a subjective assessment of the consequences of the officer remaining in their current position. Officer B was rated as ‘Medium’, which is given the following description in the risk assessment guide:

*The continued effective functioning of the NSW Police Service would not be threatened, however would cause medium term consequences to the organisation both, internally (morale and well being of officers) and externally (public confidence and trust in the NSW Police Service).<sup>201</sup>*

The risk assessment guide lists several factors to be considered in this consequence rating.<sup>202</sup> It appears from the documents relating to Officer B’s risk assessment that at least some of these factors were considered in his case. However, the information in the risk assessment report suggests that several of the factors were not actually considered – including his position and responsibilities, the potential impact on the morale of NSWPF employees of him remaining in his position, possible media responses and public perceptions.

Although the allegations against Officer B were serious, and the likely sanctions would be substantial if the allegations were proven, the risk assessment noted that “there is no corroborated evidence to sustain any of the allegations at this time”.<sup>203</sup> The risk assessment also stated that “[s]hould direct corroborative evidence become available a new risk assessment based on current and new evidence will need to be conducted”.<sup>204</sup>

193 NSWPF, SCIA, *Risk Assessment – Status of Involved Officer*: [Officer B], [name], 14 November 2002, p. 1.

194 NSWPF, SCIA, *Risk Assessment – Status of Involved Officer*: [Officer B], [name], 14 November 2002, p. 3.

195 NSWPF, SCIA, *Risk Assessment – Status of Involved Officer*: [Officer B], [name], 14 November 2002, p. 2.

196 NSWPF, SCIA, *Risk Assessment – Status of Involved Officer*: [Officer B], [name], 14 November 2002, p. 2.

197 NSWPF, SCIA, *Risk Assessment – Status of Involved Officer*: [Officer B], [name], 14 November 2002, pp. 2-3.

198 NSWPF, SCIA, *Risk Assessment – Status of Involved Officer*: [Officer B], [name], 14 November 2002, p. 3.

199 NSWPF SCIA, *Risk Assessment – Status of Involved Officer*: [Officer B], [name], 14 November 2002, p. 4.

200 NSWPF, *Risk Assessment – Duty of Involved Officer*, undated.

201 NSWPF, *Risk Assessment – Duty of Involved Officer*, undated, p. 1.

202 NSWPF, *Risk Assessment – Duty of Involved Officer*, undated, p. 1.

203 NSWPF, SCIA, *Risk Assessment – Status of Involved Officer* [Officer B], [name], 14 November 2002, p. 5.

204 NSWPF, SCIA, *Risk Assessment – Status of Involved Officer* [Officer B], [name], 14 November 2002, p. 5.



Using a predetermined risk assessment guide,<sup>205</sup> the SCIA risk assessment concluded that “consideration should be given to the adverse effect upon the morale of police employees and the public confidence in police should this officer remain in his current position”. The assessment also concluded that “[a]lternative duties could be considered for Officer B”.<sup>206</sup> Operation Prospect has not found any documentation suggesting that Officer B was assigned to alternative duties as a result of this risk assessment.

The NSWPF submission to Operation Prospect pointed out that the risk assessment was an automatic result of the combined risk and consequence ratings for Officer B, applying the predetermined risk assessment matrix.<sup>207</sup> The NSWPF further submitted that the risk and consequence ratings were at the appropriate level, the recommendation was only that alternative duties ‘could’ be considered as a means of drawing attention to managerial options, and Officer B was not apparently placed on alternative duties.<sup>208</sup>

### 6.3.10.1. Analysis and submissions

The SCIA risk assessment overstated the consequences of Officer B remaining in his current position. There was no credible evidence to support the conclusion that he presented the risk identified by SCIA using its risk assessment matrix and guide. At the time of this assessment, Mascot had been investigating Officer B for two and a half years and not corroborated any of the allegations against him. There was substantial exculpatory evidence in his favour that was not included in the assessment. In particular, no reference was made to the integrity test conducted on him in February 2001 that he passed – although this may be because the NSWPF had not conducted the integrity test and Mascot investigators had not properly completed relevant paperwork on recording and notifying the outcome of the integrity test.

The NSWPF has submitted to Operation Prospect<sup>209</sup> that the assessment would not have changed even if the results of the integrity test on Officer B were incorporated, as the risk assessment report was prepared using a pre-formatted risk assessment matrix that was based on the existence of serious allegations that were unresolved. Accepting that to be the case, the outcome was nevertheless unacceptable from the standpoint of Officer B – an outcome that may raise doubts about the fairness of the matrix document itself. The integrity test that Officer B passed was strongly exculpatory, at least for the allegation that he had disposed of firearms. The NSWPF submission itself acknowledged that integrity tests “provide not just inculpatory evidence, but exculpatory evidence. ... they establish innocence as well as guilt ... [They] can provide compelling evidence ... that militates against a finding of corrupt behaviour”.<sup>210</sup>

The integrity test result was also consistent with Officer B’s evidence to Operation Florida and the recorded conversation between Officer B and Sea. It was relevant to the strength of the evidence against Officer B on a serious allegation against him, and should equally have been relevant to assessing the consequences of him remaining in his position – when there was no direct corroborating evidence to support the allegation. On this point at least, it is difficult to accept that Officer B remaining in his current position should have been considered as a moderate risk to the NSWPF in November 2002.

The risk assessment did not include other information which affected the strength of the evidence supporting the original allegations against Officer B, even if other NSWPF officers nominated by Sea had acted corruptly in the same or related events.

Another telling feature of the risk assessment document is that the civilian analyst recommended that (emphasis in original) “this report be forwarded to Deputy Commissioner [name] for **URGENT** consideration of [Officer B’s] duty status”.<sup>211</sup> That recommendation does not sit easily with the NSWPF submission that the risk assessment produced an automatic, pre-formatted result of what ‘could’ be considered as a managerial response.

205 NSWPF, Risk Assessment – Duty of Involved Officer, undated.

206 NSWPF, SCIA, *Risk Assessment – Status of Involved Officer* [Officer B], [name], 14 November 2002, p. 5.

207 NSWPF, Submission in reply, 16 November 2015, p. 11.

208 NSWPF, Submission in reply, 16 November 2015, pp. 11-12.

209 NSWPF, Submission in reply, 16 November 2015, p. 10.

210 NSWPF, Submission in reply, 16 November 2015, p. 7.

211 NSWPF, SCIA, *Risk Assessment – Status of Involved Officer* [Officer B], [name], 14 November 2002, p. 5.



## 6.3.11 Task Force Volta and confirmation of Officer B's promotion

### 6.3.11.1. Role of Task Force Volta

The allegations against Officer B were referred to Task Force Volta over 2002-2003, and investigations into those allegations were conducted by a range of officers. The investigation of the verballing allegation was ultimately done by an officer from the Professional Standards Command (PSC) of the NSWPF.<sup>212</sup> The results of these investigations are set out in the following paragraphs.

Operation Prospect has been unable to locate a finalisation report for the allegation that Officer B fabricated a police report of a vehicle accident to protect another officer. It seems this matter was not progressed after the SCIA risk assessment in 2002.

### 6.3.11.2. Investigation of allegation of verballing a suspect (SOD020)

This allegation was investigated by Detective Inspector Paul Grainger who was attached to the NSWPF SCIA.

At the time Grainger was conducting this investigation, Officer B was being considered for promotion to the rank of Inspector. On 14 November 2003 Grainger made a submission to the SCIA Complaint Management Team (CMT) which recommended that the promotion should not occur until Officer B was given the chance to comment on Mascot's LD product containing the evidence against him.<sup>213</sup>

On 1 December 2003 Grainger interviewed Officer B about the verballing allegation.<sup>214</sup> The interview was conducted as a directed interview and without a criminal caution, despite Grainger stating that "the basis of the allegation is a criminal allegation ... which have some Departmental aspects involved to them as well".<sup>215</sup> It seems Officer B had indicated he would exercise his right to silence if interviewed subject to criminal caution.<sup>216</sup> In response to Grainger's questioning, Officer B denied verballing Paddle or subsequently perjuring himself when making a statement in the matter in April 1994, and reiterated his earlier account of events.<sup>217</sup> Grainger also asked Officer B about the LD product from 23 November 2000. Officer B did not recall the substance of the conversation that day, commenting:

*All the alcohol consumed. Probably no substance to the conversations we had, like [Sea] wasn't a person, like, [Sea] wasn't a person I thought well of, I'd had a beer with [Sea], because [Sea] was, [Sea]'d made a point to come around to visit me.*<sup>218</sup>

Officer B also commented that Sea was prone to 'talk up' matters, and said "the [Sea] that I knew, like, talked up everything".<sup>219</sup>

When Officer B was asked to explain why the verballing allegation might have been fabricated, he suggested that Paddle may have done so to escape prosecution.<sup>220</sup> Officer B also suggested that Sea may have made the allegation on the basis of an incomplete understanding of the events or to broker a deal to avoid prosecution:

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212 NSWPF, Complaint number [number] SOD020 Investigator's report by Detective Inspector Paul Grainger, Professional Standards Command, 12 May 2004.

213 NSWPF, Complaint number [number] SOD020 Investigator's Submission by Detective Inspector Paul Grainger, Professional Standards Command, 14 November 2003, p. 1.

214 NSWCC, Record of interview between Detective Inspector Grainger, [name] and [Officer B] with Inspector [name] as support person, 1 December 2003.

215 NSWCC, Record of interview between Detective Inspector Grainger, [name] and [Officer B] with Inspector [name] as support person, 1 December 2003, p. 6.

216 NSWCC, Record of interview between Detective Inspector Grainger, [name] and [Officer B] with Inspector [name] as support person, 1 December 2003, pp. 5-6.

217 NSWCC, Record of interview between Detective Inspector Grainger, [name] and [Officer B] with Inspector [name] as support person, 1 December 2003.

218 NSWCC, Record of interview between Detective Inspector Grainger, [name] and [Officer B] with Inspector [name] as support person, 1 December 2003, pp. 34-35.

219 NSWCC, Record of interview between Detective Inspector Grainger, [name] and [Officer B] with Inspector [name] as support person, 1 December 2003, p. 42.

220 NSWCC, Record of interview between Detective Inspector Grainger, [name] and [Officer B] with Inspector [name] as support person, 1 December 2003, p. 47.

*God only knows how [Sea's] mind work [Sea] obviously operated as a criminal for some time under my nose which I'm, I've certainly got to live with, but and I... I don't know what... I'm still very unclear what actually happened with [Sea]. But no doubt there could be a self serving purpose there for... like trying to say that if [Sea] was doing the actual things wrong ... [Sea] might've been throwing off to see if everyone else was doing them or whether it was a deal or whatever.<sup>221</sup>*

Grainger completed his investigation report on 12 May 2004.<sup>222</sup> It acknowledged Officer B's denials of wrongdoing,<sup>223</sup> and noted that the credibility of the witnesses was low and the information to support the allegation was weak. However, Grainger concluded that the allegation of verballing should be sustained and the available evidence could support a prosecution for attempting to pervert the course of justice – although significant further investigation would be needed before a prosecution could be instituted:<sup>224</sup>

*During my review I have formed the opinion that the raw material on hand in respect of [the allegation of verballing] does meet the prima facie test in that sufficient material exists to satisfy each element of the offences. I must re-iterate that this material is in a raw state and significant further investigation in the form of statements and evidence collection would have to be undertaken in order to present the matter for prosecution.<sup>225</sup>*

On 15 July 2004, the investigation report was considered by the CMT. The CMT concluded that the allegations against Officer B were not supported by sufficient evidence to warrant any further action or investigation. The CMT minutes comment that “the issues should not be sustained against the officers due to the lack of credibility of the witnesses and the discrepancies in the versions provided by the witnesses”.<sup>226</sup>

The CMT resolved to notify the officers involved of the outcome and for Grainger to brief Officer B personally before any letters were sent. The CMT also resolved to disseminate the investigator's report and related legal advice to Officer B's Region Commander “to allow him to implement any risk management strategies he may consider necessary”.<sup>227</sup> Operation Prospect has been unable to locate any evidence to confirm if these materials were provided to the Region Commander.

NSWPF records show that Officer B was confirmed in his role at the new rank of Inspector on 31 August 2004.<sup>228</sup>

An adverse finding is recorded in this report against Grainger in reaching a finding on the verballing allegation that was not reasonably supported by the evidence. Grainger made a submission to Operation Prospect that disputed that finding.<sup>229</sup> The thrust of Grainger's submission was that his finding was correct and was supported by the evidence available to him. Operation Prospect does not accept that view, and points to the fact that Grainger's finding was not accepted by the CMT and that Officer B's promotion was later confirmed.

### **6.3.11.3. Investigation of allegation of agreeing to dispose of weapons (SOD028)**

The allegation that Officer B was involved in disposing of unlawfully obtained firearms was investigated by SCIA staff and finalised on 2 May 2003.<sup>230</sup> The finalisation report concluded there was no evidence to support the allegation other than Sea's hearsay evidence, which was insufficient to substantiate any criminal charges or departmental action against Officer B.<sup>231</sup> The report does not mention the integrity test. The finalisation report was certified for quality and completeness by a Detective Inspector on 15 May 2003.<sup>232</sup>

221 NSWCC, Record of interview between Detective Inspector Grainger, [name] and [Officer B] with Inspector [name] as support person, 1 December 2003, p. 48.

222 NSWPF, Complaint number [number] SOD020 Investigator's Report by Detective Inspector Paul Grainger, Professional Standards Command, 12 May 2004.

223 NSWPF, Complaint number [number] SOD020 Investigator's Report by Detective Inspector Paul Grainger, Professional Standards Command, 12 May 2004, p. 20.

224 NSWPF, Complaint number [number] SOD020 Investigator's Submission by Detective Inspector Paul Grainger, Professional Standards Command, 14 November 2003, p. 26.

225 NSWPF, Complaint number [number] SOD020 Investigator's Submission by Detective Inspector Paul Grainger, Professional Standards Command, 14 November 2003, p. 26.

226 NSWPF, *Professional Standards Command Complaints Management Team Meeting Minutes*, 15 July 2004, p. 1.

227 NSWPF, *Professional Standards Command Complaints Management Team Meeting Minutes*, 15 July 2004, p. 2.

228 PIC, PODS Person profile for [Officer B], accessed by NSW Ombudsman on 25 October 2013, p. 3.

229 Grainger, P, Submission in reply, 26 November 2015.

230 NSWPF, Complaint number [number] SOD028 Finalisation Report by [name], SCU, 2 May 2003.

231 NSWPF, Complaint number [number] SOD028 Finalisation Report by [name], SCU, 2 May 2003, p. 6.

232 NSWPF, Complaint number [number] SOD028 Finalisation Report by [name], SCU, 2 May 2003, p. 6.

The CMT met to consider an earlier version of the finalisation report on 31 March 2003<sup>233</sup> and agreed with the investigator's findings.<sup>234</sup> This earlier version of the report did not include any reference to Officer B.

#### **6.3.11.4. Investigation of allegation of planting a gun on a suspect (SOD018 and SOD103)**

Task Force Volta cleared Officer B of any involvement in the allegation that police officers planted a gun on a suspect. Volta found that the statements of other officers involved in the alleged offence did not mention Officer B, and his Duty Book showed that he was on a rest day when the alleged incident took place – thereby “absolving him of any involvement in this allegation”.<sup>235</sup>

#### **6.3.11.5. Investigation of allegation of receiving corrupt payments (SOD036)**

Officer B was interviewed by Task Force Volta on 15 April 2003 about the allegation of receiving corrupt payments.<sup>236</sup> He was shown a transcript of his conversation with Sea of 23 November 2000. Officer B stated that he had been heavily intoxicated during the recorded conversation, and had no recollection of the parts of the conversation that discussed the corrupt payments. Officer B also indicated that he would have dismissed Sea's comments as being exaggerated, and that:

*... this is something I would dismiss as [Sea] was full of rubbish, [Sea] used to talk about stuff the whole time and look I have had, as I said documented conflict with [Sea], [Sea's] a, and the only reason I had a drink with [Sea] that night was out of pity and I thought [Sea] was struggling to get back up on [Sea's] feet again because [Sea], um for whatever reason, um had gone mad and tried to take [Sea's] own life. And um I just pretty wrote off anything that [Sea] actually said to me because as [Sea] was just full of crap, I'm sorry, now if [Sea's] talking the truth and I understand certainly that both [Sea] and [MSO9] are corrupt Police, then um, yeh I just dismissed whatever he said as rubbish.<sup>237</sup>*

The Task Force Volta investigator's report concluded there was insufficient evidence to support the allegation against officers who allegedly received the corrupt payment, including Officer B, and insufficient evidence to consider laying criminal or departmental charges against them. The report and its conclusions were accepted by Task Force Volta, Mascot's CMT and the PIC in May 2003. No further action was taken.<sup>238</sup>

#### **6.3.11.6. Investigation of allegation of failing to take appropriate action in relation to a suspect in police cells (SOD131)**

The allegation that officers had assaulted a chef during his arrest, and that Officer B had failed to take appropriate action when the chef was agitated in police cells, was considered in a finalisation report prepared by a Special Crime Unit investigator on 21 February 2003. In relation to Officer B, the finalisation report concluded:

*Regarding the allegation against [Officer B], Sea or [MSO8] do not corroborate this comment. In any case the comment relates to later on at the police station and has nothing to do with the initial assault in the car. Investigators believe it is unlikely that [Officer B] will be able to provide any evidence relating to the assault, as he was not present.<sup>239</sup>*

The CMT supported those conclusions on 3 March 2003.<sup>240</sup> Accordingly, no further action was taken in relation to the allegations, and no adverse finding was made against the officers alleged to have been involved.

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233 NSWPF, Mascot Complaint Management Team, SCIA, *Minutes of meeting*, 31 March 2003.

234 NSWPF, Mascot Complaint Management Team, SCIA, *Minutes of meeting*, 31 March 2003.

235 NSWPF, Complaint number [number] SOD103 Investigator's Report by [name], Task Force Volta, 25 July 2003, p. 3.

236 NSWPF, Complaint number [number] SOD036 Investigator's Report by [name], Task Force Volta, 6 May 2003, p. 4.

237 NSWPF, Record of interview between [name], [name] and [Officer B] with [name] as independent, 15 April 2003, p. 11.

238 NSWPF, Complaint number [number] SOD036 Investigator's Report by [name], Task Force Volta, 6 May 2003, pp. 6-9.

239 NSWPF, Complaint number [number] SOD131 Finalisation Report by [name], SCU, 21 February 2003, p. 2.

240 NSWPF, Mascot Complaint Management Team, SCIA, *Minutes of meeting*, 3 March 2003.

### 6.3.11.7. Investigation of allegation of receiving money from a search (SOD178)

Officer B was interviewed by Task Force Volta in April 2003 about the allegation that he had received money taken during a search. Officer B recalled being involved in arresting people associated with the operation in question, but stated that he was not involved in executing the warrant. Officer B denied receiving any money allegedly stolen during the execution of the warrant and had no knowledge of the alleged theft.<sup>241</sup>

The Task Force Volta investigator concluded that although there was a strong suspicion that money and/or drugs were stolen during the search, there was insufficient evidence to consider criminal charges against any person.<sup>242</sup> The investigator also noted that there was “no admissible evidence to corroborate the allegation by SEA”, and the alleged victim of the theft “continues to deny any money was stolen by Police and refuses to make a complaint”.<sup>243</sup> The investigator’s report recommended that no further action be taken.<sup>244</sup>

### 6.3.11.8. Investigation of allegations of assault (SOD115/SOD035)

In early 2003 Burn and PIC investigator McGrath assessed this allegation that Officer B had assaulted a suspect as “NFA unless [MSO4]/[Officer B] rolls” (meaning makes admissions).<sup>245</sup> On 18 February 2003 a Task Force Volta investigator recommended that no further action be taken in relation to the allegation.<sup>246</sup> This recommendation was accepted by the CMT on 6 March 2003.<sup>247</sup>

## 6.3.12 Overall analysis and submissions

It is understandable that Mascot decided to investigate allegations against Officer B. Information provided by Sea pointed to the possibility that serious offences may have been committed by members of the AHU during Officer B’s term there. Officer B was mentioned, albeit inconclusively, in the information Sea provided.

Officer B was one of many people mentioned by Sea, along with a large number of allegations. It would necessarily take some time for Mascot investigators to decide the reliability and strength of the evidence relating to each of the allegations. The covert nature of the Mascot investigations, before the Operation Florida hearings in 2001, also had a distinct bearing on the conduct and finalisation of the investigations. So, too, did the need to keep the identity of informants secret.

There were nevertheless serious shortcomings in the Mascot investigation and handling of the allegations against Officer B. The allegations against him remained on the Mascot books longer than seems warranted. This was largely due to deficiencies identified earlier in this chapter that can be summarised in the following general terms:

- The comment by Sea that Officer B may have verbally threatened the suspect Paddle was soon transformed into an allegation of substantiated fact, which was then copied into multiple affidavits over coming months. Information subsequently obtained that threw doubt on that allegation (including Officer B’s denial and Paddle’s admission to the offence) was not included in the affidavits. The investigation of this allegation should have concluded much earlier than it did. In particular, the investigation should not have continued into 2003-2004 and led to a sustained finding in Grainger’s report – which appears not to have adequately considered all of the information.
- The investigation of the allegation that Officer B had fabricated an accident report was poorly conducted. It relied almost exclusively on obtaining LD and TI evidence and did not pursue other investigatory channels that may have quickly finalised the investigation, such as obtaining the accident report and interviewing Officer B. The information obtained through Sea was presented inaccurately in affidavits and presented Officer B’s conduct in a more culpable manner than the facts supported.

241 NSWPF, Complaint number [number] SOD178 Investigator’s Report by [name], Task Force Volta, 29 April 2003, p. 5.

242 NSWPF, Complaint number [number] SOD178 Investigator’s Report by [name], Task Force Volta, 29 April 2003, p. 5.

243 NSWPF, Complaint number [number] SOD178 Investigator’s Report by [name], Task Force Volta, 29 April 2003, p. 6.

244 NSWPF, Complaint number [number] SOD178 Investigator’s Report by [name], Task Force Volta, 29 April 2003, p. 6.

245 NSWPF, Complaint number [number] SOD115 Investigator’s Report by [name], Task Force Volta, 18 February 2003, p. 3.

246 NSWPF, Complaint number [number] SOD115 Investigator’s Report by [name], Task Force Volta, 18 February 2003, p. 3.

247 NSWPF, Complaint number [number] SOD115 Investigator’s Report by [name], Task Force Volta, 18 February 2003, p. 5.

- The same criticism can be made of the affidavits relating to the allegation that Officer B had agreed to dispose of unlawfully obtained firearms – specifically, that the affidavits inaccurately recorded information provided by Sea in order to strengthen the allegation against Officer B, and the affidavits omitted relevant information (that five firearms had been retrieved from the Hawkesbury River).
- The procedure followed in conducting an integrity test of Officer B did not comply with the relevant internal policy and guidelines, and should probably have been done by the Integrity Testing Unit in the NSWPF rather than by the Mascot team in the NSWCC. The result – that Officer B had apparently passed the test – was not recorded by Mascot nor notified to relevant officers in the NSWPF or the PIC. If this had occurred, it is probable that the investigation of the allegation that Officer B participated in the disposal of firearms could have been concluded earlier.
- The allegation that Officer B had received a corrupt payment was presented more strongly in affidavits than the facts supported.
- Four other allegations against Officer B – that he planted a gun on a suspect, that he corruptly received a portion of a reward payment, that he did not take appropriate action in relation to a suspect in police cells, and that he received money stolen during the execution of a search warrant – were not actively investigated and remained longer on Mascot records than was warranted. The allegation about planting the gun could have been resolved much earlier by the simple step of obtaining Officer B's Duty Book – for an ostensible reason that would not expose Mascot's work. This would have shown that he was not working on the relevant day.
- Mascot's heavy reliance on information obtained directly from Sea and through the use of LD and TI warrants cannot be justified on the basis that it was a covert investigation that would have been revealed if other investigation methods had been used. The covert nature of the investigation should not have precluded the use of other investigation methods, such as obtaining Duty Books and accident reports. Mascot had interviewed Officer B directly about some of Sea's allegations in June 1999, so he had some awareness of the investigation. The availability of alternative investigation methods was also a relevant matter to place before a judicial officer who was deciding whether to issue a warrant for covert intelligence collection. Mascot affidavits routinely included the comment that alternative investigative methods were not likely to succeed.
- The investigation of the large number of allegations against Officer B by Task Force Volta would not have been necessary if Mascot had finalised some of those allegations at an earlier stage – as it should have done. Task Force Volta concluded that no further action should be taken on the allegations, with the exception of the allegation of verballing a suspect. As discussed above, Volta's findings on that allegation are not supported by the evidence.

It is understandable that Officer B believed that the prolonged investigation of these allegations delayed the confirmation of his promotion to the rank of Inspector. It is not clear to what extent the delay was directly attributable to the outstanding allegation that Officer B had verballing a suspect, or to Grainger's recommendation that Officer B's promotion not be formalised until the investigation of that allegation was finalised. However, the swift confirmation of Officer B's promotion after the CMT resolved the investigation<sup>248</sup> suggests that the delay in resolving this allegation did cause some delay, with corresponding personal and financial consequences for Officer B.

The NSWPF submission to Operation Prospect accepted that there was a delay in confirming Officer B's promotion, but submitted that the delay was not extended or unreasonable.<sup>249</sup> The submission noted that Officer B was given a temporary appointment at the rank of Inspector before the confirmation of his appointment, and that the internal investigation of allegations against Officer B needed to be resolved. For that to happen, internal legal advice and Officer B's response to the allegations were required; and Task Force Volta faced a daunting task at that time of investigating 199 medium to low risk allegations from the Schedule of Debrief that had not been finally dealt with by Mascot.

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248 NSWPF, *Minutes of the Integrity Review Committee Meeting*, 22 July 2004, p. 5.

249 NSWPF, Submission in reply, 10 November 2015, pp. 12-14; Email from Inspector Duane Carey, NSWPF to Operation Prospect, NSW Ombudsman, 30 August 2016.



Those considerations, while relevant, do not adequately account for the adverse impact on Officer B of the time taken to finalise allegations that had lingered for some time. It may be that the delay experienced by the NSWPF on this issue was a legacy of the problems in Mascot processes that are discussed in this report. However, that provides no justification for the delay on the part of the NSWPF.

### 6.3.13 Findings

As discussed in section 6.2.4.2, the approach adopted in this chapter is not to record an adverse finding against a named officer who followed the prevailing Mascot practice of deposing to an affidavit without first checking and verifying the content copied from an earlier affidavit. That systemic failure is taken up in Chapter 16. An adverse finding is made against some officers who swore the first affidavit that contained inaccurate content – because of the special responsibility on the deponent to ensure the accuracy and reliability of the information stated in the affidavit. It is nevertheless accepted, in the instances discussed in this chapter, that the errors were not intentional or deliberate. Adverse findings are also recorded below against the NSWPF and the NSWCC for failing to ensure that policies and procedures were properly followed by their officers or officers under their supervision.

#### 4. Trayhurn

Trayhurn's conduct in preparing a memorandum dated 14 November 2000 to the NSW Crime Commission solicitor, that contained an inaccurate summary of a conversation recorded on 31 October 2000, was conduct that arose wholly or in part from a mistake of fact in terms of section 122(1)(d)(iv) of the *Police Act 1990*. The memorandum exaggerated Officer B's knowledge of and involvement in the disposal of unlawfully obtained firearms. Trayhurn knew and intended that the memorandum would be used in affidavits supporting applications for LD and TI warrants to investigate Officer B.

#### 5. Moore

Moore's conduct as the deponent of TI affidavit 122-125/1999 sworn on 30 April 1999, in support of an application for a warrant to intercept Officer B's telephone service, was conduct that arose wholly or in part from a mistake of fact in terms of section 122(1)(d)(iv) of the *Police Act 1990*. As discussed in section 6.3.3, the affidavit wrongly stated that Officer B had knowingly completed a police report that falsely named himself as the driver of a vehicle driven by another officer that was involved in an accident.

#### 6. Szabo

Szabo's conduct as the deponent of LD affidavit 338-334/2000 sworn on 16 November 2000, in support of an application for seven LD warrants to listen to or record Officer B's private conversations, was conduct that arose wholly or in part from a mistake of fact in terms of section 122(1)(d)(iv) of the *Police Act 1990*. As discussed in section 6.3.4.4, the affidavit apparently relied on a memorandum dated 14 November 2000, prepared by Trayhurn, that inaccurately summarised a conversation recorded on 31 October 2000.

#### 7. Szabo

Szabo's conduct as the deponent of LD affidavit 362-368/2000 sworn on 7 December 2000, in support of an application for a LD warrant to listen to or record Officer B's private conversations, was conduct that was unreasonable and arose wholly or in part from a mistake of fact in terms of section 122(1)(d)(i) and (iv) of the *Police Act 1990*. As discussed in section 6.3.2.3, the affidavit incorrectly stated that a recorded conversation between Sea and Officer B corroborated an allegation that Officer B had verbaled a suspect.



## 8. Kaizik

Kaizik's conduct as the deponent of LD affidavit 062-068/1999 sworn on 5 February 1999, in support of an application for a LD warrant to listen to or record Officer B's private conversations, was unreasonable conduct in terms of section 122(1)(d)(i) of the *Police Act 1990*. The affidavit did not accurately record information about Officer B in relation to two allegations concerning the completion of a false police report – as discussed in section 6.3.3 and the disposal of firearms, as discussed in section 6.3.4.

## 9. Kaizik

Kaizik's conduct as the deponent of LD affidavit 324-330/2000 sworn on 17 September 1999, in support of an application for a LD warrant to listen to or record Officer B's private conversations, was unreasonable conduct in terms of section 122(1)(d)(i) of the *Police Act 1990*. The affidavit inaccurately represented a claim by Sea that Paddle had been verbally by Officer B as an allegation that was a substantiated fact – as discussed in section 6.3.2.3.

## 10. Grainger

Grainger's conduct in preparing a report dated 12 May 2004 with a finding that an allegation of verballing against Officer B was sustained was conduct that was unreasonable in terms of section 122(1)(d)(i)(iv) of the *Police Act 1990*. The finding was not reasonably supported by the evidence available to Grainger – as discussed in section 6.3.11.2.

## 11. NSW Police Force

The NSW Police Force is responsible for:

- the inappropriate recommendation, made in a risk assessment in November 2002, that alternative duties be considered for Officer B as allegations against him had not been fully resolved – as discussed in section 6.3.10.
- the extended delay in Officer B being confirmed in a new position at the rank of Inspector, caused by unnecessary delays in resolving the allegation that he had verbally Paddle – as discussed in sections 6.3.11.2 and 6.3.12.

The recommendation and the delay were caused by the actions of NSW Police Force officers. The conduct of the NSW Police Force was unreasonable and based wholly or partly on a mistake of fact, in terms of section 26(1)(b) and (e) of the *Ombudsman Act 1974*.

## 12. NSW Crime Commission

The NSW Crime Commission is responsible for the actions of members of the Mascot Task Force in continuing to investigate, after December 1999, the allegation that Officer B had verbally Paddle. As discussed in section 6.3.2.4, Paddle's admission on 7 December 1999 that he was involved in the armed robbery in 1994 provided a basis to conclude the investigation of this allegation against Officer B. The NSW Crime Commission was responsible for the Mascot and Mascot II references and for the supervision of members of the Mascot Task Force. The conduct of the NSW Crime Commission in failing to ensure that the investigation of this allegation was appropriately conducted and finalised was unreasonable and otherwise wrong in terms of section 26(1)(b) and (g) of the *Ombudsman Act 1974*.

# Chapter 7. Investigation of Messrs F and N, and Officers C1 and J

## 7.1 Chapter overview

This chapter considers the investigation by the Mascot Task Force of a number of current and former NSWPF officers. A common thread in many of the investigations was that the first LD warrant in which most of these officers were named was LD warrant 109/1999 granted on 12 March 1999 – less than five weeks after the Mascot reference was made to the NSWCC. Some of the officers were mentioned in Mascot documents before that date, but LD warrant 109/1999 was significant in that it named 119 people whose private conversations could be recorded or listened to for the 21 days the warrant was active. This represented a significant spike in the number of people that Mascot sought to record. The maximum number of names on any of the previous 32 Mascot LD warrants was 19.

The affidavit supporting the warrant application did not explain why Mascot investigators wanted to record or listen to 95 of the 119 people who were named in the application and the warrant. Nor did the affidavit explain whether the other 24 named people were suspected of engaging in or having knowledge of the criminal offences under investigation by the Mascot Task Force.

For many of the 119 people named this was the first time they had been named in a Mascot warrant – but they were then named frequently after that in Mascot applications, affidavits and warrants. Often no explanation was given in a later document as to why a person was being named. A common practice was that a person, once named (either in LD warrant 109/1999 or in a later warrant), would be named in subsequent rollover warrant applications and affidavits. Inaccurate, exaggerated or ambiguous information that appeared in an early affidavit would frequently reappear in the same terms in a later affidavit. Allegations that were typecast as facts would also reappear unchanged.

Generally, the matters that are discussed in this chapter reflect a lack of administrative rigour in document preparation processes in the early stages of the Mascot investigations. These problems were compounded as the investigation built on this early work and expanded. However, the implications are more serious than a succession of administrative lapses. The LD Act imposed strict legal controls on the use of LDs to record private conversations. A central purpose of the LD Act was to safeguard the privacy of interpersonal communications from unwarranted intrusion. A warrant authorising the use of a LD could be granted by an eligible Judge, after receiving an application that addressed a number of criteria precisely listed in section 16 of the LD Act. It is clear from this chapter that Mascot investigators did not have sufficient regard to those legal requirements when applying for LD warrants.

Some of the people who were the subject of Mascot investigations dealt with in this chapter later complained when they became aware or suspicious that they had been named in a warrant. That is another reason why the Mascot processes discussed in this chapter are of significant continuing concern. The complaints illustrate that it can be enormously distressing to a current or former police officer – for personal, career and occupational reasons – to learn or suspect that they have been named on a warrant that was being executed as part of an investigation into alleged corruption and criminality.

This chapter contains a case study analysis of the Mascot investigations of the following four people:

- Mr N was a former NSWPF officer during the Mascot investigations. He was named in 95 LD warrants, 51 LD affidavits and two TI affidavits. The 95 LD warrants and 37 of the LD affidavits named him as a person whose private conversations Mascot sought to listen to or record. He was not recorded pursuant to any of the warrants.

- Officer C1 was a NSWPF officer during the Mascot investigations and is still serving. He was named in 63 LD warrants, 29 LD affidavits and four TI affidavits. The 63 LD warrants and 22 of the LD affidavits named him as a person whose private conversations Mascot sought to listen to or record. He was recorded once.
- Officer J was a NSWPF officer during the Mascot investigations and is still serving. He was named in three LD warrants and one supporting LD affidavit. He was recorded once, but as a participant in a conversation that was covered by a separate LD warrant.
- Mr F was a NSWPF officer when the Mascot investigations started, but resigned in 2000. He was named in 90 LD warrants and 30 LD affidavits, all but three of which named him as a person Mascot sought to listen to or record. He was not recorded under any of the warrants.

Mr N, Officer C1 and Officer J were named for the first time in LD warrant 109/1999 on 12 March 1999. Mr F was first named in a Mascot LD affidavit on 4 June 1999.

The analysis in this chapter of the investigation of each person concludes with the Ombudsman's findings under section 122 of the Police Act and section 26 of the *Ombudsman Act 1974* (Ombudsman Act). The only Mascot investigators who are named in the findings are those who swore an affidavit that first mentioned Mr N, Officer C1, Officer J or Mr F as a person who Mascot sought to listen to or record – for example, the supporting affidavit for LD warrant 109/1999. The view taken in this report is that due diligence is required of a deponent in those circumstances. The officers who swore the rollover affidavits that repeated paragraphs from those original affidavits are not named in this chapter. Many of those officers made submissions to Operation Prospect explaining that they swore rollover affidavits that had been prepared by experienced professionals in the NSWCC, and they acted in good faith and were unaware of the defects in the affidavits exposed in the Operation Prospect investigation. This issue is discussed further in Chapter 6.

Findings are reached about the conduct of the NSWCC in relation to its responsibility for the actions of members of the Mascot Task Force in relation to Mr N, Officer C1, Officer J and Mr F. There is similarly a finding about the conduct of the NSWPF in relation to its responsibility for the actions of its officers in responding inadequately to a complaint from Mr N. Recommendations are made for the NSWCC and the NSWPF to issue written apologies in response to those findings.

## 7.2 LD warrant 109/1999 and the supporting affidavit

LD warrant 109/1999 was granted on 12 March 1999 by Justice Graham Barr. The supporting affidavit was LD affidavit 105-111/1999, sworn the same day by Detective Senior Constable Troy Kaizik before NSWCC solicitor Neil Owen. Kaizik's affidavit followed the common form used for most Mascot affidavits. It described the debrief information provided by the informant, Sea, and the criminal offences under investigation that the deponent suspected had or may be committed – such as corruption, money laundering, and conspiracy to pervert the course of justice.

The application for LD warrant 109/1999 sought authority to listen to or record the private conversations of 119 people. Kaizik's supporting affidavit did not explain why Mascot wanted to record or listen to the private conversations of 95 of those named. For the other 24 people where an explanation was given, the affidavit was not clear as to whether all were suspected of engaging in or having knowledge of the criminal offences that Mascot was investigating.

Nineteen of the 119 people named in LD warrant 109/1999 were named in previous Mascot warrants or supporting affidavits. The earlier affidavits explained why Mascot sought to listen to or record 18 of those 19 people. Kaizik's affidavit also referred to an investigation being undertaken within NSWPF Internal Affairs by Task Force Ancrum. Ancrum had been established after the Royal Commission into the New South Wales Police Service to investigate a range of matters, including possible corrupt activity by officers involved in Task Force Magnum. Magnum had been established in 1991 to investigate a growth in armed robberies on armoured vehicles. Internal Affairs was scrutinising some arrests that had resulted from Task Force Magnum,

in part to examine whether armed robbery charges had been fabricated or if Task Force Magnum members had 'loaded up' or verbalised suspects.

Kaizik's affidavit described meetings between Sea and MSO1 that had recently been recorded by an authorised LD worn by Sea. MSO1 had worked on Task Force Magnum. He and some other Task Force Magnum members (including Sea) were under investigation by Task Force Ancrum, and he had been interviewed by Ancrum investigators. The LD affidavit referred to a recorded discussion between Sea and MSO1 about this interview, about a draft affidavit prepared by the relieving Commander of Ancrum that MSO1 had obtained, the circulation of that affidavit among Ancrum targets, and previous corrupt and criminal conduct by Sea and MSO1 and others. The draft Ancrum affidavit stated that Sea was to be interviewed by Task Force Ancrum on 12 March 1999 – the day that LD affidavit 105-111/1999 was sworn by Kaizik. In the affidavit, Kaizik stated that he suspected other Ancrum targets would approach Sea for information about his interview in the following days, and warrants were therefore sought to record any such meetings on Sea's three body worn LDs.<sup>250</sup>

A record of a Mascot team meeting on 9 March 1999 provides some insight into why so many new names were added to the warrant application.<sup>251</sup> The meeting was attended by Dolan, Burn, Kaizik and other officers. LD warrants 081-087/1999, which authorised the use of LDs to record 19 people including Sea, were due to expire in three days on 12 March 1999.<sup>252</sup> The record of the meeting noted: "Discussion re adding [named people] with allegations against them from SEA onto Bodywire LD which is up for renewal on Friday 12/03/1999".<sup>253</sup>

After the meeting, Kaizik prepared the affidavit for LD warrants 105-111/1999 – which added 100 names to those listed on the previous affidavit.<sup>254</sup> These 100 new names had not been included in any previous LD affidavit prepared by Mascot, but were named in the handwritten Schedule of Debrief of the interview with Sea that Burn had prepared in January 1999.<sup>255</sup> It appears that Kaizik copied all but four names on the Schedule of Debrief and included them in the new warrant application.<sup>256</sup>

As discussed in Chapter 3, Burn's handwritten Schedule of Debrief included names of officers mentioned by Sea during his debrief interviews – some of whom Sea alleged were involved in corrupt or criminal conduct, and others who were not the subject of allegations. Officers from both categories were included in the expanded list of people named in Kaizik's affidavit. For example, Sea had noted that Officer C1 was present during an operation that allegedly involved corrupt conduct, though he was not recorded in any Mascot documents as a person involved in corruption (see section 7.4). Some names listed in the application and supporting affidavit were in Mascot records because they had inadvertently been recorded by Sea's body worn LD – as in the case of Officer J (see section 7.5). Some of those named in LD affidavit 105-111/1999 were police officers working on Task Force Ancrum – as in the case of Officer P (see Chapter 8).

Operation Prospect asked Kaizik why an increased number of names was included in the LD warrant application and supporting affidavit. Kaizik acknowledged that an affidavit should explain why a person's name is included in an application. However, he was unable to explain why so many people were in this application and why the supporting affidavit provided no explanation for the majority of people named.<sup>257</sup>

Operation Prospect also asked those questions of NSWCC solicitor, Owen, who witnessed the affidavit. He did not recall why an increased number of names was included.<sup>258</sup>

250 LD affidavit 105-111/1999, pp. 13-14.

251 NSWCC Information Report, *Office Meeting on 09/03/1999*, reporting officer: Jewiss, 9 March 1999, p. 1.

252 LD affidavit 081-087/1999.

253 NSWCC Information Report, *Office Meeting on 09/03/1999*, reporting officer: Jewiss, 9 March 1999, p. 1.

254 LD affidavit 062-068/1999.

255 NSWCC Information Report, *Schedule of Debrief with SEA, 91 matters outlined*, reporting officer: Burn, 13 January 1999 – attachment 'handwritten schedule of events'.

256 LD affidavit 081-087/1999, p. 2.

257 Ombudsman Transcript, Troy Kaizik, 8 August 2014, pp. 1248-1250.

258 Ombudsman Transcript, Neil Owen, 23 January 2014, p. 51.

## 7.3 The investigation of Mr N

### 7.3.1 Mr N made a subject of investigation

Mr N was named in LD warrant 109/1999 and subsequently in 94 other Mascot LD warrants. He was named in 37 affidavits that were sworn in support of those LD warrants, in a further 14 affidavits – but not as a person who Mascot may listen to or record under the warrant being applied for – and in two supporting affidavits for TIs, but not as a person whose telephone was to be intercepted under the TI warrant being applied for. Some of the LD affidavits in which he was named were sworn before LD warrant 109/1999, which was granted on 12 March 1999.

At one stage, Mr N led Task Force Ancrum. He resigned from the NSWPF in August 1998 while Ancrum was still underway. He was not a NSWPF officer when the Mascot investigations started, although there appeared to be an expectation he may return to the Ancrum investigation in a consultancy role.<sup>259</sup>

Mr N was initially a target of investigation because of a suspicion that he had revealed information about the Ancrum investigation to people who were being investigated. Sea alleged that Mr N had leaked information to MSO6, a NSWPF officer and Mascot target, who had previously worked with Mr N. Information received by the NSWCC from an informant before Mascot started had described Mr N and MSO6 as “very good friends”.<sup>260</sup> The informant providing this information was later assessed in 2001 as “generally unreliable”,<sup>261</sup> but the information was included in a profile on Mr N prepared by a NSWCC analyst and a Mascot officer in February 1999.<sup>262</sup> There was no reference to this alleged association between Mr N and MSO6 in any Mascot affidavits.

There was also evidence in Mascot records that Mr N socialised with Sea and other Mascot subject officers. On 27 January 1999, the Operation Mascot Chronology recorded that:

*Sea stated that a regular drinking establishment of [Mr N], [MSO6] and [MSO1] was the [name] Hotel.*<sup>263</sup>

Two further allegations of corrupt conduct about Mr N were listed for investigation during the course of the Mascot investigations. Those allegations were that he was involved in:

- receiving corrupt payments while working at Eastwood Police Station in 1969 – see section 7.3.5
- ‘loading-up’ arrested persons.<sup>264</sup>

Mascot pursued the first of those allegations, about a corruption incident in 1969 (see section 7.3.5). There is no evidence that Mascot conducted any investigation into the second allegation about loading-up arrested people. All three allegations against Mr N were reviewed in 2003 by Task Force Volta, which had been established the previous year to consider and finalise outstanding Mascot investigations. Volta found that there was insufficient evidence to justify any criminal charges or management action against Mr N and recommended no further action (see section 7.3.6).<sup>265</sup>

The following discussion traces the development of Mascot’s investigation of Mr N. The analysis begins with Sea’s debrief interview, followed by a summary of the warrants relating to Mr N that were granted in three successive time periods. Although Mr N was mentioned in a large number of warrants and affidavits, his private conversations were never recorded by LD, none of his telephone conversations were intercepted, and it does not appear that Sea made contact with Mr N at any time during the Mascot investigations.

<sup>259</sup> NSWCC, Record of interview between Detective Inspector Burn, Detective Senior Sergeant Henry and ‘Sea’, 10 January 1999, p. 7.

<sup>260</sup> NSWCC Internal Memorandum from [name] to [Assistant Director, Investigations], 1 May 1998, p. 9.

<sup>261</sup> NSWCC Information Report, *Overview of Informant [name] allegations relevant to [name]*, reporting officer: Moore, 15 May 2001, p. 3.

<sup>262</sup> NSWCC Individual Profile on Mr N, report date: 15 February 1999, profile prepared by: [a NSWCC analyst] and [a Mascot investigator], p. 6.

<sup>263</sup> NSWCC Information Report, *Additional information provided by Sea re corruption*, reporting officer: Burn, 27 January 1999, p. 2.

<sup>264</sup> NSWPF, Complaint number [number], SOD127, Investigator’s Report SCIA – Task Force Volta, 18 March 2003, p. 1.

<sup>265</sup> NSWPF, Complaint number [number], SOD127, Investigator’s Report SCIA – Task Force Volta, 18 March 2003, p. 4.



### 7.3.2 Information Sea initially provided to Mascot about Mr N

In his induced statement to the NSWCC on 19 December 1998, Sea said the following about Mr N:

*Recently I met with [MSO6] who told me that [Mr N] had spoken to him [about Ancrum] and told him that he, [MSO6] was not going to be charged and that I was not going to be charged. I do not know the source of that information.<sup>266</sup>*

Sea provided further information about that incident (the car park meeting) in a debrief interview on 10 January 1999:

*Sea: Then I rang [MSO6] again and he said "just get yourself down here. I've got some news for you". So I said "I'll meet you in the back carpark". So anyway I met him near the carpark, around the back. He explained to me that he'd run into [Mr N] and that [Mr N] had said that he wasn't going to be charged, I wasn't going to be charged, don't worry about it, everything's right.*

...

*Burn: Okay. Just in relation to the conversation with [MSO6] in the carpark behind the Leagues Club, you said [MSO6] told you that [Mr N], [Mr N] had told you ...*

*Sea: He'd run into [Mr N] down at the [name] Club and said that [Mr N] had said something along the lines that he's been brought back as a consultant and that "everything's right, there's going to be a review, but you're not going to be charged and I'm not going to be charged". It was along those lines.<sup>267</sup>*

Operation Prospect has not located any document that identifies the exact date the alleged car park meeting took place.

Although Sea spoke about Mr N in his initial debrief interview, Mr N was not listed in the handwritten Schedule of Debrief.<sup>268</sup> His name was later added to the electronic version of the schedule.<sup>269</sup>

### 7.3.3 Mr N named in affidavits (January and February 1999)

Soon after, in January and February 1999, Mascot named Mr N in two affidavits as a person who could be listened to or recorded. In a further seven affidavits sworn during this period, he was named in the 'facts and grounds' paragraphs in the body of the affidavit – but not as a person to be listened to or recorded. Although mentioned in all nine affidavits, Mr N was not named in any warrants during this period. The following section discusses the nine affidavits and related developments.

The first affidavit in which he was mentioned was sworn on 6 January 1999 by a senior Mascot officer.<sup>270</sup> This was followed by a further three affidavits on 11 January,<sup>271</sup> 14 January<sup>272</sup> and 22 January 1999.<sup>273</sup> He was not mentioned in any of the affidavits as a person to be listened to or recorded, nor in any of the associated LD warrants. Those four affidavits contained almost identical information about the car park meeting between Sea and MSO6, which referred to Mr N. An example is the following paragraph in the affidavit of 14 January 1999:

*5.5 ... That with one exception was a meeting [Sea] had with [MSO6] on 19 December 1998 during which [MSO6] told [Sea] that they ([Sea] and himself) would not be charged over any of the matters being investigated by Task Force ANCRUM. [MSO6] told [Sea] that information had come from [Mr N], ... a previous commander of 'ANCRUM'.<sup>274</sup>*

<sup>266</sup> NSWCC Information Report, *Induced Statement of Sea provided over 16/12/1998 & 18/12/1998*, reporting officer: Burn, 13 January 1999, p. 10.

<sup>267</sup> Record of interview between Detective Inspector Burn, Detective Senior Sergeant Henry and 'Sea', 10 January 1999, p. 7.

<sup>268</sup> NSWCC Information Report, *Schedule of Debrief with SEA, 91 matters outlined*, reporting officer: Burn, 13 January 1999 – attachment 'handwritten schedule of events'.

<sup>269</sup> The electronic version of the Schedule of Debrief Operation Boat, printed on 31 August 2000 notes Mr N against SOD 127, p. 57.

<sup>270</sup> LD affidavit 003/1999.

<sup>271</sup> LD affidavit 022-025/1999.

<sup>272</sup> LD affidavit 028/1999.

<sup>273</sup> LD affidavit 031-035/1999.

<sup>274</sup> LD affidavit 028/1999, p. 3.



By 18 January 1999, Mascot had developed a multi-pronged strategy to investigate who was responsible for the Ancrum leaks.<sup>275</sup> One strategy was to install an officer from Internal Affairs, Senior Constable Darren Boyd-Skinner, who would be 'on loan' to the Ancrum investigation team. The covert purpose of that 'loan' was that he would report back to Mascot about what was happening within Ancrum.<sup>276</sup>

A second strategy involved slightly altering a document so that the altered version could be traced if leaked – therefore identifying the leaker. To implement this strategy, Mascot staff went to the Ancrum office<sup>277</sup> and made a number of small alterations to a report that had been written by Detective Senior Sergeant Peter Brown<sup>278</sup> (an Ancrum investigator). The next part of the strategy was described in a NSWCC Information Report as follows:

*Mr Brammer may, if appropriate, speak with former Ancrum Commander [Mr N] and show him the altered version of the report. The strategy of disseminating the report in this format is to identify the source of potential information leaks should a copy of this report surface as in the case of the Brown draft affidavit.*<sup>279</sup>

The strategy proposed to “test whether this information was then relayed to any other person”.<sup>280</sup>

Mascot records indicate that the report was not in fact provided to Mr N, but to Officer P – who at the time was an investigator working on Ancrum. This is discussed further in Chapter 8. This occurred sometime before 8 February 1999 “for the purpose of identifying a possible leak of information from IA”.<sup>281</sup>

The next affidavit was sworn by Burn on 29 January 1999,<sup>282</sup> and included the same information about Mr N and the car park meeting as in the previous four affidavits. Again, he was not named as a person to be listened to or recorded or in the associated LD warrant.

On 1 February 1999, Sea recorded a conversation with MSO1 at a hotel in Manly. Sea stated that MSO6 had told him of being informed by Mr N that neither he nor Sea were going to be charged. MSO1 replied: “Just you’ve got to get hold of that fuckin’ thing from Internal Affairs (ind) otherwise”.<sup>283</sup>

On 5 February 1999, Kaizik swore two LD affidavits that mentioned Mr N.<sup>284</sup> One of the affidavits named Mr N for the first time as a person who may be listened to or recorded.<sup>285</sup> He was not named in the associated warrants, which was presumably an administrative oversight. Both affidavits included the information about the car park meeting between MSO6 and Sea, as well as the following new information about a telephone conversation between Sea and MSO1 that had occurred on 3 February 1999:

*(5.10) At 10.10am on 3 February 1999, [MSO1] used his mobile telephone service to contact [Sea] on [Sea]’s home telephone service. During their conversation, [MSO1] said to [Sea], “I was speaking to someone yesterday, a friend and apparently there is nothing further coming ... it will be interesting to see what is in the brief.” Subsequent to that conversation, [Sea] informed Commission investigators that [MSO1] was referring to having spoken with [Mr N] concerning any ANCRUM matters arising and that no charges would be laid against [Sea].*<sup>286</sup>

Operation Prospect has been unable to locate any source document, such as a transcript, for this 3 February 1999 conversation. Documents considered by Operation Prospect suggest that by this time the Ancrum investigation was no longer secret.<sup>287</sup>

275 NSWCC/SCU, *Weekly Activity Report*, 18 January 1999.

276 NSWCC Information Report, *IA Memo From Mr Brammer to Ancrum Re Future Direction*, reporting officer: Burn, 3 February 1999, p. 1.

277 NSWCC/SCU, *Weekly Activity Report*, 18 January 1999.

278 NSWCC Information Report, *Alterations made by [a Mascot investigator] on 01/02/1999 to D/S/Sgt Brown document “Further investigations Re T/F Magnum matters”*, reporting officer: [a Mascot investigator], 1 February 1999, p. 1.

279 NSWCC Information Report, *Ancrum report by Brown dated 27.1.1999*, reporting officer: Henry, 1 February 1999, p. 1.

280 NSWCC Information Report, *Draft Memo from Mr Brammer to TF Ancrum re test of leak from IA*, reporting officer: Burn, 1 February 1999, p. 1.

281 NSWCC/SCU, *Weekly Activity Report*, 8 February 1999.

282 LD affidavit 061/1999.

283 NSWCC Transcript of LD warrant 061/1999, Tape T99/039, 1 February 1999, p. 26.

284 LD affidavits 062-068/1999 and 069-071/1999.

285 LD affidavit 069-071/1999.

286 LD affidavit 069-071/1999, p. 7.

287 NSWCC Information Report, reporting officer: [a Mascot officer], 14 January 1999; NSWCC, SCU *Weekly Activity Report – Operation Mascot*, 15 February 1999.

On 10 February 1999 Burn and a senior Mascot officer discussed 'various operational matters' with Sea – including 'contact between [MSO6], [Mr N] and Sea after the IA interviews'.<sup>288</sup> Presumably, it was intended that Sea would record any such contact on his body worn LD. As noted above, Sea does not appear to have made contact with Mr N at any time during the Mascot investigations.

On 19 February 1999, Mascot prepared two further LD affidavits that included information about Mr N – each sworn by a junior Mascot investigator.<sup>289</sup> Both affidavits included the information in the 5 February affidavits about the car park meeting between MSO6 and Sea and the telephone conversation between Sea and MSO1 on 3 February 1999. One of the fresh affidavits supported an application for LDs to be installed in MSO1's apartment, and named Mr N as a person to be listened to or recorded.<sup>290</sup> Mr N was not named in the associated warrants, which was presumably an administrative oversight.

On 22 February 1999, Sea met with MSO6 and Mascot Subject Officer (MSO8) at the [name] Club. Before MSO8 arrived, Sea discussed with MSO6 that they may need to go somewhere else as "[Mr N] drinks in here". The conversation continued:

- [MSO6] *(...ind...) I don't think it's a real good idea going into the other joint, ha.*  
 S *No?*  
 [MSO6] *Ha, ha. Fuckin' [Mr N], you'd be, oh come on, we'll have a round table.*  
 S *He's on side, isn't he?*  
 [MSO6] *Yeah, but I just don't think he's that far onside. What's goin' on?*<sup>291</sup>

Later in the same recorded conversation, MSO6 and MSO8 discussed Mr N having told MSO6 that he (Mr N) would be working again on the Ancrum 'brief' as a consultant:

- [MSO8] *[Mr N] didn't mention how, how he got the brief (ind)?*  
 [MSO6] *Nuh. Oh he umm, he didn't go into, it was you know a bit hard, it wasn't as if we were sitting down, you know, having a yarn. He's just pulled me aside, like in a corner. And he said, and I, I wasn't asking, I was concerned about the long term thing. I just wanted to hear what he had to say to me.*  
 [MSO8] *Hmm.*  
 [MSO6] *'Cause you know, like I've known him, the funny comment was, was that "[name] (...ind...) blokes have got into trouble through just noble cause stuff" and I was gonna turn around and say well you were the fuckin' cunt that fuckin' "let's get a brief" (...ind..) taught me. (ind) Manly.*<sup>292</sup>

Burn summarised this conversation in an Information Report on 24 February 1999 as follows:

- [MSO6] *talks about [Mr N] and that he is on side. [MSO6] said that he had been involved in a brief with [Mr N] in the early days at Manly where [MSO6] had his first exposure to noble cause corruption.*<sup>293</sup>

This summary does not include the qualifying statement about Mr N – "but I just don't think he's that far onside".

### 7.3.4 Mr N named in warrants (March to December 1999)

Between March and December 1999, Mr N was named in 10 LD affidavits and 20 associated warrants as a person to be listened to or recorded. Four of the 10 affidavits did not contain information to explain why this was

288 NSWCC Information Report, *Contact With Sea On 10/2/99 - Debrief/Operational Matters*, reporting officer: Burn, 10 February 1999, p. 2.

289 LD affidavits 081-087/1999 and 088-090/1999.

290 LD affidavit 088-090/1999, p. 1.

291 NSWCC Transcript of LD warrant 085/1999, Tape T99/056, 22 February 1999, p. 1.

292 NSWCC Transcript of LD warrant 085/1999, Tape T99/056, 22 February 1999, pp. 28-29.

293 NSWCC Information Report, *Meeting with Sea – LD contact Sea, [Mascot Subject Officer 8] and [MSO6] on 22/2/99*, reporting officer: Burn, 24 February 1999, p. 2.

considered necessary. During this same period, Mr N was also named in the 'facts and grounds' paragraphs of six further LD affidavits, but not as a person to be listened to or recorded. He was also named in two TI affidavits. The dates and features of those affidavits and warrants were as follows:

- The first warrants in which Mr N was named as a person to be listened to or recorded were LD warrant 109/1999 and three other warrants, all granted on 12 March 1999.<sup>294</sup> As discussed at section 7.2, these warrants were supported by two affidavits sworn by Kaizik on the same date<sup>295</sup> including LD affidavit 105-111/1999. Both affidavits included information about the car park meeting between MSO6 and Sea and the telephone conversation between Sea and MSO1 on 13 February 1999.<sup>296</sup> Mr N was not named as a person involved in the offences listed in the affidavit, nor was it proposed that communications from his telephone be intercepted.
- Between 25 March 1999 and 5 August 1999, Mr N was named in four affidavits<sup>297</sup> as a person to be listened to or recorded, and in eight of the associated LD warrants.<sup>298</sup> During this period, he was also named in the 'facts and grounds' paragraphs of six further LD affidavits;<sup>299</sup> and in a further TI affidavit sworn by the same junior Mascot officer on 20 April 1999.<sup>300</sup> The TI affidavit did not name Mr N as a person involved in the offences listed in the affidavit, nor was it proposed that communications from his telephone be intercepted.
- On 29 October 1999, a LD affidavit<sup>301</sup> sworn by Kaizik named Mr N as a person to be listened to or recorded, and he was named in two associated warrants that authorised the use of LDs at the premises of MSO1.<sup>302</sup> The affidavit did not provide information about why it was considered necessary to listen to or record Mr N's private conversations at these premises. The affidavit also did not refer to the car park meeting, the 3 February 1999 telephone conversation, or the allegation that Mr N leaked information from Ancrum.
- Mr N was named in three affidavits sworn by Mascot officers on 18 November 1999,<sup>303</sup> 10 December 1999<sup>304</sup> and 21 December 1999,<sup>305</sup> and in six associated warrants.<sup>306</sup> The affidavits did not provide information about why it was considered necessary to listen to or record Mr N's private conversations. There was also no reference to the car park meeting, the 3 February 1999 telephone conversation or the leaking allegation.

### 7.3.5 New allegation against Mr N about 1969 conduct (December 1999 to May 2001)

In December 1999 a new allegation against Mr N was noted in Mascot records (the 1969 allegation). A Mascot Information Report dated 10 December 1999 summarised part of a conversation between Sea and Mascot Subject Officer 7 (MSO7) that occurred on 8 December 1999:

*Sea: I spoke to [MSO6]. He said, That fucking cunt [Mr N], he's got to be kidding. He took me out to do me first verbal.*

294 LD warrants 109-112/1999. Mr N was named as a person to be recorded in all of these warrants.

295 LD affidavits 105-111/1999 and 112/1999.

296 TI affidavit 103/1999, p. 4.

297 LD affidavits 122-123/1999, 145-147/1999, 172-174/1999, and 211, 214-215/1999.

298 LD warrants 122-123/1999, 146-147/1999, 173-174/1999, and 214-215/1999.

299 LD affidavits 121/1999, 185-191/1999, 218-224/1999, 241-247/1999, 262-268/1999, and 279-285/1999.

300 TI affidavit 114/1999.

301 LD affidavit 371-380/1999.

302 LD warrants 379-380/1999.

303 LD affidavit 398-407/1999.

304 LD affidavit 427-436/1999.

305 LD affidavit 447-456/1999.

306 LD warrants 406-407/1999, 435-436/1999, and 455-456/1999.

[MSO7]: *I used to work with him back in '69 at Eastwood, sharing dollars with him. All of a sudden he's telling me. There's no need to keep up with the same practices but you don't become that righteous, self-righteousness is a frightening thing.*<sup>307</sup>

The Information Report also noted: "SOD127 relates to corruption allegations made by [MSO6] & [MSO7] against [Mr N]".<sup>308</sup>

Sea lawfully recorded two conversations with MSO6 in December 1999, in which MSO6 referred to Mr N giving him 'off the record' information about an Internal Affairs investigation.<sup>309</sup>

The 1969 allegation was next mentioned in an affidavit – sworn on 11 January 2000 by a Mascot officer – which named Mr N as a person to be listened to or recorded:

*[Mr N] is a former Detective Chief Inspector of Police. He previously commanded ANCRUM. On 8 December 1999, [Sea] had a conversation at Manly Detectives office with [MSO7], recorded by the [Sea] body devices, in the course of which, [Sea] mentioned [Mr N]. [MSO7] then used words to the effect of "I used to work with him back in '69 at Eastwood, sharing dollars with him. All of a sudden he's telling me. There's no need to keep up with the same practices. But you don't become that righteous. Self-righteousness is a frightening thing." I suspect [MSO7] was referring to [Mr N's] involvement in corrupt conduct.*<sup>310</sup>

MSO7 was also added to this affidavit and associated warrants as a person to be listened to or recorded. The paragraph was rolled over into a further 24 affidavits up to 12 April 2001, which all named Mr N as a person to be listened to or recorded.<sup>311</sup> Those 25 affidavits supported applications for 75 LD warrants that authorised the use of listening devices to record Mr N's private conversations.

The last affidavit in which Mr N was mentioned was sworn by a Mascot officer on 7 May 2001.<sup>312</sup> This affidavit included the 1969 allegation in the 'facts and grounds' paragraphs, but did not name Mr N as a person to be listened to or recorded. He was also not named in any warrants associated with this affidavit.

Other matters concerning Mr N were also mentioned in Mascot records during this period. The first concerned a restaurant that he owned. In January 2000, Mascot made preliminary inquiries with the intention of tasking Sea to invite MSO6 for a meal at the restaurant to capture any conversation between them and Mr N.<sup>313</sup> No operational plan was devised, but Mr N's restaurant was mentioned in 17 Mascot affidavits sworn between 11 January 2000 and 16 November 2000:

*[Mr N] recently purchased a restaurant at [address]. [Mr N] is actively involved in the day to day running of his restaurant. Commission investigators intend to encourage [Sea] to invite [MSO6] for a meal at [Mr N's] restaurant with the intention of capturing any conversation between them and [Mr N] by the [Sea] body devices.*<sup>314</sup>

On 2 November 2000, Sea informed Mascot investigators that MSO6 was not keen on having a meal at Mr N's restaurant.<sup>315</sup> The restaurant strategy was referred to in one further affidavit sworn on 16 November 2000,<sup>316</sup> but not after that.

307 NSWCC Information Report, *Informant Contact with Sea on 9/12/99. Receipt of Tape 99/303*, reporting officer: [Officer], 10 December 1999, p. 2.

308 NSWCC Information Report, *Informant Contact with Sea on 9/12/99. Receipt of Tape 99/303*, reporting officer: [Officer], 10 December 1999, p. 3.

309 NSWCC Information Report, *Contact with Sea*, reporting officer: Henry/Szabo, 21 December 1999, p. 1, and LD transcript of LD warrant 432/1999 – Tape T99-317 16 December 1999, pp. 31-33.

310 LD affidavit 007-014/2000, p. 25.

311 LD affidavits 007-014/2000, 015-021/2000, 036-038/2000, 043-049/2000, 070-076/2000, 091-097/2000, 108-114/2000, 126-132/2000, 147-153/2000, 174-180/2000, 196-202/2000, 215-221/2000, 241-247/2000, 262-268/2000, 284-290/2000, 313-319/2000, 338-344/2000, 362-368/2000, 391-397/2000, 01/00056-00062, 01/00183-00190, 01/00640-00646, 01/01175-01181, 01/01795-01801, and 01/02271-02277.

312 LD affidavit 01/02769-02775.

313 NSWCC Information Report, *Former D/C// [Mr N] interest in Italian restaurant at [suburb]*, reporting officer: [a Mascot officer], 20 January 2000, p. 1.

314 LD affidavits 007-014/2000, 015-021/2000, 036-038/2000, 043-049/2000, 070-076/2000, 091-097/2000, 108-114/2000, 126-132/2000, 147-153/2000, 174-180/2000, 196-202/2000, 215-221/2000, 241-247/2000, 262-268/2000, 284-290/2000, 313-319/2000, and 338-344/2000.

315 NSWCC Information Report, *(SOD032), (SOD155) Informant contact with Sea, Thursday 2/11/00*, reporting officer: Moore, 3 November 2000, p. 2.

316 LD affidavit 338-344/2000.

A second matter concerned a planned send-off for James King to mark his retirement from the NSWPF. This 'King send-off' is discussed in detail in Chapter 9. A 22 February 2000 Information Report<sup>317</sup> by a Mascot officer noted that Sea had included Mr N in a draft list of people to be invited to King's send off. The report noted "[MSO3] wanted to reduce numbers to about 30 people, however King wants the invitation list to include numerous current and former police who worked with King, particularly those from the AHU Squad".<sup>318</sup> King and Sea also discussed inviting Mr N to the send-off on 23 March 2000<sup>319</sup> and 12 April 2000.<sup>320</sup> An Information Report summarised a recorded conversation between Sea and MSO1 that occurred on 12 April 2000 as follows: "Discussion over whether or not to invite Mr N to the King send-off as [MSO8] might knock him out, Sea comments that Mr N, 'gave them the early warning system' (SOD127)".<sup>321</sup> The final list of people expected to attend did not include Mr N.<sup>322</sup>

Mr N was also referred to by MSO8 in a lawfully recorded conversation with Sea on 30 May 2000, as having engaged in historical corrupt conduct with [MSO6].<sup>323</sup> This matter was not pursued or listed for investigation.

### 7.3.6 Resolution of allegations and advice to Mr N

In May 2001 a Mascot investigator conducted a review of the allegations against Mr N.<sup>324</sup> He recommended no further investigation by Mascot as the matters were largely historical, Mr N was no longer a serving police officer – and therefore not liable for departmental discipline – and there were no other matters on his Internal Affairs record over his 30-year service history. However, a separate review document by the same Mascot investigator in September 2001 commented that Mascot could use the assistance of the PIC to establish the truth of the allegations against Mr N.<sup>325</sup>

The three allegations against Mr N – leaking information, receiving corrupt payments and loading-up a suspect – were not resolved by Mascot and were subsequently referred to Task Force Volta on 9 December 2002.<sup>326</sup>

In a letter dated 27 February 2003, Mr N wrote to the Commander of Internal Affairs stating that he was "receiving calls from persons who have told me that I have been nominated as a 'corrupt police officer' in a search warrant".<sup>327</sup> Mr N sought responses to three specific points:

- confirmation that his name appeared on a LD warrant within Operation Florida
- information relied upon to form the view that he was corrupt
- information relating to any similar complaints and the name of any investigating officer.<sup>328</sup>

After receiving Mr N's letter, Task Force Volta reviewed the allegations against him. The report completed by a Volta investigator on 13 March 2003 concluded there was insufficient evidence to justify any criminal charges or management action and recommended no further action.<sup>329</sup> This recommendation was endorsed by the SCIA's CMT on 24 March 2003. The CMT's reasons for this decision were recorded as being:

317 NSWCC Information Report, *Contact with Sea 22.2.2000*, reporting officer: [officer], 22 February 2000, p. 1.

318 NSWCC Information Report, *Contact with Sea 22.2.2000*, reporting officer: [officer], 22 February 2000, p. 1.

319 NSWCC Information Report, *Informant contact with Sea on 27.3.00*, reporting officer: [officer], 27 March 2000, p. 2.

320 NSWCC Information Report, *Informant Contact with Sea on 12 April 2000*, reporting officer: Burn/Moore, 13 April 2000, p. 4.

321 NSWCC Information Report, *Informant contact with Sea on 12 April 2000*, reporting officers: Burn/Moore, 13 April 2000, p. 4.

322 NSWCC Information Report, *Informant contact with Sea, Wednesday 28 June 2000*, reporting officer: [officer], 29 June 2000, pp. 1-2.

323 NSWCC Transcript, Tape 99/498, 30 May 2000, p. 49. Also summarised in NSWCC Information Report, *Review of CD/034 concerning lunch between Sea and [MSO8] at the [name] Restaurant in Walker Street, North Sydney on Tuesday 30 May 2000*, reporting officer: Szabo, 12 June 2000.

324 NSWPF Report, *Summary of SOD 127 – [Mascot Subject Officer 7]/[MSO6]/[MSO8] indicate to Sea that [Mr N] was corrupt and compromised internal affairs investigations*, reporting officer: [officer], 3 May 2001, p. 1.

325 NSWCC Report, *Overview of SOD127 – Allegation that [Mr N] was involved in corruption and compromised IA investigations*, reporting officer: Detective [officer], 3 September 2001, p. 14.

326 Letter from Assistant Director Mark Standen, NSWCC, to Commissioner of Police Ken Moroney, NSWPF, 9 December 2002.

327 Letter from [Mr N] to Commander, Police Internal Affairs, 27 February 2003.

328 Letter from [Mr N] to Commander, Police Internal Affairs, 27 February 2003.

329 NSWPF, SCIA – Task Force Volta, Investigator's Report, SOD127 – Complaint number [complaint], 13 March 2003, p. 4.



... on the 1st issue - due to the age of the matter and insufficient evidence to proceed. On the 2nd issue - due to the age of the matter, limited prospect of corroboration, insufficient evidence to proceed, no serving officers, and victim unidentified.<sup>330</sup>

The CMT record further noted that the file was to be “reviewed by PIC prior to finalisation”.<sup>331</sup>

The CMT approved a letter that was sent to Mr N on 10 April 2003. It advised that “there is no current allegation of corruption against you or any investigation in process”.<sup>332</sup> This was technically accurate, as the CMT had dispensed with the allegations against Mr N and this was reflected on c@ts.i at the time.<sup>333</sup> The letter referred Mr N to an article by Senior Assistant Commissioner P J Walsh in the police publication, Police Service Weekly, Vol 15 No 1, which stated (emphasis in original):

*Some members of NSW Police are concerned about the inclusion of their names on a listening device warrant, number 266, 2000. Please be assured that if your name was included on that warrant, it does not mean you are involved in, or are even suspected of being involved in wrong doing.*

*This warrant was issued in September of 2000 as part of a major joint investigation into criminal activity and serious allegations of misconduct against members of NSW Police.*

*All members should be aware that in making application for a listening device warrant, and in any warrant issued, it is necessary to include the names of **any people** whose conversations are reasonably expected to be recorded.*

*The applicant for this warrant was obliged to include the names of **all persons** whose conversations were likely to be listened to. That is the law.*

*The inclusion of a name on a warrant does not mean that a person is involved in, or is even suspected of being involved in wrongdoing.*

*Accordingly, the inclusion of any member’s name on the warrant should not be taken to infer that individual was suspected of being involved in any criminal activity.*

*I hope this clarifies the position for all concerned.*<sup>334</sup>

## 7.3.7 Analysis and submissions

### 7.3.7.1 Criticisms of Mascot’s investigation of Mr N

Mr N was named in 95 LD warrants, 41 LD affidavits and two TI affidavits. His name was linked in some of those documents to allegations of leaking information and corruption. His private conversations were never in fact recorded by Mascot LDs and none of his telephone conversations were intercepted. The following criticisms can be made of Mascot’s investigation of Mr N.

First, the soundness of the reasoning for selecting Mr N as a Mascot target was questionable. Mascot’s interest in Mr N stemmed from Sea’s comment – in his induced statement and subsequent debrief – that Mr N had spoken with MSO6 about the Ancrum investigation. Mascot had a legitimate concern that a leak had occurred from within the Ancrum team, given that Sea possessed a leaked copy of a confidential Ancrum affidavit when he first approached the NSWCC (see Chapter 5). However, that incident was open to differing explanations that do not seem to have been adequately explored by the Mascot team. For example, Sea recounted in a statement made on 19 December 1998 that he had ‘recently’ been told by MSO6 of his conversation with Mr N. The Ancrum investigation was apparently well known within the NSWPF by mid-December 1998, various subject officers knew they were being investigated, and the Ancrum investigation was nearing closure.

330 NSWPF, SCIA Volta Complaints Management Team Meeting Minutes, 24 March 2003.

331 NSWPF, SCIA Volta Complaints Management Team Meeting Minutes, 24 March 2003.

332 Letter from [officer], NSWPF, to[ Mr N], 10 April 2003.

333 c@ts.i is the NSWPF Customer Assistance Tracking System upon which all complaints about police are registered.

334 Letter from [officer], NSWPF, to[ Mr N], 10 April 2003, pp. 1-2.



Documents considered by Operation Prospect suggest that some other conversations of interest to Mascot – for example, between Mr N and MSO1 in early February 1999 – occurred at a time when the Ancrum investigation was no longer secret.<sup>335</sup>

Second, none of the LD affidavits that named Mr N squarely addressed the requirements of section 16(1) of the LD Act. As discussed in Chapter 5, that section required an applicant for a LD warrant to establish reasonable grounds for the applicant's suspicion or belief that a LD was necessary to investigate a prescribed offence. Some affidavits nominated Mr N as a person whose private conversations were to be listened to or recorded, while others mentioned him only in the 'facts and grounds' paragraphs of the affidavits. None of the affidavits explained directly whether he was suspected of engaging in or having knowledge of a prescribed offence. The information that was provided in the affidavits about Mr N did not connect his conduct directly with any prescribed offence listed in the affidavits. At most, the affidavits presented hearsay information about alleged disclosures that do not appear to meet the threshold for the prescribed offences listed in the affidavits.<sup>336</sup> Also, none of the affidavits explain directly how the use of a LD in relation to Mr N's private conversations was the most appropriate strategy for investigating a prescribed offence.

Third, there were important omissions from some affidavits. For example, the affidavit of 5 February 1999<sup>337</sup> – which first listed Mr N as a person Mascot sought to listen to or record – did not mention that the Ancrum investigation was no longer covert. This was also not mentioned in any subsequent affidavit that referred to Mr N's alleged disclosures. This would be relevant in assessing whether the information that Mr N had allegedly communicated to MSO6 and MSO1 was secret or restricted information at the time – and, consequently, whether Mr N had acted unlawfully or corruptly.

Fourth, it is also questionable whether the allegation that Mr N was leaking confidential information fell within the Mascot and Mascot II references. An allegation of unauthorised release of information would ordinarily be dealt with as an internal disciplinary matter to be addressed by management action under Part 9 of the Police Act. However, Mr N had retired from the police force in August 1998 and it was therefore not possible that management action could be taken against him.

Fifth, the decision to investigate Mr N's conduct in relation to a matter that allegedly occurred in 1969 – 30 years previously – was questionable. This was mentioned in 25 affidavits. The allegation of corruption in 1969 was based on uncorroborated comments made in passing by another officer who did not provide details of particular instances of corrupt conduct by Mr N. It is equally hard to understand why the use of a LD was the preferred strategy for investigating this allegation. The implications from this part of the investigation are that:

- Mascot did not rigorously assess the reliability of allegations before they were added to the Schedule of Debrief.
- Mascot's investigative approach was to expand the range of matters to be investigated, rather than rigorously evaluate whether scant and potentially unreliable information at hand warranted the investigation of historic matters.
- Inadequate consideration was given to the privacy invasion implications of using concealed LDs.

This issue was put by Operation Prospect to one of the Mascot investigators who had deposed to a rollover affidavit that included the paragraphs about Mr N's allegedly corrupt behaviour in 1969.<sup>338</sup> When asked about those paragraphs and whether the allegation warranted Mr N's inclusion in LD warrants, the former investigator responded: "Ah, no. I'd imagine that, ah, an investigation or an allegation going back that far wouldn't proceed based on the – the time frame".<sup>339</sup> As to the likelihood of proving such an allegation, he answered: "Oh probably next to zero".<sup>340</sup>

335 NSWCC Information Report, *Contact with Sea On 10/2/99 - Debrief/Operational Matters*, reporting officer: Burn, 10 February 1999, p. 2.

336 The relevant prescribed offences were money laundering, contrary to s. 73 of the *Confiscation of Proceeds of Crimes Act 1989* (NSW), corruption, contrary to s. 200 of the *Police Service Act 1990* (NSW), corruptly receive a benefit, contrary to s. 249B of the *Crimes Act 1900* (NSW) (Crimes Act), conspiracy to pervert the course of justice, contrary to s. 319 of the Crimes Act, conspiring to pervert the course of justice, contrary to common law, and tampering with evidence, contrary to s. 317(a) of the Crimes Act.

337 LD affidavit 069-071/1999.

338 LD affidavit 01/00640-00646.

339 Ombudsman Transcript, [Mascot investigator], 20 March 2014, p. 219.

340 Ombudsman Transcript, [Mascot investigator], 20 March 2014, p. 219.

Sixth, there were multiple errors in the affidavits and warrants relating to Mr N that point to a lack of administrative rigour in the NSWCC's document preparation processes. For example, Mr N was first named as a person to be listened to or recorded in an affidavit on 5 February 1999,<sup>341</sup> but he was not named in the corresponding warrants. The same oversight occurred soon after in a LD affidavit sworn on 19 February 1999.<sup>342</sup> The first warrant in which Mr N was named was LD warrant 109/1999 granted on 12 March 1999 (he was named along with 118 other people).<sup>343</sup> The same administrative oversight worked in the opposing direction. Mr N was named in eight warrants between October and December 1999 as a person to be listened to or recorded,<sup>344</sup> but there was no corresponding explanation in the supporting affidavits.<sup>345</sup>

The implications from this aspect of the investigation is that rollover affidavits were not systematically checked to ensure that the inclusion of each person named:

- was consistent across affidavits and warrants
- was supported by relevant information in the affidavit to enable an eligible Judge to determine if a LD warrant was necessary for the investigation of a prescribed offence
- continued to be justified in the light of any new information that had arisen since the swearing of the previous affidavit.

### 7.3.7.2. The advice to Mr N in April 2003

The letter of 10 April 2003 to Mr N from the CMT could be read as suggesting that the inclusion of his name in a warrant that had entered public circulation (LD warrant 266/2000) was not due to suspected wrongdoing on his part but to a legal requirement to name all people who might be recorded under the warrant. The letter reinforced that inference by stating there was no *current* allegation of corruption against him or investigation in process.

That message was misleading. It is clear that Mascot held suspicions about Mr N that resulted in him being named in multiple LD warrants, LD affidavits and TI affidavits. The affidavit supporting LD warrant 266/2000 specifically named him for suspected involvement in corruption in 1969.

The message conveyed to Mr N was contrary also to a memorandum in April 2002 by Burn regarding named persons in LD warrant 266/2000 (see Chapter 13). Burn's memo asserted that Mr N was named on LD warrant 266/2000 because he was the subject of:

*Allegations of historical corruption (SOD127). Former commander of Ancrum investigation, who is a close friend of Ancrum target [MSO6]. Mascot strategy for Sea & [MSO6] to have lunch at [Mr N's] restaurant.*<sup>346</sup>

### 7.3.7.3. Submissions

Kaizik made a submission to Operation Prospect about his role as the deponent of affidavits, including LD affidavit 105-111/1999. The submission acknowledged that the criticisms of the affidavits he swore may be warranted and that, with the benefit of hindsight, he would have undertaken this work differently.<sup>347</sup> However, he submitted that he prepared the affidavits in absolute good faith, he worked as part of a team at the NSWCC in which more senior officers decided who should be targeted by Mascot, he relied on the advice and assistance of others (including legal advisers) at the NSWCC and all his work was checked through senior officers, and he had no formalised training at the NSWCC or elsewhere in preparing LD affidavits. Kaizik's submission also noted his younger age and junior status at the time and that he has since had an unblemished and successful career.<sup>348</sup>

341 LD affidavit 069-071/1999.

342 LD affidavit 088-090/1999.

343 LD warrants 109-111/1999.

344 LD warrants 379-380/1999, 406-407/1999, 435-436/1999, and 455-456/1999.

345 LD affidavits 371-380/1999, 398-407/199,9 427-436/1999, and 447-456/1999.

346 NSWPF internal memorandum from Acting Commander Catherine Burn, 13 April 2002, p. 3.

347 Kaizik, T, Submission in reply, 14 July 2015, p. 1.

348 Kaizik, T, Submission in reply, 14 July 2015, pp. 1-3.

The author of the letter to Mr N of 10 April 2003 which misleadingly inferred that Mr N was not a target of the Mascot investigations – made a submission to Operation Prospect to explain the terms of the letter.<sup>349</sup> He said he prepared a draft letter that was reviewed and signed off by multiple other people including the Commander of Special Crime Unit (SCU), the SCU legal advisers, the Mascot CMT and SCIA management.<sup>350</sup> He submitted that his draft letter accurately reflected the information he was able to access from c@ts.i and was in line with the NSWPF corporate response to queries about LD warrant 266/2000.<sup>351</sup> Those submissions are accepted. However, a number of other NSWPF officers who reviewed the correspondence were able to access the relevant information and should have checked to ensure the letter was accurate and not misleading.<sup>352</sup>

The NSWPF made a submission to Operation Prospect, disagreeing that a written apology should be given to Mr N for the response sent to him on 10 April 2003. The submission disagreed that it was a misleading response, commenting that “Strictly speaking, the letter was accurate at the time of writing”.<sup>353</sup> The submission further noted that there may have been policy considerations at play as to why Mr N was not informed at the time about the earlier investigation of his conduct, there was no evidence that Mr N was actually misled by the NSWPF letter and, if the letter was misleading, this was inadvertent or unintentional.<sup>354</sup>

## 7.3.8 Findings

### 13. Kaizik

Kaizik’s conduct as the deponent of two affidavits that referred to Mr N was unreasonable conduct in terms of section 122(1)(d)(i) of the *Police Act 1990*.

LD affidavit 069-071/1999 sworn on 5 February 1999 named Mr N for the first time as a person whose private conversations Mascot sought to listen to or record, although Mr N was not named in the associated warrant. As discussed in section 7.3.7.1 the affidavit did not explain why the investigation of a prescribed offence would be assisted by listening to or recording Mr N’s private conversations, and the information provided in the affidavit about Mr N fell short of an allegation of criminal conduct.

LD affidavit 371-380/1999 sworn on 29 October 1999 named Mr N in support of an application for two LD warrants that authorised his private conversations to be listened to or recorded. The affidavit did not provide any information to explain why Mascot sought to listen to or record Mr N’s private conversations.

### 14. NSW Crime Commission

The NSW Crime Commission was responsible for the actions of members of the Mascot Task Force in undertaking an investigation of Mr N and naming him in 95 LD warrants, 41 LD affidavits and two TI affidavits. The NSW Crime Commission was responsible for the Mascot and Mascot II references and for supervising members of the Mascot Task Force. There were multiple failings in Mascot’s investigation of Mr N, as outlined in section 7.3.7.1. A contributing element was the failure of the NSW Crime Commission to implement its own policies, practices and procedures in conducting the Mascot references and preparing affidavits and warrant applications. The conduct of the NSW Crime Commission was unreasonable and otherwise wrong in terms of section 26(1)(b) and (g) of the *Ombudsman Act 1974*.

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349 [Name], Submission in reply, 27 July 2015.

350 NSWPF, Memorandum from [name], 10 April; NSWPF Memorandum, [name], c@ts.i Support Team, 31 March 2003.

351 [Name], Submission in reply, 27 July 2015, pp. 2-3.

352 NSWCC, Information Report, “Letter sent to Officer N, reporting officer: [name], 15 April 2003.

353 NSWPF, Submission in reply, 16 November 2015, p. 15.

354 NSWPF, Submission in reply, 16 November 2015, pp. 15-16.

## 15. NSW Police Force

The conduct of the NSW Police Force in providing Mr N with an inadequate response on 10 April 2003, concerning his enquiry about the investigation of his conduct as a police officer, was conduct of a kind for which adequate reasons should have been but were not given – in terms of section 26(1)(f) of the *Ombudsman Act 1974*.

### 7.3.9 Recommendations

1. It is recommended under section 26(2) of the *Ombudsman Act 1974* that the NSW Crime Commission give Mr N a written apology for naming him in multiple LD and TI affidavits and LD warrants without:
  - first undertaking a proper and rigorous analysis to justify that course of action
  - properly explaining in the affidavits either why Mr N was being named or why it was considered necessary to listen to or record his private conversations.
2. It is recommended under section 26(2) of the *Ombudsman Act 1974* that the NSW Police Force give Mr N a written apology for inadequately responding to his query in the NSW Police Force letter of 10 April 2003.

## 7.4 The investigation of Officer C1

### 7.4.1 Officer C1 made a subject of investigation

At the time Mascot began, Officer C1 was a serving police officer at the rank of Detective Senior Constable. He became a Detective Sergeant on 20 April 1999, then a Detective Inspector from 20 June 2000. He is still a serving NSWPF officer.

It appears that Mascot's interest in Officer C1 arose wholly from him being one of a number of NSWPF officers who were present during an arrest on a houseboat on the Hawkesbury River in March 1994. In his debrief interviews, Sea alleged that some of the officers who participated in the arrests had engaged in corrupt conduct. Sea did not allege that Officer C1 was involved in the corrupt conduct, and it appears that Officer C1 was on the periphery of that operation.

As a result of being named as a person present at the arrest, Officer C1 was named as a person to be listened to or recorded in 22 LD affidavits between 12 March 1999 and 11 February 2002. He was named in 63 warrants associated with those affidavits. He was mentioned in the annexures to a further seven affidavits, which were cross-referenced to a 'facts and grounds' paragraph in the affidavits that noted that Sea had provided information "regarding official corruption involving himself and former and serving members of the NSWPS". Officer C1 was also named in four TI affidavits, but not as a person involved in a relevant offence, and his telephone was not the subject of the TI application.

Apart from those references, Operation Prospect has found no evidence that Mascot devised a strategy to target Officer C1 or ever tasked Sea to engage with Officer C1 – other than a plan to invite him to the King send-off (see section 7.4.4). Officer C1 was recorded by a LD on only one occasion. One of his telephone conversations was intercepted when he was speaking on a lawfully intercepted telephone with one of Mascot's main targets.

## 7.4.2 Information Sea initially provided Mascot about Officer C1

Sea named Officer C1 in his initial debrief in response to questioning about alleged corrupt conduct by members of the AHU attached to the MCSN, including MSO1 and MSO9. Both were targeted for investigation by Mascot following Sea's disclosures. Sea recounted one occasion when his unit worked with the "South Region"<sup>355</sup> to arrest a prison escapee hiding on a houseboat with two others (the houseboat arrests). According to Sea, he and MSO1 planted a firearm in the seat of a car being used by one of the people on the houseboat. MSO9 and another officer from the South Region Mascot Subject Officer 10 (MSO10) then 'verballed' that person, and MSO1 assaulted another person.<sup>356</sup>

Sea told Mascot investigators that MSO10 had "come over with a fellow called [Officer C1]"<sup>357</sup> When asked if he had "much to do" with Officer C1, Sea answered: "Oh little bit over the years, not, not a great deal".<sup>358</sup> Sea did not suggest that Officer C1 had any involvement or knowledge of the planting, verballing and assaults that took place during the houseboat arrests.

Burn recorded Officer C1 and some other officers on her handwritten Schedule of Debrief in a column marked 'police involved'.<sup>359</sup> Throughout the Mascot investigations, Officer C1 was only named in connection with the houseboat arrests. This event was numbered SOD021 on the Schedule of Debrief.<sup>360</sup>

On 5 and 19 February 1999, Mascot investigators obtained a number of LD warrants.<sup>361</sup> The affidavits that supported the associated warrant applications recounted Sea's description of the houseboat arrests.<sup>362</sup> Officer C1 was not mentioned in relation to these arrests in the affidavits or named on the corresponding warrants.

## 7.4.3 Officer C1 named in warrants (March 1999)

Officer C1 was first named as a person to be listened to or recorded in Mascot LD warrant 109/1999 on 12 March 1999, along with 118 other people. He was also named in two other warrants that were granted that day.<sup>363</sup>

The first affidavit in which Officer C1 was mentioned was LD affidavit 105-111/1999, which Kaizik swore on 12 March 1999 in support of LD warrant 109/1999. The affidavit did not explain why Mascot sought to listen to or record most people named in the affidavit, including Officer C1. It appears their names were copied over from the Schedule of Debrief (see section 7.2). Although the affidavit reproduced a paragraph about the houseboat arrest that had appeared in previous LD affidavits,<sup>364</sup> the paragraph made no mention of Officer C1.

Officer C1's conversations were not recorded under any of those warrants. He was not named again in a LD warrant until 4 April 2000.

355 NSWCC, Record of interview between Catherine Burn, Detective Senior Sergeant Henry and 'Sea', 8 January 1999, p. 20. 'South Region' in the record of interviews is a reference to the AHU attached to the Major Crime Squad south of the NSWPF.

356 NSWCC, Record of interview between Catherine Burn, Detective Senior Sergeant Henry and 'Sea', 8 January 1999, p. 20.

357 NSWCC, Record of interview between Catherine Burn, Detective Senior Sergeant Henry and 'Sea', 8 January 1999, p. 21.

358 NSWCC, Record of interview between Detective Inspector Burn, Detective Senior Sergeant Henry and 'Sea', 8 January 1999, p. 24.

359 NSWCC Information Report, *Schedule of Debrief with SEA, 91 matters outlined*, reporting officer: Burn, 13 January 1999 – attachment 'handwritten schedule of events'.

360 NSWCC Report, *Schedule of Debrief Operation Boat*, reporting officer: Jewiss, 11 July 2003, p. 3.

361 LD warrants 062-068/1999, 069-071/1999, 081-087/1999, and 088-090/1999.

362 LD affidavits 062-068/1999, 069-071/1999, 081-087/1999, and 088-090/1999.

363 LD warrants 110-111/1999.

364 LD affidavits 062-068/1999, 069-071/1999, 081-087/1999, and 088-090/1999.

#### 7.4.4 Officer C1 named in warrants and affidavits (April to June 2000)

On 22 February 2000 Burn and Henry discussed with Sea the planned send-off party for James King – a Mascot subject officer. An Information Report of the same date recorded that Sea's draft invitation list included Officer C1 and his brother, Officer C2 – who was then a current serving police officer.<sup>365</sup>

Around 4 April 2000 a memo addressed to NSWCC solicitor Owen advised that a number of people would need to be added to the affidavit that would rollover Sea's body worn LD warrant, as they were likely to be invited to the King send-off. This practice of updating rollover affidavits by advising Owen of the additional material to be included or changes to be made was a common Mascot practice that is discussed in Chapter 16. The memo to Owen stated: "Neil, only new additions required to be added to the affidavit have been below listed"<sup>366</sup> (emphasis in original). The list included Officer C1 but not Officer C2, presumably because Officer C2 was named on the previous affidavit and was therefore not a new addition.<sup>367</sup>

On 4 April 2000 Sergeant Greg Jewiss deposed an affidavit in support of applications for LD warrants to listen to or record the conversations of a large number of people who were listed in the affidavit.<sup>368</sup> The list included Officer C2 (who was named, though the affidavit noted that he would be referred to after that by his surname only) and Officer C1 (who was also named, though the affidavit noted that he would be referred to after that by his full name).<sup>369</sup> Officer C1 was not mentioned further in the affidavit after the initial list of names. However, the body paragraphs of the affidavit referred to Officer C2 (by surname only) in relation to alleged corrupt conduct and as a person invited to the King send-off. In fact, Officer C2 had not at that stage been invited to the send-off. Officer C1 had been, and it is likely that their names were confused in the affidavit in relation to this forthcoming event. As events transpired, Officer C2 was later invited and did attend the King send-off but Officer C1 was not invited.

The supporting affidavit by Jewiss was rolled over four times – on 19 April 2000,<sup>370</sup> 15 May 2000,<sup>371</sup> 5 June 2000<sup>372</sup> and 26 June 2000.<sup>373</sup> This is discussed further in Chapter 9. Each affidavit and the corresponding LD warrant named Officer C1 as a person to be listened to or recorded by the LD, but without explanation. Officer C2 was also included in those affidavits, in relation to alleged corruption and in the list of invitees to the King send-off.

Records suggest that the send-off function was initially planned to take place in April 2000, during the currency of the LD warrants obtained with the support of the affidavit sworn by Jewiss on 4 April 2000.<sup>374</sup> However, by the time those warrants expired and the next set of warrants was authorised (from 19 April 2000) Mascot investigators were aware that the function would not take place until late June. It is possible that the continued mention of Officer C1 in those affidavits was based on the unreliable assumption that he would be invited to the send-off.

Officer C1 was named on 12 LD warrants related to Sea's body worn LD that were granted in relation to the three affidavits sworn on 4 April, 15 May and 5 June 2000.<sup>375</sup> Officer C1's conversations were not monitored or recorded in this time. There is also no record of Mascot officers encouraging Sea to meet with Officer C1 during this time. However, seemingly by coincidence, on 15 June 2000 Mascot investigators lawfully intercepted a telephone conversation between one of Mascot's main targets and Officer C1.<sup>376</sup> Officer C1 was not the subject of the relevant TI warrant, but the target was.

365 NSWCC Information Report, *Contact with Sea 22/2/2000*, reporting officer: Henry, 22 February 2000, p. 1.

366 NSWCC internal memorandum from unknown author to Neil Owen, Solicitor, NSWCC, undated.

367 LD affidavit 070-076/2000, pp. 1-3.

368 LD affidavit 091-097/2000, pp. 1-3.

369 LD affidavit 091-097/2000, p. 3.

370 LD affidavit 108-114/2000.

371 LD affidavit 126-132/2000.

372 LD affidavit 147-153/2000.

373 LD affidavit 174-180/2000.

374 LD warrants 091-097/2000.

375 LD warrants 095-097/2000, 112-114/2000, 130-132/2000, and 151-153/2000.

376 NSWCC internal memorandum from [a senior Mascot investigator] to Superintendent John Dolan and Detective Inspector Catherine Burn, 7 September 2000, p. 4.



On 26 June 2000, Jewiss swore a supporting affidavit for an application for LD warrants.<sup>377</sup> Officer C1 was named on three warrants related to this affidavit.<sup>378</sup> As in the preceding affidavits, Jewiss's supporting affidavit initially named both Officer C1 and Officer C2 as individuals that Mascot intended to record, but then referred only to Officer C2 (by surname only) as a possible invitee to the King send-off.

On 28 June 2000, Sea advised Mascot investigators which people were "expected to attend the function".<sup>379</sup> Officer C2 was expected to attend, but there was no mention of Officer C1.

The King send-off was eventually held on 30 June 2000.

#### 7.4.5 Officer C1 named in warrants (July to December 2000)

From July to December 2000, Mascot investigators continued to seek successive warrants to authorise the use of LDs to listen to or record the conversations of Officer C1 and the other people who had earlier been named on warrants as invitees to the King send-off. Officer C1 was named in nine affidavits and 27 warrants during this period. None of the affidavits explained why his name was included.

Sea recorded Officer C1 using his body worn LD on 16 November 2000 – the only occasion on which Officer C1 was recorded. He was named at that time on an active LD warrant as a person who could be recorded.<sup>380</sup> The only record of this conversation is a note made by Detective Sergeant Greg Moore (a Mascot investigator) in the relevant contact advice report that "Sea spoke to Officer C1 (from the [branch of police]) and mention was made of John Dolan and Malcolm Brammer".<sup>381</sup> Moore reviewed the recordings made by Sea,<sup>382</sup> but did not summarise the contents of this conversation further or seek to have the recording transcribed.

#### 7.4.6 Officer C1 named in warrants (2001)

On 22 January 2001 Moore swore a supporting affidavit<sup>383</sup> for three LD warrants to record or listen to the private conversations of Officer C1, among others.<sup>384</sup> This was the first Mascot affidavit to explain why Mascot sought to listen to or record Officer C1's private conversations. The affidavit states:

*Between 1987 and 1991, [Sea], [MSO1], [MSO9], [MSO10] and [Officer C1] were among the police involved in the arrest of a male named [name] on a houseboat on the Hawkesbury River.*<sup>385</sup>

The affidavit outlined allegations against Sea, MSO1, MSO9 and MSO10.<sup>386</sup> Nothing else was said about Officer C1's involvement other than that he was present – he was not implicated in any wrongdoing.

This information subsequently appeared in 13 LD affidavits sworn in 2001 in support of applications for LD warrants. Six of the LD affidavits named Officer C1 as a person to be listened to or recorded.<sup>387</sup> He was named in 18 LD warrants associated with those affidavits.<sup>388</sup>

377 LD affidavit 174-180/2000.

378 LD warrants 178-180/2000.

379 NSWCC Information Report, *Informant contact with Sea, Wednesday 28 June 2000*, reporting officer: [name], 29 June 2000, p. 1.

380 LD warrant 317/2000; and NSWCC Information Report, *Review of CD/093 recorded product for Wed. & Thur. 15-16 November, 2000*, reporting officer: Moore/Haywood, 16 November 2000.

381 NSWCC Information Report, *Informant contact with Sea on 16/11/00*, reporting officer: Haywood, 16 November 2000, p. 1.

382 NSWPF Duty Book, D38891, G. Moore, SCIA, 16 November 2000, p. 70.

383 LD affidavit 01/00183-00190.

384 LD warrants 01/00183-00190.

385 LD affidavit 01/00183-00190, Annexure B (e).

386 LD affidavit 01/00183-00190, Annexure B (e).

387 LD affidavits 01/00183-00190, 01/00640-00646, 01/00175-00181, 01/01795-01801, 01/02271-02277, and 01/02769-02775.

388 LD warrants 01/00188-00190, 01/00644-00646, 01/01179-01181, 01/01799-01801, 01/02275-02277, and 01/02769-02775.

The remaining seven LD affidavits<sup>389</sup> sworn in 2001 that named Officer C1 included the paragraph above in an annexure, but did not name Officer C1 as a person Mascot sought to listen to or record.

Similar information also appears in four TI affidavits sworn in support of applications for TI warrants on 24 April 2001,<sup>390</sup> 30 April 2001,<sup>391</sup> 2 October 2001<sup>392</sup> and 31 October 2001.<sup>393</sup> Officer C1 was not the subject of any of the associated TI applications.

Officer C1's conversations were not monitored or recorded in this period. There is also no record of Mascot officers instructing or encouraging Sea to meet with Officer C1 in this period.

The final Mascot LD affidavit to name Officer C1 was sworn on 11 February 2002.<sup>394</sup> This affidavit did not name him as a person to be listened to or recorded, but in the 'facts and grounds' paragraphs in an annexure. He was not named in any of the associated warrants.

### 7.4.7 Mention of Officer C1 in other records and resolution of Mascot investigations

Officer C1 was mentioned in some other Mascot records in the following three years that record differing views.

On 22 October 2001 a NSWCC analyst wrote a profile of Officer C1 that stated that there was "no alleged corruption on his part, but involvement in corrupt arrest."<sup>395</sup> On 1 March 2002 a further NSWCC overview of the investigation into the houseboat arrests noted that the nature of Officer C1's involvement was "non adverse – possible witness".<sup>396</sup> This overview also noted that Officer C1 had no involvement in any other allegations investigated by Mascot.

On 13 April 2002 Burn prepared a memorandum that stated that Officer C1 was "Suspected to have been involved in or have knowledge of corrupt or criminal conduct by Police ... SOD021 where allegations of pervert the course of justice, assault and perjury have been made".<sup>397</sup> This memo is considered further in Chapter 13.

On 14 March 2003 Task Force Volta confirmed that Officer C1 was not implicated in any misconduct. The Finalisation Report for the investigation into the houseboat arrests noted that "[Officer C1] and [NSWPF officer] were involved in the interviewing and charging of [name] only. There is no evidence or any allegation that these officers engaged in any criminal activity, impropriety or misconduct".<sup>398</sup>

Sea's allegations about the houseboat arrests were the subject of the Operation Florida public hearings and were reported in the PIC's 2004 public report.<sup>399</sup> Officer C1 was not mentioned in either the hearings or the PIC's final report.

389 LD affidavits 01/00204-00206, 01/03510-03516, 01/04222-04888, 01/05255-05261, 01/05980-05986, 01/06753-06759, and 01/07478-07482.

390 TI affidavit 01/321-322.

391 TI affidavit 01/330-331.

392 TI affidavit 02/146-159.

393 TI affidavit 02/199-201.

394 LD affidavit 02/00547.

395 NSWCC Individual Profile of [Officer C1], report date: 22 October 2001, profile prepared by: [NSWCC analyst], p. 5.

396 NSWCC Report, *Overview for SOD021*, reporting officer: [NSWCC analyst], 21 March 2002, p. 2.

397 NSWPF internal memorandum from Acting Commander Catherine Burn, 13 April 2002, p. 12.

398 NSWPF Report, *Finalisation Report – SOD021*, reporting officer: [name]: 14 March 2003, p. 4.

399 PIC, *Report to Parliament – Operation Florida*, Volume 1, June 2004.

## 7.4.8 Analysis and submissions

Mascot's investigation of Officer C1 was seemingly based on the following two items of information in Mascot records:

- He was involved in an operation in 1994 where individuals hiding on a houseboat were arrested and, during this operation, Sea and other officers (not including Officer C1) planted a firearm and assaulted a person.
- He was to be invited to the King send-off that was originally scheduled for April 2000, and was later held in June 2000.

That information led to Officer C1 being named in 63 LD warrants and 22 LD affidavits between 12 March 1999 and 11 February 2002 as a person whose private conversations could be listened to or recorded. He was also mentioned in seven other LD affidavits and four TI warrants during that period. The following criticisms can be made of Mascot's investigation of Officer C1:

- The first LD affidavit in which he was mentioned – LD affidavit 105-111/1999 sworn by Kaizik on 12 March 1999 – did not explain why Mascot considered it necessary to listen to or record Officer C1's private conversations. This omission was repeated in the following 14 affidavits sworn between 4 April 2000 and 21 December 2000.<sup>400</sup>
- The first affidavit to explain why it was thought necessary to listen to or record Officer C1's private conversations was sworn on 22 January 2001, and noted only that he was "among the police involved in the arrest of a male [named] on a houseboat on the Hawkesbury River".<sup>401</sup>
- There was no further explanation of his involvement or mention of any alleged corruption or criminality by Officer C1 in relation to that operation. The affidavit also did not explain how recording Officer C1 may assist the Mascot investigations. The brief statement that he was involved was repeated in a further five LD affidavits that named Officer C1 as a person to be listened to or recorded,<sup>402</sup> and in eight other LD affidavits<sup>403</sup> and four TI affidavits.<sup>404</sup>
- There is no record of Mascot devising a strategy to investigate Officer C1, apart from the plan to record the conversations of those attending the King send-off. However, even here, the information presented about Officer C1 was unclear and potentially confusing. It seems likely that he was mistakenly included in some affidavits because of Mascot's investigation of allegations against his brother, who shared the same surname. The information about those expected to attend the King send-off (including Officer C1) was apparently not checked or revised to ensure it was current and accurate after the date of the send-off was delayed.

As noted in section 7.3.7.3, Kaizik made a submission to Operation Prospect about his role as the deponent of affidavits and his degree of individual responsibility for the defects in Mascot document preparation.<sup>405</sup>

## 7.4.9 Findings

### 16. Kaizik

Kaizik's conduct as the deponent of LD affidavit 105-111/1999 – sworn on 12 March 1999 in support of an application for a warrant to listen to or record Officer C1's private conversations – was unreasonable conduct in terms of section 122(1)(d)(i) of the *Police Act 1990*. As discussed in section 7.4.8, the affidavit did not provide any information to explain why Mascot sought to listen to or record Officer C1's private conversations.

400 LD affidavits 091-097/2000, 108-114/2000, 126-132/2000, 147-153/2000, 174-180/2000, 196-202/2000, 215-221/2000, 241-247/2000, 262-268/2000, 284-290/2000, 313-319/2000, 338-344/2000, 362-368/2000, and 391-397/2000.

401 LD affidavit 01/00183-00190, Annexure B (e).

402 LD affidavits 01/00640-00646, 01/01175-01181, 01/01795-01801, 01/02271-02277, and 01/02769-02775.

403 LD affidavits 01/00204-00206, 01/03510-03516, 01/04222-04228, 01/05255-05261, 01/05980-05986, 01/06763-06759, 01/07478-07482, and 02/00547.

404 TI affidavits 01/321-322, 01/330-331, 02/146-159, and 02/199-201.

405 Kaizik, T, Submission in reply, 14 July 2015.

## 17. NSW Crime Commission

The NSW Crime Commission was responsible for the actions of members of the Mascot Task Force in undertaking an investigation of Officer C1 and naming him in 63 LD warrants, 29 LD affidavits and four TI affidavits. The NSW Crime Commission was responsible for the Mascot and Mascot II references and for supervising members of the Mascot Task Force. There were multiple failings in Mascot's investigation of Officer C1, as outlined in section 7.4.8. A contributing element was the failure of the NSW Crime Commission to implement its own policies, practices and procedures in conducting the Mascot references and preparing affidavits and warrant applications. The conduct of the NSW Crime Commission was unreasonable and otherwise wrong in terms of section 26(1)(b) and (g) of the *Ombudsman Act 1974*.

### 7.4.10 Recommendation

3. It is recommended under section 26(2) of the *Ombudsman Act 1974* that the NSW Crime Commission give Officer C1 a written apology for naming him in multiple LD and TI affidavits and LD warrants without:
  - first undertaking a proper and rigorous analysis to justify that course of action
  - properly explaining in the affidavits either why Officer C1 was being named or why it was considered necessary to listen to or record his private conversations.

## 7.5 The investigation of Officer J

Officer J is a current serving police officer. Officer J complained through his chain of command about his name being included on LD warrant 109/1999 that was granted on 12 March 1999.<sup>406</sup> The complaint was referred to the Ombudsman to be considered as part of Operation Prospect. Officer J first became aware he was named when he was given a copy of the warrant by journalist Mr J on 21 September 2012. Mr J did not tell Officer J where he had obtained the document.

### 7.5.1 Information held by Mascot about Officer J

Sea did not mention Officer J in the initial debrief he had with Burn and Henry in January 1999,<sup>407</sup> or in any later debriefs.<sup>408</sup>

Officer J was recorded by LD once, on 29 January 1999, while present during a conversation with Sea.<sup>409</sup> The recording appears to have been unintentional. It occurred when Officer J unexpectedly attended a meeting with other people who Sea had been tasked to record under the authority of a LD warrant.<sup>410</sup> Mascot investigators made a record of the fact that Officer J had been captured by the LD recording in a LD Summary Log, which summarised the parts of the recorded conversations that were relevant to Mascot. The general conversation was about promotions, sick leave, transfers and gossip. There was some discussion about Task Force Magnum and the PIC's involvement. In relation to Officer J, the LD Summary Log notes that MSO3 said to him "what you hear stays here",<sup>411</sup> but the summary does not record anything that Officer J said, nor does it record any conversation by any of the participants about corrupt conduct.

Later, Officer J was named as one of 119 people that Mascot proposed to listen to or record in LD affidavit 105-111/1999, sworn on 12 March 1999. That affidavit does not explain why Officer J was named.

406 NSWPF internal memorandum from [Officer J] to Detective Superintendent CJ Dyson, 25 September 2012.

407 NSWCC Information Report, *Schedule of Debrief with SEA, 91 matters outlined*, reporting officer: Burn, 13 January 1999.

408 Officer J is not mentioned by Sea in any of Sea's Debrief Statements.

409 NSWCC Information Report, *Contemporaneous notes by "Sea" re: [MSO8] visit on 18 January 1999*, reporting officer: [junior Mascot officer], 19 January 1999, attachment: *Operation Mascot LD Summary Log*, undated, p. 6.

410 LD warrant 035/1999.

411 NSWCC Information Report, *Contemporaneous notes by "Sea" re: [MSO8] visit on 18 January 1999*, reporting officer: [junior Mascot officer], 19 January 1999, attachment: *Operation Mascot LD Summary Log*, undated, p. 6.

Officer J was named in three LD warrants associated with this affidavit.<sup>412</sup> He was not recorded during the period of these warrants, and he was not recorded again by Mascot. Sea was never tasked with recording Officer J.

## 7.5.2 Analysis and submissions

The only Mascot documents that Operation Prospect has located that name Officer J are the LD Summary Log, LD affidavit 105-111/1999, and the three associated LD warrants. Operation Prospect has not located any document that names Officer J as being involved in or having knowledge of corruption.

Affidavit 105-111/1999 did not justify or explain why Officer J was named in a LD warrant. This was inappropriate and contrary to the practice that should have been followed in accordance with section 16(1) of the LD Act.

As noted at section 7.3.7.3, Kaizik made a submission to Operation Prospect about his role as the deponent of affidavits and his degree of individual responsibility for the defects in Mascot document preparation.<sup>413</sup>

## 7.5.3 Findings

### 18. Kaizik

Kaizik's conduct as the deponent of LD affidavit 105-111/1999 – sworn on 12 March 1999 in support of an application for a warrant to listen to or record Officer J's private conversations – was unreasonable conduct in terms of section 122(1)(d)(i) of the *Police Act 1990*. As discussed in section 7.5.2, the affidavit did not provide any information to explain why Mascot sought to listen to or record Officer J's private conversations.

## 7.6 Mascot's investigation of Mr F

### 7.6.1 Mr F made a subject of investigation

Former NSWPF Sergeant Mr F was named as a person Mascot proposed to listen to or record in 90 Mascot warrants<sup>414</sup> and 30 supporting affidavits.<sup>415</sup> The warrants were active for a continuous period of 18 months between 4 June 1999 and 21 December 2000. Five of the 27 affidavits did not explain why he was named as a person Mascot sought to listen to or record by LD. Mr F was also named in the 'facts and grounds' paragraphs of a further three affidavits supporting LD warrant applications, as well as the corresponding warrants – although he was not specifically listed in the affidavits as a person Mascot sought to listen to or record.<sup>416</sup> Mr F was never recorded on any LD by Mascot and no findings were made in relation to his conduct as a result of Mascot investigations. Operation Prospect did not find any evidence that Mascot devised a strategy to target Mr F or for Sea to record Mr F with a LD. Mr F was investigated separately by the NSWPF and by the PIC in relation to alleged corrupt conduct in the 1990s.<sup>417</sup> He was medically discharged from the NSWPF in August 2000, during the period he was listed on the Mascot warrants.<sup>418</sup>

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412 LD warrant 109-111/1999.

413 Kaizik, T, Submission in reply, 14 July 2015.

414 LD warrants 366-368/2000, 376-378/1999, 403-405/1999, 432-434/1999, 452-454/1999, 074-076/2000, 095-097/2000, 112-114/2000, 178-180/2000, 200-202/2000, 219-221/2000, 245-247/2000, 012-014/2000, 019-021/2000, 036-038/2000, 047-049/2000, 222-224/1999, 245-247/1999, 266-268/1999, 283-285/1999, 266-268/2000, 306-308/1999, 328-330/1999, 350-352/1999, 395-397/2000, 288-290/2000, 317-319/2000, 130-132/2000, 151-153/2000, and 342-344/2000.

415 LD affidavits 218-224/1999, 279-285/1999, 262-268/1999, 241-247/1999, 302-308/1999, 324-330/1999, 346-352/1999, 371-380/1999, 398-407/1999, 427-436/1999, 447-456/1999, 007-014/2000, 015-021/2000, 036-038/2000, 043-049/2000, 070-076/2000, 091-097/2000, 108-114/2000, 174-180/2000, 196-202/2000, 215-221/2000, 241-247/2000, 262-268/2000, 284-290/2000, 313-319/2000, 126-132/2000, 147-153/2000, 338-344/2000, 362-368/2000, and 391-397/2000.

416 LD affidavits 241-247/1999, 262-268/1999 and 279-285/1999.

417 PIC, *Report to Parliament: Operation Oslo*, June 2001.

418 NSWPF Police Oversight Data Store on former officer – [Mr F], report date: 30 April 2014, profile prepared by: [officer], p. 6.

## 7.6.2 Mascot's targeting of Mr F

Mr F was not mentioned by Sea during his initial debrief in 1999,<sup>419</sup> nor is he mentioned in the Schedule of Debrief. However, at the time of the Mascot investigations, Mr F was the subject of a separate investigation being conducted by NSWPF Internal Affairs – codenamed Operation Lublin. That investigation related to historical allegations of corruption from the early 1990s. Operation Lublin was handed over to the PIC on 19 March 1999 and renamed Operation Oslo. Mr F was called to give evidence at the PIC on 21 April and 10 June 1999.<sup>420</sup>

Mr F was mentioned in a recorded conversation on 27 May 1999 between Sea and Mascot Subject Officer 11 (MSO11), another Mascot target who worked with Sea on Task Force Magnum. The relevant portion of the transcript of that conversation reads:

[MSO11]: *I'd say [Mr F's] got his problems.*

Sea: *Has he? In the shit?*

[MSO11]: *The Vice Squad's blown up.*

Sea: *Has it?*

[MSO11]: *Haven't you seen it? Been overseas?*

Sea: *I've been overseas.*

[MSO11]: *They left him in the box a month ago and they said we were adjourning for a month. They haven't got back to him. Oh yeah his inquiries (...ind...) [nickname of MSO12]. I went down to Kempsey police station and [nickname of MSO12] goes "don't worry, don't worry, don't worry, I'm number 37". This bloke's got in the box and said "36 out of the 38 members of the Vice Squad were fuckin' millionaire corrupt police". [nickname of MSO12]'s gone [Laughs] "I'm thirty-fuckin'-seven"*

Sea: [Laughs]

[MSO11]: *He says "there's a lot of cunts tryin' to be number 37 and 38". [Mr F] was copping plenty of it. He knew there was a (... ind ...) he (ind) Internal Affairs.*

Sea: *Who's rolled over at the Vice Squad?*

[MSO11]: *No, no-one yet. They had ... they must have this (... ind ...) They would have been one of the choice squads.*

Sea: *Huh!*

[MSO11]: *Eh?*

Sea: *Huh! A licence to print money.*

[MSO11]: *No, the only other good one where there was never any dramas was the Dealers.*

Sea: *Mmm.*

[MSO11]: *You know why, because fuckin' they just gave it to them, it looked like (... ind ...) the businessmen gave it to them. That's where Slasher was, the Pillage Squad and Dealers ...<sup>421</sup>*

419 NSWCC Information Report, *Induced Statement of Sea provided over 16/12/1998 & 18/12/1998*, reporting officer: Burn, 13 January 1999, attachment – *Sea Induced Statement*.

420 PIC, *Report to Parliament: Operation Oslo*, June 2001, p. 16.

421 NSWCC Transcript of LD warrant 189/1999, Tape 99/128, 27 May 1999, pp. 2-3.



The content of this conversation was then summarised in Mascot operational documents. It first appeared in an Information Report prepared by Moore on the following day, 28 May 1999:<sup>422</sup>

[MSO11] then makes reference to [Mr F] from the vice squad having some problems....the Vice Squad is blown... [Mr F] was at PIC, they left him in the box a month ago and adjourned the matter for a month.... [MSO11] mentions going into Kempsey Police Station and seeing "[nickname of MSO12]" (possibly [MSO12]) and [nickname of MSO12] said he was number 37 which is a reference to evidence at the PIC inquiry by a witness suggesting 36 out of the 38 Vice Squad police were millionaire corrupt police... (Laughter), "he says there's a lot of guys trying to be number 37 and 38". [MSO11], "[Mr F] was copping plenty.....that would have been one of the choice squads." Sea, "A licence to print money.' [...]"<sup>423</sup>

This summarised account of the original conversation was substantially adopted in an affidavit that was deposed shortly after – on 4 June 1999 – by Detective Senior Constable Arpad Szabo, in support of an application for a LD warrant to listen to or record Mr F.<sup>424</sup> The affidavit summarised the conversation that occurred on 27 May 1999 between Sea and MSO11 as follows:

[Sea] and [MSO11] discussed the Police Integrity Commission hearings concerning the Vice Squad and [MSO11] made reference to [Mr F] (a Detective Sergeant formerly attached to Vice Squad but now on long term sick report) having... 'some problems'. [MSO11] went on to say "The Vice Squad is blown. [Mr F] was at PIC. They left him in the box a month ago and adjourned the matter for a month."

[MSO11] said he had gone to Kempsey Police Station and seen [MSO12] (a Detective Sergeant attached to Kempsey Police Station) who said he was number 37 which was a reference to evidence given to the Police Integrity Commission to the effect 36 out of the 38 Vice Squad police were millionaire corrupt police. [MSO11] then said that [MSO12] had said "There's a lot of guys trying to be number 37 and 38." [MSO11] then said "[Mr F] was copping plenty. That would have been one of the choice squads." [Sea] replied "A licence to print money." [MSO11] then said "The only other good one where there was never any dramas was the Dealers. You know why? Cause they just gave it to them. The businessmen gave it to them. That's where [a senior officer] (currently Detective Superintendent, [branch of police]) was, Pillage Squad and Dealers."<sup>425</sup>

One possible reading of that summary is that the reference to Mr F 'copping plenty' was a reference to him corruptly receiving money. However, if the reader was taken to the full transcript, another plausible reading was a reference to Mr F's experience in the witness box at his PIC hearing.

The paragraphs from Szabo's affidavit appeared in 25 Mascot affidavits between 4 June 1999 and 14 September 2000. Three of those affidavits did not name Mr F as a person who Mascot proposed to listen to or record under the LD warrant being sought.<sup>426</sup> However, Mr F was in fact listed in the associated warrants as a person whose conversations could be listened to or recorded by use of a LD.

Operation Prospect asked Szabo about the paragraphs in the affidavit of 4 June 1999.<sup>427</sup> Initially, he did not recall Mr F being a target of Mascot or having ever appeared on a warrant. After being shown the affidavit of 4 June 1999 – and asked about the reference in the intercepted conversation to Mr F 'copping plenty' – Szabo said this could mean "Copping quids, copping money, corruptly receiving payments".<sup>428</sup> Szabo conceded that the conversation between Sea and MSO11 was recorded differently in the transcript and in his affidavit, but he did not consider that he recorded it inaccurately.<sup>429</sup>

422 NSWCC Information Report, *Contact with Sea on 28/5/1999 – Debriefing re Sea and [MSO11] attendance at NSWCC re [name] Witness [name], 27/5/1999*, case officer: Moore, 28 May 1999.

423 NSWCC Information Report, *Contact with Sea on 28/5/1999 – Debriefing re Sea and [MSO11] attendance at NSWCC re [name] Witness [name], 27/5/1999*, case officer: Moore, 28 May 1999, pp. 1-2.

424 LD affidavit, 218-224/1999.

425 LD affidavit, 218-224/1999, p. 19.

426 LD affidavits 279-285/1999, 262-268/1999, and 241-247/1999.

427 Ombudsman Transcript, Arpad Szabo, 28 July 2014, p. 833.

428 Ombudsman Transcript, Arpad Szabo, 28 July 2014, p. 835.

429 Ombudsman Transcript, Arpad Szabo, 28 July 2014, p. 838.

*I agree that's it's incorrectly recorded from the transcript. It's not word to word as what appears in the affidavit, however the gist is still the same. The information is still the same.*<sup>430</sup>

Operation Prospect also asked Moore about this matter. He was the deponent of an affidavit sworn on 15 May 2000 that included the paragraphs from Szabo's affidavit.<sup>431</sup> Counsel Assisting asked Moore about the reference to 'copping plenty':

Q: Yes. "Copping plenty". But that could mean anything?

A: I think in that context it's pretty obvious what it means.

Q: Why?

A: If you read the conversation in context, you start talking about a Police Integrity Commission...

Q: Yes, but people get sent to the Police Integrity Commission not just for corrupt conduct?

A: I appreciate that. That's one aspect of a conversation that talks about that. It talks about the vice squad being blown. In that context of that hearing - in the context of this investigation, that conversation, you know, it extends - would extend the listener to understand that that would be indicative that the corrupt behaviours at the vice squad have been identified, and the reference to "copping plenty", in that context I think it's reasonable to suspect that that's linked to copping - taking corrupt moneys.<sup>432</sup>

When Counsel Assisting suggested that the reference to 'copping plenty' could refer to cross-examination that Mr F was facing in the PIC hearing, Moore stated:

*So in the context of that discussion, like, choice squads obviously - these conversations were had throughout the life of this investigation where they discussed cultures and attitudes at various squads. And in that context, and the way that these things were discussed, I think that's a reasonable conclusion.*<sup>433</sup>

Counsel Assisting then asked Moore why 'copping plenty' could not be 'copping plenty in the witness box' and he replied:

*I don't see that any of those suggestions that you made would be a reasonable assumption from that. I think, you know, copping plenty in the witness box when they're talking about the choice squads and businessmen giving people money and all that, I think it's reasonable summation to suggest that they're discussing corrupt conduct.*<sup>434</sup>

The last five Mascot affidavits relating to Mr F – sworn between 5 October 2000 to 21 December 2000 – were in support of applications for LDs to listen to or record Mr F. The affidavits did not include the paragraphs from Szabo's affidavit, nor contain any other explanation as to why Mr F was listed.<sup>435</sup> The first of those affidavits was deposed to by Moore and the others by other Mascot staff.

### 7.6.3 Analysis and submissions

Three criticisms can be made of the affidavits that were sworn in support of applications to listen to or record Mr F's private conversations.

430 Ombudsman Transcript, Arpad Szabo, 28 July 2014. p. 839.

431 LD affidavit 126-132/2000.

432 Ombudsman Transcript, Greg Moore, 23 July 2014, pp. 706-707.

433 Ombudsman Transcript, Greg Moore, 23 July 2014. p. 707.

434 Ombudsman Transcript, Greg Moore, 23 July 2014. p. 708.

435 LD affidavits 284-290/2000, 313-319/2000, 338-344/2000, 362-368/2000, and 391-397/2000.

First, the affidavit sworn by Szabo on 4 June 1999<sup>436</sup> does not accurately or fairly represent the conversation between Sea and MSO11 that occurred on 27 May 1999. In the transcript of the conversation, MSO11 discussed Mr F appearing at a PIC hearing and then referred to Mr F 'copping plenty of it'.<sup>437</sup> A few lines later he referred to the Vice Squad as being 'a licence to print money'.<sup>438</sup> The conversation then moves on to another person and subject that are unrelated to Mr F.

The affidavit of 4 June 1999 changed or excluded some words from the transcript and set out some parts of the conversation in a different order. This had the effect of removing an ambiguity that is present in the transcript. The account of the conversation in the affidavit emphasised the suspicion about Mr F – that he had received money corruptly obtained by Vice Squad officers. The reference to 'copping plenty' in the affidavit could be read as meaning the receipt of bribes. In the transcript, the reference could alternatively be taken to refer to the cross examination of Mr F during the PIC hearing.

There is no evidence before Operation Prospect that the information was intentionally presented in the affidavit to narrow the range of possible meanings or to mislead an eligible Judge who may be deciding an application to grant a LD warrant. However, the affidavit did not accurately or fairly represent the conversation as recorded in the transcript. The inaccurate presentation was repeated in a further 25 affidavits.<sup>439</sup>

The second criticism is that five affidavits that named Mr F did not explain why Mascot sought to listen to or record his conversations by LD.<sup>440</sup> This was inappropriate and contrary to the practice that should have been followed in accordance with section 16(1) of the LD Act. These five affidavits, the first sworn by Moore, were sworn between 5 October 2000 and 21 December 2000.<sup>441</sup>

The third criticism is that three supporting affidavits<sup>442</sup> did not list Mr F as a person who was to be listened to or recorded, but he was so named in the nine associated warrants.<sup>443</sup> It is likely that this was an administrative oversight, as the affidavits contain the paragraphs detailed above that were in affidavits which named Mr F as a person to be listened to or recorded. This points to a lack of administrative rigour in NSWCC document preparation processes.

Szabo made a submission to Operation Prospect about his role in preparing and swearing Mascot affidavits, and specifically his role in swearing LD affidavit 218-224/1999 on 4 June 1999.<sup>444</sup> The submission acknowledged that other possible interpretations could be placed on the conversation between Sea and MSO11, and that the words in the affidavit did not accord exactly with those in the transcript of the conversation. However, Szabo submitted that the interpretation of the conversation presented in the affidavit was the more reasonable interpretation.<sup>445</sup> In preparing the affidavit, Szabo also relied on an Information Report prepared a few days earlier that presented a similar interpretation – and which Szabo relied on as an accurate presentation. He noted that the transcript of the conversation was not proofed until after his affidavit was sworn. More generally, Szabo's submission noted that – in preparing affidavits in the Mascot investigations – he did not intentionally exaggerate or falsify information, he relied on other NSWCC staff to prepare draft affidavits, it was reasonable for him to rely on and not check the work of others on which he relied, and the selection of Mascot targets was a decision made by others.<sup>446</sup>

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436 LD affidavit, 218-224/1999.

437 NSWCC Transcript of LD warrant 189/1999, Tape 99/128, 27 May 1999, p. 2.

438 NSWCC Transcript of LD warrant 189/1999, Tape 99/128, 27 May 1999, p. 3.

439 LD affidavits 241-247/1999, 262-268/1999, 285/1999, 302-308/1999, 324-330/1999, 346-352/1999, 371-380/1999, 398-407/1999, 427-436/1999, 447-456/1999, 007-014/2000, 015-021/2000, 036-038/2000, 043-049/2000, 070-076/2000, 091-097/2000, 108-114/2000, 126-132/2000, 147-153/2000, 174-180/2000, 196-202/2000, 215-221/2000, 241-247/2000, and 262-268/2000.

440 LD affidavits 284-290/2000, 313-319/2000, 338-344/2000, 362-368/2000 and 391-397/2000.

441 LD affidavits 284-290/2000, 313-319/2000, 338-344/2000, 362-368/2000, and 391-397/2000.

442 LD affidavits 241-247/1999, 262-268/1999, and 279-285/1999.

443 LD warrants 245-247/1999, 266-268/1999, and 283-285/1999.

444 Szabo, A, Submission in reply, 10 August 2015.

445 Szabo, A, Submission in reply, 10 August 2015, p. 8.

446 Szabo, A, Submission in reply, 10 August 2015, pp. 8-9.

Moore also made a submission to Operation Prospect.<sup>447</sup> He felt he could not comment on the absence of an explanation in his affidavit of 5 October 2000 about why Mascot sought to record Mr F as he was not examined on this issue. Although Moore's conduct in relation to this affidavit may not have been canvassed in his hearings before Operation Prospect, he was given the submissions and provisional findings of Counsel Assisting and given the opportunity to consider those, inspect any documents he considered necessary in order to respond to the submissions, and make comment through the procedural fairness process.

Moore also submitted that the NSWCC had in place "layers of review"<sup>448</sup> as well as a review by the judicial officer considering the affidavit, and the absence of an explanation was not raised as a concern by any of those people.<sup>449</sup> The conduct of the NSWCC in failing to have in place adequate quality assurance and review of the work of Mascot staff is addressed in Chapter 16. However this does not prevent findings being made in relation to Moore's conduct in this matter.

## 7.6.4 Findings

### 19. Szabo

Szabo's conduct as the deponent of LD affidavit 218-224/1999 – sworn on 4 June 1999 in support of an application for a warrant to listen to or record Mr F's private conversations – was unreasonable conduct in terms of section 122(1)(d)(i) of the *Police Act 1990*. As discussed in section 7.6.3 the affidavit did not accurately or fairly represent the information that Mascot held about a conversation between Sea and Mascot Subject Officer 11 on 27 May 1999 that referred to Mr F.

### 20. Moore

Moore's conduct as the deponent of LD affidavit 284-290/2000 – sworn on 5 October 2000 in support of an application for a warrant to listen to or record Mr F's private conversations – was unreasonable conduct in terms of section 122(1)(d)(i) of the *Police Act 1990*. As discussed in section 7.6.3 the affidavit did not provide any information to explain why Mascot sought to listen to or record Mr F's private conversations.

### 21. NSW Crime Commission

The NSW Crime Commission was responsible for the actions of members of the Mascot Task Force in naming Mr F in 90 LD warrants and 30 supporting LD affidavits. As outlined in section 7.6.3, some of those affidavits did not accurately or fairly represent the information Mascot held about Mr F, and some other affidavits did not explain why Mascot sought authority to use a LD to listen to or record his private conversations. The NSW Crime Commission was responsible for the Mascot and Mascot II references and for supervising members of the Mascot Task Force. The matters referred to collectively indicate a lack of administrative rigour in NSW Crime Commission document preparation processes. This was contrary to NSW Crime Commission policies, practices and procedures that should have been followed in conducting the Mascot references and preparing affidavits and warrant applications. The conduct of the NSW Crime Commission was unreasonable and otherwise wrong in terms of section 26(1)(b) and (g) of the *Ombudsman Act 1974*.

447 Moore, G, Submission in reply, 25 November 2015.

448 Moore, G, Submission in reply, 25 November 2015, pp. 22, 44.

449 Moore, G, Submission in reply, 25 November 2015, p. 44.

### 7.6.5 Recommendation

4. It is recommended under section 26(2) of the *Ombudsman Act 1974* that the NSW Crime Commission give Mr F a written apology for naming him in multiple LD affidavits and LD warrants:
  - in a way that did not accurately and fairly represent (in some affidavits) the information that the NSW Crime Commission held at the time about Mr F
  - without properly explaining (in some affidavits) either why Mr F was being named or why it was considered necessary to listen to or record his private conversations.

## Chapter 8. Investigation of Officers P, H and E

### 8.1 Chapter overview

This chapter continues a theme developed in Chapter 7. It analyses the Mascot Task Force investigation of three current and former NSWPF officers who were named in the early Mascot warrants. Two of the three officers were first named in LD warrant 109/1999 granted on 12 March 1999. This warrant was granted less than five weeks after the Mascot reference was made to the NSWCC, and was significant in that it named 119 people whose private conversations could be recorded or listened to for the 21 days the warrant was active. The brief details of the Mascot investigation of the three officers discussed in this chapter are:

- Officer P was a NSWPF officer during the Mascot investigation, but has since left the NSWPF. She was named in 81 LD warrants, 48 LD affidavits, 12 TI affidavits and four TI warrants. The 81 LD warrants and 29 of the LD affidavits named her as a person whose private conversations Mascot sought to listen to or record. She was recorded once on a LD on 12 March 1999.
- Officer H was a NSWPF officer during the Mascot investigation, but has since left the NSWPF. He was named in 20 LD warrants, 10 LD affidavits, four TI warrants and four TI affidavits. The 20 LD warrants and eight of the LD affidavits named him as a person whose private conversations Mascot sought to listen to or record. Officer H's situation is unusual in that – despite the relatively low number of times he was named in a warrant – he was recorded 25 times, on many occasions without a relevant warrant being in place.
- Officer E was a NSWPF officer during the Mascot investigation. He was named in 66 LD warrants, 22 LD affidavits, two TI affidavits and one TI warrant. He was recorded nine times on a LD (five of which were under a warrant which named him and four under a warrant which did not).

Officer P and Officer H were named for the first time in LD warrant 109/1999. Officer E was first named in LD warrant 95/2000 (the first 'King send-off' warrant discussed in Chapter 9).

The Mascot investigation of these three officers illustrates problems in Mascot processes that are similar to those discussed in Chapter 7. One problem was the lack of administrative rigour in preparing documents in the early stages of the Mascot investigation. The shortcomings were compounded as the investigation built on the early investigation work and expanded.

Another problem was that Mascot investigators did not have sufficient regard to the legal requirements of the LD Act when applying for LD warrants. The consequences of that failure are that a judicial officer who is deciding whether to grant an application for a LD warrant may not have the full information required for that task. If, as a result, a warrant is granted in inappropriate circumstances or without conditions that might otherwise be imposed, an unwarranted intrusion may occur into the privacy of a person whose private conversations are listened to or recorded.

Another theme explored in this chapter (and also in Chapter 7) was the use by Mascot investigators of integrity tests on Mascot suspects. Integrity tests are a function or power conferred on the Commissioner of Police (or his or her delegates) under section 207A of the *Police Service Act 1990* (as it was then known), and the NSWPF had guidelines to be followed.<sup>450</sup> Integrity tests are not a function that is expressly conferred by legislation on the NSWCC.

This chapter also identifies other serious problems in the conduct of the Mascot investigations. One is that Officer H was recorded on multiple occasions when he was not named in a supporting affidavit or warrant. An associated problem was that Officer H was the subject of a sustained investigation and a Mascot strategy to encourage him to engage in conduct that Mascot identified as corrupt.

<sup>450</sup> NSWPF, *Integrity Testing Policy and Guidelines*, 22 May 1997.



Another problem was that some of the police conduct that Mascot was investigating may not have been within the scope of the Mascot and Mascot II references to the NSWCC. Those references applied to the investigation of specific indictable offences (see Chapter 3). Some of the conduct that Mascot investigated that is examined in this chapter concerned the breach of police regulations or the Code of Conduct – that is, conduct that is not a serious criminal offence but a disciplinary offence. It was inappropriate to use NSWCC warrants, staff and resources for this purpose. In addition, a T1 warrant can only be issued to investigate a serious criminal offence.

The analysis in this chapter of the investigation of the three police officers concludes with the Ombudsman's findings under section 122 of the Police Act and section 26 of the Ombudsman Act. The only Mascot investigators who are named in the findings in relation to defective affidavits are those who swore an affidavit that first mentioned Officer P, Officer H or Officer E as a person who Mascot sought to listen to or record – for example, the supporting affidavit for LD warrant 109/1999. As explained in Chapter 6, an adverse finding is not made against a named officer who did no more than swear a later rollover affidavit or cut and paste material from earlier affidavits.

Findings are also made about the conduct of the NSWCC as to its responsibility for the actions of members of the Mascot Task Force in relation to Officer P, Officer H and Officer E. Recommendations are made for the NSWCC to issue written apologies in response to some of those findings.

## 8.2 Mascot investigation of Officer P

### 8.2.1 Introduction

Officer P was an investigator in the SCIA of the NSWPF.<sup>451</sup> From 1997 she worked as a Senior Constable on Task Force Ancrum, which was located within SCIA's Internal Affairs unit. Ancrum had been established after the Royal Commission into the New South Wales Police Service to investigate a range of matters – including possible corrupt activity by officers involved in Task Force Magnum. Magnum had been set up in 1991 to investigate a growth in armed robberies on armoured vehicles. SCIA was scrutinising some arrests that had resulted from Magnum, in part to examine whether armed robbery charges had been fabricated. The specific allegations were that Task Force Magnum members had 'loaded up' or verballled suspects.

Magnum was headed up by Mascot Subject Officer 13 (MSO13). Sea worked on Magnum with other officers he named in his initial debrief interviews as being involved in corruption – MSO1, Mascot Subject Officer 14 (MSO14) and MSO6.<sup>452</sup>

Some matters arising in Ancrum were taken over by Mascot. Some of the allegations about Magnum investigators were also examined by the PIC in public hearings during Operation Florida.

A specific issue that Mascot examined was the suspected leak of confidential material from Ancrum. When Sea first approached the NSWCC about police corruption, he was in possession of an affidavit that had been prepared by an Ancrum investigator. The affidavit contained numerous allegations against members of Magnum and another police task force, including allegations that officers had verballled and assaulted multiple suspects. Sea told the NSWCC that the affidavit had been circulated among the targets of the Ancrum investigation.

Mascot included the suspected leak of the affidavit on its Schedule of Debrief (see Chapter 3) as a matter for investigation. Mascot investigators harboured a suspicion that some officers in Ancrum were leaking confidential information to the targets of that investigation. One of the officers who was suspected of leaking information was Officer P. In fact, Mascot never determined who leaked the affidavit. Mascot also investigated Mr N, the former head of Ancrum, as discussed in Chapter 7.

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451 This chapter makes reference to a number of officers who worked for Internal Affairs, which is a sub unit within the Special Crime and Internal Affairs Command, which is discussed in Chapters 3 and 4.

452 PIC, *Report to Parliament – Operation Florida*, Volume 2, June 2004, pp. 273-327.

A difficulty that beset the leaking investigation from the outset is that by this time Ancrum was not itself a covert investigation. The main people of interest to Ancrum (police officers MSO1, MSO3, MSO6 and Mascot Subject Officer 15 (MSO15)) knew they were being investigated by Ancrum, and were aware that Officer P was an Ancrum investigator. Three of the officers – MSO1,<sup>453</sup> MSO3<sup>454</sup> and MSO6<sup>455</sup> – had attended interviews with Ancrum.

### 8.2.2 Officer P named in Mascot documents (Early 1999)

Sea did not make any allegations against Officer P in his initial debrief interview in January 1999, nor was she listed in the handwritten Schedule of Debrief prepared after his interview. However, by early 1999, Mascot investigators began to suspect Officer P may have disclosed information to MSO1, MSO3, MSO6 and MSO15.

The first transcript Operation Prospect has identified that mentions Officer P is a transcript of a conversation recorded on an authorised LD between Sea and MSO1 on 19 February 1999. She was not a participant in this conversation and no allegation of corruption against her was raised in the conversation.<sup>456</sup>

The next transcript that mentions Officer P was of a conversation recorded on an authorised LD between Sea and MSO1 on 25 February 1999. The topic of conversation appears to be whether Ancrum was planning to interview MSO3. MSO1 suggests that Officer P might inform MSO15 if he spoke to her:

Sea        *Would [nickname of Officer P] tell you...*

MSO1      *Not over the phone she wouldn't but...*

Sea        *If [nickname of MSO3] was on the interview list? He wants to know.*

MSO1      *No, she wouldn't tell us that.*

Sea        *Nuh?*

MSO1      *No. I wouldn't dare ask her over the phone (ind)*

Sea        *Not over the phone. I'm not talkin' over the phone.*

MSO1      *I'd say [nickname of MSO15] could find out.*

Sea        *[Nickname of MSO15] could?*

MSO1      *I reckon, if he got talkin' to her.*

Sea        *Eh?*

MSO1      *If he got talkin' to her.*

...

Sea        *We'll get hold of [nickname of MSO15].<sup>457</sup>*

A Contact Advice Report dated 3 March 1999 documented a meeting between Burn, Henry and Sea. During the meeting, Burn and Henry tasked Sea to visit MSO15's home and discuss the planned Ancrum interviews, the association between MSO15 and Officer P, and MSO3's request for the Ancrum interview list.<sup>458</sup>

A conversation between Sea and MSO1 at a hotel on 4 March 1999 was recorded by an authorised LD. Sea and MSO1 discussed the Ancrum investigation of Magnum officers. MSO1 indicated that he thought officers would not be charged but may be removed from office by the Commissioner of Police under section 181D of

453 NSWCC Information Report, *Meeting with Sea on 22/02/99 – LD contact Sea & [MSO1]*, reporting officer: Burn, 24 February 1999, p. 1; NSWCC Transcript of LD085/1999, Tape T99/055, 19 February 1999, p. 7 and NSWCC Transcript of LD085/1999, Tape T99/058, 25 February 1999, p. 4.

454 NSWPF internal memorandum from [Officer P] to Commander Malcolm Brammer, 25 May 1999 – enclosure entitled 'Submission for advising to the Director of Public Prosecutions in the Matter of [person] Charged with Assault on [person] on 29 November 1991', p. 3.

455 NSWPF internal memorandum from [Officer P] to Commander Malcolm Brammer, 25 May 1999 – enclosure entitled 'Submission for advising to the Director of Public Prosecutions in the Matter of [person] Charged with Assault on [person] on 29 November 1991', p. 4.

456 NSWCC Transcript of LD 085/1999, Tape T99/055, 19 February 1999, pp. 55-56.

457 NSWCC Transcript of LD 085/1999, Tape T99/058, 25 February 1999, p. 13.

458 NSWCC, *Informant Contact Advice Report*, Contact by Burn and Henry with informant Sea, 3 March 1999.

the Police Act.<sup>459</sup> Officer P was not mentioned at that stage in the conversation, but was mentioned later after Sea commented that another police officer said the Ancrum investigation was over. MSO1 responded:

Sea After [a police officer] said it was over?

[MSO1] Mate, (...ind...) say it was over.

Sea Mmm?

[MSO1] When did [a police officer] tell us it was over?

Sea Weeks ago.

[MSO1] Mmm, it ain't over, mate, even [nickname of Officer P] has said it's not over. A young bloke got on his goat and said "oh you'll never come back (...ind...)"<sup>460</sup>

The Information Report summarising this conversation, dated 15 March 1999, noted:

[MSO1] said he had heard that [Officer P] said, "Evan [sic] [nickname of Officer P] said it wasn't over".<sup>461</sup>

### 8.2.3 Officer P named in affidavits and warrants (March 1999)

Officer P was first named on a LD affidavit on 12 March 1999, sworn by Sergeant Troy Kaizik – a Mascot investigator – before NSWCC solicitor Owen.<sup>462</sup> The associated warrants were granted on the same day. The affidavit stated that Mascot proposed to use Sea's body worn LD to record Officer P (among others). The affidavit included only one paragraph as follows in relation to Officer P:

*In relation to the ANCRUM, [MSO1] said "Even [nickname of Officer P] says it's not over." I suspect [nickname of Officer P] is [Officer P], who is the officer in charge of the ANCRUM.*<sup>463</sup>

This paragraph (or slight variations of it) appeared in a number of subsequent affidavits. Some of those affidavits also included additional information about Officer P – as outlined below.

Officer P was recorded by LD on 12 March 1999, under one of the warrants granted that day. It appears this was the only occasion on which she was recorded by LD. In the conversation that Sea recorded, he was being interviewed by Officer P and Boyd-Skinner – who was on the Mascot team but was also working in a covert role as an Internal Affairs investigator. Officer P was unaware of Boyd-Skinner's covert role at that time, and of Sea's role as an informant for Mascot. Sea activated his body worn LD for the interview and was required to be untruthful in some of his answers to questions to protect his position. An Information Report summarised Sea's recording of the interview and noted which parts of Sea's answers were untruthful. The Information Report also stipulated that this content was "not to be transcribed", and Mascot did not have the recording transcribed.<sup>464</sup>

It does not appear that the conversation canvassed any issues suggesting corruption by Officer P.

Operation Prospect asked Kaizik about the inclusion of Officer P in the LD affidavit of 12 March 1999.<sup>465</sup> He stated that because Officer P was in charge of Ancrum, the statement in the affidavit attributed to MSO1 could mean that information Officer P was providing to people could potentially have an impact on the outcome of the operation. He explained why Officer P was named:

459 NSWCC Transcript of LD 085/1999, Tape T99/066, 4 March 1999, p. 21; s. 181D of the *Police Service Act 1990* (now the Police Act) allowed the Commissioner to remove an officer if he had lost confidence in that officer having regard to that officer's "competence, integrity, performance or conduct".

460 NSWCC Transcript of LD 085/1999, Tape T99/066, 4 March 1999, p. 40.

461 NSWCC Information Report, *LD Contact between Sea and [MSO1] on 4 March 1999 at [a Manly hotel], Manly – T99/066*, reporting officer: [Mascot investigator], 15 March 1999, p. 2.

462 LD affidavit 105-111/1999.

463 LD affidavit 105-111/1999, p. 13.

464 NSWCC Information Report, *Meeting at [surf club] between Sea, [MSO3] & [MSO6]*, reporting officer: [a Mascot investigator], 18 March 1999, p. 2.

465 LD affidavit 105-111/1999.

*Well, the thinking was probably that she's heading up a taskforce and she's providing information that people don't have a need to know and that that could potentially have an impact on the outcome. Now, I know what you're saying here is that this doesn't really - two lines doesn't really give a lot of information to support that.*<sup>466</sup>

A LD affidavit of 16 April 1999 sworn by Moore contained a paragraph with an additional reference to Officer P.<sup>467</sup> The paragraph suggested that MSO1 may try to elicit information from Officer P and another SCIA officer:

*I suspect there will be attempts by [MSO1] to use his friendship with [officer name] and [officer name] to elicit information concerning the Internal Affairs investigation into his conduct. [Officer P], [a police officer] and [Mr C2] are attached to the Internal Affairs Investigation Unit. [Police officer] formerly worked with [MSO1] in the North Region Drug Unit. [Mr C2] and [Officer P] also formerly worked with [MSO1]. I suspect it is likely [MSO1] may seek to elicit information from [Officer P] and/or [police officer] and/or [Mr C2] concerning the Internal Affairs investigation into his conduct.*<sup>468</sup>

Moore swore affidavits that included MSO1's comment to Sea about Officer P – "It ain't over, mate. Even [nickname of Officer P] has said it's not over". Moore was asked whether that comment provided an adequate basis for inferring that Officer P was prepared to disclose confidential information about the Ancrum investigation:

**Q:** *What's your view about the adequacy of that as being a basis to pursue [Officer P] as a target for investigation?*

**A:** *Look, I concede that that on its own, there could be an argument pushed that it's very light on and it doesn't justify the invasion of someone's privacy to the extent that their phones are intercepted, but equally there's a counter-argument in the context of the broader picture that that would breach that threshold. So I suppose – look, obviously I've been satisfied with that level of information at the time.*<sup>469</sup>

Moore gave evidence to Operation Prospect that it was not his decision to target Officer P.<sup>470</sup> He was unsure what decision-making process had been followed in deciding to target Officer P, but "obviously it was a significant strategy at that point in the investigation to try and I suppose identify if some of these leaks were occurring".<sup>471</sup> Moore was asked whether it was prima facie corrupt for an Internal Affairs investigating officer to provide information to a subject officer that an investigation was not yet finished. He replied that in some situations, it could be.<sup>472</sup> He explained that it could potentially undermine an investigation to flag with an involved officer that an investigation may conclude shortly, particularly if there was mention of police surveillance operations or the like.<sup>473</sup>

Moore was asked how the reliability of MSO1's comment was checked or tested before it was used for investigation. Moore replied that he did not recall the exact process or procedures and he did not think Mascot pursued Officer P solely because of MSO1's comment. He said that there would have been an awareness of the credibility of the statement and whether it was possibly out of character for that officer.<sup>474</sup> However, he agreed that it would be an overreaction to name Officer P in LD warrants for the following 18 months if MSO1's comment was the only information that Mascot held against Officer P. He agreed that the information seemed a bit 'light on', but he was unsure what other information might have been available.<sup>475</sup>

<sup>466</sup> Ombudsman Transcript, Troy Kaizik, 8 August 2014, p. 1316.

<sup>467</sup> LD affidavit 145-147/1999.

<sup>468</sup> LD affidavit 145-147/1999, p. 11.

<sup>469</sup> Ombudsman Transcript, Greg Moore, 17 February 2015, p. 40.

<sup>470</sup> Ombudsman Transcript, Greg Moore, 17 February 2015, p. 40.

<sup>471</sup> Ombudsman Transcript, Greg Moore, 17 February 2015, p. 40.

<sup>472</sup> Ombudsman Transcript, Greg Moore, 17 February 2015, p. 40.

<sup>473</sup> Ombudsman Transcript, Greg Moore, 17 February 2015, p. 40.

<sup>474</sup> Ombudsman Transcript, Greg Moore, 17 February 2015, pp. 40-41.

<sup>475</sup> Ombudsman Transcript, Greg Moore, 17 February 2015, p. 41.

Operation Prospect asked Burn to explain why the comment “even [nickname of Officer P] says it’s not over”, being a second-hand report, was considered an adequate ground to prompt investigation of Officer P. Burn stated: “I think there was a suspicion that she might have been providing information to whoever she was speaking to”.<sup>476</sup> Burn said that the comment did not provide any insight into what the suspected corruption was.<sup>477</sup> She explained that conveying information to subjects of an internal investigation where the investigation was not yet finished might be corrupt if Officer P had “sinister motives”. Examples given by Burn were providing information to somebody to do something they might not already have done, or to pass information to a subject officer to say “It’s not over. Be careful”.<sup>478</sup>

Kaizik was asked why Officer P continued to appear in LD affidavits on the basis of the same information over 12 months later, particularly given the information was hearsay in nature. He responded:

*Like I said, if I’ve left it in there it would be nothing but an administrative error; because, I mean, I would’ve read it and I would’ve kept it in there, for whatever reason I don’t know but certainly I remember [Officer P] by name but I certainly didn’t have any particular grievance against her.*<sup>479</sup>

## 8.2.4 Other information about Officer P captured by Mascot (mid-1999)

On 18 May 1999, Burn and Moore debriefed Sea about a meeting he had earlier that day with MSO6 (one of Mascot’s key targets). The Information Report of the debrief noted that Sea’s recording device had malfunctioned, but Sea had given Burn and Moore a summary of his meeting with MSO6. This included a comment about Officer P:

*\* [MSO6] told Sea that he had spoken to [MSO14] (Magnum) and [MSO14] told him that he had been in touch with [Officer P] re the Magnum inquiry. [Officer P] told him that to [sic] was going to be over in 3 to 4 weeks and a couple of people might get 181Ds out of it.*<sup>480</sup>

On 19 May 1999 Burn and Moore again debriefed Sea – this time about a meeting he had with MSO1 at an RSL Club earlier that evening. The Information Report of the debrief noted that MSO1 told Sea about a conversation between MSO6 and MSO14 in Newcastle. That conversation:

*... apparently related to a conversation [MSO14] had with [Officer P] (IA) regarding the likely outcome of all the Ancrum matters with [Officer P] apparently commenting that it probably just end up with a couple of 181d notices.*<sup>481</sup>

Operation Prospect was unable to locate a transcript of this recorded conversation between Sea and MSO1 on 19 May 1999 so prepared its own transcript of the original recording. The relevant part of the conversation reads:

Sea: Well, [nickname of MSO6] says I’ve got to get out.

[MSO1]: [nickname of MSO6] (ind) nah, nah, [nickname of MSO6] tell you about the conversation he had with your cousin, [nickname of MSO14]?

Sea: Yeah

[MSO1]: That’ll probably be the result (ind) whatever you want, which means – doesn’t mean termination.

Sea: What do you mean?

[MSO1]: With 181 you get the right of reply.<sup>482</sup>

<sup>476</sup> Ombudsman Transcript, Catherine Burn, 12 November 2014, p. 2815.

<sup>477</sup> Ombudsman Transcript, Catherine Burn, 12 November 2014, p. 2815.

<sup>478</sup> Ombudsman Transcript, Catherine Burn, 12 November 2014, p. 2816.

<sup>479</sup> Ombudsman Transcript, Troy Kaizik, 8 August 2014, p. 1317.

<sup>480</sup> NSWCC Information Report, *Contact with Sea – Meeting between [MSO6]/Sea*, reporting officer: Burn, 20 May 1999, p. 2. Operation Prospect has been unable to locate the original recording or any transcript of the meeting between Sea and MSO6, which confirms that the conversations were not successfully recorded; NSWCC Information Report, *Contact with Sea – Meeting between [MSO6]/Sea*, reporting officer: Burn, 20 May 1999, p. 2.

<sup>481</sup> NSWCC Information Report, *Contact with Sea on 19/5/99 – Meeting with [MSO1]*, reporting officer: Burn, 20 May 1999, p. 2.

<sup>482</sup> NSW Ombudsman, Transcript of LD189/1999, Tape T99/110, 19 May 1999, p. 2.



The first point to note about that transcript extract is that MSO1 did not state that MSO14 had spoken to Officer P. By contrast, the Information Report relating to the meeting makes that claim. Nor is Officer P mentioned at this point in the conversation. The recorded conversation between Sea and MSO1 lasted three hours, and Officer P was mentioned only in the context of MSO1 saying he had spoken to her about Ancrum and she had mentioned issues such as staffing. There is no clarification or detail around what may have been said during the conversation that purportedly occurred between MSO6 and MSO14. The conversation between Sea and MSO1 also does not attribute any comment to Officer P that would raise any suspicion of misconduct.<sup>483</sup>

From early June 1999 a number of LD affidavits included information about these reported conversations – between MSO6 and Sea (18 May 1999) and MSO1 and Sea (19 May 1999). The first affidavit to refer to the conversations was sworn by a Mascot investigator on 4 June 1999 and contains the following information about Officer P:<sup>484</sup>

- During a conversation at a pub on 4 March 1999 MSO1 said “Even [nickname of Officer P] says ‘it’s not over’”, when discussing his Internal Affairs interview.<sup>485</sup>
- During a conversation with Sea on 18 May 1999 MSO6 said he had spoken to MSO14 and that Officer P had told MSO14 “it” was going to be over in three to four weeks and that “a couple of people might get 181Ds out of it”.<sup>486</sup> The affidavit indicated that this information was from a lawfully recorded conversation between MSO6 and Sea. The affidavit did not note that the conversation was not recorded due to a malfunction with the LD.
- During a recorded conversation with Sea on 19 May 1999, MSO1 confirmed he had met with MSO6 who had outlined information he had obtained from MSO14 and Officer P.<sup>487</sup> The reference to “and [Officer P]” suggests that MSO6 had actually spoken to her, not that he had received second-hand information from MSO14.

This affidavit did not include Officer P in the list of people that Mascot proposed to listen to or record, so she was not named on the associated warrants that were granted on 4 June 1999.

On 4 June 1999 Sea met with MSO6 and others – and made an authorised recording of his conversations on his body worn LD.<sup>488</sup> By this date, MSO6 had been formally interviewed by Officer P as part of the Ancrum investigation. MSO6 claimed that Officer P told him there is “another brief to go down, we’ll get the DPP” and “there might be some 181Ds”.<sup>489</sup> MSO6 also said that Officer P indicated Ancrum would be finished by September,<sup>490</sup> to which he had replied to Officer P: “I said oh look [first name of Officer P], you might tell me shit, I don’t care, um ... I’m ... I’m getting out anyway, it doesn’t even worry me”.<sup>491</sup>

The next affidavit to include information about these conversations was sworn on 25 June 1999.<sup>492</sup> It included the three points noted earlier, and the following comment referring to the conversation between MSO6 and Sea on 4 June 1999:

*[MSO6] said [Officer P] had told him the ‘Magnum’ investigation would be finalised by September. I suspect there has been corrupt contact between [MSO6] and [Officer P].*<sup>493</sup>

This affidavit did not name Officer P as a person Mascot sought to listen to or record and she was not listed in the associated warrants.

483 NSW Ombudsman Transcript of LD189/1999, Tape T99/110, 19 May 1999, p. 10.

484 LD affidavit 218-224/1999.

485 LD affidavit 218-224/1999, p. 14.

486 LD affidavit 218-224/1999, p. 15.

487 LD affidavit 218-224/1999, p. 16.

488 LD warrant 222/1999.

489 NSWCC Transcript of LD222/1999, Tape T99/130, 4 June 1999, pp. 79-80.

490 NSWCC Transcript of LD222/1999, Tape T99/130, 4 June 1999, p. 80.

491 NSWCC Transcript of LD222/1999, Tape T99/130, 4 June 1999, p. 80.

492 LD affidavit 241-247/1999.

493 LD affidavit 241-247/1999, p. 20.



Those four items of information were repeated in nine further affidavits sworn between 16 July and 21 December 1999. None of them named Officer P as a person to be listened to or recorded,<sup>494</sup> and she was not named in any of the associated warrants.

On 25 June 1999, Sea again met with MSO6 and made an authorised recording of the conversation.<sup>495</sup> The following exchange attributes a comment to Officer P about the issue of Section 181D notices:

[MSO6]: *Build up, probably September and the rest of us, 'cause everyone'll get a bloody 181, I reckon.*

S: *You reckon?*

[MSO6]: *I think so. Although, look, [Officer P] only says, she says a couple but, er, just because you get a 181 doesn't mean, doesn't mean shit really.*<sup>496</sup>

On 28 July 1999 Sea made an authorised recording of a conversation with MSO11.<sup>497</sup> They discussed the likely fate of certain officers associated with Task Force Magnum after the Ancrum investigation. Sea stated that – according to Officer P – Mascot Subject Officer 8 (MSO8) and the former head of Magnum (MSO13) would probably get removed under section 181D of the Police Act. There was also a brief general discussion about Officer P. Sea mentioned that she worked as a senior sergeant for the “toe cutters” under Brammer (Commander of SCIA). Sea went on to say that Officer P spoke to MSO1 and said “there's gonna be some 181's”.<sup>498</sup>

Officer P was also named within the facts and grounds paragraphs of two other affidavits sworn on 11 June 1999<sup>499</sup> and 2 July 1999<sup>500</sup> but not in a way that intimated she was suspected of being corrupt or for any other reason.

The next affidavit naming Officer P as a person Mascot proposed to listen to or record was sworn by a Mascot investigator on 11 January 2000.<sup>501</sup> It contained the previous four points (numbered 1 to 4). A further 13 affidavits prepared for LD warrants covering the period February to September 2000 contained the same four points and named Officer P as a person Mascot sought to listen to or record. Officer P was named on 39 LD warrants associated with the affidavits during this period. Operation Prospect cannot find evidence that Officer P was recorded during this period.

She was also named as a person to be recorded in a further 11 affidavits between October 2000 to April 2001, that repeated points 1 and 2 in the body of the affidavit. She was named in 33 LD warrants during the same period, but Operation Prospect cannot find evidence that she was recorded. She is also mentioned in the body of a further three affidavits between January to May 2001, but not as a person to be recorded and not named in the associated warrants. There is no evidence that she was recorded.

### **8.2.5 Mascot's concern that Officer P was interfering in Paddle investigation (early 2000)**

A document produced to Operation Prospect indicates that in early 2000 Mascot suspected Officer P might be interfering with an investigation into an allegation that police officers had verbally an offender who was at the time an informant for the NSWCC. The informant was codenamed 'Paddle'. Mascot's management of Paddle and investigation of the verballing allegation is examined in Chapter 14 of this report.

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494 LD affidavits 262-268/1999, 279-285/1999, 302-308/1999, 324-330/1999, 346-352/1999, 371-380/1999, 398-407/1999, and 427-436/1999.

495 LD warrant 222/1999.

496 NSWCC Transcript of LD222/1999, Tape T99/155, 25 June 1999, pp. 28-29.

497 NSWCC Transcript of LD266/1999, Tape T99/187, 29 July 1999.

498 NSWCC Transcript of LD266/1999, Tape T99/187, 29 July 1999, p. 17.

499 LD affidavit 226-227/1999.

500 LD affidavit 251-252/1999.

501 LD affidavit 007-014/2000.

On 16 February 2000 a solicitor with the Office of the Director of Public Prosecutions (ODPP) drafted a confidential file note relating to a meeting two days earlier between herself, Commissioner Phillip Bradley, the Director of Public Prosecutions (DPP), Assistant Commissioner Brammer and Superintendent Dolan.<sup>502</sup> The meeting was about Mascot's investigation of the allegation that police had verbaled Paddle. At the time, the ODPP was prosecuting Paddle for attempted armed robbery.

The ODPP solicitor's file note recorded that Bradley and Brammer advised her and the DPP that they had concerns about the integrity of some Internal Affairs officers who were the subject of a covert inquiry. The note went on to say that correspondence and communications between the ODPP and IA may be "leaked" by corrupt officers or IA officers. The note stated:

*Mr Bradley advised that the covert inquiries using Sea were continuing and that two of the Internal Affairs investigators (a police officer and Officer P) were under suspicion for trying to stymie the [Paddle] investigation.<sup>503</sup>*

This file note was the only document produced to Operation Prospect that mentioned any concern that Officer P may have been attempting to "stymie" the Paddle investigation. It is unclear why Bradley formed this view of Officer P or how she was thought to be involved. There is no evidence that Mascot pursued Bradley's suspicion, and it was not repeated in any operational documents or LD affidavits.

## 8.2.6 Officer P subject to TIs and integrity test (September to October 2000)

In September 2000, Mascot was investigating information that MSO6 and two other officers were conspiring to give false evidence about a drink driving charge that MSO6 was facing at the time.

To test the suspicion that Officer P could be leaking confidential IA information, Mascot planned to get her involved in prosecuting the drink driving charge. The strategy was described in an Information Report compiled by Moore on 14 September 2000:

*It is anticipated the involvement of Internal Affairs staff in the [MSO6] prosecution will raise suspicion and concern within the [MSO6] camp. Such concern may transpire into dialogue between the conspirators. Other potentially positive outcomes include greater SCU control and knowledge of the prosecution case. Potential negative results of such a strategy would include an anticipated suspicion of [MSO6] and others in relation to the motivation for Internal Affairs involvement in the brief. Any such suspicion could result in [MSO6] becoming paranoid and minimising compromising conversation about the matter. Involvement of staff specifically associated with Mascot would create an awareness among police of an apparent Mascot interest in the [MSO6] prosecution, such perceptions would be detrimental to the Mascot Reference. For this reason it would be preferable to utilise [Officer P] as the Internal Affairs officer overseeing the [MSO6] prosecution. [Officer P] has previously worked with a number of Mascot targets including [MSO6] and has in the past demonstrated that she is prepared to talk openly to [MSO6] and others about the status of Internal Affairs investigations directly involving those persons. If [Officer P] is tasked with the [MSO6] investigation the proposed value in intercepting her home and mobile phone should be assessed.<sup>504</sup>*

The strategy outlined in Moore's Information Report resulted in TI warrants being taken out on the telephones of MSO6, Officer P and a former police officer.

502 [ODPP solicitor], File Note, 'Confidential note for Director's safe relating to submission dated 16/2/00', meeting held regarding Paddle, 16 February 2000.

503 [ODPP solicitor], File Note, 'Confidential note for Director's safe relating to submission dated 16/2/00', meeting held regarding Paddle, 16 February 2000.

504 NSWCC Information Report, (SOD155) Assessment of potential strategies – outcomes re the [MSO6] current PCA matter, reporting officer: Moore, 14 September 2000, pp 2-3.

On 15 September 2000 Dolan sent an email to Burn with the subject line 'get your guns' – providing the work, home and mobile telephone numbers for Officer P and signed off 'we're smokin'.<sup>505</sup> Burn forwarded the email to Moore and another Mascot investigator the same day.<sup>506</sup> The minutes of a Mascot meeting (attended by Bradley, Burn and the majority of the Mascot team) dated 18 September 2000 record that TI affidavits were being prepared for the telephones of MSO6 and Officer P. The minutes also noted that Officer P was "associated" with MSO1.<sup>507</sup> The SCIA weekly operational report, dated and signed by Burn on 18 September 2000, also described the "proposed activity" – "TI affidavits for [MSO6], [another officer], [Officer P] being prepared".<sup>508</sup>

Minutes from a Mascot meeting held on 22 September 2000 confirm that the TI affidavit for Officer P's telephone had been prepared and would be amended to include her mobile and landline telephone numbers along with those of MSO6 and another officer. Those minutes noted that Officer P "will probably be in contact with [MSO1] and [Mr N]".<sup>509</sup> As outlined in Chapter 7, Mr N was a former head of Ancrum who Mascot had suspected was a source of leaked confidential information from IA.

On 28 September 2000, Moore swore an affidavit in support of an application for six TI warrants for the telephones of an officer (mobile), MSO6 (business, home and mobile) and Officer P (home and mobile). The application sought the TI warrants for a period of 30 days. It was anticipated that the hearing on the drink driving charge would occur within that timeframe. The application was approved the same day by Bradley as the Commissioner of the NSWCC, and granted the same day by a judicial officer.<sup>510</sup>

The relevant paragraphs of the TI Affidavit relating to Officer P stated:

*[MSO6] said [Officer P] had told him the MAGNUM investigation would be finalised by September. Internal Affairs are currently reviewing all matters investigated by MAGNUM. I suspect there has been corrupt contact between [MSO6] and [Officer P].*<sup>511</sup>

...

*If the warrants are granted, Commission investigators intend to orchestrate a situation which will stimulate conversation between [MSO3], [MSO6] and [another officer] in relation to [MSO6]'s forthcoming court proceedings. Investigators have caused an anonymous letter of complaint (the NSWCC letter) to be sent to Internal Affairs. The NSWCC letter warns Internal Affairs investigators that [MSO6] will lie under oath and claim he was not the driver of the vehicle on the 13 April 2000. The NSWCC letter infers that [MSO6] may receive 'special' treatment due to his associations with a number of serving NSW police officers. It is suspected that Internal Affairs will nominate a case officer to handle the complaint and to oversee the prosecution case against [MSO6]. I suspect [Officer P] has previously leaked confidential Internal Affairs information to [MSO6]. I further suspect that [Officer P] will become aware of the NSWCC letter and the Internal Affairs presence during the court proceedings and that [Officer P] will again leak the information to [MSO6]. Once aware of the situation, I suspect [MSO6] will contact [MSO3] and [a police officer] to discuss the fabrication of evidence.*<sup>512</sup>

The affidavit included an analysis of call charge records for MSO6 between April and June 2000. The records show contact with MSO3 and the other police officer named in the warrant application. The record does not show contact between MSO6 and Officer P's telephone services.

505 Email from Superintendent John Dolan, Mascot Reference, NSWCC, to Detective Inspector Catherine Burn, Mascot Reference, NSWCC, 15 September 2000, contained in email from Detective Inspector Catherine Burn, Mascot Reference, NSWCC to [a Mascot investigator] and Detective Sergeant Greg Moore, Mascot Reference, NSWCC, 15 September 2000.

506 Email from Detective Inspector Catherine Burn, Mascot Reference NSWCC, to [a Mascot investigator] and Detective Sergeant Greg Moore, 15 September 2000.

507 NSWCC, *Confidential Minutes of Mascot meeting*, 18 September 2000.

508 NSWCC, *Weekly operational report for week ending 18 September 2000*, dated 18 September 2000.

509 NSWCC, *Confidential Minutes of Mascot meeting*, 22 September 2000.

510 TI warrants E0885/0, E0886/0, E0887/0, E0888/0, E0889/0, and E0890/0.

511 TI affidavit 099-104/2000, p. 8.

512 TI affidavit 099-104/2000, pp. 15-16.

The reference in the affidavit to the strategy of sending an anonymous letter of complaint to IA is the first documentation of what appears to be an integrity test of Officer P. Operation Prospect has located an integrity test that was signed by Brammer on 23 October 2000.<sup>513</sup>

The 'anonymous letter' strategy was also mentioned in the minutes of a Mascot Team meeting on 3 October 2000.<sup>514</sup>

Brammer held the required delegation to authorise integrity tests. In approving the integrity test on Officer P on 23 October 2000, he also approved the Operation Plan for the test – which was headed 'New South Wales Police Service – Operation Plan'. This suggests it was drafted using a NSWPF template. Burn was listed under the heading 'Control'. The term 'control' is not defined in the NSWPF Integrity Testing policy, but Operation Prospect understands that it refers to the person in charge of the integrity test.

Part of the Operation Plan cited:

*Evidence and Intelligence is held suggesting [Officer P] of the Special Crime and Internal Affairs Investigation Unit, contravenes regulations 55 and 56 of the Police Service Regulation 1990 in that she does not treat all official information as strictly confidential. Further that she is likely to communicate information without proper authority to unauthorised persons. Listening device product is held where [MSO1] states that he can speak to [Officer P] and get information about current IA investigations.*

*It is known that she has close associations with former officer [Mr N], former Detective Sergeant [MSO6], [MSO1] and [MSO3]. It is also known that a corrupt association exists between [MSO6], [MSO1] and [MSO3]. A further corrupt association exists between [Mr N] and [MSO6].<sup>515</sup>*

The strategy for the integrity test was the same as that outlined in the TI affidavit sworn by Moore on 28 September 2000. Officer P's conduct would be monitored by the telephone intercept.<sup>516</sup>

A point to note is that a TI warrant can only be granted to assist in the investigation of a serious crime (see Appendix 3, Volume 1). The TI affidavit sworn by Moore stated his view that, "I suspect there has been corrupt contact between [MSO6] and [Officer P]", and referred to her leaking information to MSO6. By contrast, the integrity test Operation Plan approved by Brammer places the suspicion no higher than breaching the Police Service Regulation 1990.

Moore made a further application on 26 October 2000 for TI warrants applying to the former officer's mobile telephone, MSO6's home service and Officer P's mobile and home service.<sup>517</sup> The supporting affidavit contained the following information about Officer P:

- Officer P had told MSO6 that the Magnum investigation would be finalised by September.
- Mascot had sent a confidential anonymous letter to IA warning that MSO6 would lie under oath, and Moore suspected Officer P would leak the contents of that letter to MSO6.
- MSO6's hearing had been stood over to 31 October 2000 and the suspected leak was likely to occur before that hearing.

The affidavit also contained the same information about call charge records as in the earlier affidavit of 28 September. This was that there had been telephone contact in the period April-June 2000 between MSO6, MSO3 and the other officer, but no mention was made of those officers making contact with Officer P by telephone.

<sup>513</sup> NSWPF, Operation Plan, Operation no. IT 00/007, Operation Mascot, 23 October 2000, p. 1. Note that the typewritten date of approval in this document of 28 September 2000 was crossed out and replaced with the handwritten notation "23.10.00 6.55am".

<sup>514</sup> NSWCC, *Confidential minutes of the Mascot team meeting*, 3 October 2000.

<sup>515</sup> NSWPF Operation Plan, Integrity Test Application IT 00/007, Target: [Officer P], 23 October 2000, p. 1.

<sup>516</sup> NSWCC *Confidential minutes of the Mascot Team meeting*, 3 October 2000.

<sup>517</sup> TI affidavit 132-135/2000.

Operation Prospect asked Moore to identify the corruption involving MSO6, Officer P and MSO3 that justified the TI. Moore's response was that he thought the affidavit referred to a leak about the details of a covert police investigation (Ancrum's investigation into Magnum), and that Officer P might have conversations with MSO6 and MSO3 about that matter.<sup>518</sup> The legal basis for the TI warrants is examined further in section 8.2.10.4.

On 3 November 2000 as part of the integrity test, Mascot told the IA Manager of Investigations about an anonymous phone call that had been received. The caller purportedly said he had seen MSO6 on the night that he was charged with the drink driving offence. MSO6 was so intoxicated he could not walk and then got into his own car. The caller said he had earlier written a letter about this but was now ringing as he had seen MSO6 continue to drive in the area after he had lost his licence.<sup>519</sup>

On 15 November 2000 Mascot intercepted a telephone call between Officer P and the IA Manager of Investigations. The Manager questioned why Officer P had not investigated the anonymous phone call. Officer P said that she did not want to raise suspicion by questioning people at the licensed premises as it was a small club. She was concerned this could affect IA inquiries into who may give false evidence. She told the Manager they should meet to discuss the matter.<sup>520</sup>

Mascot was unable to record the meeting between Officer P and the Manager of Investigations. Instead, Burn met with the Manager on 16 November 2000 and he confirmed that Officer P had decided that the anonymous call information should be passed to the officer in charge of the drink driving matter for investigation.<sup>521</sup>

As discussed in section 8.2.10.3, the apparent outcome was that Officer P passed the integrity test. However, Mascot did not record this or convey it to others as required by the integrity testing policy. This outcome was also not referred to or reflected as exculpatory information in subsequent LD affidavits.

## 8.2.7 Officer P seconded to work for Mascot (October 2001)

After Mascot was given responsibility for finalising the Ancrum investigation, consideration was given to inducting Officer P into Mascot to assist with this work. On 25 May 2001 Burn drafted a risk assessment on Officer P that set out the pros and cons of bringing her into Mascot<sup>522</sup> (Operation Prospect was only able to locate an unsigned version of this document). Although the risk assessment did not favour bringing Officer P into Mascot at that time, she was inducted into the NSWCC under the Mascot reference from 9 October 2001<sup>523</sup> – once the overt phase of the Mascot investigation had begun through the PIC Operation Florida hearings.<sup>524</sup>

## 8.2.8 Mascot considers further intelligence about Officer P (November 2001)

Mascot undertook a preliminary assessment of an allegation against Officer P after she started working with Mascot. In recorded conversations between Sea and MSO6 in March 2000 and between Sea and MSO8 in May 2000, MSO6 and MSO8 both speculated that Officer P was worried when the Royal Commission into the New South Wales Police Service considered allegations relating to a task force she had worked for in the 1980s and her association with a known drug supplier.<sup>525</sup> The matter was recorded on the Mascot Schedule of Debrief, although it was not known precisely what association Officer P allegedly had with the drug supplier.<sup>526</sup>

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518 Ombudsman Transcript, Greg Moore, 17 February 2015, p. 42.

519 NSWCC Information Report, *Further information forwarded to [Officer P] at Internal Affairs Investigation Unit by [Manager of Investigations, Internal Affairs] re SOD155.*, reporting officer: [Mascot investigator], 6 November 2000.

520 NSWCC Information Report, [Officer P] and [the Manager of Investigations within Internal Affairs] *discussing [MSO6] PCA matter. SOD155*, reporting officer: [Mascot investigator], 16 November 2000.

521 NSWCC Information Report, *Meeting between [Officer P] and [the Manager of Investigations within Internal Affairs] on the 15-11-00 re [MSO6]s PCA matter SOD155.*, reporting officer: [a Mascot investigator], 16 November 2000.

522 NSWCC, *Risk Assessment / Strategies re [Officer P]*, Catherine Burn, 25 May 2001.

523 NSWCC, *Induction for Task Force Police and other officers, [Officer P]*, 9 October 2001.

524 The PIC Florida hearings commenced on 8 October 2001.

525 NSWCC Transcript of LD 074/2000, Tape T99/404, 16 March 2000, p. 11 and NSWCC Transcript of LD 130/2000, Tape T99/498, 30 May 2000, p. 142.

526 Schedule of debrief, NSWCC Summary of SOD215 prepared by [a Mascot investigator], 20 November 2001.



It appears that this issue was identified afresh in a review of Sea's recorded conversations. There is nothing else to indicate why Mascot reviewed the allegation. On 21 November 2001 a Mascot investigator compiled a summary report about the matter. The report stated there was no reliable evidence of wrongdoing by Officer P:

*... the suspicion is merely speculation by other police. Checks reveal that [Officer P] has not had anything to do with any charges in relation to [the known drug supplier].*<sup>527</sup>

A police officer who worked for the SCU in SCIA prepared a further document headed 'Risk Assessment - Status of involved officer', dated 6 February 2002.<sup>528</sup> That report was compiled in response to Officer P's impending nomination to the rank of Inspector. The report noted that there was no specific allegation against Officer P and no evidence to support the inference that she had engaged in corrupt or criminal behaviour. The officer therefore recommended no further action against Officer P and concluded that there was no material that questioned her integrity sufficiently to prevent her promotion proceeding.<sup>529</sup> The report was signed by Burn on 15 February 2002 and Officer P was promoted to Inspector on 1 March 2002.

### 8.2.9 Officer P's evidence about her induction into Mascot

Officer P gave evidence to Operation Prospect. She said that officers from Task Force Magnum would call her to find out what was happening with Task Force Ancrum:

*... they knew me, so they'd ring me up, yeah... And I'd just say, "It's still going." Or whatever... Yeah, but as I said, I'd tell [Manager of Investigations, Internal Affairs] each time.*<sup>530</sup>

Operation Prospect asked Officer P about her induction into the NSWCC on 9 October 2001. She answered: "That was the day that my whole world was shattered to the point of no return".<sup>531</sup> She explained that by that time she had become anxious for a variety of work related reasons, including investigation requests being refused for unusual reasons and being told by a colleague that Boyd-Skinner was seen searching through her desk. Officer P recalled that when she started working for Mascot, Boyd-Skinner apologised and advised he was doing what he was directed to do.<sup>532</sup>

Officer P described a meeting with Dolan and Burn before her induction into the NSWCC Mascot reference:

- A: *... they kind of just laid it out on the table that, um, I'd been investigated, my friends had been investigated, my family had been investigated, my phone had been off, um, I had been followed during a period of time. They didn't give me a period of time thing, um, - - -*
- Q: *Did they give you an allegation or - - -*
- A: *Nope.*
- Q: *- - - reason why?*
- A: *Nope.*
- Q: *And you obviously must have said, why.*
- A: *I couldn't say anything. I was shattered.*
- Q: *Yep.*
- A: *I walked into a room and I thought I was a pretty honest person and they have just delivered all this stuff and when I walked out, there was nothing, nothing left of me. I couldn't even trust the words that were going to come out of my mouth because I didn't know whether I could trust myself anymore.*

...

<sup>527</sup> Schedule of debrief, NSWCC Summary of SOD215 prepared by [a Mascot investigator], 20 November 2001.

<sup>528</sup> NSWCC, Risk Assessment for [Officer P], [a police officer], 6 February 2002.

<sup>529</sup> NSWCC, Risk Assessment for [Officer P], [a police officer], 6 February 2002.

<sup>530</sup> Ombudsman Transcript, [Officer P], 12 May 2014, p. 64.

<sup>531</sup> Ombudsman Transcript, [Officer P], 12 May 2014, p. 65.

<sup>532</sup> Ombudsman Transcript, [Officer P], 12 May 2012, pp. 65-70.



Q: *And was the purpose of them coming clean or – or doing, you know, telling you all of this, was the purpose then that they wanted to say to you, “And [first name], now that we’ve told you everything, can you come over and help us out?”*

A: *That’s exactly what they bloody said.*

Q: *That was the purpose. So - - -*

A: *It was like, we’ve got all this stuff from Magnum and Ancrum that needs to be fixed up, can you and [another officer] do it.<sup>533</sup>*

## 8.2.10 Analysis

Officer P was named both as a person to be recorded and within the facts and grounds paragraphs of 29 LD affidavits that were sworn in support of 81 LD warrants that named her. She was also named in the facts and grounds paragraphs of a further 19 LD affidavits, but not in any of the corresponding warrants. She was named in two TI affidavits that were sworn in support of four TI warrants (two for her mobile service and two for her home service). The available evidence suggests that Officer P was recorded on 10 occasions under those TI warrants. She was also mentioned in the body of a further 10 TI affidavits, but not named either as a person whose telephone calls were to be intercepted or in the associated warrants.

This section examines the adequacy and accuracy of the information that was used in the affidavits, the conduct of the integrity test on Officer P, and the use of TI. The section ends with a general assessment of Mascot’s investigation of Officer P.

### 8.2.10.1. Adequacy of the grounds for suspicions against Officer P

The strength and reliability of the available documentary evidence that was initially used as the grounds for Mascot’s investigation of Officer P was weak.

Officer P was first mentioned in an affidavit on 12 March 1999.<sup>534</sup> It correctly quoted a recorded conversation between Sea and MSO1 on 4 March 1999, in which MSO1 said: “Even [nickname of Officer P] said it wasn’t over”. This was repeated in many affidavits.

Standing by itself that remark said very little. However, accepting that it could open a window on a larger picture, other elements of that picture then become important. Officer P’s remark was reportedly made in early March 1999, when Ancrum was an overt investigation and MSO1 was aware he was being investigated. Those facts are not included in the affidavit of 12 March 1999. In those circumstances, it is questionable whether the remark attributed to Officer P was inappropriate. An investigator in her position may understandably tell a person who is aware they are under investigation that it is ongoing – ‘not over’ – and provide an estimated timeframe for completion. It would be different if the investigator leaked information about police surveillance operations that could compromise an investigation. However, there is nothing to suggest either that Ancrum was using those or similar methods or that Officer P revealed anything of that kind.

The Mascot officers who were responsible for preparing and deposing the affidavits that named Officer P gave evidence to Operation Prospect that there may have been other available information that roused their concerns. It was known that an affidavit prepared within Ancrum had been leaked, and that Officer P was friendly with or spoke to some of the key Mascot targets. The difficulty of investigating police corruption, keeping an eye on the ‘broader picture’, and ‘keeping in the frame’ someone in Officer P’s position were other matters mentioned in submissions.

There is, however, nothing else of substance in the Mascot records to explain the investigation of Officer P. This is perhaps surprising, given the Mascot practice of recording more rather than less and including hearsay and untested allegations. More importantly, the core issue for Operation Prospect is whether the affidavits that were

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<sup>533</sup> Ombudsman Transcript, [Officer P], 12 May 2014, pp. 72-73.

<sup>534</sup> LD affidavit 105-111/1999, pp. 12-13.

prepared in support of warrant applications for the approval of judicial officers presented a fair, balanced and accurate picture of the information known to Mascot.

Additional information about Officer P was added to the affidavits after June 1999. It was stated that MSO14 had relayed to other officers the advice he had received from Officer P about the progress of the Ancrum investigation. However, this was unsupported hearsay information and merely repeated the earlier allegation. Similarly, a comment by MSO6 that Officer P had given him advice on the Ancrum progress was added to an affidavit on 25 June 1999 (and subsequent affidavits), with the comment: "I suspect there has been corrupt contact between [MSO6] and [Officer P]". Nothing else was said to substantiate that comment.

The next worrying development is that this information about Officer P was relied on as the basis for an integrity test using TI of her mobile and home landline. The Operation Plan for that test said about Officer P that "she does not treat all official information as strictly confidential", "she is likely to communicate information without proper authority to unauthorised persons" and "it is known that she has close associations" with four other Mascot targets who were known to have corrupt associations with each other. That is not a fair representation of the evidence available to Mascot as recorded in other documents.

As discussed in section 8.2.10.3, Officer P apparently passed the integrity test. She was nevertheless named after 16 November 2000 in a further 10 LD affidavits and 31 warrants (27 LD warrants and four TI warrants) as a person Mascot wanted to listen to or record. None of the affidavits referred to the integrity test or the outcome. Another point to note is that the affidavits do not spell out the connection between these concerns about Officer P and naming her in LD warrants. It was not explained how recording her private conversations would shed light on whether she was involved in or had knowledge of a prescribed offence, and why other investigation methods were not practically available. Specifically, it is not clear (and was not spelt out) how recording her private conversations would yield evidence about whether she was inappropriately passing on information about Task Force Ancrum. Interestingly, there is no evidence that Mascot ever tasked Sea to record Officer P, or that she was likely to be engaging in a conversation with Sea that he could record. There is also no evidence to indicate that Mascot took steps to verify the allegations and hearsay evidence it had received about Officer P.

Kaizik made a written submission to Operation Prospect about his role as the deponent of LD affidavit 105-111/1999.<sup>535</sup> The submission is summarised in Chapter 7 (section 7.3.7.3). It referred to Kaizik's junior status at the time and reliance on others, and acknowledged the criticisms that are now made of the work undertaken in Operation Mascot.

### **8.2.10.2. Inaccurate presentation of information in affidavits**

A related deficiency in the affidavits is that the information about Officer P was sometimes presented inaccurately.

The affidavit of 4 June 1999<sup>536</sup> refers to a conversation between Sea and MSO6 on 18 May 1999, in which MSO6 relays information that MSO14 had told him about Officer P. The affidavit uses direct quotes to capture MSO6's remarks. However, the conversation between MSO6 and Sea was not properly recorded due to a malfunction with the LD that Sea was wearing and there is no actual recording or transcript of that meeting.<sup>537</sup> The affidavit may therefore give a misleading impression, especially since MSO6 was himself conveying hearsay information.

The affidavit of 4 June 1999 also refers to a conversation between Sea and MSO1 on 19 May 1999. The affidavit states that MSO1 "confirmed"<sup>538</sup> he had met with MSO6 who outlined information he obtained from MSO14 and Officer P about officers receiving section 181D notices. In fact, MSO6 had not spoken directly to Officer P, and his information came only from MSO14. In effect, MSO1 was giving a hearsay account of a conversation with MSO6, who was giving a hearsay account of his conversation with MSO14.

<sup>535</sup> Kaizik, T, Submission in reply, 14 July 2015, pp. 1-2.

<sup>536</sup> LD affidavit 218-224/1999, pp. 15-16.

<sup>537</sup> NSWCC Information Report, *Contact with Sea – Meeting between [MSO6]/Sea*, reporting officer: Burn, 20 May 1999, p. 1.

<sup>538</sup> LD affidavit 218-224/1999, p. 16.

Those inaccuracies – that presented a stronger case against Officer P than the facts supported – were repeated in 24 subsequent affidavits between 25 June 1999 and 14 September 2000. This suggests that the deponents of those affidavits copied the information from the 4 June 1999 affidavit and did not check the source material – which in this case was an Information Report dated 20 May 1999 that noted the recording device had malfunctioned.<sup>539</sup>

Items of information that could be exculpatory of Officer P were not included in the affidavits. Two examples are not mentioning the positive result in the integrity test, and that call records did not reveal any contact between her and other Mascot targets.

As discussed in other chapters in this report, these were systemic Mascot problems – information was presented inaccurately in affidavits, it was presented more strongly than the facts warranted, exculpatory information was not included, and these flaws were carried over into rollover affidavits without further checking (see also Chapter 16).

### 8.2.10.3. Integrity test on Officer P

There are a number of issues and problems with the integrity test conducted by Mascot on Officer P:

- First, under section 207A of the Police Act, the Commissioner of Police may authorise an officer to test the integrity of another officer. Officer P was a NSWPF officer and the test was approved by Brammer under delegation from the Commissioner. However, the test was conducted as part of the Mascot investigation – which was being managed by the NSWCC. It is questionable whether it was appropriate in those circumstances to conduct an integrity test as part of a NSWCC investigation. This matter is canvassed more fully in Chapter 17.
- Second, the decision to conduct the integrity test was based on the same information that was used in LD supporting affidavits. As discussed in section 8.2.10.1, this information is best described as weak, hearsay information that was overstated and inaccurately represented in some documents – and was not linked to a serious criminal offence. An example was the statement in the Information Report of 14 September 2000 that outlined the strategy for the integrity test – that Officer P “has in the past demonstrated that she is prepared to talk openly to MSO6 and others about the status of Internal Affairs investigations directly involving those persons”.<sup>540</sup> Similarly, the TI affidavit of 28 September 2000<sup>541</sup> that was sworn in relation to this test stated: “I suspect there has been corrupt contact between [MSO6] and [Officer P]”, “I suspect [Officer P] has previously leaked confidential Internal Affairs information to [Officer P]” and she “will again leak the information to [MSO6]”.

By the time the integrity test was devised – in September 2000 – Mascot had collected a considerable volume of LD product and information about the officers to whom Officer P had allegedly leaked information. None of that revealed any credible intelligence or evidence that Officer P had leaked confidential information. Also, none of those officers revealed in their extensive recorded conversations with Sea that Officer P had ever leaked confidential information that could compromise or jeopardise a criminal investigation.

The NSWPF made a written submission to Operation Prospect in which it explained the value of integrity tests and why one was done for Officer P.<sup>542</sup> The main points were that the real target of the integrity test appears to have been MSO6 not Officer P, she was included because of a suspicion that she may have been involved by passing confidential information to others, and an integrity test is an effective and non-invasive means of testing integrity concerns about officers. Those points are noted. However, they do not explain the inadequate and inaccurate presentation of information about Officer P in the preparatory documentation, including the TI supporting affidavits. Understandably, Officer P reacted strongly in her evidence to Operation Prospect to the knowledge that she had been subject to an integrity test.

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539 NSWCC Information Report, *Contact with Sea - Meeting between [MSO6]/Sea*, reporting officer: Burn, 20 May 1999, pp. 16-17.

540 NSWCC Information Report, *(SOD155) Assessment of potential strategies – outcomes re the [MSO6] current PCA matter*, reporting officer: Moore, 14 September 2000, p. 2.

541 TI affidavit 99-104/2001, pp. 8, 15-16.

542 NSWPF, Submission in reply, 10 November 2015, pp. 6-9.

A third problem with the integrity test is that the outcome – that apparently Officer P passed the test – was not recorded or passed on to the Commissioner of Police and the PIC, as required by the NSWPF integrity test procedures. The outcome was also not referred to in subsequent LD affidavits that named Officer P as a person Mascot sought to listen to or record. There does not appear to be any TI product that shows Officer P leaked the details of the anonymous letter to MSO6 or any other officer. She suggested to the Manager of Investigations (IA) that the anonymous information be assessed by the officer who was in charge of investigating whether MSO6 was implicated in the drink driving event. There is nothing to suggest Officer P acted corruptly on receiving the information at the heart of the integrity test.

The only reference in Mascot documentation to the outcome of the integrity test was in a Mascot risk assessment conducted in May 2001, which notes that although Officer P “did not participate in misconduct or corruption during this strategy, her ability to effectively and thoroughly conduct the investigation was assessed as bordering on incompetent”.<sup>543</sup> No reason was given for the “bordering on incompetent” comment.

#### **8.2.10.4. Use of telephone intercepts to support the integrity test of Officer P**

Mascot’s grounds for obtaining TI warrants in September and October 2000<sup>544</sup> to record Officer P’s conversations did not meet the legislative threshold for the use of TIs.

The application for the TI warrants was made under the *Telecommunications (Interception and Access) Act 1979* (Cth) (TI Act). An application could only be made to investigate if someone was involved in an offence – that is, “has committed, or is committing the offence”, or is suspected on reasonable grounds “of being likely to commit, the offence”.<sup>545</sup> Moore explained in evidence that the offence that Officer P may commit or have committed was corruption, contrary to section 200 of the Police Act. That section provided:

##### **200 Bribery or corruption**

- (1) *A member of the Police Service who receives or solicits any bribe, pecuniary or otherwise, is guilty of an offence.*
- (2) *A person (including a member of the Police Service) who:*
  - (a) *gives, or offers or promises to give, any bribe (pecuniary or otherwise) or any other benefit to a member of the Police Service, or*
  - (b) *makes any collusive agreement with a member of the Police Service,**for the purpose of inducing the member to neglect his or her duty, of influencing the member in the exercise of his or her functions or of improperly taking advantage of the member’s position is guilty of an offence.*

Moore was asked to explain how Officer P’s conduct could fit within that section. Moore thought the TI on Officer P’s phone was justified because she might breach her duty by having further conversations with MSO6 and MSO3. Moore thought that Officer P may act in that way even though she may not necessarily be involved in corrupt conduct with them.<sup>546</sup>

Moore’s explanation does not clarify how Officer P’s conduct falls within section 200: it is not suggested that she had received or solicited a bribe, given or offered or promised to give a bribe to induce a police officer to neglect their duty, or made a collusive agreement with a police officer to induce the officer to neglect their duty. The evidence available to Mascot at that time did not support a reasonable suspicion that Officer P had done any of those things.

Moore also submitted that some weight should be given to the fact that affidavits were vetted and approved by other senior officers before being sworn.<sup>547</sup> That is a reasonable point. Nevertheless, the deponent of

<sup>543</sup> NSWCC, *Risk Assessment / Strategies re Officer P*, Catherine Burn, 25 May 2001.

<sup>544</sup> TI affidavits 99-104/2001 and 132-135/2001.

<sup>545</sup> *Telecommunications (Interception and Access) Act 1979* (Cth) (TI Act), s. 6B.

<sup>546</sup> Ombudsman Transcript, Greg Moore, 17 February 2015, p. 42.

<sup>547</sup> Moore, G, Submission in reply, 25 November 2015, p. 63.

an affidavit has a special responsibility to ensure that the information stated in the affidavit is correct. This responsibility is particularly important in affidavits that are first sworn in support of warrant applications against a particular person (see section 8.1).

#### **8.2.10.5. Responsibility for making and approving TI applications**

Bradley signed and approved the applications for the two TI warrants that authorised the interception of Officer P's telephone. This was in accordance with the NSWCC TI manual in force at the time which specified that it was NSWCC policy that a TI warrant application must be made by a member of the Commission<sup>548</sup> (under the NSWCC Act, a member of the Commission was the Commissioner and any Assistant Commissioner). The manual also stated that the application was required to be presented by the legal officer to the relevant member for signature, after the supporting affidavit had been sworn by the police officer and a draft warrant had been prepared and approved by the Solicitor to the Commission.<sup>549</sup>

An email from a Mascot investigator to Moore on 28 November 2000 – to alert him to the expiration of the TI warrants that named Officer P – indicated that Bradley had a practice of reviewing TI affidavits with TI warrant applications:

*Moorey, the t.i.'s for [Officer P]'s mobile and landline are due to expire on 24 December. As the affidavit is to be with Mr Bradley at least 7 days prior to the expiry date could you please ensure the updated information is with [the NSWCC legal officer] by the 14 December.*

*Thanks, [name]<sup>550</sup>*

It is reasonable to assume that Bradley reviewed the supporting affidavits in the case of the TI warrants to intercept Officer P's phones, which were supported by Moore's affidavits in September and October 2000. As stated at section 8.2.6, Bradley reviewed the supporting affidavits when he signed and endorsed the TI applications. As the affidavits deposited by Moore fell short of supporting a reasonable suspicion of Officer P's involvement in the offence of bribery or corruption, Bradley's decision to sign the warrant applications supported by Moore's affidavits is also open to criticism.

#### **8.2.10.6. Decision to target Officer P – overall assessment**

It is understandable that the Mascot team was anxious to ensure there was no threat to the integrity of their work. Their task was to identify corrupt officers who were still operating in the NSWPF, despite the report and reforms initiated by the Royal Commission into the NSW Police Service. A natural spill-over of that anxiety would be vigilance in ensuring that Mascot team members – and other NSWPF staff doing similar investigative and professional standards work – were not prone to corruption. The leak of information that had already occurred from Task Force Ancrum was an obvious concern. It was also reasonable that Mascot would examine further whether there was a worrying association or friendship between a NSWPF task force member and an officer who was under investigation.

That may explain why Officer P was selected for investigation based on flimsy and inadequate evidence, from the documentary record at least. In part, at least, the investigation was probably driven by a need to rule out potential integrity threats.

Understandable though that may be in the circumstances of the time, an investigation relying covertly on the use of LDs and TIs had to meet demanding legislative standards. One of the statutory requirements was that alternative methods of investigation and obtaining evidence had to be considered. It seems reasonably clear that the decision to investigate Officer P, and to continue doing so for 18 months, lost sight of that critical perspective.

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548 NSWCC, *Telecommunications Interception User Procedure Manual*, 28 July 1998, p. 8.

549 NSWCC, *Telecommunications Interception User Procedure Manual*, 28 July 1998, p. 12.

550 Email from [a Mascot investigator], Mascot Reference, NSWCC to Sergeant Greg Moore, Mascot Reference NSWCC, 28 November 2000.



Adverse findings are recorded below against four people for their part in obtaining LD and TI warrants to investigate Officer P's conduct. The written submissions of three people – Kaizik, Moore and Bradley – are summarised earlier. The fourth person – Burn – drew attention in her submission<sup>551</sup> to matters that have largely been covered above. These include Mascot's concern that a document had been leaked from Ancrum, Officer P's association with other people under investigation, Mascot's concern to safeguard the integrity of its own processes, and in those circumstances the need to maintain a broad frame of investigation. Burn also submitted that she had no role in the process for obtaining LD and TI warrants, and she relied on others and on checks and balances in the system to ensure that warrants were properly sought. Those points are accepted. It is nevertheless clear from the previous discussion (for example, sections 8.2.3, 8.2.4, 8.2.6 and 8.2.9) that Burn was involved as Mascot Team Leader in the discussions that led to the investigation of Officer P through use of LDs, TIs and an integrity test. This strategy of using intrusive investigation techniques was based on weak information and was not properly tested or assessed.

## 8.2.11 Findings

### 22. Kaizik

Kaizik's conduct as the deponent of LD affidavit 105-111/1999 sworn on 12 March 1999 – in support of an application for a LD warrant to listen to or record Officer P's private conversations – was unreasonable conduct in terms of section 122(1)(d)(i) of the *Police Act 1990*. As discussed in sections 8.2.3 and 8.2.10.2, the affidavit did not include other important information that would have affected the strength of the information presented in the affidavit about Officer P.

### 23. Moore

Moore's conduct as the deponent of TI affidavit 099-104/2000 sworn on 28 September 2000 and TI affidavit 132-135/2000 sworn on 26 October 2000 – in support of applications for TI warrants applying to Officer P's home and mobile telephones – was unreasonable conduct in terms of section 122(1)(d)(i) of the *Police Act 1990*. As discussed in sections 8.2.6 and 8.2.10.4, the affidavits overstated the strength of the information available to support an allegation that Officer P had or would engage in corrupt conduct.

### 24. Burn

Burn's conduct as the leader of the team that investigated Officer P through the use of LDs, TIs and an integrity test was unreasonable conduct in terms of section 122(1)(d)(i) of the *Police Act 1990*. As discussed in section 8.2.10, the investigation relied on weak information (including hearsay information) that was not properly tested or assessed in the context of other available information, and there was a failure to explain adequately the connection between the information available and the use of intrusive investigation techniques to investigate an allegation against Officer P. Burn was aware of or approved many of the steps that were taken in the investigation of Officer P, and was in a position to exercise better control over the investigation.

### 25. Bradley

Bradley's conduct in approving the applications for six TI warrants in September and October 2000, based on the TI supporting affidavits sworn by Moore, was unreasonable conduct in terms of section 26(1)(b) of the *Ombudsman Act 1974*. As discussed in sections 8.2.6 and 8.2.10.4, the affidavits did not contain information sufficient to demonstrate that the gravity of Officer P's alleged conduct justified the invasion of her privacy through the use of a TI, or that Officer P could be reasonably suspected of being involved in the relevant offence of bribery or corruption.

<sup>551</sup> Burn, C, Submission in reply, 25 September 2015, Appendix 3, pp. 15-19.



## 26. NSW Crime Commission

The NSW Crime Commission was responsible for the actions of members of the Mascot Task Force in naming Officer P in 81 LD warrants (29 of which named her as a person to be recorded or listened to), 48 LD affidavits, 12 TI affidavits and four TI warrants. As discussed in section 8.2.10, Officer P was investigated through the use of LDs, TIs and an integrity test. The decisions to use those intrusive techniques relied on weak information (including hearsay information) that was not properly tested or assessed in the context of other available information, and there was a failure to explain adequately the connection between the information available and the use of those techniques to support an investigation of an allegation against Officer P.

The NSW Crime Commission was responsible for the Mascot and Mascot II references and for the supervision of members of the Mascot Task Force. The actions taken by the Mascot Task Force with respect to Officer P indicate a lack of administrative rigour at the time in NSW Crime Commission document preparation processes. This was contrary to NSW Crime Commission policies, practices and procedures that should have been followed in the conduct of the Mascot references and in the preparation of affidavits and warrant applications.

The conduct of the NSW Crime Commission was unreasonable and otherwise wrong in terms of section 26(1)(b) and (g) of the *Ombudsman Act 1974*.

### 8.2.12 Recommendation

5. It is recommended under section 26(2) of the *Ombudsman Act 1974* that the NSW Crime Commission provide Officer P with a written apology for naming her in multiple LD and TI affidavits and warrants and making her the subject of an integrity test. Those actions were based on information that was not properly tested or assessed in the context of other available information, and without adequate examination of whether it was appropriate to use those intrusive investigation methods in relation to her.

## 8.3 Mascot investigation of Officer H

### 8.3.1 Introduction

Officer H was a Detective Senior Constable at the time that Mascot started investigating him in March 1999. He had previously worked with Sea on Task Force Borlu, which was set up in June 1997 to investigate drug importation and supply activities.

Task Force Borlu came to Mascot's attention as it was suspected that an IA officer, Officer K, had leaked information to Officer H that an investigation of Borlu was underway. It was alleged that Officer H then did an electronic 'sweep' of the Borlu offices to check if IA had installed any LDs as part of its investigation. Mascot considered that Officer H may have committed the offence of hindering an investigation by doing this sweep. Mascot deployed Sea to find out if Officer H would repeat this conduct by doing another sweep, or would provide information about either the sweep of Borlu or the alleged leak of information from IA.

Officer H complained to Operation Prospect that he was unfairly targeted by Mascot as a result of having had a personal difference with Dolan, who was the Commander of the Special Crime Unit, and was included on LD and TI warrants with "little if any evidence of wrongdoing".<sup>552</sup> He also complained that he was subject to 10 or 11 integrity tests during Mascot's investigation of the allegations against him. In his view, this amounted to attempted entrapment and was contrary to relevant legislation and guidelines.<sup>553</sup>

This section examines Mascot's investigation of Officer H, which formally began when he was named in LD warrant 109/1999. Three themes are examined:

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<sup>552</sup> Email from [Officer H], NSWPF to Operation Prospect, NSW Ombudsman, 13 December 2012.

<sup>553</sup> Email from [Officer H], NSWPF to Operation Prospect, NSW Ombudsman, 13 December 2012.

- the integrity testing of Officer H
- the recording of Officer H when his name was not on a warrant
- the inclusion of Officer H's name on various warrants without sufficient reasons being given in the supporting affidavits.

### 8.3.2 Mascot begins investigating Officer H (January to March 1999)

Sea named Officer H twice during his initial debrief on 9 January 1999. First, Sea listed Officer H as one of over 20 officers who he had worked with on Task Force Borlu. In the debrief Sea was asked if he was aware of any criminal activity, misconduct or corruption at Borlu. Sea did not name Officer H specifically, but indicated that “just about everybody” was involved in lower level “roting”:

[Sea] *The only thing that I would say that would have occurred was probably a little bit of roting on TA [travel allowance] and meal and overtime and I was quite conscious of all those things at that time although I'm not saying there wasn't occasions where I didn't and especially in relation to say speeding fines where the excuse was made up and forwarded off as to, you know, probably being a sighting of a similar suspect vehicle or something along those lines.*

[Burn] *So would they have been common practices throughout Task Force Borlu?*

[Sea] *Yes.*

[Burn] *And who would engage in those practices?*

[Sea] *Oh, I think just about everybody had a crack at it.*<sup>554</sup>

Sea's second reference to Officer H was in relation to a robbery in which investigators suspected that police, including MSO6, had been involved. Sea stated: “it was leaked ... I think [Officer K], [Officer K] leaked it to [Officer H] that [MSO6] was the suspect and his brother had some tie up or something along those lines”.<sup>555</sup>

During Sea's debrief, Burn read out a list of officers who Sea worked with at the Drugs Unit – including Officer H – and asked Sea: “Do you have knowledge of any of these people being engaged in criminal activity or corruption or misconduct?”<sup>556</sup> Sea responded: “nothing that comes to mind”.<sup>557</sup>

Sea did not provide any more specific information about Officer H during this initial debrief, and did not provide any evidence directly tying him to corrupt activity.

Officer H first appeared in a Mascot LD affidavit and warrants on 12 March 1999, when he was listed in LD warrant 109/1999 with 118 others.<sup>558</sup> There was no information provided in the supporting affidavit as to why most of those people, including Officer H, were listed or why Mascot considered their private conversations should be listened to and recorded by LD. In short, it is not clear why Officer H was targeted for investigation at this time – but it is likely it was a result of Sea's references to him in relation to Borlu.

The warrants authorised the recording of Officer H's private conversations between 12 March and 2 April 1999, but he was not recorded during that period. Officer H was not named again on any other Mascot warrant until May 2001. However, during that two year period, Mascot continued to target Officer H by listening to and recording some of his conversations with Sea and encouraging him to participate in an integrity testing exercise. Some of the recordings were unintentional – and would fall within the exception in section 5(2)(d) of the LD Act for “the unintentional hearing of a private conversation by means of a listening device”. However, some other recordings of Officer H were intentional but no warrant was in place naming him as a person to be recorded. It is probable those recordings were unlawful.

<sup>554</sup> NSWCC, Record of interview between Detective Inspector Burn, Detective Senior Sergeant Henry and 'Sea', 9 January 1999, p. 62.

<sup>555</sup> NSWCC, Record of interview between Detective Inspector Burn, Detective Senior Sergeant Henry and 'Sea', 9 January 1999, p. 68.

<sup>556</sup> NSWCC, Record of interview between Detective Inspector Burn, Detective Senior Sergeant Henry and 'Sea', 9 January 1999, p. 70.

<sup>557</sup> NSWCC, Record of interview between Detective Inspector Burn, Detective Senior Sergeant Henry and 'Sea', 9 January 1999, p. 70.

<sup>558</sup> LD affidavit 105-111/1999, p. 3, LD warrant 109/1999, LD warrant 110/1999 and LD Warrant 111/1999.

### 8.3.3 Integrity testing of Officer H proposed (May 2000)

On 26 August 1999 Officer H was recorded in a conversation with Sea and MSO11. It appears this recording was unintentional as Sea was tasked to record MSO11, who was named on a LD warrant at the time as a person who could be recorded.<sup>559</sup> Mascot records do not indicate that Sea was tasked to record Officer H and the transcript of the recording indicates that Sea did not initiate the conversation with Officer H.<sup>560</sup>

A summary of the conversation produced by Mascot analysts contained the first specific allegation against Officer H:

*After reviewing the tape Sea stated that when the information form [sic] [a police officer] was received re the Borlu office, [Officer H] arranged for his mate to scan the office at the SPC [the Sydney Police Centre]. The mate did a scan of the office and found two 'hot spots', one in [MSO3]'s office and one in the main office. Sea does not know the identity of this mate...<sup>561</sup>*

MSO3 had worked with Sea on Borlu, which was based at the Sydney Police Centre. The type of scan or sweep that Officer H had allegedly arranged involves using a battery-powered hand-held device that detects 'hot-spots', which are locations in a room or car where LDs or 'bugs' have been installed. It is not unlawful to own or use such a scanning device in NSW. However, if the device is used with an intent to discover a LD installed by police as part of a covert investigation, this may be an offence under section 315 of the *Crimes Act 1900* (Crimes Act), which provides in part:

**315 Hindering investigation etc**

- (1) A person who does anything intending in any way to hinder:
  - (a) the investigation of a serious indictable offence committed by another person, or
  - (b) the discovery of evidence concerning a serious indictable offence committed by another person, or
  - (c) the apprehension of another person who has committed a serious indictable offence, is liable to imprisonment for 7 years.
- (2) For the purposes of subsection (1), a person is to be considered to have committed a serious indictable offence if a public officer engaged in the detection or investigation of offenders suspects on reasonable grounds that a person has committed the offence.

The offence of hindering an investigation was not listed in the schedule of offences in either the Mascot or Mascot II references.

In his recorded conversation with Sea on 26 August 1999, Officer H stated his belief that the Drug Trafficking office and police vehicles had LDs installed in them. Mascot recorded this as an allegation in the Schedule of Debrief, naming Officer H as an involved officer. The allegation was numbered SOD32.<sup>562</sup>

OFFENCE	DATE	LOC SEA	INCIDENT	POL INV
32 Release Confidential Info; misconduct	1997	Borlu	... From SEA on 26/08/1999, [Officer H] arranged for his mate to scan the office at the SPC. The mate did scan the office and found two 'hot spots', one in [MSO3]'s office and one in the main office. Sea does not know the identity of this mate. [Officer H] captured on LD 26/08/1999 saying he will get the mate out to scan the Drugs Trafficking office.	Sea; [police officer]; [MSO3]; [Officer H]

559 LD warrant 283/1999.

560 NSWCC Transcript of LD 1999/283, Tape 99/201, 26 August 1999, pp. 1-2.

561 NSWCC, Information Report, *Contact with Sea 26/08/1999*, reporting officer: Henry, 2 September 1999, p. 1.

562 NSWCC, *Schedule of Debrief Operation BOAT*, version dated 31 August 2000.

It appears that this allegation brought Officer H back into the focus of Mascot's investigation. SOD032 was also the number Mascot had originally assigned in the handwritten Schedule of Debrief to Sea's allegation that confidential information had been released about the investigation of officers attached to Task Force Magnum.<sup>563</sup>

In the second half of 1999 Officer H was not named on any LD warrant as a person to be listened to or recorded. However, he was recorded three times on Sea's body worn LD in that period.

On 8 September 1999 Sea recorded a conversation with MSO11 and continued recording when Officer H joined them. The conversation was not transcribed, but Burn included a one line reference to this conversation when she summarised it in an Information Report.<sup>564</sup> This appears to have been an unintentional recording.

On 15 September 1999 Officer H was recorded while Sea was on the way to a lunch time send-off for an officer at a restaurant and activated his LD as he left the NSWCC.<sup>565</sup> The transcript of the recording shows that six lines after activating the device, Sea asked Officer H: "Is that office of yours safe to go into yet, have you had that fuckin' ... had that looked at yet".<sup>566</sup> Although it does not appear that Mascot had clearly tasked Sea to record Officer H at this point, the timing of Sea's activation of the device and his subsequent question that related to SOD032 indicate that Sea intended to record Officer H's conversation. Officer H was not listed on a LD warrant at that time.

On 19 November 1999 Sea incidentally recorded 26 words of conversation with Officer H at a send-off for another officer. Mascot had this conversation transcribed<sup>567</sup> and Burn summarised the content in an Information Report.<sup>568</sup>

Sometime in early 2000, Mascot developed a strategy to target Officer H. The strategy involved getting Sea to encourage Officer H to organise another sweep to search for LDs – this time of the Manly Detectives offices. Despite this strategy being discussed in Mascot minutes and Information Reports, Officer H was not named in warrants at the time.

Information Reports show that on 8 and 9 May 2000 Mascot investigators told Sea about this strategy, including that he was to arrange to meet Officer H on 10 May 2000. Burn was present at the 8 and 9 May meetings.<sup>569</sup> The summary of the meeting on 9 May 2000 noted:

*Discussion with Sea. Contacting [Officer H] this date to arrange for office to be swept electronically. Sea to meet [Officer H] near Crime Agencies tomorrow (10/5/00) (16:08, this date).<sup>570</sup>*

On 10 May 2000, Sea approached Officer H about getting him and an associate to do this new sweep. Their conversation was recorded on Sea's body worn LD without Officer H being named on a warrant. Sea informed Officer H that a colleague of Sea, MSO12 of Manly Local Area Command, was under investigation. The following exchange then took place between Sea and Officer H:

Sea: *We don't know where it's coming from.*

[Officer H]: *Yeah.*

Sea: *But we think the office is off because we've got a couple of things... we just need to sweep it you know what I mean?*

[Officer H]: *Right oh. What, you want to have a look at the office.*

Sea: *Yeah.*

563 NSWCC Information Report, *Schedule of Debrief with SEA, 91 matters outlined*, reporting officer: Burn, 13 January 1999 – attachment 'handwritten schedule of events', p. 8.

564 NSWCC Information Report, *LD Contact on 8/9/99 Sea and [MSO11]*, reporting officer: Burn, 14 September 1999, p. 1.

565 NSWCC Information Report, *LD Tape review re send off at [Sydney City restaurant] on 15/9/99*, reporting officer: Burn, 22 September 1999, p. 1.

566 NSWCC Transcript of LD 306/1999, Tape T99/239, 15 September 1999, p. 1.

567 NSWCC Transcript of LD 376/00 and LD 403/00, Tape T99/282, 19 November 1999, p. 101.

568 NSWCC Information Report, *Contact with Sea 22.11.99. LD tapes re [name] send-off received & reviewed*, reporting officer: Henry, 29 November 1999, p. 5.

569 NSWCC Information Report, *Informant contact with Sea, Monday 8 May 2000*, reporting officer: Moore, 11 May 2000; NSWCC Information Report, *Informant contact with Sea, Tuesday 9 May 2000*, reporting officer: Kaizik, 11 May 2000.

570 NSWCC Information Report, *Informant contact with Sea, Tuesday 9 May 2000*, reporting officer: Kaizik, 11 May 2000.

[Officer H]: *Right oh.*

Sea: *Can we do that?*

[Officer H]: *Yeah as long as there's no cunt around.*

Sea: *No, no, it will be a weekend job.*

[Officer H]: *Oh... will it.*

Sea: *It'll be a weekend job.*

[Officer H]: *Yeah, right (...ind...)*

Sea: *Oh (...ind...)<sup>571</sup>*

Officer H further stated in relation to his associate:

[Officer H]: *He knows what he's doing, he'll be able to tell within fuckin' two minutes whether ...*

Sea: *Is it the same ... is it the same bloke that come in for um ...*

[Officer H]: *Yeah. ...*

...

[Officer H]: *He's just ... he's a fuckin' technical whiz.*

Sea: *Yeah that's him, he found a hot spot down in my corner. [Laughs]*

[Officer H]: *Yeah and he found one in fuckin' [nickname of MSO3]*

Sea: *[nickname of MSO3]'s office.*

[Officer H]: *Yeah. Uh but what it will do. Any, any um emission whatsoever, even if it's a cable that's been laid ...*

Sea: *Mm.*

[Officer H]: *Um ... se [sic] what they're ... what they're doin' a lot now, the cheeky cunts, is they're setting them up in another office, run a cable through and then setting up the device so when ... what they can do, they'll take the device out and leave the cable there. If you follow the fucking cable.*

Sea: *Right.*

[Officer H]: *Actually did one out (ind) Bankstown (Ind...)*

Sea: *Bankstown.*

[Officer H]: *Yeah<sup>572</sup>*

Officer H also told Sea that the Bankstown sweep found LD technology that had been installed by the Special Technical Investigation Branch (STIB) of the NSWPF (STIB).<sup>573</sup> He stated that he was "part owner"<sup>574</sup> of the scanning device with his associate and that payment would not be required for this particular sweep.

After this recording, another allegation naming Officer H as an involved officer was recorded in the Schedule of Debrief, as SOD149:<sup>575</sup>

OFFENCE	DATE	LOC SEA	INCIDENT	POL INV	
149	Hinder investigation	10/5/2000	Crime Agencies	[Officer H] informed by Sea re investigation at Manly. [Officer H] made arrangements to have his scanner mate sweep the office for devices.	[Officer H]

571 NSWCC Transcript of LD 130/00, Tape T99/484, 10 May 2000, p. 3.

572 NSWCC Transcript of LD 130/00, Tape T99/484, 10 May 2000, pp. 8-9.

573 NSWCC Transcript of LD 130/00, Tape T99/484, 10 May 2000, p. 9.

574 NSWCC Transcript of LD 130/00, Tape T99/484, 10 May 2000, p. 6.

575 NSWCC, Schedule of Debrief Operation BOAT, version dated 31 August 2000.

Burn made a record that this conversation between Sea and Officer H had “partially confirmed SOD032 regarding a sweep of the Borlu office in 1997 for electronic devices. This sweep was organised by [Officer H]”.<sup>576</sup> It appears that Burn had – quite plausibly – understood Sea’s comment that “he found a hot spot down in my corner” to be a reference to the alleged sweep of the Borlu offices.

Burn then checked and confirmed that LDs had been present in the Borlu offices at the time of the alleged 1997 sweep by Officer H and his associate – one in the office of MSO3, as suggested by Officer H, and one in the main office.<sup>577</sup> Mascot records also indicate that investigators understood Officer H’s reference to the Bankstown location to be the Bankstown Detective offices. They checked and confirmed that LDs had been installed in those offices at the relevant time as part of a separate covert police operation.<sup>578</sup>

On the same day that this conversation between Sea and Officer H was recorded (10 May 2000), a Mascot officer prepared an application for a controlled operation in relation to the strategy to target Officer H. The Mascot plan was explained as follows:

*Investigators propose to instruct Sea to approach [Officer H] with information relating to his concerns about a pending investigation targeting officers from Manly Detectives Office, and whether [Officer H] can facilitate his ‘associate’ to scan the office in search of listening devices. Due to [Officer H]’s prior pattern of improper conduct, the following developments are anticipated:*

- [Officer H] will perceive that Sea remains a corrupt officer and will; take him into his confidence
- [Officer H] will organise his associate to scan the Manly detectives Office and [MSO12]’s premises for a benefit to [Officer H] and his associate
- The purpose of [Officer H]’s actions will be to hinder and defeat investigations, or pervert the course of justice
- [Officer H] will have confidence in Sea and therefore discuss prior corrupt activity, current criminal and corrupt activity.<sup>579</sup>

A controlled operation is a type of covert operation in which officers may break the law in order to obtain evidence, make arrests, or frustrate criminal and/or corrupt activity. A controlled operation must be authorised, usually in advance, under the *Law Enforcement (Controlled Operations) Act 1997* – see Appendix 3 (Volume 1) for more information about controlled operations.

The reason a controlled operation strategy was adopted was that Mascot investigators were concerned the proposed sweep of the Manly offices might discover LDs installed for some other legitimate covert investigation.<sup>580</sup> If so, there was a risk that Sea – in arranging for Officer H to do the sweep – might be engaging in the criminal offence of hindering an investigation. Presumably, it was envisaged that Sea’s approach to Officer H to do a sweep as outlined in the Mascot plan would be recorded. However, there was no Mascot warrant at that time naming Officer H as a person who could lawfully be recorded.

Burn recorded in an Information Report dated 15 May 2000 that Mark Standen, Assistant Director at the NSWCC, had considered the application and advised Mascot investigators that “a controlled operation was not necessary (ie. he [Sea] was not committing the offence of hinder and [sic] investigation because he did not have any intent to do so)”.<sup>581</sup> Mascot investigators had also indicated that there were unlikely to be any LDs installed in the Manly office. The application for the controlled operation did not therefore progress further.<sup>582</sup> However, the plan for Sea to ask Officer H to facilitate a scan of the Manly office was put into action.

576 NSWCC Information Report, *Conversation with [a STIB officer] STIB re Borlu Listening Devices*, reporting officer: Burn, 10 May 2000.

577 NSWCC Information Report, *Conversation with [a STIB officer] STIB re Borlu Listening Devices*, reporting officer: Burn, 10 May 2000.

578 NSWCC Information Report, *Application for controlled operation re [Officer H] – SOD149*, reporting officer: Burn, 15 May 2000 [p. 4 of unsigned application for controlled op, attached to IR].

579 NSWCC Information Report, *Application for controlled operation re [Officer H] – SOD149*, reporting officer: Burn, 15 May 2000.

580 NSWCC Information Report, *Application for controlled operation re [Officer H] – SOD149*, reporting officer: Burn, 15 May 2000.

581 NSWCC Information Report, *Application for controlled operation re [Officer H] – SOD149*, reporting officer: Burn, 15 May 2000.

582 NSWCC Information Report, *Application for controlled operation re [Officer H] – SOD149*, reporting officer: Burn, 15 May 2000.



### 8.3.4 Mascot implements strategy to target Officer H (May to November 2000)

Mascot investigators discussed their strategy to target Officer H multiple times between May 2000 and 21 November 2000. Sea approached Officer H about sweeping the Manly office on 10 separate occasions during this period, and recorded Officer H's response on some of those occasions. Sea also recorded at least one other conversation with Officer H during this period that did not involve discussion about the sweep. In total, he recorded Officer H's conversations on 10 occasions between 10 May 2000 and 21 November 2000 – including the conversation that occurred during the sweep.

Sea's approaches to Officer H were in accordance with Mascot's strategy. The draft application for a controlled operation had also indicated that "it is intended to capture all relevant conversations between Sea, Officer H and other suspect police by means of authorised listening device".<sup>583</sup> As noted before, Officer H was not named in any LD warrants during this period.

The strategy of having Sea approach Officer H to persuade him to organise a sweep of the Manly office is documented in the minutes of at least 13 Mascot meetings, 12 Weekly Activity Reports, and 31 Information Reports before Officer H conducted the sweep on 21 November 2000. An early reference in an Information Report on 11 May 2000 noted the "Possibility of organising a future electronic sweep of the Manly Detective's office for listening devices. To be arranged through [Officer H] – Crime Agencies".<sup>584</sup> On 23 May 2000 another Information Report recorded that Sea was continuing to approach Officer H: "SEA spoke to [Officer H] this date [22 May 2000]. Person with the 'sweeping' device hasn't called back as yet, SOD149".<sup>585</sup>

The minutes of the Mascot meeting of 29 May 2000 discussed: "Sweep of Manly PS: [Officer H] currently being targeted for the investigation into the proposed sweep of Manly PS for listening devices etc".<sup>586</sup> That meeting was attended by senior NSWCC and SCIA officers including Bradley, Giorgiutti, Standen, Brammer, Dolan and Burn.

On 20 June 2000 Sea recorded a telephone conversation with Officer H that included discussion of the arrangements for the sweep. Officer H stated: "Told him to ace it up and get you to ring me. The bloke just got back a few days ago". Sea replied: "Yeah". Officer H replied: "And we're right to go".<sup>587</sup> Sea and Officer H then discussed the best day for the sweep to occur.

Another Information Report dated 27 June 2000 shows that Mascot was still tracking the issue of a possible sweep: "Sea spoke with [MSO12] regarding the future possibility of [Officer H] still performing a 'sweep' of the Manly Dets Office".<sup>588</sup>

By 7 August 2000 under the heading 'Electronic Sweep,' the minutes of the Mascot Team Meeting noted: "SEA will be encouraged to put some pressure on [Officer H] to conduct this sweep as soon as possible".<sup>589</sup> The minutes also recorded a hope that the strategy would assist "to identify [Officer H]'s associate to help corroborate the Borlu sweep".<sup>590</sup>

On 8 August 2000 Sea recorded his side (only) of a telephone conversation with Officer H. The following comments of Sea are recorded:

*Sea: are you kidding me? What do you mean he's gone a-wall? Who is he? What is he in the job oh ok right right mmm.*

...

<sup>583</sup> NSWCC Information Report, *Application for controlled operation re [Officer H] – SOD149*, reporting officer: Burn, 15 May 2000.

<sup>584</sup> NSWCC Information Report, *Informant Contact with Sea, Monday 8 May 2000*, reporting officer: Moore, 11 May 2000.

<sup>585</sup> NSWCC Information Report, *Informant contact with Sea, Monday 22 May, 2000*, reporting officer: Kaizik/[NSWCC analyst], 23 May 2000, p. 1.

<sup>586</sup> NSWCC, *Confidential minutes of the Mascot team meeting, 29 May 2000*.

<sup>587</sup> NSWCC Transcript of LD151/2000, Tape T99/538, 20 June 2000, p. 1.

<sup>588</sup> NSWCC Information Report, *Informant contact with Sea, Tuesday 27 June 2000*, reporting officer: Moore, 27 June 2000.

<sup>589</sup> NSWCC, *Confidential minutes of the Mascot team meeting, 7 August 2000*.

<sup>590</sup> NSWCC, *Confidential minutes of the Mascot team meeting, 7 August 2000*.

*Mmmm Jesus Christ [nickname of Officer H] times running out.*

...

*Mmmm. Right, mmm was he in the job a couple of years ago when we got that other book for us?*

...

*He was out was he? Oh, different bloke.*

...

*Well come on [nickname of Officer H] right, ok.*<sup>591</sup>

Mascot investigators met Sea later that day and summarised one of the issues discussed: “[Officer H] will ring Sea when sweep will happen. Police officer at Blacktown is the co-owner of the ‘sweep’ device. Another male did the ‘Borlu’ sweep with [Officer H], not the Blacktown Police officer”.<sup>592</sup>

At 9.30 am on 11 August 2000 Mascot investigators met Sea and discussed his planned meeting with MSO11 later that day in a cafe. They instructed Sea to pursue the strategy with Officer H, and noted in their Information Report: “Sea advised to contact [Officer H] to join in the meeting. Sea to discuss the proposed ‘Sweep’ of the Manly Detectives Office”.<sup>593</sup> Sea followed those instructions and recorded the conversation that he had with MSO11 and Officer H at the cafe. They discussed the possible sweep and sweep device and Officer H stated: “He had it in his boot and he’s ready to go. There’s no dramas. But I’ll just come and do a fucking fifteen minute ... I’ll tell you if there’s something in there straightaway”.<sup>594</sup>

On 21 August 2000 Mascot investigators met Sea and recorded that Sea would “continue to pursue [Officer H] regarding the electronic sweep of the Manly Det’s office”.<sup>595</sup> However, by this stage, a number of records indicate that Mascot investigators sensed that Officer H was reluctant to conduct the sweep. It appears nonetheless that Mascot pressed on with the strategy. Minutes of a Mascot meeting that day (21 August 2000) stated: “Sea is still pressuring [Officer H] re the sweep of the Manly police station”.<sup>596</sup> On 23 August 2000, Mascot investigators discussed the sweep with Sea, and recorded: “Sea stated that he has head [sic] nothing further from Sweep. Sea’s feeling is that he doesn’t want to do de-bugging”.<sup>597</sup> (“Sweep” appears to refer to Officer H.) A later Mascot Management Meeting, on 28 August 2000, also discussed that “[Officer H] is still back peddling regarding the sweeps of Manly Police Station”.<sup>598</sup>

On 4 October 2000 Sea recorded a conversation with Officer H and another officer while they were on duty. The conversation was not transcribed, but was summarised in an Information Report.<sup>599</sup> The conversation lasted five minutes and 59 seconds. Sea appears to have activated his LD at the start of the conversation and turned it off when the conversation ended. The topics discussed did not include the possible sweep.

Mascot officers continued to talk to Sea about the strategy,<sup>600</sup> and on 9 November 2000 a Mascot investigator and a NSWCC analyst recorded in an Information Report that Sea had stated he had not been able to contact Officer H as yet.<sup>601</sup>

591 NSWCC Transcript of LD219/2000, Tape CD055, 8 August 2000, p. 39.

592 NSWCC Information report, *Contact with Informant Sea on 08.08.00*, reporting officer: [Mascot investigators], undated.

593 NSWCC Information Report, *Friday 11 August 2000, Contact with Informant ‘Sea’*, reporting officer: [Mascot investigator], 11 August 2000, p. 1.

594 NSWCC transcript, LD 219/2000, Tape T99/687, 11 August 2000, p. 13.

595 NSWCC Information Report, *Informant Contact with Sea, Monday 21 August, 2000*, reporting officer: [Mascot investigator], 23 August 2000, p. 1.

596 NSWCC, *Minutes of Mascot Management Meeting*, 21 August 2000.

597 NSWCC Information Report, *Contact with Informant Sea on 23.08.00*, reporting officer: [Mascot investigator], 23 August 2000.

598 NSWCC, *Minutes of Mascot Management Meeting*, 28 August 2000.

599 NSWCC Information Report, *Review of product CD/075 for 28.9.00 to 4.10.00*, reporting officer: [Mascot investigator], 9 October 2000, p. 3.

600 NSWCC Information Report, *Contact with Informant “Sea” on Thursday 12 October 2000*, reporting officer: [Mascot investigator], 11 October 2000, pp. 2-3.

601 NSWCC Information Report, *Informant contact with Sea, Thursday 9 November 2000*, reporting officer: [Mascot investigator/NSWCC analyst], 9 November 2000, p. 1.

Sea made contact with Officer H on 15 and 16 November 2000. Their conversations were recorded by LD and transcribed.<sup>602</sup> On 16 November 2000 Sea raised the issue of the sweep and told Officer H: "And if you get a spare moment I might get you to do Manly". Officer H replied: "Have a look at Manly?" Sea responded: "Yeah". Officer H stated: "You've gotta make sure though ... it's ... I'm not goin' in there if it's fuckin' iced. Have they got a surveillance or somethin' on the joint or ..."<sup>603</sup>

An Information Report that summarised the conversations on 15 and 16 November 2000 records that Officer H had obtained the sweeping device:

*Sea talks with [Officer H] about the sweep of Manly (SOD149). [Officer H] mentions he has just got the thing back with flat batteries and a new transistor needed. Sea talks about a few funny things happening over in the Manly area. Sea mentions Crime Commission activity in the area and the boys being "a little bit spooked still". Sea talks about them springing a bloke ([Mascot investigator]) writing up his log. [Officer H] says "that's not a good sign" and asks Sea if it was PIC, Sea says "no", [Officer H] says "Special Projects?" and Sea says "Yeah".*<sup>604</sup>

The summary also records that Officer H mentioned the sweep of Borlu offices again, in relation to the technology installed there: "[Officer H] says "they're still only using [the frequency] ... same as they were using at Borlu ... in the lounge or in the roof".<sup>605</sup>

During their conversation on 16 November 2000, Sea and Officer H also discussed a previous complaint that had been made to the NSWPF about MSO11. A man arrested by MSO11 (in company with Officer H and several other officers) had complained that MSO11 assaulted him during the arrest. The complaint had been investigated, found to be 'not sustained', and had been closed on 2 May 2000. However, while being recorded, Officer H provided the following information:

[Officer H]: *Has he still got that blue about [the complainant]?*

Sea: *What blue did he have with [the complainant]?*

[Officer H]: *When fuckin' we did the restaurant and [the complainant]... we all fuckin' punched fuck out of him and [the complainant] said that fuckin' [nickname of MSO11] was the only one that hit him. Ha ha ha ha.*<sup>606</sup>

Mascot recorded this information in the Schedule of Debrief as: "SOD205 Alleged assault of [the complainant] during search warrant: [MSO11], [Officer H]".<sup>607</sup> It was added to the Mascot Chronology listing on 12 December 2000.<sup>608</sup> As discussed in section 8.3.8, this matter was finalised by SCIA in 2003 with no further action required.<sup>609</sup> Officer H was not named on a LD warrant at the time this recording was made.

On 20 November 2000 Sea recorded a conversation with Officer H that Mascot transcribed. Sea and Officer H arranged for the sweep to occur the next evening:

Sea: *Can you do that thing tomorrow night?*

[Officer H]: *Mmmm.*

*[VOICE IN BACKGROUND]*

Sea: *I've got to go down there anyway, that's all.*

602 NSWCC Transcript of LD warrant 317/2000, Tape T99/735, 15 November 2000; NSWCC Transcript of LD warrant 317/2000, Tape T99/769, 16 November 2000.

603 NSWCC Transcript of LD warrant 317/00, Tape 99/769, 16 November 2000, p. 21.

604 NSWCC Information Report, *Review of CD/093, recorded product for Wed. & Thur. 15-16 November, 2000*, reporting officer: Moore/[Mascot investigator], 16 November 2000, p. 2.

605 NSWCC Information Report, *Review of CD/093, recorded product for Wed. & Thur. 15-16 November, 2000*, reporting officer: Moore/[Mascot investigator], 16 November 2000, p. 5.

606 NSWCC Transcript of LD 317/2000, Tape T99/769, 16 November 2000, p. 3.

607 NSWCC SOD205, Incidents, Alleged assault of [the complainant] during search warrant: [MSO11], [Officer H], 28 July 2014, p. 1.

608 NSWCC, Mascot Chronology listing, Document ID 6325, 12 December 2000.

609 NSWPF, Special Crime and Internal Affairs - Operation Mascot, Investigator's Report, SOD205, 10 March 2003.

[Officer H]: *Have you?*

Sea: *Yeah, I'll be there.*

[Officer H]: *Uh yeah alright I'll bring it in tomorrow.*<sup>610</sup>

### 8.3.5 Integrity test done (November 2000)

Officer H conducted the sweep on the evening of 21 November 2000, as arranged. At 10.17 am that day, Sea recorded a discussion with Officer H about the arrangements and Mascot summarised this as follows:

*[Officer H] asks 'what are we going to do about this other thing?' Sea asks what [Officer H] is doing this afternoon [sic], as Sea is going away. Sea says 'They'll throw in a sweetener for you. There's no drama if you want a few bob for it.'* [Officer H] says *'he won't be able to get there [Manly], if that's the case until at least 6:30'. They wil [sic] meet around the back. [Officer H] says he will call on his mobile and asks if it is going to be empty. Sea explains [MSO2] will be there who is very happy it's being done. SOD149.*<sup>611</sup>

Sea then met with Mascot investigators at 12.04 pm and they discussed the sweep, including how Sea would need to avoid the possibility of the sweep identifying his own LD:

*Sea stated that he planned to meet [Officer H] at the rear of Manly Police Station at 6:30pm for the electronic sweep of the Det's office. Sea stated that [Officer H] was dressed in cargo shorts and a t-shirt today and would probably be driving an unmarked police vehicle. Sea stated that he told [Officer H] there could be a 'sweetener' in it for him. Sea will switch off his recorder while the bug detector is switched on.*<sup>612</sup>

The 'sweetener' was \$100 which Sea planned to give to Officer H.

At 1.38 pm the same day, Burn emailed an application for the integrity test involving the sweep to Dolan.<sup>613</sup> Burn was noted on the application document as 'Control' for the integrity test.

The plan for the integrity test outlined that it was expected that on 21 November 2000 Officer H would:

*... conduct an electronic 'sweep' of Manly detectives office for any listening device equipment installed at those premises at the request of Sea and on behalf of [MSO12] ...*<sup>614</sup>

It was also clearly planned that "whilst the integrity test takes place, Sea will gather electronic evidence by virtue of an authorised listening device warrant".<sup>615</sup>

At 3.15 pm, Dolan telephoned Brammer and explained the integrity test and the risks involved. Brammer gave verbal authorisation for the integrity test to proceed<sup>616</sup> and confirmed his authorisation in an email to Dolan at 4.20 pm.<sup>617</sup>

Sea then recorded conversations with Officer H, starting at 4.29 pm and again at 5.49 pm. Those conversations were transcribed<sup>618</sup> and Mascot summarised them in an Information Report.<sup>619</sup> The recording of the conversation from 5.49 pm occurred while Sea, Officer H and MSO18 were conducting the sweep – for example:

<sup>610</sup> NSWCC transcript of LD warrant 342/00, Tape 99/780, 20 November 2000, p. 1.

<sup>611</sup> NSWCC Information Report, (SOD032) *Informant contact with Sea, Tuesday (I) 21 November, 2000. (CD /095)*, reporting officers: [Mascot investigator/NSWCC analyst], 21 November 2000, p. 4.

<sup>612</sup> NSWCC Information Report, (SOD032) *Informant contact with Sea, Tuesday (I) 21 November, 2000. (CD /095)*, reporting officers: [Mascot investigator/NSWCC analyst], 21 November 2000.

<sup>613</sup> Email from Detective Inspector Catherine Burn, Mascot Reference, NSWCC to Superintendent John Dolan, Mascot Reference, NSWCC, 21 November 2000.

<sup>614</sup> NSWCC, Information Report, *Integrity Test IT00/009 Targeting [Officer H], [MSO18], [MSO12], and [MSO2] concerning the Manly Detectives office electronic sweep authorised 21-11-00 (SOD149)*, reporting officer: [Mascot investigator]/Burn, 21 November 2000, p. 1.

<sup>615</sup> Email from Detective Inspector Catherine Burn, Mascot Reference, NSWCC to Superintendent John Dolan, Mascot Reference, NSWCC, 21 November 2000.

<sup>616</sup> Email from Detective Inspector Catherine Burn, Mascot Reference, NSWCC to Superintendent John Dolan, Mascot Reference, NSWCC, 21 November 2000 – with handwritten notes stating verbal authorisation and attachment entitled "Operational Orders".

<sup>617</sup> Email from Assistant Commissioner Malcolm Brammer, NSWPF to John Dolan, Mascot Reference, NSWCC, 21 November 2000, 4.20 pm.

<sup>618</sup> NSWCC Transcript of LD 342/00, Tape T99/781, 21 November 2000.

<sup>619</sup> NSWCC Information Report, *Receipt of recorded product for Tuesday 21 November, 2000. CD/096*, reporting officer: Burn, 22 November 2000, p. 2.

[Officer H]: *And it still comes across this as a maximum level even though it might only be two hertz. The funny thing is it's fuckin' hot as (ind)*

Sea: *Mm.*

[Officer H]: *Barring, I'm not gunna say ... I'm not a (...ind...) expert, I'm not gunna tell you ... but that's ... it's quite unusual because it's just working one area of the room and as soon as I move it from there to there it just goes off.*

Sea: *Mm.*

[MSO18]: *(...ind...)*

[Officer H]: *No, no, what it ... there's obviously somethin' down there like a um ... uh it's probably pickin' up a bit of interference. Have you got a radio mast or something out there?*<sup>620</sup>

Mascot summarised the later part of the conversation recorded during the sweep as follows:

*Session 9. (18.32-18.34)*

*Sea and [Officer H] talking about the Borlu sweep. [Officer H] explaining the device picks up electricity. [Officer H] speculates if [MSO6] can get hold of a spectrum analyser 'which does microwaves'. [Officer H] explains this device would be more thorough. SOD149*

*Session 10. (18.38-19.05)*

*Sea talking to [Officer H] and [MSO18]. [Officer H]; 'my opinion is, and it's purely my opinion, is that there is a device somewhere in this office.' [Officer H] explaining devices that can detect listening devices. Talk about there being a device in an office. [MSO18] asking if machine is off? [Officer H] says it's on, and explains how the machine tells him. [Officer H] saying he used the highest frequency of transmission*<sup>621</sup>

Before the sweep of the Manly offices, Mascot had checked whether there were any LDs installed there for some other covert operation, and had concluded there probably was not.<sup>622</sup> An actual sweep by Officer H, with a functioning device, is therefore unlikely to have found any hot spots.

In December 2000, the month after the sweep, Sea recorded four further conversations that he had with Officer H. On 1 December 2000<sup>623</sup> Sea recorded a discussion with Officer H at Crime Agencies, where they discussed the sweep. On 6 December the following interaction suggests that Sea gave Officer H \$100 for conducting the sweep:

[Officer H]: *What's happening man?*

Sea: *Not much mate.*

[Officer H]: *Want a ciggie?*

Sea: *Here's a hundred, mate. I'll try and get a bit more. They've had a lean week they reckon.*

[Laughter] [RE-RECORDED]

[Officer H]: *Are you gunna have a ciggie or ...*

Sea: *No, no, I just wanted to get you out of there, that's all.*

[Officer H]: *Oh right oh, okay, yeah, yeah ...*

Sea: *So no worries mate, I'm tryin' to ah ... I've put it on for a bit more, that'll pay for your petrol anyway so, and your time to start with.*

[Officer H]: *(...ind...)*

Sea: *Alright.*

[Officer H]: *Oh you've got my best interests at heart.*<sup>624</sup>

620 NSWCC Transcript of LD342/2000, Tape T99/781, 21 November 2000, p. 13.

621 NSWCC Information Report, *Receipt of recorded product for Tuesday 21, November 2000. CD/096*, reporting officer: Burn, 22 November 2000, p. 2.

622 NSWCC Information Report, *Application for controlled operation re [Officer H] – SOD149*, reporting officer: Burn, 15 May 2000.

623 NSWCC Transcript of LD342/00, Tape T99/738, 1 December 2000, pp. 24-27.

624 NSWCC Transcript, LD 342/2000, Tape T99/798, 6 December 2000, p. 3.



A Mascot team meeting discussed this exchange and noted that “Sea met with [Officer H] last week. An integrity test was conducted in which Sea gave [Officer H] \$100”.<sup>625</sup> Mascot later recorded the result of the integrity test of Officer H as ‘Fail’.<sup>626</sup>

After Sea gave Officer H the \$100, he continued to occasionally record conversations they had without a LD warrant in place. On 7 December 2000 Sea recorded a conversation with Officer H where they discussed issues related to staffing at Crime Agencies,<sup>627</sup> and on 13 December 2000 he recorded a conversation with Officer H at Crime Agencies where they discussed Officer H’s opportunities for secondary employment.<sup>628</sup>

On 17 January 2001 Sea and Officer H had a discussion which was recorded in which they mentioned the sweep. Mascot’s summary of this recording noted that Officer H expressed concerns that his car had been bugged and “[Officer H] states that he was considering that nobody knows about his security stuff because he was very careful about that stuff but someone has pegged him coming into the station (Manly) that day”.<sup>629</sup> This was the last recording that Sea made of a conversation where he and Officer H discussed the sweep.

Officer H was not named on any LD warrants during the period of 10 May 2000 to 17 January 2001 when Sea was tasked to approach Officer H to conduct the sweep, including the day of the sweep and afterwards when Sea continued to record Officer H. He was recorded 15 times by Sea’s body worn LD during the period.

Many Mascot meetings during the period discussed the progress of the strategy to encourage Officer H to conduct the sweep of the Manly office. For example, minutes of a meeting on 29 May 2000 recorded “[Officer H] currently being targeted for the investigation into the proposed sweep of Manly PS for listening devices etc.”;<sup>630</sup> minutes of a meeting on 17 July 2000 recorded “organising [Officer H] for the sweep of the Manly detectives office, with the aim of identifying the sweeper”;<sup>631</sup> and minutes of a meeting on 28 August 2000 recorded “[Officer H] is still back peddling regarding the sweeps of Manly Police Station”.<sup>632</sup>

Bradley, Dolan and Burn were present at those three meetings and at most others in the period. Giorgiutti, Standen and many of the Mascot investigators who deposed LD affidavits during this period were also present at many of the meetings. This suggests those staff would have been aware of the nature and extent of Mascot’s strategy, including mentions at meetings in August 2000 of Officer H’s possible reluctance to do the sweep.

As noted before, Officer H complained to Operation Prospect that Mascot had conducted a total of 10 or 11 integrity tests during its investigation of the allegations against him, contrary to relevant legislation and guidelines. Officer H’s view was that each time Sea approached Officer H it was an integrity test.

In late 2002 Strike Force Tumen interviewed several Mascot investigators about the targeting of Officer H. On 7 November 2002, Moore provided the following explanation to Tumen investigators:

*So I think in hindsight it could probably appear that he was hassling him to do it, but, you know, you’d have to consider in the context of, well, there wasn’t one at an initial meeting. [Officer H] said straight off the bat, Yeah, there’s no dramas mate, I’ll do that sweep for you, we’ll have to organise a time. Which is, you know one of the, which was, there was a problem initiating the sweep because [Officer H], as it would now seem, was stalling, but at the time C [sic] made a number of contacts to try and, try and say, Well, when can we do this, sort of thing, you know. If [Officer H] had have said, No, no, mate, I’m a bit toey, I don’t want to do that, or, or just leave it sort of thing, that would have been it, you know, but the fact that he’d left it open and said, Ring me when that guy gets back from overseas - - -*<sup>633</sup>

625 NSWCC, *Confidential minutes of the Mascot team meeting*, 11 December 2000.

626 NSWCC, *Integrity Tests Schedule - Mascot reference*, 6 April 2001, p. 2.

627 NSWCC Information Report, *Contact with Informant Sea on Monday 11 December 2000*, reporting officer: [Mascot investigator]/[NSWCC analyst], 11 December 2000, pp. 2-3.

628 NSWCC Information Report, *Review of listening device product CD/104*, reporting officer: [Mascot investigator]/[NSWCC analyst], 14 December 2000, p. 2.

629 NSWCC Information Report, *Contact with informant ‘Sea’ on Wednesday 17 January, 2001*, Reporting officer: [Mascot investigator], 18 January 2001, p. 3.

630 NSWCC, *Confidential Minutes of the Mascot team meeting*, 29 May 2000.

631 NSWCC, *Confidential Minutes of the Mascot team meeting*, 17 July 2000.

632 NSWCC, *Minutes of Mascot Management Meeting*, 28 August 2000.

633 Strike Force Tumen Transcript, Interview of Senior Constable Greg Moore by [Tumen investigator] and [Tumen investigator], 7 November 2002, p. 40.



Strike Force Tumen investigators also interviewed Burn on 16 December 2002.<sup>634</sup> It was put to her that Officer H was “integrity tested on eleven occasions ... and on the eleventh occasion allegedly relented under the pressure” from Sea. Burn rejected the suggestion: “surely there’s no way we did eleven integrity tests on [Officer H]. So, um, whether eleven comes from the fact that there was eleven meetings, I don’t know”. Burn added that in her view there was nothing inappropriate in Mascot’s targeting of Officer H.

Burn was also asked about the integrity testing of Officer H in her evidence to Operation Prospect. She stated that she did not recall specifics of the targeting of Officer H,<sup>635</sup> and would need to examine the case further if there was any suggestion of incitement, but “I would have said no”. She also added, as to the tactic of Sea continuing to raise the matter with Officer H, “one way or another, yes, he’s clearly continuing to put pressure on him”.<sup>636</sup>

She was also asked more generally about the use of integrity tests in Mascot investigations:

Q: *Do you recollect any particular pressure being applied on you to by those senior to you to have integrity tests done?*

A: *Look I don’t recall specifically, but this is something that I did disagree with Mr Dolan about, some of the integrity testing strategies. But I don’t recall then pressure coming down in the term of quota, like you have to do this number.*<sup>637</sup>

Some Mascot staff told Operation Prospect they were concerned that Sea was repeatedly tasked to pressure Officer H to conduct the sweep. One Mascot investigator recalled the integrity testing of Officer H as follows:

*Um, [Officer H]. Um, I – I found, you know, those sort of things to be, you know startling. I’ve never heard of that ever before. You know, I assumed that you either passed or you failed. They had 11 shots at him and then they wanted me to prosecute him on the 11th occasion because he’d failed the integrity test and they were all high-fiving going, you know, we’ve got him. We’ve got him. And I’m saying are you for real? Like, how would you ever prosecute that matter because we’ve gone back to him 11 occasions and we’ve badgered him and we’ve badgered him and we’ve badgered him [laughs] and he’s finally caved in and then we class that as a victory. I thought that was just, you know, um, incredible.*<sup>638</sup>

Another Mascot investigator also told Operation Prospect that a total of 10 approaches by Sea to encourage Officer H to perform the sweep of the Manly Detectives office was “bordering on – or it is badgering ... he’s reluctant to do it.”<sup>639</sup>

On 23 October 2013, Operation Prospect asked Sea if he believed Officer H had done a legitimate sweep on 21 November 2000. His evidence went as follows:

Q: *Do you think he legitimately did a sweep?*

A: *No.*

Q: *Or do you think it was - - -*

A: *I don’t know what he did. He pointed to a couple of spots and said, “It’s a bit hot there and there’s a spot there,” and I’m going, “I wouldn’t know.” So whether he’s – whether it was a working- or whether he was fair dinkum, I don’t know.*<sup>640</sup>

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634 Strike Force Tumen Transcript, Interview of Superintendent Catherine Burn by [Tumen investigator] and [Tumen investigator], 16 December 2002, p. 42.

635 Ombudsman Transcript, Catherine Burn, 19 November 2014, p. 2897.

636 Ombudsman Transcript, Catherine Burn, 19 November 2014, pp. 2900-2901.

637 Ombudsman Transcript, Catherine Burn, 19 November 2014, pp. 2896-2897.

638 Statement of Information (Interview), [Mascot investigator], 27 August 2013, p. 74.

639 Ombudsman Transcript, [Mascot investigator], 10 February 2014, p. 80.

640 Ombudsman Transcript, [Sea], 23 October 2013, p. 159.

### 8.3.6 Officer H continues to be recorded while not named on warrants (January to May 2001)

Sea recorded occasional conversations with Officer H between 29 January 2001 and 14 May 2001.

He recorded conversations with Officer H on 29 January 2001 and 1 February 2001, during which they discussed speeding tickets and secondary employment,<sup>641</sup> and Officer H mentioned "PIC knowing something".<sup>642</sup> On 30 April 2001, Sea recorded a conversation with Officer H during which they discussed MSO11 and other general topics.<sup>643</sup> For each of these recordings in January, February and April 2001, it appears that Sea activated his LD when he began speaking with Officer H and turned it off when the conversation ended.

On 7 May 2001 Officer H was named in an annexure to a LD affidavit,<sup>644</sup> but was not named in the affidavit or the associated warrants as a person to be listened to or recorded. The annexure introduced for the first time Officer H's alleged receipt of leaked confidential information, as follows:

*s) In 1997, members of police task force codenamed 'BORLU' ( "BORLU ") received information that a target had approximately \$50,000 in cash secreted in his garage. Soon afterwards, the \$50,000 was stolen. [Sea] told Commission investigators that at the time of the theft, he was in Western Australia with [MSO6], [MSO3] and other police officers. [Sea] further stated that when he ([Sea]) and his colleagues returned to Sydney and were told about the theft, [MSO6] was said to be the prime suspect along with his brother, [name], who works in the security industry. At that time, [MSO3] said to [Sea], 'Well just remember, I was with you, remember? We were over in Perth.' Later, [MSO3] told [Sea] that [Officer K] had leaked confidential information concerning the Borlu investigation into the allegations against [MSO6] and his brother, to [Officer H].<sup>645</sup>*

The same day this affidavit was sworn (7 May 2001), Sea recorded a conversation with Officer H at Crime Agencies. The summary of the conversation drafted by a Mascot Senior Investigator indicates that a conversation was recorded from 9.28 am to 9.32 am in which Sea and Officer H discuss MSO11 and rumours that he (MSO11) was going to be interviewed by PIC.<sup>646</sup> The summary does not indicate how Sea and Officer H came to be in this discussion at this time.

Sea recorded another conversation with Officer H in a cafe on 14 May 2001. Sea was recording a conversation with another person when Officer H arrived, and continued recording after the other person left. Mascot summarised the conversation,<sup>647</sup> which was about general work issues but did not transcribe it. Officer H was not named on any LD warrant at this time.

On 14 May 2001, Mascot instructed Sea to approach Officer K to seek corroborating evidence about the allegation that Officer K had leaked information to Officer H, as follows:

*He was then briefed in regards to speaking with [Officer K] from the City DATS in regards to the leak of information about "Borlu" to [Officer H].<sup>648</sup>*

641 NSWCC Information Report, *Contact with informant 'Sea' on Monday 29 January, 2001*, reporting officer: [Mascot investigator], 30 January 2001, p. 5.

642 NSWCC Information Report, *Contact with Informant Sea - Retrieval of LD Product 1/2101 (CD/118)*, reporting officer: Moore/[NSWCC analyst], 2 February 2001, p. 2.

643 NSWCC Information Report, *Contact with Informant 'Sea' on Tuesday 1 May, 2001 – CD/140*, reporting officer: [Mascot investigators], 1 May 2001, p. 3.

644 LD affidavit 2769-2775/2001, Annexure B, p. 5.

645 LD affidavit 2769-2775/2001, Annexure B, p. 5.

646 NSWCC Information Report, *Contact with informant Sea on Monday 7.5.01, CD/146 obtained*, reporting officer: [Mascot investigator], 8 May 2001, pp. 1-2.

647 NSWCC Information Report, *Contact with informant Sea on Wednesday 16 May 2001*, reporting officer: [Mascot investigator], 16 May 2001, p. 2.

648 NSWCC Information Report, *Contact with Informant Sea on Monday 14th May 2001 (SOD129, 216)*, reporting officer: [Mascot investigator], 14 May 2001, p. 1.

As directed, Sea contacted Officer K by telephone on 16 May 2001 and discussed Borlu – mentioning both MSO11 and Officer H.<sup>649</sup> That conversation led to Officer K speaking with Officer H sometime between 16 May 2001 and 23 May 2001. Mascot became aware of this by way of a lawfully intercepted telephone conversation between Officer H and Sea on 23 May 2001. Mascot summarised the telephone call in the Mascot Chronology as follows:

*About 14.52 on 23/5/01, a telephone call was intercepted on SEA's line (E01000/2) between SEA and [Officer H]. The telephone call lasts for 01.33 (minutes). Although the conversation is not explicit it is apparent that [Officer H] wants to meet SEA. [Officer H] has been abused by [Officer K] for telling SEA that he was one who leaked the information about the taskforce BORLU office had a listening device in it. He wants to discuss the matter further with SEA.*<sup>650</sup>

Mascot also obtained further information from Sea about the sweep of the Borlu offices in a meeting with Sea on 20 July 2001. Sea was able to recall very specific information about Officer H allegedly organising to have the Borlu offices electronically swept and claimed he was there when the sweep was conducted.<sup>651</sup>

### 8.3.7 Officer H named in affidavits and warrants (May to October 2001)

From 28 May 2001 to 23 September 2001 Officer H was named as a person to be listened to or recorded in seven LD affidavits that supported 17 LD warrants. Officer H was recorded through using a LD twice during this period – on 30 May 2001 and 4 September 2001. Although the seven LD affidavits included information about Officer H, no satisfactory explanation was given about why Mascot considered it necessary to use a LD to record him during this period. Indeed, as a few of the affidavit extracts below will illustrate, the information in the affidavits appears to have been included on an inconsistent and haphazard basis.

The first LD affidavit in this period to name Officer H as a person to be listened to or recorded was sworn by a Mascot investigator on 28 May 2001.<sup>652</sup> Paragraph 5 of the affidavit set out the facts and grounds on which the LD warrant was sought. Two sub-paragraphs referred to Officer H, but did not explain why the information in those paragraphs supported Mascot's application to record or listen to Officer H's conversations. One sub-paragraph repeated the information from the affidavit sworn on 7 May 2001 – that Officer H had received leaked information about the Borlu investigation from Officer K.<sup>653</sup> The other sub-paragraph read:

*(ccc) About 9.30am on 7 May 2001 [Sea] met with [Officer H] at Crime Agencies and had a conversation that was recorded by an authorised listening device. During that meeting [Officer H] told [Sea] that talk around the Drug Unit was that Mark Standen from the New South Wales Crime Commission had spoken to [MSO11] and had advised him that the PIC were going to speak to him.*<sup>654</sup>

The reference in sub-paragraph (ccc) to an 'authorised listening device' being used to record Officer H on 7 May 2001 was incorrect. As noted before, Officer H was not listed on any Mascot warrant at that time and was named only in the annexure to a supporting affidavit.

On 30 May 2001 Sea recorded a conversation – that was approximately 15 minutes long – with Officer H in a café. Mascot summarised the key points from this conversation as:

*During the [Officer H] conversation [Officer H] informed Sea that [Officer K] contacted him after Sea spoke to [Officer K] on the 16/5/01. [Officer H] stated that [Officer K] was upset with him for telling Sea (SOD081). [Officer H] had made corroborative comments the leak of information by [Officer K] to him suggesting that [Officer K] had relayed the substance of certain product on the Borlu LD which indicated that [Officer H] was not popular with others in the task force and that he was possibly going to be transferred. [Officer H] also*

649 NSWCC Information Report, *Contact with Informant 'Sea' on Wednesday 16 May, 2001.*, reporting officer: [Mascot investigator], 16 May 2001, p. 2.

650 NSWCC Mascot Chronology Database, Document ID 9765.

651 NSWCC, Record of interview between Detective Moore, [Mascot investigator] and Sea, 20 July 2001, pp. 1-5.

652 LD affidavit 01/03510-03516.

653 LD affidavit 2769-2775/2001, Annexure B, p. 5.

654 LD affidavit 01/03510-03516.

indicated to Sea that he had heard [an officer] may have some problems and that there were rumours around Crime Agencies that Sea had 'lost it' or similar.<sup>655</sup>

On 18 June 2001 a further LD affidavit was sworn that named Officer H as a person to be listened to or recorded. The affidavit replaced sub-paragraph (ccc) from the previous affidavit with a new sub-paragraph (ddd) that also mentioned the conversation on 30 May 2001:

*(ddd) On 7 May 2001 [Sea] met with [Officer H] at Crime Agencies and had a conversation that was recorded by an authorised listening device. During that meeting [Officer H] told [Sea] that talk around the Drug Unit was that Mark Standen from the New South Wales Crime Commission had spoken to [MSO11] and had advised him that the PIC were going to speak to him. On 30 May 2001, at the request of Commission investigators, [Sea] had a further conversation with [Officer H] that was recorded by the first body device. [Sea] had previously informed Commission investigators that [Officer K] of the Internal Affairs Investigation Unit had leaked information to [Officer H] regarding an investigation into Task Force Borlu (see Annexure B(s)). In the course of his conversation with [Sea] of 30 May 2001, [Officer H] referred to [Sea] having recently spoken with [Officer K] about the leakage of information to the effect that Task Force Borlu's office was being monitored by a listening device and then used words to the effect "[Officer K] fronted me saying 'It's pretty obvious that people know'," and [Sea] replied to the effect "I only asked [Officer K] in case he knew something since he helped last time." [Officer H] then used words to the effect "He helped me, no one else. He came to me along the lines of welfare issues because there was discussion in the office that I was going to be booted out of the office and all that kind of shit. So that's where all that came from."<sup>656</sup>*

The affidavit also included a paragraph from the affidavit sworn on 7 May 2001 in exactly the same form (see section 8.3.6).

On 4 July 2001 Mascot named Officer H in a TI affidavit for the first time. The affidavit was in support of a warrant applying to Sea's mobile, but not Officer H's phones. Officer H was listed as one of the 'persons involved in the offences'.<sup>657</sup> The 'facts and grounds' section of the affidavit included information regarding the 30 May 2001 conversation between Officer H and Sea, similar to paragraph (ddd), above, with the addition of the following information:

*On 23 May 2001, in an intercepted telephone conversation with [Sea], [Officer H] said that he had been abused by [Officer K] after [Sea] had spoken with him ([Officer K]).<sup>658</sup>*

The information in the TI affidavit of 4 July 2001 was also included in LD affidavits that were sworn on 9 July 2001,<sup>659</sup> 30 July 2001<sup>660</sup> and 20 August 2001.<sup>661</sup>

On 4 September 2001 Sea attempted to record a conversation with Officer H at a café – but Sea's LD did not activate.<sup>662</sup> Sea gave an account of the conversation to Mascot officers on 5 September 2001, including that Officer H planned to describe the Borlu sweep, if required, as:

*... so basically the story would be that, you know, um, yeah, you did the sweep of the office because you thought the crooks might have put a device in there, um, and that's basically what he said he would run with, um, if called upon down at PIC.<sup>663</sup>*

The malfunction in Sea's LD was referred to in an affidavit sworn on 10 September 2001, which explained how Mascot planned to use Sea over coming weeks to meet with current and former associates.

<sup>655</sup> NSWCC Information Report, *Informant contact with Sea, Thur. 31/5/01 – CD/156 obtained*, reporting officer [Mascot investigators], 31 May 2001, p. 1.

<sup>656</sup> LD affidavit 01/04222-04228, p. 19.

<sup>657</sup> TI affidavit 005/2002, p. 3.

<sup>658</sup> TI affidavit 005/2002, p. 13.

<sup>659</sup> LD affidavit 01/5255-5261, p. 11.

<sup>660</sup> LD affidavit 01/05980-05986, pp. 12-13.

<sup>661</sup> LD affidavit 01/06753-06759, pp. 11-12.

<sup>662</sup> NSWCC, Record of interview between [Mascot investigator] and Informant 'Sea', p. 3.

<sup>663</sup> NSWCC, Record of interview between [Mascot investigator] and Informant 'Sea', 5 September 2001, p. 2.

The last LD affidavit to name Officer H as a person to be listened to or recorded was sworn on 23 September 2001.<sup>664</sup> It included information similar to that in the preceding affidavits, but with no clear justification for Officer H's inclusion. There was a similar mention of Officer H in a TI affidavit sworn on 28 September 2001.<sup>665</sup>

The first TI affidavit that was sworn in support of an application to intercept communications to and from Officer H's telephone was sworn on 2 October 2001. An associated warrant was granted the same day. The affidavit stated:

*13. I suspect [Officer H] of having committed, of committing or of being likely to commit the following offences (as the case may be) viz., the hinder offences.*<sup>666</sup>

The affidavit contained information about Officer H that was drawn from previous LD and TI affidavits. It was not apparent from the affidavit how that information related either to the offence of hindering or to the use of TI to investigate that offence. In summary, the information in the affidavit about Officer H referred to the recorded conversations between Sea and Officer H on 30 May 2001<sup>667</sup> and 23 May 2001<sup>668</sup> (in that order) in which they discussed Officer K and the leak of information about a LD in the Borlu office, and the allegation that \$50,000 went missing from a garage that may have been visited by Borlu officers.

A further (and final) TI affidavit that named Officer H was sworn on 31 October 2001, and an associated warrant was granted the same day. This affidavit also cited a suspicion that Officer H had committed the offence of hindering an investigation, and included the following additional information to explain the inclusion of Officer H's name:

*(i) It is intended that the leaking of information about the investigation into Task Force Borlu will be investigated in public hearings in the PIC shortly after 7 November 2001. I suspect that the service of summonses in respect of that matter is likely to stimulate communications between persons with knowledge of the leaking of such information, including [Officer H]. I further suspect that it is likely that the [Officer H] mobile service may be used for the purpose of such communications.*<sup>669</sup>

The final LD affidavit that named Officer H was sworn on 11 February 2002.<sup>670</sup> This affidavit and associated warrants did not name Officer H as a person to be listened to or recorded.

In summary, it appears that Mascot initially considered that Officer H may have committed the offence of hindering an investigation by his alleged involvement in the sweep of the Borlu offices. The 10 May 2000 draft application for a controlled operation to cover the planned sweep of the Manly police office also referred to this offence when it noted: "The purpose of Officer H's actions will be to hinder and defeat investigations, or pervert the course of justice".<sup>671</sup> However, none of the TI affidavits that named Officer H referred specifically to his involvement in either the sweep of the Borlu offices or the planned sweep of the Manly office. Presumably, one purpose in intercepting his telephone communications would be to gather information about his involvement in both sweeps. The failure to draw this link in the TI affidavits underscores their haphazard preparation.

### 8.3.8 Mascot investigation of Officer H is concluded (2002 to 2003)

On 15 March 2002 Officer H was interviewed by Mascot investigators in the company of his solicitor. He declined to answer questions under criminal caution. After being directed to answer questions relating to the Manly integrity test (the sweep), he stated that he experienced "constant harassment"<sup>672</sup> to perform the sweep. Officer H stated that he did it under sufferance as a means of ingratiating himself to Sea (a more senior officer)

664 LD 01/08304-08308.

665 TI affidavit 005/2002, p. 3.

666 TI affidavit 146-159/2002, p. 7.

667 TI affidavit 146-159/2002, p. 16.

668 TI affidavit 146-159/2002, Annexure C, p. 5.

669 TI affidavit 199-201/2002, pp. 10-11.

670 LD affidavit 02/00547, p. 5.

671 NSWCC Information Report, *Application for controlled operation re [Officer H] – SOD149*, reporting officer: Burn, 15 May 2000.

672 NSWCC, Record of interview between Detective Senior Constable [Mascot investigator] and [Officer H], 15 March 2002, p. 16.



and other detectives at Crime Agencies. He also alleged that he returned money given to him by Sea (\$100) via a departmental envelope to Sea's pigeon hole.<sup>673</sup>

An Information Report detailing the 15 March 2002 interview with Officer H raised a question about the legitimacy of the sweep:

*[Officer H] admitted to attending Manly Police Station to perform the "sweep" of the Detectives office. He strongly claims to have no knowledge of the workings of the Spectrum Analyser and 'bullshitted' to SEA and others present. In performing the "sweep" he advised SEA of possible L.D locations within the office.*<sup>674</sup>

On 15 April 2002 a Senior Sergeant from STIB examined an exhibit – which appears to be the sweeping machine used by Officer H. He tested the machine, describing it as a counter-surveillance monitor designed to detect and locate electronic transmitting devices and noting that it was operational.<sup>675</sup>

Advice prepared by a legal officer within SCIA dated 28 May 2002<sup>676</sup> concluded that there would be difficulty in showing Officer H's actions in relation to the sweep of the Borlu offices were done with the intent to hinder the investigation of a serious offence committed by another person, as required by section 315 of the Crimes Act.

The allegation that Officer H told Sea that he (Officer H) and other officers had punched a man during an arrest (detailed in SOD205) was finalised by the Mascot CMT on 10 March 2003. The CMT concluded: "With following evidence and the conflicting evidence from [the complainant] the matter is not sustained. The new evidence obtained from [Officer H] does not add any further weight to the allegation".<sup>677</sup>

After the CMT report, the Commissioner of Police considered taking action against Officer H under section 181D of the Police Act<sup>678</sup> in relation to this allegation and some other more minor matters. Ultimately, the Commissioner decided not to remove Officer H but issued him with a warning under section 173(1) and Schedule 1 of the Police Act.<sup>679</sup>

### 8.3.9 Analysis and submissions

#### 8.3.9.1. Integrity testing of Officer H

Officer H was first mentioned in a Mascot affidavit in March 1999, but did not become a person of distinct interest to Mascot until he was mentioned in an authorised LD recording on 26 August 1999. The information Mascot obtained from that recording about Officer H arranging a covert sweep of the NSWPF Borlu offices, gave rise to a reasonable suspicion that he may have engaged in previous criminal activity – hindering an investigation contrary to section 315 of the Crimes Act. Although that crime was not included in either the Mascot or Mascot II references, it may be conduct that would fall within the definition of corruption in section 200 of the Police Act. While Officer H complained that he was targeted by Dolan on the basis of 'a personal difference', there is no evidence to substantiate that as the basis of Mascot's investigative interest in Officer H.

The suspicion that Officer H may have arranged an electronic sweep of a NSWPF office was clearly an appropriate matter for investigation. That view was pressed strongly in the submissions to Operation Prospect from some senior officers who had knowledge of the investigation. They explained why they would view with serious concern the possibility that a police officer had covertly acted to assist other officers to avoid detection for corruption.

673 NSWCC, Record of interview between Detective Senior Constable [Mascot investigator] and [Officer H], 15 March 2002, p. 19.

674 NSWCC Information Report, *Interview of S/Cst [Officer H] on 15 March 2002*, reporting officers: [Mascot investigators], 15 March 2002, p. 2.

675 NSWPF, Statement by [STIB officer] in the matter of Technical Evaluation CDM-700, 15 April 2002.

676 NSWPF Court and Legal Services (SCIA), *Legal advising - Criminal liability of Detective Senior Constable [Officer H] – Electronic sweep of the Borlu task force Office in 1997*, [solicitor], 28 May 2002.

677 NSWPF, SOD205 Investigator's Report by Detective Senior Constable [SCU investigator], 10 March 2003, p. 10.

678 This section allows the Commissioner to summarily remove an officer if he does not have confidence in them.

679 NSWPF, SOD032 (DDP047) SOD149 Finalisation report by Detective Sergeant [SCU investigator], 14 April 2003, p. 2.



There is cause for concern, however, about the way Mascot approached this investigation. This concern was highlighted in the evidence of a couple of Mascot staff quoted in section 8.3.5, who felt that Officer H was badgered by a more senior officer (Sea) into conducting a sweep of the Manly Detectives Office in November 2000. An opposing view, put in submissions to Operation Prospect from some senior officers, was that Officer H had acted willingly, as demonstrated by his acceptance of Sea's suggestion, his conduct in obtaining equipment to conduct the sweep, the actual conduct of the sweep, his supportive comments as recorded by Sea on a couple of occasions, and his knowledge of similar sweeps of the Borlu and Bankstown police offices. It was purely speculative, they submitted, that Officer H reacted to pressure from a senior officer.

The main cause for concern is that Sea (at Mascot's encouragement) energetically urged Officer H over a period of six months, and on 10 occasions, to conduct the sweep. There was mention midway through this period (in August 2000) that Officer H may be reluctant to participate, but this did not lead to a change in strategy. In fact the records of two Mascot team meetings on 7 and 21 August 2000 refer to Sea putting pressure on Officer H to conduct the sweep, and the minutes of two meetings on 23 and 28 August 2000 mention Sea's view that Officer H was reluctant to go ahead.

While it was understandable that Mascot wished to identify whether a NSWPF officer was prepared to assist colleagues who may be under suspicion of corruption, there can be distinct unease at a strategy that was pursued so actively over an extended period, and by using a senior police officer to enlist the support of a junior colleague to engage in wrongful conduct. Adding to this concern is that Mascot meeting and other records refer only to discussion of the objective of pursuing the strategy and not to any qualm being raised about whether it was appropriate to continue doing so. There was a lack of objective assessment of the results of the integrity investigation as they unfolded.

The strategy was characterised also by insufficient attention to the legal and administrative framework for conducting an integrity test. The conduct of integrity tests is covered in more detail in Chapter 17, and only the main problems exhibited in the testing of Officer H will be referred to briefly here. The Commissioner of Police (or his delegates) are authorised by section 207A of the Police Act to conduct an 'integrity testing program' of a particular officer, to gauge if the officer will engage in behaviour that is in contravention of the principles of integrity required of a police officer. There is no similar function conferred by statute on the NSWCC.

Bradley correctly submitted that there was no statutory bar against the NSWCC taking actions that could alternately be conducted by the NSWPF as an integrity test – "It is not, and was not then, illegal to ask someone to conduct an electronic sweep [or] to conduct an integrity test".<sup>680</sup> However, as a management practice, there was a distinct problem in the Mascot Task Force, situated within the NSWCC, initiating an integrity testing program of a NSWPF officer, when the program could alternately be conducted under a specific statutory framework that imposed controls on approving, managing and reporting the results of the integrity test. In relation to Officer H, it seems to have been assumed throughout that an integrity test was being conducted, and on the day in question Dolan obtained Brammer's approval under section 207A to conduct the test. At a much earlier stage on 10 May 2000 consideration was given to applying for a controlled operation to facilitate the strategy.

In those circumstances, careful attention should have been paid throughout to the legal and administrative framework for conducting the test. The application under section 207A was lodged over six months after Sea had first approached Officer H to organise the sweep. Indeed, it was arguable that the integrity test had commenced earlier than November 2000, as Sea's initial approaches to Officer H may have fallen within the words of section 207A – that is, giving him "the opportunity to engage in behaviour ... in contravention of the principles of integrity required of a police officer". While that definitional issue is not clear-cut – that is, whether it was a single as opposed to multiple integrity testing programs – the issue nevertheless underscores the importance of having a coherent and structured approach plan in mind from the beginning.

The objective of an integrity testing program is to gauge whether an officer will grasp the opportunity to engage in wrongful conduct. It was therefore relevant that Officer H had apparently displayed reluctance in August 2000

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680 Bradley, P. Submission in reply, 18 October 2016, pp. 4-5.

to go ahead with the proposed sweep. The failure within Mascot and the NSWCC to react to this conduct indicates a lack of objective evaluation of the way that Officer H responded to Sea's approaches.

Some of the operational aims, as recorded in Information Reports, also raise a question about this exercise. The reports stated: "[Officer H] will perceive that Sea remains a corrupt officer and will take him into his confidence",<sup>681</sup> and "[Officer H] will have confidence in Sea and therefore discuss prior corrupt activity, current criminal and corrupt activity".<sup>682</sup> Those aims were related to the longer term productivity of the Mascot investigation, rather than the more discrete and immediate aim of testing Officer H's integrity on a particular issue. While an integrity test program could properly have a broad objective in testing an officer's integrity, those stated aims may explain why Mascot investigators seem not to have focussed more objectively on assessing Officer H's interim responses.

The NSWPF *Integrity Testing Policy and Guidelines*, which was the relevant policy at the time governing the way that integrity tests were to be conducted, states that only the Integrity Testing Unit (ITU) in the NSWPF could be authorised to conduct integrity tests.<sup>683</sup> Mascot officers should not therefore have conducted the integrity test themselves. Brammer's written submission to Operation Prospect referred to some contemporaneous documents that may indicate the ITU was either informed or consulted of the plan to test Officer H's integrity. Even so, it is clear from the developments and documents referred to in sections 8.3.3 and 8.3.4 that the proposal was shaped and driven within the Mascot Task Force and the NSWCC, and only on the day in question was the statutory formality followed. There is further discussion of integrity tests conducted by Mascot in Chapter 17.

It is also significant that Mascot officers did not complete the relevant paperwork required at the end of the integrity test. There does not appear to have been any formal assessment of whether Officer H passed or failed in any of the earlier approaches. The outcome of the integrity test was never passed on to the officers who were required to be notified under the policy and legislation – the Commander of SCIA (at the time, Brammer), the Commissioner of Police and the PIC. Effectively, this means that Mascot failed to comply with the relevant policy and legislation governing integrity tests. The explanation may be, in part, that Mascot was a covert investigation at that time. Other areas within SCIA, such as the ITU, did not know about the investigation and were not aware of Sea's role as an informant. Processing any integrity test in accordance with the Integrity Testing Policy and Guidelines may have exposed the investigation, and may have compromised the investigation and the safety of Sea. Once again, however, there is no documentary record of a discussion of these legal and practical complexities among Mascot investigators or senior NSWCC and NSWPF officers who were aware of this strategy.

It is clear from multiple meeting records that Bradley, Standen, Giorgiutti, Dolan and Burn were all aware of the nature and progress of Mascot's strategy to investigate Officer H. Some officers submitted that a mere record of their attendance at a meeting does not confirm they had active knowledge of an issue minuted at the meeting. Technically that may be correct, but it does not explain away the frequent mention of this strategy at multiple meetings they attended. Furthermore, it fell within the responsibilities of one or more of them to take a close supervisory interest in compliance with statutory and administrative formalities in using LDs and integrity tests.

There is no finding made individually in this report against any senior officer for the conduct of the integrity testing strategy in relation to Officer H. The criticisms in this report are not directed at the decision to implement the strategy but at the failure to undertake (or at least to record) a more objective evaluation of how the strategy would be implemented. It would be unfair also to assign blame to individual senior officers for the entire strategy, in the absence of evidence that one or other of them was the primary and active proponent of the strategy. Other individual considerations are relevant too. Dolan arranged with Brammer to approve the testing program under section 207A of the Police Act. Bradley, as discussed elsewhere in this report, had expressed strong concern about the NSWCC's involvement in integrity testing. Giorgiutti and Standen were also NSWCC officers, with no formal responsibility for integrity testing. Burn consulted frequently with other senior

681 NSWCC Information Report, *Application for controlled operation re [Officer H] – SOD149*, reporting officer: Burn, 15 May 2000.

682 NSWCC Information Report, *Application for controlled operation re [Officer H] – SOD149*, reporting officer: Burn, 15 May 2000.

683 NSWPF, *Integrity Testing Policy and Guidelines*, 22 May 1997.

officers on individual Mascot actions, and also did not have direct responsibility for LD warrant application processes. A senior PIC representative was also in attendance at many of the meetings at which the testing strategy was discussed.

There were shortcomings nevertheless in the way that the integrity testing of Officer H was undertaken. There were serious problems too (as discussed below) in the LD warrant process in relation to Officer H. An adverse finding is accordingly made below against the NSWCC for actions taken by the Mascot Task Force in relation to Officer H.

### **8.3.9.2. Recordings of Officer H**

Another major issue with the investigation into Officer H's conduct is that from April 1999 and during 2000 Officer H was not named on any Mascot LD warrant. This included the period from May to November 2000 when the strategy of Sea approaching Officer H and encouraging him to do the sweep of the Manly Detectives office was being pursued. In accordance with that plan, Sea made 10 recordings of Officer H using his LD between 10 May 2000 and 21 November 2000.

Sea also recorded Officer H five times in the period following the integrity test, between 22 November 2000 and 17 January 2001. He then also recorded Officer H on five occasions between 29 January 2001 and 14 May 2001.

As outlined in Chapter 5 and Appendix 3 (Volume 1), it was an offence under the LD Act to use a LD to record a private conversation, unless the recording fell within a listed exception.<sup>684</sup> The recordings of Officer H's private conversations between 10 May 2000 and 21 November 2000 do not fit within any of these exceptions. There was no warrant authorising the recording of Officer H's private conversations. The recordings were not unintentional, as Sea was specifically tasked to approach Officer H to pressure him to conduct the sweep and to record their meetings. No other exception listed in section 5(2) of the LD Act was relevant to the circumstances of the 10 recordings.

However, it is clear from the evidence given by those in charge of tasking Sea and Sea himself, that at all times they had an honest and reasonable belief that warrants were in place to allow them to lawfully record Officer H. This mistaken belief occurred principally because of the lack of systems in place to allow cross-checking between those who drafted affidavits and applied for warrants and those who deployed Sea to record conversations. This systemic failure is discussed in Chapters 11 and 16. In those circumstances, there is no individual finding in this report against any officer for acting unlawfully in causing Sea to use a LD in contravention of section 5 of the LD Act.

Two other relevant offence provisions in the LD Act are sections 6 and 8. Section 6 made it an offence to "knowingly communicate or publish to any other person a private conversation, or a report of a private conversation, that has come to the person's knowledge as a result, direct or indirect, of the use of a listening device" in contravention of the LD Act.<sup>685</sup> Section 8 made it an offence to possess a record of a private conversation knowing that it has been obtained, directly or indirectly, by the use of a LD used in contravention of the LD Act.<sup>686</sup>

There is no direct evidence before Operation Prospect that any of the Mascot staff who communicated or possessed the recordings of Officer H's private conversations had the requisite knowledge at the time that the recordings or reports were obtained in contravention of section 5 of the LD Act. As detailed in Chapters 5 and 16, Operation Prospect sought the advice of the Solicitor General on this aspect of the LD Act. He advised that a breach of this section could only be proven where the individual who published the recording had knowledge that it was made in breach of section 5. In the absence of evidence of any such knowledge on the part of those who transcribed the recordings, no finding is made against any Mascot staff in relation to sections 6 and 8 of the LD Act.

While no offence may have been committed, Mascot's failure to include Officer H's name on any LD warrants during this time was a significant failing. Over the six months that Mascot pursued the strategy of recording

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<sup>684</sup> LD Act, s. 5(2).

<sup>685</sup> LD Act, s. 6.

<sup>686</sup> LD Act, s. 8.

Sea's meetings with Officer H, there was ample opportunity for Mascot investigators to consider whether the recordings were appropriately authorised. The content of the recordings was clearly assessed, summarised and discussed on multiple occasions by investigators in meetings and Information Reports. However, despite there being a clear plan to target Officer H in this way, it does not seem that Mascot investigators ever checked to make sure that the warrants authorising the use of Sea's body worn LD permitted the recording of Officer H during this period. A simple cross-check of the targets of active investigation strategies against new warrant applications may have prevented this error. However, it appears that there was no system in place to ensure such a cross-check was routinely done.

It is difficult to understand why adequate procedures were not in place to ensure that an operation of this kind was planned and conducted in accordance with the law. It is equally difficult to understand why a strategy to target Officer H that was discussed at numerous Mascot meetings did not reveal that the warrants authorising Sea's body worn LD did not permit Officer H's conversations to be recorded in repeated and planned approaches. The importance of having robust procedures in place is magnified where there is a large investigation involving multiple targets and so many people named in LD warrants. This criticism is taken up in Chapter 16.

### **8.3.9.3. Problems with the inclusion of Officer H in LD and TI affidavits**

Officer H was named as a person to be listened to or recorded in eight LD affidavits and 20 LD warrants (though the warrants did not apply to all the occasions on which he was recorded). He was also named in four TI affidavits and his telephone was the subject of two TI warrants. There are two key concerns with the affidavits that supported the LD and TI warrants that named Officer H:

- none of the affidavits contained sufficient detail as to why it was considered necessary to record Officer H
- some affidavits contained misleading information.

The first affidavit that mentioned Officer H (LD affidavit 105-111/1999), sworn in March 1999 in support of three LD warrants, did not contain a justification for his inclusion. Indeed, the affidavit did not contain any information about Officer H – apart from listing him as a person Mascot proposed to listen to or record by the LD being sought. At that time, Mascot had not recorded any specific allegation against Officer H. It was therefore not clear how recording Officer H would assist Mascot to obtain evidence about any of the offences listed in Sea's initial debrief interviews.

Officer H's name was later included in seven LD affidavits and four TI affidavits in 2001 and 2002. None of the seven LD affidavits, in their various iterations, outlined a clear justification for Officer H's inclusion. Two of the supporting TI affidavits did not provide sufficient information to explain why intercepts on Officer H's telephone were considered necessary. The affidavits stated that Officer H was suspected of having committed the offence of hindering an investigation. However, the information presented to support this suspicion went no further than stating that Officer H received information from Officer K which was derived from a police investigation into the alleged theft of money. The receipt of this information by Officer H could not amount to conduct on his part that was intended to hinder an investigation.

Another concern was the inclusion of inaccurate information in the warrants that named Officer H. LD affidavit 01/03510-03516, sworn on 28 May 2001, intimated that Officer H was lawfully recorded by a LD on 7 May 2001. That was incorrect and misleading. The LD warrant in place at the time named other people but not Officer H. Nor, as discussed above, did the recording of Officer H come within any other exception listed in section 5 of the LD Act, such as the exception for an unintentional hearing and recording. Sea had been tasked on numerous occasions to approach Officer H and engage him – and it appears that Sea activated his LD at the start of the conversation with Officer H and turned it off once the conversation was finished.

There is no evidence before Operation Prospect that these inaccurate paragraphs in the affidavits were included deliberately or with the intention of misleading the judicial or other officers to whom the warrant applications were being made. Rather, these are further examples of the systemic weaknesses in Mascot affidavit processes that are discussed in Chapter 16. Accordingly, no adverse finding is made in this report against the more junior operational Mascot staff who prepared and deposed to these affidavits. A finding is instead recorded against the NSWCC for these systemic failings.

### 8.3.10 Findings

#### 27. NSW Crime Commission

The NSW Crime Commission was responsible for the actions of members of the Mascot Task Force in implementing an investigation strategy in relation to Officer H that had multiple failings. As discussed in section 8.3.9, these included non-compliance with the legal and administrative requirements for conducting integrity tests, recording Officer H's private conversations in contravention of the *Listening Devices Act 1984*, naming Officer H in LD and TI affidavits without proper justification, and including inaccurate information about Officer H in LD and TI affidavits.

The NSW Crime Commission was responsible for the Mascot and Mascot II references and for the supervision of members of the Mascot Task Force. The actions taken by the Mascot Task Force with respect to Officer H indicate a lack of administrative rigour at the time in NSW Crime Commission document preparation processes and in investigation planning procedures. This was contrary to NSW Crime Commission policies, practices and procedures that should have been followed in the conduct of the Mascot references and in the preparation of affidavits and warrant applications.

The conduct of the NSW Crime Commission was unreasonable and otherwise wrong in terms of section 26(1)(b) and (g) of the *Ombudsman Act 1974*.

### 8.3.11 Recommendations

6. It is recommended under section 26(2) of the *Ombudsman Act 1974* that the NSW Crime Commission provide Officer H with a written apology for repeatedly recording his conversations without appropriate authorisation.
7. It is recommended under section 26(2) of the *Ombudsman Act 1974* that the NSW Crime Commission destroy all recordings (and associated transcripts) of the unlawfully recorded conversations between Sea and Officer H.

## 8.4 Mascot investigation of Officer E

### 8.4.1 Introduction

Officer E was a Senior Constable at the time that Mascot started investigating him in 1999. He was mentioned by Sea – in his initial debrief in February 1999 – as an officer who worked with Sea on Task Force Borlu.<sup>687</sup> However, Officer E's name was not added to the Schedule of Debrief until September 1999, after comments he made at a lunch that Sea recorded.

During the course of the investigation, Officer E was named on 22 LD affidavits and 66 LD warrants, and on two TI affidavits and one associated TI warrant. His conversations were recorded on listening devices on nine

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<sup>687</sup> NSWCC Record of interview between Detective Inspector Burn, Detective Senior Sergeant Henry and 'Sea', 9 January 1999, pp. 60-62.



occasions, a number of which were incidental recordings. Mascot also planned to conduct an integrity test on Officer E, but despite considerable planning did not do so.<sup>688</sup>

Officer E was named in the Mascot LD affidavits in three distinct groups. In the first five affidavits that he was mentioned – sworn between 4 April 2000 and 26 June 2000 – he was listed as one of the people expected to attend the King send-off (see Chapter 9). Second, in another nine affidavits sworn between 17 July 2000 and 21 December 2000, his name appears in the warrants and affidavits without any explanation. Third, comments he made at a lunch conversation that was recorded on 15 September 1999 were mentioned (16 months later) in eight sworn between 22 January and 18 June 2001. This section is mostly concerned with the third group of affidavits.

### 8.4.2 Officer E's conversation recorded (September 1999)

On 15 September 1999 Officer E, Sea and others attended a send-off lunch for a fellow officer. During that lunch and at drinks afterwards, Sea recorded several conversations – including one with Officer E that took place during many hours of drinking. There is no evidence that Mascot had tasked Sea to record Officer E at the time of this send-off lunch, and Officer E was not named on the relevant LD warrant 306/99 that authorised the use of Sea's LD at that time. Other Mascot targets were present at the send-off and were named on the relevant warrant as persons likely to be recorded by Sea. One of these Mascot targets was involved in the conversation that Sea had with Officer E, and that Sea recorded. It therefore appears that the recording of Officer E on this occasion was incidental.

An Information Report dated 22 September 1999 written by Burn reviewed the taped conversation from the lunch.<sup>689</sup> The Information Report included the following statement:

*[Officer E] then spoke about unsigned records of interview and said, "did what you had to do." [Officer E] also said "I'm left over from those days, too." [Officer E] said, "If you knew the lie better than they knew the truth you were right." REFERENCE TO FABRICATED ADMISSIONS, SOD 134.*

This conversation was the catalyst for Officer E to be added to Mascot's Schedule of Debrief, along with other officers, as SOD number 134.<sup>690</sup> That SOD was recorded as 'Managerial Issues & General Corruption matters'.

As no transcript of the recorded conversation could be found, Operation Prospect transcribed a portion of the conversation. The transcript reads:

*(Time call 6:54)*

*[Officer E]: They think they're the only cunts who've had unsigned records of interview.*

*UJK:<sup>691</sup> Ahhhh, I never did one in me life*

*UJK: Did you?*

*Sea: Never... I always went for the notebook*

*UJK: and that's what we were taught, it was always good stuff after a four hour interview*

*(Laughter) (Pause)*

*UJK: But you always got around...*

*UJK: Whaddya doing?*

*UJK: ...they signed out of pity with the blood dripping off them*

*[Officer E]: I remember when ERISP was coming in and it was absolutely terrifying*

<sup>688</sup> NSWCC Information Report, *Execution of strategic contact and later meeting between Sea, Inspector [Officer E] and undercover operative [name] capture of corroboration re SOD134 ([Officer E] component)*, reporting officer: Seary, 4 May 2001.

<sup>689</sup> NSWCC, Information Report, *LD Tape Review Re Send-off at [Sydney City restaurant] on 15/9/99*, reporting officer: Burn, 22 September 1999.

<sup>690</sup> NSWCC, SOD 134, Incident, Managerial Issues & General Corruption Matter, 28 July 2014, Greg Jewiss, p. 37.

<sup>691</sup> U/K is a person unknown to the transcriber.



(Time call 7:28)

(Several inaudible conversations)

[Officer E]: *Who's that? Yeah, yeah, yeah, yeah. ERISP was, uhh... (inaudible)*

(Several inaudible conversations continue)

(Time call 7:44)

U/K: *That went out with button up boots*

[Officer E]: *What what?*

U/K: *It went out with button up boots*

(Inaudible comment)

[Officer E]: *Unfortunately [Sea], I am also left over from those days too.*

Sea: *Do you know why? Typed ones maybe*

U/K: *I'm older than you*

Sea: *Mate we gave up typed ones up for dead, fucken in 86*

[Officer E]: *Yeah*

Sea: *they were always in the notebook,*

[Officer E]: *What? Yeah.*

(Time call 8:10)

Sea: *You're fucking kidding*

[Officer E]: *You did what you had to do! You did what you had to do*

Sea: *How could you fucking be so fucking dumb?*

[Officer E]: *Because I was a fucken (inaudible)*

U/K: *because even if you (learnt?), at this stage you had blokes like, you know, [name] here that made mistakes*

(Time call 8:20)

U/K: *ERISP.*

U/K: *Yeah?*

U/K: *Have you got it yet?*

U/K: *Nuh.*

[Officer E]: *Everything was the truth*

(Several inaudible conversations)

U/K: *but I learnt, I learnt from that, I um*

[Officer E]: *And even it was a lie, as long as you knew the lie better than they knew the truth, you were right. ...<sup>692</sup>*

The lunch conversation was described in a LD affidavit sworn by Moore 16 months later on 22 January 2001. The affidavit stated:

*[Sea] also had a conversation with [Officer E], who used words to the effect "I'm left over from the old days too...you did what you had to do. If you knew the lie better than they knew the truth you were right." I suspect [Officer E] was referring to the fabrication of evidence against persons who had been charged.<sup>693</sup>*

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<sup>692</sup> Ombudsman Transcript of LD306/1999, Tape T99/239, Tape 4 side B, 15 September 2000, pp. 1-3.

<sup>693</sup> LD affidavit 01/00183-00190, p. 7.

The recording of the 15 September 1999 conversation<sup>694</sup> was played to Burn during her evidence to Operation Prospect. She agreed that a number of the participants in the conversation sounded intoxicated and that there was an amount of background noise that made it difficult to hear some of the salient conversation. She agreed that she was unable to hear parts of the conversation, including other subject matters that were raised in between Officer E's comments. After listening to the recording and reviewing the transcript and Moore's affidavit, Burn agreed that the affidavit did not accurately reflect the recorded conversation.<sup>695</sup>

*I really don't know why it's been put together like that. I mean, I don't know why ... I really don't understand how it's ended up like that.*<sup>696</sup>

Burn agreed that it was potentially misleading that the affidavit did not include the words – “Unfortunately, [Sea]” – that appeared immediately before the words that were quoted – “I'm left over from the old days too”.<sup>697</sup> Burn also agreed that it was unfair and “a more suspicious inference” to run together two sentences spoken by Officer E that were in fact separated by other conversation – “You did what you had to do. If you knew the lie better than they knew the truth you were right”.<sup>698</sup>

When pressed during questioning to describe in her own words what she would say if this was drawn to her attention by a staff member, Burn replied:

*This does not accurately reflect the recorded conversation nor the transcript and that is a concern. So if I was aware of that, that needed to be brought to the person's attention and that needed to be addressed and stopped.*<sup>699</sup>

Burn agreed that a description of the context in which a conversation was recorded (in this case, a long drinking session) should be included in an affidavit, which had not occurred in this case.<sup>700</sup>

Moore was also questioned about the recording and the use of conversations of intoxicated people. He emphasised that at times when drinking, people would “let their guard down, they would be more inclined to say things that they might be a bit guarded about otherwise”.<sup>701</sup> Moore accepted that it was material that a statement was made while a person was intoxicated.<sup>702</sup> He said this detail would not have been omitted from affidavits with an intention to mislead, and best practice would have been to include it – noting that the omission would have been “more of an oversight than a deliberate act not to include it”.<sup>703</sup> He stated:

*I accept what you're saying, that the ones that have been filed, certainly there's a level, an argument that could be put that all the evidence hasn't been presented fairly; but I certainly don't believe that that was done so with any deliberate intention. I believe that it arose as a result of investigators, including myself, trying to just put forward the kernel of the relevant material to that person.*<sup>704</sup>

Moore expanded on that point – that he was putting forward ‘the kernel of the relevant material’ – in his written submission to Operation Prospect.<sup>705</sup> He submitted that the interpretation he had placed on Officer E's words was clearly open and raised a serious concern that warranted further investigation. There is no reason to suggest, he submitted, that a different presentation of the same material would have resulted in a warrant not being granted by a judicial officer.

694 NSWCC, LD306/1999, Tape T99/239, 15 September 1999.

695 Ombudsman Transcript, Catherine Burn, 19 November 2014, pp. 2913, 2915.

696 Ombudsman Transcript, Catherine Burn, 19 November 2014, p. 2916.

697 Ombudsman Transcript, Catherine Burn, 19 November 2014, p. 2915.

698 Ombudsman Transcript, Catherine Burn, 19 November 2014, p. 2915.

699 Ombudsman Transcript, Catherine Burn, 19 November 2014, p. 2916.

700 Ombudsman Transcript, Catherine Burn, 12 November 2014, p. 2823.

701 Ombudsman Transcript, Greg Moore, 23 July 2014, p. 736.

702 Ombudsman Transcript, Greg Moore, 23 July 2014, p. 737.

703 Ombudsman Transcript, Greg Moore, 23 July 2014, p. 737.

704 Ombudsman Transcript, Greg Moore, 23 July 2014, p. 738.

705 Moore, G, Submission in reply, 25 November 2015, pp. 112-116.

Operation Prospect also asked Commissioner Andrew Scipione about the inclusion of Officer E in Mascot affidavits and warrants. Scipione expressed an opinion about recording people when they were not sober, and using information obtained from those recordings as a basis for investigation:

*You may not put as much weight in the information... but many, many, many operations that run where you're looking at people for serious drug trafficking matters for instance, those people are under the influence of drugs... And we still use that information. We still value that information.*<sup>706</sup>

### 8.4.3 Integrity testing of Officer E planned (April 2001)

In April 2001 Mascot prepared an integrity test for Officer E.<sup>707</sup> The operation plan noted that Officer E had worked at a number of locations during the course of his policing career in periods when “a significant amount of corrupt behaviour was identified involving a number of officers”.<sup>708</sup> This included the North Region Major Crime Squad, about which Sea had made numerous allegations. The operation plan appears also to refer to the 15 September 1999 lunch conversation, in stating: “Recent evidence has been captured on listening device, during which [Officer E] admits that verballing took place”.

The integrity test scenario devised by Mascot was for Sea and Officer E to meet with an undercover operative identified as one of Sea’s informants in order to make a sustenance payment of \$1,000. The undercover operative would then hand \$400 back to Sea and thank him. Once the undercover operative had left, Sea was to offer \$200 to Officer E as a ‘thank-you’ payment.<sup>709</sup>

The integrity test operation plan was approved by Brammer. Burn was listed under the heading ‘Control’.<sup>710</sup> However, despite considerable planning, the integrity test was not conducted. On 2 May 2001 a meeting of NSWPF Mascot investigators:

*... was told that The NSWCC would not use its resources to prepare and make application for a listening device warrant in respect to the integrity test. The NSWCC has further stated that they did not see fit to apply for any such warrant.*

The Information Report continued that the risk of using a NSWPF solicitor to apply for a LD warrant would put Sea at serious risk of exposure.<sup>711</sup>

Instead of conducting an ‘integrity test’, Mascot investigators tasked Sea to participate in an almost identical plan. This was to meet Officer E at the Campsie Local Area Command office, then travel to meet an undercover operative who (Sea would tell Officer E) was the girlfriend of a drug dealer and may be able to provide Officer E with information. During the car ride to meet the undercover operative and return to the station, Sea recorded his conversations with Officer E.<sup>712</sup>

During the conversations, Sea raised various instances of misconduct and corrupt conduct by other Mascot targets. After a review of these recorded conversations, Mascot added an allegation to the Schedule of Debrief on 4 May 2001 that Officer E “had knowledge of suspected Police corruption and failed in his duty to report such conduct to a senior officer or appropriate body, in contravention of the New South Wales Police Code of Conduct and Ethics”.<sup>713</sup> The failure to report in breach of the Code of Conduct would constitute a breach of policy rather than a serious criminal offence, so would not fall within the remit of the Mascot references.

<sup>706</sup> Ombudsman Transcript, Andrew Scipione, 31 July 2014, p. 1017.

<sup>707</sup> NSWPF Operational Plan, Operation no. IT 04/001, Operation Mascot II (Stroma).

<sup>708</sup> NSWPF Operational Plan, Operation no. IT 04/001, Operation Mascot II (Stroma), p. 1.

<sup>709</sup> NSWPF Operational Plan, Operation no. IT 04/001, Operation Mascot II (Stroma), p. 2.

<sup>710</sup> NSWPF Operational Plan, Operation no. IT04/001, Operation Mascot II (Stroma), p. 3.

<sup>711</sup> NSWCC, Information Report, *Meeting held re Stroma to further discuss integrity test 01/004 (Stroma)*, reporting officer: Seary, 2 May 2001. p. 2.

<sup>712</sup> NSWCC Information Report, *Execution of strategic contact and later meeting between Sea, Inspector [Officer E] and Undercover operative [name]*: *Capture of corroboration re SOD134 ([Officer E] component)*, reporting officer: Seary, 4 May 2001.

<sup>713</sup> SOD134A. And see NSWPF, *Code of Conduct and Ethics*, 1997.

The allegation that Officer E had failed to report police corruption was ultimately finalised by Task Force Volta in June 2003.<sup>714</sup> Officer E was interviewed by Volta and denied having any specific knowledge of police corruption other than information that was publicly available after the arrest of two detectives who were discussed during his recorded conversations with Sea.<sup>715</sup> The Volta investigator's report noted that the LD material had been reviewed and it was clear that the references to corrupt officers were "primarily generated by the informant SEA and acknowledged by [Officer E]". The report concluded that no adverse finding should be made against Officer E, as the recorded conversations "do not conclusively prove with any certainty that [Officer E] had prior knowledge about this Police corruption".<sup>716</sup>

Sea also gave evidence to Operation Prospect in 2013 that he could not recall Officer E ever being involved in corrupt conduct.<sup>717</sup>

Burn could not recall whether integrity tests or investigations were conducted into officers solely because they had worked at particular units or locations where there was known to be current or historical corrupt activity. However she conceded that she could not exclude that possibility.<sup>718</sup> After documents relating to the targeting of Officer E were put to her by Counsel Assisting, Burn agreed that Officer E was referred to Mascot because of suspected contact with a particular registered informant rather than any allegations made by Sea.<sup>719</sup> On the basis of one document put to her, Burn acknowledged that Mascot's interest in Officer E appeared to be his relationship with Mascot targets MSO3 and MSO6.<sup>720</sup> She agreed with Counsel's suggestion that this information alone would not be sufficient to justify a LD being used to record Officer E's conversations.<sup>721</sup>

#### 8.4.4 Analysis

There was information available to Mascot to support a decision to further investigate Officer E. He made comments in a recorded conversation that, at the least, indicated an acceptance or tolerance of corrupt police culture and possible participation in it. Officer E's statement, "If you knew the lie better than they knew the truth, you were right", could be understood objectively as a reference to police verballing suspects. Officer E's knowledge and acceptance of corrupt police culture could also be drawn from the comments, "I'm left over from those days too" and "you did what you had to do".

The choice was therefore open to Mascot to conduct further investigations of Officer E's conduct. One option Mascot considered was an integrity test, which is an accepted and legislatively-sanctioned means of testing an officer's integrity. Another option was to gather further information through the use of LDs and TI.

However, to use those options, the law and agency procedures require that a rigorous process is followed to obtain approval from an officer who is not a member of the investigation team.

A proposal to conduct an integrity test must be approved by the Commissioner of Police or an authorised delegate, and follow procedures that are outlined in NSWPF guidelines. For Officer E, the integrity test plan was approved by Brammer but not supported by the NSWCC. Although the integrity test of Officer E did not go ahead, a larger problem that seems not to have been raised was whether the allegation that Mascot was investigating was only a disciplinary breach and not a matter for which the Mascot reference had been issued to investigate – failure to report knowledge of corruption – rather than the criminal offence of participating in that corruption. The use of integrity tests by Mascot is discussed more fully in Chapter 17 and earlier in this chapter (section 8.2.10.3).

714 NSWPF, complaint number [complaint] SOD134A Investigators report by Detective Sergeant [Volta Investigator], Task Force Volta, 12 June 2003.

715 NSWPF, complaint number [complaint] SOD134A Investigators report by Detective Sergeant [Volta Investigator], Task Force Volta, 12 June 2003, p. 3.

716 NSWPF, complaint number [complaint] SOD134A Investigators report by Detective Sergeant [Volta Investigator], Task Force Volta, 12 June 2003, p. 3.

717 Ombudsman Transcript, Sea, 23 October 2013, p. 125.

718 Ombudsman Transcript, Catherine Burn, 19 November 2014, p. 2908.

719 Ombudsman Transcript, Catherine Burn, 19 November 2014, p. 2909.

720 Ombudsman Transcript, Catherine Burn, 19 November 2014, p. 2910.

721 Ombudsman Transcript, Catherine Burn, 19 November 2014, p. 2910.

The proposal to use a LD to record Officer E's private conversations required the approval of a judicial officer under Part 4 of the LD Act. As discussed in Chapter 5 and Appendix 2 (Volume 1), this required that the supporting affidavit fairly and accurately set out the information to support the grant of a LD warrant. It was at this point, once again, that there was a distinct failure in Mascot processes. This failure cannot be excused by speculation as to whether the warrant would still have been granted if the affidavit presented a more qualified or nuanced (and accurate) presentation of the facts and grounds.

The affidavit sworn by Moore on 22 January 2001 (and copied in other affidavits) did not accurately or fairly reflect the recorded conversation of 15 September 2000 between Sea and Officer E. Separate comments by Officer E were run together to present a more suspicious picture, as acknowledged by Burn in her evidence to Operation Prospect. The affidavit did not explain the context in which the comments were made – an extended lunch and drinking session, in which the comments were part of a far longer and discursive conversation. When the proper context is considered, and regard is had to the transcript of the conversation, an available inference is that Officer E's comments were idle gossip or intoxicated banter.

It appears from their textual similarity that Moore's affidavit was drawn from Burn's 22 September 1999 Information Report. This illustrates the risk inherent in that practice and the importance of checking and capturing the original material.

It should be noted that a recommendation has not been made under section 26(2)(e) of the *Ombudsman Act 1974* for the NSW Crime Commission to apologise to Officer E for the inaccurate information presented about him in affidavits. It may appear disingenuous for the NSW Crime Commission to be required to draft a limited apology in those terms, given that there was information available to the Mascot Task Force to support a decision to further investigate Officer E and to apply for LD warrants to record his private conversations. It is important also to note that no reliable evidence was gathered that implicated Officer E in any corruption related to his police service.

## 8.4.5 Findings

### 28. Moore

Moore's conduct as the deponent of LD affidavit 01/00183-00190 sworn on 22 January 2001, in support of an application for a LD warrant to listen to or record Officer E's private conversations, was unreasonable conduct in terms of section 122(1)(d)(i) of the *Police Act 1990*. As discussed in section 8.4.4 the affidavit did not accurately and fairly represent information about Officer E in relation to an allegation concerning the fabrication of evidence against police suspects.

### 29. NSW Crime Commission

The NSW Crime Commission was responsible for the actions of members of the Mascot Task Force in naming Officer E in 67 LD and TI warrants and 23 supporting LD and TI affidavits. As outlined in section 8.4.4 some affidavits did not accurately or fairly represent the information Mascot held about Officer E, and some affidavits did not explain why Mascot sought authority to use a LD to listen to or record his private conversations. The NSW Crime Commission was responsible for the Mascot and Mascot II references and for the supervision of members of the Mascot Task Force. The actions taken by the Mascot Task Force with respect to Officer E indicate a lack of administrative rigour at the time in NSW Crime Commission document preparation processes. This was contrary to NSW Crime Commission policies, practices and procedures that should have been followed in the conduct of the Mascot references and in the preparation of affidavits and warrant applications. The conduct of the NSW Crime Commission was unreasonable and otherwise wrong in terms of section 26(1)(b) and (g) of the *Ombudsman Act 1974*.





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