

Operation Prospect

Volume 3
Chapters 9-13
Mascot investigations –
2000 to 2002

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"> time commencing and completing each duty places visited, people spoken to and actions taken start, finish and meal times and rest days. 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.
Gynea reference	In 1996 the Gynea 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 Gynea 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 Gymea 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 9. King send-off strategy and the associated warrants

9.1 Chapter overview

In early 2000 Mascot investigators became aware that Detective Sergeant James King – one of the informant Sea’s long time associates – was planning to leave the NSW Police Force (NSWPF). King had worked with Sea in the Armed Hold Up Unit at Chatswood, in Major Crime Squad North, and on a range of NSWPF task force investigations. King and other officers from those units were the subject of some of Sea’s early allegations. Because of this, King was named as a person suspected of being involved in corrupt or criminal conduct in the very first Mascot listening device (LD) affidavit and warrant.¹

Sea and Mascot Subject Officer 1 (MSO1), another of King’s associates, had been nominated by their work colleagues to organise a send-off function to celebrate King’s departure.² Mascot viewed the send-off as an opportunity for Sea to get LD recordings of attendees who they believed might reminisce and talk about their old exploits – and, in doing so, possibly corroborate some of Sea’s allegations. Mascot investigators set about obtaining warrants to authorise a body worn LD for Sea to wear at the send-off.

This chapter considers the King send-off strategy and accompanying LD warrants, with particular emphasis on LD warrants 95/2000 and 266/2000. LD warrant 266/2000 became public in April 2002, probably as a result of being served in a prosecution brief that arose from the Mascot investigations. Some complainants to Operation Prospect advised they received copies of warrant 95/2000 also in 2002. The publication of both warrants sparked controversy, as a number of people were deeply concerned about why they were named. The publication of the warrants and the NSW Crime Commission (NSWCC) and NSWPF responses are discussed in Chapter 13. A number of complainants to Operation Prospect were named on LD warrant 95/2000 as invitees to the King send-off.

LD warrant 266/2000 was effectively a ‘rollover’ warrant – a colloquialism that means it effectively extended the earlier warrant that authorised Sea to wear a body worn LD to record people attending the King send-off. Affidavits supporting the extension of previous warrants were also known as ‘rollover affidavits’ or ‘rollover applications’. A list of 30 people included in LD warrant 95/2000 as invitees to the King send-off remained in LD warrant 266/2000, despite the fact that the King send-off had already taken place three months earlier. The supporting affidavit for the later warrant failed to explain why Mascot had a continuing need to listen to or record those people.

This chapter examines the following issues:

- The Mascot processes and reasoning that led to the list of invitees to the King send-off being named in LD warrants 95/2000 and 266/2000.
- The circumstances of three invitees – Mr J, Officer T and Officer X – who were named in those warrants although Mascot held no suspicion they were involved in criminal or corrupt conduct. (It is noted that other invitees also had no allegations of corrupt conduct made against them.)
- The circumstances of two other former NSWPF officers – Mr K and Mr DD – who were also named in both warrants.

Some of the people listed in LD warrant 95/2000 as invitees had been listed on earlier Mascot warrants, as a result of allegations that Mascot had received. However, a significant feature of LD warrant 95/2000 is that it listed all invitees (but one) for the sole reason that they had been identified as invitees. For some at least there was no allegation or evidence of corrupt activity, but they all continued to be listed on later warrants.

¹ LD affidavit 003/1999, LD warrant 003/1999.

² LD affidavit 091-097/2000, p. 31.

A person could be validly listed on a warrant in those circumstances. For example, it may be expected either that the person could incidentally be in conversation with or in the vicinity of someone who is an investigation target, or that the listed person has knowledge of an offence that could be discussed during a recorded conversation. An 'incidental bystander' could be listed in a LD warrant consistently with section 16(4)(b) of the *Listening Devices Act 1984* (LD Act) – which stated that a warrant should specify, "where practicable, the name of any person whose private conversation may be recorded or listened to by the use of a listening device pursuant to the warrant".³

There must nevertheless be a reason to include a person's name in a warrant and, by extension, in a warrant application and supporting affidavit. One of the central objectives of the LD Act was to regulate the exercise of intrusive state powers and to safeguard personal privacy as far as possible when LDs were being used. Those are themes examined in this chapter.

9.2 LD warrant 95/2000

LD warrant 95/2000 was granted on 4 April 2000. The supporting affidavit⁴ was sworn earlier the same day before a NSWCC solicitor.

LD warrant 95/2000 was significant because it named 113 people and was the first LD warrant to record invitees to the King send-off. The supporting affidavit only named 111 people – the other two people had been named in previous Mascot affidavits and warrants. The warrant authorised conversations to be listened to or recorded at places and times other than the send-off, but clearly that function was an important focus of the warrant. The following can be said about the people named in the supporting affidavit:

- Many of the people had been named in previous Mascot warrants and supporting affidavits and were the subject of allegations made in Sea's initial debrief.
- 30 people were named in relation to the King send-off.
- Nine people were named because they worked at Manly Detectives, and were considered likely to participate in conversations that may be recorded or listened to when Sea was working there and using a body worn LD.⁵ This is one of only a few examples of Mascot affidavits that properly identified potential incidental recordings of other parties.
- For 16 people, no reason was given to explain why Mascot wanted to record or listen to their private conversations. For 10 of those people, an explanation given in a previous affidavit was not repeated in this affidavit.
- 46 people (including the 30 King send-off invitees) were listed without being linked to any specific allegation. The affidavit does not clearly indicate whether those people were individually suspected of being involved in or having knowledge of corrupt or criminal conduct. However, some of the 30 invitees had been linked to allegations in earlier affidavits.

The deficiencies in the supporting affidavit that are raised in this chapter illustrate a range of systemic problems in Mascot LD warrant and affidavit processes. They include:

- No explanation being given for why Mascot sought to listen to or record some people.
- Inaccurate and exaggerated explanations about why some people were named as people who Mascot sought to listen to or record.
- Failure to distinguish between people suspected of being involved in or having knowledge of corrupt or criminal conduct, and people named as likely to be inadvertently recorded because of their anticipated proximity to Sea at any given time.
- People being named in a warrant but not in the supporting affidavit.

3 *Listening Devices Act 1984* (LD act), s. 16(4)(b).

4 LD affidavit 091-097/2000.

5 LD affidavit 091-097/2000, p. 29.

Those problems can have an impact on the role of the judicial officer who has to decide whether to grant the application for a LD warrant. They also raise questions about the role of NSWCC lawyers who were responsible for checking LD documentation – as discussed in Chapter 16.

9.3 King send-off strategy

9.3.1 Mascot preparation for the send-off

Mascot documents show that Sea kept Mascot investigators informed about the development of the invitation list for King's send-off,⁶ and Mascot investigators made suggestions to Sea about who should be invited. When the send-off was initially planned for early April 2000, Mascot investigators appear to have conducted a surveillance assessment of the proposed venue.⁷

A LD warrant for Sea's body worn LD was due to expire on 4 April 2000.⁸ Before that date, a memo was prepared by a Mascot officer and addressed to NSWCC solicitor Neil Owen (the 'Owen' memo) setting out information to be included in the rollover warrant for Sea's body worn LD.⁹ In relation to the King send-off, the memo stated:

5.63 re King send-off that Sea and [MSO1] are arranging.

Commission investigators have supplied [Sea] with a list of past and present colleagues of King to be invited to the King send-off. King was provided with those names by [Sea] and has approved their invitation. (Neil, only new additions required to be added to the affidavit have been below listed).¹⁰

A list of 31 names was outlined, followed by the comment:

The abovementioned have historical connection with King and other members of NSW Police who Commission investigators believe have previously been involved in and/or have knowledge of corrupt behaviour. It is considered highly likely that past events including corrupt and criminal behaviour will be discussed at the King send-off. Commission investigators have instructed [Sea] to utilise the [Sea] body device to record conversations at the King send-off with the potential of capturing incriminating conversations.¹¹

Operation Prospect has been unable to establish the identity of the author of this memo, but thinks it may have been Mascot investigator Sergeant Greg Jewiss as he swore the subsequent affidavit on 4 April 2000. It is unclear why one of those named in the memo did not get listed in the affidavit.

Operation Prospect asked Jewiss if it was his understanding in April 2000 that all people listed in the Owen memo as send-off invitees actually knew about or had been involved in corrupt conduct. He replied that it was his understanding that "most of them would probably have knowledge of criminal conduct – corrupt conduct",¹² given that most of those people were named at various stages throughout the Mascot investigations.¹³ He agreed that it was a big statement to make about such a large group of people.¹⁴

Jewiss noted that some people on the invitation list did not appear initially on the Schedule of Debrief, and some were added later on the basis of hearsay allegations.¹⁵ He added that "reliability testing" of hearsay allegations was not managed well by Mascot.¹⁶

6 NSWCC Information Report, *Contact with Sea 22.2.2000*, reporting officer: Henry, 22 February 2000, p. 1; NSWCC Information Report, *Contact with Sea 7.3.2000*, reporting officer: Henry, 7 March 2000, p. 1.

7 NSWCC Information Report, *Survey conducted of [venue], re proposed Jim King Send-off*, reporting officer: Moore, 31 March 2000, p. 1.

8 LD warrant 074/2000.

9 NSWCC internal memorandum from unknown author to NSWCC solicitor Neil Owen, undated.

10 NSWCC internal memorandum from unknown author to NSWCC solicitor Neil Owen, undated, p. 2.

11 NSWCC internal memorandum from unknown author to NSWCC solicitor Neil Owen, undated, p. 3.

12 Ombudsman Transcript, Greg Jewiss, 29 July 2014, p. 52.

13 Ombudsman Transcript, Greg Jewiss, 29 July 2014, p. 52.

14 Ombudsman Transcript, Greg Jewiss, 29 July 2014, p. 53.

15 Ombudsman Transcript, Greg Jewiss, 29 July 2014, p. 53.

16 Ombudsman Transcript, Greg Jewiss, 29 July 2014, p. 53.

After the Owen memo, Jewiss deposed an affidavit to roll over the warrant that was due to expire on 4 April 2000. This became the supporting affidavit for LD warrant 95/2000, and contained the following paragraphs to explain the additional people named in the affidavit:

5.61. [Sea] and [MSO1] have been nominated by their work colleagues to organise a send-off for King (“the King send-off”). Commission investigators encouraged [Sea] to get involved in organising the King send-off on the premise it would bring him into contact with persons of interest to the investigation to which this application relates and would create opportunities for incriminating conversations concerning past and current corruption.

5.62. Commission investigators recently provided [Sea] with a list of King’s past and present colleagues that [Sea] referred to King. King has reviewed the list, and has approved it. Accordingly invitations to the King send-off will be sent to the following persons: [list of 30 names]. I suspect all those persons have been involved in, or have knowledge of, corrupt or criminal conduct, or both. I suspect past corrupt and criminal conduct will be discussed at the King sendoff. Provided the warrants sought herein are granted, [Sea] will be encouraged to use the body devices to record conversations at the King send-off.¹⁷

There is an important wording difference between the Owen memo and the affidavit deposed by Jewiss. The memo described the names of people listed as follows:

*The abovementioned have historical connection with King and other members of NSW Police who Commission investigators believe have previously been involved in and/or have knowledge of corrupt behaviour.*¹⁸

The affidavit said – about the same list of people – that:

*I suspect all those persons have been involved in, or have knowledge of, corrupt or criminal conduct, or both.*¹⁹

The list of names was added to LD warrant 95/2000 as people whose private conversations were to be listened to or recorded.

Operation Prospect asked Jewiss whether he felt compelled to put things in affidavits to maximise the likelihood of obtaining a warrant so that it could be used against the maximum number of suspects. He replied:

*No, I didn’t overtly set out to put in anything that was not true. These, whilst there was suspicion based on information we had on many of these people, I didn’t have all of that in the warrant. They were going on the warrant because of the upcoming send-off where there would be opportunities to collect, potentially collect material that was relevant to matters that were on our books but we didn’t have very much for. I suggest and you already know that this was not done well. This is not the right way to do it. This was not done well.*²⁰

Detective Inspector Catherine Burn was the Mascot Team Leader at the time of the King send-off strategy. Operation Prospect showed Burn the Owen memo and asked if it was a proper way to instruct the solicitor in this matter. She observed: “it doesn’t really articulate well the reasons for each of those names. So if that’s all that’s relied on, yes, I agree it’s a concern”.²¹ She also agreed that the sentence in the affidavit quoted above was “very different” from the wording in the memo.²² Burn was asked if reading that sentence now caused her any disquiet about its drafting and she agreed it did.²³ She agreed that the documents should demonstrate why particular people were named and why it was necessary to record their conversations. Burn agreed that the memo and affidavit clearly did not do that.²⁴

Other evidence before Operation Prospect suggests that, at around the time of the King send-off strategy, there was discussion within the Mascot team and the NSWCC more broadly about who should be named in LD affidavits. Evidence was given to Operation Prospect on this issue by Mark Standen, former Assistant Director at the NSWCC with responsibility for Mascot. He recounted a discussion he had with John Giorgiutti,

17 LD affidavit 091-097/2000, p. 31.

18 NSWCC internal memorandum from unknown party to NSWCC solicitor Neil Owen, undated, p. 3.

19 LD affidavit 091-097/2000, p. 31.

20 Ombudsman Transcript, Greg Jewiss, 29 July 2014, pp. 53-54.

21 Ombudsman Transcript, Catherine Burn, 12 November 2014, p. 65.

22 Ombudsman Transcript, Catherine Burn, 12 November 2014, p. 68.

23 Ombudsman Transcript, Catherine Burn, 12 November 2014, p. 68.

24 Ombudsman Transcript, Catherine Burn, 12 November 2014, p. 70.

the Director and Solicitor to the NSWCC, about a matter unrelated to Mascot concerning an application for a LD to be installed in a private home. Giorgiutti's advice, according to Standen, was that any residents of the private property (including children) should be listed on the warrant because the LD Act indicated that people likely to be recorded should be nominated and "the issuing justice may or may not, ah, issue the warrant, or might want to impose some conditions or restrictions as the Act allows them to do, um, in relation to that material".²⁵ Standen's conversation with Giorgiutti then turned to Mascot and presumably the King send-off:

I said to him "well, what about – what about this one where Sea's going to be at this function," I think at Leichhardt or some – some club; I can't remember what it was. "Um, where there's going to be a couple of hundred people; he's going to be wandering around like a social butterfly chatting to many, many people, some of whom will be people of interest to the Mascot Investigation." And he said, "Well that's all the more reason to – to tell the judge the people who might be recorded because on balance with – with, um privacy versus, ah, the necessity, the judge may decide not to issue that warrant at all in those circumstances." So I recall, um, making some written changes and corrections to the document and then handing them back to Greg Jewiss and telling him of the conversation I had with Giorgiutti, explaining that principle to him, and left it with him to make those changes. Um, I – as is the usual practice I didn't see the documents again. He, presumably, um, made the – made the corrections. Um, he added the names; the documents went to the team lawyer.²⁶

Standen recalled that he subsequently saw another LD affidavit that had the:

... list of names ... and also there was no distinction in the list of names between the persons of interest to the – to the warrant, and those whose conversations would be recorded, ah, incidentally. Um, and I said to – to Greg Jewiss, that you need to take out all these names that are no longer, um, relevant. Um, ah, and then I made the other – whatever corrections were needed to the document and left it with him. Um, again, expecting the – the usual process to follow. Now at some point, I'm not sure whether it was at the next renewal or beforehand for some reason, but I had a look – had a look – I had a look at those documents, um, and it was either those documents or a renewal application, where the list of names was – was if not the same, was even bigger. And I spoke to Greg Jewiss about it, and I said, "You were supposed to take all those names out; what happened?" And he said, "Oh, we did take a lot out, but we put a lot more on." At which point it dawned on me that he didn't really understand, um, the concept at all. And so I – I remember having quite a detailed conversation with him.²⁷

Standen told Operation Prospect that he told Jewiss that as Mascot was in charge of Sea they could plan who he was going to speak to in the next 21 days and tailor each warrant to the tasks Sea would be given. He pointed out to Jewiss that one of the named people was a police officer stationed "in the bush" and that "there is no likelihood or no reasonable likelihood, ah, in the next 21 days that Sea is going to be having a conversation with this person".²⁸ He recalled making the comment "like on your approach you might have well just attached the New South Wales Police phone list, and – and that's not the – that's not the purpose".²⁹

9.3.2 Send-off postponed to June 2000

By 12 April 2000 Mascot became aware that the send-off had been postponed to 23 June 2000.³⁰ The same paragraphs about the send-off invitees were nevertheless repeated in a rollover affidavit sworn on 19 April 2000 by Sergeant Troy Kaizik. This affidavit repeated the statement that "[p]rovided the warrants sought herein are granted, [Sea] will be encouraged to use the body worn LD to record conversations at the King send-off".³¹ Plainly that was no longer possible within the 21-day timeframe of the warrant. The affidavit did not indicate that the send-off was now expected to be held in late June.

25 Ombudsman Transcript, Mark Standen, 21 March 2014, p. 9.

26 Ombudsman Transcript, Mark Standen, 21 March 2014, p. 9.

27 Ombudsman Transcript, Mark Standen, 21 March 2014, pp. 10-11.

28 Ombudsman Transcript, Mark Standen, 21 March 2014, pp. 11-12.

29 Ombudsman Transcript, Mark Standen, 21 March 2014, p. 12.

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

31 LD affidavit 108-114/2000, p. 33.

The same paragraphs were repeated in a further rollover affidavit sworn on 15 May 2000 by Senior Constable Greg Moore, with the added comment that the send-off was “currently scheduled for 30 June 2000” and listed the venue.³² This new date of 30 June 2000 is also recorded in other Mascot documents.³³

Operation Prospect asked Moore about his 15 May 2000 affidavit. Moore was unsure why he sought authorisation to record the invitees in the period before the send-off.³⁴ He agreed that this may have been an error.³⁵

Operation Prospect also asked Moore why the proposed invitees were identified as “knowing about or having engaged in corrupt conduct”.³⁶ He pointed to statements made elsewhere in the affidavit about general corruption matters and of “Sea coming forward and making allegations”.³⁷ Moore pointed to one early paragraph in the affidavit and commented:

*...for example it talks about [Sea's] involvement in numerous instances of official corruption during his career, and he provided an induced statement in which he gave a broad overview of his service history and instances of corruption.*³⁸

Moore continued:

*It sets the scene, if you like, for the context of those individuals and then, obviously, propensity to, potentially people [sic] to engage in discussions about systemic corruption.*³⁹

Moore's view was that the general comments in the affidavit about corruption “would support”⁴⁰ the suspicion that the King send-off invitees would “potentially engage in conversations of an awareness”⁴¹ of corrupt conduct and that the invitees were:

*... a class of people that were invited to the send-off of a certain person that we knew certain information about, so by inference that would form a suspicion that there could be a propensity to discuss knowledge of corruption or involvement in corruption.*⁴²

Moore added:

*I accept that there could have been more information provided about each person, but certainly there was an awareness of – I suppose, in the broader context of the affidavit that Officer King was identified as the person that had very serious allegations about him. Again, that would lead to a presumption about his associates and who he felt comfortable inviting, so obviously that would, that combined with the other information contained within the application I think would go to justifying a suspicion that they may have knowledge or involvement in corruption.*⁴³

Moore did not consider this a matter of ‘guilt by association’ – explaining that:

*... I think if you start to tick a few boxes, obviously there has been information disclosed about cultures in certain work places, certain fraternities within the police that would go to justifying a higher level of suspicion that those individuals may potentially discuss knowledge of criminal conduct*⁴⁴

Moore said that “in hindsight” his statement that all the proposed King send-off invitees were involved in or had knowledge of corrupt or criminal conduct “could have been explained a lot more in detail, I suppose, with reference to the cultures, but I suppose I was relying on those at that earlier general paragraphs and the other information to inform the judge what we were looking at”.⁴⁵

32 LD affidavit 126-132/2000, p. 33.

33 NSWCC Information Report, *Contact with Sea on 17/5/00*, reporting officer: Burn, 18 May 2000, p. 1.

34 Ombudsman Transcript, Greg Moore, 23 July 2014, p. 104.

35 Ombudsman Transcript, Greg Moore, 23 July 2014, p. 105.

36 See for example LD affidavit 126-132/2000, p. 33.

37 Ombudsman Transcript, Greg Moore, 23 July 2014, p. 78.

38 Ombudsman Transcript, Greg Moore, 23 July 2014, p. 79.

39 Ombudsman Transcript, Greg Moore, 23 July 2014, p. 79.

40 Ombudsman Transcript, Greg Moore, 23 July 2014, p. 79.

41 Ombudsman Transcript, Greg Moore, 23 July 2014, p. 79.

42 Ombudsman Transcript, Greg Moore, 23 July 2014, p. 81.

43 Ombudsman Transcript, Greg Moore, 23 July 2014, p. 81.

44 Ombudsman Transcript, Greg Moore, 23 July 2014, p. 82.

45 Ombudsman Transcript, Greg Moore, 23 July 2014, p. 79.

Operation Prospect asked Moore why no explanation was given in the affidavit about why some people were named in the affidavit and warrant as individuals whose private conversations may be recorded. He said it was due to NSWCC 'protocol' that required an affidavit to name any person who was likely to be recorded in a conversation, whether as a witness or an involved party.⁴⁶ This accords with Standen's evidence noted earlier.

Moore indicated that no obvious distinction was made in Mascot affidavits between people who were being targeted for criminal conduct and others who were named simply because they might be in a conversation with the person wearing the LD.⁴⁷ Moore was unsure why those different categories could not be separated or identified – in the way adopted for officers who worked at Manly Detectives who were separately identified in an affidavit.⁴⁸ Moore said: "I've tried to communicate as best I could why those persons were potentially going to be recorded. I agree. There could have been more information included".⁴⁹ He also commented: "I think in good faith the protocol was to just try and ensure that, obviously, anyone that was nominated and likely to be there was recorded on the affidavit".⁵⁰

Operation Prospect put to Moore that he had simply rolled over the material from a previous affidavit and in doing so was prepared to accept another deponent's views and suspicions.⁵¹ Moore disagreed, commenting: "I take responsibility for swearing that affidavit, and I take that responsibility seriously. I would have read that information and obviously – on the known information at that time – I would have believed it to be reasonable".⁵²

Moore stood by his statement in the May affidavit that identified the King send-off invitees as people whom he "suspected had knowledge of or involvement in corrupt conduct". He said this statement was accurate, and his recollection of the basis of this statement was his knowledge, understanding and experience together with Information Reports about why there had been corruption in certain units. He said there were other factors, such as associates of certain parties and other risk factors, that would have escalated his concern about the group who were attending the King send-off function.⁵³

On 5 June 2000 another rollover affidavit was sworn, this time by Kaizik. The associated warrants expired 21 days later, four days before the send-off. The King send-off paragraphs were included in the affidavit with the acknowledgement that the send-off "is currently scheduled for 30 June 2000".⁵⁴ Kaizik agreed in evidence that the send-off was scheduled outside the 21-day period in which the relevant warrants would be in effect.⁵⁵

In both the 19 April 2000 and 5 June 2000 affidavits, Kaizik stated that he suspected all the invitees of being "involved in" or having "knowledge of, corrupt or criminal conduct, or both".⁵⁶ Kaizik could not recall the grounds on which he based those suspicions, but ventured that the invitees "could possibly" have been named in the Schedule of Debrief.⁵⁷ Kaizik's evidence was that he would not have attested to having that suspicion without proper grounds.⁵⁸

9.3.3 Final Mascot preparations and the send-off, including LD warrant 266/2000

On 26 June 2000 Jewiss swore an affidavit for a warrant authorising Sea's body worn LD that included the King send-off paragraphs. The affidavit had the same list of 30 invitees named in his 4 April 2000 affidavit, along with other names.⁵⁹

46 Ombudsman Transcript, Greg Moore, 23 July 2014, pp. 23-24.

47 Ombudsman Transcript, Greg Moore, 23 July 2014, p. 23.

48 Ombudsman Transcript, Greg Moore, 23 July 2014, p. 110.

49 Ombudsman Transcript, Greg Moore, 23 July 2014, p. 82.

50 Ombudsman Transcript, Greg Moore, 23 July 2014, p. 80.

51 Ombudsman Transcript, Greg Moore, 23 July 2014, p. 82.

52 Ombudsman Transcript, Greg Moore, 23 July 2014, p. 82.

53 Ombudsman Transcript, Greg Moore, 23 July 2014, p. 114.

54 LD affidavit 147-153/2000, p. 33.

55 Ombudsman Transcript, Troy Kaizik, 8 August 2014, p. 84.

56 LD affidavits 108-114/2000, p. 33; 14-153/2000, p. 33.

57 Ombudsman Transcript, Troy Kaizik, 8 August 2014, p. 83.

58 Ombudsman Transcript, Troy Kaizik, 8 August 2014, p. 83.

59 LD affidavit 174-180/2000, p. 34.

In the days before the send-off, Burn and Kaizik met with Sea to discuss the final invitation list that Sea was to obtain from MSO1.⁶⁰ Sea gave Mascot a list of attendees and those “not coming”.⁶¹ On 28 June 2000 Sea gave Mascot a new list of 43 people he expected to be attending.⁶² Nearly half the people on the list were not named in the 26 June 2000 LD affidavit as people Mascot wanted to listen to or record – although they were all named in the facts and grounds paragraphs of that affidavit. The names were also not on the associated warrant as people authorised to be recorded. Conversely, 18 of the people listed in the 26 June 2000 affidavit as invitees were not on Sea’s new list – including Mr J and Officer X, who are discussed later in this chapter.

The send-off function took place on 30 June 2000. A long recording from the function was reviewed and conversations of interest to Mascot were summarised and/or transcribed.⁶³

9.3.4 Mascot affidavits after the send-off

The affidavits after the King send-off included only one piece of new information. A third party had alleged that MSO1, who was a current serving police officer suspected of corruption, was intoxicated at the time he was the driver in a car accident.⁶⁴

On 17 July 2000 Kaizik swore the first of the body worn LD rollover affidavits to follow the King send-off. The paragraphs from the 26 June 2000 affidavit relating to the send-off were removed and replaced by a short summary:

*On 30 June 2000, [Sea] attended a send-off for King at [venue], at Chatswood. At the function, [Sea] engaged [MSO19] in conversation that was recorded by the first body device, regarding the [MSO1] motor vehicle accident. In the course of their conversation, [MSO19] said that [MSO1] was in a highly intoxicated state at the material time, as were they all.*⁶⁵

Although this summary makes it clear that the King send-off has already taken place, the list of people Mascot sought to listen to or record by Sea’s body worn LD still included the King send-off invitees previously named in Jewiss’s 4 April 2000 affidavit and the following rollover affidavits.⁶⁶ The invitees were also named in the accompanying body worn LD warrants.⁶⁷ The deletion of the paragraph explaining that they were expected to attend the King send-off meant there was now no explanation for their inclusion in the warrant application – with the exception of one invitee who was named elsewhere in the affidavit.

When interviewed by Operation Prospect, Kaizik could not recall or explain why the former invitees were named in the 17 July 2000 affidavit,⁶⁸ but surmised that there was “obviously some oversight or error”.⁶⁹ Kaizik conceded that it was an error on his part, but said there was no specific intent behind that mistake.⁷⁰

The 30 King send-off invitees were then named in a further six LD affidavits and associated warrants, sworn between 7 August 2000 and 16 November 2000.⁷¹

One of the affidavits to name the 30 King send-off invitees was the supporting affidavit for LD warrant 266/2000,⁷² which became public in 2002. This affidavit was sworn by Detective Sergeant Glenn Trayhurn on 14 September 2000 and was essentially another rollover affidavit for Sea’s body worn LD. Given the notoriety of this warrant, it is appropriate to list a few points about the names included in it and the supporting affidavit:

- There were 114 names were listed on the warrant – all but one of those names were listed earlier on LD warrant 95/2000, which listed 113 people.

60 NSWCC Information Report, *Contact with Sea 27.6.00*, reporting officer: Moore, 27 June 2000, p. 1.

61 NSWCC, *Informant Contact Advice Report*, contact by Burn and [Mascot officer] with Sea, 28 June 2000, p. 2.

62 NSWCC Information Report, *Contact with Sea 28 June 2000*, reporting officer: [Mascot officer], 29 June 2000, pp. 1-2.

63 NSWCC Information Report, *Review of CD/046 – King send-off function, 30.6.00*, reporting officers: Kaizik, [Mascot officer], [Mascot officer], 7 July 2000.

64 LD affidavit 196-202/2000, p. 35.

65 LD affidavit 196-202/2000, p. 35.

66 LD affidavit 196-202/2000, pp. 2-3.

67 LD warrants 200/2000, 201/2000, 202/2000.

68 Ombudsman Transcript, Troy Kaizik, 8 August 2014, p. 85.

69 Ombudsman Transcript, Troy Kaizik, 8 August 2014, p. 84.

70 Ombudsman Transcript, Troy Kaizik, 8 August 2014, p. 85.

71 LD affidavits 215-221/2000, 241-247/2000, 262-268/2000, 284-290/2000, 313-319/2000, and 338-344/2000.

72 LD affidavit 262-268/2000.

- Two people listed on the warrant were not named in the supporting affidavit, although they were named in previous warrants and affidavits.
- There were 112 people named in the supporting affidavit, but no explanation was given about why 45 of the people were included.
- Ten people are mentioned in the affidavit in a manner that does not explain sufficiently whether Mascot suspected them of having known about or participated in criminal or corrupt conduct.
- The 30 King send-off invitees were named in the warrant and supporting affidavit as people to be recorded, but no explanation was given for their inclusion.
- Some of the people named in the warrant had no allegation recorded against them in Mascot records, but this is not clear from the supporting affidavit. The affidavit could be read as inferring that all those named were suspected by Mascot of having known about or participated in corrupt or criminal conduct, with the exception of nine people who were named merely because they worked at Manly Detectives where Sea was likely to be working while wearing a LD.

An additional two affidavits sworn on 7 December 2000⁷³ and 21 December 2000⁷⁴ named all but six of the 30 invitees.⁷⁵ It is unclear why only those six names were removed. The majority of invitees' names remained in warrant applications from July to December even though the send-off had occurred, and no explanation was given as to why their names were to remain on warrants.

When Sea's body worn LD warrant was next renewed on 12 January 2001,⁷⁶ the names of the send-off invitees were removed – with the exception of one name.

Operation Prospect asked one of the deponents why so many people were named on the three LD supporting affidavits he swore, to which he frankly replied:

*You know, it's a very good question. I wish I had, you know, I could come up with the answer why. You know, I really don't remember. It may have been practice that it was at some point in time Sea was going to be talking to those people and it was deemed necessary to put them on the warrant in being complete, or in fairness, but I can't remember the conversations or why those names were on the list.*⁷⁷

Operation Prospect asked Jewiss why the invitees remained on affidavits and warrants after 30 June 2000 and until December 2000. Although Jewiss had not sworn any of the warrants after June, he did some analysis of LD warrant 266/2000 after it became public in 2002 – see Chapter 13. Jewiss indicated that the names should not have remained on the LD applications, but Mascot had no structure in place to ensure people were taken off LD applications and affidavits.⁷⁸ A possible explanation is that Sea was still at work and could participate in impromptu meetings. As a result, "if an opportunity arose in relation to somebody that he told us about, he was to try and raise it if he could".⁷⁹ It may be that people remained on the warrants so that conversations could be recorded on those occasions.⁸⁰

Moore could not recall why he named the invitees in his affidavit of 5 October 2000 and agreed that it was a "reasonable possibility" the names were left in the affidavit due to human error.⁸¹ He explained:

*I'm not too sure how those names were dealt with in that way, whether it was a direction or advice given about the protocol. I just can't recall... it was quite a different format at the Crime Commission to the way they prepared their affidavits, and I complied with those protocols, but I don't really remember, you know, obviously, what advice was given when – so it's a bit hard to sort of go back and try and give an explanation.*⁸²

73 LD affidavit 362-368/2000.

74 LD affidavit 391-397/2000.

75 Including Officer T and Mr J (discussed later in this chapter).

76 LD affidavit 01/00056-00062.

77 Ombudsman Transcript, [witness], 6 August 2014, p. 55.

78 Ombudsman Transcript, Greg Jewiss, 29 July 2014, p. 913.

79 Ombudsman Transcript, Greg Jewiss, 29 July 2014, p. 915.

80 Ombudsman Transcript, Greg Jewiss, 29 July 2014, p. 915.

81 Ombudsman Transcript, Greg Moore, 23 July 2014, p. 756.

82 Ombudsman Transcript, Greg Moore, 23 July 2014, pp. 753-754.

The deponent of another LD affidavit dated 26 October 2000⁸³ gave similar evidence about his experience of working in the Mascot team with limited previous experience in swearing LD affidavits. He started work in Mascot after the King send-off⁸⁴ and did not recall anything about the function.⁸⁵ When asked about the names included in his 26 October affidavit, he said:

*I assume that was correct being rolled over, being signed off before. Just like any document I find, you assume that it's correct if it's in the system. So, yeah, I just think by taking it out that this was all relevant. All we're doing was adding new information into it that we'd get the rollover and it would keep going.*⁸⁶

The deponent of affidavits sworn in November and December 2000 could also not explain why the send-off invitees were still named,⁸⁷ and agreed they should not have been named without an explanation in the affidavit for their inclusion.⁸⁸ He commented:

*I don't think it was deliberate. I think it's just, the names were put on there and for some unknown reason, I don't know, they just were left in the warrant and they weren't removed.*⁸⁹

The same deponent also gave evidence that affidavits “should have” contained “a paragraph somewhere” outlining the function that was expected to take place and if a person’s name was included because they may be “bumped into” and have their conversation casually recorded.⁹⁰ He did not consider the absence of an explanation for names in affidavits was misleading, but an oversight⁹¹ – it was probably something he forgot to insert or did not check when the affidavit was sworn.⁹² He agreed that a long paragraph at the beginning of the affidavit that referred to Sea providing information to the NSWCC about corrupt police was likely to create, in a reasonable judge’s mind, the impression that all those who were named had been mentioned by Sea – unless there was a specific paragraph to explain that their conversations may be casually recorded.⁹³

Operation Prospect asked Phillip Bradley, Commissioner of the NSWCC at the time, about his knowledge of the King send-off strategy and the associated affidavits and warrants. Counsel Assisting put to Bradley that – if people were initially named because they may be incidentally recorded at the send-off – their names should have been removed after the send-off had taken place. He responded:

*Well, somewhere else here it says, “Sea has recently been transferred to the CIB” – or something like that – “and he’s likely to rub shoulders with all these people” and someone might have taken the view well, all these people on this list are the people that he’s likely to rub shoulders with. I think that would have been a long bow. I suspect it was laziness, or mission creep, or something.*⁹⁴

Bradley agreed, however, that the affidavit should have stated if some people were named simply because their conversations may be recorded rather than being suspected of corruption, and that class of people should be identified in the affidavit and distinguished from targets.⁹⁵ He acknowledged that Mascot affidavits did not always draw this distinction, and he was a bit surprised to learn that all the people at a particular event were referred to as people who would be involved in or have knowledge of crime or corruption.⁹⁶ He hastened to add that he did not think he knew that certain people were named until much later, probably when the warrant became public in April 2002.⁹⁷

83 LD affidavit 313-319/2000.

84 Ombudsman Transcript, [witness], 16 April 2014, p. 214.

85 Ombudsman Transcript, [witness], 16 April 2014, p. 215.

86 Ombudsman Transcript, [witness], 16 April 2014, p. 213.

87 Ombudsman Transcript, [witness], 28 July 2014, p. 877.

88 Ombudsman Transcript, [witness], 28 July 2014, p. 877.

89 Ombudsman Transcript, [witness], 28 July 2014, p. 878.

90 Ombudsman Transcript, [witness], 28 July 2014, p. 772.

91 Ombudsman Transcript, [witness], 28 July 2014, p. 773.

92 Ombudsman Transcript, [witness], 28 July 2014, p. 772.

93 Ombudsman Transcript, [witness], 28 July 2014, p. 772.

94 Ombudsman Transcript, Phillip Bradley, 24 November 2014, p. 3062.

95 Ombudsman Transcript, Phillip Bradley, 24 November 2014, p. 3062.

96 Ombudsman Transcript, Phillip Bradley, 24 November 2014, p. 2983.

97 Ombudsman Transcript, Phillip Bradley, 24 November 2014, p. 2983.

Bradley also stated that, before the public discussion of LD warrant 266/2000, he was not aware of the practice of leaving names in affidavits and warrants without explaining their inclusion.⁹⁸

There is no other evidence before Operation Prospect to indicate that Bradley was aware of how the affidavits naming King send-off invitees were prepared. It should nevertheless be noted that – when he sought to broaden the Mascot reference on 9 November 2000 – he used the 5 October 2000 affidavit to present the summary of the Mascot investigations to the NSWCC Management Committee (discussed in Chapter 17). When asked about his use of the affidavit in this way, Bradley stated that had he been aware the affidavit contained names “for which there was no basis for inclusion, either a bumping into reason or criminality”,⁹⁹ he would have been concerned about the inclusion of those names as a basis for the Mascot references.¹⁰⁰ He agreed with the proposition that, to a large extent, he had relied on the fact that others checked the material in the affidavits that were used to justify the expansion of the reference into Mascot II.¹⁰¹

9.4 The investigation of Mr J, Officer T and Officer X

9.4.1 Introduction

Mr J, Officer T and Officer X were all named on LD warrant 95/2000, granted on 4 April 2000. This was the first Mascot warrant that each was named on – and they were named because they were among the 30 invitees to the King send-off.¹⁰² None of them was the subject of any allegation of corruption in Mascot records – either at the time or subsequently – and none of them was ever investigated by Mascot. All of them made complaints to Operation Prospect about being named on Mascot LD affidavits and warrants.

Other facts about each person are:

- Mr J was a civilian during the Mascot investigations. He was named in 36 LD warrants and 12 LD supporting affidavits in the period 4 April to 16 November 2000.¹⁰³ He was named in Sea’s debrief on 9 January 1999 – not because of any allegation of corruption, but because Sea suspected Mr J may have film footage from a story he was compiling about the arrest of a gun collector who had multiple unlawful firearms.¹⁰⁴ Sea alleged that the officers involved in that arrest may have taken money and not properly recorded the unlawful firearms that were seized. Mr J’s name was included on the Mascot Schedule of Debrief next to that allegation, as “Footage of Firearms – [Mr J]”.¹⁰⁵

Mr J’s inclusion in the list of expected invitees may have stemmed from information that he had attended a birthday function for King the previous year.¹⁰⁶ Mascot also knew that Mr J would sometimes attend NSWPF functions. Ultimately, Mr J was not invited and did not attend the function. It is not clear when he was taken off the invitation list.

- Officer T was an officer in the NSWPF during the Mascot investigations. He was named in 35 LD warrants and 12 LD supporting affidavits in the period 4 April to 16 November 2000.¹⁰⁷

Officer T had worked with King around 1997 at the Special Crime Unit (SCU) in the North Region Crime Squad.¹⁰⁸ He attended the King send-off.

98 Ombudsman Transcript, Phillip Bradley, 24 November 2014, p. 2993.

99 Ombudsman Transcript, Phillip Bradley, 24 November 2014, p. 2993.

100 Ombudsman Transcript, Phillip Bradley, 24 November 2014, p. 2993.

101 Ombudsman Transcript, Phillip Bradley, 24 November 2014, p. 2995.

102 LD affidavit 091-097/2000, p. 31.

103 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, and 338-344/2000.

104 NSWCC, Record of interview between Detective Inspector Burn and Detective Senior Sergeant Damien Henry and ‘Sea’, 9 January 1999, p. 4.

105 NSWCC, Operational file SOD051, *Arrest St Ives Gun Collector Weapons*, p. 24.

106 NSWCC Information Report, *Contact with Sea 8.11.99*, reporting officers: Henry/[Mascot officer], 10 November and 7 December 1999, p. 1.

107 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, and 338-344/2000.

108 Ombudsman Transcript, Informal Interview, [Officer T], 28 May 2014, p. 11.

- Officer X was an officer in the NSWPF during the Mascot investigations. He was named in 42 LD warrants and 14 LD supporting affidavits in the period 4 April to 21 December 2000.¹⁰⁹

Officer X and King may have worked together in the early 1980s, but not in the same unit.¹¹⁰ There is no evidence that Officer X attended the send-off.

9.4.2 References to Mr J, Officer T and Officer X in Mascot affidavits

The evidence before Operation Prospect suggests that the only reason Mr J, Officer T and Mr P were listed on LD warrant 95/2000 is that they were on the invitation list to King's send-off, and are referred to in the Owen memo as among the invitees to be named in the warrant.¹¹¹ However, the affidavit sworn by Jewiss on 4 April 2000 went a step further by stating that all persons named as invitees "have been involved in or have knowledge of corrupt or criminal conduct, or both".¹¹² For Mr J, Officer T and Officer X, there is no specific support for that statement in the information before Mascot at that time.

Operation Prospect asked Burn why people such as Mr J were included in LD affidavits and warrants. She responded:

*... they'd be going out to lunch all the time with a lot of those players, a lot of those people and [Mr J], the reporter was very much in that, um, group of people and he would often be at those functions as well, um, now from memory [Mr J] was also mentioned in a partial allegation but I don't think we ever were going to – we were ever going to target [Mr J] but he was present at functions, um, and the same with most of the others that weren't actual targets.*¹¹³

The paragraphs about the King send-off (including mention of Mr J, Officer T and Officer X) were copied into a further four affidavits that were sworn before the send-off – specifically on 19 April,¹¹⁴ 15 May,¹¹⁵ 5 June,¹¹⁶ and 26 June 2000.¹¹⁷

The rollover affidavit for Sea's body worn LD that was sworn soon after the send-off on 17 July 2000 included a short summary that noted the send-off had occurred. Both this affidavit and the associated warrant continued to name all the proposed invitees from the affidavit of 4 April 2000 – including Mr J, Officer T and Officer X.¹¹⁸ They continued to be named in Mascot affidavits sworn on 7 August 2000,¹¹⁹ 28 August 2000,¹²⁰ 14 September 2000,¹²¹ 5 October 2000,¹²² 26 October 2000¹²³ and 16 November 2000,¹²⁴ and in the associated warrants. An additional two affidavits sworn on 7 December 2000¹²⁵ and 21 December 2000¹²⁶ removed the names of six proposed invitees, including Mr J and Officer T.

¹⁰⁹ 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 to 338-344/2000, 362-368/2000, and 391-397/2000

¹¹⁰ NSWCC Information Report, *Contact with Sea 22.2.2000*, reporting officer: Henry, 22 February 2000, p. 1.

¹¹¹ NSWCC internal memorandum from unknown author to Neil Owen, undated, pp. 2-3.

¹¹² LD affidavit 091-097/2000, p. 31.

¹¹³ Statement of Information (Interview), Catherine Burn, 14 November 2012, p. 14.

¹¹⁴ LD affidavit 108-114/2000.

¹¹⁵ LD affidavit 126-132/2000.

¹¹⁶ LD affidavit 147-153/2000.

¹¹⁷ LD affidavit 174-180/2000.

¹¹⁸ LD affidavit 196-202/2000, p. 35.

¹¹⁹ LD affidavit 215-221/2000.

¹²⁰ LD affidavit 241-247/2000.

¹²¹ LD affidavit 262-268/2000.

¹²² LD affidavit 284-290/2000.

¹²³ LD affidavit 313-319/2000.

¹²⁴ LD affidavit 338-344/2000.

¹²⁵ LD affidavit 362-368/2000.

¹²⁶ LD affidavit 391-397/2000.

9.4.3 Mascot recording of Mr J, Officer X and Officer T

There is little evidence to suggest that any of the three were recorded or listened to as a result of being named in multiple warrants and affidavits. There is no evidence of targeted recordings. It appears that Officer X was never recorded by Mascot LDs.

Mr J was recorded on at least two occasions, although both were unintentional recordings:

- On 13 April 2000, Sea attended the Gosford races wearing a LD and Mr J also attended. There is no evidence that Mascot anticipated Mr J's attendance or that Sea was seeking to record Mr J.
- A conversation involving Mr J was captured during an intercepted telephone conversation. The interception was authorised by warrant, which was directed at investigating the other party to the conversation.

It is unclear whether Officer T was in fact recorded at the send-off. Mascot's report¹²⁷ about the LD used at the King send-off indicated that Officer T had been recorded,¹²⁸ but he is not mentioned either in the tape transcripts for the send-off¹²⁹ or in the Mascot Information Report that reviewed the send-off.¹³⁰ If he was recorded, it seems that nothing captured on the tape was considered significant by Mascot. Officer T told Operation Prospect that he did not recall speaking to Sea at the send-off.¹³¹

Officer T was recorded by a Mascot LD much earlier, though the recording of his conversation was unintentional.

9.5 Investigation of Mr K

Mr K is a former NSWPF officer. He was first named in LD warrant 95/2000 on 4 April 2000 and in the supporting affidavit as a person on the invitation list for the King send-off. There is no evidence that he attended the send-off on 30 June 2000. His circumstances differ from those of Mr J, Officer X and Officer T in that Mr K was named by Sea as having been involved in corrupt conduct.

Mr K was named in 14 LD affidavits and 42 associated warrants between 4 April 2000 and 21 December 2000, including LD warrant 266/2000 on 14 September 2000. There was no explanation for his inclusion given in any affidavit after the send-off and no evidence presented to link him to criminal or corrupt conduct.

However, Mr K had been mentioned by Sea both in his induced statement in December 1998 and in his initial debrief interviews in January 1999. Sea referred to something he had heard about Mr K but about which he had no direct knowledge:

*I have been told that [an officer] (Port Macquarie?) was involved in a couple of murders with [Mr K]. I may be able to recall the names of the victims.*¹³²

In his debrief interviews, Sea made two references to Mr K. In one reference Mr K was mentioned only in passing and no connection was drawn between him and any corrupt activity.¹³³ The second is a vague reference to a murder allegation:

127 This report was made under s. 19 of the LD Act, which says that the person who is granted a warrant must report to the eligible Judge and the Attorney General about the way the LD was used.

128 NSWCC, Report in accordance with LD Act, s. 19 (1), LD 178/2000, signed by [a NSWCC officer], 31 July 2000.

129 NSWCC transcripts of LD warrant 178/2000 do not name [Officer T].

130 NSWCC Information Report, *Review of CD/046 King Send-off Function, 30.6.00*, reporting officers: Kaizik, [Mascot officer], [Mascot officer], 7 July 2000.

131 Ombudsman Transcript, [Officer T], 28 May 2014, p. 14.

132 NSWCC Information Report, *Induced Statement of Sea provided over 16/12/1998 & 18/12/1998*, reporting officer: Burn, 13 January 1999, p. 8 of attachment (untitled, unsigned and undated).

133 NSWPF, Record of Interview between Detective Inspector Burn, Detective Senior Sergeant Henry and 'Sea', 10 January 1999, p. 15.

I can't give you the year, but I would say it would be in the early 90s. Just having a beer with [an officer] at various locations in Port Macquarie. First of all he told me, you know we were comparing stories about the guns and stuff and there was talk about, you know, shop work about armed hold ups (ind) he was talking about how a heap of guns fell out of the ceiling down at Miranda, at the Crime Squad there and then he started talking to me about, he said he was under investigation for some murders, or something like that. He said, he described one to me where, and I think they're in the southern region there somewhere where the guy that they were after, I think they were waiting inside the premises and the way he described it to me was that the bloke came in the front door, and went, shot, went straight back out. The other one he didn't sort of elaborate on but he did say that him and [Mr K] had done a couple of shootings.¹³⁴

Sea did not provide any more specific information. It appears that Sea was referring to a shooting involving Mr K during an armed robbery where an offender was shot but not killed. The incident was investigated at the time and there was no finding of wrongdoing against the police involved. Task Force Volta later reviewed the allegation against Mr K and found there was no material or evidence to support the allegation.¹³⁵

This information was transferred to the Schedule of Debrief allegation sheet and noted as:

SEA heard from [an officer] that [an officer] & [Mr K] were involved in two shootings/murders in South Region. Also heard from [an officer], that [an officer] was receiving money from solicitors at Port Macquarie.¹³⁶

Despite those mentions, Operation Prospect has not found any evidence that Mr K was specifically targeted during Mascot and his conversations were never recorded in any form of electronic surveillance by Mascot.

9.6 Investigation of Mr DD

Mr DD was a former NSWPF officer who worked with Sea on Task Force Magnum in 1991. At the time of the Mascot investigations he was no longer a serving police officer.¹³⁷

Mr DD was named in a total of 24 LD affidavits and 45 LD warrants during Mascot. He was also named in two TI affidavits but his phone was never intercepted.¹³⁸ Operation Prospect did not find any evidence that Sea or anyone else was specifically tasked to record Mr DD. There are no transcripts or tape logs that indicate Mr DD was recorded; one reference to him in a report by Mascot under section 19(1) of the LD Act indicates that he may have been recorded by the LD worn by Sea at the King send-off.¹³⁹

In his original debrief interviews, Sea told Mascot that he had no direct knowledge that Mr DD had been involved in any misconduct or corruption.¹⁴⁰ However, Sea stated that other officers had told him about Mr DD's alleged corrupt conduct during Magnum.¹⁴¹ This allegation was listed in Mascot's Schedule of Debrief, along with mention of an existing complaint that he was involved in corrupt conduct relating to the arrest and charging of suspects accused of conspiring to rob a payroll van in 1991.¹⁴² The Schedule of Debrief did not specify that Mr DD was an involved officer in its summary of the latter allegation.¹⁴³

¹³⁴ NSWPF, Record of Interview between Detective Inspector Burn, Detective Senior Sergeant Henry and 'Sea', 10 January 1999, p. 16.

¹³⁵ NSWPF, SCIA – Task Force Volta, Investigator's Report, SOD086 – NSWPF, Complaint number [number], 3 June 2003, p. 1.

¹³⁶ NSWCC, SOD086, Sea heard from [an officer] that [an officer] and [Mr K] were involved in two shootings/murders in South Region. Also heard from [an officer] that [an officer] was receiving money from solicitors at Port Macquarie, as at 28 July 2014, p. 26.

¹³⁷ PIC, *PODS Person Profile for [Mr DD]*, accessed by NSW Ombudsman on 11 August 2015.

¹³⁸ TI affidavits 100-101/1999 and 106-107/1999.

¹³⁹ NSWCC, Report in accordance with the LD Act, s. 19 (1), LD warrant 178/2000, 31 July 2000, signed by [a NSWCC officer], 31 July 2000.

¹⁴⁰ NSWCC, Record of Interview between Detective Inspector Burn, Detective Senior Sergeant Henry and 'Sea', 8 January 1999, p. 74.

¹⁴¹ NSWCC Information Report, *Schedule of Debrief with Sea, 91 matters outlined*, reporting officer: Burn, 13 January 1999, attachment 'handwritten schedule of events', p. 7.

¹⁴² Complaint CIS no. [number] was referred to Mascot and detailed under SOD044. See NSWPF Complaints Assessment Form, *CIS No. [number]*, reporting officer: Detective Senior Sergeant [name], date compiled: 26 October 1998; and NSWCC Report, *Schedule of Debrief – Operation Boat*, reporting officer: Jewiss, date compiled: 31 August 2000, p. 21.

¹⁴³ NSWCC Report, *Schedule of Debrief – Operation Boat*, reporting officer: Jewiss, date compiled: 31 August 2000, pp. 5, 11, 21 and 22. Mascot listed Mr DD as involved in four investigation matters in its initial Schedule of Debrief, including: SOD013, SOD025, SOD045, and SOD048.

Between 22 January 1999 and 5 August 1999, Mr DD was included in the ‘facts and grounds’ paragraphs of 10 LD affidavits¹⁴⁴ in connection with his previous involvement as an officer on Magnum. He was only named as a person Mascot sought to listen to or record in one of those affidavits and associated warrants.¹⁴⁵ The relevant paragraph also outlined Mascot’s suspicion that Mr DD had distributed an affidavit prepared by Internal Affairs (IA), relating to the investigation of Magnum officers.

Between 15 and 31 March 1999, Mr DD was also named in two TI affidavits as one of the “persons involved in the offences”, although he was not the person whose phone service was to be intercepted.¹⁴⁶ In those TI affidavits, Mr DD was also named in paragraphs outlining allegations that he was involved in corrupt conduct relating to the arrest and charging of suspects accused of conspiring to rob an armoured van in 1991.

Between 4 April 2000 and 26 June 2000, Mr DD was named in five LD affidavits as a person Mascot sought to listen to or record.¹⁴⁷ The ‘facts and grounds’ paragraphs of those affidavits referred to his expected attendance at the King send-off (and did not include the paragraphs relating to his involvement in Magnum).

Mr DD appeared in a further nine affidavits as a person Mascot was likely to listen to or record; however, there is no explanation in the ‘facts and grounds’ of the affidavits as to why Mascot wanted to do this.

Mr DD was named as a target by Mascot in a total of four separate investigations which were ultimately referred to Volta for review and finalisation.¹⁴⁸ In 2003, Volta investigators recommended “no further action” and “no adverse findings” in relation to Mr DD.¹⁴⁹

9.7 Memorandum about LD warrant 266/2000 in 2002

A memorandum signed by Burn on 13 April 2002 (Burn memo) explained why people were named in LD warrant 266/2000 (14 September 2000). This memo, together with findings, is discussed in Chapter 13. However, the Burn memo contained inaccurate information about Mr J, Officer T, Officer X and Mr K that will be mentioned at this stage.

The annexure to the Burn memo provided the following information about all four people:

[Mr J] *Not mentioned in September affidavit.*

King send-off list, part of Mascot strategy to gather corroborative evidence. Suspected to have been involved in or have knowledge of, corrupt or criminal conduct by Police. Mentioned in affidavits covering 19 April 2000 to 16 July 2000.

Known associate of named targets. Allegation that he may have a tape of the firearms located at a search warrant of interest to the inquiry.¹⁵⁰

[Officer T] *Not mentioned in September affidavit.*

King send-off list, part of Mascot strategy to gather corroborative evidence. Suspected to have been involved in or have knowledge of, corrupt or criminal conduct by Police. Mentioned in affidavits covering 19 April 2000 to 16 July 2000.¹⁵¹

144 LD affidavits 031-035/1999, 061/1999, 062-068/1999, 081-087/1999, 105-111/1999, 185-191/1999, 218-224/1999, 241-247/1999, 262-268/1999, and 279-285/1999. The affidavit Mascot suspected Mr DD to have distributed is referred to in Chapter 5 of this report as the ‘Ancrum affidavit’.

145 LD affidavit 105-111/1999; LD warrants 105-111/1999.

146 TI affidavits 100-101/1999, and 106-107/1999.

147 LD affidavits 091-097/2000, 108-114/2000, 126-132/2000, 147-153/2000 and 174-180/2000.

148 NSWCC Report, *Schedule of Debrief – Operation Boat*, reporting officer: Jewiss, date compiled: 31 August 2000, pp. 5, 11, 21 and 22. Mascot listed Mr DD as involved in four investigation matters in its initial Schedule of Debrief, including: SOD013, SOD025, SOD045 and SOD048.

149 NSWPF, *Involved Officers List (abridged to exclude complaint details)*, as at 21 November 2003, pp. 7, 17, 31 and 34; NSWPF Complaint number [number] SOD013 Investigators report by Constable [name], Task Force Volta, 27 February 2003; NSWPF, Complaint number [number] SOD025 Investigators Report by Detective Senior Constable [name], Task Force Volta, 12 February 2003; NSWPF, Complaint number [number] SOD045, Investigator’s Report by Senior Constable [name], Task Force Volta, 13 May 2003; and NSWPF, Complaint number [number] SOD048 Investigator’s Report by Detective Sergeant [name], Task Force Volta, 28 August 2003.

150 NSWPF internal memorandum from Acting Superintendent Catherine Burn, Acting Commander of SCU to Commissioner Brian Reith, Commander of SCIA, 13 April 2002 – annexure entitled ‘Listening Device Warrant 266/2000 Dated, 14 September 2000’, p. 12.

151 NSWPF internal memorandum from Acting Superintendent Catherine Burn, Acting Commander of SCU to Commissioner Brian Reith, Commander of SCIA, 13 April 2002 – annexure entitled ‘Listening Device Warrant 266/2000 Dated, 14 September 2000’, p. 9.

[Officer X] *Not mentioned in September affidavit.*

King send-off list, part of Mascot strategy to gather corroborative evidence. Suspected to have been involved in or have knowledge of, corrupt or criminal conduct by Police. Mentioned in affidavits covering 19 April 2000 to 16 July 2000.

Lenghty [sic] complaints history.¹⁵²

[Mr K] *Not mentioned in September affidavit.*

King send-off list, part of Mascot strategy to gather corroborative evidence. Suspected to have been involved in or have knowledge of, corrupt or criminal conduct by Police. Mentioned in affidavits covering 19 April 2000 to 16 July 2000.

Adverse SOD involvements.¹⁵³

Those extracts contain some misleading or incorrect statements:

- It is misleading to say that those people were not mentioned in the supporting affidavit to LD warrant 266/2000 (dated 14 September 2000). They were all named in the list of people in that affidavit who were likely to be recorded by the LD. What was not mentioned in the affidavit was an explanation for why each of them was named.
- The Burn memo states that each person was 'Mentioned in affidavits covering 19 April 2000 to 16 July 2000'. In fact, Mr J and Officer T were named in affidavits between 4 April to 16 November 2000, and Officer X and Mr K in affidavits between 4 April and 21 December 2000. All were mentioned in the supporting affidavit for LD warrant 266/2000. The affidavits after June 2000 did not explain why any of them was named.
- There was no allegation in any of the affidavits or any Mascot documents about Mr J, Officer T or Officer X being involved in or having knowledge of corrupt or criminal conduct.
- There was no allegation in any of the affidavits of Mr K being involved in or having knowledge of corrupt or criminal conduct. While he was listed on the SOD list none of the affidavits mentioned Mr K's 'adverse SOD involvements'.

A letter written by Burn dated 22 April 2002 and addressed to Inspector of the Police Integrity Commission (PIC Inspector) the Hon Mervyn Finlay QC also provided an explanation for why Officer T was named in LD warrant 266/2000. The letter commented that – while investigators did not have any evidence that any of the three were involved in corruption – “it is possible they had some sort of knowledge, and in any case, it was believed that they would be present when corruption was committed or spoken about”.¹⁵⁴

9.8 Analysis, findings and recommendation

9.8.1 Analysis and submissions

It is not clear from the supporting affidavit to LD warrant 95/2000 why many of the 113 people were named in that warrant. The particular concern of this chapter is why the 30 invitees to the King send-off function were all named.

¹⁵² NSWPF internal memorandum from Acting Superintendent Catherine Burn, Acting Commander of SCU to Commissioner Brian Reith, Commander of SCIA, 13 April 2002 – annexure entitled 'Listening Device Warrant 266/2000 Dated, 14 September 2000', p. 9.

¹⁵³ NSWPF internal memorandum from Acting Superintendent Catherine Burn, Acting Commander of SCU to Commissioner Brian Reith, Commander of SCIA, 13 April 2002, – annexure entitled 'Listening Device Warrant 266/2000 Dated, 14 September 2000', p. 9.

¹⁵⁴ Letter from Acting Commander Catherine Burn, Mascot Reference, NSWCC to the Hon Mervyn Finlay, Inspector of the Police Integrity Commission, 22 April 2002, p. 1.

The explanation given in the supporting affidavit is that all were suspected of knowing about or being involved in criminal conduct or corruption. There was no staunch defence of that supposition in the evidence given to Operation Prospect, and some of the former Mascot staff expressed their unease with it. Indeed, there is a high degree of implausibility in assuming that every attendee at a social function to mark a police officer's retirement will be connected to the possible corruption of one or other officers at the function. In particular, there was no evidence in Mascot records to suggest that Mr J, Officer T or Officer X had been involved in any corrupt or criminal conduct or any specific evidence to suggest they had knowledge of it.

That is not to say that a warrant application could not be made to record (potentially) all those attending the function. An obvious rationale for doing so is that a person attending the function may be an incidental bystander or participant in a conversation that does meet the threshold required by the LD Act. If so, that explanation could be given in straightforward terms in the affidavit. It would then be for the judicial officer deciding the application to consider whether it is appropriate that a LD should be used in that way and, if so, whether conditions should be included in the warrant.

That path was not followed in drafting the supporting affidavit for LD warrant 95/2000. The Mascot records do not indicate that staff turned their minds to this issue, or considered whether those attending the function should be considered individually, rather than as a homogenous group. There was an obvious distinction to be drawn between Mr J, Officer T and Officer X and at least some other invitees to the function. It seems that the invitees were grouped together either through opportunism or carelessness in the Mascot team and the NSWCC. “[L]aziness, or mission creep” was Bradley’s description.¹⁵⁵

The defects in LD warrant 95/2000 were carried over into subsequent warrants and affidavits. This occurred both before and after the King send-off. Affidavits sworn before the function explained that Mascot sought to listen to or record people attending a function that would not be held until after the warrant had expired. The only possible explanation is that the deponents of those affidavits did not properly discharge their legal and professional duty of attesting to material which they understood and believed to be true.

Affidavits sworn after the function noted that the function had been held, but Mascot still sought to listen to or record every member of the invited group for some months afterwards. Again, there is no apparent rationale for that strategy – other than error and sloppiness in the warrant and affidavit process.

Substandard affidavit preparation is apparent too from some anomalies in the documents, as the following three examples illustrate:

- The warrant granted on 26 June 2000 did not name some attendees who were in the updated list that Sea gave Mascot on 28 June, two days before the send-off. It is possible their conversations were recorded.
- The names of six of the 30 invitees were removed, without explanation, from two affidavits sworn on 7 December 2000¹⁵⁶ and 21 December 2000.¹⁵⁷ It is not clear why some names were removed but not others.
- The cautious language used in the Owen memo – the invitees “have historical connection with King and other members of NSW Police who Commission investigators believe have previously been involved in and/or have knowledge of corrupt behaviour” was replaced by far stronger language in the affidavits of 4 April, 19 April, 15 May, 5 June and 26 June 2000 – “I suspect those persons have been involved in, or have knowledge of, corrupt or criminal conduct, or both”.

155 Ombudsman Transcript, Phillip Bradley, 24 November 2014, p. 3056.

156 LD affidavit 362-368/2000.

157 LD affidavit 391-397/2000.

There were many stages at which those flaws could have been picked up by one or more officers who had a role to play in the investigation – in drafting the affidavits, reviewing them before adoption, at the stage of being sworn, or in overall guidance and supervision of the Mascot investigations and preparation of documents for the investigation. Clearly, there was a collective failure. There is therefore a finding below against the NSWCC for its failure to discharge its responsibility to ensure that the Mascot investigations were conducted in accordance with the NSWCC’s own policies, practices and procedures.

Operation Prospect has also considered whether adverse findings should be made against individual officers. Following the approach adopted in other chapters, individual adverse findings are not made against the officers who swore rollover affidavits that simply copied or cut and pasted from earlier affidavits.

On the other hand, the approach adopted in this report has been to make individual findings against officers who swore the first affidavit that included inaccurate or misleading material. In some other chapters, a finding has been made that the deponent in those circumstances engaged in conduct that was unreasonable in terms of section 122(1)(d)(i) of the *Police Act 1990*. Three officers are named earlier in this chapter for affidavits that were defective:

- Jewiss – as the deponent of the supporting affidavit to LD warrant 95/2000, sworn on 4 April 2000, that first listed all 30 invitees to the King send-off (section 9.3.1).
- Kaizik – as the deponent of three affidavits. Two sworn on 19 April and 5 June 2000, that named all 30 invitees though it was known the send-off would not be held during the currency of either warrant (section 9.3.2), and the third warrant sworn after the send-off on 17 July 2000, that continued to name all 30 invitees (section 9.3.4).
- Moore – as the deponent of an affidavit on 15 May 2000 that named the invitees but also noted the date of the send-off as 30 June 2000 (section 9.3.4).

Although the deponents do bear some responsibility for swearing affidavits with those defects, it is accepted that this was not done deliberately to flout proper principle in conducting the Mascot investigations. In part, it seems, the King send-off invitees were listed as a group to ensure operational flexibility in case Sea encountered any of the listed people, and in the belief that it was legitimate to frame a warrant in that way.¹⁵⁸ Also, the names were grouped and left on the warrant because Mascot lacked a rigorous system to check the content of affidavits and warrants. That and other systemic problems are examined in Chapter 16.

Many of the deponents of the affidavits that named the King send-off invitees also made written submissions to Operation Prospect to explain the context for their actions.¹⁵⁹ Common themes were that the affidavits were sworn in good faith, they were prepared in part if not substantially by others, it was established practice in Mascot to adopt affidavits in this form, the deponents did not receive specific training in affidavit preparation, and they relied on legal and senior staff in Mascot for guidance in document preparation. Some submissions also made the frank concession that “with the benefit of hindsight he would have probably approached the affidavit process a lot differently”;¹⁶⁰ “there were serious omissions, errors and problems in the way in which a number of his tasks were performed”;¹⁶¹ and “[he] properly conceded that names may have been left in ... due to “human error””.¹⁶²

For those reasons, the finding that is made below against Jewiss, Kaizik and Moore is not that their conduct was unreasonable – but that it was in accordance with a NSWCC practice that was unreasonable.

158 For example, Ombudsman Transcript, Greg Jewiss, 29 July 2014, p. 915; Ombudsman Transcript, Troy Kaizik, 8 August 2014, p. 1250; Statement of Information (Interview), Greg Moore, 10 March 2014, p. 101; Ombudsman Transcript, [witness], 6 August 2014, p. 1214; Ombudsman Transcript, [witness], 28 July 2014, p. 771.

159 For example: Jewiss, G, Submission in reply, 7 September 2015, pp. 1-3; Kaizik, T, Submission in reply, 11 June 2015, pp. 2-3; and Moore, G, Submission in reply, 25 Nov 2015, pp. 45-53.

160 Kaizik, T, Submission in reply, 11 June 2015, p. 2.

161 Jewiss, G, Submission in reply, 7 September 2015, p. 3.

162 Moore, G, Submission in reply, pp. 44-45.

Four other people are mentioned in the earlier discussion in this chapter – Trayhurn, Burn, Standen, Bradley.

Trayhurn is mentioned as the deponent of LD warrant 266/2000 (section 9.3.4). However, that was essentially a rollover warrant. Trayhurn's written submission to Operation Prospect made many of same points about Mascot practices described above.¹⁶³

Burn is mentioned as the Mascot team leader (section 9.3.1). Although she had the opportunity through her supervisory role and planning involvement to influence the overall conduct of investigation strategies and actions, she did not have a specific responsibility under the NSWCC LD Manual for affidavit review. Her evidence to Operation Prospect was that NSWCC processes and procedures for obtaining LD warrants allocated the responsibility to other officers, and she “relied on those officers to perform their roles with due diligence and care and I did not consider it to be part of my role to verify the factual accuracy and completeness of their work”.¹⁶⁴ In those circumstances it is not appropriate to record an individual finding against Burn for the specific deficiencies in the affidavits considered in this chapter.

The same can be said about Standen's role (section 9.3.1). Standen had a responsibility under the NSWCC LD Manual to review affidavits.¹⁶⁵ He gave evidence to Operation Prospect that he made suggestions for amendments to the affidavits, and it is not possible to determine if those suggestions were taken up.

Bradley accepted in his written submission to Operation Prospect that he was part of the “responsible senior management in respect of the direction, oversight and control of the Mascot investigation”.¹⁶⁶ However, his submission also stated that he was not a party “to the precise manner in which the King send-off documentation was prepared and used”.¹⁶⁷ The earlier discussion in this chapter has accepted Bradley's submission on those points (section 9.3.4).

9.8.2 Findings

30. Jewiss

As discussed in section 9.8, the conduct of Jewiss, Kaizik and Moore – as the deponents of LD affidavits that inappropriately named, without proper explanation, 30 people who were on a list of invitees to the King send-off – was conduct that was engaged in accordance with an established practice that was unreasonable in terms of section 122(1)(e) of the *Police Act 1990*.

31. Kaizik

As discussed in section 9.8, the conduct of Jewiss, Kaizik and Moore – as the deponents of LD affidavits that inappropriately named, without proper explanation, 30 people who were on a list of invitees to the King send-off – was conduct that was engaged in accordance with an established practice that was unreasonable in terms of section 122(1)(e) of the *Police Act 1990*.

32. Moore

As discussed in section 9.8, the conduct of Jewiss, Kaizik and Moore – as the deponents of LD affidavits that inappropriately named, without proper explanation, 30 people who were on a list of invitees to the King send-off – was conduct that was engaged in accordance with an established practice that was unreasonable in terms of section 122(1)(e) of the *Police Act 1990*.

¹⁶³ [Mascot officer], Submission in reply, 26 August 2015.

¹⁶⁴ Burn, C, Submission in reply, 25 September 2015, Appendix 2, pp. 7-8.

¹⁶⁵ NSWCC, *LD Manual*, June 1998, p. 25; and NSWCC, *LD Manual*, December 1999, p. 28.

¹⁶⁶ Bradley, P, Submission in reply, 30 November 2015, p. 2.

¹⁶⁷ Bradley, P, Submission in reply, 30 November 2015, p. 3.

33. NSW Crime Commission

The NSW Crime Commission is responsible for the actions of members of the Mascot Task Force in the preparation and adoption of warrants and supporting affidavits that inappropriately named, without proper explanation, 30 people who were on a list of invitees to the King send-off. As discussed in section 9.8, this occurred in relation to multiple warrants and affidavits that were adopted in the period 4 April to 21 December 2000. The example is given in section 9.4 of three people – Mr J, Officer T and Officer X – who were named even though there was no evidence in Mascot records to suggest that any of them had been involved in corrupt or criminal conduct, or specific evidence to suggest that any of them had knowledge of it.

The NSW Crime Commission was responsible for the Mascot and Mascot II references and for supervising members of the Mascot Task Force. The actions taken by the Mascot Task Force as examined in this chapter 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 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*.

9.8.3 Recommendation

8. It is recommended under section 26(2) of the *Ombudsman Act 1974* that the NSW Crime Commission separately provide to Mr J, Officer T and Officer X a written apology for the fact that they were inappropriately named in warrants and affidavits in the period 4 April to 16 November 2000 (as to Mr J and Officer T) and to 21 December 2000 (as to Officer X).

It should be noted that a similar recommendation that an individual apology be given to each of the other 27 people who were listed as invitees to the King send-off is not made. Operation Prospect is not in a position to gauge whether there was other evidence to support those people being named in one or more of the warrants or affidavits in the period 4 April to 21 December 2000.

Chapter 10. Investigation into Officer F

10.1 Chapter overview

This chapter considers the investigation by Mascot of a senior police officer, who will be referred to as Officer F. In the course of the Mascot investigations, Officer F was named in 77 LD warrants that were supported by 27 LD affidavits. He was named as a person whose telephone calls were to be listened to in one TI affidavit supporting three warrants on telephone services on his telephone, Sea's telephone, and at his former home. He was also named in three other TI affidavits as an involved person. He was recorded by a LD on at least nine occasions.¹⁶⁸ The reasons Officer F was named in those warrants differed over the course of investigation. The earliest document Operation Prospect has found which identifies Officer F (other than the brief mention in the Sea debrief which is discussed at section 10.2.2) is a 2 October 2000 report identifying opportunities for Sea (see section 10.2.6).

Officer F was first named in a Mascot LD affidavit and warrant on 4 April 2000, along with other people who it was anticipated would be invited to the King send-off. This was cited as the reason he may be recorded in a total of five LD affidavits between April and June 2000. Those affidavits and warrants are discussed in Chapter 9, along with Operation Prospect's conclusions and findings in relation to the preparation of the affidavits.

Between July and December 2000 Officer F was named in nine LD affidavits as a person Mascot was likely to record or listen to. There is nothing in any of those affidavits to explain why Mascot wanted to do this. It appears that Officer F was listed in those affidavits and associated warrants along with other King send-off invitees, even though that function had been held on 30 June 2000. The paragraph in the affidavits referring to the King send-off was removed after that date, but the names of all proposed invitees remained in the affidavits that followed. Those affidavits and warrants are also discussed in Chapter 9.

Between 22 January and 23 September 2001 Officer F was named in 13 LD affidavits. The explanation given in the affidavits was a suspicion attaching to his conduct, arising from a conversation recorded by a LD on 19 November 1999. In five of the affidavits, an additional ground was that Officer F was suspected to have leaked information about Mascot's informant, Sea.

The warrants associated with these 27 LD affidavits were granted in all cases.

The primary focus of this chapter is analysing why Officer F was actively investigated by Mascot over a period of 15 months from October 2000 to December 2001 – including why he was named in affidavits and associated warrants. The key issues considered are:

- the appropriateness of the Mascot decisions to target Officer F for investigation
- the nature of the allegations Mascot was investigating
- whether there was a perceived conflict of interests behind the targeting decisions.

This chapter will also highlight a range of inaccuracies in the way that allegations against Officer F were recorded in Mascot Information Reports and in the supporting affidavits for LD and TI warrants.

The chapter concludes with findings against Mascot investigators who included inaccurate information about Officer F in affidavits and Information Reports, senior officers of the NSWPF, the NSWCC and the Police Integrity Commission (PIC) in relation to how they managed the strategies to investigate Officer F, and the NSWCC in relation to its lack of appropriate systems to properly evaluate the strategies being used by Mascot to investigate Officer F.

The discussion in this chapter repeats the allegations against Officer F that were investigated by Mascot. It is necessary to do this to provide context for the analysis. However, it is important to note that no findings of misconduct or criminality were recorded against Officer F. The first allegation that led to him becoming a Mascot target was made by a person who was serving a prison sentence after a police operation in which Officer F had participated.

¹⁶⁸ Officer F was also named as a person, among others, whose phone conversations may be recorded in two affidavits for TI warrants for Sea's telephone.

10.2 Mascot takes notice of allegations about Officer F

10.2.1 Initial allegations about Officer F

Officer F initially came to the attention of the Special Crime and Internal Affairs Command (SCIA) through an internal memo on 26 October 1998.¹⁶⁹ The memo was written by a Detective Senior Sergeant in the Internal Affairs Investigation Unit of SCIA, and was addressed to the Operations Coordinator, Manager of the Strategic Assessments and Security Centre (SASC) and SASC Assessments.¹⁷⁰ The memo listed eight complaints relating to 11 police officers (including Officer F and Sea) who had been involved in Task Force Magnum. The memo recommended these matters be investigated by Task Force Ancrum, which sat within the IA Investigation Unit, within SCIA.

Magnum was established in 1991 to investigate the growing number of armed robberies on armoured vehicles occurring at that time.¹⁷¹ Ancrum was investigating allegations that Magnum investigators 'loaded' or 'verballed' a number of suspects during its investigations.¹⁷² Officer F and Sea had both worked in Magnum, along with other officers who were investigated by Mascot.¹⁷³ The unresolved Ancrum investigations were later taken over by Mascot.

One of the eight complaints in the October 1998 memo was made by a convicted criminal, Mr S, alleging that he had been falsely arrested in 1992 in relation to an armed robbery. Mr S complained that during his arrest on 18 August 1992 he was loaded up and verballed by police alleging he had shown them where guns were hidden near Rookwood Cemetery. Mr S alleged that four officers were involved in this conduct, including Officer F.¹⁷⁴ In late 1998 Mr S was still serving a prison sentence for that armed robbery. The memo recommended that the matters be lodged as separate complaints and returned to Ancrum for investigation.¹⁷⁵

On 9 December 1998 the same IA Detective Senior Sergeant wrote a further memo titled: 'Further investigations required re T/F 'Magnum' matters'.¹⁷⁶ In relation to Mr S's allegations about Officer F, the memo stated there was no likelihood of criminal charges given the length of time since the alleged conduct and the lack of corroborative evidence, but recommended that all police involved be investigated "with a view to managerial action".¹⁷⁷

The SCIA Investigations Unit Operations Coordinator made an individual handwritten note/assessment on each investigative proposal in the December 1998 memo. For the allegation involving Officer F, the Coordinator noted: "I fail to see what would be gained by the proposed action, given the historical nature of the matter and the perceived lack of corroboration".¹⁷⁸ Both the December memo and the version with the Coordinator's notes were annexed to an Information Report by a Mascot investigator, dated 18 January 1999. The Information Report listed the matters outlined in the memo and named 28 officers, including Officer F.¹⁷⁹

169 NSWPF internal memorandum from Detective Senior Sergeant [name] to Operations Co-ordinator, Investigation Unit, Manager Strategic Assessments and Security Centre (SASC), Internal Affairs and SASC assessments, 26 October 1998, p. 3.

170 The SASC was part of Internal Affairs, within SCIA; SASC conducted a variety of assessments such as security and probity, held police service histories, and conducted intelligence analysis and other research.

171 PIC, *Report to Parliament – Operation Florida*, Volume 2, June 2004, p. 275.

172 NSWPF internal memorandum from Detective Senior Sergeant [name] to Operations Co-ordinator, Investigation Unit, Manager SASC, Internal Affairs and SASC assessments, 26 October 1998, p. 3.

173 PIC, *Report to Parliament – Operation Florida*, Volume 2, June 2004, pp. 273-327.

174 NSWPF internal memorandum from Detective Senior Sergeant [name] to Operations Co-ordinator, Investigation Unit, Manager SASC, Internal Affairs and SASC assessments, 26 October 1998, p. 2.

175 NSWPF internal memorandum from Detective Senior Sergeant [name] to Operations Co-ordinator, Investigation Unit, Manager SASC, Internal Affairs and SASC assessments, 26 October 1998, p. 3.

176 NSWCC Information Report, *Report by Det Sen Sgt [name] 'Further investigations required re Task Force 'Magnum' Matters'*, reporting officer: Szabo, 18 January 1999 enclosure entitled 'Further investigations required re: T/F 'Magnum' Matters' [Ancrum Investigator], 9 December 1998.

177 NSWCC Information Report, *Report by Det Sen Sgt [name] 'Further investigations required re Task Force 'Magnum' Matters'*, reporting officer: Szabo, 18 January 1999 enclosure entitled 'Further investigations required re: T/F 'Magnum' Matters', [Ancrum Investigator], 9 December 1998, p. 2.

178 NSWCC Information Report, *Report by Det Sen Sgt [name] 'Further investigations required re Task Force "Magnum" Matters'*, reporting officer: Szabo, 18 January 1999 enclosure entitled 'Further investigations required re: T/F "Magnum" Matters', [Ancrum Investigator], 9 December 1998, p. 2 of enclosure.

179 NSWCC, *Task Force Magnum Reference – Targets*, reporting officer: Szabo, 18 January 1999, p. 1.

Burn, who was Team Leader for Mascot at the time, was asked in her evidence to Operation Prospect why Officer F was named in Mascot warrants for LDs. She said:

Ancrum is very, very important to the lead-up to Mascot ... Ancrum preceded Sea, Ancrum preceded Mascot. So there already was an investigation underway into very serious allegations involving police still in the police force, around planting evidence, fabrication, perjury, et cetera. So there were serious allegations. One of those matters that Ancrum was looking at was a series of allegations made by [Mr S]. One of those matters involved [Officer F]. So he was an involved officer in an investigation prior to Mascot being formed. He was an involved officer, along with other serving police, including Sea. ...[S]o they were both under investigation...¹⁸⁰

10.2.2 Debrief of Sea (January 1999)

On 8 January 1999 – as explained in Chapter 3 – Burn and Detective Senior Sergeant Damien Henry recorded a debrief interview with Sea. Burn asked Sea some questions about Officer F and Magnum in the interview:

Q.830: *Do you have any knowledge of police officer [Officer F], [Officer F]?*

A: *[Officer F]. I know [Officer F], yes.*

Q.831: *Do you have any knowledge of any participation in Magnum he may have had?*

A: *I don't remember him being involved in Magnum. He wasn't on the team, I know that.*

Q.832: *Ah ...*

A: *I know he was on the Hold Up Squad at North West there for a time.*

Q.833: *Do you know of any involvement with [Officer F] in any arrest or incidents with [Mr S]?*

A: *No.¹⁸¹*

Sea was then asked about two other officers involved in the arrest of Mr S. Officer F was not mentioned again.

10.2.3 Officer F mentioned on a LD recording (July 1999)

In July 1999 Mascot documents indicate that Sea had two conversations with Mascot targets – that were recorded by authorised LDs – in which Officer F was mentioned.¹⁸² On both occasions, Sea alluded to Officer F's possible involvement in an alleged theft of money by police officers after the robbery of an Armaguard truck at Orange Airport in 1993 (the Armaguard robbery).¹⁸³ There is no evidence that Officer F was involved in that theft, although he had worked with some officers who may have been involved.

The Armaguard robbery allegation was recorded in the Mascot Schedule of Debrief. The early versions of the Schedule did not refer to Officer F, but his name was later added to the record of this incident (see section 10.5.2).

In the first recorded conversation on 23 July 1999, Officer F was mentioned in a discussion of performance management agreements between Sea, MSO1 and Mascot Subject Officer 7 (MSO7). Sea said: "I saw [Officer F] yesterday. I said mate did they uh.... are they forgettin', they forgettin' your history, have they? He said yeah I think they have".¹⁸⁴ This is followed by the following exchange about Officer F's recent promotion:

S: *Gifted? He's fuckin' blessed.*

[MSO7]: *It's a matter of timing, isn't it?*

[MSO1]: *Oh yeah. Yeah you're right, [Officer F]'s blessed.*

¹⁸⁰ Ombudsman Transcript, Catherine Burn, 12 November 2014, pp. 2782-2783.

¹⁸¹ NSWCC, Record of interview between Detective Inspector Burn, Detective Senior Sergeant Henry and 'Sea', 8 January 1999, pp. 70-71.

¹⁸² NSWCC internal memorandum from [a NSWCC analyst], Intelligence Analyst, undated, pp. 2-3.

¹⁸³ This matter was listed on the Mascot Schedule of Debrief as SOD078.

¹⁸⁴ NSWCC Transcript of LD 266/1999, T99/183, 23 July 1999, p. 19.

S: *He's fuckin' blessed, he should have got locked up.*

[MSO1]: *The only one not to be interviewed over [Mr S]. Never interviewed.*

S: *He was interviewed over ... he was interviewed over fuckin' Orange Airport.*

[MSO1]: *(ind) something there?*

S: *[Laughs] You're fucking kidding [MSO1].*

[MSO1]: *Orange Airport, I can't even remember Orange Airport.*

S: *Where the million went missing.*

[MSO1]: *I don't remember Orange Airport. Refresh my memory.*¹⁸⁵

Operation Prospect was unable to find any Mascot document stating that Sea was tasked to have this particular exchange or to suggest that Officer F was involved in the Armaguard robbery. Operation Prospect asked Sea about his basis for saying Officer F "should've got locked up".¹⁸⁶ Sea replied that he might have just "thrown that in" and that it was not on the basis of any information he knew about Officer F.¹⁸⁷

In the second recorded conversation on 29 July 1999 between Sea and Mascot Subject Officer 11 (MSO11), Sea again raised the possibility of Officer F being involved in the Armaguard robbery (described as the Orange job in the conversation quoted below):

[MSO11]: [Officer F] ... [Officer F] *is the one, fuck me.*

[MSO11]: *He's a super now.*

S: *How come some people get washed clean and others don't, explain to me how that happens.*

[MSO11]: *Fuck me.*

S: *Well [Officer F] did the Orange job, didn't he?*

[MSO11]: *He was worried for fuckin' months.*

S: *Well, why wouldn't he be?*

[MSO11]: *They had a good hit out of that, did they?*

S: *Mmm. So [Mascot Subject Officer (MSO22)] told me.*¹⁸⁸

Mascot documents do not record Sea being tasked to mention Officer F in this conversation, and – in his evidence to Operation Prospect – Sea did not recall anything about the Armaguard robbery.

Sea's conversation with MSO11 was summarised by Burn in an Information Report dated 10 August 1999: "[MSO11] referred to [Officer F] and the Orange Armaguard robbery".¹⁸⁹ The Information Report records Officer F in a list of 'names mentioned' in the conversation,¹⁹⁰ but does not note that Sea had raised Officer F's alleged involvement. Rather, the report could be read as implying that MSO11 had connected Officer F to the Armaguard robbery.

Burn was interviewed by Operation Prospect about the transcript of the recorded conversation of 29 July 1999 and her Information Report. She told Operation Prospect that there was no evidence in the transcript of the conversation that Officer F was involved in the Armaguard robbery.¹⁹¹ She agreed that the subject matter of the 'Orange job' was only raised by Sea to prompt conversation on the issue.¹⁹² Burn thought it was "a matter for interpretation" whether her Information Report could be read as implying that MSO11 was making a connection

185 NSWCC Transcript of LD 266/1999, T99/183, 23 July 1999, pp. 19-20.

186 NSWCC Transcript of LD 266/1999, T99/183, 23 July 1999, p. 20.

187 Ombudsman Transcript, Sea, 23 October 2013, p. 106.

188 NSWCC Transcript of LD 266/1999, T99/187, 29 July 1999, p. 12.

189 NSWCC Information Report, *Contact with Sea on 10/8/99 – LD review re [name]/[MSO11]*, reporting officer: Burn, 10 August 1999, p. 2.

190 NSWCC Information Report, *Contact with Sea on 10/8/99 – LD review re [name]/[MSO11]*, reporting officer: Burn, 10 August 1999, p. 4.

191 Ombudsman Transcript, Catherine Burn, 11 November 2014, p. 2726.

192 Ombudsman Transcript, Catherine Burn, 11 November 2014, pp. 2726, 2728.

between Officer F and the Armaguard robbery.¹⁹³ She did not consider the wording of her report to be unfair or inaccurate in not mentioning that it was Sea who had raised the matter:

Q: *So you won't accept that that's an unfair and inaccurate reflection of the exchange about [Officer F]?*

A: *I, I, it's, it's a summary of the transcript – sorry it's a summary of the meeting, and, and I think that you could, it does, it doesn't, it doesn't reflect – it doesn't necessarily say that Sea, Sea, Sea brought it up. What it does say, though, is that [MSO11] does refer to [Officer F] and in the context of Orange.*

Q: *[MSO11] doesn't even use the word "Orange", does he?*

A: *No, but in the context ---*

Q: *And nobody uses the word "Orange Armaguard robbery". That's been read into it by you hasn't it?*

A: *That's, that's correct.¹⁹⁴*

10.2.4 Officer F unintentionally recorded by LD (November 1999)

On 19 November 1999 Officer F was recorded by an authorised LD at a social function attended by some Mascot targets.¹⁹⁵ The conversation was recorded without Officer F being named on warrants authorising Sea to record conversations at that function. At this time, Mascot records did not include any allegations against Officer F. He was not named in any operational documents as a target – only as a name mentioned in relation to the conversation recorded on 29 July 1999. It does not appear that his attendance at the function was anticipated by Mascot or that Sea was tasked to record him. It is likely that this recording of Officer F would therefore be classified as an 'unintentional' recording that was permitted under section 5(2)(d) of the LD Act.

The conversation took place in a noisy bar. An Information Report noted that the recording started at 4.12 pm and Officer F arrived at 6.12 pm. His voice is picked up on the recording at about 7.39 pm.¹⁹⁶ The recorded conversation centred on an officer who was being treated unfairly by the PIC because another officer's transcript had been put on his file, which was then relied on to remove him from the NSWPF.¹⁹⁷ The relevant part of the conversation was transcribed by Mascot as follows:

[MSO3]: *Yeah. That's what I heard.*

[Officer F]: *Because they fucked him up completely. They just ... I can't believe that. Can you imagine what would happen to [Officer F] or [Sea] if you fuckin' transpose some other bloke's transcript on to it and charge him on that basis. (...ind...)*

[MSO3]: *The thing is leading up to a 181D no one knows what they're gonna base it on until you actually get it. You should be able ... when they ... they've gotta send you a notice first right. At that stage they are considering it right. At that stage they simply say we're considering (a) (b) (c) (d) and (e). Instead of saying we're considering it and all of a sudden you get one, and then they give it to you ...*

[Officer F]: *What about the fuckin' effect it has on your family and that ...*

[MSO3]: *You've got 21 fuckin' days ...*

[Officer F]: *Yeah.*

¹⁹³ Ombudsman Transcript, Catherine Burn, 11 November 2014, p. 2729.

¹⁹⁴ Ombudsman Transcript, Catherine Burn, 11 November 2014, pp. 2729-2730.

¹⁹⁵ NSWCC Transcript of LD 376/1999 and 403/1999, Tape 99/282, 19 November 1999.

¹⁹⁶ NSWCC Information Report, *Contact with Sea 22.11.1999. LD Tapes re [name] send off received & reviewed*, reporting officer: Henry, 29 November 1999, pp. 1, 3, 4.

¹⁹⁷ NSWCC Transcript of LD 376/1999 and 403/1999, Tape 99/282, 19 November 1999, pp. 64-65.

[MSO3]: *21 fuckin' days to fuckin' ... a mountainous case (...ind...) half the things that most people don't even know about and (...ind...) goes on. Mate, I'm telling you know, I don't think there's been a successful one down there I don't think.*

Sea: *(...ind...)*

[MSO3]: *Those drug fuckin' (...ind...)*

[IND CONVERSATION]

[MSO3]: *(...ind...) fuckin' sick (...ind...) involved in fuckin' years ago in their own fuckin' way because we're all involved in (...ind...) that's the way it happened. If you didn't fuckin' do what you were told you didn't stay in there.*

[Officer F]:¹⁹⁸ *They're judgin' blokes today on today's rules on something what they did fuckin' ...*

[MSO3]: *(...ind...) What I'm talkin' about is this ...*

Sea: *The job has changed.*

[MSO3]: *There's no more... it don't matter whether the guy is in the job or out of the job. For a guy (...ind...) that's not a big deal, that's not a bloody big deal. And (...ind...) and if you didn't do it you weren't allowed to stay (...ind...) and yet all of a sudden they want to (...ind...)*

[Officer F]: *I thought it was all over.*

[MSO3]: *No it's not all over.*¹⁹⁹

On 29 November 1999 Henry prepared an Information Report on the recorded conversation:

19.48 [Officer F] *mentions [an officer] is looking good for getting back into the Service. [Officer F] goes through history of his sacking etc.*

19.51 [MSO3] *infers everyone was involved in some form of corruption 'in their own way' years ago. Mentions [a senior officer] and [another senior officer]. [MSO3] – 'If you didn't do it you weren't allowed to remain in plain clothes'. [Officer F] agrees and replies – 'Judging blokes today on today's rules for something they did whenever'. [MSO3] comments that the job has changed... 'guys were bricking blokes because they needed bricking.'*²⁰⁰

This extract of the conversation summarises it in a way that implies agreement by Officer F with MSO3's assertion that everyone was involved in corruption at some stage. Operation Prospect questioned senior Mascot and other NSWCC officers about this summary.

Superintendent John Dolan, Commander of the SCU said that the meaning to be derived from recordings and the transcripts was sometimes "enhanced".²⁰¹ However, he agreed that Henry's Information Report did not fairly reflect what was said in the transcript in attributing agreement by Officer F with MSO3's comment. Dolan described it as "an error, and it's wrong".²⁰² He agreed when it was put to him that it looked like 'beefing up' what was actually said to make it look more suspicious, and that it was 'probably' unfair to Officer F.²⁰³ However, Dolan was not surprised there was such an error given the huge amount of transcribed material that Mascot staff were digesting each day.²⁰⁴

198 This comment was wrongly attributed to Sea in the original Mascot transcript. A number of witnesses confirmed to Operation Prospect that they were aware at the time that the comment was made by Officer F rather than Sea (e.g. Ombudsman Transcript, John Dolan, 31 October 2014, p. 2645; Ombudsman Transcript, Phillip Bradley, 24 November 2014, p. 3037). It was also evident that the Mascot team was aware of the transcript error, as evident in the Information Report produced 10 days later on 29 November 1999, where Officer F is correctly identified as the person who made this comment. Sea confirmed to Operation Prospect that it was Officer F's comment.

199 NSWCC Transcript of LD 376/1999 and 403/1999, Tape 99/282, 19 November 1999, pp. 64-65.

200 NSWCC Information Report, *Contact with Sea 22.11.1999. LD Tapes re [name] send off received & reviewed*, reporting officer: Henry, 29 November 1999, pp. 3-4.

201 Ombudsman Transcript, John Dolan, 31 October 2014, p. 2,645.

202 Ombudsman Transcript, John Dolan, 31 October 2014, p. 2,646.

203 Ombudsman Transcript, John Dolan, 31 October 2014, pp. 2,646-2,647.

204 Ombudsman Transcript, John Dolan, 31 October 2014, p. 2,647.

Burn was played the recorded conversation of 19 November 1999 and shown the transcript. It was put to her that they did not show Officer F agreeing with MSO3's comment "if you didn't fucken' do what you were told, you didn't stay in there".²⁰⁵ Burn agreed that the purpose of such an Information Report was to let Mascot staff know the relevant parts of the transcript and the report needed to be accurate.²⁰⁶ After some questioning on the matter, Burn agreed that the report did not accurately reflect the way the conversation played out. It was unfair both to describe Officer F as agreeing with what MSO3 said and to represent the conversation in the Information Report in that way.²⁰⁷

Bradley was questioned about the differences between the tape of the conversation, the transcript and the Information Report.²⁰⁸ He agreed that the Information Report unfairly and inaccurately attributed particular agreement by Officer F to MSO3's comments.²⁰⁹

Henry made a written submission to Operation Prospect in which he disputed that he had misrepresented Officer F's comment.²¹⁰ His submission was partly based on listening again to the recording and examining the transcript.²¹¹ Operation Prospect accepts that Henry's Information Report was prepared in good faith, but does not accept (after reviewing the relevant material) that the Information Report accurately or fairly represented Officer F's comment. Operation Prospect notes also that Dolan, Burn and Bradley reviewed the recording and transcript in expressing their view to Operation Prospect that the Report misrepresented Officer F's comment.

10.2.5 Officer F named in King send-off affidavits (April to September 2000)

The King send-off led to many police officers and others being named in a series of LD affidavits and associated warrants. This is discussed in Chapter 9. Officer F was one of those first named in a Mascot affidavit and warrant on 4 April 2000 as an expected invitee to the King send-off. Five LD affidavits between April and June 2000 gave this as the reason he may be recorded.

Between July and December 2000 Officer F was named in a further nine affidavits as a person Mascot was likely to record or listen to. No explanation for this was given in the body of the affidavits. As with other expected invitees to the King send-off, it appears Officer F was listed in subsequent affidavits and associated warrants because of his earlier inclusion in the list of King send-off invitees. The paragraph about the King send-off was removed from affidavits after the send-off occurred on 30 June 2000, but the names of proposed invitees stayed in those affidavits. The warrants associated with these affidavits were all granted.

In total, Officer F was named in 14 LD affidavits and 42 LD warrants because of his proposed attendance at the King send-off.

10.2.6 Mascot investigations into Officer F (May 2000 to mid-2001)

Mascot documents note that on 10 May 2000 Dolan sent an email to Henry headed 'Secret stuff':

*I need asap the mobile number, home number and office number for [Officer F]. I thought you might have them?*²¹²

When interviewed by Operation Prospect, Dolan was unable to recall why he sent this email although he speculated that it would have to be because the interception of Officer F's phones was being contemplated.²¹³ No documents shed light on anything being done at that time.

²⁰⁵ Ombudsman Transcript, Catherine Burn, 12 November 2014, pp. 2,773-2,774.

²⁰⁶ Ombudsman Transcript, Catherine Burn, 12 November 2014, p. 2,775.

²⁰⁷ Ombudsman Transcript, Catherine Burn, 12 November 2014, pp. 2,775-2,776.

²⁰⁸ Ombudsman Transcript, Phillip Bradley, 24 November 2014, pp. 3,036-3,038.

²⁰⁹ Ombudsman Transcript, Phillip Bradley, 24 November 2014, pp. 3,037-3,038.

²¹⁰ Henry, S, Submission in reply, 10 August 2015, p. 12.

²¹¹ Henry, S, Submission in reply, 10 August 2015, p. 10.

²¹² Email from Superintendent John Dolan, Commander SCU, Mascot Reference, NSWCC to Detective Acting Senior Sergeant Damian Henry, Senior Investigator, Mascot Reference, NSWCC, 10 May 2000.

²¹³ Ombudsman Transcript, John Dolan, 31 October 2014, p. 2,626.

On 28 September 2000, an Ancrum investigator wrote an Investigator's Report about the complaints Mr S had made about his arrest in 1992.²¹⁴ The Ancrum investigator's report recommended that the investigation of the allegation against Officer F be discontinued as it lacked substance.²¹⁵ The report was addressed to four parties – the Commander of Ancrum, the Operational Review Committee of SCIA, the Commander of SCIA and the PIC.

When interviewed by Operation Prospect, Burn did not recall any Ancrum report that recommended discontinuing the investigation of Mr S's complaint.²¹⁶ She offered the view that if the investigation was being wound up in that way she should have known about it,²¹⁷ and agreed that any basis for targeting Officer F would have evaporated if she had known of this report.²¹⁸ There is no evidence that Burn received the report.

Mascot continued the strategy of tasking Sea to speak with Officer F while wearing a LD. By this stage, Officer F had been added to SOD78²¹⁹ as being 'involved' in the Armaguard robbery because of the two recorded conversations with Sea in July 1999.

A series of Mascot reports from late 2000 to mid-2001 regularly mentioned Officer F and others as 'Crime Agency contacts' – under the heading 'proposed activities'. These weekly reports were invariably authored and signed 'C J Burn'. The weekly reports contained a section that summarised various Mascot investigative strategies and tasks. The report of 2 October 2000 noted: "Sea to commence at Crime Agencies 3/10/00".²²⁰ At that time, Officer F was employed at Crime Agencies. Under a heading 'proposed activities', the weekly report included various strategies for contact, lunches and meetings. It listed four officers as 'Crime Agencies contacts', including Officer F.²²¹ Burn's evidence to Operation Prospect was that she thought this raised opportunities for investigating allegations about staff employed at Crime Agencies, which was another unit of the NSWPF.²²²

This is consistent with the approach Mascot was adopting at that time of using Sea to record people he might encounter and who he thought would know about or be involved in corruption. This is discussed in more detail in Chapter 5. Burn agreed that at some point a decision was made that Officer F fitted into that category.²²³ She said the people who would have been involved in that decision were herself, Dolan, Bradley, Standen, Assistant Commissioner Malcolm Brammer (Commander of SCIA), and possibly Giorgiutti.²²⁴ Burn told Operation Prospect that:

*Well, in my mind at that time there was the possibility of Sea having discussions with [Officer F] about crime or corruption that he might have been involved with, and the link there being [Mr S], and I understand what you're saying that – what's in that induced statement. So there is, there is potentially a topic of conversation that they could talk about, but they, they did know of each other, so it wasn't a complete, wasn't a complete cold start.*²²⁵

An Information Report dated 20 December 2000 completed by a NSWCC analyst and intelligence officer was called 'Inquiries into the current whereabouts of [Officer F], named in SOD078'.²²⁶ The report noted that both MSO22 and MSO11 alleged that Officer F was involved in the Armaguard robbery.

That was inaccurate in two respects. First, there is no recorded conversation with MSO22 in which he makes that allegation about Officer F. Sea had said in his debrief interview on 9 January 1999 that MSO22 told him that members of the North West Crime Squad had been involved in the theft of money after the Armaguard robbery,

214 NSWPF, CIS [number] Investigator's Report by Detective Sergeant [name], Task Force Ancrum, 28 September 2000.

215 NSWPF, CIS [number] Investigator's Report by Detective Sergeant [name], Task Force Ancrum, 28 September 2000.

216 Ombudsman Transcript, Catherine Burn, 11 November 2014, pp. 2,736, 2,737.

217 Ombudsman Transcript, Catherine Burn, 11 November 2014, p. 2,736.

218 Ombudsman Transcript, Catherine Burn, 11 November 2014, p. 2,745.

219 NSWCC, SOD078, Incident, Sea was told by [MSO22] that NW Crime Squad received \$90 000 re the Orange Armaguard robbery. [Officer F] mentioned 29/07/99 by [MSO22], see MATR0067 & MAIN0631, as at 31 August 2000, p. 36.

220 NSWCC, *Weekly operational report for week ending 2 October 2000*, dated 2 October 2000, p. 1.

221 NSWCC, *Weekly operational report for week ending 2 October 2000*, dated 2 October 2000, p. 2.

222 Ombudsman Transcript, Catherine Burn, 11 November 2014, pp. 2,732-2,733, 2,740.

223 Ombudsman Transcript, Catherine Burn, 11 November 2014, p. 2,740.

224 Ombudsman Transcript, Catherine Burn, 11 November 2014, pp. 2,740-2,741.

225 Ombudsman Transcript, Catherine Burn, 11 November 2014, p. 2,743.

226 NSWCC Information Report, *Inquiries into the whereabouts of [Officer F], named in SOD078, reporting officer: [NSWCC analyst]*, 20 December 2000.

but Sea did not mention Officer F's name when recalling that conversation.²²⁷ Second, MSO11 did not allege that Officer F was involved in the Armaguard robbery in his recorded conversation with Sea on 29 July 1999 – he only indirectly acknowledged that Sea made this suggestion.

The Information Report of 20 December 2000 notes that checks made on the NSWPF's Computerised Operational Policing System (COPS), the Roads and traffic Authority (RTA) and the electoral roll listed a North West Sydney address for Officer F. The report also noted that checks had been made on Officer F's complaint history. A copy of a SASC profile was attached to the Information Report.²²⁸ The profile contained information that Officer F was no longer living at the family home.²²⁹ This is relevant to the information in a later TI affidavit that is discussed at section 10.5.

10.2.7 Officer F named in LD affidavits (January 2001)

On 22 January 2001 Officer F's comment about "judgin' blokes today on today's rules"²³⁰ from the conversation on 19 November 1999 was included in a Mascot LD affidavit sworn by Moore:

During the send-off on 19 November 1999, [Sea] engaged in a conversation with [MSO3] and [Officer F]. In the course of their conversation [MSO3] inferred that years ago everyone had been involved in some form of corruption "in their own way." [MSO3] used words to the effect 'If you didn't do it, you weren't allowed in plain clothes' and [Officer F] agreed and used words to the effect "Judging blokes today on today's rules for something they did whenever".²³¹

As discussed before, it is not apparent from the transcript of the recorded conversation that Officer F agreed with the comment attributed to MSO3. Moore's affidavit unfairly infers that Officer F knew about and tolerated past police corruption.

Moore was questioned by Operation Prospect about including the "judging blokes" conversation in his affidavit. He said that if it was the first time the comment had been used in an affidavit he would have listened to the tape.²³² He agreed that where inverted commas are used to quote a conversation, the affidavit should accurately record exactly what was said.²³³ Moore agreed that "if there's words been put in there that weren't said, that's misleading and it certainly wouldn't have been done intentionally".²³⁴ He said:

I believe the context of the way the conversation is demonstrated is reasonable but I do agree that in terms of the way the conversation was recorded it would have been a much better situation had the whole transcript been recorded in that paragraph.²³⁵

Operation Prospect asked Moore whether his affidavit was copied from the Information Report, given the similarity of the material in both. Moore said that he did not have a direct recollection but would be "cautious to accept that because the wording is identical that I haven't listened to the recording".²³⁶ He agreed that it was potentially unsafe to rely solely on the Information Report, rather than going to the actual source material – either the tape or the full transcript if it was available.²³⁷ Moore also agreed that it would have been fairer to disclose in the affidavit that the conversation was recorded some hours into a social occasion that was likely to have involved alcohol.²³⁸

227 NSWCC, Record of interview between Detective Inspector Burn, Detective Senior Sergeant Henry and 'Sea', 9 January 1999, p. 52.

228 NSWCC Information Report, *Inquiries into the whereabouts of [Officer F], named in SOD078*, reporting officer: [NSWCC analyst], 20 December 2000 – enclosure entitled 'Copy of SASC profile'.

229 NSWCC Information Report, *Inquiries into the whereabouts of [Officer F], named in SOD078*, reporting officer: [NSWCC analyst], 20 December 2000 – enclosure entitled 'Copy of SASC profile'.

230 NSWCC Transcript of LD 376/1999 and 403/1999, Tape 99/282, 19 November 1999, p. 65.

231 LD affidavit 01/00183-00190, p. 8.

232 Ombudsman Transcript, Greg Moore, 23 July 2014, p. 278.

233 Ombudsman Transcript, Greg Moore, 23 July 2014, pp. 278-279.

234 Ombudsman Transcript, Greg Moore, 23 July 2014, p. 729.

235 Ombudsman Transcript, Greg Moore, 23 July 2014, p. 730.

236 Ombudsman Transcript, Greg Moore, 17 February 2015, p. 12.

237 Ombudsman Transcript, Greg Moore, 17 February 2015, p. 14.

238 Ombudsman Transcript, Greg Moore, 17 February 2015, p. 13.

Moore made a written submission to Operation Prospect questioning whether the 19 November 1999 conversation involving Officer F was incorrectly presented in his affidavit and Henry's Information Report.²³⁹ As discussed above in section 10.2.4, Operation Prospect is satisfied that the conversation was misrepresented. Moore also noted that his affidavit was checked by NSWCC solicitors before it was sworn. While it is accepted that the inaccuracy in Moore's affidavit probably stems from his reliance on the Information Report, a formal finding against Moore is made later in this chapter. This is in accordance with the approach adopted in this report of making an individual finding against an officer who first swore an affidavit that included inaccurate or misleading material.

10.2.8 Analysis and submissions

Officer F was mentioned in Mascot records in relation to four matters in this early period of investigation:

- An allegation was made by Mr S in 1998 alleging criminal misconduct against Officer F and others in relation to Mr S's arrest in 1992.
- Sea raised the false proposition that Officer F may have involvement in an alleged police theft of money after the Armaguard robbery in Orange to which other Mascot Subject Officers made supportive comments.
- A comment by Officer F in a recorded conversation on "judgin' blokes" on today's rules for something done in earlier times was interpreted as him agreeing with another officer that everyone was earlier involved in corruption.
- Officer F was mentioned in affidavits sworn in April to September 2000 as an invitee to the King send-off held on 30 June 2000.

It does not appear that any definite step was taken to investigate the allegation made by Mr S. Indeed, a couple of documents among the Mascot records assessed the allegation as not warranting separate investigation because of its age and lack of corroboration. The allegation nevertheless remained in Mascot records and appears to have been given some weight by Mascot investigators in deciding that Officer F was an appropriate target of investigation. It may have influenced the decision to ask Sea about Officer F in the debrief in January 1999, and it is referred to in an Information Report on 7 May 2001 that summarised the information Mascot had collected and that informed the strategy to deploy Sea to make contact with Officer F (see section 10.3.1). It seems inappropriate that the allegation was given some significance – as it was quite weak and uncorroborated and came from a known criminal who may have had an ulterior motive in making the allegation.

The second item of information – Officer F's alleged connection to the Armaguard robbery – developed in importance, even though the investigation material from Ancrum did not associate Officer F with the theft. His possible involvement seems to have been based on his previous association and work with other officers who may have been involved. As Mascot proceeded, the possibility that Officer F was involved appears to have become cemented in the minds of Mascot officers. It was recorded in documentation and on the Schedule of Debrief list, and is referred to in documents that underpinned a decision to take more active steps to investigate Officer F.

It seems probable that Sea acted at the suggestion of Mascot officers in raising Officer F's connection to the Armaguard robbery in the recorded conversations on 23 and 29 July 1999. There is no Mascot documentation detailing what Sea was tasked to discuss in those conversations. However, Sea did not himself hold any suspicions about Officer F and had not been involved in any corruption with Officer F. The connection appears to be manufactured.

²³⁹ Moore, G, Submission in reply, 25 November 2015, pp. 69-74, 77-81.

Sea's conversation with MSO11 on 29 July 1999 was also misrepresented in Burn's Information Report of 10 August 1999. The fact that Sea – not MSO11 – had raised the connection between Officer F and the robbery was obscured. In fact, the recorded conversation shows that MSO11 did not know anything significant about any such connection. This inaccuracy was later copied over into other material, such as the 20 December 2000 Information Report.

The third item of information – Officer F's "judgin' blokes" comment – was at best ambiguous. However, it was misrepresented, starting with Henry's Information Report on 29 November 1999 and extending to Moore's affidavit on 22 January 2001.

The fourth item of information – the King send-off – was discussed in Chapter 9. This item was clearly given some importance, as it led to Officer F being named in nine LD warrants along with other invitees. Although differing explanations were advanced by Mascot officers for naming all invitees, an influential view was that those officers were suspected of being involved in or having knowledge of corruption or criminal conduct.

By at least mid-2000 it is clear that Officer F had been identified for investigation. After that, he was mentioned regularly in Mascot's weekly list of proposed activities, Mascot pursued strategies for Sea to speak with Officer F while wearing a LD, and Officer F had been added to the Schedule of Debrief.

Reflecting on those early steps in Mascot's investigation of Officer F, Mascot's investigative methods can be criticised on the same grounds that are discussed in other chapters. These include that:

- The decision to investigate Officer F was based on allegations or comments that carried little force and were little more than unsubstantiated and uncorroborated suspicions.
- Some of the comments were misrepresented in a way that could support a suspicion about Officer F's conduct.
- The absence of any record of the instructions given to Sea – an undercover operative – in relation to his contact with Officer F meant that there was no recorded basis for the intrusive actions that he was deployed to undertake.
- There is no evidence of any objective evaluation of the information that Mascot held about Officer F, including the information received from Ancrum.
- The information in some reports, including in a supporting LD affidavit, appears to have been drawn from other secondary documents rather than from source documents such as a transcript of conversation.
- The investigation of Officer F appears to have been driven by suspicion and opportunity, rather than by satisfactory evidence.

10.3 Confirmed Mascot investigations of Officer F (2001)

10.3.1 Mascot deploys Sea to speak to Officer F (April to May 2001)

Various Mascot records show that in early 2001 the investigation of Officer F increased. Information Reports from February and March 2001 indicate that Sea was tasked to speak with Officer F, among others.²⁴⁰

²⁴⁰ NSWCC Information Report, *Contact with Sea – Dolan and Burn*, reporting officer: Burn, 16 February 2001, p. 1; Email from Senior Sergeant Craig Goozee, Senior Investigator, Mascot Reference, NSWCC to 'Mascot', NSWCC, 6 March 2001; Email from Senior Sergeant Craig Goozee, Senior Investigator, Mascot Reference, NSWCC to 'Mascot', NSWCC, 8 March 2001; Email from Senior Sergeant Craig Goozee, Senior Investigator, Mascot Reference, NSWCC to 'Mascot', NSWCC, 9 March 2001; Email from Senior Sergeant Craig Goozee, Senior Investigator, Mascot Reference, NSWCC to 'Mascot', NSWCC, 13 March 2001.

In separate Information Reports dated 20 and 21 March 2001, Officer F appeared in a list of possible targets for integrity testing.²⁴¹ The Information Report dated 21 March 2001 listed Officer F as one of 17 possible targets, along with another four people as primary targets. It was written by Burn, and noted and signed by Dolan on the same date, stating: "Viewed by PAB 4.30pm this date. Stated, wanted to know to satisfy targets were not currently associated with CC".²⁴² The reference to 'CC' is to the Crime Commission and the reference to PAB is taken to be Phillip Bradley.

On 10 April 2001 the Mascot Investigations Coordinator (a detective senior sergeant) reviewed the allegations in Mascot documents that members of the North West Crime Squad had been involved in stealing proceeds from the 1993 Armaguard robbery. Next to the heading 'Offenders' was a list of "Possible Police involved: Officer F, and [MSO22] and possibly others".²⁴³ Under the heading 'Investigators Comments' are the following relevant comments:

*Sea and [MSO11] speculate that the NW Crime Squad stole about \$90,000 of the proceeds of the offence and divided it amongst themselves... Neither SEA nor [MSO11] were present at the time the offence occurred. Sea has been told by former Detective [MSO22] of the supposed involvement of the NW Crime Squad. This conversation is not recorded.*²⁴⁴

The review then notes that two offenders were charged with the robbery and were sentenced to gaol. Two others were charged with accessory offences. Two NSWPF officers had internal findings sustained against them for the theft and were permitted to resign. Under the heading 'Recommendation' it was noted:

*At this time there is no direct evidence to support the inference made that [Officer F] and others were involved in the offence. It is recommended that later overt inquiries focus on interviewing the convicted offenders in the matter as to their recollection of the matter. [MSO22] should be interviewed to corroborate the conversation SEA asserts. At this time it possible, but unlikely that criminal charges would be pursued.*²⁴⁵

The view expressed in that document – that it was unlikely criminal charges would be pursued and the offenders should be interviewed – was not apparently taken up. Mascot documents show that the strategy of tasking Sea to approach Officer F with a LD was followed instead.

A Mascot email on 30 April 2001 advised of tasks allocated to Sea for the coming week. The email noted that Mascot wanted Sea to speak to Officer F in the next few days.²⁴⁶ Another email of 1 May 2001 set out the 'Plans for Sea on Wednesday':

*Sea has made contact with [codename for Officer F] and arranged to meet for coffee on Wednesday morning. Sea is heading straight there in the morning to meet at the North Sydney before 8am. Sea's objective is to ask for advise from [codename for Officer F] in relation to the threatening calls and to infer that the calls are coming from [a convicted criminal]. Stay tuned for the results to see if [codename for Officer F]'s is nonchalant to report [MSO22] assault. Sea will also endeavour to discuss historical matters involving [codename for Officer F].*²⁴⁷

The plan, devised by Mascot, was for Sea to speak to Officer F and advise that he had been receiving threatening phone calls from a person who Sea suspects is a criminal that he, MSO22 and MSO17 arrested some years ago, and who MSO22 allegedly assaulted during the arrest. Sea's story would be that he suspected the criminal now believes that Sea was the person who assaulted him.²⁴⁸

241 NSWCC Information Report, *List of proposed targets for Mascot integrity testing program*, reporting officer: Seary, 20 March 2001; NSWCC Information Report, *Integrity test targests [sic]/Possible targets arising from Mascot*, reporting officer: Burn, 21 March 2001.

242 NSWCC Information Report, *Integrity test targests [sic]/Possible targets arising from Mascot*, reporting officer: Burn, 21 March 2001.

243 Summary of SOD078 – [MSO11] and SEA infer the involvement of the NW Crime Squad in in [sic] receiving proceeds of Orange Armaguard robbery, investigator: [an officer], 10 April 2001.

244 Summary of SOD078 – [MSO11] and SEA infer the involvement of the NW Crime Squad in in [sic] receiving proceeds of Orange Armaguard robbery, investigator: [an officer], 10 April 2001.

245 Summary of SOD078 – [MSO11] and SEA infer the involvement of the NW Crime Squad in in [sic] receiving proceeds of Orange Armaguard robbery, investigator: [an officer], 10 April 2001.

246 Email from Senior Sergeant Craig Goozee, Senior Investigator, Mascot Reference, NSWCC to 'Mascot', NSWCC, 30 April 2001.

247 Email from [junior Mascot investigator], Investigator, Mascot Reference, NSWCC to '5 Special Crime Unit', NSWCC, 1 May 2001.

248 PIC internal memorandum from [a senior PIC lawyer] to Operations Advisory Group (OAG), 11 December 2003, p. 1.

An Information Report shows that a junior Mascot investigator and Moore met with Sea on 1 May 2001. They confirmed that Sea was meeting Officer F the following morning²⁴⁹ and

*... informed Sea that the objective of the strategy is to test if [Officer F] will advise Sea to report the matter or if [Officer F] will provide advise [sic] based on his own historical behaviour of corruption.*²⁵⁰

When interviewed by Operation Prospect, Moore was unable to explain what “historical behaviour of corruption”²⁵¹ Mascot suspected of Officer F. Moore thought that [a junior Mascot investigator] probably wrote that portion of the Information Report, given she was listed as the first author. He also stated that he was unsure, but he could have written part of the report as he was listed as the assisting officer.²⁵²

Operation Prospect also asked Burn about the “historical behaviour of corruption”²⁵³ comment in the Information Report, which she had initialled as read on 15 June 2001. She thought it could relate to the “allegation” but pointed out that she did not write the document.²⁵⁴

An Information Report²⁵⁵ and an email²⁵⁶ of 2 May 2001 both record 23 proposed Mascot investigations strategies that had been developed on 27 April 2001. One strategy named Officer F as the target and was described as follows:

- *Contact same at PSG at North Sydney*
- *Sea advise him that he is in a bind and needs advice regarding the threats received by Sea re [the arrest of a criminal] matter. [MSO17] lack of involvement*
- *Inform same that he is worried about the treats*
- *Old school talk*²⁵⁷

Sea and Officer F met on 2 May 2001. At the meeting, Sea told Officer F that he “got a couple of threats over the phone”²⁵⁸ from “a bloke called uh [a criminal] that fucken um we locked up a long time ago, you know... Magnum days, right”.²⁵⁹ Sea said that he went to MSO17 who told him not to “make too much of it”.²⁶⁰ Sea went on to explain that:

*[MSO17] got a vested interest because [MSO17], ... see what happened was he got a almighty fucken serve ... So uh anyway uh [MSO17] said oh we won't do anything about that. I said that's fine.*²⁶¹

Officer F replied: “I can't see how you can't [Sea] ... I can't see how you can't ... I can't see how you can just ignore it”.²⁶² Officer F went on to tell Sea about the procedures in place to look after “coppers when they're under threat”.²⁶³ He said:

*... you've gotta do somethin' about it. I don't agree with [MSO17]. I don't think you can ignore it and this cunt's gotta be sorted out ... If this cunt's gonna make allegations that he was verballed or loaded or whatever and... as he... as they fucken do.*²⁶⁴

249 NSWCC Information Report, *Contact with Informant 'Sea' on Tuesday 1 May 2001 – CD/140*, reporting officers: [junior Mascot investigator]/Moore, 1 May 2001, p. 1.

250 NSWCC Information Report, *Contact with Informant 'Sea' on Tuesday 1 May 2001 – CD/140*, reporting officers: [junior Mascot investigator]/Moore, 1 May 2001, p. 2.

251 NSWCC Information Report, *Contact with Informant 'Sea' on Tuesday 1 May 2001 – CD/140*, reporting officers: [junior Mascot investigator]/Moore, 1 May 2001, p. 2.

252 Ombudsman Transcript, Greg Moore, 23 July 2014, pp. 725-726.

253 NSWCC Information Report, *Contact with Informant 'Sea' on Tuesday 1 May 2001 – CD/140*, reporting officers: [junior Mascot investigator]/Moore, 1 May 2001, p. 2.

254 Ombudsman Transcript, Catherine Burn, 11 November 2014, p. 2764.

255 NSWCC Information Report, *Proposed Sea strategies from the 27-4-01*, reporting officer: Szabo, 2 May 2001.

256 Email from Detective Acting Sergeant Arpad Szabo, Internal Affairs, Mascot Reference, NSWCC to 'Mascot', 2 May 2001.

257 NSWCC Information Report, *Proposed Sea strategies from the 27-4-01*, reporting officer: Szabo, 2 May 2001, p. 1.

258 NSWCC Transcript of LD 01/02275, T99/893, 2 May 2001, p. 7.

259 NSWCC Transcript of LD 01/02275, T99/893, 2 May 2001, p. 8.

260 NSWCC Transcript of LD 01/02275, T99/893, 2 May 2001, p. 8.

261 NSWCC Transcript of LD 01/02275, T99/893, 2 May 2001, pp. 8-9.

262 NSWCC Transcript of LD 01/02275, T99/893, 2 May 2001, p. 9.

263 NSWCC Transcript of LD 01/02275, T99/893, 2 May 2001, p. 11.

264 NSWCC Transcript of LD 01/02275, T99/893, 2 May 2001, p. 13.

Officer F then confirmed that Sea had documented the threats and suggested a risk assessment on Sea's home.²⁶⁵

During the conversation Officer F told Sea he had moved out of his family home and was staying with another officer.²⁶⁶ This information was included in the Information Report summarising the LD product from the meeting. It became significant some months later when a TI warrant was taken out on Officer F's family home, his mobile phone and his office (see section 10.5).

On 7 May 2001 Mascot held a team meeting at which the meeting between Sea and Officer F was discussed. Those present included Bradley, Standen, Dolan, Burn, Assistant Commissioner Andrew Scipione (Commander of SCIA), Tim Sage (Assistant Commissioner, PIC), various operational detective sergeants and sergeants, detective senior constables, a legal officer from the PIC and various analysts and monitors from Mascot.²⁶⁷ The minutes of the meeting noted that Sea met with Officer F on 2 May 2001, but did not note Officer F's response to Sea.²⁶⁸ Although the strategy that Mascot used to test Officer F did not follow the formal processes for an integrity test – such as a formal plan authorised under section 207A of the Police Act – the strategy was nevertheless described as an integrity test by Bradley in an email to Standen following the team meeting.²⁶⁹

This strategy and the description of it as an 'integrity test' clearly raised concerns in Bradley's mind (see section 10.3.2.)

The information Mascot had amassed about Officer F at this point of the investigation was set out in an Information Report of 7 May 2001, headed 'STRATEGY FOR CONTACT BETWEEN SEA AND [Officer F] AS AT 7.05.01':

1. *Original debrief with Sea: Sea stated that he was told by [MSO22] that in 1996 the North West Armed Hold Up Unit was involved in the Orange Armguard Robbery investigation where the members of the unit received \$90,000.00 (SOD078). (Mentioned by [MSO11] on the 29-7-99 in conversation MATR0067 p. 12 CHR 6423) CHR 90*
2. *Report by Det Sen Sgt [name] of Task Force Ancrum dated 9-12-1998 titled 'Further Investigation required re Task Force Magnum matters'. [Officer F] is mentioned re the matter of [Mr S] Robbery Offences (SOD047) 1989-1992 CHR3614*
3. *On the 23-7-99 Sea, [MSO1] and [MSO 7] has a drink at the [a hotel]. LD T99/188 (MATR0066) Talk about promotion of [Officer F] to Superintendent. [Officer F] is the only person not interviewed over [Mr S] matter (SOD047). However he was interviewed re the Orange Armguard matter (SOD078). CHR 1140*
4. *[name] Send off 19-11-99 T99/282. @ 19:51 [MSO3] infers everyone was involved in some form of corruption 'in their own way' years ago. Mentions [a senior police officer] and [another senior officer]. [MSO3] – 'If you didn't do it you weren't allowed to remain in plain clothes.' [Officer F] agrees and replies, 'Judging blokes today on today's rules for something they did whenever.' [MSO3] comments that the job has changed... but continues along the previous line, 'guys were bricking blokes because they needed bricking.' CHR1805.*
5. *CIS Summary. [Brief mention of Officer F's complaints history].*²⁷⁰

The Information Report then referred to Sea and Officer F's meeting earlier that week, and that Officer F acted appropriately in offering advice to Sea on how to deal with the threat by a criminal. The Report continued:

There is further discussion between the two where [Officer F] mentions issues and conflict involving himself and Detective Superintendent Dolan, Commander of Special Crime Unit. Dolan has been informed of this information and has reviewed the context of the product obtained by Sea. Dolan stated that he wanted put on

²⁶⁵ NSWCC Transcript of LD 01/02275, T99/893, 2 May 2001, p. 14.

²⁶⁶ NSWCC Transcript of LD 01/02275, T99/893, 2 May 2001, p. 5.

²⁶⁷ NSWCC, *Confidential minutes of the Mascot team meeting*, 7 May 2001, p. 1.

²⁶⁸ NSWCC, *Confidential minutes of the Mascot team meeting*, 7 May 2001, p. 1.

²⁶⁹ Email from Commissioner Phillip Bradley, NSWCC to Mark Standen, Assistant Director Investigations, NSWCC, 9 May 2001.

²⁷⁰ NSWCC Information Report, *Strategy for contact between Sea and [Officer F] as at 7-5-01*, reporting officer: Szabo, 7 May 2001, p. 1.

record that the further contact between Sea and [Officer F] had nothing to do with him and that is [sic] was a decision based upon operational strategies of the Mascot members.

The meeting on the 2-5-01 between Sea and [Officer F] involving [the alleged phone threat to Sea] matter which did not relate to the original allegation by Sea, was a strategy to develop rapport and continued contact between Sea and [Officer F]. It is anticipated that Sea will contact [Officer F] on the 7-5-01 as [sic] find out the results of [Officer F] inquiry with [MSO22] concerning the threats by [the criminal] towards Sea. Sea has also been tasked when speaking with [Officer F] to make it quite clear that [MSO17] was present at the assault upon [the criminal] and that he covered up the assault.

Sea has also been tasked that at this next meeting if appropriate, Sea is to bring up the Orange Armguard Robbery and gather corroborative evidence to support the allegation involving the theft of the \$90,000 involving members of the Armed Hold Up Unit – North West Region.²⁷¹

The suggestion that there was conflict between Dolan and Officer F is discussed at section 10.4.

10.3.2 Bradley expresses concern about investigating Officer F

Bradley told Operation Prospect that he did not think the five items listed on the 7 May 2001 Information Report justified pursuing Officer F as part of the Mascot investigations.²⁷² He said he was concerned in May 2001 that he had been misled by the suggestion that there was a body of material to confirm that Officer F was corrupt, that he felt there was animosity between Dolan and Officer F, and that Officer F's comment in the recorded conversation from November 1999 was not a sufficient basis to target him.²⁷³

At the time, Bradley had discussed his concerns about Mascot's targeting of Officer F with Scipione – who started as Commander of SCIA in mid-April 2001. Scipione provided Operation Prospect with some extracts from a note book he kept at the time. The entry for 7 May 2001 states (capitalisation and emphasis in original):

7/5/01

SCU-SCC MEETING (WEEKLY) AT SCC PREMISES. REPORT PROVIDED.

#CONV – P.B.[Phillip Bradley] RE: SERIOUS CONCERNS ABOUT I.T.²⁷⁴ ON [Officer F]. # FURTHER CONCERNS ABOUT I.T.'S USING SCC INFORMANT. (SEA) FURTHER SERIOUS CONCERNS ABOUT "ENTRAPMENT [no inverted commas] POTENTIAL– STAFF/MORAL CONCERNS IN MASCOT -

SUGGESTION NO MORE "INTEGRITY TEST" USE OF SEA. "VERY UNCOMFORTABLE IN [Officer F] / [A CRIMINAL]" MATTER – Q: HAS THIS MATTER BEEN RAISED WITH JOHN – (NO). I INDICATED THAT I WOULD RAISE THIS MATTER ASAP WITH JOHN DOLAN & KEEP HIM ADVISED. P.B. AGREED THAT HE WOULD BE PREPARED TO DISCUSS THESE MATTERS WITH J.D POST MY MEETING. – COMMISSIONER ADVISED (BY PHONE) OF SITUATION. AGREES WITH P.B. THAT: 1) DEBRIEF OF SEA SHOULD BE A PRIORITY.2) SEA SHOULD NOT BE TASKED WITHOUT AGREEMENT SCC/SCIA COMMANDERS. 3) LEGAL OFFICER SUPPORT.²⁷⁵

Scipione's notebook entry for 8 May 2001 states:²⁷⁶

ABOVE MATTERS DISCUSSED WITH J.DOLAN. ALL MATTERS CANVASED & AND AGREED J.D WOULD RAISE MATTERS WITH PHILLIP BRADLEY TO SEEK RESOLUTION INCLUDING:-

- AGREEMENT BEFORE ANY I.T RUN USING SEA.
- DE-BRIEFING COMMENCEMENT DATE.²⁷⁷

271 NSWCC Information Report, *Strategy for contact between Sea and [Officer F] as at 7-5-01*, reporting officer: Szabo, 7 May 2001, p. 2.

272 Ombudsman Transcript, Phillip Bradley, 24 November 2014, pp. 3041-3042.

273 Ombudsman Transcript, Phillip Bradley, 24 November 2014, p. 3045.

274 Taken to refer to 'integrity test'.

275 NSWPF Day Book, Assistant Commissioner A. Scipione, 7 May 2001.

276 NSWPF Day Book, Assistant Commissioner A. Scipione, 8 May 2001.

277 NSWPF Day Book, Assistant Commissioner A. Scipione, 8 May 2001.

On 9 May 2001 Bradley sent an email to Standen headed 'Integrity tests' which relayed the conversation Bradley had had with Scipione (short hand spellings are presented as written in the original):

I also talked to him about the matters which I raised with U concerning IT. I said that during my discussion with JD, I had been informed by him that there wd be no IT conducted on [Officer F] and that during the Mascot meeting it was clear that that was happening. I said that this was not a case where there was a body of material to suggest that [Officer F] was corrupt and that he had to be removed if the opportunity presented itself. AS [Scipione] said there was some history of animosity between [Officer F] and JD and this had been heightened by some comments that [Officer F] had made to SEA about JD during the integrity test. I said this made the matter worse because ITs were distasteful enough without the added problems caused when they are motivated by personal dislike. I said that I was concerned that I had been misled as to this matter. I said that I was generally concerned about the advice I was receiving. I said that I had previously said that I did not want the CC to be involved in ITs as I had no faith in the people conducting them and they were not part of our charter...

Generally in relation to IT, I mentioned my concerns about fairness in the particular environment of the PS. I mentioned the golf ball matter²⁷⁸ and the scenario planned for [Officer E] which I understood was not to proceed.

I sd that the relationship with CA²⁷⁹ was already very bad and it wd be far better if the SCU could emerge from Mascot arguing that it had worked on cops who were crooks and did not run around entrapping people esp if this was done to settle old scores. I sd I did not want the name of the CC associated with such conduct and that as the informer is registered here and not with the PS it would be difficult to assert that we were not involved in ITs involving Sea. I said I took the view that the SCU was managing him on our behalf. He shd not be diverted onto work which we did not support and in fact were opposed to. He sd he had already ascertained that Sea was registered with us and not the PS. I sd I did not want to make an issue out of this, because he seemed to be well handled by police and MS [Mark Standen] had regular contact with him.

AS also mentioned that [Officer F] had been recorded saying that now that AS had taken over SCIA he wd bring JD under control. JD was quite upset about this and expressed concern to AS that he was going to be moved. AS told him that this was not the case...

I went thru the history and explained that from my point of view there was no need for JD to be concerned. AS had told him that he wanted to make his position permanent which I had urged upon him from day one. In the context of the [Officer F] matter, I told KB²⁸⁰ that all I knew about it was that [Officer F] had made some offhand remark about how things were done in the old days and this did not seem to be sufficient basis for targetting an otherwise respected officer. I sd that JD had agreed with this, and then at the Mascot meeting it was announced that an IT is being done on him. KB sd that it was not reaily an IT tho it was described as such. She sd it is based on strong info that [Officer F] loaded someone in Magnum and there needed to be a basis for Sea approaching him and the threats scenario (which is true) was used...

AS sd that I had complained that I was not informed of ITs and I was concerned about entrapment and specifically mentioned the [Officer F] matter. I repeated what I sd above and sd that KB had given a different perspective on the matter. She sd that there was a specific allegation of corruption by [Officer F] and the contact which Sea made was not an integrity test (as represented at the meeting) but simply part of the usual process by which allegations are tested.

AS sd that I sd we shd concentrate on Sea's debriefing which wd take 8 months and we shd not do more ITs. AS had spoken the COP who agrees.²⁸¹

278 A planned integrity test against another officer.

279 Refers to Crime Agencies within the NSWPF.

280 A reference to Catherine Burn.

281 Email from Commissioner Phillip Bradley, NSWCC, to Mark Standen, Assistant Director Investigations, NSWCC, 9 May 2001.

On 9 May 2001, Bradley wrote a memo on NSWCC letterhead to Standen – copied to Giorgiutti, Dolan and Scipione – and headed ‘Integrity Testing’.²⁸² The memo more formally set out Bradley’s views about integrity testing and his criticism of some of the operational situations that had been constructed by Mascot.²⁸³

Despite the concerns expressed by Bradley, emails between Mascot staff on 17 and 18 May 2001 indicate that Mascot continued to pursue Officer F.²⁸⁴

On 14 June 2001 Bradley wrote an email to Standen and Dolan with the subject ‘[Officer F]’. The email said that Bradley had met with a friend and former work colleague of Officer F the previous evening. That officer had mentioned that Officer F had told him he was:

*... extremely upset because he believed that he was being worked on and set up by JD who he says has some grudge or beef against him.*²⁸⁵

The email went on (shorthand spelling represented as in original text):

*I sd I wd be very surprised if this was the case because I have made my views very clear about people working on police with whom they have personal differences. I also sd that the only thing they cd do wd be an integrity test and there was none of that going on here because we didn’t like them. I sd I wd have a word to [Officer F] as he tried to see me recently as there was some issue about his career.*²⁸⁶

Bradley’s email indicated that Tim O’Connor (Assistant Director with the NSWCC) was present for part of the meeting and had said that Officer F had “made some allegation about being worked on by Dolan”.²⁸⁷ Bradley noted that this was the first he had heard of these issues, but noted that Giorgiutti had once conveyed to him that Officer F had “come in and talked about his promotional prospects and JMG felt that there had been another reason for the visit”.²⁸⁸

Bradley’s email also mentioned the recorded conversation between Sea and Officer F on 2 May 2001:

*There was at this time a recorded conversation between S [Sea] and [Officer F] in which [Officer F] referred to his dispute with JD and suggested that thru his association with [an officer initials] and [an officer initials] influence over AS, that JD wd be pulled into line. I remember that JD was very concerned that these statements were being made by a senior officer and told AS so. While JD accepts assurances from AS that he is not being pulled into line, he is concerned that [Officer F] shd know that he is being worked on.*²⁸⁹

The email noted the shared concern that a target (Officer F) had a source of information about a covert investigation:

If [Officer F] has a suspicion based on the info from his source connected to the approach by Sea, then it is a good thing that he is no longer active. If the source has told him about Sea then we have a problem. I think that the latter is unlikely, but we need to talk to Sea and [the SASC officer overlooking Sea’s security] at least without causing too much stress.

282 NSWCC internal memorandum from Commissioner Phillip Bradley to Assistant Director Investigations Mark Standen, copying Director and Solicitor to the Commission John Giorgiutti, Superintendent John Dolan, Commander of SCU and Assistant Commissioner Andrew Scipione, Commander of SCIA, 9 May 2001, pp. 1-2.

283 NSWCC internal memorandum from Commissioner Phillip Bradley to Assistant Director Investigations Mark Standen, copying Director and Solicitor to the Commission John Giorgiutti, Superintendent John Dolan, Commander of SCU and Assistant Commissioner Andrew Scipione, Commander of SCIA, 9 May 2001, pp. 1-2.

284 Email from Senior Sergeant Craig Goozee, Senior Investigator, Mascot Reference, NSWCC to ‘Mascot’, NSWCC, 17 May 2001; Email from Senior Sergeant Craig Goozee, Senior Investigator, Mascot Reference, NSWCC to ‘Mascot’, NSWCC, 18 May 2001.

285 Email from Commissioner Phillip Bradley, NSWCC to Mark Standen, Assistant Director Investigations, NSWCC and Superintendent John Dolan, Commander of SCU, Mascot Reference, NSWCC, 14 June 2001.

286 Email from Commissioner Phillip Bradley, NSWCC to Mark Standen, Assistant Director Investigations, NSWCC and Superintendent John Dolan, Commander of SCU, Mascot Reference, NSWCC, 14 June 2001.

287 Email from Commissioner Phillip Bradley, NSWCC to Mark Standen, Assistant Director Investigations, NSWCC and Superintendent John Dolan, Commander of SCU, Mascot Reference, NSWCC, 14 June 2001.

288 Email from Commissioner Phillip Bradley, NSWCC to Mark Standen, Assistant Director Investigations, NSWCC and Superintendent John Dolan, Commander of SCU, Mascot Reference, NSWCC, 14 June 2001.

289 Email from Commissioner Phillip Bradley, NSWCC to Mark Standen, Assistant Director Investigations, NSWCC and Superintendent John Dolan, Commander of SCU, Mascot Reference, NSWCC, 14 June 2001.

*I don't think we shd do anything else at this time other than to record the events which is the purpose of this note. I do not think there is sufficient basis to launch an investigation.*²⁹⁰

On 18 June 2001, Bradley recorded in a file note a telephone conversation he had with Officer F.²⁹¹ Among other things, Bradley noted that Officer F mentioned that he had been passed messages to watch out for himself as “Dolan is likely to do anything”.²⁹² Officer F referred to Dolan’s track record in relation to two other officers he named. Bradley then noted that Officer F alleged that Dolan had plagiarised a report Officer F had written on undercover work without acknowledging his work.²⁹³

The file note records that the two discussed Bradley’s earlier conversation with Officer F’s friend and former colleague about the strategy to test Officer F. The file note continued:

[Officer F] said that there is another matter of concern. A fellow has been coming to see him and seeking his opinions, and talking to him about historical stuff that’s got nothing to do with him ... This fellow had just gone off on HOD²⁹⁴. He said there were rumours around about his mental state. I asked him his name. He said it was [Sea]. He said he has been in a psych hospital. He said he came to see him on the pretext that he had a current problem. [Officer F] said he was concerned [Sea] hadn’t gone through his command. When he checked with the command, he found out it was an historical problem which had come to nothing. He also said [Sea] has been having conversations with a lot of blokes on the north-side about stickups and things. I asked whether this was to enhance [Sea]’s HOD claim as to things that had happened to him in the past. [Officer F] said he didn’t think so. He said it was more like he was trying to get evidence against him. I used the word “stitch-up” and he said “yes”. He said it was a very amateurish attempt at getting information from him.

*He said there is a general perception that the Dolan group are out to crucify anyone that gets in their way.*²⁹⁵

10.3.3 Evidence to Operation Prospect about targeting Officer F

The evidence given by some witnesses to Operation Prospect appears to indicate that the investigation of Officer F was based in part on a misapprehension about the evidence given by Sea in his original debrief.

Moore gave evidence in 2002 to the Strike Force Tumen investigation into complaints about the mismanagement of the NSWPF Covert Operations Unit, which for a time had been headed by Dolan. Moore told Strike Force Tumen that he did not think Officer F had been inappropriately investigated, and thought that Sea was the source of the information Mascot held about Officer F.²⁹⁶ Moore told Operation Prospect that his understanding was that Officer F was targeted because there had been information provided to the NSWCC and that Officer F – like many other people who had been identified – was approached in that context to test the allegations.²⁹⁷ When interviewed by Operation Prospect, Moore was unable to remember who provided information to the NSWCC about Officer F.²⁹⁸

Dolan, Commander of the SCU during Mascot, told Operation Prospect that his recollection was that there were two parts to the information Mascot held about Officer F. One part was about “planting of a gun on somebody, and the other was about finding some money from an armed robbery and keeping it”.²⁹⁹ He said the “whole source of information came from Sea”.³⁰⁰ When presented with the evidence that the initial Schedule

290 Email from Commissioner Phillip Bradley, NSWCC to Mark Standen, Assistant Director Investigations, NSWCC and Superintendent John Dolan, Commander of SCU, Mascot Reference, NSWCC, 14 June 2001.

291 Phillip Bradley, File note, [Officer F], NSWCC, 18 June 2001, p. 1.

292 Phillip Bradley, File note, [Officer F], NSWCC, 18 June 2001, p. 1.

293 Phillip Bradley, File note, [Officer F], NSWCC, 18 June 2001, p. 1.

294 Refers to ‘Hurt on Duty’ being a discharge from the NSWPF on medical grounds.

295 Phillip Bradley, File note, [Officer F], NSWCC, 18 June 2001, p. 2.

296 NSWPF, Record of interview between [two Tumen investigators] and Detective Senior Constable Greg Moore, 7 November 2002, pp. 33-34, 35-36.

297 Ombudsman Transcript, Greg Moore, 23 July 2014, p. 655.

298 Ombudsman Transcript, Greg Moore, 23 July 2014, p. 655.

299 Ombudsman Transcript, John Dolan, 31 October 2014, p. 2,602.

300 Ombudsman Transcript, John Dolan, 31 October 2014, p. 2,602.

of Debrief recorded that Sea did not know anything about Officer F, Dolan was unable to help with where his understanding came from.³⁰¹

In his evidence to Operation Prospect, Bradley agreed that he had assumed Officer F was adversely mentioned by Sea in the initial debriefing phase of Mascot.³⁰² Bradley thought that somebody had told him that Officer F was named by Sea as somebody who had been involved in corrupt conduct. Bradley said that if he had known that Sea had explicitly said he had no evidence about misconduct by Officer F,³⁰³ Bradley “would have been more forthright”³⁰⁴ in his views about whether or not Officer F “should be the subject of proactive investigation”.³⁰⁵

10.3.4 Analysis and submissions

Three aspects of this phase of Mascot’s investigation of Officer F warrant comment. They are the:

- decision to test Officer F through a conversation with Sea on 2 May 2001
- development of Mascot’s investigative strategy, as outlined in the Information Report of 7 May 2001
- failure to explore or resolve apparent anomalies in the strategy to investigate Officer F.

The references in this phase to Dolan having a perceived conflict of interest in relation to Officer F are discussed later in section 10.4.

10.3.4.1 Strategy to test Officer F

The strategy to test Officer F through a conversation with Sea on 2 May 2001 that would be covertly recorded on a LD marked an important escalation in the Mascot investigations of Officer F. Some officers were of the view that this was an integrity test. The clear purpose of the strategy was to test whether Officer F would counsel Sea to follow the proper course of reporting the alleged threat against him, or whether – as stated in an Information Report on 1 May 2001 – Officer F would instead “provide advice based on his own historical behaviour of corruption”.³⁰⁶

The decision to conduct this test lacked any strong evidentiary basis. As discussed before in section 10.2.8, the information available to Mascot at that time about Officer F was weak, ambiguous and uncorroborated. It fell distinctly short of ‘historical behaviour of corruption’.

Compounding Mascot’s misjudgement was the confusion as to whether this was an integrity test or purely a test and whether Officer F’s reactions constituted a ‘pass’. The confusion regarding whether this approach was an integrity test first arose when a junior Mascot investigator mistakenly referred to the strategy as an integrity test in a meeting of the Mascot team on 7 May 2001. Following that meeting Bradley drafted various emails and notes questioning if the strategy was an integrity test. He indicated he was uncomfortable about the NSWCC involving an undercover informant in such an exercise and was concerned it amounted to entrapment. On 9 May 2001 he wrote an email to Standen in which he stated that he was advised by Burn and Dolan that it was not an integrity test. The Information Report of the team meeting on 7 May 2001 refers to the meeting between Sea and Officer F on 2 May 2001 as “a strategy to develop rapport and continued contact”³⁰⁷ between them, and that it opened an opportunity for Sea at a subsequent planned meeting with Officer F “to bring up the Orange Armaguard robbery”.³⁰⁸

301 Ombudsman Transcript, John Dolan, 31 October 2014, p. 2,602.

302 Ombudsman Transcript, Phillip Bradley, 24 November 2014, p. 2,984.

303 Ombudsman Transcript, Phillip Bradley, 24 November 2014, pp. 2,983-2,984.

304 Ombudsman Transcript, Phillip Bradley, 24 November 2014, p. 2,984.

305 Ombudsman Transcript, Phillip Bradley, 24 November 2014, p. 2,984.

306 NSWCC Information Report, *Contact with Informant ‘Sea’ on Tuesday 1 May 2001 – CD/140*, reporting officers: [junior Mascot investigator]/Moore, 1 May 2001, p. 2.

307 NSWCC Information Report, *Strategy for contact between Sea and [Officer F] as at 7-5-01*, reporting officer: Szabo, 7 May 2001, p. 2.

308 NSWCC Information Report, *Strategy for contact between Sea and [Officer F] as at 7-5-01*, reporting officer: Szabo, 7 May 2001, p. 2.

The strategy for the meeting between Sea and Officer F on 2 May did not follow formal integrity test processes, as outlined in section 207A of the Police Act – and discussed in more detail in Chapter 17.

The Mascot response after the meeting on 2 May was equally flawed. It is apparent that Officer F ‘passed’ the test – in that he advised Sea to report the alleged threat through established channels – and his responses to Sea did not show signs of corruption. In evidence to Operation Prospect the junior Mascot investigator who mistakenly referred to the strategy as an integrity test agreed that if it were an integrity test Officer F had passed.³⁰⁹ However, the results of the test are not mentioned in the minutes of the Mascot team meeting held on 7 May 2001 or in the Information Report of the same date. There is no evidence that Mascot acted on this development by reviewing or ceasing its investigation of Officer F. Rather, as discussed below, the investigation of Officer F intensified in the following months.

10.3.4.2 Information Report of 7 May 2001

The Information Report of 7 May 2001 was an important document in relation to Mascot’s investigation of Officer F. The document is dated the same day as the Mascot team meeting that discussed Officer F and was attended by senior NSWCC, NSWPF and PIC officers and Mascot investigators (though it is unclear if the Information Report was drafted before or after the meeting). The Information Report summarised the information that Mascot had gathered about Officer F, and was headed ‘Strategy for contact between Sea and [Officer F] as at 7.05.01’.³¹⁰

The presentation of the information about Officer F in the report was inaccurate and misleading. The defects have been already discussed and will be summarised briefly here:

- The Information Report perpetuated the misunderstanding that MSO11 had linked Officer F to the Armaguard robbery. It was actually Sea who raised the matter and MSO11 did not display any other awareness of a link.
- The Information Report associated Officer F with the Ancrum investigation of Mr S’s allegations, but did not record that Ancrum chose not to investigate the allegations as raising criminal or corrupt conduct and regarded the information as ‘departmental’ only.
- The Information Report misrepresents Officer F’s “judgin’ blokes” comment as agreement with a suggestion that current serving officers engaged in corruption in earlier times.
- The Information Report referred to Sea and Officer F meeting on 2 May 2011, but did not mention how Officer F had responded to Sea’s information about being threatened. In fact, the report suggested that Sea could raise the issue again when he next met Officer F.

The Information Report appeared to confirm that Mascot held information that corroborated the suspicion that Officer F was involved in or had knowledge of corruption. The clear purpose of the report, as captured in the heading, was to refine the strategy for deploying Sea in a continuing investigation of Officer F.

10.3.4.3 Failure to resolve anomalies in the strategy to investigate Officer F

The investigation of Officer F was driven by suspicion – based on comments and allegations that were weak, uncorroborated and ambiguous. This suspicion was shared among a number of officers who perpetuated allegations without adequately checking source documentation or objectively evaluating the evidence on hand. Burn was involved in most if not all the investigative strategies used against Officer F and maintained that the motivation for investigating him came from Ancrum. By this time, it was also an established part of the Mascot strategy to use the opportunities that Sea presented to explore allegations that might uncover more solid information about police corruption. To a point, that is orthodox investigative practice.

On the other hand, several officers expressed doubts about the strength of the evidence relied on to continue the investigation of Officer F. Some of the documents relating to Ancrum did not place great weight on the allegation made by Mr S. Bradley likewise questioned the strength of the evidence, the strategy to test Officer F

309 Statement of Information (Interview), [junior Mascot investigator], 13 March 2014, p. 244.

310 NSWCC Information Report, *Strategy for contact between Sea and [Officer F] as at 7-5-01*, reporting officer: Szabo, 7 May 2001.

at a recorded meeting with Sea, and whether the investigation was motivated by a conflict of interest on Dolan's part. Bradley's broad concern about the unfairness associated with the pursuit of Officer F was recorded in memos and emails that were sent to senior staff asking about the rationale and basis for pursuing Officer F.

More direct action should have been taken at this stage to explore and resolve these differences of view before further investigative action was initiated. Many senior officers were aware that Officer F was being investigated and were involved at one stage or another in discussions about the strategy being adopted. An example of an anomaly that was not taken up is that the serious nature of the Ancrum referrals and Armaguard robbery allegations were relied upon to explain why Officer F was named in many LD warrants. However, Burn was unable to explain why information about Ancrum and Armaguard was not included in the supporting affidavits for LD warrants to record Officer F.³¹¹ Reliance was instead placed on a conversation in 1999 involving Officer F that was not accurately transcribed and was misquoted.

10.4 Management of Dolan's perceived conflict of interests in targeting Officer F

10.4.1 Evidence to Operation Prospect about conflict between Dolan and Officer F

An issue that arose repeatedly in the evidence gathered by Operation Prospect was whether Mascot actions targeting Officer F were influenced by Dolan's animosity towards Officer F. Officer F spoke of his suspicion that Dolan was 'out to get him' in his meeting with Sea on 2 May 2001, and repeated his concerns to Bradley, O'Connor and others at various points in that period. Bradley also raised this issue in emails to other parties.

Operation Prospect examined this issue by questioning former Mascot staff about the matter. Sea was asked if he ever felt pressured to get results or target a person vindictively. Sea responded:

The only time I felt that was in relation to [Officer F]. Um, as I said, I could not work that out for the life of me and um, I always felt, after that meeting with Dolan that day when he was frothing at the mouth, I thought this is just – this is not right. This one's not right and I – I found out later and I don't know who told me, that they had a falling out over undercover operations or how – how – how the undercover unit works and that sort of thing, and which sort of led me to then to believe that well now I know why he was sealing me on to [Officer F] because he's got the dirt with him [...] Or they've had an argument or they're disagreeing about something, but at the time I couldn't – I just couldn't work it out. I thought it was wrong [...] That was the only one I thought – it was the only time I thought that it was crossing – crossing to something else that wasn't right.³¹²

Sea repeated the same views at another point in his evidence:

... with [Officer F], I mean, Dolan was obsessed, it was, um – he was briefing me about what to say one day and he was basically frothing at the mouth and his voice was raised and I thought this bloke's – this is, this is not right.³¹³

Sea commented that it was not normal for Dolan to be the person issuing instructions to him about speaking with targets.³¹⁴

Dolan, in his evidence to Operation Prospect, did not remember Sea ever saying that he had problems about approaching Officer F.³¹⁵

Evidence was also given by some of the Mascot investigators who were present in meetings when the investigation of Officer F was discussed. One said that he was not aware of Sea's reservations and, although he had heard the rumour that Dolan had a conflict of interest in relation to Officer F, he saw no evidence of

311 Ombudsman Transcript, Catherine Burn, 12 November 2014, p. 2,786.

312 Ombudsman Transcript, Sea, 21 August 2013, p. 105.

313 Ombudsman Transcript, Sea, 21 August 2013, p. 40.

314 Ombudsman Transcript, Sea, 21 August 2013, p. 42.

315 Ombudsman Transcript, John Dolan, 31 October 2014, p. 2,634.

it.³¹⁶ Another stated that he thought Dolan took an “inordinate” interest and a “hands-on” approach to the investigation of Officer F.³¹⁷

One of Sea’s handlers from August 2000 to January 2002 expressed the view that the targeting of Officer F was “probably irrelevant” and “aggressive”.³¹⁸ He recollected that Sea was uncomfortable about being tasked to target Officer F. He told Operation Prospect about an occasion where he said to Dolan:

A: *...I said to John, “I don’t think you should be subject to this meeting, because you’ve got a conflicting interest,” because I know him and [Officer F] didn’t get on. I’m not sure that’s what the point was. And John said, “Oh, that’s a good point,” but nothing ever happened.*

Q: *And he stayed?*

A: *He stayed.*³¹⁹

The same handler recalled that Sea expressed concern about meeting with Officer F and felt uncomfortable going in and talking about things, as Officer F was not someone he saw all the time.³²⁰ The handler also recalled that Sea felt Officer F had been aware that Sea was an informer.³²¹

When Operation Prospect asked Dolan about this perception of conflict between himself and Officer F, he stated:

*... see I don’t understand, people say there’s an animosity against myself and [Officer F] and I don’t understand this.*³²²

Dolan then went on to explain that Officer F had done some undercover work in the United States, came back and wrote a very good report about how the NSWPF undercover unit could be used in other areas such as homicide.³²³ Dolan told Operation Prospect that the last conversation he recalled having with Officer F was positive. He first became aware, through the intercepts³²⁴ in 2001, that Officer F felt that Dolan had animosity towards him and was pursuing him through investigations in SCIA.³²⁵ Having learnt of Officer F’s view, Dolan said he did not want to be seen to be influencing the investigation.³²⁶

Operation Prospect asked Dolan about Mascot tasking Sea to record conversations with Officer F on multiple occasions in the first half of 2001. Dolan accepted that Sea had been deployed to approach Officer F, but said that “there was nothing untoward. Every conversation was an amicable conversation until that time”.³²⁷ If Sea had been tasked to record conversations with Officer F, Dolan agreed he would have been part of the decision making group for that tasking.³²⁸

Operation Prospect asked Dolan whether Bradley ever told him that there was no need to pursue Officer F. Dolan responded that “Bradley did say that he thought that maybe we should not go ahead because the allegations against [Officer F] weren’t – didn’t warrant an investigation”.³²⁹ Dolan told Operation Prospect that Bradley’s view was that the evidence relating to Officer F did not justify an integrity test.³³⁰ This is confirmed by an email from Bradley to Standen of 9 May 2001 which refers to such a conversation between Dolan and Bradley.³³¹ However, Dolan also said that Burn explained to Bradley that it was not an integrity test,³³² and that

316 Ombudsman Transcript, Greg Moore, 17 February 2015, p. 16; Ombudsman Transcript, Greg Moore, 23 July 2014, p. 684.

317 Statement of Information (Interview), [name], 27 August 2013, p. 31.

318 Ombudsman Transcript, Craig Goozee, 16 April 2014, p. 76.

319 Ombudsman Transcript, Craig Goozee, 16 April 2014, p. 18.

320 Ombudsman Transcript, Craig Goozee, 16 April 2014, pp. 65, 85.

321 Ombudsman Transcript, Craig Goozee, 16 April 2014, p. 79.

322 Ombudsman Transcript, John Dolan, 31 October 2014, p. 2,603.

323 Ombudsman Transcript, John Dolan, 31 October 2014, pp. 2,603-2,604.

324 Ombudsman Transcript, John Dolan, 31 October 2014, pp. 2,603-2,604.

325 Ombudsman Transcript, John Dolan, 31 October 2014, p. 2,604.

326 Ombudsman Transcript, John Dolan, 31 October 2014, p. 2,609.

327 Ombudsman Transcript, John Dolan, 31 October 2014, p. 2,605.

328 Ombudsman Transcript, John Dolan, 31 October 2014, p. 2,606.

329 Ombudsman Transcript, John Dolan, 31 October 2014, p. 2,609.

330 Ombudsman Transcript, John Dolan, 31 October 2014, p. 2,610.

331 Email from Phillip Bradley, NSWCC Commissioner to Mark Standen, Assistant Director Investigations, NSWCC, 9 May 2001.

332 Ombudsman Transcript, John Dolan, 31 October 2014, p. 2,610.

Bradley accepted this view and then decided that it was appropriate to proceed with the planned meeting between Sea and Officer F on 2 May 2001.³³³

Another incident referred to earlier is Dolan's email of 10 May 2000 to Henry seeking Officer F's phone numbers. Dolan was not able to recall why he made that request or what was done in response.³³⁴ No TIs were taken out following the email until more than a year later. An available inference is that Dolan made this request for investigative rather than personal reasons.

10.4.2 Analysis and submissions

The evidence before Operation Prospect indicates that Dolan and Officer F did not enjoy an amicable association. The perception of conflict was held by Officer F and a number of Mascot investigators, some of whom appear to have observed evidence of the conflict. Sea also thought there was personal animosity between Dolan and Officer F. Dolan himself was aware that there was at least a perceived conflict and noted it at meetings.

The NSWPF Code of Conduct and Ethics requires that action be taken to avoid a conflict of interests that could compromise the impartial performance of an officer's duties.³³⁵ The Code also requires that any potential or actual conflict is disclosed to the person's manager or other senior officer.³³⁶ The Code notes that a conflict of interests may occur where an officer has personal beliefs or attitudes that could influence their impartiality in performing their job.³³⁷

The NSWCC Code of Conduct also addressed conflicts of interests.³³⁸ It noted that personal interests should be disclosed in order to avoid compromise, whether real or perceived, and the "onus is on officers to notify their supervisors of a potential or actual conflict of interest".³³⁹

The conflict – or perception of a conflict – between Dolan and Officer F should have been better managed.

Operation Prospect asked Dolan what was meant by the comment, recorded in the Information Report dated 7 May 2001, that Dolan wanted to put on the record that contact between Sea and Officer F was operational and had nothing to do with him. Dolan said: "I wanted to make it clear to all that if they thought I was acting improper or because I thought they thought I was acting in a manner that was prejudiced, to speak up".³⁴⁰

Dolan's comment suggests he was aware that others may have perceived him to lack impartiality in relation to Officer F. Dolan was aware too that Officer F felt Dolan was personally out to get him. Dolan repeated those points in his written submission to Operation Prospect – he accepted there was a perception he was biased towards Officer F, but submitted there was no direct evidence of ill feeling or an ulterior motive.³⁴¹ Given that there was a perception of bias, Dolan accepted if that was sufficient to constitute a conflict of interests within the meaning of the NSWPF Code of Conduct that perhaps he could have removed himself from any role in the investigation of Officer F. However, he further submitted that there was no evidence that his conduct towards Officer F was motivated by any personal interest or ulterior motive.³⁴²

In these circumstances, it was a grave omission on Dolan's part not to remove himself from the investigation of Officer F from at least May 2001. His failure to do so allowed the perception to continue that Officer F was being investigated for personal reasons. It was not sufficient for Dolan merely to say at a Mascot meeting that he did not harbour animosity to Officer F. The NSWPF Code of Conduct and Ethics required that he take more effective action to manage and avoid the perceived conflict of interest.

333 Ombudsman Transcript, John Dolan, 31 October 2014, p. 2,610

334 Ombudsman Transcript, John Dolan, 31 October 2014, pp. 2,642-2,643.

335 NSWPF, *Code of Conduct and Ethics*, January 1997, pp. 4-5.

336 NSWPF, *Code of Conduct and Ethics*, January 1997, pp. 4-5.

337 NSWPF, *Code of Conduct and Ethics*, January 1997, pp. 4-5.

338 NSWCC, *Code of Conduct*, July 1999, pp. 5-6.

339 NSWCC, *Code of Conduct*, July 1999, p. 5.

340 Ombudsman Transcript, John Dolan, 31 October 2014, p. 2,642.

341 Dolan, J, Submission in reply, 24 August 2015, pp. 5-7.

342 Dolan, J, Submission in reply, 24 August 2015, p. 7.

Some other officers were also compromised by their failure to act on their knowledge that Dolan had a potential, if not an actual, conflict in relation to matters concerning Officer F. None of the NSWCC officers or the NSWPF officers working at Mascot, other than Sea's handler, took any adequate steps to raise this conflict with senior officers and bring a more objective bearing to the issue. The attempt by Sea's handler to draw the problem to Dolan's attention was ignored.

There is insufficient evidence to suggest any failure by Scipione to address the conflict of interests between Dolan and Officer F. By May 2001 Scipione had formed the view that Dolan required supervision and had put strategies in place to manage that. Scipione was also not kept fully abreast of the investigative strategies being used against Officer F.

By contrast, Bradley was put on notice about this conflict of interests – as evidenced by his memos and emails in mid-2001. However, he took no decisive action to remove Dolan from the investigation of Officer F. Bradley's continued reliance on information from Dolan and/or officers under his command about whether Mascot was justified in targeting Officer F showed a lack of awareness by Bradley of the risks associated with that conflict. One step Bradley could have taken was to assess the risks to the investigation in light of Dolan's conflict. This would have been a proportionate response to the views Bradley had recorded. These included that he was aware of personal differences between Dolan and Officer F, there was no adequate justification for Mascot to investigate Officer F, and it was not appropriate to pursue Officer F by way of an integrity test. Despite documenting those views, there is no record to indicate that Bradley intervened to stop the investigation of Officer F or more closely considered and evaluated the reliability of information being used at that time.

10.5 Mascot investigations of Officer F for misuse of official information (June to July 2001)

10.5.1 TI warrant obtained for Officer F's phones (June 2001)

In mid-2001 Mascot developed a strategy to investigate a suspected leak of information to Officer F about Sea's involvement as an undercover operative. The suspicion of a leak was based on a number of events including Officer F and MSO22 not attending a lunch organised by Sea on 16 May 2001. As a result of their non-attendance, Mascot conducted a review of telephone records and found various calls between Officer F and MSO22 before that date. Mascot began to suspect that their non-attendance may have been because Officer F had been tipped off about Sea's role as an informer.

The following month, on 27 June 2001, another Mascot target told Sea that MSO22 had told him that Sea had been 'wired up' at the May lunch – meaning he was wearing a LD.³⁴³

On 28 June 2001 Mascot lawfully intercepted two telephone calls between Sea and MSO22. During these calls, Sea and MSO22 discussed the reason MSO22 and Officer F did not attend the lunch. MSO22 told Sea that he had been warned it was a 'set up'. MSO22 initially refused to name his source over the telephone, but in the second telephone call MSO22 revealed that Officer F had given him the information about Sea and warned him against attending the lunch.³⁴⁴

On 29 June 2001 Sea made an intercepted phone call to Officer F and arranged to meet him outside the NSW Supreme Court.³⁴⁵ They met later that day, with Sea attempting to lawfully record the conversation with a LD.³⁴⁶ Sea asked Officer F about the source of information that Officer F allegedly passed on to MSO22. Officer F confirmed he had spoken with MSO22, but denied telling him Sea had been wearing a LD.³⁴⁷

343 NSWCC Information Report, *Informant contact with Sea, Thursday 28/6/01*, reporting officer: Moore, 29 June 2001, p. 1.

344 NSWCC internal memorandum from unknown author, 26 July 2001, pp. 3-4.

345 TI affidavit 01/403-406; NSWCC internal memorandum from unknown author, 26 July 2001, p. 4.

346 NSWCC Information Report, *Informant contact with informant Sea on Friday 29-6-01*, reporting officer Szabo, 29 June 2001. This Information Report indicates that the LD did not work properly and as a result no product was recorded.

347 TI affidavit 01/403-406; NSWCC internal memorandum from unknown author, 26 July 2001, p. 4.

A Mascot file note of 29 June 2001 titled “GENERAL INFORMATION RE [Officer F] – [MSO22] TI’S” records the following:

Mascot investigators have analysed the [Officer F] disclosure’s to [MSO22] concerning Sea and the 16/5/2001 luncheon. This disclosure in the context of other developments indicates sensitive operational intelligence has been disclosed to [Officer F] prior to the luncheon on the 16/5/01. [Officer F] has in turn disseminated the information to [MSO22]. On the 18/5/2001 [Officer F] attended the NSWCC where he spoke to Assistant Director, Tim O’Connor. During this conversation [Officer F] disclosed to O’Connor that he had heard that John Dolan was going to do something to him and was concerned about being ‘set up’. John Dolan is currently the Police Commander of Operation Mascot.

Mascot investigators believe that [Officer F] was tipped off regarding the proposed operation targeting [Officer F], [MSO22], [MSO 8] and [MSO 9] on the 16/5/2000.³⁴⁸ At this stage investigators have been unable to identify the source of the leak of the information to [Officer F] however believe it may have originated from a person with detailed knowledge of the Mascot investigation. Investigators intend pursuing further strategies to promote conversations between [Officer F], [MSO22] and others via the services subject of this application. Investigators believe that such conversations will assist in determining the source of the leak.³⁴⁹

This file note indicates that Mascot was confirmed in the belief that Officer F had been told about Sea’s covert role and Mascot’s investigation of him.

On the same day, Moore swore an affidavit in support of a TI warrant on Officer F’s mobile and home telephone services to investigate the offence of corruption contrary to section 200 of the Police Act.³⁵⁰ At that time, Officer F did not live at the home address Mascot sought to intercept. The subscriber for the home telephone service was Officer F’s wife, from whom he was then separated. While Mascot documentation shows that Mascot knew Officer F was separated, the affidavit stated that Moore suspected Officer F to be using, or likely to use, the home service. The affidavit also sought a TI for MSO22’s mobile and home telephone services.

The facts and grounds that the application for the TI warrant was based on included that Officer F and MSO22 had not attended the lunch on 16 May 2001, Sea’s phone conversations with MSO22 on 28 June 2001, and Sea and Officer F’s conversation on 29 June 2001.³⁵¹

The application for the TI warrant appears to have been made quite urgently. The date of the application was 29 June 2001, the affidavit incorporated evidence obtained that day, and the application process was completed the same day.³⁵² The application was granted that day.³⁵³

Moore gave evidence to Operation Prospect that, after reviewing documents including the TI application, it was clear from the content of the application and other relevant documents there was a level of concern – particularly about a potential leak or disclosure of Sea’s activities.³⁵⁴ Mascot investigators were concerned that Officer F had become aware of Sea’s activities and had disclosed this to other parties.³⁵⁵ Moore said it was both corrupt and dangerous to disclose knowledge about Sea or that Sea was using a LD.³⁵⁶ Moore believed there was evidence that Officer F had in fact disclosed this information and it was on that basis that the TI was deployed.³⁵⁷

Moore was also asked about the address of the phone service for the TI. He told Operation Prospect that “there would have been reasonable inquiries made to confirm that [Officer F] was living at that home address”,³⁵⁸ because “obviously we don’t want to get the wrong phone off”.³⁵⁹ He noted that the earlier profile document was six months old at the time he swore the affidavit in support of the TI, but he agreed that if Officer F was not living at this address the affidavit was inaccurate in that respect.³⁶⁰

348 This is a typographical error and ought to reference 16 May 2001.

349 Susan Shaw, File note, ‘General Information re [Officer F] – [MSO22] TI’s’, 29 June 2001, p. 3.

350 TI affidavit 403-406/2001.

351 TI affidavit 403-406/2001.

352 TI affidavit 403-406/2001.

353 Email from [name], NSWCC to ‘Mascot’, NSWCC, 29 June 2001. LD warrants EO1128/00/00 (01/406); EO1129/00/00 (01/406); EO1130/00/00 (01/406); EO1131/00/00 (01/406).

354 Ombudsman Transcript, Greg Moore, 23 July 2014, p. 731.

355 Ombudsman Transcript, Greg Moore, 23 July 2014, p. 731.

356 Ombudsman Transcript, Greg Moore, 23 July 2014, p. 732.

357 Ombudsman Transcript, Greg Moore, 23 July 2014, p. 732.

358 Ombudsman Transcript, Greg Moore, 23 July 2014, p. 734.

359 Ombudsman Transcript, Greg Moore, 23 July 2014, p. 734.

360 Ombudsman Transcript, Greg Moore, 23 July 2014, p. 734.

On 4 July 2001 the warrant to intercept the telephone service at Officer F's former home was revoked pursuant to a notice signed by Bradley issued under section 57 of the TI Act.³⁶¹ Operation Prospect has been unable to locate any records which detail why or how the decisions to revoke the warrant for the former home were reached.

None of the conversations transcribed from the period that the TI warrants were in force related to conversations on the telephone service at Officer F's former family home.

10.5.2 Officer F named in the Schedule of Debrief for an allegation of leaking (July 2001)

On 2 July 2001 Mascot entered a new allegation in the Schedule of Debrief numbered SOD231. It was described as "leak of information and [Officer F's pseudonym], [MSO22], [pseudonyms for two other Mascot subject officers]".³⁶² An email from Burn to Dolan, Senior Sergeant Craig Goozee, Jewiss and Moore on that day noted:

*Craig and Greg Moore have compiled most of the information in a chronology. Greg Jewiss has been allocated as the analyst for this SOD, and Craig is the case officer. It will be necessary to compile all relevant TI and LD material over the past week re this SOD.*³⁶³

On 3 July 2001 Burn and Dolan discussed with Sea the "high likelihood that there has been a leak of information and that a source has passed information onto [Officer F]".³⁶⁴ They noted that the source of the leak had not yet been confirmed.

Jewiss created a "Personal Profile on [Officer F]"³⁶⁵ on 4 July 2001. The profile noted that Officer F was separated from his wife, indicated that he had a "girlfriend", and noted different addresses for the family home and the girlfriend's home. This profile was updated after 4 July 2001 by a NSWCC analyst. The profile also noted that Officer F was alleged by Sea:

*... to have been involved in four instances of corruption and or criminal behaviour that SEA either has directly knowledge of (ie involvement in or witnessed) or has heard about. These matters relate to SOD numbers 47, 87 [sic], 134 & 231.*³⁶⁶

In summary, the four allegations set out in Officer F's profile were:

- SOD47 Mr S component – this was dated 18 August 1992 and related to the complaint by a criminal, Mr S, that Officer F and other officers had falsely arrested him in August 1992. The profile noted four LD transcripts as the source of the allegation.³⁶⁷ SOD 47A, also dated 18 August 1992, related to a complaint by Mr S that Officer F and other officers had planted firearms exhibits near Rockwood Cemetery, and fabricated alleged admissions in an official police notebook.³⁶⁸ The source for this allegation was identified as Ancrum. The entries in the Profile for SOD047 and SOD047A included the note: "[Officer F]: Fabricated statements. Internal investigation, no corroboration from Sea".³⁶⁹

³⁶¹ NSWCC, *Notice pursuant to Telecommunications (Interception) Act 1979 Revocation of Warrant Number – E01128/00/00*, 4 July 2001.

³⁶² Email from Detective Inspector Catherine Burn, Team Leader Mascot, Mascot Reference, NSWCC to Superintendent John Dolan, Commander of SCU, Mascot Reference, NSWCC, Senior Sergeant Craig Goozee, Senior Investigator, Mascot Reference, NSWCC, Sergeant Greg Moore, Senior Investigator, Mascot Reference, NSWCC and Detective Sergeant Greg Jewiss, Mascot Reference, NSWCC, 2 July 2001.

³⁶³ Email from Detective Inspector Catherine Burn, Team Leader Mascot, Mascot Reference, NSWCC to Superintendent John Dolan, Commander of SCU, Mascot Reference, NSWCC, Senior Sergeant Craig Goozee, Senior Investigator, Mascot Reference, NSWCC, Sergeant Greg Moore, Senior Investigator, Mascot Reference, NSWCC and Detective Sergeant Greg Jewiss, Mascot Reference, NSWCC, 2 July 2001.

³⁶⁴ NSWCC Information Report, *Contact with Sea on 3/7/01 re Security Assessment*, reporting officer: Burn, 3 July 2001.

³⁶⁵ NSWCC *individual profile on [Officer F]*, report date: 4 July 2001, Profile prepared by: Greg Jewiss, profile updated: 10 October 2001 by [a NSWCC analyst].

³⁶⁶ NSWCC *individual profile on [Officer F]*, report date: 4 July 2001, Profile prepared by: Greg Jewiss, profile updated: 10 October 2001 by [a NSWCC analyst], p.7. The figure of 87 is an error as presented in the quote, and should read 78.

³⁶⁷ NSWCC *individual profile on [Officer F]*, report date: 4 July 2001, Profile prepared by: Greg Jewiss, profile updated: 10 October 2001 by [a NSWCC analyst], p. 7.

³⁶⁸ NSWCC *individual profile on [Officer F]*, report date: 4 July 2001, Profile prepared by: Greg Jewiss, profile updated: 10 October 2001 by [a NSWCC analyst], p. 7.

³⁶⁹ NSWCC *individual profile on [Officer F]*, report date: 4 July 2001, Profile prepared by: Greg Jewiss, profile updated: 10 October 2001 by [a NSWCC analyst], p. 7.

- SOD78 “Alleged theft of \$90000 by MCSNW”³⁷⁰ – this was dated 1996 and related to the alleged theft by officers from the North West Crime Squad investigating the Armaguard robbery. The source for this allegation was noted as the transcript from Sea’s debrief.³⁷¹
- SOD134 “Managerial & generic corruption matters”³⁷² – the description of this allegation in the profile referred to recorded conversations of various officers attributing the following comment to Officer F: “Judging blokes today on today’s rules for something they did whenever”.³⁷³ This incorrectly characterised Officer F’s comment as agreeing with an earlier statement by MSO3, one of the others recorded at that function.
- The profile also lists SOD231 – the possible leak of information about Mascot, and suggests that MSO22 confirmed that Officer F leaked this information.³⁷⁴

Operation Prospect asked Jewiss about this profile document that he prepared. He said there were errors in it, but he was unable to be certain which parts were written by him as opposed to a NSWCC analyst – who was noted as updating the document on 10 October 2001. Although Jewiss acknowledged the inaccuracies,³⁷⁵ it is not now possible to identify which officer wrote which parts of the profile document.

A Mascot file note prepared by Bradley noted that Officer F called him to discuss various things, including Officer F’s suspicion that Sea was working on him – with Officer F remarking that it was “a very amateurish effort”.³⁷⁶ Officer F is also noted as saying that a senior Mascot officer had told him:

*... if you keep upsetting him (Dolan), he’ll do something. [Officer F] said that he was concerned about the situation, but he thought things might have changed with Scipione being there.*³⁷⁷

Officer F conveyed to Bradley the details of a dispute between him and Dolan about undercover police, in which Officer F had written to the Commissioner of Police about his concerns with the way IA was managing undercover police.³⁷⁸

Bradley sent an email to Standen – explaining that he had conveyed his conversation with Officer F to Burn and Dolan and had also gone through the allegations against Officer F with Dolan, telling them:

*... as far as I cd see there was the allegation which came from [Mr S] that he had been loaded by [Officer F] and that this was not a matter about which Sea cd give any evidence (other than evidence of the complaint).*³⁷⁹

Bradley also noted:

*It was therefore an uncorroborated allegation from a criminal who had been arrested. There was a throw away [sic] line from [MSO11] that [Officer F] had benefited from the Orange Armaguard robbery which had gone nowhere and will go nowhere unless [MSO11] rolls and can actually give some useful info about it. The [allegation that a criminal was making threats against Sea] matter was only the excuse which Sea used to approach [Officer F] and [Officer F] is not the subject of an adverse allegation there.*³⁸⁰

Bradley’s email also noted that Giorgiutti told him that Mascot investigators had “formed the view that there was a criminal brief” against Officer F.³⁸¹ Bradley then observed:

370 NSWCC *individual profile on [Officer F]*, report date: 4 July 2001, Profile prepared by: Greg Jewiss, profile updated: 10 October 2001 by [a NSWCC analyst], p. 8.

371 NSWCC *individual profile on [Officer F]*, report date: 4 July 2001, Profile prepared by: Greg Jewiss, profile updated: 10 October 2001 by [a NSWCC analyst], p. 8.

372 NSWCC *individual profile on [Officer F]*, report date: 4 July 2001, Profile prepared by: Greg Jewiss, profile updated: 10 October 2001 by [a NSWCC analyst], p. 8.

373 NSWCC *individual profile on [Officer F]*, report date: 4 July 2001, Profile prepared by: Greg Jewiss, profile updated: 10 October 2001 by [a NSWCC analyst], p. 8.

374 NSWCC *individual profile on [Officer F]*, report date: 4 July 2001, Profile prepared by: Greg Jewiss, profile updated: 10 October 2001 by [a NSWCC analyst], p. 8.

375 Ombudsman Transcript, Greg Jewiss, 29 July 2014, pp. 959-960.

376 Phillip Bradley, File note, *Mascot*, NSWCC, undated, p. 1.

377 Phillip Bradley, File note, *Mascot*, NSWCC, undated, p. 1.

378 Phillip Bradley, File note, *Mascot*, NSWCC, undated, p. 1.

379 Email from Commissioner Phillip Bradley, NSWCC to Mark Standen, Assistant Director Investigations, NSWCC, 23 July 2001.

380 Email from Commissioner Phillip Bradley, NSWCC to Mark Standen, Assistant Director Investigations, NSWCC, 23 July 2001.

381 Email from Commissioner Phillip Bradley, NSWCC to Mark Standen, Assistant Director Investigations, NSWCC, 23 July 2001.

Unless there is something that I don't know, it seems to me that if someone is warned that someone in JDs [Dolan's] position is setting him up for the wrong reasons and he gets an amateurish approach from a colleague, the warning of others about this does not amount to a crime ... While I think it is proper to test serious allegations against senior police as in this case we need to keep an open mind. JD and CB [Burn] both think that [Officer F] knows more. I stressed with them the need to keep an open mind for a number of reasons. Apart from the usual reasons, we don't want to damage a very good operator on the basis of what some criminal said some time ago if it can never be sustained.³⁸²

When this matter was canvassed by Operation Prospect, Burn said that she did not have a view in July 2001 that there was a criminal brief against Officer F.³⁸³ While Bradley's email indicated that Giorgiutti told him Mascot investigators had formed the view there was a criminal brief, Burn told Operation Prospect that she could not recall a meeting in which a criminal brief was discussed with Bradley.³⁸⁴ Burn indicated that in July 2001 there were investigative opportunities about Officer F and she entertained suspicions that Officer F had been involved in the matters alleged by Mr S.³⁸⁵

Around this time, it seems that Officer F was being considered for a position in the National Crime Authority (NCA). Bradley had some contact with both Officer F and the NCA about the potential appointment – as noted in Bradley's file note of 23-25 July 2001:

MASCOT

FILE NOTE: [Officer F]

230701 [The Director of Intelligence with the then National Crime Authority] *spoke to me about selection for the covert operations head at NCA. [Officer F] is one of the preferred candidates.*

I told him that he was a good operator, and discussed his qualifications for the job in some detail. I said that there were also some allegations which we would need to discuss before he makes the final decision.

240701 [The Director of Intelligence with the then National Crime Authority] *rang back seeking more information. It appeared that [Officer F] had firmed. There had been discussions about a secondment, and [The Director of Intelligence with the then National Crime Authority] suggested that [Officer F] speak to me about the job.*

I told [The Director of Intelligence with the then National Crime Authority] the general nature of the allegations on a strictly confidential basis. I said that none were likely to be sustained on what I knew, but I had not looked at all the information. I said the main issue for the NCA was whether it would be embarrassed by a public examination of the matters.

250701 [Officer F] *came to see me and we discussed the job at the NCA. There was no discussion of the 'other matter'.*

*P Bradley
Commissioner³⁸⁶*

382 Email from Commissioner Phillip Bradley, NSWCC to Mark Standen, Assistant Director Investigations, NSWCC, 23 July 2001.

383 Ombudsman Transcript, Catherine Burn, 12 November 2014, p. 2,803.

384 Ombudsman Transcript, Catherine Burn, 12 November 2014, pp. 2,803-2,804.

385 Ombudsman Transcript, Catherine Burn, 12 November 2014, p. 2,804.

386 Phillip Bradley, File note, *File Note: [Officer F]*, NSWCC, 23-25 July 2001.

10.5.3 Analysis and submissions

Four aspects of this phase of Mascot's investigation of Officer F warrant comment:

- the continued inclusion of inaccurate information about Officer F in Mascot documents
- the suspicion that Officer F had leaked confidential information
- the application for TI warrants applying to Officer F
- the management of Dolan's perceived conflict of interests.

10.5.3.1 Inaccurate information about Officer F in Mascot documents

There were inaccurate statements in two important documents. One was the profile document that was prepared by Jewiss on 4 July 2001 and updated by a NSWCC analyst on 10 October 2001. The document suggested that the four allegations listed from the Schedule of Debrief came from Sea. In fact, Sea made no allegations about Officer F and did not witness any misconduct involving Officer F. The profile document therefore perpetuates the misinformation that Sea was the source of Mascot's information against Officer F.

The profile document repeats the inaccuracy (discussed earlier) that Officer F's "judgin' blokes" comment (SOD134) was agreeing with a suggestion that current serving officers engaged in corruption in earlier times. Bradley, Burn and Dolan agreed in their evidence to Operation Prospect that the way this conversation was represented in Mascot documents was unfair and inappropriate. The information in the profile document about the allegation relating to the suspected leak of information (SOD231) was also unbalanced. As discussed earlier, Officer F may have deduced from the circumstances that Sea was wearing a LD.

The other important document that contained inaccurate information was the supporting affidavit for the TI warrants that Moore swore on 29 June 2001. The affidavit included the inaccurate statement about Officer F's "judgin' blokes" comment, that appears to have been copied from Henry's 29 November 1999 Information Report. It also incorrectly stated that Officer F was considered likely to use the home service "because he resides on the premises to which it is connected".³⁸⁷ The telephone service was registered in Officer F's wife's name, and the SASC profile attached to the December 2000 Information Report and the transcript of Sea's meeting with Officer F on 2 May 2001 both noted that Officer F did not live in his former family home. It is unclear if this error in the affidavit was due to unnecessary haste or carelessness in preparing it, or whether Mascot's information holdings were not organised to facilitate a thorough search. Either way, it suggests that Moore did inadequate analysis in preparing the affidavit and seeking a TI warrant for the wrong premises.

Moore made a written submission to Operation Prospect that drew attention to evidentiary difficulties in clarifying Officer F's residential address, and questioned whether the information presented in his affidavit was incorrect.³⁸⁸ Operation Prospect is satisfied that the affidavit contained inaccurate information. However, it is accepted that Moore relied on information obtained from other sources, and the finding made below is that his conduct arose in part from a mistake of fact.

10.5.3.2 Suspicion that Officer F had leaked information

In May and June 2001 Mascot developed a growing suspicion that Officer F had learnt from an unknown source of Sea's undercover activities and had disclosed this to other parties. Mascot acted on this suspicion by obtaining a TI warrant for Officer F's mobile and home phone services, and listing this allegation in the Schedule of Debrief (SOD231) and in Officer F's personal profile.

³⁸⁷ TI affidavit 403-406/2001, p. 7.

³⁸⁸ Moore, G, Submission in reply, 25 November 2015, pp. 74-79, 83-87.

It was understandable that Mascot would be concerned at a possible leak of information that could expose an informant in a covert investigation. An issue facing Mascot at the time was whether it was viable for Sea to work in Crime Agencies.³⁸⁹ Exposure of an undercover operation has the potential to place the informant in danger and to compromise investigations. It is therefore appropriate that suspected leaks are closely considered and action is taken to mitigate the risk of leaks.

However, an objective evaluation of the information that Mascot held does not reasonably support a firm suspicion that Officer F had received confidential information that he communicated to others. MSO22 had reported that Officer F had warned him against attending the luncheon in May 2001 because Sea was wired up. Officer F may have independently formed that suspicion. He had become suspicious of Sea's approaches and strange behaviour. He conveyed his suspicion and concern to Bradley, he felt that Dolan was out to get him, and Sea was self-conscious about approaching Officer F to discuss historical corruption matters.³⁹⁰ Officer F also had a background in undercover policing that would have made him more alert to these warning signs. In fact, Officer F told Sea and others in 2001 that he deduced that Sea may be wearing a wire from Sea's suspicious conduct.³⁹¹

10.5.3.3 Application for TI warrants applying to Officer F

The TI warrants for Officer F's mobile and home telephone services were obtained on 29 June 2001 in connection with Mascot's suspicion that Officer F had received and communicated leaked information. The criticism in the preceding section of the evidentiary basis for Mascot's suspicion applies as well to the decision to apply for a TI warrant. TI is a highly invasive strategy that should not be adopted lightly. In this case, Mascot applied for a TI warrant for the home of a senior police officer against whom there was no strong or unambiguous evidence of corruption.

An additional criticism is that the supporting affidavit for the TI warrant wrongly stated that Officer F lived at his family home. The error was inadvertent. Nevertheless, it was a serious error that should not pass without comment. The interception of the home telephone service was a serious invasion of the privacy of Officer F's wife and children, who did live at that location and presumably used the telephone regularly. Greater care should have been taken in checking the available factual information in applying for this warrant.

10.5.3.4 Management of Dolan's perceived conflict of interests

Bradley received further information on 23 July 2001 from Officer F detailing the nature of the conflict between him and Dolan, and also explaining how Officer F formed his suspicion that he was being 'worked on' by SCIA. It appears that Bradley still took no active step to address Dolan's perceived conflict of interests in relation to his involvement in the investigation of Officer F. Bradley was sceptical about the quality and strength of the information Mascot held about Officer F, and advised Burn and Dolan to "keep an open mind"³⁹² and avoid damaging a "good operator".³⁹³ However, it is not clear that he took any further steps as Commissioner to direct Mascot away from investigating Officer F.

389 Dolan, J, Submission in reply, 24 August 2015, p. 5.

390 Ombudsman Transcript, Sea, 23 October 2013, pp. 117-118.

391 PIC internal memorandum from [a senior lawyer at PIC], to OAG, 11 December 2003.

392 Email from Commissioner Phillip Bradley, NSWCC to Mark Standen, Assistant Director Investigations, NSWCC, 23 July 2001.

393 Email from Commissioner Phillip Bradley, NSWCC to Mark Standen, Assistant Director Investigations, NSWCC, 23 July 2001.

10.6 Mascot suspicions about information given by Scipione to Officer F (December 2001)

10.6.1 Discussions between the NSWCC and PIC

In late 2001 Scipione was being considered for promotion to Deputy Commissioner of the NSWPF. Bradley was contacted by the Police Ministry for information about Scipione.³⁹⁴ Mascot had included Scipione in a list of possible suspects for leaking information to Officer F. This was based on telephone records that indicated a 57 second call was made on 11 May 2001 from Scipione's office telephone to Officer F's mobile telephone.³⁹⁵ It appears that Mascot decided that investigating Scipione as a possible suspect should be progressed as a matter of urgency, given the promotional decision was under consideration.³⁹⁶

The investigation was handed over to the PIC on 20 November 2001, in a meeting between Giorgiutti, Terry Griffin (PIC Commissioner) and other senior PIC staff.³⁹⁷ Giorgiutti was to assemble the relevant material and deliver it to the PIC. However, before this happened, Scipione had been identified for the more senior role of Police Commissioner.³⁹⁸

A file note prepared by Bradley recorded that Les Tree (Director General of the Police Ministry) had telephoned him on 13 December 2001 to advise of a plan to promote Scipione to a Deputy Commissioner position. Bradley noted that Tree told him that when he (Tree) had mentioned this to Griffin, Griffin advised there "could be a problem with" Scipione.³⁹⁹

This is confirmed in Griffin's diary of the same day that was produced to Operation Prospect. The following entry is recorded for 13 December 2001:

3pm Discussed Les Tree possible probs [sic] with senior officers.

4pm Call from Les Tree – asked about Sci [Scipione] & [another senior officer] said needed urgent advice because Ryan likely to promote – said problems with S [Scipione] alleged nothing on other – said didn't have details but Bradley involved [undecipherable]. Call from Bradley discussed promotion [?] – said COP [Commissioner of Police] would be ill advised to act as Dolan was a wild card & had all info. Bradley called (car) said COP probably proceeding proposed to summons [MSO22]? and then see what happened asked for PIC investigator to attend if that happens.⁴⁰⁰

As Griffin's diary entry indicates, Bradley (and Giorgiutti) had decided to progress the investigation by calling in MSO22 to the NSWCC for a hearing. Griffin agreed with this course of action, and sent a PIC representative to participate in the hearing.

MSO22 was issued a summons on 14 December 2001. In a written statement made that day, MSO22 said that Officer F had told him he would not attend the gathering six months earlier (on 15 May 2001) because he had a gut feeling he was being set up by Sea who kept approaching Officer F at work to talk with him about things he did not know about.⁴⁰¹

394 Phillip Bradley, File note, *Mascot*, NSWCC, 14 December 2001.

395 NSWCC internal memorandum from unknown author, 26 July 2001, p. 2.

396 Phillip Bradley, File note, *Mascot*, NSWCC, 14 December 2001.

397 PIC internal memorandum from [a senior lawyer at PIC], to OAG, 29 May 2002, pp. 3-4.

398 PIC internal memorandum from [a senior lawyer at PIC], to OAG, 29 May 2002, p. 4.

399 Phillip Bradley, File note, *Mascot*, NSWCC, 14 December 2001.

400 Diary, Terrence Griffin, 13 December 2001.

401 NSWPF, Statement by [MSO22] in the matter of SOD231, NSWCC offices, 14 December 2001, p. 3.

10.6.2 Interview of Officer F at PIC (14 December 2001)

On 14 December 2001 a discussion between Bradley, Giorgiutti, Burn and Acting Superintendent Greg Randall SCU resolved to bring Officer F in for an interview on that day. Bradley spoke with Police Commissioner Peter Ryan about this proposal, and Ryan “delegated a direction to A/Supt Randall for [Officer F] to attend the NSWCC for interview”.⁴⁰² An Information Report noted that later that day Randall contacted Officer F, gave him the direction and arranged to meet at the PIC offices, rather than the NSWCC offices.⁴⁰³

The evidence about what happened on 14 December 2001 is not entirely clear, given much of it has been constructed from the memory of participants a considerable time after the events.

After refreshing his memory from a NSWCC information report,⁴⁰⁴ Griffin recalled Officer F attending the PIC to be interviewed, but that a formal interview by PIC did not happen “because Giorgiutti got in the middle of the discussions” and spoke to [Officer F] alone.⁴⁰⁵

Griffin’s diary entry for 14 December at 2.30 pm records the following:

PB [Philip Bradley] called re [Officer F] – said [MSO22] had lied and problem was [Officer F] could be useful before matter than after [MSO22] talks to him.

Agreed to bring [Officer F] to PIC if possible to have interview of private hearing.

Called PIC no answer- left

CB [Catherine Burn] called to say [Officer F] would be outside PIC in 20 mins –

Attend office told [name] needed assistance

[A PIC investigator] to be called back – was on way to NSWCC

JG [John Giorgiutti] arrived CC 3.15ish

Discussed avenues of enquiry for [Officer F] – agreed difficult

JG to speak alone first [a PIC investigator] to wait with tapes until called.

*Declared SOD 231 Preliminary investigation*⁴⁰⁶

It is clear from that entry that Griffin spoke with Giorgiutti before the interview with Officer F was to be held. They agreed that Giorgiutti would speak with Officer F alone before an interview was recorded, and that the avenues of enquiry were “difficult”.

An Information Report compiled by Burn indicated that in the late afternoon of 14 December 2001, she and Randall went to the PIC and had a conversation with Giorgiutti and Griffin.⁴⁰⁷ Officer F was then interviewed by Giorgiutti – others may have been present, as discussed later, although the evidence on this is unclear.⁴⁰⁸ The interview with Giorgiutti was not recorded. The Information Report noted that Officer F asked that his legal representative attend the interview with him. His legal representative was unable to be contacted, so arrangements were made for Officer F to attend the NSWCC to be formally interviewed with his solicitor the next day.⁴⁰⁹

While the interview with Giorgiutti was not recorded, evidence given to Operation Prospect and contemporaneous documents bear out that the interview was harrowing and unfair for Officer F.

⁴⁰² NSWCC Information Report, *Contact with [Officer F] 14/12/01 & 15/12/01 re: SOD231*, reporting officer: Burn, 17 December 2001, p. 1.

⁴⁰³ NSWCC Information Report, *Contact with [Officer F] 14/12/01 & 15/12/01 re: SOD231*, reporting officer: Burn, 17 December 2001, p. 1.

⁴⁰⁴ NSWCC Information Report, *Contact with [Officer F] 14/12/01 & 15/12/01 re: SOD231*, reporting officer: Burn, 17 December 2001.

⁴⁰⁵ Ombudsman Transcript, Terrence Griffin, 3 June 2016, p. 68.

⁴⁰⁶ Diary, Terrence Griffin, 14 December 2001.

⁴⁰⁷ NSWCC Information Report, *Contact with [Officer F] 14/12/01 & 15/12/01 re: SOD231*, reporting officer: Burn, 17 December 2001, p. 1.

⁴⁰⁸ NSWCC Information Report, *Contact with [Officer F] 14/12/01 & 15/12/01 re: SOD231*, reporting officer: Burn, 17 December 2001, p. 1.

⁴⁰⁹ NSWCC Information Report, *Contact with [Officer F] 14/12/01 & 15/12/01 re: SOD231*, reporting officer: Burn, 17 December 2001, p. 1.

Randall and Burn had contact with Officer F after the interview with Giorgiutti on 14 December 2001. An Information Report dated 17 December 2001 drafted by Burn records that Officer F was upset about the interview and noted that he lost his composure. She and Randall spoke with him about welfare issues, and checked that he was not in possession of his firearm at the time.⁴¹⁰

Randall gave evidence to Operation Prospect that he was at the PIC when the interview occurred (although not present during the interview), and spoke with Officer F immediately after the interview with Giorgiutti on 14 December 2001. Randall stated that the nature of the questioning and the matters discussed had clearly affected Officer F both physically and emotionally:

*I think he – he, sort of, saw his career going down the drain in front of him, and he, you know, he'd done nothing wrong. And he thought that, you know, he wasn't the sort, you know, maybe it was set up or something like that, you know.*⁴¹¹

Randall stated that Officer F was more bewildered than outraged by Giorgiutti's questioning.⁴¹² Randall's evidence was that Officer F did not know and was not informed why he had been directed to attend the PIC for questioning:

*No, there were no raised voices, but I – I, look, I can just remember [Officer F] saying, "Look, I don't know what this is all about. I've got no idea what – what you're talking about, what it's all about." Um, I remember him saying that on quite a few occasions, but it wasn't heated, there wasn't raised voices or anything like that, but you could just see [Officer F], he had trouble – oh, you could see his Adam – Adam's apple going up and his mouth was dry and everything else and he's going, "Well, I just don't know what this is all about."*⁴¹³

Randall recalled that he was concerned for Officer F's welfare and contacted a support officer.⁴¹⁴ Randall noted that other pressures affecting Officer F at the time may have exacerbated matters, but stated:

*I can still remember this to the day of – of the impact it had on him, when I had to go and get him, I just, um, yeah, his reaction to it all.*⁴¹⁵

Officer F later gave evidence to the PIC about the interview with Giorgiutti. He stated that the interview was conducted in a conference or interview room at the PIC on the evening of 14 December 2001 – and only Giorgiutti and he were present. It is noted that this evidence differs from other people present on the day. Giorgiutti had said, "Your phone was off, your house was off, you are going to gaol. The only chance you have got is to give us Scipione".⁴¹⁶ Officer F then denied that he had leaked any information given to him by Scipione, and furthermore denied that Scipione had told him anything in the first place.⁴¹⁷

Officer F's evidence that only he and Giorgiutti were present is contradicted by other evidence before Operation Prospect. Although there is no contemporaneous file note of the interview, contemporaneous records were prepared and evidence was given by other people who were present at the interview. It is possible that Officer F may have misremembered who was present.

One person who confirmed his attendance at the interview was a PIC investigator. His diary entry for 14 December 2001 notes that he attended the PIC for NSWCC activities on that day.⁴¹⁸ In response to a request by Operation Prospect, the PIC investigator drafted notes from memory in October 2014.⁴¹⁹ The notes state that he attended the meeting between Officer F and Giorgiutti as a witness, with a view to conducting a formal interview with Officer F in the following days.⁴²⁰ He also indicated that the other people in the room at PIC were Giorgiutti, Officer F, Griffin, Burn and Randall.⁴²¹

410 NSWCC Information Report, *Contact with [Officer F] 14/12/01 & 15/12/01 re: SOD231*, reporting officer: Burn, 17 December 2001, p. 1.

411 Ombudsman Transcript, Greg Randall, 10 April 2014, p. 142.

412 Ombudsman Transcript, Greg Randall, 10 April 2014, p. 142.

413 Ombudsman Transcript, Greg Randall, 10 April 2014, p. 143.

414 Ombudsman Transcript, Greg Randall, 10 April 2014, p. 142.

415 Ombudsman Transcript, Greg Randall, 10 April 2014, p. 142.

416 PIC internal memorandum from [a senior lawyer at PIC] to OAG, 30 July 2002, p. 7.

417 PIC internal memorandum from [a senior lawyer at PIC] to OAG, 30 July 2002, pp. 7-8.

418 Diary, [PIC investigator], 14 and 15 December 2001.

419 [PIC investigator], File note, 6330/7846, 27 October 2014, p. 1.

420 [PIC investigator], File note, 6330/7846, 27 October 2014, p. 1.

421 [PIC investigator], File note, 6330/7846, 27 October 2014, p. 1.

The investigator's notes further state that, in a break from the interview, he told Griffin that he was concerned with Giorgiutti's approach and manner – and the interview should stop so some legal protection could be offered to Officer F.⁴²² The investigator told Griffin that he did not think it was in the interests of the PIC to be involved in the conversation.⁴²³

The investigator confirmed this information in his evidence to Operation Prospect. He also said that Griffin was not interested in engaging with him about his concerns about Officer F's interview and was dismissive of him.⁴²⁴ He also recalled being directed by Griffin to stay behind at the office.⁴²⁵ The PIC investigator assumed that Griffin was aware that NSWCC officers were going to visit, as Griffin did not seem surprised when they arrived.⁴²⁶

In his evidence to Operation Prospect, Griffin recalled that the PIC investigator was unhappy about something – but was unable to recall the conversation.⁴²⁷ Generally, Griffin said that the PIC investigator was a “good operator and a person, who if he had problems, would state them”.⁴²⁸ Griffin did not have any doubt that if the PIC investigator “had an issue, that was right”.⁴²⁹

Sage gave evidence to Operation Prospect that the PIC investigator called him on 14 December 2001, while the PIC Christmas function was underway:

A: *I got a call at Manly to tell me that [Officer F], his office had been searched, and he had been brought in to the PIC and could I come back, and I got the call from [the PIC investigator] who we had left at the PIC so we had a duty officer there, and so I came back and [Officer F] was in the conference room at the PIC, Terry Griffin was certainly there, and John I was told by Terry that John Giorgiutti, Giorgiutti had [Officer F] in the conference room and that he'd asked [the PIC investigator] to go in and be an observer.*

Q: *He asked Giorgiutti to go in and be an observer?*

A: *Terry asked [the PIC investigator] to go in and be observer on behalf of the PIC.*

Q: *Thank you. So something had already commenced by the time you had arrived?*

A: *Something had already commenced and [the PIC investigator] came out shortly after I got there and he said that [Officer F] was in tears, Giorgiutti was alleging that they had [Officer F]'s phones, his office, his home, his car off, and he was in serious trouble, and [the PIC investigator], [the PIC investigator] used words to the effect that he thought it was all bullshit and it was all bluff, and he didn't want to be a part of it. So I didn't get into the conference room and I didn't see [Officer F].*

Q: *You personally didn't see him?*

A: *Terry told me that it was a Crime Commission matter and that, that we were to stay out of it.⁴³⁰*

Sage's evidence was that the reason the PIC investigator had called him was to keep him informed as Assistant Commissioner – because “he thought that it was very unusual”.⁴³¹ Sage was not briefed by any member of the NSWCC about the purpose of the interview, but he indicated he expected that Griffin had been.⁴³²

The PIC investigator could not recall telephoning Sage, but remembered telling Sage at the PIC offices that he was displeased.⁴³³ He also told Operation Prospect it was unusual for notes not to be taken in a PIC interview.

422 [PIC investigator], File note, 6330/7846, 27 October 2014, p. 1.

423 [PIC investigator], File note, 6330/7846, 27 October 2014, p. 1.

424 Ombudsman Transcript, [PIC investigator], 3 June 2016, p. 12.

425 Ombudsman Transcript, [PIC investigator], 3 June 2016, p. 5.

426 Ombudsman Transcript, [PIC investigator], 3 June 2016, p. 6.

427 Ombudsman Transcript, Terrence Griffin, 3 June 2016, p. 74.

428 Ombudsman Transcript, Terrence Griffin, 3 June 2016, p. 75.

429 Ombudsman Transcript, Terrence Griffin, 3 June 2016, p. 75.

430 Ombudsman Transcript, Timothy Sage, 15 August 2014, p. 1,574.

431 Ombudsman Transcript, Timothy Sage, 15 August 2014, p. 1,575.

432 Ombudsman Transcript, Timothy Sage, 15 August 2014, p. 1,575.

433 Ombudsman Transcript, [PIC investigator], 3 June 2014, p. 15.

The usual and proper practice was to “at least give them some protection about what they’re about to say”,⁴³⁴ namely that the witness should be cautioned and legally represented.⁴³⁵

The PIC investigator was also asked about the purpose of the interview with Officer F on 14 December 2001:

- Q: *So what was the purpose of that meeting if he was going to be interviewed the following day?*
- A: *I have no idea.*
- Q: *Do you recall any of the conversation?*
- A: *They wanted – I know that they wanted him to give up Scipione. Now, I wasn’t aware of what that was for or what it was about.*
- Q: *What do you mean give up Scipione? Can you explain what you mean by that?*
- A: *Well, my interpretation of that was that [Officer F] had information that Mr Giorgiutti wanted and he wanted [Officer F] to tell him what it was, as in give him up. Um, apart from that, look, to tell you the truth I was to say the least, annoyed about being put in that position.*
- Q: *Why?*
- A: *Because I didn’t think it was right. I didn’t agree with what was being said or how it was going, how the interview was taking place or how the discussion was taking place.*
- Q: *Can you explain to us in more detail. You say you didn’t agree with the way the interview was taking place. Can you explain what you mean? Was it the questions, the method of questions? The manner, the demeanour?*
- A: *The whole thing. It was – put it this way, if – and I’ve always thought of it as if as a police officer I had done that to a suspect, I would have been before the Police Integrity Commission for that sort of interview.*⁴³⁶

10.6.3 Interview of Officer F at the NSWCC (15 December 2001)

On 15 December 2001 Officer F went to the NSWCC premises with his solicitor. Others in attendance during the interview were Burn and the PIC investigator – who had been at the PIC interview the previous day.⁴³⁷

An Information Report prepared by Burn records that she outlined all the allegations that Mascot held about Officer F.⁴³⁸ Officer F was interviewed by the PIC investigator. The interview was recorded on ERISP. Burn records that after the interview there was discussion between Bradley, Griffin and Giorgiutti. It was agreed that the source of the leak was unclear – in fact, it was not clear that there had been a leak of information to Officer F about the Mascot investigations.⁴³⁹

The PIC investigator told Operation Prospect that he thinks he was directed by Griffin to interview Officer F on 15 December 2001.⁴⁴⁰ The investigator was not briefed and described it as a “very open-ended interview”.⁴⁴¹ He described Officer F as “forthcoming and cooperative”.⁴⁴²

434 Ombudsman Transcript, [PIC investigator], 3 June 2016, pp. 9-10

435 Ombudsman Transcript, [PIC investigator], 3 June 2016, p. 10.

436 Ombudsman Transcript, [PIC investigator], 3 June 2016, pp. 10-11.

437 [PIC investigator], File note, 6330/7846, 27 October 2014, pp. 1-2.

438 NSWCC Information Report, *Contact with [Officer F] 14/12/01 & 15/12/01 re: SOD231*, reporting officer: Burn, 17 December 2001, p. 2.

439 NSWCC Information Report, *Contact with [Officer F] 14/12/01 & 15/12/01 re: SOD231*, reporting officer: Burn, 17 December 2001, p. 2.

440 Ombudsman Transcript, [PIC investigator], 3 June 2016, p. 18.

441 Ombudsman Transcript, [PIC investigator], 3 June 2016, p. 18.

442 Ombudsman Transcript, [PIC investigator], 3 June 2016, p. 19.

10.6.4 Instructions to Giorgiutti about the interview held on (14 December 2001)

Giorgiutti's initial evidence to Operation Prospect was that Griffin told him to 'roll' Officer F.⁴⁴³ He was told to pressure him by saying that if he did not confess to corruption his career would be over.⁴⁴⁴ Giorgiutti explained that 'rolling' meant "I had to get him to confess to him being corrupt".⁴⁴⁵

Q: *All right. What basis did you have at that time to suspect that [Officer F] was in fact corrupt?*

A: *The only basis I had was that everyone else thought he was corrupt.*⁴⁴⁶

Later in his evidence, Giorgiutti said that the direction given to Officer F to attend the PIC came from Bradley.⁴⁴⁷ Giorgiutti said he received a phone call while he was out shopping to say, "you must go to the PIC this afternoon and [Officer F] is being directed to go up there and answer questions about, you know, this Mascot thing".⁴⁴⁸ Giorgiutti's evidence was that he had told Bradley: "Look, I haven't formed a view. I don't know enough to ask [Officer F] any questions".⁴⁴⁹ Giorgiutti was told in response that Officer F had to be interviewed immediately and convinced to give up the source of the leak:

*... they said, "Look, we can't wait. You have to go and roll [Officer F], like now." So I went up to the PIC, met up with Terry Griffin and he said, "Right, he's coming up here and he's been directed to talk or whatever and you've got to roll him." They were the instructions.*⁴⁵⁰

Giorgiutti gave the following evidence about the interview with Officer F:

A: *... when I went up there to see Terry Griffin I was told, look, you've got to roll this bloke, he's got to confess to the whatever. I said okay but I said, you know like it's easy to roll someone who has done it but if he hasn't done it, it's a bit sort of trickier. And I said I just don't know, I'll do my best and that's what happened. So we were in the boardroom of the PIC just before Christmas and I was being very, very heavy with [Officer F], not sort of improper or anything but sort of saying, look, you know, "This is it." You know, like, your career's over and they've got you for this, they've got you for that, you know, do the best you can, you know, whatever.*

Q: *You said that, or you were told to say that?*

A: *I was told to say that to--*

Q: *But it was untrue?*

A: *Well, they thought it was true. I didn't know it was true or not but my instructions were, look, "he's good for it" type stuff, you know?*

Q: *All right?*

A: *But I hadn't---*

Q: *Was this recorded, this particular interview discussion?*

A: *No, no, no, no. That's the whole---*

Q: *So this is a type of verballing or softening up before he goes to---?*

443 Ombudsman Transcript, John Giorgiutti, 11 August 2014, p. 1,365.

444 Ombudsman Transcript, John Giorgiutti, 11 August 2014, p. 1,365.

445 Ombudsman Transcript, John Giorgiutti, 11 August 2014, p. 1,364.

446 Ombudsman Transcript, John Giorgiutti, 11 August 2014, p. 1,364.

447 Ombudsman Transcript, John Giorgiutti, 11 August 2014, p. 1,365.

448 Ombudsman Transcript, John Giorgiutti, 11 August 2014, p. 1,364.

449 Ombudsman Transcript, John Giorgiutti, 11 August 2014, p. 1,364.

450 Ombudsman Transcript, John Giorgiutti, 11 August 2014, p. 1,364.

- A: *No, it's not a verballing. It's a case of saying, listen, look, you're in for the high jump type stuff; you know, do the best you can for yourself and, you know, give people up, you know? And I was a bit uncomfortable because you know some people will hold out but, like, you know I've always maintained that I've never said anything to anyone unless I believed it. If I told a crook it was a good idea to roll over, it was a good idea to roll over but with [Officer F], I hadn't made up my mind as to – and if I knew what I know now, I would've said, "I'm not doing it."*
- Q: *Who told you to do that?*
- A: *Well, Bradley told me to go up and see – go to the, go to the PIC and meet Terry Griffin. And he-*
- Q: *But who told you to do this particular exchange with [Officer F] in that way?*
- A: *Look, I can't remember.⁴⁵¹*

Giorgiutti's written submission to Operation Prospect did not elaborate on that evidence, noting merely that "Giorgiutti was instructed to attempt to roll [Officer F]. Giorgiutti put to [Officer F] what he was instructed to put".⁴⁵²

Griffin could not initially recall why Giorgiutti was present at the PIC for the interview of Officer F.⁴⁵³ As to who directed Giorgiutti to interview Officer F in that manner, Griffin said:

- Q: *Would someone direct Giorgiutti to go to PIC and interview [Officer F]?*
- A: *Well.*
- Q: *Did you provide him with instructions?*
- A: *I wasn't in a position to provide him instructions. The only person who could provide him.*
- Q: *Why not?*
- A: *Who, Giorgiutti?*
- Q: *Yes?*
- A: *Um...Noting [sic] to do with PIC really. Giorgiutti, perhaps could have instructed himself, or he might have been instructed by Phillip, but at best I could ask him if I thought it was useful, instruct him, there's a difference, is too strong a word.*
- Q: *Did you tell him to get [Officer F] to confess to this alleged corruption?*
- A: *No, I'm sure that I wouldn't have told him that in any event.*
- Q: *Why would you be sure that you didn't?*
- A: *Because of the phrasing.*
- Q: *Would you have used the expression, "You have to roll him"? Would you have told Giorgiutti that?*
- A: *No. Have to roll him?⁴⁵⁴*

Although it is unclear if the instruction to Giorgiutti came from Bradley or Griffin, it is clear that Giorgiutti proceeded on the basis that he was told to interview Officer F on a serious matter in a direct and confrontational manner. It is likely that Bradley or Griffin gave such an instruction.

It may be relevant that Griffin's diary confirms he had greater involvement than he had recalled in his evidence to Operation Prospect. Bradley denied in his evidence to Operation Prospect that he instructed Giorgiutti to carry out the task, and described the attempt to roll Officer F as "appalling".⁴⁵⁵

451 Ombudsman Transcript, John Giorgiutti, 11 August 2014, p. 1,365.

452 Giorgiutti, J, Submission in reply, 10 May 2016, p. 47.

453 Ombudsman Transcript, Terrence Griffin, 3 June 2016, pp. 69-70.

454 Ombudsman Transcript, Terrence Griffin, 3 June 2016, pp. 71-72.

455 Ombudsman Transcript, Phillip Bradley, 24 November 2014, p. 3,029.

Written submissions on behalf of Bradley to Operation Prospect are that the evidence shows only the following:

- *Bradley made a decision that Giorgiutti should attend the PIC (mostly likely at the request of the PIC).*
- *That decision was communicated by a telephone call to Giorgiutti, but the evidence is not clear about who made the call. Either the caller was Bradley or it was someone else who conveyed a direction or request said to have to come from Bradley.*
- *Nowhere does Giorgiutti ascribe to Bradley or the caller any direction or request that Giorgiutti was to try to roll [Officer F] or act in any particular way.*
- *Giorgiutti did attend the PIC.*
- *Giorgiutti initially ascribed to Griffin the request that Giorgiutti roll [Officer F] and when further questioned said that he did not know who made the request.⁴⁵⁶*

Bradley submitted that the PIC was far more involved in devising the strategy for Giorgiutti to interview Officer F,⁴⁵⁷ and that there is no evidence that he instructed Giorgiutti to roll Officer F.⁴⁵⁸

Griffin also made a written submission to Operation Prospect in which he accepted that he knowingly made PIC premises available for the interview with Officer F.⁴⁵⁹ However, he claimed that there was no direct evidence that he “perceived at any relevant time that the interview was sufficiently inappropriate in form and content that he should intervene in questioning by a senior officer from another agency”.⁴⁶⁰ This submission is at odds with the evidence given by the PIC investigator and Sage and referred to at section 10.6.2.

The PIC investigator told Operation Prospect that the Officer F interview on 14 December 2001 caused him to leave investigations and take up another role within the PIC:

Q: *It has been described by a witness that situation as appalling. Do you agree with that proposition?*

A: *Yes, I would. More so than appalling, almost – it was just, it had – that meeting is what made me decide to leave investigations in the Police Integrity Commission. I was that, um, appalled by it, if you like, that I thought I didn't want anything to do with conducting investigations of this nature; so I made it known, my displeasure, and I just quietly went about getting a job in the organisation elsewhere, hence I'm doing what I'm doing now. If that hadn't have occurred, I'd probably still be in investigations.⁴⁶¹*

The investigator recalled that Giorgiutti was running the conversation and had the most to say:⁴⁶²

A: *I do recall him saying to [Officer F] that he was, this is Mr Giorgiutti was renowned for not keeping notes and that there weren't going to be any notes kept of this conversation and then, um, it just went from there.*

Q: *Were you aware if it was electronically recorded?*

A: *Look, no, it wasn't, that I know of anyway.*

Q: *So the fact that you recall that one statement, is that an unusual thing to say?*

A: *Ah, yes.*

Q: *Why is that?*

A: *Well there was – bearing in mind prior to this I hadn't been briefed what this was about: I had no knowledge of what this was about. I was there as the duty investigator and I was told by Terry Griffin to go into the room and listen, which I did. It turned out ---*

456 Bradley, P, Submission in reply, 8 February 2016, p. 14.

457 Bradley, P, Submission in reply, 8 February 2016, p. 13.

458 Bradley, P, Submission in reply, 8 February 2016, p. 14.

459 Griffin, T, Submission in reply, 2 September 2016, p. 10.

460 Griffin, T, Submission in reply, 2 September 2016, p. 11.

461 Ombudsman Transcript, [PIC investigator], 3 June 2016, p. 33.

462 Ombudsman Transcript, [PIC investigator], 3 June 2016, pp. 7-8.

Q: Were they his only instructions to you?

A: Oh, as far as I know at that stage, yes. The conversation as I said was led by Mr Giorgiutti. It was not a conversation that I would have had with a person.

Q: Why?

A: Because I thought that – it wasn't a chat. It was more formal than a chat and yet I would have thought that the information that was being requested of [Officer F] would have been at least recorded somewhere. I do know that at some stage I was told that I was to interview him the next day. I'm not too sure whether that was beforehand and that may be the reason Terry put me in there, in fact I'm sure it probably was the reason he put me in there. Whether he told me that at that time I'm not sure but...⁴⁶³

The PIC investigator was asked his opinion as to whether or not both meetings on 14 and 15 December 2001 with Officer F were supported by Griffin.⁴⁶⁴ His impression was that both Griffin and Bradley supported the interviews. When asked to elaborate, he explained:

A: I think they supported it insofar as they never tried to stop it. I referred mainly to the interview on the 14th. Mr Griffin was there at the head of the table and allowed this conversation to take place. If that had taken place in front of – well, it certainly would not have taken place before Judge [Urquhart]. He would not have let that occur, and that's my personal opinion. I was dumbfounded, I could just not believe that we were speaking to – when I say "we" to the extent that the Police Integrity Commission had any involvement in this, we were speaking to a senior police Officer Like this. It was like, it took me back to, um, a couple of uniformed policemen taking, you know, a bloke around the corner, roughing him up and trying to get information out of him. That was just a more – it wasn't, it wasn't ever really a more complex situation than that, that's the impression I got.⁴⁶⁵

10.6.5 Leaking and other allegations against Officer F found to be unsubstantiated (2003)

After the interview on 15 December 2001 the PIC continued to investigate if there was evidence of a leak of information to Officer F (SOD231). The investigation was conducted through interviews and private hearings in mid-2002.⁴⁶⁶

In a 2002 interview with the PIC, Scipione denied having disclosed any information about Mascot to Officer F – including the identity of Sea, which Scipione stated he was unaware of at the time.⁴⁶⁷ The PIC also identified that around 11 May 2001 Scipione had a legitimate reason to contact Officer F that was unrelated to Mascot matters.⁴⁶⁸

On 1 December 2003 Bradley made a file note of a conversation he had with Officer F about the Mascot investigations. Officer F had suggested to Bradley that he had been used to "rubber stamp"⁴⁶⁹ Dolan and Burn's investigation of him. Bradley noted that he replied: "I said not so – agreed had to be done. Material was not embellished by D [Dolan] – taken initially by a reliable officer (CB) [Burn]".⁴⁷⁰ Bradley's file note also records that he rejected Officer F's claim that he had been targeted as a result of personal animosity with Dolan and Burn: "I said legit basis for investigation because: credible source; [Officer F]'s status; serious allegation".⁴⁷¹

463 Ombudsman Transcript, [PIC investigator], 3 June 2016, p. 8.

464 Ombudsman Transcript, [PIC investigator], 3 June 2016, p. 33.

465 Ombudsman Transcript, [PIC investigator], 3 June 2016.

466 PIC internal memorandum from [a senior lawyer at PIC] to OAG, 30 July 2002.

467 PIC, Record of interview between Andrew Scipione, [a senior lawyer at PIC] and [a PIC investigator], 31 January 2002, p. 17.

468 PIC internal memorandum from [a senior lawyer at PIC] to OAG, 11 December 2003.

469 Phillip Bradley, File note, NSWCC, 1 December 2003, p. 1.

470 Phillip Bradley, File note, NSWCC, 1 December 2003, p. 1.

471 Phillip Bradley, File note, NSWCC, 1 December 2003, p. 1.

Those file note comments do not reconcile easily with the view Bradley had earlier expressed in emails on 14 June 2001 and 23 July 2001 of his discomfort about the targeting of Officer F. Those emails dealt specifically with Bradley's discomfort about the NSWCC being associated with integrity tests and improper targeting – but they also questioned the investigation of Officer F in a way that his file note did not.

On 11 December 2003 the PIC concluded its review of the leaking allegation. The review noted that Scipione and Officer F had both denied leaking information⁴⁷² and concluded:

*... none of the evidence positively supports the allegation that [Officer F] received a leak from someone about SEA. Whilst some evidence may be consistent with [Officer F] having received a warning, it is also consistent with him having worked out for himself that SEA was trying to set him up.*⁴⁷³

The PIC recommended that there should be no further investigation and no adverse finding against Officer F or Scipione.⁴⁷⁴ Those recommendations were accepted, and it appears that Officer F was advised that no finding was made against him for the allegation that he released confidential information.⁴⁷⁵

In 2003 Volta also analysed the allegation against Officer F in relation to the Armaguard robbery.⁴⁷⁶ Volta concluded that there was nothing to implicate Officer F.⁴⁷⁷ It also noted that other police had been identified as involved in the corrupt activity and had already been dealt with.⁴⁷⁸ This recommendation was accepted by the Commander of Volta and the PIC.

10.6.6 Analysis

The final phase of Mascot's investigation of Officer F in late December 2001 was marred by the approach used to get Officer F to 'roll' or admit to corruption.

The direct and confrontational approach by Giorgiutti – with the knowledge of Bradley and Griffin – was inappropriate, unfair, ill-founded and not supported by the information available to Mascot. The questioning of Officer F was prompted by and pursued because of suspicions held by Dolan and Burn that Officer F had an association with corrupt activity. If the primary goal was to find out if Scipione had leaked information to Officer F, this could have been achieved in a more appropriate manner.

The contemporaneous documents created by Mascot and reviewed by Operation Prospect – particularly an Information Report by Burn of contact with Officer F on 14 and 15 December 2001 – show that Burn, Dolan, Bradley, Giorgiutti and Griffin were all instrumental in the attempt to 'roll' Officer F.⁴⁷⁹ These officers should have considered more thoroughly the strength of the allegations and supporting evidence before subjecting Officer F to an interview that he was directed to attend. Bradley's description of the exercise as "appalling"⁴⁸⁰ is an appropriate description of what occurred.

It is not possible, with the passage of time and fading memories, to identify precisely the role that each officer played. Contemporaneous documents and Giorgiutti's evidence indicate that Giorgiutti carried out the strategy, and Bradley and Griffin – who led the two participating agencies – both had a role in calling Officer F in for questioning. This is confirmed by the evidence from the PIC investigator who was present during the interview. Griffin's inaction in allowing the interview to continue after the PIC investigator raised his concerns was unreasonable. Griffin's diary entry for 14 December 2001 confirms he was aware of the interview that was about to take place and that Giorgiutti would speak to Officer F alone.

472 PIC internal memorandum from [a senior lawyer at PIC] to OAG, 11 December 2003, p. 22

473 PIC internal memorandum from [a senior lawyer at PIC] to OAG, 11 December 2003, p. 21.

474 PIC internal memorandum from [a senior lawyer at PIC] to OAG, 11 December 2003, pp. 22-23.

475 PIC internal memorandum from [a senior lawyer at PIC] to OAG, 28 January 2004; Letter from Director Operations, PIC to [Officer F], 15 January 2004.

476 NSWPF c@ts.i [number] SOD078 Investigator's Report by Team Leader Task Force Volta, 29 April 2003.

477 NSWPF c@ts.i [number] SOD078 Investigator's Report by Team Leader Task Force Volta, 29 April 2003, p. 2.

478 NSWPF c@ts.i [number] SOD078 Investigator's Report by Team Leader Task Force Volta, 29 April 2003, p. 2.

479 NSWCC Information Report, *Contact with [Officer F] 14/12/01 & 15/12/01 re SOD231*, reporting officer: Burn, 17 December 2001.

480 Ombudsman Transcript, Phillip Bradley, 24 November 2014, p. 3,029.

Generally, Scipione did not have any role in targeting Officer F. Events after 7 May 2001 had not been shared with Scipione in light of the perception that he may have been involved in an alleged leak of information to Officer F.

10.7 Overall analysis and submissions

A number of specific and general criticisms are made earlier in this chapter about Mascot's investigation of Officer F. Some of the specific criticisms are taken up below in findings against individual officers – specifically, for including inaccurate material in reports and affidavits, for not managing a perceived conflict of interest appropriately, and for the manner in which Officer F was questioned about a suspected leak of information. The submissions that individual officers made on those issues are referred to in the earlier discussion in this chapter.

There are two common themes in the general criticisms in this chapter of Mascot's investigation of Officer F. The first is that the investigation (which escalated over time) was based on comments and allegations that were weak, uncorroborated, ambiguous or misrepresented. The second is that a number of senior officers were, at various stages, either aware of or engaged in directing or approving the investigation of Officer F. Most of those officers relied upon information provided to them by members of the Mascot Task Force. The senior officers had opportunities that were not taken up to question the strength and reliability of the information they were given. There was reason to do so. The reasons included the weakness of some of the allegations; that Officer F was a senior and experienced officer; some of the investigation methods being adopted were intrusive and confrontational; there was a persistent allegation of personal bias in the investigation; and some officers (notably Bradley) did raise doubts that were not followed through.

The senior officers who were present at meetings or received update reports are named throughout this chapter. Three who played a stronger or more persistent role were Burn, Dolan and Bradley. Their written submissions are summarised briefly below. Findings are made against Dolan and Burn for their conduct in the investigation. A finding is also made against the NSWCC for its overall responsibility for managing this investigation and failing to ensure that officers under its direction acted appropriately.

Burn made a written submission to Operation Prospect in which she explained at length the Mascot decision to investigate allegations of historical corruption relating to Officer F.⁴⁸¹ While acknowledging that the investigation did not corroborate or substantiate the allegations, she submitted that it was incumbent on Mascot to investigate those historical matters⁴⁸² and that the selection of Officer F as a target was "routine and innocuous".⁴⁸³ Burn explained the importance that was attached at the time to investigating allegations about the activities of Magnum, and the opportunity that Sea's rollover and deployment provided to undertake investigation. She noted that Officer F was not a key Mascot target and there was no active investigation in some periods.⁴⁸⁴ She submitted that the investigation was based on a reasonable and honest suspicion, and not on any personal motives or vendetta.⁴⁸⁵ To suggest that she and others wrongly apprehended the basis and strength of the allegations against Officer F evinced, in her view, a lack of understanding of the way that investigations of police corruption were investigated at the time.⁴⁸⁶ Burn's submission also noted the occasions on which she played a lesser role in the investigation strategy, and that she was not involved in the process of applying for LD and TI warrants.⁴⁸⁷ Her submission also explained the depth of concern held at the time that a leak of information to Officer F had occurred and why this issue was investigated.⁴⁸⁸

481 Burn, C, Submission in reply, 25 September 2015, pp. 24-46.

482 Burn, C, Submission in reply, 25 September 2015, p. 27.

483 Burn, C, Submission in reply, 25 September 2015, p. 27.

484 Burn, C, Submission in reply, 25 September 2015, p. 27.

485 Burn, C, Submission in reply, 25 September 2015, pp. 38, 40.

486 Burn, C, Submission in reply, 25 September 2015, p. 39.

487 Burn, C, Submission in reply, 25 September 2015, p. 39.

488 Burn, C, Submission in reply, 25 September 2015, pp. 40-44.

A finding is made below against Burn. The evidence before Operation Prospect points to multiple flaws in the investigation of Officer F, including that the investigative strategy was partly based on allegations and comments that were inaccurate or misrepresented, and there was insufficient objective evaluation or reappraisal of the direction of the investigation and the use of covert and invasive investigation methods. The evidence before Operation Prospect indicates that Burn played an active part in the investigation (for example, sections 10.2.3, 10.2.6, 10.3.1, 10.3.4, 10.5.2, 10.5.3 and 10.6.2).

Dolan's written submission to Operation Prospect⁴⁸⁹ accepted that he shouldered some responsibility as the Commander of the SCU for the conduct of the investigation. He accepted too there were factual errors in the information about Officer F upon which Mascot relied.⁴⁹⁰ However, he submitted that he was not as strongly involved as some other officers (particularly Burn) in planning the investigation, and that as a senior officer with multiple other responsibilities he relied on assistance and information from investigation staff and lawyers.⁴⁹¹

Two findings are made below against Dolan. The evidence before Operation Prospect indicates that he was regularly briefed and participated in meetings at which the investigation was discussed (for example, sections 10.2.6, 10.3.1, 10.3.2, 10.3.4.1, 10.5.2). The evidence also indicates that other officers were aware of and concerned about his influential role (for example, sections 10.3.2, 10.4.1). As noted in section 10.4.2, Dolan accepted that he could have handled the perceived conflict of interests differently and removed himself from involvement in the investigation of Officer F.

Bradley's written submission to Operation Prospect⁴⁹² was that he did not supervise the NSWPF officers in the Mascot Task Force, nor influence the choice of investigation targets by the Task Force. He accepted advice that there were credible allegations against Officer F that warranted investigation, though he later learnt that the investigation was based on a false premise. He also expressed his concerns a number of times about aspects of the investigation strategy. A submission by Bradley that he was not involved in the strategy to conduct an aggressive interview of Officer F at PIC premises is summarised above at section 10.6.4.

No individual finding is made against Bradley. The evidence before Operation Prospect was primarily about him being advised of rather than deliberating on the investigation strategy, which he questioned a number of times. Bradley's involvement in the investigation of Officer F is discussed at a number of points in this chapter (for example, sections 10.3.1, 10.3.2, 10.6.1 and 10.6.2).

The NSWCC did not make a submission to Operation Prospect that dealt specifically with the issues in this chapter, beyond the general submission discussed in Chapter 4 that the Commission was not responsible for the direction and control of the Mascot investigations.⁴⁹³

10.8 Findings

34. Burn

Burn's conduct in jointly implementing the investigation strategy to investigate Officer F was conduct that arose in part from a mistake of fact in terms of section 122(1)(d)(iv) of the *Police Act 1990*, and was unreasonable conduct in terms of section 122(1)(d)(i) of the *Police Act 1990*. As discussed in sections 10.2.8, 10.3.4, 10.5.3 and 10.6.6, some of the investigative strategies relating to Officer F in which Burn played an active role were based on allegations or statements that were either inaccurate or misrepresented. These allegations or statements were not justified by the material known to Mascot if a more objective evaluation or reappraisal had been undertaken of the direction of the investigation and the resort to covert and invasive investigation methods. Burn was in a position to require that a thorough assessment of that kind should have been undertaken.

489 Dolan, J, Submission in reply, 24 August 2015 pp. 1-4.

490 Dolan, J, Submission in reply, 24 August 2015 pp. 2-3.

491 Dolan, J, Submission in reply, 24 August 2015 pp. 3-4.

492 Bradley, P, Submission in reply, 25 September 2015, pp. 6-9, 12-13, 15.

493 NSWCC, Submission in reply, 15 December 2015, p. 6.

35. Dolan

Dolan's conduct in jointly implementing the investigation strategy to investigate Officer F was conduct that arose in part from a mistake of fact in terms of section 122(1)(d)(iv) of the *Police Act 1990*, and was unreasonable conduct in terms of section 122(1)(d)(i) of the *Police Act 1990*. As discussed in sections 10.2.8, 10.3.4, 10.5.3 and 10.6.6, some of the investigative strategies relating to Officer F that were known to or approved by Dolan and others were based on allegations or statements that were either inaccurate or carried little force, or were not justified by the material known to Mascot if a more thorough assessment and evaluation had been undertaken.

Dolan's conduct in failing to remove himself from the investigation of Officer F due to a perceived conflict of interest was unreasonable conduct in terms of section 122(1)(d)(i) of the *Police Act 1990*. As discussed in section 10.4.2, Dolan was aware that there was a perceived conflict of interests and his failure to remove himself from the investigation was a breach of the internal policies and guidelines applying to NSW Police Force officers.

36. Griffin

As discussed in section 10.6.6, Griffin's conduct in allowing the interview of Officer F at the Police Integrity Commission on 14 December 2001 to take place in the manner it did – and allowing it to continue after the Police Integrity Commission investigator raised his concern about the conduct of the interview by a Police Integrity Commission investigator – was unreasonable conduct in terms of section 26(1)(b) of the *Ombudsman Act 1974*.

37. Henry

Henry's conduct in preparing an Information Report on 29 November 1999 that misrepresented a comment by Officer F that was made in a recorded conversation was unreasonable conduct in terms of section 122(1)(d)(i) of the *Police Act 1990*. As discussed in section 10.2.4, Officer F's comment was represented in a way that implied he agreed with a remark that everyone was involved in corruption at some stage. This representation of Officer F's comment was relied upon in subsequent Mascot documents and investigative strategies involving Officer F.

38. Moore

Moore's conduct as the deponent of LD affidavit 01/00183-0190 sworn on 22 January 2001, in support of an application to listen to or record Officer F's private conversations, was unreasonable conduct in terms of section 122(1)(d)(i) of the *Police Act 1990*. As discussed in section 10.2.7, the affidavit misrepresented a comment that was made by Officer F in a recorded conversation, in a way that implied Officer F agreed with a remark that everyone was involved in corruption at some stage.

39. Moore

Moore's conduct as the deponent of TI affidavit 01/403-406 sworn on 29 June 2001, in support of a TI warrant on Officer F's mobile and home telephone services, was conduct that arose in part from a mistake of fact in terms of section 122(1)(d)(iv) of the *Police Act 1990*. As discussed in section 10.5.3.1 the affidavit incorrectly stated that Officer F resided at the residential address of his former wife, and consequently supported a TI warrant applying to the home telephone service at that address.

40. Giorgiutti

Giorgiutti's conduct in questioning Officer F on 14 December 2001 was conduct that was unreasonable, unjust and oppressive in terms of section 26(1)(b) of the *Ombudsman Act 1974*. As discussed in section 10.6.6, the confrontational and accusatory manner in which Giorgiutti questioned Officer F was inappropriate, unfair, ill-founded and not supported by the information available to Mascot.

41. NSW Crime Commission

Throughout the Mascot investigations from 1999 to 2002, the NSW Crime Commission did not sufficiently evaluate with a critical eye the alleged bases for targeting Officer F. Although those failures can be seen as partially mitigated by what seems to have been a possible exaggeration of the strength of the evidence about Officer F by Dolan and/or Burn, the NSW Crime Commission has an overarching responsibility to ensure its powers and staff are used to investigate matters within its mandate.

The prolonged investigation of Officer F based on relatively weak allegations was wrong under section 26(1)(g) of the *Ombudsman Act 1974*.

10.9 Recommendation relating to Mascot's investigation of Officer F

9. It is recommended under section 26(2) of the *Ombudsman Act 1974* that the NSW Crime Commission give Officer 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 about him at the time
 - obtaining a TI warrant on his former home telephone number where he no longer lived.

Chapter 11. Unauthorised recordings and incorrectly naming a person as an investigation subject

11.1 Chapter overview

This chapter deals with two issues that arose in the Mascot investigations in late 2000 – the unauthorised recording of three people, and the incorrect naming of a person in LD affidavits and warrants. These issues were raised in four complaints to Operation Prospect.

The first issue of unauthorised recordings concerned the use of LDs worn by Sea to record the conversations of three people who were not named in any Mascot warrant:

- Officer M was a NSWPF Superintendent at Crime Agencies, where Sea also worked. He was recorded by Sea on 10 occasions.
- Ms E was a lawyer representing Sea in hearings of the PIC, where Sea had been summoned to appear. Ms E was recorded by Sea on three occasions.
- Officer Q was a former co-worker of Sea, and was recorded by Sea on two occasions.

None of these people were named at any time in a lawfully issued LD warrant.⁴⁹⁴ Also, none of them were named in a Mascot affidavit sworn in support of a LD warrant. Some of the recordings of the three people could be regarded as unintentional or incidental recordings that did not contravene the LD Act. This was because they occurred when Sea was recording other people who were named in LD warrants.

Some other recordings were intentionally done by Sea without a LD warrant being in place at the time. These recordings contravened the prohibition in the LD Act against using a LD to record a private conversation. Mascot officers were not aware that this had occurred, mainly because they did not consider the issue or check whether LD recordings by Sea were authorised by a warrant. The errors were compounded when the officers transcribed or summarised some of the recordings without cross-checking the LD product with source documents – such as the LD warrants.

These practices – which were systemic failures in Mascot processes – are criticised in this chapter. No adverse finding is made against any individual officer, either because they followed established practice and were not aware of the problems, or because the evidence before Operation Prospect does not indicate which particular officer if any was individually at fault. However, recommendations are made that the NSWCC apologise to Officers M and Q and Ms E for the unauthorised recording of their private conversations.

These lapses occurred at a time when the Mascot investigations had been underway for over 18 months, and Mascot officers had considerable experience in preparing affidavits, applying for warrants and monitoring the use of LDs. Given that electronic recordings were a key investigative tool used by Mascot, it would be expected that compliance with the LD Act would be key to the operation of the investigation. These systemic failures are further discussed in Chapter 16. Another example of unauthorised recording is also discussed in Chapter 8 in relation to Officer H.

The second issue dealt with in this chapter relates to the incorrect naming of a person in LD affidavits and warrants. This error was brought to light by a complaint to Operation Prospect about Officer R who was mentioned in Mascot records – including in the Schedule of Debrief and the ‘facts and grounds’ paragraphs of 42 LD affidavits and six TI affidavits explaining why the associated warrants were sought. Officer R was not named in any of those affidavits as a person Mascot sought to listen to or record, he was not named in any LD or TI warrant, he was never recorded on any LD during Mascot, and his telephone communications were never intercepted.

⁴⁹⁴ Pursuant to the LD Act, s. 5(2)(a).

A paragraph in some of the affidavits referring to Officer R described a conversation that Sea had about Officer R with a former police officer. The surname of the former officer given in the affidavits was 'Bourke'. He was in fact a retired police officer, who had no connection to the Mascot investigations. Operation Prospect has established that the intended reference was to another police officer with the surname 'Burke', who had the same first name as Bourke. This mix-up led to Bourke being incorrectly listed as a person likely to be recorded by Sea in 69 warrants and 23 supporting affidavits, and being mentioned in the 'facts and grounds' paragraphs of five other affidavits. The incorrect naming of Bourke was first identified in a newspaper article in May 2003 by a journalist who had seen a copy of one of the supporting affidavits.

This chapter is critical of the Mascot processes for document preparation and checking, and recommends that an apology be given to Bourke by the NSWCC.

11.2 Unauthorised recordings of Officer M

11.2.1 Mascot activities about Officer M

Sea and Officer M knew each other as they both worked in Crime Agencies, where Officer M was an Inspector and later a Superintendent. According to NSWPF records, both men worked at Crime Agencies between July 1997 and November 2001. Although Sea did not directly report to Officer M, Officer M summarised their level of contact as follows:

*Ah, it's very hard to say, you know there were something like about 40 or 50 people in my group and he was one of them, so you know, I could, could very well, whilst he was working for me, I [may] very well of ran into him nearly every day ...*⁴⁹⁵

During his initial debrief interviews in January 1999 with Burn and Henry, Sea mentioned Officer M only once – commenting that Officer M had previously worked in the Armed Hold Up Squad.⁴⁹⁶ Officer M was not named by Sea as a corrupt officer or as being associated with corrupt activities,⁴⁹⁷ and he was not named in the original Mascot Schedule of Debrief that detailed Sea's allegations.⁴⁹⁸ Officer M was also not named in any affidavits or warrants prepared by Mascot during its investigations.

Officer M first appeared in Mascot's Weekly Operation Report for the week ending 7 August 2000. He was briefly named in a list of 'critical outcomes' in a comment: "MSO11 – conversation with [Officer M] – 181 'not serious'".⁴⁹⁹ Other records named Officer M up until June 2001 including weekly operational reports, Mascot meeting minutes and Information Reports. Those documents indicate that Mascot investigators had an ongoing interest in Officer M during that period, and were tasking Sea to approach and record Officer M from December 2000.

Officer M was recorded by Sea on 10 occasions between October 2000 and June 2001 using his body-worn LD. Some of those recordings were incidental or unintentional. Mascot investigators summarised the key details of each recorded conversation in an Information Report. They also transcribed three of these conversations – two on 25 October 2000 and one on 18 May 2001.

495 Ombudsman Transcript, [Officer M], 31 March 2015, p. 4.

496 NSWCC, Record of Interview between Detective Inspector Burn, Detective Senior Sergeant Henry and 'Sea', 11 January 1999, p. 3.

497 NSWCC Information Report, *Schedule of Debrief with SEA, 91 matters outlined*, reporting officer: Burn, 13 January 1999; NSWCC Information report, *Induced Statement of SEA provided over 16/12/1998 & 18/12/1998*, reporting officer: Burn, 13 January 1999.

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

499 NSWCC/SCU, *Weekly operational report for week ending 7 August 2000*, dated 7 August 2000, p. 1.

11.2.2 Sea's recording of Officer M on 10 occasions

Sea's first recording of Officer M occurred on 25 October 2000 at two different times of the day, using a LD authorised by LD warrant 288/2000. Officer M was not named on the warrant as a person likely to be recorded. Mascot investigators partly transcribed the first recording⁵⁰⁰ and fully transcribed the second recording.⁵⁰¹

The first recording occurred in the morning when Sea attended a staff meeting led by Officer M. MSO2 and MSO15 – who were both named on LD warrant 288/2000 – were also present. Sea intentionally recorded the staff meeting, possibly to capture the conversations of MSO2 and MSO15. The NSWCC tape log labels required the targets to be listed for each tape and only MSO2 and MSO15 were named.⁵⁰² The recording of Officer M appears therefore to be incidental and not in contravention of the LD Act (see section 11.2.4.2).

Later the same day, Sea was having a conversation with MSO2 that he was recording (the second recording). Officer M interrupted the conversation to ask the way to the restroom.⁵⁰³ Sea's recording of Officer M on this occasion was equally unintentional and not in contravention of the LD Act.

The third recording occurred on 19 November 2000. It was not transcribed but was summarised in an Information Report.⁵⁰⁴ The summary noted that Sea and Officer M's conversation occurred in Officer M's office between 9.53 am and 9.57 am. The summary does not include any other participants in this conversation – Sea and Officer M seem to have been the only people present in the office. There is no record of Sea being tasked by Mascot investigators to record this conversation. Operation Prospect has concluded that this recording by Sea was intentional and in contravention of the LD Act.

On 29 November 2000 Sea recorded his own voice during a telephone conversation with Officer M. Mascot transcribed Sea's side of the conversation.⁵⁰⁵ Officer M's voice was not recorded on the LD, so does not therefore constitute a recording under the LD Act.

The fourth and fifth recordings of Officer M both occurred on 12 December 2000. These recordings were not transcribed but were summarised in an Information Report, which indicates that the first conversation by Sea went for 26 minutes from 1.55 pm. Sea, Officer M and another officer discussed a Crime Agencies operation involving an informant, and whether the NSWCC should be involved. The next recording was at 4.19 pm and lasted two minutes. Sea advised Officer M that an appointment had been booked with the NSWCC.⁵⁰⁶ There is no record of Sea being tasked by Mascot investigators to record these conversations. Operation Prospect has concluded that both conversations were intentionally recorded by Sea and were in contravention of the LD Act.

On 14 December 2000, Sea's case officer and a junior Mascot investigator met with Sea during which he handed over LD product. They discussed strategies and his next deployments, including the strategy relating to Officer M. The Information Report noted: "Discussed Sea approaching [Officer M]. Sea advised that the appropriate time will be considered after the listening device product was reviewed".⁵⁰⁷ This establishes that by that time Mascot was tasking Sea to approach and record Officer M.

500 NSWCC Transcript of LD 288/2000, Tape 99/664, 25 October 2000.

501 NSWCC Transcript of LD 288/2000, Tape 99/664, 25 October 2000.

502 NSWCC Tape Log T99/664, 1 November 2000.

503 NSWCC Transcript of LD 288/2000, Tape T99/664, 25 October 2000, p. 17.

504 NSWCC Information Report, (SOD177) *Informant contact with Sea Friday 19/11/00 – review of CD/094*, reporting officer: [Mascot Sergeant], 19 November 2000, p. 2.

505 NSWCC Transcript of LD 342/00, Tape T99/737, 29 November 2000, p. 43-44.

506 NSWCC Information Report, *Review of listening device product CD/104*, reporting officers: [Mascot Senior Sergeant]/[NSWCC Analyst], 14 December 2000, p. 1.

507 NSWCC Information Report, *Contact with Informant 'Sea' on Thursday 14 December, 2000*, reporting officer: [a junior Mascot Investigator], 15 December 2000, pp. 1-2.

Minutes from a meeting on 15 December 2000 provide an insight about why Mascot was tasking Sea to approach Officer M. The minutes state: "Sea will also speak to [Officer M] and tell him that he has heard there may be a problem on the North side – this is to try and get [Officer M] to reveal if he already has knowledge of a problem".⁵⁰⁸ The reference to the 'north side' is likely to be a reference to the conduct during 2000 and 2001 of detectives from the Northern Beaches of Sydney, particularly the Manly/Davidson Local Area Command that later became the focus of the 'Northern Beaches' segment of Operation Florida.⁵⁰⁹ This is consistent with Deputy Commissioner Catherine Burn's submission to Operation Prospect that Mascot's interest in Officer M most likely related to investigations into two particular Mascot targets in the northern beaches, and the possibility that Officer M's association with those individuals might have generated useful intelligence.⁵¹⁰

A number of Mascot records between 16 December 2000 and 27 January 2001 indicate Mascot's interest in Officer M. Many of those documents were signed by Burn or were meetings attended by senior NSWCC and NSWPF officers working on Mascot.⁵¹¹

On 30 January 2001 Sea's case officer and a junior Mascot investigator met with Sea and spoke about: "Discuss planned meeting with [Officer M] for 31.1.01".⁵¹² Sea did not record any conversation with Officer M on 31 January 2001. However, he did record a conversation with him the next day on 1 February 2001 – the sixth recording. The contents of that recorded conversation were noted in a number of documents:

- Burn's diary for 1 February 2001 recorded: "Sea/[Officer M]. Sea told him that [a Senior Constable] told Sea/[MSO23] they were being worked on". The Senior Constable had worked at Manly Local Area Command and Crime Agencies.⁵¹³
- An Information Report summarised a meeting between Sea, his case officer and a senior Mascot investigator on 1 February 2001, who reviewed the LD product for that day. The conversation with Officer M lasted 11 minutes and 15 seconds, during which "Sea reminds [Officer M] that he has put some applications in for promotion and how there is work being done on himself and [MSO23]. Sea talks about how this could reflect poorly on him by association ... Sea talks about how large he thinks the investigation at Manly is going to be".⁵¹⁴
- The SCIA weekly report for the week ending 3 February 2001 – signed by Burn – noted Sea's meeting with Officer M but that "little evidence obtained". The report also recorded that Sea had told Officer M that the Senior Constable from Manly passed on information that MSO23 and Sea were being "worked on".⁵¹⁵

It is evident that Mascot investigators tasked Sea to record Officer M on 1 February 2001. The recording of that conversation was therefore intentional and is in contravention of the LD Act.

508 NSWCC, *Mascot Minutes of Meeting 15 December 2000*.

509 PIC, *Report to Parliament – Operation Florida*, Volumes 1 and 2, June 2004.

510 Burn, C, Submissions in reply, 25 September 2015, Appendix 3, p. 60.

511 NSWCC, *Weekly operational report for week ending 16 December 2000*, dated 18 December 2000, p. 2 – signed by Burn – noted under the heading 'Proposed Activities': "Sea to approach [Officer M]"; NSWCC, *Confidential minutes of Mascot team meeting*, dated 18 December 2000, p. 2 – attended by Bradley, Standen, Giorgiutti, Dolan, Burn and others – noted: "Sea attended [a] Christmas party and spoke to [Officer M]"; NSWCC/SCU, *Weekly operational report for week ending 6 January 2001*, dated 8 January 2001 – signed by Burn – recorded under the heading 'Proposed Activities' and sub-heading 'Proposed meetings': "Sea to approach [Officer M]"; NSWCC/SCU, *Weekly operational report for week ending 13 January 2001*, dated 13 January 2001, pp. 1 and 2 – signed by Burn – noted: "Sea telephone contact with [Officer M] – Meeting organised" and under 'Proposed activities' noted: "Sea to approach [Officer M]"; NSWCC Information Report, *Contact with Informant 'Sea' on Monday 15 January 2001*, reporting officer [a Mascot Investigator], 16 January 2001, p. 1 – noted that an ongoing strategy discussed with Sea on 15 January 2001 was for Sea to pursue approaches with a number of individuals, including Officer M; NSWCC/SCU, *Weekly operational report for the week ending 20 January 2001*, dated 22 January 2001, p. 1 – noted that Sea had telephone contact with Officer M and organised a meeting for when Officer M returned from annual leave; NSWCC/SCU, *Weekly operational report for week ending 27 January 2001*, dated 27 January 2001, p. 1 – noted that Sea had telephone contact with Officer M and a meeting was organised for 31 January 2001.

512 NSWCC Information Report, *Contact with Informant Sea on Tuesday 30 January 2001*, reporting officer: [Sea's case officer], 31 January 2001.

513 Diary, Catherine Burn, 1 February 2001.

514 NSWCC Information Report, *Contact with Informant Sea – Retrieval of LD Product 1/2/01 (CD/118)*, reporting officers: [Mascot Sergeant]/[NSWCC Analyst], 2 February 2001, p. 2.

515 NSWCC/SCU, *Weekly operational report for week ending 3 February 2001*, dated 5 February 2001, p. 1.

On 8 February 2001, Sea recorded a seventh conversation with Officer M that was summarised (but not transcribed) as: “Sea to [Officer M], explaining why he was late in the office this morning – personal problems”.⁵¹⁶ This recording lasted 29 seconds. Sea activated his LD at the beginning of the conversation and switched it off when the conversation ended. The recording was intentional and was in contravention of the LD Act.

A SCIA Weekly Operation Report for the week ending dated 14 April 2001 recorded: “Telephone contact by Sea to [Name]/[Officer M]/[Name] re strategy”.⁵¹⁷

On 3 May 2001 Sea was recording a conversation with another officer who was named in the relevant LD warrant at the time⁵¹⁸ when Officer M interrupted and greeted the officer. No further conversation was recorded with Officer M on this occasion – the exchange was summarised⁵¹⁹ but not transcribed. This was the eighth recording of Officer M’s private conversations. As Sea was lawfully recording another officer and had not intended to record Officer M, this recording was unintentional and not in contravention of the LD Act.

The ninth recording – which was transcribed – was of a conversation between Sea and Officer M that occurred on 18 May 2001 and lasted 18 minutes. During the conversation, Officer M advised Sea that he had been contacted by Officer F who said that Sea had been to see him but he could not understand why and had the impression that Sea may be intending to take sick leave. Sea had in fact been deployed by Mascot in May to approach Officer F – see Chapter 10. Officer M also discussed welfare issues and the importance of Sea keeping him informed of what was going on and of his whereabouts.⁵²⁰

The SCIA weekly report for the week ending 19 May 2001 – signed by Burn on 21 May 2001 – noted this conversation under the headings ‘critical outcome’ and ‘Sea contact/meetings’ and listed the topic as “[Officer M] – welfare issues”.⁵²¹ This recording was intentional and was in contravention of the LD Act.

On 6 June 2001 Sea’s case officer and a junior Mascot investigator met with Sea and discussed the ‘current strategy’ that “Sea to attend Crime Agencies to speak with ... [Officer M]”.⁵²² The final (tenth) recording of Officer M occurred the next day on 7 June 2001. Sea recorded a conversation between himself and Officer M at Crime Agencies with no-one else present. The recording was not transcribed, but was summarised in an Information Report.⁵²³ The recording was intentional (and in contravention of the LD Act) as Sea had been tasked by Mascot investigators to speak with Officer M and no other person was present.

Officer M was mentioned in the SCIA weekly report for the week ending 9 June 2001 under the heading ‘Critical Outcomes’ – “Sea contacts/meetings – Sea/[Officer M] re [criminal suspect] scenario”.⁵²⁴ The final Mascot document in which Officer M is mentioned is the SCIA weekly report for the week ending 23 June 2001. It notes Officer M as one of Sea’s contacts for that week.⁵²⁵

Section 19 of the LD Act required that – after a warrant expired – the applicant for the warrant had to provide a report to the issuing judicial officer and to the Attorney General. This report was required to explain if the device had been used, the names of the people who were recorded, and the premises where the device was installed.⁵²⁶ Officer M was named in six Mascot section 19 reports. The reports covered all the occasions that Officer M was recorded, except for the first recording on 25 October 2000.⁵²⁷

516 NSWCC Information Report, *Review of CD/122, product for Thur. 8/2/01, [MSO17] approach*, reporting officers: [Mascot Sergeant]/[NSWCC Analyst], 8 February 2001, p. 1.

517 NSWCC/SCU, *Weekly operational report for week ending 14 April 2001*, dated 17 April 2001, p. 1.

518 LD warrant 01/02275.

519 NSWCC Information Report, *Contact with Informant ‘Sea’ on Thursday 3 May, 2001*, reporting officer: [junior Mascot investigator], 4 May 2001, p. 2.

520 NSWCC Transcript of LD 01/02773, Tape T99/1036 Session 5, 18 May 2001.

521 NSWCC/SCU, *Weekly operational report for week ending 19 May 2001*, dated 21 May 2001, p. 1.

522 NSWCC Information Report, *Contact with Informant ‘Sea’ on Thursday 6 June, 2001*, reporting officer: [junior Mascot investigator], 12 June 2001.

523 NSWCC Information Report, *Contact with Informant ‘Sea’ on Friday 8 June, 2001*, reporting officer: [junior Mascot investigator], 12 August 2001, p. 1.

524 NSWCC/SCU, *Weekly operational report for week ending 9 June 2001*, dated 12 June 2001, p. 1.

525 NSWCC/SCU, *Weekly operational report for week ending 23 June 2001*, dated 25 June 2001, p. 1.

526 LD Act, s. 19.

527 NSWCC, Report in accordance with section 19(1) of the *Listening Devices Act 1984*, LD 342/2000, signed by [a NSWCC officer], 17 December 2000; NSWCC, Report in accordance with section 19(1) of the *Listening Devices Act 1984*, LD 366/2000, signed by [a NSWCC officer], 10 January 2001; NSWCC, Report in accordance with section 19(1) of the *Listening Devices Act 1984*, LD 01/00188, signed by [a NSWCC officer], 20 February 2001; NSWCC, Report in accordance with section 19(1) of the *Listening Devices Act 1984*, LD 01/02275, signed by [a NSWCC officer], 16 May 2001; NSWCC, Report in accordance with section 19(1) of the *Listening Devices Act 1984*, LD 01/02773, signed by [a NSWCC officer], 6 June 2001; NSWCC, Report in accordance with section 19(1) of the *Listening Devices Act 1984*, LD 01/03514, signed by [a NSWCC officer], 2 July 2001.

11.2.3 Evidence about the recordings of Officer M

Operation Prospect conducted interviews and hearings with 11 individuals involved in Sea's recordings of Officer M, including Sea and Officer M.

Sea had no knowledge of Officer M being involved in corrupt conduct or why Officer M was of interest to Mascot.⁵²⁸ Sea could not recall if he was tasked to record Officer M, but presumed that – if he was – Officer M was named on a warrant.⁵²⁹ Sea gave evidence that he could activate the Body Worn LD by a switch in his pocket, which he could do easily by slipping his hand into his pocket.⁵³⁰

None of the Mascot staff could recall why Sea was instructed to record Officer M or who made the decision to deploy Sea to do so.

A senior Mascot investigator, who wrote two Information Reports that summarised Sea's recorded conversations with Officer M,⁵³¹ gave evidence that a reason should have been recorded if Sea was deliberately tasked to record conversations with Officer M. In addition, the reason "should have been recorded in an affidavit".⁵³² He acknowledged that it was entirely improper if Sea was deliberately deployed to record conversations with Officer M and there was no reason stated in an affidavit for Officer M to be investigated.⁵³³ The senior investigator agreed with Counsel Assisting's assertion that he "liked to do things by the book"⁵³⁴ and such a failure would therefore concern him. He stated that, if it did happen, it would have been through "human error".⁵³⁵ On the topic of record keeping, the senior investigator said it was appropriate to summarise a conversation recorded on a LD in an unanticipated setting if it was relevant to the reference and related to an offence.⁵³⁶

Burn agreed that the recording of Officer M without an authorising warrant was illegal "if it's done with the intent to record his conversations without his consent."⁵³⁷ Burn's view about Mascot's transcribing of the contents of Officer M's private conversations when he was never named on a warrant was "on face value ... unsatisfactory".⁵³⁸ She was told that conversations with Officer M were transcribed or referred to in an Information Report when he was not named on a warrant. In response, Burn said "that's not the way it should be done. I don't know what he was thinking or what advice he had been given or why he did it" – referring to the person who transcribed the material.⁵³⁹

11.2.4 Analysis and submissions

11.2.4.1 Analysis of the 10 unauthorised recordings

It is clear from the evidence that Sea was tasked by Mascot investigators to record conversations with Officer M and that a number of Mascot officers were aware of this investigative strategy. Only one Mascot record explains why Officer M was of interest – the minutes of the Mascot meeting on 15 December 2000 indicate that Sea would approach Officer M to see if he was aware of a problem "on the North side".⁵⁴⁰ This meeting occurred after the fifth recording of Officer M. It is not clear why this intelligence gathering exercise would require the use of a LD, or if that was intended. There was no warrant in place to sanction any such recording, and it is unlikely

528 Ombudsman Transcript, [Sea], 23 October 2013, p. 147.

529 Ombudsman Transcript, [Sea], 23 October 2013, p. 148.

530 Ombudsman Transcript, [Sea], 21 August 2013, pp. 36-37.

531 NSWCC Information Report, (SOD177) *Informant contact with Sea, Friday 19/11/00 – Review of CD /094*, reporting officer: [a senior Mascot Investigator], 19 November 2000; NSWCC Information Report, *Informant Contact with Sea, Mon. 21/5/01 – CD/152 retrieved*, reporting officer: [A Mascot Senior Investigator], 21 May 2001.

532 Ombudsman Transcript, [a senior Mascot investigator], 23 July 2014, p. 684.

533 Ombudsman Transcript, [a senior Mascot investigator], 23 July 2014, p. 691.

534 Ombudsman Transcript, [a senior Mascot investigator], 23 July 2014, p. 691.

535 Ombudsman Transcript, [a senior Mascot investigator], 23 July 2014, p. 691.

536 Ombudsman Transcript, [a senior Mascot investigator], 23 July 2014, p. 692.

537 Ombudsman Transcript, Catherine Burn, 19 November 2014, p. 2940.

538 Ombudsman Transcript, Catherine Burn, 19 November 2014, p. 2940.

539 Ombudsman Transcript, Catherine Burn, 19 November 2014, p. 2940.

540 NSWCC, *Mascot minutes of meeting*, 15 December 2000.

on the available evidence that the requirements of the LD Act for naming a person in a warrant could have been met. This requirement is that the use of a LD to record a private conversation was reasonably necessary to investigate a prescribed offence.⁵⁴¹

The 10 occasions on which Officer M was recorded by Sea fall into three groups:

- The second and eighth recordings (25 October 2000 and 3 May 2001) occurred when Officer M unexpectedly joined a conversation that Sea was recording with another person. The first recording (25 October 2000) was similar in nature – it was when Officer M spoke at a meeting that Sea was recording under the authority of a warrant that named two other people in the meeting. The recording of Officer M on those three occasions came within the exception in the LD Act of an unintentional hearing and recording of a private conversation (see section 11.2.4.2).
- The sixth, seventh, ninth and tenth recordings (1 and 8 February 2001, 18 May and 7 June 2001) occurred after Sea was tasked by Mascot investigators to approach or engage Officer M. These were intentional recordings – the conversations were private, Officer M was unaware of being recorded and had not given express consent, and Officer M was not named on any relevant LD warrant.
- There is no Mascot record of Sea being tasked to make the third, fourth and fifth recordings (19 November and 12 December 2000 (twice)). Sea can also not recall being tasked to make those recordings, but said more generally: “I was just tasked and went out and did what I had to do”.⁵⁴²

Sea gave evidence that when he was tasked to speak to Officer M he assumed Officer M was named on a warrant.⁵⁴³ No Mascot investigator who gave evidence denied that Sea made these recordings of Officer M in the absence of a tasking. One officer said he could not recall any incident of Sea recording an individual he was not authorised to record and, if there was, he would have documented that.⁵⁴⁴ On the other hand, Burn submitted that – based on the evidence – it appeared that Sea had indiscriminately recorded conversations with Officer M, which were then uncritically summarised in information reports that routinely summarised LD product collected by Sea.⁵⁴⁵ Other possibilities include that Sea was tasked to engage Officer M in a phone conversation rather than a face-to-face briefing, or that he was tasked to speak to Officer M but not to record him.

In summary, no firm conclusion can be drawn from the evidence as to whether Sea recorded Officer M indiscriminately or at the request of Mascot investigators as Officer M was not a Mascot target.

11.2.4.2 Compliance with section 5 of the LD Act

All 10 recordings of Officer M fell within the scope of the LD Act – where a person used or caused a LD to be used to record a private conversation. It was an offence under the Act to use a LD in that way unless the use and recording came within an exception listed in the Act.⁵⁴⁶ The three most relevant exceptions are that the use of the device was in accordance with a warrant granted by a judicial officer,⁵⁴⁷ the party being recorded consented to the recording,⁵⁴⁸ or the recording was an “unintentional hearing of a private conversation by means of a LD”.⁵⁴⁹ None of the 10 recordings fell within the first or second exception and only the first, second and eighth recordings fell within the third exception.

541 LD Act, s. 16(1).

542 Ombudsman Transcript, [Sea], 23 October 2013, p. 62.

543 Ombudsman Transcript, [Sea], 23 October 2013, p. 148.

544 Ombudsman Transcript, [Sea's case officer], 16 April 2014, pp. 171-172.

545 Burn, C, Submissions in reply, 25 September 2016, Appendix 3, p. 60.

546 LD Act, s. 5.

547 LD Act, s. 5(2)(a).

548 LD Act, s. 5(3)(a).

549 LD Act, s. 5(2)(d).

The evidence therefore suggests that seven of the recordings of Officer M may have constituted an offence under the LD Act, both by Sea who used the LD and by the Mascot investigators who 'caused' Sea to use the device. Section 5 of the LD Act – as discussed in Chapter 5 and Appendix 3 (Volume 1)– is a strict liability offence. It is not an element of the offence that a person intentionally used or caused a LD to be used in contravention of the Act. However, as a strict liability offence, the defence of honest and reasonable mistake may be available to a person.

The witnesses who gave evidence to Operation Prospect all believed that Officer M was named on warrants. Burn and another supervisor involved in the activities about Officer M were also surprised that he was not named. They acknowledged that it may be wrong and in contravention of the LD Act to record Officer M without him being named. Sea's case officer at the time gave the following evidence:

At the time, I never thought anything about that, obviously assuming that all the warrants were covered with what we were being sent out to um, deploy him [Sea] to do and we were just going on good faith that that's what was happening. As I said, I had nothing to do with the warrants apart from one where I've obviously wandered in and they said this needs to be rolled over, do it.⁵⁵⁰

Sea's case officer also gave evidence that he tasked Sea based on instructions from others, stating "Cath Burn's was the one giving instructions for us to go and tell Sea what to do."⁵⁵¹ Similarly Sea also assumed that the people he was being deployed to speak with and record were named in warrants and that he could lawfully record them.⁵⁵² Sea also stated he was never shown the warrants that covered his use of the body worn LD.⁵⁵³

On the basis of that evidence, it seems that Sea and the officers who deployed him to speak to Officer M while wearing a Body Worn LD did so as a result of an honest mistake. They believed a valid warrant was in place to allow the recording of Officer M.

The next issue is whether their mistake was reasonable. This is a separate and additional requirement to come within the scope of the defence. A reasonable mistake as to the facts is to be distinguished from ignorance of the facts or the law, which does not constitute a defence.

The substantive rank of the officers who deployed Sea to speak with and record Officer M was at a junior level. The evidence before Operation Prospect indicates they received little or no training in the LD Act. The NSWCC LD Manual and Investigations Manual did not contain procedures or requirements on the management and deployment of informants under an authorised LD warrant. The officers who 'caused' Sea to use the LD were not responsible for preparing the relevant warrant applications or affidavits and were not given copies of the warrants to plan and conduct the briefings with Sea. They were therefore unaware of who had been named on a warrant or of the terms of the warrants.

The evidence before Operation Prospect also indicates that Mascot operated at times in a rushed and disconnected manner that exposed the investigation activities to significant operational risk. Risk mitigation strategies were not in place to prevent the repeated and unintended unlawful recording of any person, nor would any Mascot system detect this if it occurred. Generally, and as discussed in Chapter 16, there were many systemic failures in Mascot methods – including a complete absence of cross-check systems and rigour in instructing or tasking Sea and in transcribing and summarising the LD product he obtained. There were no procedures or practice of checking warrants before briefing Sea to approach and record particular individuals.

Those circumstances appear adequate to establish that the Mascot officers who caused Sea to use LDs to record Officer M operated on the basis of an honest and reasonable mistake. The officers proceeded on the basis they were acting in accordance with a valid warrant. No finding is therefore made that an offence may have been committed by any officer under section 5 of the LD Act.

550 Ombudsman Transcript, [Sea's case officer], 16 April 2014, p. 149.

551 Ombudsman Transcript, [Sea's case officer], 16 April 2014, p. 139.

552 Ombudsman Transcript, [Sea], 23 October 2013, p. 7.

553 Ombudsman Transcript, [Sea], 23 October 2013, p. 29.

In addition, no finding is made that any particular officer engaged in conduct that was unreasonable or based on a mistake of fact under section 122 of the Police Act. The circumstances already mentioned point to systemic rather than individual failure. It is also difficult on the evidence available to identify any particular officer as being individually or directly responsible for deploying Sea to use a LD to record Officer M. The deployments mostly occurred in an unsystematic fashion as opportunities arose, with officers simply working from the unstated assumption that their colleagues had diligently ensured the requirements of the LD Act were being strictly followed. The fact that Officer M had not been identified as a Mascot target suspected of corruption may have tempered the rigour that might otherwise have been adopted, although this fact should have made someone clearly question why Officer M was being recorded.

Clearly, however, there was a collective failure to ensure that recordings of Officer M's private conversations were undertaken lawfully and for good reason. This unreasonable conduct was exacerbated by the recordings being transcribed and summarised in Information Reports and section 19 reports, without any officer alerting to a possible problem. What occurred should serve as a cautionary warning today of the need for officers in similar situations to have an informed understanding of statutory requirements and regulatory compliance before exercising invasive powers in an unthinking or presumptive manner.

11.2.4.3 Compliance with sections 6 and 8 of the LD Act

Two other sections of the LD Act are relevant to the actions of Mascot officers in transcribing and summarising the recorded conversations between Officer M and Sea. Section 8 of the LD Act made it an offence to possess a record of a private conversation knowing that it was obtained, directly or indirectly, by the unlawful use of a LD. Section 6 made it an offence for a person knowingly to communicate or publish information about a private conversation that had come to that person's knowledge as a result, direct or indirect, of the unlawful use of a LD.

Both sections require a mental element to be present – specifically that a person knew the recording they had in their possession or communicated to another person had been obtained in contravention of the LD Act. As noted in the evidence, no Mascot witness was aware that section 5 of the LD Act had been contravened either at the time of the recording or later. The officers who transcribed or summarised the recordings gave evidence to that effect. There was no system in place to cross check warrants, taskings and recordings. Some officers who made submissions to Operation Prospect noted that there was no procedural requirement or instruction given on reviewing LD product. One Mascot investigator who was asked about this matter in evidence to Operation Prospect said that he was not aware that a recording of a person not named in a warrant should not be transcribed⁵⁵⁴ and he had not received guidance or direction on that issue from the NSWCC:

Q: *Alright, so nobody told you that if somebody is not in the warrant, you can't transcribe their conversation?*

A: *No*

Q: *Alright, and nobody told you that you should cross-check the warrant and make sure that when you're doing your transcriptions or your information reports where you summarise listening device product, that if they're not in the warrant, you're not allowed to do that?*

A: *No*⁵⁵⁵

In summary, the actions of Mascot officers in transcribing and summarising the private conversations of Officer M with Sea, without referring to the applicable warrant, was in accordance with the normal and accepted procedure and practice at the NSWCC at that time. To that extent this conduct typified a systemic failure in Mascot processes, rather than an individual failure by any officer. This is discussed further in Chapter 16.

554 Ombudsman Transcript, [A Mascot investigator], 28 July 2014, p. 826.

555 Ombudsman Transcript, [A Mascot investigator], 28 July 2014, p. 828.

11.2.5 Recommendations

10. It is recommended under section 26(2) of the *Ombudsman Act 1974* that the NSW Crime Commission provide a written apology to Officer M for the repeated unlawful recording of his private conversations in contravention of section 5 of the *Listening Devices Act 1984*.
11. It is recommended under section 26(2) of the *Ombudsman Act 1974* that the NSW Crime Commission destroy all recordings (and associated transcripts) it holds of the private conversations between Officer M and Sea.

11.3 Unauthorised recordings of Ms E (legal representative for Sea)

11.3.1 Mascot activities about Ms E

Ms E worked as a solicitor at the Legal Representation Office (LRO) in Sydney during 2000 and 2001. The LRO was established by the NSW Government to provide independent legal advice and representation to individuals required to attend an interview or served a notice or summons by the NSW Independent Commission Against Corruption (ICAC), the PIC, or a particular Royal or Special Commission of Inquiry as directed by the Attorney General.

In late 2000 and 2001, the PIC conducted hearings into a matter referred to it after investigation by Mascot. The PIC summonsed Sea and other police officers to appear at those hearings. Ms E was retained to appear for Sea and another officer, MSO12 – who was a colleague of Sea's who he recorded a number of times. Ms E continued as the legal representative for both Sea and MSO12 until the latter was assigned a different legal representative.⁵⁵⁶

Sea recorded conversations with Ms E on four occasions – in three of these she was giving him legal advice about an appearance at a PIC hearing. There is no Mascot record of Sea being specifically tasked or directed to make those recordings.

11.3.2 Sea's recording of Ms E on four occasions

The first recording occurred on 20 November 2000. Sea recorded a conversation he had with staff at the PIC liaison office, including Ms E. The conversation was summarised in an Information Report dated 21 November 2000, which was initialled by Burn.⁵⁵⁷ The report noted that an unidentified female had advised Sea that Ms E would be representing Sea and MSO12 for the PIC hearing. A short while later Sea met Ms E and recorded their conversation that lasted approximately 48 minutes. During this conversation, Ms E provided information and advice in preparation for the upcoming hearing.⁵⁵⁸ This recorded conversation was also noted in the Mascot Weekly Report for the week ending 20 November 2000 under 'Critical Outcomes' as "PIC hearings" and "Contact by Sea with the LRO – [Ms E]".⁵⁵⁹

The recorded conversation between Ms E and Sea was a private conversation. Ms E was not named in a warrant. She was also not an incidental participant in a conversation with some other person – for example, the unidentified female (who may have been present but is not recorded). The recording of the conversation with Ms E was therefore in contravention of the LD Act.

556 Ombudsman Transcript, [Ms E], 16 February 2015, p. 5.

557 NSWCC Information Report, *SOD032 Informant contact with Sea, Tuesday 21 (1) November, 2000 CD/095*, reporting officers: [Senior Mascot investigator]/[NSWCC analyst], 21 November 2000.

558 NSWCC Information Report, *SOD032 Informant contact with Sea, Tuesday 21 (1) November, 2000 CD/095*, reporting officers: [Senior Mascot investigator]/[NSWCC analyst], 21 November 2000, p. 2.

559 NSWCC/SCU *Weekly operational report for week ending 20 November 2000*, dated 20 November 2000, p. 1.

The second recording occurred on 27 November 2000. Sea recorded a conversation with Ms E about the upcoming PIC hearings. They were the only participants in the conversation and the recording was 43 minutes long. Ms E discussed a range of matters in connection with the hearings. The conversation was summarised in an Information Report,⁵⁶⁰ but was not transcribed. Ms E was not named on a warrant. This recording was in contravention of the LD Act.

The third and fourth recordings occurred on 8 May 2001. In the third recording, just after 2.19 pm, Sea was meeting with a Mascot target (named on a relevant warrant) and was recording their conversation. He received a telephone call from Ms E, answered it, and said he would call her back. This was an incidental recording that would come within an exception in the LD Act for the unintentional hearing of a private conversation (see section 11.2.4.2). This telephone conversation with Ms E was, however, transcribed by Mascot staff – including both sides of their telephone call.⁵⁶¹

Later the same day, Sea recorded a 20 minute meeting between himself and Ms E at the LRO. No other person was present. The conversation concerned the upcoming hearing, Sea's evidence, his memory of certain matters, and their discussion of other witnesses. Ms E was not named on any relevant warrant and the recording was in contravention of the LD Act. This and the third conversation were summarised in an Information Report that was initialled by Burn.⁵⁶²

There were other mentions of contact between Sea and Ms E in the Mascot weekly operational reports over May and June 2001:

- The report for the week ending 12 May 2001, under 'Critical Outcomes', noted: "[Ms E] – legal advice re [another PIC investigation that Sea was involved in]".⁵⁶³
- The report for the week ending 9 June 2001, under 'Critical Outcomes', noted: "Sea/[Ms E] re [PIC hearing matters]".⁵⁶⁴
- The report for the week ending 30 June 2001, under 'Critical Outcomes', noted: "[Ms E] – summons withdrawn re [another PIC investigation that Sea was involved in]/PIC advised her that they were not investigating the matter any further".⁵⁶⁵

Those three weekly reports, as well as the weekly report that mentioned the first recording on 20 November 2000, ended with Burn's typed name and the date that they were completed. The weekly reports of 20 November 2000 and 30 June 2001 were also signed by Burn.

Burn also made notations in her diary on a number of occasions between May and June 2001 that referred to Ms E.⁵⁶⁶ These are brief and appeared to be from discussions, meetings or telephone calls.

11.3.3 Evidence about the recordings of Ms E

When it was revealed to her that she had been recorded by Sea, Ms E commented: "I'm quite shocked. That's the first time I've heard of that. I can't think of any justification for doing that".⁵⁶⁷ When asked if she had consented to being recorded she responded: "No, I have absolutely no recollection of him [Sea] asking me to do that or me consenting to that". Ms E said she would not have given consent had she been asked.⁵⁶⁸ She stated she was very disappointed to discover what had occurred and felt very betrayed.⁵⁶⁹ She gave evidence

560 NSWCC Information Report, *REVIEW OF CD/099 27-11-00 AND 29-11-00*, reporting officer: [Mascot investigator], 30 November 2000 – 7 December 2000, pp. 1-2.

561 NSWCC Transcript of LD 01/02773, Tape T99/894, Session 2, 8 May 2001, p. 5.

562 NSWCC Information Report, Informant contact with Sea, Wednesday 9/5/01 – CD/147 obtained, reporting officer: [a Mascot investigator] ([a Mascot investigator]-review), 9 May 2001, p. 1.

563 NSWCC/SCU, *Weekly operational report for week ending 12 May 2001*, dated 14 May 2001, p. 2.

564 NSWCC/SCU, *Weekly operational report for week ending 9 June 2001*, dated 12 June 2001, p. 1.

565 NSWCC/SCU *Weekly operational report for week ending 30 June 2001*, dated 2 July 2001.

566 Diary, Catherine Burn, 8 May 2001; Diary, Catherine Burn, 9 May 2001; Diary, Catherine Burn, 11 May 2001; Diary, Catherine Burn, 7 June 2001; Diary, Catherine Burn, 20 June 2001; Diary, Catherine Burn, 21 June 2001; Diary, Catherine Burn, 26 June 2001; Diary, Catherine Burn, 28 June 2001.

567 Ombudsman Transcript, [Ms E], 16 February 2015, p. 6.

568 Ombudsman Transcript, [Ms E], 16 February 2015, p. 7.

569 Ombudsman Transcript, [Ms E], 16 February 2015, p. 7.

to Operation Prospect that she became aware that Sea had been conducting covert operations for the NSWCC, but said she was not acting for him when his covert role became public.⁵⁷⁰

A senior Mascot investigator involved in preparing the Information Report dated 21 November 2000 that summarised a recorded discussion between Sea and Ms E was asked if he could think of any reason why it would have been appropriate for Sea to record confidential discussions with his lawyer. The investigator responded he could not think of a reason.⁵⁷¹ He also recognised another issue with recording this type of conversation:

*Well, clearly those types of communications between a person and their legal counsel are subject to professional legal privilege. So it shouldn't have happened unless, as you say, there was a controlled operation, something like that. But there should have been some attempts to correct the record or fix the error, I suppose.*⁵⁷²

When informed that Ms E was not named in any LD warrant, the senior investigator agreed that this should not have happened and he could not understand why it did.⁵⁷³ He did not think there had been a deliberate strategy for Sea to record conversations with Ms E.⁵⁷⁴ As soon as there was mention of the PIC liaison office, he felt that officers should have been alert to any issues to do with legal professional privilege – but he could not comment “too thoroughly at this stage”.⁵⁷⁵

A junior NSWCC analyst involved in preparing the Information Report dated 21 November 2000 with the senior Mascot investigator stated that his task when he began working at Mascot included reviewing CDs of the recordings that Sea had made. When he did this, “I would have assumed it would have been a lawful recording”.⁵⁷⁶ He agreed that his role was to review the recordings, but checking whether these complied with legal requirements was the responsibility of a more senior officer.⁵⁷⁷ On reviewing the Information Report, he commented: “Yeah. Okay. So I guess I wasn't aware of the time, um, that that was legal privilege. Legal privilege is probably something I learnt in the intervening years, yeah”.⁵⁷⁸ He further commented that “I- I- I probably wouldn't have given it a second thought, yeah. I would have just transcribed it or reviewed, um, yeah without even thinking about what – who was named on the warrant and things, yeah”.⁵⁷⁹ He also noted that “no-one took me to one side and said: ‘Hey, you've got to watch what you're doing there’”.⁵⁸⁰ The NSWCC analyst also confirmed that he had written the bulk of the summary of the conversation⁵⁸¹ between Sea and Ms E and explained that he would have added the senior investigator's name as a reporting officer because “he was – he would have been aware of what I was writing here”.⁵⁸² The NSWCC analyst added: “Um, yes. It- yeah, and it's probably part of, um, you know, covering myself. I mean I've been there [at the NSWCC] couple of- three months”.⁵⁸³

Sea's case officer at the time was unable to recall whether Ms E was a Mascot target and whether Sea was intentionally deployed to record Ms E because she held information.⁵⁸⁴ The case officer checked his Duty Books and was unable to find any particular notation of tasking Sea between 17 and 27 November 2000.⁵⁸⁵ He agreed that if Sea had been tasked to record Ms E, this should have been included in a warrant.⁵⁸⁶ He also

570 Ombudsman Transcript, [Ms E], 16 February 2015, p. 6.

571 Ombudsman Transcript, [a senior Mascot investigator], 17 February 2015, p. 24.

572 Ombudsman Transcript, [a senior Mascot investigator], 17 February 2015, p. 24.

573 Ombudsman Transcript, [a senior Mascot investigator], 17 February 2015, p. 25.

574 Ombudsman Transcript, [a senior Mascot investigator], 17 February 2015, p. 27.

575 Ombudsman Transcript, [a senior Mascot investigator], 17 February 2015, p. 31.

576 Ombudsman Transcript, [a NSWCC analyst], 7 May 2014, p. 64.

577 Ombudsman Transcript, [a NSWCC analyst], 7 May 2014, p. 72.

578 Ombudsman Transcript, [a NSWCC analyst], 7 May 2014, p. 69.

579 Ombudsman Transcript, [a NSWCC analyst], 7 May 2014, p. 71.

580 Ombudsman Transcript, [a NSWCC analyst], 7 May 2014, p. 71.

581 Ombudsman Transcript, [a NSWCC analyst], 7 May 2014, p. 70.

582 Ombudsman Transcript, [a NSWCC analyst], 7 May 2014, p. 73.

583 Ombudsman Transcript, [a NSWCC analyst], 7 May 2014, p. 73.

584 Ombudsman Transcript, [Mascot investigator/Sea case officer], 12 March 2015, p. 21.

585 Ombudsman Transcript, [Mascot investigator/Sea case officer], 12 March 2015, p. 36.

586 Ombudsman Transcript, [Mascot investigator/Sea case officer], 12 March 2015, p. 21.

thought that if Sea bumped into a person who was not named on a warrant, but the material they discussed could be linked to the investigation, then it was appropriate for Sea to record their conversation.⁵⁸⁷

The case officer also prepared the Information Report that summarised the conversation between Sea and Ms E recorded on 27 November 2000. He said that he did not know what evidence Mascot hoped to obtain from discussions between Sea and Ms E and his report simply reviewed the tape. When pressed about why it was appropriate to listen to and summarise the conversation when it was obvious that it was a conversation with Sea's legal advisor, the case officer answered:

*I just reviewed it and along with all these Information Reports forwarded them off to Ma'am Burn and never at any time was I told that I shouldn't be transcribing it, although one would say that if it was privileged – I don't know if it was privileged. That's about the best I can answer it, sir.*⁵⁸⁸

He explained further that as an investigator and as a reviewer he wanted to make sure that everything in the LD product was reported in case something had to be followed up:

*I keep thinking back and maybe it had something to do with the [a PIC Operation] hearings, that I had to pay particular attention to the conversation that Sea was discussing with this solicitor [Ms E].*⁵⁸⁹

His understanding at the time was that legal professional privilege did not prevent him doing what he did, given that he understood the information he listened to was relevant to the investigation.⁵⁹⁰

The case officer's understanding was that the warrant allowed the contents of LD product to be communicated to any person who was listed on the warrant as a person allowed to deal with the LD – which included other Mascot investigators.⁵⁹¹ When asked the basis of that understanding, he answered that everyone was doing the same thing and no one ever told him that he was not allowed to divulge the information in that way.⁵⁹²

Sea's case officer confirmed that it was not his practice to check the original warrant, so he did not know if the person whose conversation Sea had recorded was named on the warrant.⁵⁹³ As to how recordings were reviewed, he stated that the usual Mascot procedure once a recording was made was to receive the CD in a plastic sleeve with the word 'Review' on it. He would then review it and create an Information Report that would flow up the chain of command.⁵⁹⁴ He would not know if a conversation was authorised by a warrant without finding the hard copy of the warrant in storage and reading it – and he was certain that he never did that.⁵⁹⁵ He said he would not have had the warrant next to him while he was doing the review process.⁵⁹⁶ He acknowledged that a warrant set out clearly who was authorised to be recorded, but he did not examine the warrants to see if the product he was reviewing was authorised to be recorded.⁵⁹⁷

The case officer also said that not all documents were accessible by or circulated to all investigators, but they could source documents that they required for specific roles.⁵⁹⁸ He described Burn and Dolan as the 'gatekeepers', and that certain information for whatever reason was kept confidential and was unable to be accessed by him.⁵⁹⁹ No one in the investigation had knowledge of everything that was going on apart from Burn and Dolan. Everybody had their own inquiries to do or work on different phases of the investigation and different strategies, so material may not necessarily have been distributed or disseminated to the investigators dealing with Sea.⁶⁰⁰

587 Ombudsman Transcript, [Mascot investigator/Sea case officer], 12 March 2015, p. 42.

588 Ombudsman Transcript, [Mascot investigator/Sea case officer], 12 March 2015, pp. 19-20.

589 Ombudsman Transcript, [Mascot investigator/Sea case officer], 12 March 2015, pp. 20-21.

590 Ombudsman Transcript, [Mascot investigator/Sea case officer], 12 March 2015, p. 30.

591 Ombudsman Transcript, [Mascot investigator/Sea case officer], 12 March 2015, p. 41.

592 Ombudsman Transcript, [Mascot investigator/Sea case officer], 12 March 2015, p. 41.

593 Ombudsman Transcript, [Mascot investigator/Sea case officer], 12 March 2015, p. 42.

594 Ombudsman Transcript, [Mascot investigator/Sea case officer], 12 March 2015, p. 25.

595 Ombudsman Transcript, [Mascot investigator/Sea case officer], 12 March 2015, p. 25.

596 Ombudsman Transcript, [Mascot investigator/Sea case officer], 12 March 2015, p. 25.

597 Ombudsman Transcript, [Mascot investigator/Sea case officer], 12 March 2015, p. 26.

598 Ombudsman Transcript, [Mascot investigator/Sea case officer], 12 March 2015, pp. 39-40.

599 Ombudsman Transcript, [Mascot investigator/Sea case officer], 12 March 2015, p. 40.

600 Ombudsman Transcript, [Mascot investigator/Sea case officer], 12 March 2015, p. 40.

In her initial evidence to Operation Prospect, Burn did not recall any specific instruction to Sea about turning off his Body Worn LD – for example, when he was having a conversation with his solicitor. However, she agreed that it would generally be highly inappropriate for Sea to be tasked to record a conversation with his solicitor without the solicitor’s consent and for the LD product from that conversation to be “typed up”.⁶⁰¹ She also agreed that if Sea had made such a recording accidentally, Mascot could avoid transcribing the content – and it certainly should not have been included in Information Reports distributed among Mascot staff.⁶⁰² Burn indicated that she did not recall any such circumstances occurring at Mascot.⁶⁰³

Burn was later shown the Information Report dated 21 November 2000 that contained information about one of Sea’s recordings of Ms E. Burn had initialled this report. She agreed that her initials meant she “appears” to have read the report.⁶⁰⁴ She agreed that if Sea had recorded this conversation without being tasked to do so, it was improper for Mascot investigators to summarise the content of the conversation – particularly noting that Sea and Ms E discussed how Sea would be defended as well as some matters about MSO12.⁶⁰⁵ When Burn was asked: “Would you accept that it is an omission on your part as team leader and case officer when something like this comes to your attention that you don’t act on it?”⁶⁰⁶, her answer was “Yes”.

Burn indicated that she did not recall any Mascot strategy that involved Sea recording his conversations with Ms E.⁶⁰⁷ She commented further:

*I am of the view that there is something else there around Ms E. I just don’t believe that that was not further discussed either – both before and after Sea’s contact with [Ms E] in terms of visibility at management meetings, at the operational management meetings.*⁶⁰⁸

Burn checked her Duty Book for clarifying information but was not able to find any further information about this issue.

Dolan was not aware that the content of a conversation between Sea and his solicitor was transcribed. There is no evidence that he was specifically aware that these conversations were summarised in Information Reports. Dolan said that from time to time he would instruct staff about what could be listened to and transcribed.⁶⁰⁹ He concluded that it would be only through “naivety” or “mistake” if conversations were transcribed from people who were not on warrants.⁶¹⁰

11.3.4 Analysis and submissions

The first, second and fourth recorded conversations between Sea and Ms E were in contravention of section 5 of the LD Act. Ms E regarded them as private conversations, she was unaware of and did not consent to the recordings, and the recordings were not authorised by a LD warrant. The third recording was unintentional – Sea took a telephone call from Ms E at a time he was making an authorised recording with another person. However, that recording was both transcribed and summarised in an Information Report.

In terms of contravening section 5, Operation Prospect reviewed the documentary evidence to determine if any Mascot officer ‘caused’ Sea to record these private conversations of Ms E. There is no documentary evidence that Sea was specifically tasked to do so. Burn submitted that the absence of any such record is evidence that Mascot did not have a specific strategy to record Ms E. In her view, Sea indiscriminately made these recordings and was, colloquially put, “off on a frolic of his own”.⁶¹¹ Sea’s evidence generally was that when he was recording he was completing the tasks that Mascot had given him.⁶¹²

601 Ombudsman Transcript, Catherine Burn, 19 November 2014, p. 2906.

602 Ombudsman Transcript, Catherine Burn, 19 November 2014, p. 2906.

603 Ombudsman Transcript, Catherine Burn, 19 November 2014, p. 2906.

604 Ombudsman Transcript, Catherine Burn, 19 November 2014, p. 2947.

605 Ombudsman Transcript, Catherine Burn, 19 November 2014, pp. 2947-2948.

606 Ombudsman Transcript, Catherine Burn, 19 November 2014, p. 2948.

607 Ombudsman Transcript, Catherine Burn, 19 November 2014, pp. 2949-2950.

608 Ombudsman Transcript, Catherine Burn, 19 November 2014, p. 2955.

609 Ombudsman Transcript, John Dolan, 31 October 2015, p. 2598.

610 Ombudsman Transcript, John Dolan, 31 October 2015, p. 2597.

611 Burn, C, Submissions in reply, 25 September 2015, Appendix 3, p. 63.

612 Ombudsman Transcript, [Sea], 23 October 2013, pp. 19, 23, 34, 40-42, 44, 47, 49, 58, 59, 62, 67-72, 75-77 etc.

It is accepted there is no evidence of a deliberate Mascot strategy either to record Ms E or for Sea to elicit particular information from Ms E. There is no direct evidence that any Mascot officer caused Sea to use a LD to record the private conversations of Ms E. Although a LD was used in contravention of section 5 of the LD Act, it does not appear that any Mascot officer caused this to happen. Operation Prospect has not separately examined Sea's conduct, particularly whether the defence of honest and reasonable mistake would apply.

There is, on the other hand, direct evidence that Mascot officers were aware that Sea had recorded his conversations with Ms E. All four recordings were referred to in Mascot Information Reports in November and December 2000 and May and June 2001. No action appears to have been taken at the time to query the status of these recordings or to counsel Sea about recording conversations with his legal adviser. The officers who prepared the Information Reports were apparently unaware that the recordings were obtained in contravention of the LD Act – as they were not involved in preparing warrant applications for that period and were not required to cross-check to warrants when preparing summaries of LD product.

These actions nevertheless provide a further illustration of the systemic weaknesses in Mascot's use of LDs and LD product. There was a systematic failure to consider the propriety of individual recordings of private conversations – particularly by checking if there was a valid warrant authorising the recordings, if the nature of the relationship was of a kind that made recording inappropriate, and if it was appropriate to communicate or share transcripts and summaries of the recordings. These failures stemmed from the routine and accepted processes at the NSWCC in deploying Sea and dealing with LD product. These systemic failures are discussed further in Chapter 16.

The evidence also suggests that Mascot did not consider, or at least did not consider at any length, whether the recordings of Sea's conversations with Ms E had any impact on his entitlement to client legal privilege. The privilege resides with the client, who may waive that privilege by consent or through their conduct. Sea appears to have waived his privilege over his communications with Ms E, either expressly or impliedly, by making those recordings and sharing them with Mascot. In *Mann v Carnell* [1999] HCA 66, the High Court held that disclosure by a client of confidential legal advice, for the purpose of explaining or justifying the client's actions, will waive the privilege if the disclosure is inconsistent with the confidentiality that the privilege serves to protect. Sea's actions in handing the recordings to Mascot were inconsistent with an intention to maintain client legal privilege. There is no evidence that Mascot gave consideration to this waiver issue or discussed the matter with Sea.

11.3.5 Recommendations

12. It is recommended under section 26(2) of the *Ombudsman Act 1974* that the NSW Crime Commission provide a written apology to Ms E for the repeated unlawful recording of her private conversations in contravention of section 5 of the *Listening Devices Act 1984*.
13. It is recommended under section 26(2) of the *Ombudsman Act 1974* that the NSW Crime Commission destroy all recordings (and associated transcripts) it holds of the private conversations between Sea and Ms E.

11.4 Unauthorised recordings of Officer Q

11.4.1 Mascot activities about Officer Q

Officer Q worked with Sea on Task Force Borlu as a Detective Senior Constable. Borlu started in June 1997 and investigated the large scale importation and supply of cannabis.

Officer Q was the subject of two allegations investigated by Mascot, but he was not named on any Mascot LD or TI warrant. However, in the course of the Mascot investigations, his private conversations were recorded by LD on two occasions, and a telephone conversation of his was intercepted on one occasion.

The first allegation that Mascot recorded about Officer Q was that he had attempted to avoid a speeding fine using false information. This information came from Sea's debrief interview on 9 January 1999.⁶¹³ Sea made the general statement that some officers he had worked with on Borlu had rorted meal and overtime allowances, and avoided speeding fines they had incurred while on duty by falsely claiming they had been speeding in pursuit of a suspect vehicle. When asked if these were 'common practices' among officers assigned to Borlu, Sea said "Yes".⁶¹⁴

Later in his debrief interview, Sea alleged that Officer Q in particular had tried to avoid a speeding fine on one occasion, but other officers had refused to support him:

*... well there's two incidents that really blew up in Borlu, one was [Officer Q], another speeding fine up near Taree and I know that there was problems with that. I remember [a NSWPF officer on Task Force Borlu] coming up to me and saying something along the lines of "what am I gonna say at IA, I was asleep", well I said "do you have to say that" or something along those lines. In the end I just said to him, "look it's nothing to do with me, go and sort it out with [a senior NSWPF officer at Borlu] or whoever was in charge there"... [Officer Q and the other Borlu officer] were rushing up to Taree to make an arrest in relation to ... it was in the aftermath to the original arrests. I think [Officer Q] had become a bit abusive to (ind) [another NSWPF officer] who didn't take too kindly to it and there was a blue generated and anyway, all those that were involved basically they didn't say that they'd seen a car or something along those lines, I dunno, I didn't want [sic] know much about it.*⁶¹⁵

Burn recorded this allegation in the handwritten Schedule of Debrief as: "[Officer Q and the other Borlu officer] – speeding fine Taree – written off".⁶¹⁶ This was later recorded in the electronic version of the Schedule of Debrief as:

*1997 TF Borlu, TA/meals/OT/speeding. Common practice to write off tickets, claim meals & unworked OT ... [Officer Q and the other Borlu officer] – speeding fine Taree – written off.*⁶¹⁷

The second allegation against Officer Q was that on 15 September 1999, during a conversation with Sea and another officer, Officer Q discussed an ongoing police operation and divulged confidential information.⁶¹⁸ Sea recorded this conversation on his Body Worn LD. After listening to the recording, Burn noted the allegation⁶¹⁹ and recorded it in a further Mascot record under the title "SOD134 – Management Issues and General Corruption Issues".⁶²⁰

11.4.2 Sea's recording of Officer Q on two occasions

It appears from Mascot records that Mascot never proactively investigated Officer Q in relation to those allegations or made him a target. Mascot never instructed or encouraged Sea to engage in conversation with Officer Q, and never included Officer Q's name in any LD warrants, TI warrants or supporting affidavits.

However, Sea recorded Officer Q on his body worn LD on two occasions – 4 March and 15 September 1999. A Mascot record indicates also that investigators intercepted a telephone conversation Officer Q had with MSO16 on 16 July 1999. This intercept, and the notation about it, was authorised by a TI warrant that authorised the interception of MSO16's telephone service.⁶²¹

⁶¹³ NSWCC, Record of interview between Detective Inspector Burn, Detective Senior Sergeant Henry and 'Sea', 9 January 1999, p. 63.

⁶¹⁴ NSWCC, Record of interview between Detective Inspector Burn, Detective Senior Sergeant Henry and 'Sea', 9 January 1999, p. 62.

⁶¹⁵ NSWCC, Record of interview between Detective Inspector Burn, Detective Senior Sergeant Henry and 'Sea', 9 January 1999, p. 63.

⁶¹⁶ NSWCC Information Report, *Schedule of Debrief with SEA, 91 matters outlined*, reporting officer: Burn, 13 January 1999, attached Schedule of Debrief authored by Burn, p. 19, item 75. It appears, most likely by oversight, that Officer Q and the other Borlu officer are not named in the "police involved" column. Consequently, they are not named on the 105-111/1999 warrants.

⁶¹⁷ NSWCC, SOD080, Sea recounts the common practice of writing of parking tickets, speeding tickets, rorting overtime, travel allowances and the like, as at 3 September 2001, p. 1.

⁶¹⁸ NSWCC, individual profile, [Officer Q], report date: 22 October 2001, Profile prepared by: [a NSWCC officer], p. 3.

⁶¹⁹ NSWCC, Information Report, *LD tape review re send off at [a Sydney City restaurant] on 15/9/99*, reporting officer: Burn, 22 September 1999, p. 3.

⁶²⁰ NSWCC, SOD134, Management Issues and General Corruption Issues, as at 8 May 2002, p. 2.

⁶²¹ NSWCC, Mascot Chronology Database, Document ID 1183.

The first recording – on 4 March 1999 – was of a conversation that Sea had with Officer Q in a stairwell of the Manly Police Station and was recorded on his body worn LD. Sea and Officer Q were the only people present in the stairwell at the time.⁶²² Sea steered the conversation towards speeding fines at Borlu by asking:

Sea- Mmm, you haven't run for cover because [MSO3] got done for a driving matter, have ya?

[Officer Q] – I, er, when I first heard that I was

Sea – How did your's finish up, is that finished?

[Officer Q] – Oh yeah, that was finalised way back then.

Sea – Mmm.

[Officer Q] – When I first heard what it was for I was expecting a visit any day...⁶²³

The conversation was then interrupted by the arrival of another officer.

There is no evidence to suggest that Mascot investigators tasked or encouraged Sea to record Officer Q on this occasion. Officer Q was not named in the relevant LD affidavit or LD warrant in place at that time.⁶²⁴ Sea may have chosen to use the Body Worn LD on this occasion because he happened to see Officer Q alone in the stairwell and saw an opportunity to discuss matters relating to Borlu.

On 5 March 1999 Sea gave Burn and Henry the tape that contained the recording of this conversation.⁶²⁵ A junior Mascot officer was tasked with reviewing the recording, and summarised its content in an Information Report dated 16 March 1999 – initialled by Burn on 22 March 1999.⁶²⁶ This summary of the conversation was added to the Mascot Chronology.⁶²⁷ The Weekly Activity Report for the week of 8 March 1999 – signed by two other Mascot officers – noted that there had been “Electronic contact between Sea ... and [Officer Q]”.⁶²⁸ The recording was also transcribed,⁶²⁹ and details were included in other Mascot documents⁶³⁰ – one of which was disseminated to the PIC.

The second recording was on 15 September 1999. After attending a farewell function, Sea met with Officer Q and a number of Mascot targets at another venue. Sea recorded several conversations with people who were Mascot targets and named on the LD warrants in force at the time. Officer Q was recorded while he was taking part in some of these conversations.

A senior Mascot investigator listened to these recordings and, on 22 September 1999, summarised the content of a conversation that Sea had recorded which involved Officer Q:

[Officer Q] and [MSO9] then talk about their current job (Lebanese shootings/[name] etc)...[MSO9] then told Sea, [MSO16] and others about the forthcoming job on Friday (17/9/99) re the shooting at Lakemba and three murders – DIVULGING CONFIDENTIAL INFORMATION – SECURITY OF INFORMATION.⁶³¹

This conversation was not transcribed. However, this summary was used as a basis for Officer Q's inclusion in a further Mascot document under the heading: “Involvement of [Officer Q] in matters of interest to Operation Mascot”.⁶³² The information is recorded under a subheading ‘SOD134’, which indicates it was linked to an allegation in the Schedule of Debrief, and notes:

622 NSWCC Information Report, *LD contact between Sea and [Officer Q]* on 4 March 1999, reporting officer: [a junior Mascot officer], 16 March 1999, p. 1.

623 NSWCC Transcript of LD 085/99, Tape 99/65, 4 March 1999, pp. 5-6.

624 LD affidavit 081-087/1999; LD warrant 85/1999.

625 NSWCC, *Informant Contact Advice Report*, Contact by Burn and Henry with informant Sea, 5 March 1999.

626 NSWCC Information Report, *LD contact between Sea and [Officer Q] on 4 March 1999*, reporting officer: [a junior Mascot officer], 16 March 1999, p. 1.

627 NSWCC Chronology Listing, Document ID 423, 4 March 1999, p. 6.

628 NSWCC/SCU, Weekly activity report for week ending 8 March 1999, dated 11 March 1999.

629 NSWCC Transcript of LD 085/99, Tape No. 99/065, 4 March 1999.

630 NSWCC Chronology Listing, Document ID 423, 4 March 1999, p.6; NSWCC, SOD080, Sea recounts the common practice of writing off parking tickets, speeding tickets, roting overtime, travel allowances and the like; NSWCC/SCU, Weekly activity report for week ending 8 March 1999, dated 11 March 1999.

631 NSWCC Information Report, *LD tape review re send off at [a Sydney City restaurant] on 15/9/99*, reporting officer: Burn, 22 September 1999, p. 3.

632 NSWCC individual profile, [Officer Q], report date: 22 October 2001, Profile prepared by: [a NSWCC officer], p. 3.

[Officer Q] & [MSO9] recorded on SEA LD discussing a current job and divulging confidential information to others. [Officer Q] and [MSO9] talk about their current job (Lebanese shootings/[name] etc)...⁶³³

There are no further details recorded about the information that Officer Q is alleged to have disclosed. It is therefore unclear what misconduct he was alleged to have engaged in.

11.4.3 Resolution of allegations against Officer Q

On 22 August 2001, about two years after Officer Q was last mentioned in Mascot documents, a senior Mascot investigator assessed the viability of any further investigation of the first allegation against Officer Q about the speeding fine.⁶³⁴ It is not clear why this assessment was done at this time, although it may have been to assist with Mascot's preparation of information for the PIC's upcoming hearings.⁶³⁵

The senior investigator summarised the conversation that had been recorded between Sea and Officer Q on 4 March 1999, and commented that there was an "inference" that Officer Q "may have also had a problem with a driving matter" but that there was no specific reference to a "date, vehicle or attachment". The senior investigator recommended the investigation of this matter be discontinued as it would be difficult to resolve the allegation without these details – particularly given the passage of time – and because, if the matter were proved, at most "nothing further than managerial action would be contemplated".⁶³⁶

The second allegation against Officer Q, that he had divulged confidential information, remained open at this time⁶³⁷ and was subsequently referred to Strike Force Volta on 24 July 2002.⁶³⁸ Strike Force Volta determined that the allegation required no further action.⁶³⁹

11.4.4 Analysis

There are no records to suggest that Mascot investigators instructed Sea to record his conversations with Officer Q on either 4 March 1999 or 15 September 1999.

The first recording on 4 March 1999 was a clear and intentional use of a Body Worn LD in a situation where Sea did not have legal authority to do so. Officer Q was not named on any LD warrant at the time, and the circumstances of the recording do not fit within any of the exceptions listed in section 5 of the LD Act that authorise recordings without a warrant.

Although Mascot officers do not appear to have instructed Sea to record this private conversation of Officer Q, they were informed that Sea had done so on the day the recording occurred. Mascot records indicate that a number of Mascot officers then recorded and communicated details of the conversation. An issue arising is whether this constituted a breach of either section 6 of the LD Act (prohibition on communication or publication of a private conversation unlawfully recorded) or section 8 of the LD Act (possession of record of unlawfully recorded conversation). Both sections 6 and 8 are discussed in section 11.2.4.3, where it is noted that an element of both offences is that a person knew the recording they had in their possession or communicated to another person had been obtained in contravention of section 5 of the LD Act.

The conduct of Mascot staff in communicating and possessing records of Officer Q's conversation with Sea would have breached sections 6 and 8 of the LD Act if those officers had had the requisite knowledge. There is no evidence that any officer knew that the recording of Officer Q's private conversation on 4 March 1999 had been done in contravention of the LD Act. The junior Mascot officer who reviewed and reported on the 4 March 1999 conversation was tasked to do so by another officer, and could reasonably have assumed that it was

633 NSWCC individual profile, [Officer Q], report date: 22 October 2001, Profile prepared by: [a NSWCC officer], p. 3.

634 NSWCC Summary of SOD080, prepared by [a senior Mascot investigator], 22 August 2001.

635 NSWCC Information Report, 'Mascot' November PIC Hearing Plan Chart tabled at PIC on 22/10/2001, reporting officer: [a Volta officer], 24 October 2001, p. 1.

636 NSWCC Summary of SOD080, prepared by [a senior Mascot investigator], 22 August 2001, p. 2.

637 NSWCC individual profile, [Officer Q], report date: 22 October 2001, Profile prepared by: [a NSWCC officer].

638 NSWCC Involved Officer Report, [Officer Q], 30 September 2003.

639 NSWPF internal memorandum from [a Volta officer], Task Force Volta, 29 January 2004, p. 3.

a correct thing to do. The other Mascot officers who dealt with that recording did not subsequently become aware that Officer Q was recorded without being named on a warrant. As noted earlier in this chapter, the evidence before Operation Prospect is that LD warrants were not available to Mascot officers in the ordinary course of reviewing recordings or to NSWCC officers tasked with transcribing parts of recorded conversations. The NSWCC's policies, practices and procedures were also inadequate to ensure that breaches of sections 5, 6 and 8 of the LD Act would not occur in the course of Operation Mascot or could be identified and addressed. These have been identified as systemic failures in Mascot and NSWCC processes that are discussed in Chapter 16.

The second recording that Sea made on 15 September 1999 could be interpreted as an 'unintentional' recording under section 5(2)(d) of the LD Act, and not therefore in contravention of the LD Act. Sea appears to have been acting under LD warrants in force at the time in recording various Mascot targets who had attended a function that preceded the gathering at which the recording occurred. There is no evidence that Sea was tasked to approach Officer Q, which tends to confirm that there was no specific intention to record Officer Q on this occasion.

11.4.5 Recommendations

14. It is recommended under section 26(2) of the *Ombudsman Act 1974* that the NSW Crime Commission provide a written apology to Officer Q for unlawfully recording his private conversations in contravention of section 5 of the *Listening Devices Act 1984*.
15. It is recommended under section 26(2) of the *Ombudsman Act 1974* that the NSW Crime Commission destroy all recordings (and associated transcripts) it holds of the 4 March 1999 conversation.

11.5 Mascot references to Officer R and the Bourke/Burke mix-up

11.5.1 Newspaper article referring to Officer R

On 6 May 2013 journalist Neil Mercer published an article in the *Sydney Morning Herald* stating that the Mascot supporting affidavit for LD warrants 262-268 of 2000 had been shown to the *Sydney Morning Herald* and that parts of the affidavit were either fabricated or wrong.⁶⁴⁰ LD warrant 266/2000, but not the supporting affidavit, had become public a year earlier – as discussed in Chapter 13.

Mercer's article said the affidavit referred to a conversation on the Manly Corso between Sea and a person with the surname 'Bourke'. During this conversation, Mercer reported that Bourke described "[Officer R]'s involvement in the corrupt 'release of information' to another police officer which resulted in a drug trafficker escaping conviction".⁶⁴¹ In 2000 Officer R was an Assistant Commissioner of the NSWPF. Mercer contacted Bourke (now a retired police officer) who stated that he had never met Sea in Manly or at any other time and did not make the statement attributed to him.⁶⁴²

After the article, Operation Prospect received a complaint alleging that the information in Mercer's article apparently confirming that false information was contained in a sworn affidavit pointed to conduct which was, at its highest, serious criminal conduct and corruption by one or more Mascot officers – and at its lowest, serious police misconduct and incompetence.

640 Mercer, Neil. 'Bent police officer's pre-emptive strike', *Sydney Morning Herald*, 6 May 2013, p. 9.

641 Mercer, Neil. 'Bent police officer's pre-emptive strike', *Sydney Morning Herald*, 6 May 2013, p. 9.

642 Email from Bourke to Neil Mercer, *Sydney Morning Herald*, 16 April 2013.

11.5.2 Allegations about Officer R

In his debrief interviews with Mascot staff in January 1999, Sea mentioned that he had previously worked with Officer R at the North West Crime Squad Armed Hold Up Unit.⁶⁴³ Sea did not allege that Officer R was involved in any corrupt conduct.

Sea also said in his debrief interview that he and his close associates thought that Officer R had been blocking the promotion of officers from the 'old Break In Squad'.⁶⁴⁴ Those officers had been named in an affidavit from Task Force Ancrum as being the subject of allegations of 'verballing' or 'loading up' defendants they had arrested.⁶⁴⁵ Sea recounted that MSO16 had told him about a conversation with MSO3 – who was an old associate of Sea and one of Mascot's early and longstanding targets for investigation. MSO3 had told MSO16 of a plan to "basically take [Officer R] out of the play" and "throw a bit of mud on [Officer R] to try and take him down".⁶⁴⁶

Mascot received other information about Officer R over the course of the investigation that resulted in him being named in three SODs. These SODs were:

- SOD079 – noted that Officer R was "connected"⁶⁴⁷ to a person of interest who was the subject of an allegation and Mascot noted this information.
- SOD091A – noted that a conversation with a person with the surname 'Burke' occurred at Manly on 10 December 1999 "regarding [Officer R] and a leak of info involving [name] and [Officer R] re [an Australian Federal Police investigation]".⁶⁴⁸ SOD091A also noted a complaint by an offender that he had been verballled by police officers, and that Officer R had endorsed those officers' false police notebook entries.⁶⁴⁹
- SOD091B – mentioned a recorded conversation, in which a person alleged that a relative of Officer R may have been involved in the theft of a police car and that there was a possible cover up about this incident.⁶⁵⁰

11.5.3 Mascot activities relating to Officer R

Mascot records indicate that investigators did not take any action to investigate Officer R in relation to those allegations or any other matter during the covert stage of Mascot. He was not named as a person likely to be recorded by Sea in any Mascot affidavit or associated warrant, he was never recorded by any LD, and none of his telephone conversations were ever intercepted. The allegations about Officer R were not progressed until they were considered by Task Force Volta on 14 July 2003 (see section 11.5.4).

643 NSWCC, Record of interview between Detective Inspector Burn, Detective Senior Sergeant Henry and 'Sea', 9 January 1999, pp. 52-53.

644 NSWCC, Record of interview between Detective Inspector Burn, Detective Senior Sergeant Henry and 'Sea', commencing at 2.28 pm, 28 January 1999, p. 6.

645 NSWCC, Record of interview between Detective Inspector Burn, Detective Senior Sergeant Henry and 'Sea' commencing at 1.24 pm, 28 January 1999, p. 2.

646 NSWCC, Record of interview between Detective Inspector Burn, Detective Senior Sergeant Henry and "Sea", 28 January 1999, commencing at 2.28 pm, pp. 4-5.

647 NSWCC, SOD079, [two individuals] *murder investigation current. Sea suspects [a former NSWPF officer] possibly involved – on one occasion [MSO3] told Sea he had to visit [a former NSWPF officer] to give him a message from the boss. [Officer R] and [a former NSWPF officer] connected through the Breaking Squad [sic]*, as at 28 July 2014, p. 24.

648 NSWCC, SOD091A, Conversation with [name] at Manly on 10/12/99 regarding [Officer R] and a leak of information involving [name] and [Officer R] re [an Australian Federal Police investigation], 28 July 2014, p. 61.

649 NSWPF, Complaint number [number] – SOD091, SOD091A, SOD091B, DON037, DON038 & DON039 Finalisation report by [a Volta investigator], 11 April 2003, p. 2.

650 NSWCC, SOD091B, Conversation by [MSO8] where he tells about [Officer R's] son stealing a police car and being chased by police. Possible cover up, as at 28 July 2014, p. 61.

Officer R was nevertheless mentioned in the 'facts and grounds' paragraphs of 42 LD affidavits,⁶⁵¹ which detailed the reasons the LD warrants were sought. He was also mentioned in the facts and grounds paragraphs of six TI affidavits,⁶⁵² although his telephone was never the subject of any TI warrant.

The paragraphs that mentioned Officer R fell into three categories (the paragraphs were repeated multiple times). The first paragraph concerned a conversation between Sea and MSO8 on 25 May 1999. Sea recorded this conversation⁶⁵³ and Mascot later had part of the recording transcribed.⁶⁵⁴ Burn summarised the 'main points'⁶⁵⁵ from the recording in an Information Report dated the following day, including:

* [MSO8] *talks about the only time [MSO3] has spoken to him recently. He said it was when [MSO3] wanted [MSO8] to find things out about "[a NSWPF officer], ...[Officer R] and others, do the dirty things for him"*⁶⁵⁶

The first LD affidavit that named Officer R was sworn on 4 June 1999 and included a reference to this conversation:⁶⁵⁷

*About 1.25pm on 25 May 1999, [MSO8] visited [Sea] on the [Sea] premises. Their conversation was lawfully recorded by the [Sea] premises device. In the course of their conversation, [MSO8] used the words, or words to the effect "The only time [MSO3] has spoken to me recently was when he wanted me to find things out about [a NSWPF officer], [Officer R] and others, do the dirty things for him:" I suspect [a NSWPF officer] is [an Ancrum investigator] who was a Detective Sergeant formerly attached to Internal Affairs and who charged [MSO8] with Conspiracy to Pervert the Course of Justice). [Officer R] is an Assistant Commissioner of the New South Wales Police Service [...].*⁶⁵⁸

This paragraph was then included in nine further LD affidavits up to and including an affidavit sworn on 10 December 1999.⁶⁵⁹ Officer R was not named in any LD warrants associated with these affidavits.

The second paragraph that mentioned Officer R first appeared in a LD affidavit sworn by a Mascot investigator on 21 December 1999. This paragraph described a conversation about Officer R that had purportedly been held between Sea and "former NSWPS Inspector ... Bourke ... (retired in 1989)" at the Manly Corso on 10 December 1999, as follows:

*On 10 December 1999, [Sea] unexpectedly met and spoke with former police Inspector ... Bourke (retired in 1989) in The Corso, at Manly. Bourke engaged [Sea] in conversation regarding Assistant Commissioner [Officer R]. Bourke used words to the effect "I have the best brief on him." Bourke went on to describe Assistant Commissioner [Officer R's] alleged involvement in the release of information to [a] former police officer ... [who was] an associate of police drug target who was under investigation. As a result, the police drug target was warned of the police investigation, which ultimately failed. I suspect Bourke has information or evidence, which he believes, incriminates Assistant Commissioner [Officer R]. I suspect Bourke intended to indicate that he would use that information or evidence to protect himself, if necessary, from investigation or prosecution, or both.*⁶⁶⁰

651 LD affidavits 218-224/1999, 241-247/1999, 262-268/1999, 279-285/1999, 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, 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, 01/02271-02277, 01/02769-02775, 01/05255-05261, 01/05980-05986, 01/06753-06759, 01/07478-07482, and 01/08304-06308.

652 TI affidavits 140/2000, 149-154/2000, 169/2000, 02/005, 01/142, and 01/146-159.

653 NSWCC LD 186/1999, Tape T99/120, 25 May 1999; NSWCC LD 187/1999, Tape T99/121, 25 May 1999; NSWCC LD 188/1999, Tape T99/122, 25 May 1999.

654 NSWCC Transcript of LD 99/186-188, Tape 99/120, 25 May 1999, pp. 19-20.

655 NSWCC Information Report, *ELECTRONIC MEETING BETWEEN SEA AND [MSO8] ON 25/5/99*, reporting officer: Burn, 26 May 1999, p. 1.

656 NSWCC Information Report, *ELECTRONIC MEETING BETWEEN SEA AND [MSO8] ON 25/5/99*, reporting officer: Burn, 26 May 1999, p. 2.

657 LD affidavit 218-224/1999.

658 LD affidavit 218-224/1999, p. 17.

659 LD affidavits 241-247/1999, 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.

660 LD affidavit 447-456/1999, p. 21.

A total of 15 Mascot LD affidavits⁶⁶¹ sworn between 21 December 1999 and 14 September 2000 included both the first and the second paragraphs. The affidavits named Bourke as a person Mascot proposed to listen to or record, and the paragraph about the Manly Corso conversation appears to justify the application to record Bourke.

During this period, Mascot also prepared three of the six TI affidavits that mentioned Officer R.⁶⁶² These TI affidavits included the first paragraph. Officer R's telephone services were not the subject of any associated TI warrants.

The first paragraph was then dropped from any further affidavits. Between 5 October 2000 and 7 May 2001, Mascot prepared a further 12 LD affidavits⁶⁶³ that included the second paragraph. After that period, this paragraph was then not included in any further affidavits.

The third paragraph used by Mascot that mentioned Officer R was introduced in the facts and grounds of a TI affidavit on 4 July 2001:

On 7 April 2001, [MSO11] made an intercepted telephone call to [Sea] in which he said he believed that the PIC had targeted himself and [Sea] because they know "too much about all the top wigs and cover-ups." Further into that conversation, [MSO11] used words to the effect "We will be made to look crooked and corrupt and anything we say about [a NSWPF officer and Officer R] and the upper echelons won't be believed." I suspect "[a NSWPF officer and Officer R]" are respectively, Detective Superintendent [name] and Commander [Officer R].⁶⁶⁴

Between 4 July 2001 and 2 October 2001, this paragraph was included in three TI affidavits⁶⁶⁵ and five LD affidavits.⁶⁶⁶

11.5.4 Task Force Volta finalises the allegations about Officer R with no adverse findings

As noted above, on 14 July 2003 Volta reviewed the allegations and concluded that no adverse finding could be made against Officer R and that no further action should be taken.⁶⁶⁷ Officer R was advised by SCIA on 20 October 2003 that he was a subject officer in three matters during the course of Mascot and the subsequent Florida hearings – these were the allegations relating to the unauthorised use of a police vehicle, leaking of information and "a generalised allegation of corrupt activity". He was told that all were assessed as requiring "No further action" resulting in "No adverse findings" against him.⁶⁶⁸

The allegation that officers had verbalised an offender, in which Mascot noted Officer R as "connected" to one of these officers, was investigated further by the PIC through public hearings as part of another matter⁶⁶⁹ (see section 11.3). Officer R was not a subject of this investigation and was not named in the final report of that investigation.

661 LD affidavits 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.

662 TI affidavits 140/2000, 149-154/2000, and 169/2000.

663 LD affidavits 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, 01/02769 -02775, and 01/02271-02277.

664 TI affidavit 02/005, p. 16.

665 TI affidavits 02/005, 02/142, and 02/146-159.

666 LD affidavits 01/05255-05261, 01/05980-05986, 01/06753-06759, 01/07478-07482, and 01/08304-01/08308.

667 NSWPF, Operation Mascot/Florida Allegation Summary Report, 14 July 2003, pp. 46-47.

668 Letter from Acting Assistant Commissioner [name], NSWPF to [Officer R], NSWPF, 20 October 2003.

669 NSWCC Information Report, PIC advice received re SOD079, SOD172 & SOD231 – PIC to take carriage of matters, 26/3/03, reporting officer: [name], 22 March 2003.

11.5.5 ‘Bourke’ and ‘Burke’ mixed up in Mascot documents

LD affidavit 262-268/2000 – referred to in Mercer’s article in the *Sydney Morning Herald* – wrongly referred to ‘Bourke’ rather than ‘Burke’. There were actually two police officers with those different surnames but the same first name. They were wrongly referred to in a number of Mascot records, including in supporting affidavits and associated LD warrants.

11.5.5.1 References to Bourke and Burke (8 January 1999 to September 1999)

On 8 January 1999 Burn interviewed Sea in an initial debrief interview. The transcript of the interview stated that Sea discussed how he had worked on Task Force Pivot that started in about January/February 1989, and that “Bourke was to lead the inquiry”.⁶⁷⁰ In the original handwritten Schedule of Debrief of 13 January 1999 that summarised Sea’s interview, Burn recorded ‘Burke’⁶⁷¹ as one of the police involved in alleged misconduct at Task Force Pivot. Henry then compiled a list of nicknames in an Information Report of 3 February 1999, which included that ‘Bourkie’ was “Bourke, Former Inspector NSWPol”.⁶⁷²

LD affidavit 105-111/1999⁶⁷³ of 12 March 1999 included both ‘Bourke’ and ‘Burke’ as people whose private conversations may be recorded. Both were named in three of the LD warrants associated with this affidavit. This was the first time that either was included in a Mascot LD affidavit or warrant. Neither Bourke nor Burke was mentioned in the ‘facts and grounds’ paragraphs of LD affidavit 105-111/1999.

Operation Prospect has established that Bourke, a former Inspector with the NSWPF, left the NSWPF in February 1989.⁶⁷⁴ When Sea was interviewed by Burn on 8 January 1999, Sea would have been referring to Burke – who worked as an Inspector on Task Force Pivot. The transcript of that interview misspelt Burke’s name as ‘Bourke’. Burn, however, recorded the name correctly (Burke) in her handwritten Schedule of Debrief – but the misspelling that began in the transcript continued to occur in some later Mascot documents, and led to the inclusion of both Bourke and Burke in LD affidavit 105-111/1999.⁶⁷⁵

11.5.5.2 Incorrect reference to Bourke in relation to the meeting at Manly Corso

In the months before Sea’s conversation on 10 December 1999 at the Manly Corso, Mascot records indicated that Sea had begun to have contact with ‘Burke’. For example, on 26 October 1999 the Mascot chronology database recorded a meeting between Sea and Burke⁶⁷⁶ the previous day at Manly. An Information Report of 28 October 1999 also recorded that meeting as having occurred between Sea and Burke.⁶⁷⁷ The Report noted that Burke was mentioned in two events recorded on the Schedule of Debrief.⁶⁷⁸ Burke was in fact also mentioned in other events on the Schedule of Debrief.⁶⁷⁹

On 10 December 1999 Sea used a Body Worn LD to record a conversation he had at the Manly Corso and later that day he gave Burn and Henry a copy of the recording.⁶⁸⁰ That same day, Henry prepared an Information Report titled “Contact with Sea 10.12.99 re meeting with Bourke (10.12.99)”. It stated: “Sea provided a tape recording of an impromptu meeting captured with ... Bourke in the Manly shopping centre commencing 1:45pm.” The Information Report goes on to summarise excerpts from the recorded conversation, including the mention of Officer R.⁶⁸¹

670 NSWCC, Record of interview between Detective Inspector Burn, Detective Senior Sergeant Henry and ‘Sea’, 8 January 1999, pp. 27-28.

671 NSWCC Information Report, 13 January 1999, *Schedule of Debrief with Sea: 91 matters outlined*, reporting officer: Burn, 13 January 1999, p. 6.

672 NSWCC Information Report, *Debrief Sea 2.2.99*, reporting officer: Henry, 3 February 1999, p. 1.

673 LD affidavit 105-111/1999, p. 2.

674 PIC, *PODS Person profile for [name]*, accessed by NSW Ombudsman on 21 April 2016.

675 LD affidavit 105-111/1999, p. 2.

676 NSWCC, Mascot Chronology Database, Document ID 1609.

677 NSWCC Information Report, *Contact with Sea 26.10.99*, reporting officer: Henry, 28 October 1999.

678 NSWCC Information Report, *Contact with Sea 26.10.99*, reporting officer: Henry, 28 October 1999.

679 SODs 023, 91A, 100, and 170.

680 NSWCC Information Report, *Contact with Sea 10.12.99 re meeting with Bourke (10.12.99)*, reporting officer: Henry, 10 December 1999.

681 NSWCC Information Report, *Contact with Sea 10.12.99 re meeting with Bourke (10.12.99)*, reporting officer: Henry, 10 December 1999, p. 1.

One new entry in the Mascot Chronology Database included details of this conversation, identifying Bourke as the person who Sea recorded at Manly.⁶⁸² Another entry in the same database identified 'Burke' as the person who Sea recorded on this occasion.⁶⁸³

Three other Mascot records made between 10 December 1999 and 20 December 1999 also identified Burke as the person Sea spoke to at Manly. These were Burn's diary for 10 December 1999,⁶⁸⁴ the Weekly Activity Report for the week ending 13 December 1999,⁶⁸⁵ and the NSWCC Tape Log for T99/305 prepared on 13 December 1999.⁶⁸⁶

Certain other Mascot records from this period also referred to 'Burke' being involved in the conversation with Sea at Manly on 10 December 1999, including:

- The transcript of Sea's recording of the conversation on 10 December 1999. The date this transcript was prepared is unclear, but it does not seem to have been available to Mascot officers until after 21 December 1999.⁶⁸⁷
- An Information Report dated 18 January 2000 titled: 'Review of Listening device tape – conversation between Sea and ... Burke at Manly on Friday 10 December 99'.⁶⁸⁸

A memo was sent to a NSWCC solicitor sometime before 22 December 1999 requesting the addition of several names – including Bourke – and paragraphs for the rollover of a LD warrant that was due to expire on 24 December 1999.⁶⁸⁹ The NSWCC solicitor forwarded the memo to another NSWCC staff member on 22 December 1999.⁶⁹⁰ There is no author recorded on this memo and it is undated. However, it appears that a Mascot investigator wrote the memo on 20 December 1999 – as their Duty Book contains entries for that date that include the notations "attend to Sea rollover warrants [identifying reference] ... further attention to [identifying reference] until 4.30pm".⁶⁹¹

On 21 December 1999, the same Mascot investigator swore a LD affidavit that included Bourke as a person who would be listened to or recorded.⁶⁹² Bourke was named in three of the associated LD warrants. This was the second time that Bourke was named in a Mascot LD affidavit as a person to be listened to or recorded – he was first named in a Mascot LD affidavit on 12 March 1999.

Bourke was also mentioned in the 'facts and grounds' paragraphs of an affidavit sworn on 21 December 1999 – that is, the 'second paragraph' referred to in section 11.5.3.

The consistent use of 'Bourke' in both the memo to the NSWCC solicitor and the subsequent affidavit suggests that the Mascot investigator relied on the Information Report dated 10 December 1999, rather than checking against the tape log for T99/305 which referred to 'Burke'. Although this error should not have occurred and the Mascot investigator should have checked the tape log, that conduct was consistent with an established practice at Mascot of relying on the accuracy of documents prepared by other Mascot officers – such as information reports. This led to systemic failures that are discussed in Chapter 16. On the evidence before Operation Prospect, the Mascot investigator who swore the affidavit of 21 December 1999 was not aware of any information that should have caused a departure from this practice. The error led to Bourke being named in the affidavit instead of Burke – but it appears to have been a genuine error that resulted from adherence to an established practice at Mascot, and does not merit individual censure.

682 NSWCC, Mascot Chronology Database, Document ID 2095.

683 NSWCC, Mascot Chronology Database, Document ID 2031.

684 Diary, Catherine Burn, 10 December 1999.

685 NSWCC/SCU, *Weekly activity report for week ending 13 December 1999*, dated 4 January 2000.

686 NSWCC, Chronology Listing, Document ID 2031, 30 August 2001.

687 NSWCC Transcript of LD 403/1999, Tape 99/305, 10 December 1999.

688 NSWCC Information Report, *Review of listening device tape – conversation between Sea and [name] at Manly on Friday 10 December 99*, reporting officer: [name], 18 January 2000.

689 NSWCC internal memorandum from unidentified author, NSWCC to '[NSWCC solicitor]', NSWCC, date unknown.

690 Email from [NSWCC solicitor], NSWCC, to [a NSWCC staff member], NSWCC, 22 December 1999.

691 [Mascot investigator], Duty Book, D37831 Internal Affairs, 20 December 1999, p. 11.

692 LD affidavit 447-456/1999.

Bourke was then named as a person who would be listened to or recorded in a further 21 LD affidavits and 63 LD warrants, between 11 January 2000 and 22 January 2001.⁶⁹³ In total, he was named in this way in 28 Mascot LD affidavits and 69 LD warrants.

Bourke was also mentioned in the facts and grounds paragraphs of a further five affidavits, that were sworn between 12 February 2001 and 7 May 2001, although he was not named as a person whose private conversations would be listened to or recorded in these affidavits or their associated warrants. These affidavits included the second paragraph, regarding Sea's conversation with 'Bourke' on the Manly Corso on 10 December 1999.

Bourke was never recorded on any LD during the period of Mascot and his telephone communications were never intercepted.

11.5.5.3 Failure to identify the Bourke/Burke mix-up in annexure to memorandum of 13 April 2002

LD warrant 266/2000 began to circulate publicly in April 2002. Bourke was named on that warrant as a person whose private conversations could lawfully be recorded by a LD to be worn by Sea.

Between 13 and 15 April 2002 Mascot officers prepared a memo⁶⁹⁴ (signed by Burn) to brief the Acting Commander SCIA, Assistant Commissioner Brian Reith, for a meeting with the Police Minister scheduled for 15 April 2002. The memo included statistics and comments about the people named in LD warrant 266/2000. The annexure to this memo referred to 'Burke' as a subject of allegations that Mascot was investigating. The memo did not draw attention to the mix-up that occurred in the use of the names Bourke and Burke. This is discussed further in Chapter 13.

11.5.6 Mascot recordings of Burke

Burke was only ever named in one Mascot LD affidavit – LD affidavit 105-111/1999 – that was sworn on 12 March 1999. He was also named in three Mascot LD warrants associated with this affidavit. As with many other people named in that affidavit, Burke was named as a person to be listened to or recorded – but no reason or any other information was given to explain why he was named.

Sea recorded Burke on his LD three times during Mascot. The first occasion was during the conversation at the Manly Corso on 10 December 1999. He then recorded him on two subsequent occasions – 9 May 2000⁶⁹⁵ and 7 July 2000.⁶⁹⁶ Burke was not named on any LD warrant when those three recordings were made – although by this stage Mascot had added Bourke to its LD warrants.

Sea made the 9 May 2000 recording of Burke while he was recording the conversation of two other Mascot targets, who were named on the relevant LD warrant at the time.⁶⁹⁷ Sea's 7 July 2000 recording of Burke occurred while Sea was at a farewell event for another officer. Sea also recorded the conversations of other Mascot targets that attended the event.⁶⁹⁸ It is possible that on both occasions Sea intended to capture the conversations of the Mascot targets present, and that the recordings of Burke were incidental to that purpose.

693 LD warrants 012/2000, 013/2000, 014/2000, 019/2000, 020/2000, 021/2000, 036/2000, 037/2000, 038/2000, 047/2000, 048/2000, 049/2000, 074/2000, 075/2000, 076/2000, 095/2000, 096/2000, 097/2000, 112/2000, 113/2000, 114/2000, 130/2000, 131/2000, 132/2000, 151/2000, 152/2000, 153/2000, 178/2000, 179/2000, 180/2000, 200/2000, 201/2000, 202/2000, 219/2000, 220/2000, 221/2000, 245/2000, 246/2000, 247/2000, 266/2000, 267/2000, 268/2000, 288/2000, 289/2000, 290/2000, 317/2000, 318/2000, 319/2000, 342/2000, 343/2000, 344/2000, 366/2000, 367/2000, 368/2000, 395/2000, 396/2000, 397/2000, 01/00060, 01/00061, 01/00062, 01/00188, 01/00189, and 01/00190.

694 NSWPF internal memorandum from Acting Superintendent Catherine Burn, Acting Commander Special Crime Unit to Assistant Commissioner Brian Reith, Commander Special Crime and Internal Affairs, 13 April 2002.

695 NSWCC Information Report, *Review of Electronic Recording between Sea and other recorded on the 09.05.00*, reporting officer: [name], 1 June 2000, p. 2.

696 NSWCC Information Report, *Informant contact with Sea, Monday 10 July, 2000*, reporting officer: [a NSWCC officer and a NSWPF officer], 10 July 2000, pp. 1, 7, and 9.

697 NSWCC Information Report, *Review of Electronic Recording between Sea and other recorded on the 09.05.00*, reporting officer: [name], 1 June 2000.

698 NSWCC Information Report, *Informant contact with Sea, Monday 10 July, 2000*, reporting officer: [a NSWCC officer and a NSWPF officer], 10 July 2000.

11.5.7 Analysis

Bourke was not the subject of any allegations investigated by Mascot. His name was nevertheless included in 23 affidavits as a person whose private conversations would be listened to or recorded, 69 associated warrants, the facts and grounds paragraphs of five further affidavits, and many other Mascot documents between 12 March 1999 and 7 May 2001. He was never in fact recorded.

The inclusion of his name in those affidavits and warrants can only be explained on the basis of carelessness – the first misspelling of his name was perhaps an oversight that was repeated multiple times. The repeated error occurred because Mascot officers followed the prevailing practice of copying information directly from Information Reports into their affidavits, and then rolling over the text of those affidavits. As a result – once the name 'Bourke' found its way into an affidavit – the name was not checked against the original recording or the Schedule of Debrief. The initial error was compounded and Bourke became the victim of sloppy practice.

Bourke's name was spelt correctly in a number of Mascot records – particularly in the transcript of Sea's 10 December 1999 conversation, the tape log of the same, and the Information Report dated 18 January 2000 summarising the review of the transcript. This suggests that checking the source material before including information in the affidavit may have prevented the error from being brought into the 28 LD affidavits and 69 LD warrants that incorrectly named Bourke.

11.5.8 Recommendation

16. It is recommended under section 26(2) of the *Ombudsman Act 1974*, that the NSW Crime Commission provide a written apology to Bourke for incorrectly naming him as a person to be listened to or recorded in 23 listening device affidavits and 69 listening device warrants, and in the 'facts and grounds' paragraphs of five other affidavits.

Chapter 12. Investigations of Officers L and G

12.1 Chapter overview

This chapter examines the investigation by the Mascot Task Force of two NSWPF officers, Officer L and Officer G. The active phase in both investigations occurred mostly in 2001. By that time, Mascot was well progressed and had been underway for two years. PIC had also become more active in the investigation, with the Operation Florida public hearings due to commence in October 2001.

Some prominent themes in this chapter are similar to those in other chapters. In the case of Officer L, Mascot relied on using LD recordings as a key investigative tool – before other investigation options were thoroughly considered. An allegation against Officer L was also misrepresented in a Mascot affidavit and documents, and relevant exculpatory material was not included. These defects became a source of considerable grievance to both Officer L and some of his colleagues when the inaccuracies became known. A contributing element to the grievance was that Officer L was himself a Mascot officer – subjected to covert investigation and integrity testing by his fellow Mascot officers. Two related issues are whether the investigation of Officer L should have been undertaken elsewhere – for example, by the PIC – and whether Officer L and some of his colleagues inappropriately accessed internal information to learn more about Mascot’s investigation of him. Officer L was only named in one Mascot affidavit and warrant as a person likely to be recorded, and his conversations were only recorded on one occasion.

Officer G’s name first appeared in Mascot LD affidavits in February 2001, but Mascot’s investigation of him only gathered steam when an integrity test was planned in November of 2001. It was unclear at the time why he was identified for integrity testing. Officer G suspected that it was for personal reasons to do with a conflict of interests on the part of a NSWPF officer who had raised the idea. During the active period of investigation, Officer G was named in five affidavits and 15 associated warrants as a person likely to be recorded, and his name was mentioned in the body paragraphs of a further 29 affidavits. The only allegation against Officer G that was included in the affidavits was presented inaccurately. It seems that Mascot’s investigation delayed Officer G’s promotional progress. He was never recorded on any LD during Mascot.

Some of the evidence about Officers L and G that is considered in this chapter comes from an inquiry by Strike Force Tumen into the circumstances of both officers. Tumen was a NSWPF investigation formed in November 2001 to investigate allegations made by former undercover police officers about duty of care failures and mismanagement by the NSWPF Covert Operations Unit (as it was then known) and the SCIA. Tumen expanded its investigation in September 2002 to cover alleged interference in Mascot investigations and inappropriate use of integrity testing by Mascot.⁶⁹⁹ Tumen investigators interviewed several Mascot officers in 2002 about Mascot’s investigations of Officer L and Officer G, and made findings on these matters in 2003.⁷⁰⁰

12.2 The investigation of Officer L

Officer L joined the NSWPF in January 1990. After a period in 1998 in General Duties and the Detectives in Macquarie Fields, he was transferred in January 2000 to the Integrity Testing Unit (ITU) in SCIA. He remained there until 17 September 2001, when he was transferred to Operation Mascot.⁷⁰¹ Officer L remained at Mascot until September 2002.⁷⁰²

699 NSW Police Service, *Strike Force Tumen: CIS: [number] – covert file [number]*, 3 July 2003, p. 1.

700 NSW Police Service, *Strike Force Tumen: CIS: [number] – covert file [number]*, 3 July 2003, pp. 20-21, 25.

701 NSWPF, Record of interview between Detective Inspector Galletta, Detective Inspector Jenkins and [Officer L], 12 December 2002, pp. 3-4. NSWCC, Induction for Task Force Police and other officers, [Officer L], 17 September 2001.

702 NSWPF, Record of interview between Detective Inspector Galletta, Detective Inspector Jenkins and [Officer L], 12 December 2002, p. 4.

While Officer L worked in Mascot, it investigated an allegation that in 2000 he had tried to extort money from a known drug dealer, Mr T. This section examines Mascot's investigation of this allegation, which involved the use of a LD to record a conversation between Officer L and Mr T.

12.2.1 Allegation that a drug dealer (Mr T) was robbed by police

In August 2000 a known drug dealer told several people over the phone that police had stolen money from the premises of another drug dealer, Mr T. The names of the officers were not mentioned during these conversations. SCU within SCIA lawfully intercepted these telephone calls and passed the information on to Mascot, so that it could check whether the money might have been stolen by officers who were Mascot targets.⁷⁰³

Detective Sergeant Peter Seary, a Mascot investigator, listened to these intercepted calls. On 28 August 2000 he prepared an Information Report which stated: "Investigators believe that there were at least two police involved".⁷⁰⁴ One officer was described as being tall and the other as being shorter, with dark hair. Seary suggested that to positively identify the officers, "a comprehensive audit needs to be carried out regarding computer access, Local Area Command rosters, etc".⁷⁰⁵

On 29 August 2000, Jewiss carried out an audit of the Computerised Operational Police System (COPS) to assess which police officers, if any, had been accessing information about Mr T. He found that certain police officers had accessed information about Mr T's address and vehicles.⁷⁰⁶

Officer L was working at the ITU in August 2000 at the time the allegations were made. He was transferred to Mascot a year later on 17 September 2001 where he shared an office with Seary and another Mascot investigator, Officer V. On 1 October 2001 he assisted with the execution of a search warrant at Mr T's home – after Mr T was arrested for drug offences.⁷⁰⁷ Mr T was remanded at Silverwater Remand Centre pending a court hearing.

12.2.2 Mascot interviews Mr T

Mascot records indicate that later that month Mr T discussed with Mascot investigators whether they would recommend an inducement – such as a reduction in his sentence – in exchange for his cooperation with their investigation. Mr T's request was noted in a Detective Senior Constable's Duty Book for 25 October 2001:

*Speak with Det BURN re [Mr T] meeting. Meet with [Officer V] in Phillip St. Meet with [name] & con [sic]. Hypothetical info from [Mr T] discussed. Seeking 50% discount.*⁷⁰⁸

On 7 November 2001 Mr T was brought in to the NSWCC from Silverwater Remand Centre. He spoke with Tim O'Connor, who was then the NSWCC Assistant Director of Investigations. Mr T was given an inducement to cooperate with the NSWCC.⁷⁰⁹ The precise terms of the inducement are unknown, but it is clear that Mr T was seeking to reduce his sentence.

Mascot Detectives Seary, Officer V and another Mascot investigator also interviewed Mr T that day, and he provided information about the allegation that police officers had stolen money from his premises. Mascot transcribed the recording of this interview. Mr T stated that police had visited his premises on four occasions.

703 NSWCC Information Report, *Alleged theft of \$43,000 from [Mr T] by police on Friday 25 August 2000 at [address]*, reporting officer: Seary, 28 August 2000.

704 NSWCC Information Report, *Alleged theft of \$43,000 from [Mr T] by police on Friday 25 August 2000 at [address]*, reporting officer: Seary, 28 August 2000.

705 NSWCC Information Report, *Alleged theft of \$43,000 from [Mr T] by police on Friday 25 August 2000 at [address]*, reporting officer: Seary, 28 August 2000.

706 NSWCC Information Report, *COPS Audit of accesses upon information report I9340175 re [Mr T]*, reporting officer: Jewiss, 29 August 2000.

707 NSWPF Duty Book, D046200, [Officer L], 1 October 2001.

708 NSWPF Duty Book, D046197, [name], 25 October 2001, p. 21.

709 NSWCC Information Report, *Interview and debrief of [Mr T] in relation to large commercial supply of heroin re SOD144 and knowledge of police corruption associated with SOD144 & SOD172*, reporting officer: Seary, 8 November 2001.

On the first three visits they had stolen money. One of Mr T's associates was present on each occasion, but Mr T was not there at these times because he was in Romania.⁷¹⁰

On the fourth visit, Mr T stated that he and his brother-in-law were present when the officers visited his house. He stated that this occurred one night in June 2001.⁷¹¹ Two officers approached his house and he opened the door when they knocked. The officers showed him their police identification and he said he did not want to speak with them and closed the door.⁷¹² Ten to twenty minutes later they returned and Mr T explained:

...they said, [Mr T], we wanna talk with you, we want to sell some information, can you come outside? I said, no, I'm not going outside, and [Mr T's brother-in-law] went outside to them and they – they said, come on here it's a bit a light on – where I live, you know, that's where in the park there is the bench it's very dark there and we can start talking there, you know.⁷¹³

Mr T told Mascot that his associate had given him a description of the police who came on the first three visits. Mr T conveyed his associate's (very specific) description of those police to Mascot. His associate estimated the two officers' heights as "one ninety two (192) centimetre high and another one is about one eighty – eight two ...".⁷¹⁴

Mr T also described the police he had seen on the fourth visit – including that the smaller officer was wearing a tracksuit and the other was wearing a suit and tie.⁷¹⁵ Mr T appears to have assumed that the same police had attended on all four occasions. However, the Mascot officers clarified during the interview that he only saw the police on one occasion:

Q *... sorry – so, that was the last time you had dealings – or that was the only time you had dealings with these police?*

A: *Yeah, that was the only time when I saw them at my door.⁷¹⁶*

Mr T gave the following answer when asked why he believed they were police officers:

Q: *Did you believe that they were New South Wales Police?*

A: *I believe because they know everything, even when [name] was released and everything. They said – they talk with [name]. They know he'd been – he's been on parole, like they know everything.⁷¹⁷*

When Mr T was asked if he would recognise the two officers if he saw them again, he said:

I think so, yeah. It was a couple of months ago but if I see – maybe the pictures (indistinct) together and me and [Mr T's brother-in-law] surely wanna (indistinct).⁷¹⁸

On 8 November 2001 Seary prepared an Information Report that included a summary of the interview with Mr T:

The identity of the two police is unknown other than the following description:

- 1. Male, skinny build 192cm tall, brown hair, short neat and combed over from left to right at the front, 30-34 years old well dressed in a shirt and tie.*
- 2. Male more solid build, brown short No: 3 cut 180cm tall wearing track suit.⁷¹⁹*

710 NSWCC, Record of interview between Detective Sergeant Peter Seary and [Mr T], 7 November 2001, p. 4.

711 NSWCC, Record of interview between Detective Sergeant Peter Seary and [Mr T], 7 November 2001, pp. 15-16.

712 NSWCC, Record of interview between Detective Sergeant Peter Seary and [Mr T], 7 November 2001, p. 17.

713 NSWCC, Record of interview between Detective Sergeant Peter Seary and [Mr T], 7 November 2001, p. 17.

714 NSWCC, Record of interview between Detective Sergeant Peter Seary and [Mr T], 7 November 2001, p. 8.

715 NSWCC, Record of interview between Detective Sergeant Peter Seary and [Mr T], 7 November 2001, p. 18.

716 NSWCC, Record of interview between Detective Sergeant Peter Seary and [Mr T], 7 November 2001, p. 4.

717 NSWCC, Record of Interview between Detective Sergeant Peter Seary and [Mr T], 7 November 2001, p. 19.

718 NSWCC, Record of Interview between Detective Sergeant Peter Seary and [Mr T], 7 November 2001, p. 18.

719 NSWCC Information Report, *Interview and debrief of [Mr T] in relation to large commercial supply of heroin re SOD144 and knowledge of police corruption associated with SOD144 & SOD172*, reporting officer: Seary, 8 November 2001.

This information was a combination of Mr T's 'second hand' description from his associate about the first three visits, and Mr T's 'first hand' description of the police he had seen on the fourth visit. Seary's report did not make this clear. It also did not note the possibility that it may not have been the same two police officers on all four visits. In his later evidence to Operation Prospect, Mr T conceded that he had 'put the things together' and assumed they were all the same officers.⁷²⁰ However, an assessment of the information that Mr T had given to Mascot shows that this was only one possible conclusion.

Seary's report did not include Mr T's comment that he and his brother-in-law might be able to identify the two officers if they were shown photographs. Mascot did not follow up this potential investigative step by conducting any photographic identification process with Mr T, his associate (who was no longer in the country) or his brother-in-law. Operation Prospect has been unable to locate any transcripts of interview, Information Reports, minutes, memos or other documentation that indicates that Mascot spoke with Mr T's brother-in-law about the thefts.

12.2.3 Mr T identifies Officer L

On 6 December 2001 Seary and Officer V interviewed Mr T again. Mr T voluntarily provided further information to Mascot about police corruption.⁷²¹ In this interview, he identified Officer L as one of the officers who had tried to extort money from him in June 2001.

The only record of this Mascot interview with Mr T on 6 December is a summary that Seary prepared for an Information Report dated 7 December 2001. When interviewed in 2002 by investigators from Strike Force Tumen, Seary stated that – to the best of his knowledge – only notes were taken of the interview.⁷²² Operation Prospect has not been able to locate any other record of the interview, such as a transcript or statement by Mr T.⁷²³

According to Seary's summary, during the interview Mr T stated that when police searched his house on 1 October 2001 they failed to find five ounces of heroin he had hidden in the house.⁷²⁴ Mr T also stated that when he was last at Central Local Court (on 20 November 2001), Seary and another officer had come to see him in the cell complex about another matter. Mr T said the officer with Seary that day was one of the police who had come to his house on or about 7 June 2001, and had tried to extort money from him in return for information.⁷²⁵ Seary noted in his summary that the officer who accompanied him to the cell complex on 20 November 2001 was Officer L.

Seary also recorded that Mr T stated that his brother-in-law "had indicated that the two police on that night were the same police responsible for the theft of monies from ... [Mr T's associate] ... on three occasions".⁷²⁶ That comment conflicts with Mr T's earlier statement on 7 November 2001 that it was his associate who saw the police officers on the earlier three visits. There was no mention of his brother-in-law being present on those three occasions. Seary's summary of the interview on 6 December 2001 did not note this apparent conflict between Mr T's two accounts.

Seary's summary of the 6 December 2001 interview with Mr T then stated:

[Mr T] was questioned about his knowledge of the police who came to his house and spoke with him on or about the 7 June 2001, and he stated firstly that he was about 80% sure that it was that officer [Officer L] then

720 Ombudsman Transcript, [Mr T], 3 July 2014, p. 10.

721 NSWCC Information Report, *Further information provided by [Mr T] in relation to possible identity of police involved in suspected corruption relevant [sic] to SOD172*, reporting officer: Seary, 7 December 2001.

722 NSWPF, Record of interview between Inspector Gary Merryweather, Detective Chief Inspector Robert Norval and Detective Senior Constable Peter Seary, 23 December 2002, p. 77.

723 NSWPF file note, *Confer with [Officer V] re [Officer L] affidavit*, 18 November 2002.

724 NSWCC Information Report, *Further information provided by [Mr T] in relation to possible identity of police involved in suspected corruption relevant [sic] to SOD172*, reporting officer: Seary, 7 December 2001.

725 NSWCC Information Report, *Further information provided by [Mr T] in relation to possible identity of police involved in suspected corruption relevant [sic] to SOD172*, reporting officer: Seary, 7 December 2001.

726 NSWCC Information Report, *Further information provided by [Mr T] in relation to possible identity of police involved in suspected corruption relevant [sic] to SOD172*, reporting officer: Seary, 7 December 2001, p. 1.

changed that to 90 – 95% sure. He said that he was the smaller one of the two Police that had been wearing a blue tracksuit on the night who had not spoken to [Mr T].

[Mr T] was asked to describe the height of both police who came to his house and he gave them as 195cm and 180cm respectively. This description was the same as the one given by him in an ERISP interview at the NSW Crime Commission on the 7th November 2001 that related to police corruption, where he described the two police as 192 and 182 cm tall. The second one was the shorter one who was stockier and had short or shaved brown hair and wearing a blue tracksuit. The taller one who did all the talking was wearing a shirt and tie and had brown hair.⁷²⁷

Seary's summary did not make it clear that when Mr T had described the heights as 195cm and 180cm tall in his interview on 7 November 2001, he was passing on 'second hand' information from his associate. His associate was present at the first three visits and had discussed the height of the two police officers with Mr T. Mr T was not present at those visits and could not provide a first-hand description. He also was not certain that the same officers conducted all four visits. Seary's summary did not make those points clear.

12.2.4 Mascot develops an investigation strategy

After the interview between Mr T, Seary and Officer V, Mascot officers held discussions the same day about how to investigate the allegation against Officer L.⁷²⁸ The Duty Book of Detective Senior Constable Paul McDonald (a Mascot investigator) for 6 December 2001 states that, after lunch, he conferred with Seary and Officer V – and then with Detective Inspector Greg Randall and Standen.⁷²⁹ At the time, Randall was acting in Dolan's position in the NSWPF (as Commander SCU) and Standen was the Assistant Director, Investigations in the NSWCC.

Randall's Duty Book for 6 December 2001 confirms his briefing with McDonald, and that he then talked with Standen, emailed Andrew Scipione (Commander of SCIA at the time) and conferred with Burn.⁷³⁰

Burn's Duty Book entries indicate that she was not in the NSWCC offices that day, but that she conferred with both McDonald and Randall.⁷³¹

From that point Mascot's investigation proceeded quickly, with the following steps occurring the next day on 7 December 2001:

- Seary summarised the interview with Mr T of 6 December 2001.⁷³²
- A meeting of Mascot officers decided to investigate – by arranging for Mr T to have a 'controlled' meeting with Officer L, where Mr T would raise the allegation with Officer L and Officer L's response would be recorded using a LD.
- Seary prepared the relevant LD affidavit and obtained a LD warrant.
- The 'controlled' meeting occurred and Mr T's discussion of the allegation with Officer L was recorded, while Mascot officers listened to the recording in an adjacent room.

Before those steps are separately discussed, two issues will be noted that were raised by several former Mascot officers in their evidence to Operation Prospect. Briefly, their evidence questioned the suitability of the strategy Mascot was adopting plus they gave conflicting accounts about who made the decision to pursue this strategy.

727 NSWCC Information Report, *Further information provided by [Mr T] in relation to possible identity of police involved in suspected corruption relevant [sic] to SOD172*, reporting officer: Seary, 7 December 2001, pp. 1-2.

728 NSWPF Duty Book, D044190, P. Seary, SCIA, 7 December 2001, p. 93.

729 NSWPF Duty Book, D0467936, P. McDonald, December 2001, p. 17.

730 NSWPF Duty Book, D043945, G. Randall, 6 December 2001, p. 53.

731 NSWPF Duty Book, D044510, C. Burn, 6 December 2001, p. 74.

732 NSWCC Information Report, *Further information provided by [Mr T] in relation to possible identity of police involved in suspected corruption relevant [sic] to SOD172*, reporting officer: Seary, 7 December 2001.

12.2.4.1 Suitability of the investigation strategy

Several former Mascot officers gave evidence to Operation Prospect that Officer L looked significantly different to the description of the officers that Mr T had provided.⁷³³ They described Officer L as balding, with a height of about 5 foot 8 inches (173cm) or shorter and a stocky build.⁷³⁴

Seary agreed in evidence that Officer L could not possibly fit the 192cm tall description that Mr T gave, and may not fit the asserted height of the other officer.⁷³⁵ He agreed that it would have been an obvious thing to have Mr T's brother-in-law come in and see if he could assist with an identification, but stated: "I don't recall doing that".⁷³⁶ He agreed that Mr T had in effect offered in his interview in November 2001 to do a photo identification process and to obtain his brother-in-law's cooperation to do the same.⁷³⁷

Seary also told Operation Prospect that he was aware that criminals can make allegations about a police officer when, like Mr T, they are seeking a reduced sentence. He believed that he would have had in mind the possibility that Mr T was lying about Officer L,⁷³⁸ but he could not remember specifically what he was thinking at the time.⁷³⁹

Officer V was present with Seary when Mr T first made the allegation against Officer L on 6 December 2001. When that allegation was made, Officer V was not initially sure who Mr T meant. Officer V told Operation Prospect that when Seary told him it was Officer L, his reaction was "Oh, please". He continued:

*You know, Officer L had no connections to, um, Croydon Park. He'd worked in the Campbelltown area. Um, he'd done some undercover work. He'd been Internal Affairs. You know, he had no immediate connections. Officer L was a short five foot tall receding bald man with a – with a goatee beard and he's described these two guys as six foot tall, you know, nothing like the description at all. So I've just gone, oh give me a break, you know, please. And we said, how – how, you know sure are you? He said, oh, 80% sure.*⁷⁴⁰

Officer V assumed that Mr T's partial identification would be the end of the matter, stating: "I walked away from that meeting with [Mr T] going, it's not an identification. He's pulling this out of his bum, you know, 'cause he wants to please us and it's really going nowhere".⁷⁴¹ Officer V stated that he then sat in on a meeting with Seary and Burn, at which Seary said:

*... he's identified [Officer L] as the – as the guy. And I've [Officer V] gone, "Hang on a minute. No, he hasn't. He said he was 80% sure." I said, "That's not an ID. It's a partial ID." And then he said – I said, "Hang on a minute. He's provided this description. This is what [Officer L] looks like."*⁷⁴²

Officer V argued that the allegation could have been resolved swiftly, without the need for LDs or an integrity testing scenario:

*I said, "Before we'd even look at this, you could knock this out really quickly with some really basic inquiries. The dates that we've got. [Officer L] was here at the office, you know, when some of these incidents have occurred. We can go to [Officer L]'s duty book and show that he was in, say for instance, Manly on those days at the time when the – it – it would have occurred. And you could eradicate him from this inquiry in five seconds flat."*⁷⁴³

733 Ombudsman Transcript, [a Mascot officer], 14 April 2014, p. 85; Statement of Information, (Interview), [Officer V], 27 August 2013, p. 58; Ombudsman Transcript, Catherine Burn, 19 November 2014, p. 2926.

734 Ombudsman Transcript, Peter Seary, 5 August 2014, pp. 1093 and 1102; Statement of Information, (Interview), [Officer V], 27 August 2013, p. 58; Ombudsman Transcript, Catherine Burn, 19 November 2014, p. 2917.

735 Ombudsman Transcript, Peter Seary, 5 August 2014, pp. 1115-1116.

736 Ombudsman Transcript, Peter Seary, 5 August 2014, p. 1117.

737 Ombudsman Transcript, Peter Seary, 5 August 2014, p. 1117.

738 Ombudsman Transcript, Peter Seary, 5 August 2014, p. 1099.

739 Ombudsman Transcript, Peter Seary, 5 August 2014, p. 1099.

740 Statement of Information, (Interview), [Officer V], 27 August 2013, p. 58.

741 Statement of Information, (Interview), [Officer V], 27 August 2013, p. 58.

742 Statement of Information, (Interview), [Officer V], 27 August 2013, p. 58.

743 Statement of Information, (Interview), [Officer V], 27 August 2013, p. 58.

Officer V gave evidence that he was then told by Burn that – because he car pooled with Officer L every day – he was not to have anything further to do with the investigation. Officer V said that he “clearly told [Burn] the faults” in relation to the allegation made against Officer L.⁷⁴⁴

Burn disputes Officer V’s evidence that a meeting occurred between both of them and Seary. Her Duty Book entries for 6 December 2001 indicate that she was not in the office that day and received calls only from McDonald and Randall.⁷⁴⁵ There is no other documentary record of such a meeting being held, or of a discussion between Officer V and Burn on that date.

McDonald said that there was a sense of urgency at Mascot about resolving allegations against its members – including the allegation made by Mr T:

*Whether it, um, someone was alleging that anyone involved in covert investigation is, um, not squeaky clean. I think there was a – a culture of, um, we must be squeaky clean. So if we’ve got a bad apple that’s (sic) excise it straight away.*⁷⁴⁶

McDonald’s view was that preliminary inquiries (such as a review of Officer L’s Duty Book) should have been done before the operation,⁷⁴⁷ and that “I think there could have been more done before we go straight to a LD”.⁷⁴⁸ He also shared Officer V’s view that it was inappropriate to have an affidavit prepared by a person (Seary) who sat next to the target person (Officer L).⁷⁴⁹

When Strike Force Tumen interviewed Burn on 2 December 2002 about Mascot’s strategy, she was asked “Why was the LD run so quickly?” She replied:

*Well my understanding is there was a meeting with Phillip Bradley [Commissioner of the NSWCC], Greg Randall, probably Mark Standen [Assistant Director of the NSWCC], I can’t recall. Ah where it was agreed that we had the opportunity. Information had come out, we had the opportunity to act quickly and that’s why it was acted upon quickly.*⁷⁵⁰

Burn was then asked: “Was it because they believed that [Officer L] could have been a security risk? Is that one of the major factors, or was it [unintelligible]”.⁷⁵¹ She replied:

*Oh that would have been a factor. Oh it would have been a factor. You have to quite quickly determine where you stand with him. Um, it would have been a factor for sure. I actually can’t recall who made the final decision to run it, but. I don’t know if it was me or not. Regardless, but that would have been a factor, what are we gunna do with him.*⁷⁵²

On 19 November 2014 Operation Prospect asked Burn a range of questions about the quality of the information that the strategy to investigate Officer L was based on. Burn agreed that Officer L did not fit either of the descriptions given by Mr T of 180cm or 192cm height.⁷⁵³ She could not explain why Mascot considered Officer L was the officer identified by Mr T, given the discrepancies between Officer L’s physical appearance and the description Mr T had given about the two police who had come to his house.⁷⁵⁴

744 Statement of Information, (Interview), [Officer V], 27 August 2013, p. 58.

745 Burn, C, Submission in reply, 25 September 2015, p. 22

746 Statement of Information, (Interview), Paul McDonald, 11 March 2014, p. 115.

747 Statement of Information, (Interview), Paul McDonald, 11 March 2014, p. 114.

748 Statement of Information, (Interview), Paul McDonald, 11 March 2014, p. 117.

749 Statement of Information, (Interview), Paul McDonald, 11 March 2014, pp. 116-117.

750 NSWPF, Record of interview between Detective Inspector Mark Galletta, Detective Inspector Glenn Jenkins and Detective Superintendent Catherine Burn, 2 December 2002, p. 56.

751 NSWPF, Record of interview between Detective Inspector Mark Galletta, Detective Inspector Glenn Jenkins and Detective Superintendent Catherine Burn, 2 December 2002, p. 56.

752 NSWPF, Record of interview between Detective Inspector Mark Galletta, Detective Inspector Glenn Jenkins and Detective Superintendent Catherine Burn, 2 December 2002, pp. 56-57.

753 Ombudsman Transcript, Catherine Burn, 19 November 2014, p. 2922.

754 Ombudsman Transcript, Catherine Burn, 19 November 2014, p. 2925.

Burn agreed that allegations by criminals facing incarceration for significant drug crimes, as Mr T was at the time, should be treated with circumspection.⁷⁵⁵ When asked if in retrospect it was appropriate to conduct an investigation targeting Officer L – on the basis of the information received and in all the circumstances – she replied:

*Yeah. Again, I guess, you know, looking back on it now I just – looking back, yes, when you look at all those documents I've looked at, yes. But I think whatever happened on the Thursday, the day before the integrity test, I have no knowledge of. But when I got there on the Friday and was briefed by the relevant people, it was a decision that this is what was going to happen and I guess under the circumstances at the time it seemed reasonable.*⁷⁵⁶

12.2.4.2 Who decided on the strategy?

Operation Prospect received conflicting evidence about who decided on the strategy of recording a meeting, described in Mascot records as a 'controlled meeting', between Mr T and Officer L on a LD (although the meeting was not a controlled operation).⁷⁵⁷

The investigative strategy was discussed at a meeting on 7 December 2001 between Randall,⁷⁵⁸ Burn, Seary and McDonald (who was Seary's acting supervisor at the time).⁷⁵⁹ Operation Prospect received evidence about the role played by each of those four people and others.

Records show that Seary was clearly involved in the strategy. He wrote the Information Reports setting out the background to the strategy, and he was the deponent of the supporting affidavit for the LD used in the controlled meeting. Seary's Duty Book for 7 December 2001 records that he was on duty at 7:30 am and he took the following actions:

*Attend checks of records, confer Burn and McDonald re integrity test ... confer other records and gather docs then brief Randall, Burn, McDonald then brief Neil Owen [lawyer at the NSWCC] obtain LD so engaged to 11am.*⁷⁶⁰

Later that day, Seary noted:

*... briefing with Mark Standen, Cath Burn, Greg Randall and Paul McDonald re: meeting with [Mr T] and [Officer L]. So engaged with McDonald brief [Mr T] then transfer him to room 4 with LD. Then get [Officer L] and go to room 4 with [Mr T]. Conduct test. So engaged, then take [Mr T] to Room 2 debrief same, then confer Burn re: same.*⁷⁶¹

Seary told Operation Prospect he did not make the decision to escalate the matter to the stage of using a LD, although he had told somebody more senior about the serious allegation.⁷⁶² He further explained:

Q: *Alright, you remember now that you were the one that did the listening device application?*

A: *Yes, I did.*

Q: *Can we take it that you would have only done that if you were told that you needed to do it?*

A: *Yes.*

Q: *Alright, you wouldn't have just said to your managers, "I want to do this. I'm going to do this." You would have relied on them telling you how it should proceed?*

A: *That's correct.*⁷⁶³

⁷⁵⁵ Ombudsman Transcript, Catherine Burn, 19 November 2014, p. 2931.

⁷⁵⁶ Ombudsman Transcript, Catherine Burn, 19 November 2014, p. 2931.

⁷⁵⁷ *Law Enforcement (Controlled Operations) Act 1997*.

⁷⁵⁸ NSWPF, Record of interview between Detective Inspector Jenkins, Detective Inspector Merryweather and Detective Inspector Greg Randall, 6 December 2002, pp. 54-55.

⁷⁵⁹ NSWPF, Duty Book, D044510, C. Burn, SCU, 7 December 2001, p. 75.

⁷⁶⁰ NSWPF Duty Book, D044190, P. Seary, SCIA, 7 December 2001, p. 93.

⁷⁶¹ NSWPF Duty Book, D044190, P. Seary, SCIA, 7 December 2001, p. 93.

⁷⁶² Ombudsman Transcript, Peter Seary, 5 August 2014, pp. 1099-1100.

⁷⁶³ Ombudsman Transcript, Peter Seary, 5 August 2014, p. 1101.

Seary said that, once he passed the matter on to senior police, his role was simply to “facilitate, get the warrant and facilitate the meeting”.⁷⁶⁴ He was unable to say who told him to take out the LD warrant, but he recalled Randall being involved and possibly Burn. He said he did not think that Dolan was involved.⁷⁶⁵

McDonald was interviewed by Operation Prospect. He stated that he was acting in a more senior role on 6 December 2001 and, as Seary’s acting supervisor, Seary briefed him that Mr T had made the allegation about Officer L. He thought that Seary may have told him about the allegation and he passed it on to Burn. He stated that he had a “peripheral” role and he was acting under Burn’s direction.⁷⁶⁶

Burn was not on duty at Mascot on 6 December 2001.⁷⁶⁷ She submitted that she did not have any role in planning the strategy and played a minimal role in deploying it.⁷⁶⁸ Her view was that the key developments took place on 6 December. She was aware of the allegation against Officer L – as indicated by the phone calls she had that day from McDonald and Randall, and the note in her diary for 6 December: “[Mr T] – [Officer L] – 5 grams of heroin”, and directly underneath the names “Seary, [Officer V]”.⁷⁶⁹ She submitted that when she returned to Mascot on 7 December 2001, the plan for the controlled meeting and to bring Mr T from the correctional facility had already been set in motion. It was also clear, she submitted, that people more senior to her were at least notified of the allegation on 6 December – notably Randall, Standen and Scipione. Her view was that, “As people senior to me had decided on this course of action, it was entirely reasonable for me to assist in carrying it out”.⁷⁷⁰ Burn denied that McDonald was acting under her direction, as she was off-site on 6 December 2001.⁷⁷¹ She also pointed to evidence given by Seary in 2002 to Operation Tumen in which he listed the parties involved as himself, McDonald, Randall, Scipione, Bradley and the PIC – but not her.⁷⁷²

Burn’s Duty Book entry for 7 December 2001 noted: “Confer with McDonald re [Mr T/Officer L] matter. Attend to affidavit re same”, and later that day “Review re [Mr T] operation”.⁷⁷³ Operation Prospect showed Burn an Information Report she compiled on 11 December 2001.⁷⁷⁴ She agreed that she monitored the integrity test on Officer L and activated the devices that recorded the conversations.⁷⁷⁵

Randall gave evidence about this investigation both to Strike Force Tumen in 2002 and to Operation Prospect in 2014. Randall began work at Mascot as a Team Leader on 29 October 2001, not long before Mr T made the allegation about Officer L. He was relieving Superintendent while Dolan was on leave on 6 and 7 December 2001, when the strategy to investigate Officer L was developed.⁷⁷⁶

In 2002 Randall gave evidence to Tumen that – either late on 6 December or early on 7 December 2001 – he was called to Bradley’s office.⁷⁷⁷ He said that Bradley and Burn had already decided on an investigative strategy that required Mr T being recalled to the NSWCC and Officer L being put in a room with him to generate a conversation.⁷⁷⁸

764 Ombudsman Transcript, Peter Seary, 5 August 2014, p. 1118.

765 Ombudsman Transcript, Peter Seary, 5 August 2014, pp. 1101-1102.

766 Statement of Information, (Interview), Paul McDonald, 11 March 2014, p. 110.

767 NSWPF Duty Book, D044510, C. Burn, 6 December 2001, p. 74.

768 Burn, C., Submission in reply, 25 September 2015, Appendix 3, pp. 20-21.

769 NSWPF, Diary, Catherine Burn, 6 December 2001.

770 Burn, C. Submission in reply, 25 September 2015, Appendix 3, p. 22.

771 Burn, C, Submission in reply, 25 September 2015, p.22

772 Burn, C, Submission in reply, 25 September 2015, p.23.

773 NSWPF, Duty Book, D044510, C. Burn, SCU, 7 December 2001, p. 75.

774 NSWCC Information Report, *Continuity of listening device tapes re [Mr T]/[Officer L] – Operation Botany*, reporting officer: Burn, 11 December 2001.

775 Ombudsman Transcript, Catherine Burn, 19 November 2014, p. 2930.

776 NSWPF, Record of Interview between Detective Inspector Jenkins, Detective Inspector Merryweather and Inspector Greg Randall, 6 December 2002, p. 51.

777 NSWPF, Record of Interview between Detective Inspector Jenkins, Detective Inspector Merryweather and Detective Inspector Greg Randall, 6 December 2002, p. 56.

778 NSWPF, Record of interview between Detective Inspector Jenkins, Detective Inspector Merryweather and Detective Inspector Greg Randall, 6 December 2002, p. 56.

*Phillip Bradley's opinion was, we can't afford to have a, you know, an officer with a cloud hanging over his head on this particular type of investigation. The whole investigation could come crashing down if there is a question mark on the integrity of the officers here, so he was very keen to get this strategy in place, to get [Mr T] in and see what was generated. He then rang Terry Griffin the Commissioner of PIC, and told him what he was doing. He said that this is the allegation that's come up, and I want our people here to do it.*⁷⁷⁹

Randall told Tumen investigators that he was briefed about the allegation, possibly by Burn and McDonald.⁷⁸⁰ Following this, he emailed Scipione to advise him of the allegation and that he (Randall) knew Officer L and did not consider the allegation to be likely. Randall said that in his email he advised Scipione that Mascot would review Officer L's Duty Book and mobile telephone location data to determine whether he was in the relevant area on the day. Scipione acknowledged Randall's email and asked to be kept informed.⁷⁸¹ Randall said that, at the time of the controlled meeting, Officer L was about to go on two weeks leave.⁷⁸² Randall agreed that the reason these actions were taken so quickly was because Bradley saw Officer L as a security risk.⁷⁸³

In April 2014 Randall told Operation Prospect that he thought the strategy by Burn and Bradley "was a bit over the top" – but the prevailing view was that these allegations could not be allowed to linger.⁷⁸⁴ He observed that he was not sure why Burn did not discuss the strategy with him before speaking with Bradley, and conjectured that maybe she thought she had ownership of the investigation.⁷⁸⁵ Randall's view was that "when you've got [Burn and Bradley] saying 'This is what we're going to do,' and they run it past the Commissioner of PIC and all that, it – it wasn't much I could do".⁷⁸⁶ Even though he was at that stage Acting Commander of the SCU, his evidence was that he felt somewhat overridden.⁷⁸⁷

In his interview with Tumen investigators, Randall also observed that he was happy to apply the normal investigative process and "then go from there" – but he knew that Bradley, Burn (to a certain extent) and possibly Griffin (of the PIC) wanted to use the strategy of the controlled meeting. He thought this was due to the publicity about Mascot at the time and "a bit of hysteria",⁷⁸⁸ and that Mascot wanted this matter resolved as soon as possible. He also commented: "I guess the strategy they used was a legitimate strategy to put it to bed within a day rather than wait for weeks to attain this other information."⁷⁸⁹

Randall could not recall the exact source of the publicity he had been referring to, but suggested it may have been the arrest of Manly detectives.⁷⁹⁰ This seems a plausible explanation, as there were media reports in October 2001⁷⁹¹ about the PIC's public hearings as part of Operation Florida, which had exposed the corrupt activities of Manly Detectives MSO2, MSO18 and MSO23.

779 NSWPF, Record of interview between Detective Inspector Jenkins, Detective Inspector Merryweather and Detective Inspector Greg Randall, 6 December 2002, pp. 56-57.

780 NSWPF, Record of interview between Detective Inspector Jenkins, Detective Inspector Merryweather and Detective Inspector Greg Randall, 6 December 2002, p. 54.

781 NSWPF, Record of Interview between Detective Inspector Jenkins, Detective Inspector Merryweather and Detective Inspector Greg Randall, 6 December 2002, p. 57.

782 NSWPF, Record of Interview between Detective Inspector Jenkins, Detective Inspector Merryweather and Detective Inspector Greg Randall, 6 December 2002, p. 56.

783 NSWPF, Record of interview between Detective Inspector Jenkins, Detective Inspector Merryweather and Detective Inspector Greg Randall, 6 December 2002, pp. 63-64.

784 Ombudsman Transcript, Greg Randall, 10 April 2014, pp. 164-165.

785 Ombudsman Transcript, Greg Randall, 10 April 2014, pp. 165-166.

786 Ombudsman Transcript, Greg Randall, 10 April 2014, p. 169.

787 Ombudsman Transcript, Greg Randall, 10 April 2014, pp. 169-170.

788 NSWPF, Record of interview between Detective Inspector Jenkins, Detective Inspector Merryweather and Detective Inspector Greg Randall, 6 December 2002, pp. 64-65.

789 NSWPF, Record of interview between Detective Inspector Jenkins, Detective Inspector Merryweather and Detective Inspector Greg Randall, 6 December 2002, p. 65.

790 Ombudsman Transcript, Greg Randall, 10 April 2014, pp. 174-175.

791 Peter Lloyd, ABC Local Radio, 'Manly detective admits to corruption', *ABC PM*, 16 October 2001; ABC, "Directing traffic: the inside story of a three year undercover investigation into NSW police corruption", *Four Corners*, 9 October 2001.

Scipione told Operation Prospect that he felt it would not be appropriate for SCIA officers to investigate one of their own staff. Such an investigation should be done by another area due to “the perception of there is not enough distance between those that are conducting the investigation, and those that are being investigated, and for that reason you’ve got to separate it”.⁷⁹² He added: “certainly on my watch, had I have known that, that would have been immediately stopped because that’s not consistent with what we should be doing”.⁷⁹³

12.2.5 LD affidavit of 7 December 2001

Seary swore an affidavit on 7 December 2001 in support of an application for a warrant authorising the use of a LD in the controlled meeting. This affidavit relevantly said:

5e. On 7 November 2001, [Mr T] was brought to the Commission for the purposes of a hearing. In the course of an interview, [Mr T] informed Commission investigators that two members of the NSWPS had stolen money from him on three previous occasions and that there had been a fourth occasion (about 5 June 2001) on which the same two members of the NSWPS went to his home premises and attempted to extort money from him. On that last mentioned occasion, [Mr T’s brother-in-law] (who was present with [Mr T]) informed [Mr T] that the two members of the NSWPS were the same as the two persons who stole money from him on the three previous occasions.

[..]

5g. On 6 December 2001, [Mr T] was brought to the Commission, at his request, for the purpose of providing information about police corruption. In the course of an interview, [Mr T] alleged that [Officer L] was one of the two members of the NSWPS who had stolen money from him on the occasions mentioned above.

5h. In order to test [Mr T]’s allegations, Commission Investigators have arranged for him to be brought on 7 December 2001 to the Commission ostensibly for the purpose of a hearing. It is proposed that [Mr T] will be placed in Room 883 and provided the warrant sought is granted, left alone with [Officer L].⁷⁹⁴

Those affidavit paragraphs contain inconsistencies similar to those Seary recorded in earlier Information Reports of 8 November and 7 December 2001 (the latter was completed on the same day as the affidavit).

Paragraph 5e of the affidavit states that Mr T’s brother-in-law “informed [Mr T] that the two members of the NSWPS [who visited Mr T and his brother-in-law] were the same as the two persons who stole money from him on three previous occasions”. In Mr T’s first induced interview on 7 November 2001,⁷⁹⁵ he stated that it was his associate (not his brother-in-law) who had described the same two police officers as being present for the first three visits. Mr T did not mention that his brother-in-law had been present on those three occasions in that interview. Mr T confirmed in his evidence to Operation Prospect that his brother-in-law only met the two officers at the fourth visit, along with Mr T – but not his associate.⁷⁹⁶ According to Mr T, his brother-in-law could not have been present at the first three visits and linked the police officers to all four visits as his brother-in-law was released from jail only a few days earlier.⁷⁹⁷ Mr T gave the following evidence, referring to his return from Romania after the third alleged visit:

Q: All right. And so did they – when you came back and they told you that the money had been stolen, did they give you a description of the people?

A: They give me, but honest to tell you the truth at that time I don’t really believe that because I thought maybe they ripped me off or something like that.

...

⁷⁹² Ombudsman Transcript, Andrew Scipione, 31 July 2014, p. 1022.

⁷⁹³ Ombudsman Transcript, Andrew Scipione, 31 July 2014, p. 1022.

⁷⁹⁴ NSWCC LD affidavit 01/10995, p. 3.

⁷⁹⁵ NSWPF, Record of interview between Detective Sergeant Seary, [Officer V] and [Mr T], 7 November 2001, pp. 4-5.

⁷⁹⁶ Ombudsman Transcript, [Mr T], 3 July 2014, p. 11.

⁷⁹⁷ Ombudsman Transcript, [Mr T], 3 July 2014, pp. 10-11.

- Q: *Yeah. And who was there when the \$6,000 was taken?*
- A: *The same guys. The same people.*
- Q: *Yep. You weren't there?*
- A: *No.*
- Q: *Okay. And what did they tell you about the \$6,000 – the men who took the \$6,000?*
- A: *Same thing, the same thing like before.*
- Q: *Yeah.*
- A: *They come – they – they come and look and they took the money, that's it.*
- Q: *Did they describe those two men to you at any time?*
- A: *No.*
- Q: *They didn't.*
- A: *No, they – they – no, they don't give me detail...⁷⁹⁸*

Another inconsistency in paragraph 5g of the affidavit is the statement that “[Mr T] alleged that [Officer L] was one of the two members of the NSWPF who had stolen money from him”. Mr T’s statement in his interview on 6 December 2001 was initially that he was “about 80% sure”, which he changed to “90 – 95% sure”.⁷⁹⁹

The affidavit stated in paragraph 8 that “alternative investigative methods are not likely to succeed” and that it was “highly unlikely that [Officer L] would assist or cooperate if directly interviewed about [Mr T]’s allegations”. The affidavit then referred to Officer L’s extensive experience and exposure to police methodology, including physical and electronic surveillance. However, it appears that Mascot did not carry out any alternative means of investigation that could be done without Officer L’s knowledge – such as checking rosters and Duty Books or holding a photographic identity process with Mr T and his brother-in-law.

There were items of information known to Mascot at that time that were not included in the affidavit, but could be considered relevant to the decision to authorise a LD warrant:

- Mr T and his brother-in-law were not present during the first three visits when money was allegedly stolen from Mr T’s house. They were present only on the fourth visit, when officers visited Mr T’s house and allegedly offered to sell him information.
- Some of the physical descriptions of the police officers who allegedly visited Mr T’s house were provided to him by his associate.
- Mr T identified Officer L as one of the officers he saw when they visited his house in July 2001, though he only saw the officers briefly and at night time.
- The COPS audit that Seary conducted in 2001 showed that certain NSWPF officers (but not Officer L) had searched police records for Mr T’s address and vehicle registrations at the relevant times.
- Officer L did not fit the physical descriptions of the two officers provided by Mr T.
- Mr T provided the information about Officer L in the context of seeking a reduced sentence for drug offences.

When shown the supporting affidavit for the LD warrant dated 7 December 2001, Burn agreed that it omitted relevant information and that the information in paragraph 5g overstated what Mr T said about identifying Officer L as one of the two officers.⁸⁰⁰

798 Ombudsman Transcript, [Mr T], 3 July 2014, pp. 8-9.

799 NSWCC Information Report, *Further information provided by [Mr T] in relation to possible identity of police involved in suspected corruption relevant [sic] to SOD172*, reporting officer: Seary, 7 December 2001, p. 1.

800 Ombudsman Transcript, Catherine Burn, 19 November 2014, p. 2929.

Seary gave evidence to Operation Prospect that he completed the LD application.⁸⁰¹ He agreed that it was unusual to use a LD before exhausting other investigative methods that were available.⁸⁰² He could not recall looking at other information or at exculpatory matters or documents while preparing the affidavit, but agreed that if he was acting properly he would have done so.⁸⁰³ He did not know whether that was his job or someone else was doing it.⁸⁰⁴

Seary agreed that there was information that suggested Mr T had not seen the two officers who allegedly went to his house and stole the \$43,000.⁸⁰⁵ He agreed that, without corroboration, it would be improper to investigate somebody based on a second or third hand description given by a person alleged to have conducted a criminal act.⁸⁰⁶ When asked if that had occurred in relation to Officer L, Seary answered: "I didn't actually decide to do the investigation. But when I read it like you've put it to me here, yes, I'd have to agree with you".⁸⁰⁷

Seary gave evidence to Operation Prospect that he did not recall whether he reported to senior officers that Mr T had described the officers as being taller than Officer L. He also did not know why he had not included that information in the affidavit:

- Q. *Did you tell the person you reported up the line to that in this interview [Mr T] had actually described the officers as having a height, having heights that were both taller than [Officer L]?*
- A. *I don't remember.*
- Q. *And that would have been an important thing to tell your supervisors, wouldn't it?*
- A. *Yes.*
- Q. *And it would have been an important thing to put in the affidavit, because it was potentially exculpatory of [Officer L]?*
- A. *Yes.*
- Q. *Alright, but you didn't put it in the affidavit?*
- A. *No.*
- Q. *Alright, why not?*
- A. *I don't — - —*
- Q. *Pardon?*
- A. *I don't know why I didn't put it in.*⁸⁰⁸

After being shown Seary's affidavit, Burn agreed it was unfair as it did not include the other evidence about the description of the officers – which she described as "a relevant part of this matter... [to] Inform the solicitor so that the Judge has got the information for the affidavit".⁸⁰⁹

Officer V had nothing further to do with the investigation until Officer L told him as they were driving home about "the strangest thing" that happened to him that day, and then proceeded to tell him about the controlled meeting with Mr T. Officer V made an educated guess that Mascot had used a LD to record the controlled meeting and, the day after, searched the LD affidavits on the Mascot system and read Seary's affidavit. Officer V told Operation Prospect the following about the affidavit:

801 Ombudsman Transcript, Peter Seary, 5 August 2014, p. 1101.

802 Ombudsman Transcript, Peter Seary, 5 August 2014, p. 1094.

803 Ombudsman Transcript, Peter Seary, 5 August 2014, p. 1099.

804 Ombudsman Transcript, Peter Seary, 5 August 2014, p. 1099.

805 Ombudsman Transcript, Peter Seary, 5 August 2014, p. 1109.

806 Ombudsman Transcript, Peter Seary, 5 August 2014, p. 1112.

807 Ombudsman Transcript, Peter Seary, 5 August 2014, p. 1112.

808 Ombudsman Transcript, Peter Seary, 5 August 2014, p. 1118.

809 Ombudsman Transcript, Catherine Burn, 19 November 2014, p. 2928.

And it said that – it made no mention of the discrepancies in the identification that he said 80% sure. He said – Peter Seary had put in there that he had positively identified him as the person who'd stolen his money, which was to me and [sic] out and out lie 'cause I was present. I know what was said and they also didn't put in the discrepancies in the, um, the descriptions that [Mr T] had provided when we asked him in – in his interviews. Um, the description he provided clearly did not match [Officer L]. They did no inquiries at all concerning [Officer L]'s whereabouts on those specific days. There was also – we had looked up and kept tabs on [Mr T] because of that – him being ripped off and we thought well, somebody in the police, if they're ripping him off, maybe they're looking at him on the system. So I did a reverse check on him and there was two guys, one in the local area and one guy called [named police officer] from Crime Agencies had looked him up. That had never been looked at.⁸¹⁰

McDonald had no role in drafting or reviewing the Seary affidavit, but said that it would have been done “with the assistance of the solicitors, Crime Commission solicitors”.⁸¹¹

Randall agreed that it was misleading to state in the affidavit that alternative methods of investigation were not likely to succeed or that Officer L's experience with police methodology hindered Seary's ability to check Duty Books or confirm cell phone locations.⁸¹² He also noted there were significant staffing issues at the time,⁸¹³ and that he did not have the corporate knowledge of Burn and Bradley who had been working on Mascot since its commencement.⁸¹⁴

Randall thought the actions taken to investigate these allegations might have been motivated by a desire to address them before they were publicly disclosed:

...all these white knights investigating corruption, in fact one of them is guilty of corruption them self, I think they just wanted to, maybe, try and get that sorted out as soon as possible.⁸¹⁵

...that was their mindset at the time. Let's – let's get it over and done with to find out whether he – because they couldn't afford to have this corrupt officer on – on the taskforce.⁸¹⁶

Officer V said that as he, Seary and Officer L shared a small office “it was a huge conflict of interest” for Seary to have taken out the affidavit, and that this matter “never should have been investigated by him”.⁸¹⁷ Officer V called the affidavit “unbelievably offensively put together”.⁸¹⁸ It was at this point in time that Officer V decided to leave Mascot. He told Operation Prospect:

Because these people – these are people who are involved in the covert investigation themselves, in the most covert investigation in New South Wales Police history. And somebody makes an off the cuff remark, and they just start investigating their own internally in their own office and create an affidavit. It was just the most obscene thing that I've ever – ever heard of. It was just bizarre. So I ... said, look, I can't be here. I just – I simply can't be here. ... I really didn't know what was going to happen next. I thought if that – if – if they can cross to that line, I'd been seeing these things happen consistently, but now they're even willing to do people – people in their own office. You know, this is just out of control and, um – and so I said to them, “I can't be here a day longer. I won't come back to work until you move me out of here.” And, um, in a short space of time I was called and said, “Where would you like to go?”⁸¹⁹

810 Statement of Information, (Interview), [Officer V], 27 August 2013, p. 59.

811 Statement of Information, (Interview), Paul McDonald, 11 March 2014, p. 115.

812 Ombudsman Transcript, Greg Randall, 10 April 2014, pp. 171-172.

813 Ombudsman Transcript, Greg Randall, 10 April 2014, p. 181.

814 Ombudsman Transcript, Greg Randall, 10 April 2014, p. 182.

815 Ombudsman Transcript, Greg Randall, 10 April 2014, p. 177.

816 Ombudsman Transcript, Greg Randall, 10 April 2014, p. 178.

817 Statement of Information, (Interview), [Officer V], 27 August 2013, p. 59.

818 Statement of Information, (Interview), [Officer V], 27 August 2013, p. 59.

819 Statement of Information, (Interview), [Officer V], 27 August 2013, p. 60.

12.2.6 ‘Controlled meeting’ between Officer L and Mr T

The controlled meeting was held between 2 pm and 3 pm on 7 December 2001. Randall, McDonald, Burn and Standen monitored the conversation from the office of John Giorgiutti, Director and Solicitor to the NSWCC, and assessed Mr T’s reaction.⁸²⁰ The conversation between Mr T and Officer L did not produce any evidence of his alleged corrupt conduct.

The transcript of the controlled meeting records that just before talking with Officer L, Mr T whispered (presumably to Seary): “I’m not 100 per cent, I just go 80 per cent ... I’m not 100 per cent at all and I don’t want him to have any problems because I’m not 100 per cent, only 80 per cent yes”.⁸²¹ Following that comment, the other male police officer in the interview feigned an excuse to leave. Mr T then attempted the strategy as instructed by Mascot, suggesting to Officer L that his face was familiar and asking if he had come to Mr T’s house. Officer L flatly denied that he had been at Mr T’s house in June.⁸²²

Randall told Tumen investigators that he recalled being called to Giorgiutti’s office after Mr T had arrived at the NSWCC premises. Seary was to interview Mr T on another issue and then be called out on an errand. Seary was to ring Officer L and ask him to “look after [Mr T] while I go and do this other errand”.⁸²³ He recalled that he, McDonald, Burn and Standen monitored the conversation between Mr T and Officer L from Giorgiutti’s office. He said that Mr T “sort of put this allegation to him” and Officer L “just straight out denied it”.⁸²⁴

Randall said that Seary then debriefed Mr T, who said he was 80% certain it was Officer L. According to Randall, the allegation had been put and Officer L had reacted “the right way for an innocent person”. It was clear to Randall that Officer L was not one of the officers who went to Mr T’s residence.⁸²⁵

A document created by Seary on 11 December 2001 noted in relation to the controlled meeting that “It became apparent during the interview that [Mr T] and [Officer L] had not met each other prior to this recorded engagement”.⁸²⁶

Operation Prospect interviewed Officer L on 13 December 2013. He said that on 7 December 2001 he first thought “what’s going on”⁸²⁷ when Seary or McDonald asked him to look after Mr T, and Burn asked him again later that day. Officer L said he was put in a room to look after Mr T. He noted that was “unusual to me” and that he was told a back story and it “didn’t gel with me”:

*I sat in the – in the room with [Mr T] and they went. When I’m alone with – with a criminal that I’d never done that job at all, I knew that the room or he himself was wired up. I was waiting for it. [...] I was waiting for it [...] I was waiting for a comment to be made something to him making allegations and that’s when he said, “It was you that” ...*⁸²⁸

820 Transcript of LD recording on 7 December 2001 between 2:08pm to 2:37pm – Conversations between [Officer L] and [Mr T] (transcribed by Operation Prospect), pp. 12-13.

821 Transcript of LD recording on 7 December 2001 between 2:08pm to 2:37pm – Conversations between [Officer L] and [Mr T] (transcribed by Operation Prospect), p. 9.

822 Transcript of LD recording on 7 December 2001 between 2:08pm to 2:37pm – Conversations between [Officer L] and [Mr T] (transcribed by Operation Prospect), pp. 12-13.

823 NSWPF, Record of interview between Detective Inspector Jenkins, Detective Inspector Merryweather and Detective Inspector Greg Randall, 6 December 2002, p. 58.

824 NSWPF, Record of interview between Detective Inspector Jenkins, Detective Inspector Merryweather and Detective Inspector Greg Randall, 6 December 2002, p. 58.

825 NSWPF, Record of interview between Detective Inspector Jenkins, Detective Inspector Merryweather and Detective Inspector Greg Randall, 6 December 2002, pp. 58-59.

826 NSWCC Internal Memorandum from Detective Sergeant Seary, 11 December 2001.

827 Statement of Information, (Interview), [Officer L], 13 December 2013, pp. 30-31.

828 Statement of Information, (Interview), [Officer L], 13 December 2013, p. 31.

Officer L knew about the allegation that \$43,000 had been stolen from Mr T's place by two police officers. When Mr T put to him that he was one of the officers, Officer L said he thought: "No, this can't be happening to me. They wouldn't be that stupid and I've gone, oh yeah, probably yeah, they probably would".⁸²⁹ He then tried to change the subject with Mr T and deflect the conversation because "I knew I was set up and who set that up, I don't know but I had grave concerns for myself".⁸³⁰

Officer L gave evidence that when he left the room, Seary approached him:

*Peter Seary came and said "How'd you go?" And he was – he was – he was beaming, he was – you could see his whole eyes were lighting up and he was jumping around and, "How'd you go? How'd you go?"*⁸³¹

Officer L mumbled a response and realised that he either had to disclose that Mr T had made an allegation or 'play dumb' and act like nothing happened. He chose the latter. When he got upstairs he thought he recalled that McDonald also asked him, "How'd you go? With [Mr T]?"⁸³² At that stage his suspicions that he was being investigated heightened because:

*It was another job ... It was very unusual 'cause they never asked me anything – when you're doing other big briefs and things like that, they don't ask you how you're going with your job about, you know, you're going to lock up – you go and lock up somebody for a commercial load of drugs, they don't ask you how you go – how you're going with that job then whoever did it and this one, minding a prisoner, they're asking me, "How – how I'm going with it." They said, "How'd you go with the job?" And then 'cause you don't ask a person how they're going with a job with minding a prisoner, it's unheard of.*⁸³³

Officer L recalled that Burn also approached him and asked how he went with Mr T. Not long after, he was asked the same question by Randall. He told Operation Prospect that he thought to himself, "This is unbelievable, it can't be happening ... They've done a job on me. I knew that they'd – they'd done a test on me in some sort within the LD".⁸³⁴

Officer L then went on two weeks leave. He said he thought about what had occurred on the way home that day and "basically when I was – a thousand of things were going through my head like you wouldn't believe, and I just said, well obviously they don't – they don't trust me. They think I'm, you know, I'm involved in police corruption in there ... this is going to be bad for my family...".⁸³⁵

In his interview with Operation Prospect, Officer L was emotional when discussing this incident as he recalled the stress of being investigated by his own team.

12.2.7 Mascot refers the allegation to the PIC

Mascot referred the allegation against Officer L to the PIC soon after the controlled meeting between Mr T and Officer L on 7 December 2001. Randall told Tumen investigators that a PIC officer (McGrath) came to the NSWCC at about 4 pm on the day of the controlled meeting to obtain the relevant files, and that the PIC were going to further investigate the allegation. Randall concluded that "they just wanted to put it to bed before it had any impact on the integrity of the Mascot investigation".⁸³⁶

This is confirmed by an Information Report prepared by Burn on 11 December 2001 referring to "continuity of listening device [Mr T]/[Officer L] – Operation Botany":

⁸²⁹ Statement of Information, (Interview), [Officer L], 13 December 2013, p. 32.

⁸³⁰ Statement of Information, (Interview), [Officer L], 13 December 2013, p. 33.

⁸³¹ Statement of Information, (Interview), [Officer L], 13 December 2013, p. 34.

⁸³² Statement of Information, (Interview), [Officer L], 13 December 2013, p. 34.

⁸³³ Statement of Information, (Interview), [Officer L], 13 December 2013, p. 34.

⁸³⁴ Statement of Information, (Interview), [Officer L], 13 December 2013, pp. 34-35.

⁸³⁵ Statement of Information, (Interview), [Officer L], 13 December 2013, p. 35.

⁸³⁶ NSWPF, Record of interview between Detective Inspector Jenkins, Detective Inspector Merryweather and Detective Inspector Greg Randall, 6 December 2002, p. 59.

On Friday 7 December 2001 a listening device operation, codenamed Operation Botany was conducted at the NSWCC after a listening device [sic] warrant was obtained re the information relating to allegations made by [a pseudonym for Mr T] that [Officer L] may have been one of the police who he saw in June 2001 outside his home.

About 2.08pm I activated two recording devices (one original DAT tape and one copy C90 tape) and monitored the conversations between [Mr T], [Officer L] and Seary. Also present was Mark Standen and Greg Randall. Joh [sic] Giorgiutti was present in another part of the room but did not monitor the conversations ...

About 3:15pm I had a conversation with Tom McGrath [PIC Special Advisor (Internal Investigations)] and [another PIC Investigator] from PIC where I briefed them about the allegations of [Mr T]. I handed McGrath the C90 tape and a transcript of an ERISP [Electronically Recorded Interview with Suspect Person] conducted between [Officer V] and [Mr T] on 7 November 2001.⁸³⁷

The PIC Commissioner at the time Griffin, told Operation Prospect he had no recollection of this investigation strategy. Griffin said he was aware that on occasion the NSWCC “used devices of putting rooms off where people were talking”, and he “never thought that was a particularly good thing to do. I don’t think it’s unlawful. It’s not something I would normally do unless there were a huge indication it had to be done”.⁸³⁸

On 11 December 2001 Burn emailed Scipione and Randall updating them about a number of matters.⁸³⁹ She advised that on “the issue of [Officer L]”, a report and information had been gathered and was being referred to PIC and that the original should be kept in the SCU Commander’s safe. Scipione replied: “I also agree that in the [Officer L] matter the information should be forwarded to the PIC direct. Please ensure that this happens”. There is however no evidence that Scipione was involved to any greater extent in the planning or execution of the Officer L plan.

Operation Prospect asked McGrath if he had any recollection of this investigation. He stated: “I have no recollection of his name and no recollection of being involved in that operation”.⁸⁴⁰ Although McGrath had a vague recollection of matters involving Mr T, he did not believe he was directly involved in the matter. He stated:

Well, everything we did at the PIC was absolutely documented, as you can see from some of those documents. You didn’t move to the PIC unless you wrote it down and did the file note. So if I’d have done that, I would think there would be something in PIC records that would indicate I’d had a role in it of some sort. Because every single thing that was done in the PIC, as I recall, was file noted and double file noted almost. It was a passion of the place, which is a good thing. So I have no recollection of it, and I would assume you’d find some record of me dealing with it.⁸⁴¹

It is most likely that McGrath performed the role of trusted ‘courier’ of the confidential documentation to PIC. There is no evidence that he had any other involvement in the investigation of Officer L.

12.2.8 Actions of Officer L and other officers after the controlled meeting

Officer L told Operation Prospect that he was suspicious at the time of his encounter with Mr T. He spoke to Officer V and Officer S, as he thought they were the only two colleagues he could trust. He told them of the incident and his suspicion of being ‘set up’.⁸⁴² It is unclear exactly when this conversation took place, but it was soon after his encounter with Mr T.

All three officers then accessed Mascot records relating to the controlled meeting. Exactly who did what, when and why is unclear. For example:

⁸³⁷ NSWCC Information Report, *Continuity of listening device tapes re [Mr T]/[Officer L]*, reporting officer: Burn, 11 December 2001.

⁸³⁸ Ombudsman Transcript, Terrence Griffin, 3 June 2016, p. 59.

⁸³⁹ Email from Detective Inspector Catherine Burn, Mascot Coordinator, Mascot Reference, NSWCC to Assistant Commissioner Andrew Scipione, Commander of SCIA, NSWPF and Acting Superintendent Greg Randall, Acting Commander of SCU, Mascot Reference, NSWCC, 11 December 2001.

⁸⁴⁰ Ombudsman Transcript, Tom McGrath, 31 July 2014, p. 1065.

⁸⁴¹ Ombudsman Transcript, Tom McGrath, 31 July 2014, p. 1066.

⁸⁴² Statement of Information, (Interview), [Officer L], 13 December 2013, p. 35.

- There are no audit trail records of access to Mascot documents for that period.
- Officer L, Officer V and Officer S have given different accounts of what occurred.
- There are differences in what Officer V and Officer S told Tumen investigators in 2002 and their statements or evidence to Operation Prospect in 2013-14.

The following sets out the evidence and accounts given by all three officers about their actions in accessing documents and raising their concerns with other more senior officers.

Officer L gave evidence to Operation Prospect that Officer V and Officer S helped him to access relevant documents about the strategy.⁸⁴³ Officer L's evidence was that he spoke with Officer V and Officer S on their way home from work after Officer L returned from leave.⁸⁴⁴ Officer L told Tumen investigators that he began collecting information and documents after this conversation with both officers.⁸⁴⁵ In his evidence to Operation Prospect, Officer L said he could not remember whether he, Officer V or Officer S had obtained a copy of the affidavit and the relevant pages of Seary's Duty Book.⁸⁴⁶ He told Operation Prospect that he would have been able to access those materials as a Mascot officer.⁸⁴⁷

Officer V was interviewed by Tumen investigators on 25 October 2002.⁸⁴⁸ He told them that he believed Officer L happened upon information on the computer relating to the targeting.⁸⁴⁹ Officer V did not refer in his Tumen interview to discussing the incident with Officer L – or to Officer L coming into possession of the information. Officer V later told Operation Prospect that he regularly travelled home from work with Officer L and during one such trip Officer L raised the events of 7 December 2001.⁸⁵⁰ On the day after this conversation, Officer V said he looked on the Mascot computer system at the LD affidavit sworn by Seary on 7 December 2001.⁸⁵¹ Officer V immediately saw that the affidavit did not mention the discrepancies in identifying the police who allegedly stole money from Mr T – that information was already known to Officer V and was available in Mascot records. As a result, Officer V formed the view that it was a 'false affidavit' and an offence may have been committed.⁸⁵²

Officer V also told Operation Prospect that – after the allegation made by Mr T – he “clearly told [Burn] the faults” in relation to the allegation made against Officer L.⁸⁵³ Officer V said he was then told by Burn that as he car pooled with Officer L every day, he was not to have anything further to do with that investigation (see 12.2.4.1).

Officer S spoke to Tumen investigators on 21 November 2002. He told Tumen that he was searching for another matter relating to Mr T when he happened on the affidavit. Officer S took the affidavit to Officer V to see whether he could corroborate the information. Officer S was unable to recall how he saw Seary's Duty Book, but knows he did. Officer S and Officer V then approached Officer L who decided that he wanted to leave it for appropriate managerial action.⁸⁵⁴

Officer S told Operation Prospect that Officer L told Officer V and himself that he suspected at the time that he had been tested and 'set up'.⁸⁵⁵ After hearing Officer L's story, Officer S said that he suggested to Officer V and Officer L that they should “put this to bed” and go through Seary's computer drive and take a look.⁸⁵⁶ After this discussion, Officer S accessed Seary's computer drive and found the LD affidavit – which he read and

843 Statement of Information (Interview), [Officer L], 13 December 2013 p. 37.

844 Statement of Information (Interview), [Officer L], 13 December 2013, pp. 35-36; NSWPF, Record of interview between Detective Inspector Mark Galletta, Detective Inspector Glenn Jenkins and [Officer L], 12 December 2002, pp. 36-37.

845 NSWPF, Record of interview between Detective Inspector Mark Galletta, Detective Inspector Glenn Jenkins and [Officer L], 12 December 2002, pp. 37-38.

846 Statement of Information (Interview), [Officer L], 13 December 2013, p. 37.

847 Statement of Information (Interview), [Officer L], 13 December 2013, p. 35.

848 NSWPF, Record of interview between Detective Inspector Glenn Jenkins and [Officer V], 25 October 2002.

849 NSWPF, Record of interview between Detective Inspector Glenn Jenkins and [Officer V], 25 October 2002, pp. 24-25.

850 Statement of Information (Interview), [Officer V], 27 August 2013, p. 58.

851 Statement of Information (Interview), [Officer V], 27 August 2013, p. 59.

852 NSWPF, Record of interview between Detective Inspector Glenn Jenkins and [Officer V], 25 October 2002, p. 11.

853 Statement of Information (Interview), [Officer V], 27 August 2013, p. 58.

854 NSWPF, Record of interview between Detective Inspectors Mark Galletta and Glenn Jenkins and [Officer S], 21 November 2002, pp. 44-49.

855 Ombudsman Transcript, [Officer S], 1 May 2014, pp. 52-53.

856 Ombudsman Transcript, [Officer S], 1 May 2014, p. 53.

showed to Officer L.⁸⁵⁷ Officer S also told Operation Prospect that the LD affidavit left out Mr T's description of the two people⁸⁵⁸ – which Officer S had learnt from another document – and that Officer L clearly did not match either description.⁸⁵⁹ Officer S also indicated that 'we' – presumably referring to himself, Officer L and Officer V, although this is not clear – read Seary's Duty Book which had a reference to the controlled meeting.⁸⁶⁰ Officer L only intermittently looked at the material as he "didn't want to believe it".⁸⁶¹

Officer S sought advice from Officer U, a more senior Mascot officer, who advised him to gather as much information as possible before it disappeared off the system.⁸⁶²

Officer L advised Operation Prospect that he complained to Officer W, another Mascot officer, who passed the complaint up the chain of command.⁸⁶³ Officer W gave evidence to Operation Prospect on 17 December 2013 that Officer S had raised with him a concern that Officer L had been targeted by Mascot. Officer W passed the information to Randall who was the Detective Inspector. Officer W was unable to tell Prospect what happened after he relayed his conversation with Officer S to Randall.⁸⁶⁴

Randall told Tumen investigators that on 19 April 2002 he was called into the office of Detective Senior Sergeant Matthew Heenan, and that Heenan and another Mascot investigator expressed some concerns they had about Officer L. They told Randall that Officer L was aware an integrity test had been carried out on him. Randall said he spoke to Officer L on 26 April 2002. Officer L told Randall that he had gathered all the information together and he wanted to go to the PIC or the Ombudsman to investigate it. Officer L approached Randall because he had concerns about approaching Burn. Randall then spoke to Commander Reith, who was at that time the Commander of SCIA, on 29 April 2002. Reith told Randall to bring Officer L in the following day to see him. Reith asked Officer L what he wanted to do and Officer L said he wanted to think about it. Randall said he does not know what happened after that, but he believes there was some sort of conciliation meeting.⁸⁶⁵ Reith later told Tumen investigators in October 2002 that Officer L did not make a complaint and the matter was resolved within SCIA (see 12.2.9).⁸⁶⁶

Tumen investigators met with Officer L on 26 November 2002. He told them what had happened and handed over the documents he had compiled. This included a number of records of interviews (between Seary and Mr T, and Seary and two other offenders), minutes of the meeting of 14 May 2002 (see section 12.2.9), Seary's Duty Book entries for 6 and 7 December 2001, and two Information Reports. Officer L also gave Tumen investigators an undated written document outlining his concerns that the test was unwarranted.⁸⁶⁷ Officer L told Tumen that the main reason this occurred was the deliberate omission of exculpatory material in Seary's affidavit. Officer L described the process as appalling and that no one considered the risks this posed to his welfare and career:

*In essence, the extraordinary methods adopted and used by my work colleague and superiors to achieve a result at any cost I feel was to protect their own interests, careers and operations, without considering the occupational, health and safety or draconian consequences to me.*⁸⁶⁸

857 Ombudsman Transcript, [Officer S], 1 May 2014, p. 53.

858 Ombudsman Transcript, [Officer S], 1 May 2014, pp. 54-55.

859 Ombudsman Transcript, [Officer S], 1 May 2014, p. 54.

860 Ombudsman Transcript, [Officer S], 1 May 2014, p. 56.

861 Ombudsman Transcript, [Officer S], 1 May 2014, p. 56.

862 NSWPF, Record of interview between Detective Inspectors Mark Galletta and Glen Jenkins, NSWPF and [Officer U], NSWPF, 19 November 2002, pp. 55-56.

863 Statement of information (Interview), [Officer L], 13 December 2013, p. 38.

864 Statement of Information (Interview), [Officer W], 17 December 2013, p. 55.

865 NSWPF, Record of Interview between Detective Inspector Jenkins and Detective Inspector Randall, 6 December 2002, pp. 59-61.

866 NSWPF, Task Force Tumen, Investigators Note, 30 October 2002.

867 NSWPF, Internal memorandum from [Officer L], undated.

868 NSWPF, Internal memorandum from [Officer L], undated, p. 7.

12.2.9 Mediation meeting (May 2002)

On 14 May 2002 a meeting was held between Reith, Burn, Seary, Officer L and a Mascot investigator (acting as a support person for Officer L). The purpose of the meeting was to resolve tensions between Officer L and other Mascot staff – particularly Seary – arising from Officer L's discovery of the investigation.

When Burn was interviewed by Tumen she stated that Officer L had advised Randall and Reith that he had discovered he was the subject of an operation. Officer L and Seary had since become disruptive in the workplace due to their "attitudes towards each other". Burn described it as a conciliation – so both could say their piece and try and work together.⁸⁶⁹

Seary had emailed Burn the week before the meeting indicating that he believed he was being treated unfairly. Mascot team members believed that he was totally responsible for the test conducted on Officer L.⁸⁷⁰

Officer L recalled that Reith chaired the meeting or mediation on 14 May. The support person took minutes of the meeting.⁸⁷¹ The minutes indicate that Reith wanted each party to "have an uninterrupted opportunity to express their views with an expectation that a resolution could be achieved", which Reith "believed on the progress of previous discussions had already been achieved".⁸⁷²

Officer L advised the meeting that he knew the conversation with Mr T was a 'set-up'. As a result, he inspected Seary's Duty Book and found the incident recorded in it described as an 'integrity test'. He also advised that he had secured a copy of the affidavit sworn in support of the LD application "for fear of going to gaol". He expressed bemusement "as to how the affidavit could legitimately record that [Mr T] positively identified him".⁸⁷³ He understood that warnings had been given to Burn and Seary by Officer V about the inconsistency with Mr T's earlier account and the unreliability of the information he provided. He also understood that Officer V warned Burn and Seary that the information needed to be verified and checked before anything else was done.

Officer L told the meeting that he knew Mr T was overseas during the first three police visits to his house and "that it was very clear in his mind that the motive for [Mr T]'s allegations was to achieve a reduction in sentence as he could claim he provided information to the Crime Commission".⁸⁷⁴ He stated that he felt his reputation had been tarnished and that a complaint file would remain with him for the rest of his career. He felt that he was still under surveillance and had concerns for his future in the workplace. Officer L described the investigation as a 'quick fix' and asked Seary to give reasons for the omissions in the LD affidavit.⁸⁷⁵

Seary started his response by stating that Scipione and McGrath should be present as they were 'stakeholders'. He agreed with Officer L's points and said he also felt bad about the investigation. He had to report the allegation by Mr T to his supervisors and that he was nominated to facilitate the meeting and it was something "he had to do". According to the minutes of the meeting, Seary stated "his only crime was failing to remove material from the system".⁸⁷⁶

Seary nominated the parties in the investigation as McDonald, Randall, Scipione, Bradley and the PIC. The minutes state that Burn advised the meeting she was not present. Presumably this was a reference to her absence on 6 December 2001. Officer L was told that the matter was now with the PIC. Reith undertook to find out the status of the investigation and update Officer L.⁸⁷⁷

869 NSWPF, Record of interview between Detective Inspector Galletta, Detective Inspector Jenkins and Chief Inspector Catherine Burn, 2 December 2002, p. 58.

870 Email from Detective Sergeant Peter Seary, Mascot Reference, NSWCC to Acting Superintendent Catherine Burn, Mascot Reference, NSWCC, 7 May 2002.

871 NSWPF, *Minutes of Meeting*, 14 May 2002.

872 NSWPF, *Minutes of Meeting*, 14 May 2002, p. 1.

873 NSWPF, *Minutes of Meeting*, 14 May 2002, pp. 1-2.

874 NSWPF, *Minutes of Meeting*, 14 May 2002, p. 2.

875 NSWPF, *Minutes of Meeting*, 14 May 2002, pp. 3-4.

876 NSWPF, *Minutes of Meeting*, 14 May 2002, pp. 3-4.

877 NSWPF, *Minutes of Meeting*, 14 May 2002, pp. 4-5.

12.2.10 PIC concludes its investigation (July 2003)

The PIC continued to investigate the allegation that two police officers had stolen money from Mr T. PIC investigators interviewed Mr T's brother-in-law on 6 June 2002 – and on 16 July 2002 they showed Mr T and his brother-in-law photoboards that included photos of Officer L and other police.⁸⁷⁸ Neither man identified any officer from the photoboards as being involved in corrupt activity.⁸⁷⁹

The PIC concluded in July 2003 that:

[Officer L] was attached to the Macquarie Fields Local Area Command from 1990 until transferred to SCIA on 7 January 2001. His activities at the relevant times have not been pursued as the imprecise reports as to the theft dates and other contact make elimination a hit and miss exercise. Further, he was not identified by [Mr T's brother-in-law].

...

*This office is not satisfied that reliable evidence identifies any police officer involved in the thefts from [Mr T's associate]. Similarly, this office is not satisfied that the accusation made about [Officer L] is corroborated such that further action is warranted. The police who spoke to [Mr T] and [Mr T's brother-in-law] during May 2001 have not been identified.*⁸⁸⁰

12.2.11 Strike Force Tumen concludes its investigation (July 2003)

At the same time that the PIC was investigating the allegation against Officer L in 2002, Strike Force Tumen was investigating a range of complaints about the management of the SCU. On 17 September 2002, Tumen extended its investigation to include inappropriate integrity testing conducted by the SCU and the "Matter arising" of "False information contained in an affidavit for a listening device to target [Officer L]".⁸⁸¹

As part of its investigation of the 'matter arising', Strike Force Tumen accessed a range of Mascot documents including Seary's LD affidavit of 7 December 2001. Tumen investigators also interviewed Mascot officers – including Randall, Burn, Seary, Officer L and Officer V – between October and December 2002 about the controlled meeting and Seary's LD affidavit. Tumen investigators were not able to interview Mr T.⁸⁸²

In relation to Mascot's strategy of using a LD to record the controlled meeting, Tumen concluded:

The information regarding [Officer L] was supplied to Seary on 6 December, 2001 and the targeting of [Officer L] done on 7 December, 2001 through the listening device. There appears to have been no other traditional forms of investigation used in this case. A factor that influenced such a rushed operation was that [Officer L] was to commence two weeks annual leave after the 7 December, 2001 and because of the state that [sic] Operation Mascot, meant they could not wait two weeks to test if [Officer L] was a corrupt officer or not. This potential risk in security had to be acted upon immediately. This was a management decision that was made by Commissioner Bradley of the NSW Crime Commission in conjunction with the then Assistant Commissioner Scipione, Commander SC&IA.

*If [Officer L] was a perceived security risk, which he was at that time, then Strike Force Tumen investigators believe that it was the appropriate course of management action to do under the circumstances, due to the confidential and complex state of Operation Mascot.*⁸⁸³

878 Letter from Andy Nattress, Director Operations, PIC, to Assistant Commissioner Brian Reith, Commander of SCIA, NSWPF, 13 June 2003, pp. 3-4.

879 Letter from Andy Nattress, Director Operations, PIC, to Assistant Commissioner Brian Reith, Commander of SCIA, NSWPF, 13 June 2003, pp. 3-4.

880 Letter from Andy Nattress, Director Operations, PIC, to Assistant Commissioner Brian Reith, Commander of SCIA, NSWPF, 13 June 2003, pp. 5-6.

881 NSWPF, *Strike Force Tumen: CIS*: [number] – covert file [number], 3 July 2003, pp. 2, 19 and 21.

882 NSWPF, *Strike Force Tumen: CIS*: [number] – covert file [number], 3 July 2003, p. 24.

883 NSWPF, *Strike Force Tumen: CIS*: [number] – covert file [number], 3 July 2003, p. 25.

Regarding Seary's affidavit of 7 December 2001, Tumen noted:

*... Seary states that [Mr T] alleged that [Officer L] was one of the two members of the NSWPS who had stolen money from him. There is no mention as stated by [Officer V] that he positively identified [Officer L], it simply states that [Mr T] alleged it was [Officer L].*⁸⁸⁴

Tumen then made the following finding about Seary's affidavit and the use of the LD to record Officer L on 7 December 2001:

The information contained in the affidavit from Seary was certainly not false, but exculpatory material should have been included, not just inculpatory.

*There is **NO ADVERSE FINDING** in regards to this matter arising concerning the appropriateness of a Listening device being utilised on [Officer L].*⁸⁸⁵ [emphasis in original]

Tumen's finding that Seary's affidavit did not include false information appears to have focused on whether paragraph 5g of the affidavit accurately reflected that Mr T had been, at most, 95% sure that Officer L was one of the two officers who had stolen money from him.

As outlined in section 12.2.12, Operation Prospect has reached different findings to Strike Force Tumen about both the strategy of the controlled meeting and the accuracy of the information in the affidavit.

12.2.12 Analysis and submissions

12.2.12.1 Strategy of the controlled meeting

The allegation that Mr T made against Officer L on 7 December 2001 was of a serious nature. Seary acted appropriately by passing the allegation on within Mascot.

However, shortcomings in three documents that Seary prepared impaired the integrity of Mascot's investigation of Officer L. Those documents were an Information Report dated 8 November 2001, an Information Report dated 7 December 2001, and a LD affidavit sworn on 7 December 2001. The affidavit is examined at section 12.2.12.2.

The Information Report dated 8 November 2001 was prepared before Officer L was named by Mr T. It outlined Mr T's allegation that two police officers had stolen money from him on multiple occasions, and gave Mr T's physical descriptions of the officers. The report appeared to suggest that the same two officers had made four visits to Mr T's house, and that the physical descriptions in the report were provided solely by Mr T. In fact, Mr T was present only during the fourth visit. The report did not mention that Mr T and his brother-in-law might be able to do a photo identification of the two officers.

The Information Report of 7 December 2001 was prepared after another interview with Mr T on 6 December 2001 – in which he named Officer L as one of the two officers who had made four visits to his house (section 12.2.3). There were three important defects in this Information Report. It wrongly assumed that the same two police officers had made four visits to Mr T's house, it suggested that Mr T's brother-in-law had seen the police officers in the first three visits – when Mr T had earlier said it was his associate, and it did not clarify that the physical descriptions of the two officers relied on second hand information from Mr T's associate.

It is probable that those shortcomings in both reports influenced Mascot's decision on 6-7 December to investigate the allegation against Officer L. However, other circumstances should have led Mascot to cautiously assess the veracity of Mr T's allegation before deciding to use a LD at a controlled meeting involving Mr T and Officer L. For example:

884 NSWPF, *Strike Force Tumen: CIS: [number] – covert file [number]*, 3 July 2003, p. 24.

885 NSWPF, *Strike Force Tumen: CIS: [number] – covert file [number]*, 3 July 2003, p. 25.

- Mascot was aware that Mr T was a known drug dealer and it was clear that he was trying to improve his situation by offering information about police corruption.
- The physical descriptions given by Mr T of the two officers who visited his house did not match Officer L – who was a colleague of the other Mascot officers.

Before resorting to a LD, Mascot could have done simple checks that might have ruled out any possibility of Officer L's involvement – as noted by Randall and Officer V (section 12.2.4.1). Officer L was going on holidays for two weeks. This appears to have influenced Mascot to act swiftly, when in fact it provided an opportunity to explore other options – including photo identification, inspection of Officer L's Duty Books, and referral of the allegation to PIC. These would have been appropriate steps in managing any risk that Officer L might pose to the integrity of the Mascot investigation. Overall, the strategy that Mascot deployed to investigate Officer L was unreasonable and unnecessarily hasty.

The strategy to investigate Officer L through a LD and a controlled meeting was either known to or discussed by a number of senior NSWCC and NSWPF officers. Officers who are mentioned in the preceding discussion include Bradley, Standen, Randall, Burn, McDonald, Seary and Scipione – as well as some PIC officers. It seems clear that the PIC officers, Standen and Scipione were informed of at least some aspects of the proposed investigation – but did not play any active role in developing the investigation strategy and were not present at the controlled meeting.

Seary was involved at all stages, but gave evidence that more senior officers than him devised the strategy. There is no reason to question his opinion. Similarly, McDonald was actively involved and was present at the controlled meeting on 7 December 2001 – although there is no evidence (and no suggestion by other officers) that he played a decisive role.

Burn's initiative or agreement was instrumental to the strategy and some officers said she played a central role. However, Burn was off duty on 6 December 2001. She submitted that she was not a driving force or a significant player, that key elements of the strategy were in play by 7 December 2001 when she returned to work, and that her involvement in the controlled meeting was based on decisions made by her superior officers.⁸⁸⁶ Also, Seary did not identify Burn as one of the key players in his evidence to Tumen in 2002. It is nevertheless clear that Burn was briefed on developments on 6 December 2001 and the morning of 7 December 2001, many of the investigative steps were noted in her Duty Book, and she went along with and did not raise objection to the strategy.

Randall was Acting Commander of the SCU at the time. He was advised and involved in discussions on both 6 and 7 December 2001, he was present at the controlled meeting on 7 December 2001, and he informed Scipione of developments. Randall gave evidence to both Tumen and Operation Prospect that he had doubts about the strategy that was being developed, and he had noted other investigative options that could be used. However, Randall's evidence was that the strategy was decided by Bradley and Burn and their opinions held sway – not least because Randall had only been acting in his position since 29 October 2001 and did not have the depth of involvement or knowledge of others.

Bradley's submission did not question the evidence of other officers (for example, Randall in section 12.2.4.2) that he was involved in discussing and implementing the strategy and informing Griffin about it. Bradley noted "it was surely reasonable" that the allegation should be investigated and not be allowed to linger.⁸⁸⁷ Bradley's submission accepted that it no longer appears reasonable for Officer L to have been treated as a suspect. However, Bradley submitted that – at the time – he had not seen Seary's affidavit of 7 December 2001 and had nothing to do with the matter until a plan was formulated to put Mr T and Officer L together in a meeting.⁸⁸⁸

On the basis of that evidence, it is difficult to record an adverse finding against any individual officer for developing and implementing the strategy of a controlled meeting and the use of a LD. The evidence points to the involvement of a number of senior officers, but also to the possibility that each played a less influential role than other officers. Another possibility is that the strategy emerged from discussion and was readily endorsed or accepted by other participants in the discussion.

⁸⁸⁶ Burn, C, Submission in reply, 25 September 2015, Annexure 3, pp. 21-23.

⁸⁸⁷ Bradley, P, Submissions in reply, 28 September 2015, p. 16.

⁸⁸⁸ Bradley, P, Submissions in reply, 28 September 2015, p. 15.

In the circumstances, the more appropriate course is to record an adverse finding against the NSWCC based on the following factors:

- The investigation strategy against Officer L formed part of the Mascot references.
- The Commissioner of the NSWCC and senior NSWPF officers working on the Mascot reference were participants in adopting and implementing the strategy.
- The strategy was hastily devised.
- Proper consideration was not given to the strength of available evidence to justify the strategy or to other investigative options.
- The strategy did not take adequate account of the potential adverse career and emotional impact on Officer L.

12.2.12.2 LD Affidavit of 7 December 2001

Seary swore a supporting affidavit on 7 December 2001 for a warrant authorising the use of a LD in the controlled meeting that was to be held that day (section 12.2.5). The affidavit restated some information about Mr T's allegations that was in the two Information Reports that Seary prepared on 8 November and 7 December 2001.

The affidavit restated the inaccuracies in those Information Reports – notably, that two police officers had made four visits to Mr T's house, they had stolen money from him on the first three visits and tried to extort money on the fourth visit, Mr T identified Officer L as one of the officers on the fourth visit, and Mr T's brother-in-law had identified Officer L as being present on all four visits. As discussed earlier, neither Mr T nor his brother-in-law or his associate were present at all four visits.

Seary's affidavit omitted all the exculpatory information that was held by Mascot at the time – as listed in the dot points in section 12.2.5. In particular, the affidavit did not indicate that the description of the corrupt officers given to Mascot on more than one occasion did not match Officer L, and that Mr T had estimated the officers heights at 182cm and 192cm which were both substantially taller than Officer L. This omission of known and significant exculpatory information in the affidavit was a serious deficiency. The information was directly relevant to whether Officer L was involved in the corruption incidents that were to be investigated by the use of a LD.

An affidavit in support of an application for a LD warrant is presented to a judicial officer under the LD Act. Affidavits must be sworn under oath in accordance with the Oaths Act, and the accuracy of information in an affidavit is self-evidently a vital issue.

Section 29 of the Oaths Act provides that:

... every person wilfully swearing falsely in any affidavit made before any such justice of the peace or other person so authorised to take affidavits, shall be deemed guilty of perjury and shall incur and be liable to the same pains and penalties as if the person had wilfully sworn falsely in open Court in a judicial proceeding in the Supreme Court.

Seary's affidavit was under oath and witnessed by Owen, NSWCC solicitor. Seary had participated in the interviews of Mr T on 7 November and 6 December 2001 and would have been aware that some of the information in his affidavit did not accurately present the information provided by Mr T. Seary would also have been aware that Mr T's brother-in-law was not present at all four police visits to Mr T's house and could not therefore verify that Officer L was present on all four occasions.

Seary did not make any submission to Operation Prospect and the conclusions and findings reached here were in the absence of any explanation from him.

Burn submitted that she had no role in preparing the LD affidavit sworn by Seary and was not highly familiar with the relevant material.⁸⁸⁹ Although it is accepted that Burn may not have been aware of the defects in the content of Seary's affidavit, her Duty Book for 7 December 2001 suggests some involvement in the affidavit preparation process.

Bradley submitted – and it is accepted – that he did not see or approve the affidavit prepared by Seary.⁸⁹⁰

12.2.12.3 Access to information

One question that arises from the events that occurred is whether there was any inappropriate access to the Mascot holdings – either on the NSWCC computer system or in hardcopy – by Officer L, Officer V or Officer S after the controlled meeting between Mr T and Officer L.

All three individuals were sworn into the NSWCC and assigned to work on Mascot investigations during the relevant period. Access to Mascot holdings on the computer systems and records within the physical workspace (a secure floor in NSWCC premises) was unfettered once an investigator was assigned to these investigations. All Mascot investigators could therefore access all Mascot holdings – both electronic and physical. These arrangements were appropriate given the large number of investigations under the Mascot references, the interconnection between many investigations, and the need for investigators to access information when they were assigned to work on different investigations for either short or long periods.

The NSWCC should have ensured at the time that electronic and hard copy records relating to the investigation of Mr L (a Mascot officer) were maintained securely outside of the Mascot holdings and the Mascot work area. This would not have been necessary if the NSWCC had arranged for the investigation to be done externally or by another area of the NSWCC unconnected to Mascot. No special document security or access arrangement was put in place by the NSWCC. This meant that Officer L, Officer V and Officer S all had access to the holdings and other records about all Mascot investigations – including the records about Mr T's allegation and the controlled meeting between Mr T and Officer L.

As discussed in section 12.2.8, the officers gave differing accounts of which documents they accessed, and there are no audit trail records of access to Mascot documents for that period. It is nevertheless clear that there were instances of document access of a kind that warranted investigation by Operation Prospect. These included one or other officer accessing Seary's Duty Book and computer drive and the LD affidavit relating to the controlled meeting.

Operation Prospect is aware, from the evidence it has received, that cultural factors within Mascot may explain why officers did not follow a more normal course of action. Some officers said there was a significant lack of trust within Mascot and a fear of speaking out in relation to concerns – particularly on how investigations should proceed. There was also a lack of confidence in approaching senior NSWCC officers – such as Bradley, Giorgiutti or Standen – about issues within Mascot. Consistent with those sentiments, there was a clear lack of trust by Officer L, Officer V and Officer S with Mascot management and many of their more senior colleagues. It is evident that none of the three believed that any concern they raised with Mascot management about the investigation of Officer L would be properly addressed. That is understandable in the circumstances, given that senior management had approved the strategy to investigate Officer L. A senior officer who the officers did trust (Officer U) – when approached by Officer S – gave advice to gather as much information as possible before it disappeared off the system.

Officer L, Officer S and Officer V each made written submissions to Operation Prospect that elaborated on the actions they took.⁸⁹¹ A strong theme in all three submissions was that Officer L had been unjustly and improperly investigated, based on a false allegation. Their sole objective was to expose this wrong, and for Officers V and S to protect a work colleague. They harboured suspicion of their senior officers and felt a need to conduct their own inquiries.

⁸⁸⁹ Burn, C, Submission in reply, 25 September 2015, Appendix 3, p. 22.

⁸⁹⁰ Bradley, P, Submission in reply, 22 September 2015, p. 15.

⁸⁹¹ [Officer L], Submission in reply, 19 October 2016; [Officer S], Submission in reply, 17 October 2016; [Officer V], Submission in reply, 14 October 2016.

The submissions of all three officers took that proposition a level higher and relied in justification for their actions on clause 20 of the Police Service Regulation, which applied to their actions in late 2001 and early 2002. It provided that an officer who is aware that the conduct of another officer may constitute a criminal offence or misconduct is under a duty to report the conduct to a senior officer. Their submissions explained that they were motivated by a genuine belief that Mascot officers had improperly investigated Officer L, and that the information they gleaned through accessing Mascot documents was notified to senior officers.

A related theme in the submissions was that it was within the scope of their work duties to be alert to and identify any improper work practices in the Mascot team. They submitted that they did not breach any explicit restrictions on access to and use of official information. The steps they took went no further than was necessary to examine the suspicions they held, and they then followed protocol and reported their concerns to senior officers.

Those submissions accord with established principles about the individual responsibility of public officials to uphold integrity in the workplace. However, the submissions do not ring true in this instance. One setback is that the officers unilaterally decided to undertake their own furtive inquiry into the propriety of an investigation that was jointly sanctioned by a group of senior officials from the NSWCC and the NSWPF – including the Commissioner of the NSWCC. A firmer basis than anger that a colleague had been wronged, or belief that senior officers were untrustworthy, would be necessary to bring their conduct within the scope of clause 20 of the Police Service Regulation.

Another weakness in their argument is that all government agencies – and especially law enforcement agencies – have strict controls on internal access to and use of official information. These controls are discussed in Chapter 20, and are variously stated in codes of conduct, official handbooks and legislation. There was no operational reason or work purpose for Officers V and S to self-initiate their own investigation into whether a colleague had been improperly treated and to access any information in the system that they thought to be relevant to their objective.

Although the misgivings and cultural factors within Mascot may explain to some extent the actions taken by Officers V, S and L, their motivation does not justify their actions nor make them legitimate. It is worth noting that this situation may well have been avoided by referring the matter to another area for investigation as suggested by Scipione at 12.2.4.2. Their actions warrant adverse comment – although the mitigating factors are accepted and consequently no formal findings are made.

The action taken by Officer V in looking up the LD affidavit sworn by Seary on 7 December 2001 on the Mascot computer system – the day after his discussion with Officer L – was wrong. Officers have access to the electronic and hard copy records to discharge assigned duties, not to help a colleague to pursue evidence about an internal investigation into themselves.

Officer V was present when Mr T had nominated Officer L as the officer who had tried to extort money from him. Officer V's evidence was that Burn advised him to have nothing further to do with the Mr T investigation after he raised his concerns – and it was wrong for Officer V to go behind that instruction to help Officer L by using his access to the Mascot records system in the way that he did.

Officer S's suggestion that they should 'put this to bed' and go through Seary's computer drive was inappropriate and wrong for the same reason.⁸⁹² Officer S had no justification to access Seary's computer drive and look at the controlled operation order and the LD affidavit – which he read and showed to Officer L.⁸⁹³

The advice given by Officer U to gather as much information as possible before it disappeared off the system was likewise wrong.⁸⁹⁴ Officer U, as a supervisor, should have followed proper procedure and advised Officer S to make a formal complaint. It was not appropriate to advise Officer S to investigate and gather information.

892 Ombudsman Transcript, [Officer S], 1 May 2014, p. 53.

893 Ombudsman Transcript, [Officer S], 1 May 2014, p. 53.

894 NSWPF, Record of interview between Detective Inspectors Mark Galletta and Glenn Jenkins, NSWPF and [Officer U], NSWPF, 19 November 2002, pp. 56-57.

It is clear that Officer L should not have been compiling records about matters in which he was a person of interest through the course of his work. Although Officer L eventually followed protocol by making a formal complaint to Tumen investigators and providing the documentation to them, and later to Operation Prospect, he should not have amassed any documents or made copies of official records about the controlled meeting between himself and Mr T. There is no evidence that Officer L actively searched for documents outside his ordinary duties, that he either asked or directed Officer V or Officer S to do so, or that he disseminated those records to anyone except the Tumen and Prospect investigators.

12.2.12.4 Referral to PIC

In April 2000 the PIC published an audit of the quality of NSWPF internal investigations – known as Project Dresden. One of the recommendations from that audit was that “conflicts of interest by investigators should be countered by making it mandatory that a Category 1 complaint about an officer in a particular local area command or unit be investigated by an officer from another local area command or unit”.⁸⁹⁵ Essentially, this means that investigations into alleged wrongdoing within an organisation should not be done by the part of the organisation in which the wrongdoing is claimed to have occurred.

On this basis, Mascot should have referred the investigation of Officer L – a Mascot officer – to the PIC for investigation as soon as the allegation was made.

Griffin told Operation Prospect that the type of strategy used to target Officer L could have been better,⁸⁹⁶ but the urgency of an investigation may be a reason to conduct an investigation in a manner that was contrary to the Dresden Protocol⁸⁹⁷ – “as long as the other behaviour, that is the actual behaviour, is alright”.⁸⁹⁸

A *Well, it would be better if it appears, and it's often what protocols are about, to be beyond reproach, as in arm's length. Arm's length justice appearing to be done et cetera. I think the essence of a Dresden Report was not just that, reconstructing again for the record, not just that you remove any possibility that there might be collusion or deceitful investigation but it looks*

Q *Transparent?*

A *Transparency is the word. Thank you. Yes that.*⁸⁹⁹

As outlined in section 12.2.4.2, Randall gave evidence to Tumen that Bradley had decided that the investigation of Mr L should be done within Mascot – and he rang Griffin and “told him” what Mascot proposed to do. Bradley submitted to Operation Prospect that, in moving ahead with the controlled meeting strategy, he was ‘deferring to’ relevant people – including Griffin and Scipione.⁹⁰⁰ Bradley submitted that in pursuing this strategy:

*Not only were the heads of the PIC and the Police internal affairs branch consulted and apparently in agreement, but SCA⁹⁰¹ has not suggested how, in the circumstances (which required engineering a set of circumstances in the context of [Officer L]'s work) the proposed operation could have been conducted by the PIC itself. A unique opportunity arose that only the NSWCC could exploit and so Bradley – after deferring to the relevant people (Griffin and Scipione, whose evidence, if any, remains undisclosed to Bradley) – departed from his usual limits to take the opportunity in the public interest.*⁹⁰²

Bradley submitted in similar terms that the inference to be drawn from the evidence is that Griffin acquiesced in his proposal.⁹⁰³ Bradley did not disagree with the evidence that he spoke with Griffin on the phone about the Officer L investigation strategy.

895 Police Integrity Commission, *Special Report to Parliament Project Dresden: an Audit of the Quality of NSW Police Service Internal Investigations*, April 2000, p. 51.

896 Ombudsman Transcript, Terrence Griffin, 3 June 2016, p. 61.

897 Police Integrity Commission, *Special Report to Parliament Project Dresden: an Audit of the Quality of NSW Police Service Internal Investigations*, April 2000, p. 51.

898 Ombudsman Transcript, Terrence Griffin, 3 June 2016, p. 61.

899 Ombudsman Transcript, Terrence Griffin, 3 June 2016, p. 60.

900 Bradley, P, Submission in reply, 8 February 2016, p. 16.

901 “SCA”: Senior Counsel Assisting

902 Bradley, P, Submission in reply, 8 February 2016, p. 16.

903 Bradley, P, Submission in reply, 22 September 2015, p 16.

Griffin was unable to provide any confirmation of these accounts in evidence, as he could not remember Officer L or Mr T.⁹⁰⁴ What Griffin did say in evidence was the following:

Q: *Well, it's been suggested by Mr Bradley that he deferred to you about the proposed strategy.*

A: *In relation to?*

Q: *This matter.*

A: *Putting a listening device into a room?*

Q: *To target [Officer L].*

A: *I have no recollection, and I don't think Mr Bradley has deferred to anything that I've suggested to him in his life, but you say – if that had arisen, I would expect to remember it, because we...*

Q: *Is it possible that he – if he didn't defer to you, would he have telephoned you and told you what the strategy was going to be?*

A: *You're using the word "possible" once again. Of course it's possible. I've got no recollection. I would expect to remember if there'd been a debate about it between us. In broad terms, debates between us – we could sometimes agree not to agree, but I don't recall ever changing his mind about anything. It's possible he could have ...⁹⁰⁵*

Although the content of the conversation between Bradley and Griffin is not entirely clear, it is accepted that a phone call did take place. The available evidence suggests that the allegation against Officer L was not referred to the PIC until after Mascot obtained a warrant to use a LD to conduct the controlled meeting scenario. Mascot's documentation of the strategy was given to McGrath on the afternoon that the strategy and the LD had been deployed.

It is not clear why the matter was not referred outside of Mascot for investigation in accordance with the 'Dresden protocols' – once the allegation against Officer L had been made and an investigation was required. Burn could not explain why Mascot did not take that approach.⁹⁰⁶ It is not disputed that Bradley played a direct role in advising the PIC of the proposed NSWCC strategy that had already been devised. To describe this as "deferring" to the views of Griffin and Scipione does not reflect the evidence before Operation Prospect. Although Bradley's view is also that the PIC acquiesced in his proposal, the point remains that it was inappropriate for an investigation of this kind to be launched peremptorily within the NSWCC.

Mascot investigating one of its own staff members created an unacceptable conflict of interests, and the matter should have been referred to the PIC when the allegation was made to avoid this occurring. Mascot appears to have viewed the situation as requiring a hasty resolution – as it raised questions about whether it was appropriate for Officer L to continue working on the Mascot investigation. Although it was reasonable for Mascot to consider and manage how the unresolved allegation might affect the integrity of the Mascot investigation, this consideration should not have overridden the need for a prompt referral to the PIC. There were also other investigation options to be considered. The acrimonious fallout that occurred after the controlled meeting between Officer L and Mr T underscores why the Dresden Protocols were adopted to avoid a situation of an in-house investigation of this kind.

On the basis of the evidence at hand, no finding will be made against Griffin. It appears that the NSWCC strategy was already being implemented when he was advised by Bradley. However, it would be expected that Griffin – as the PIC Commissioner – would have advised against such a strategy, particularly applying the Dresden Protocols.

904 Ombudsman Transcript, Terrence Griffin, 3 June 2016, p. 56.

905 Ombudsman Transcript, Terrence Griffin, 3 June 2016, pp. 57-58.

906 Ombudsman Transcript, Catherine Burn, 19 November 2014, pp. 2924-2925.

12.2.13 Findings

42. Bradley

Bradley's conduct in approving an internal investigation by Mascot officers into the allegations against Officer L was conduct that was otherwise wrong in terms of section 26(1)(g) of the *Ombudsman Act 1974*. As discussed in section 12.2.12.4, Bradley should have referred the allegation for investigation by the Police Integrity Commission.

43. Seary

Seary's conduct as the deponent of LD affidavit 01/10995 was unreasonable and unjust in terms of section 122(1)(d)(i) of the *Police Act 1990*. As discussed in sections 12.2.5 and 12.2.12.2, the affidavit contained inaccurate, misleading information about allegations relating to Officer L and did not include relevant exculpatory information.

44. Seary

Seary's conduct as the deponent of LD affidavit 01/10995 containing false and misleading information was conduct that may fit within the terms of section 122(1)(a) of the *Police Act 1990* – namely, "conduct of a police officer that constitutes an offence". The relevant offence is swearing falsely in affidavits in section 29 of the *Oaths Act 1900*. As discussed in section 12.2.12.2, Seary would have been aware that some of the information in the affidavit was false.

45. NSW Crime Commission

The conduct of the NSW Crime Commission in conducting an internal investigation of allegations against Officer L was unreasonable and otherwise wrong in terms of section 26(1)(b) and (g) of the *Ombudsman Act 1974*. As discussed in sections 12.2.12.1 and 12.2.12.4, the investigation strategy was hastily and poorly devised, it did not take adequate account of the potential adverse career and emotional impact on Officer L, and the matter should instead have been referred for investigation by the Police Integrity Commission.

12.2.14 Recommendation

17. It is recommended under section 26(2) of the *Ombudsman Act 1974* that the NSW Crime Commission provide Officer L with a written apology for the distress and injury caused by the unsatisfactory manner in which an investigation was undertaken into allegations against him.

12.3 The investigation of Officer G

Officer G worked at Newtown Police Station in the mid-1980s with MSO11, who was a Mascot target. MSO11 made an allegation about Officer G during a recorded conversation with Sea in 1999. Sea had not named Officer G as an officer involved in corruption in his initial debrief interviews.⁹⁰⁷ However, Officer G had a complaints history that included allegations of corruption and taking money from drug dealers. The great majority of the complaints against Officer G were either not sustained or no action was required in response.⁹⁰⁸ The management action for the sustained matters had been taken and finalised before Mascot began to take an investigative interest in Officer G.

907 NSWPF, Record of interview between Detective Inspector Burn, Detective Senior Sergeant Henry and 'Sea', 7 January 1999; NSWPF, Record of interview between Detective Inspector Burn, Detective Senior Sergeant Henry and 'Sea', 8 January 1999; NSWPF, Record of interview between Detective Inspector Burn, Detective Senior Sergeant Henry and 'Sea', 9 January 1999; NSWPF, Record of interview between Detective Inspector Burn, Detective Senior Sergeant Henry and 'Sea', 10 January 1999; NSWPF, Record of interview between Detective Inspector Burn, Detective Senior Sergeant Henry and 'Sea', 11 January 1999; NSWPF, Record of interview between Detective Inspector Burn, Detective Senior Sergeant Henry and 'Sea', 28 January 1999.

908 PIC, *PODS Person profile for [Officer G]*, accessed by NSW Ombudsman on 25 October 2013.

Officer G's private conversations were never listened to or recorded by Mascot LDs. His name was nevertheless mentioned from 1999 onwards in the facts and grounds paragraphs of 28 supporting affidavits for LD warrant applications, although he was not named in the associated applications and warrants as a person Mascot sought to listen to or record. From February 2001 he was named in five LD supporting affidavits and 15 associated LD warrants as a person whose private conversations Mascot sought authority to lawfully record. In all, he was named in 33 LD supporting affidavits and 15 LD warrants. Allegations about Officer G were also included in two affidavits sworn in support of applications for TI warrants, but Officer G was not an intended target of those warrants and they did not authorise the interception of any telecommunications services that Officer G was considered likely to use.

12.3.1 Officer G's complaint to Operation Prospect

Officer G complained to Operation Prospect that he "may have been unlawfully targeted" by SCIA.⁹⁰⁹ He told Operation Prospect that in late 2012 a journalist, Mr J, gave him a transcript of an interview conducted by Strike Force Tumen in which a Mascot investigator raised concerns about Mascot's targeting of Officer G.⁹¹⁰ The transcript recorded the investigator as stating:

*The reason I believe I [sic] he was inappropriately targeted was that Darryl Boyd Skinner [sic], who was a fairly close confidante of Mr Dolan, had recently been rolled on appeal for a job in the, I think it was the St George Sutherland area, by [Officer G]. Whether the information that was on hand was sufficient to Warrant a investigation into [Officer G]'s conduct, previous conduct, I'm not fully aware, but I just thought it plain inappropriate that we should be doing it and directly under Mr Dolan, because of that close alignment.*⁹¹¹

Officer G told Operation Prospect:

*... what it [the Tumen interview] did articulate, and I guess, it's now it's not fact, it's – it is what it is, but in the document the person who was interviewed was specifically questioned about the actions of Dolan and it's articulated in this document how in this person's view Boyd-Skinner and perhaps Dolan and perhaps others had specifically targeted me, perhaps without any – I'm saying without any lawful justification to do it, other than purely out of spite because I took a position off him; and that's the only relationship I've got with Boyd-Skinner.*⁹¹²

12.3.2 Allegation against Officer G recorded by Mascot (July 1999)

On 29 July 1999 Sea made an authorised recording on a body worn LD of a conversation with MSO11 at a restaurant.⁹¹³ During the conversation, MSO11 detailed allegedly corrupt activity of a number of police officers, including one matter involving Officer G.⁹¹⁴ The reference to Officer G was summarised by a Mascot senior investigator on 3 August 1999, as follows:

[MSO11] mentions [Officer G] was 'red hot' when he worked at Newtown. [Officer G] mostly took money from drug dealers and [MSO11] describes this activity as 'armed robbery.' [SOD110, Chron 1236]⁹¹⁵

Based on this summary, Mascot recorded the allegation in the Schedule of Debrief:

*[MSO11] mentions [Officer G] was 'red hot' when he worked at Newtown. [Officer G] mostly took money from drug dealers and [MSO11] describes this activity as 'armed robbery.'*⁹¹⁶

909 Email from [Officer G], NSWPF to Bruce Barbour, Ombudsman, NSW Ombudsman, 14 November 2012.

910 Statement of Information (Interview), [Officer G], 29 November 2013, pp. 6-9.

911 NSWPF, Record of interview between Detective Inspector Jenkins and [a Mascot investigator], 22 October 2002, pp. 27-28.

912 Statement of Information (Interview), [Officer G], 29 November 2013, p. 5.

913 NSWCC Transcript of LD266/1999, Tape T99/187, 29 July 1999.

914 NSWCC Transcript of LD266/1999, Tape T99/187, 29 July 1999, p 29.

915 NSWCC Information Report, *Summary of Sea/[MSO11] trip to QLD, re [name] interview 28/7/99 – 31/7/1999*, reporting officer: [name], 3 August 1999, p. 4.

916 NSWCC, SOD110, [MSO11] mentions [Officer G] was 'red hot' when he worked at Newtown, as at 31 August 2000.

12.3.3 Officer G's name mentioned in LD affidavits

On 5 August 1999, Detective Sergeant Troy Kaizik – a Mascot investigator – swore an affidavit in support of an application for LD warrants.⁹¹⁷ The affidavit mentioned Officer G, but not as a person whose private conversations were likely to be recorded. Officer G was therefore not named in the associated warrants. Paragraph 5.31 of the affidavit included the allegation about Officer G from MSO11's conversation with Sea a few days before:

On 29 July 1999, in lawfully recorded conversation held over a meal at a restaurant on the Gold Coast, with [Sea], [MSO11] outlined a number of instances of official corruption, as follows:

...

c) [MSO11] nominated two police officers involved in corruption namely, [Officer G] (“[Officer G]”) (a serving Sergeant of Police attached to Kogarah Police) ... Of [Officer G], [MSO11] said ‘Red hot. Kidnapped guys and take all their money and throw them out.’...⁹¹⁸

Although that paragraph purports to quote what MSO11 said, the transcript of the recorded conversation between Sea and MSO11 was worded differently. The affidavit contains a shortened version of the conversation and introduces the term ‘kidnapping’ that MSO11 had not used.

The actual transcript of the conversation between Sea and MSO11 read:

We had all the Greeks, our biggest go was receivers in Marrickville, [name] and all those clowns and we'd go to fuckin', we would go to gooks, gooks, in Marrickville, see you get blokes like [Officer G] and he was a bit red hot he would drive down the street fuckin' pick out this cunt on the corner then he would put him in the fuckin' car take all his money and throw him out the next street corner and drive off just an armed robbery. ...But no one would report it, cause they were all drug dealers and it was [name] territory and [name] from the Consorters, that's right [MSO1] was there, he was a good bloke mate.⁹¹⁹

The metadata for the transcript of this conversation indicates that the transcript was created by a Mascot investigator on 3 August 1999 – that is, two days before Kaizik's affidavit was sworn.⁹²⁰ An Information Report created by Burn on 10 August 1999 also refers to the recorded conversation as being “already transcribed”.⁹²¹ The NSWCC tape log that records which officers accessed LD tapes also shows that Kaizik had the tape of Sea's and MSO11's conversation between 2 and 18 August 1999.⁹²²

The paragraph in Kaizik's affidavit was repeated in 27 other LD affidavits⁹²³ between August 1999 and January 2001. None of those affidavits named Officer G as a person whose private conversations were likely to be recorded, and his name was not on any of the associated warrants. There appears to have been little investigative activity in this period in relation to Officer G. The allegation against him, like many others recorded by Mascot, seems to have been noted and left dormant while other investigative priorities were pursued.

However, as discussed at section 12.3.4, this same version of the paragraph was ‘rolled over’ into five other LD affidavits sworn in support of applications for warrants which named Officer G as a person whose private conversations Mascot sought to record.⁹²⁴

917 LD affidavit 279-285/1999.

918 LD affidavit 279-285/1999, p. 22.

919 NSWCC Transcript of LD266/1999, Tape T99/187, 29 July 1999, p. 29.

920 NSWCC Transcript of LD266/1999, Tape T99/187, 29 July 1999.

921 NSWCC Information Report, *Contact with Sea on 10/8/99 – LD Review re [name]/[MSO11]*, reporting officer: Burn, 10 August 1999, p. 2.

922 NSWCC Tape Log T99/187, 2 August 1999, as at 5 April 1999.

923 LD affidavit 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, 284-290/2000, 313-319/2000, 338-344/2000, 362-368/2000; 391-397/2000, 01/00056-00062, and 01/00183-00190.

924 LD affidavit 01/00640-00646, 01/01175-01181, 01/01795-01801, 01/02271-02277, and 01/02769-02775.

The same paragraph was also included in two TI affidavits sworn in 2001, but neither of these was sworn in support of applications for warrants targeting any telecommunications services that Officer G was considered likely to use.⁹²⁵

12.3.3.1 Increased targeting and proposed integrity testing of Officer G

On 3 November 2000 Dolan sent an email to the SCU with the subject line 'DBS – Appeal'. The email stated:

Darren [Boyd-Skinner] has just informed me that he has been rolled in his nomination for the position of Sergeant.

[...]

He was rolled by [Officer G]. Interestingly, [Officer G] has been nominated for an Inspector's position but that is being considered on integrity [sic] grounds. It is ironic that if he is passed he will get the Inspector position but if he is stopped, he will get neither position. It is also ironic that [Mascot Subject Officer 15] was on the Appeal Panel. Of course he and [Officer G] are good friends and worked together back in the DEA days. I am sure this had no effect on the outcome of the appeal it is your association.

The other person also got rolled.

DBS will be in on Monday. He is one of ours and feeling belted. Your support would be appreciated.

*Regards>Dolan.*⁹²⁶

It appears that at some point in the following month Mascot decided to actively target Officer G. The minutes of the Operations Coordination Committee (OCC) meeting of 11 December 2000 record that "Supt Dolan also discussed the integrity test campaign and possible persons/places of interest (e.g [Officer G], Ashfield, Kings Cross)".⁹²⁷

Mascot records do not indicate how Dolan reached the decision that Officer G would be the subject of an integrity test. The lack of justification and the timing raise some concern. However, a senior Mascot investigator suggested that she may have been the proponent of this idea. In her evidence to Operation Prospect, the senior investigator recalled that Dolan addressed a meeting and asked if there was any knowledge of police involved in corrupt behaviour.⁹²⁸ She recalled suggesting Officer G as a target as his name "kept popping up" during her work previously at IA.⁹²⁹ However, she then went on to say that "as far as I know it didn't go anywhere".⁹³⁰

On 5 February 2001 Burn recorded in a Weekly Activity Report that one of Mascot's 'Proposed Activities' for the week was "Intergrity [sic] test phase: Profiles re [Officer G], [an officer], [Officer E], [name]".⁹³¹ Mascot staff also sought the details of informants registered by Officer G, and assessed whether any of them could be used in an integrity test for Officer G.⁹³² Although this and subsequent Mascot meeting records refer to Officer G as a possible target for integrity tests, Operation Prospect has not found evidence detailing the proposed integrity test strategy.⁹³³

Operation Prospect interviewed the Mascot investigator who told Strike Force Tumen in late 2012 that he thought Officer G had been inappropriately targeted (see section 12.3.1). The investigator recalled that he thought the contemplated integrity testing of Officer G was affected by conflicts of interests:

925 TI affidavit 01/311-313; TI affidavit 01/329.

926 Email from Superintendent John Dolan, Mascot Reference, NSWCC to the SCU, Mascot Reference, NSWCC, 3 November 2000.

927 NSWCC, *Confidential Minutes of the OCC*, 11 December 2000, p. 2.

928 Ombudsman Transcript, [a senior Mascot investigator], 26 March 2014, p. 108.

929 Ombudsman Transcript, [a senior Mascot investigator], 26 March 2014, p. 109.

930 Ombudsman Transcript, [a senior Mascot investigator], 26 March 2014, p. 109.

931 NSWCC/SCU, *Weekly activity report for week ending 3 February 2001*, 5 February 2001, p. 2.

932 Email from [NSWCC Analyst], NSWCC to [name] and [Officer S], NSWPF, 7 February 2001, p. 11.

933 NSWCC/SCU, *Weekly activity report for week ending 10 February 2001*, 12 February 2001, p. 2; NSWCC/SCU, *Weekly activity report for week ending 17 February 2001*, 17 February 2001, p. 2; NSWCC/SCU, *Weekly activity report for week ending 24 February 2001*, 26 February 2001, p. 2; NSWCC/SCU, *Weekly activity report for week ending 3 March 2001*, 5 March 2001, p. 2; NSWCC/SCU, *Weekly activity report for week ending 10 March 2001*, 10 March 2001, p. 2.

A ...I don't recall what information there was but I do recall thinking, amongst others, if we should be doing anything given the – that link between Boyd-Skinner and Dolan and [Officer G].

Q And what's wrong with that link?

A Conflict of interest. Um, there was no – even if there was some information, to have someone like Boyd-Skinner, who had just been rolled by, um, [Officer G] for a promotion, driving or being assisted by Dolan to drive an investigation into this person would, in my mind, be a significant conflict of interest.⁹³⁴

...

A ...I don't recall specifically what they were planning to do in regard to [Officer G], whether they were going to, ah, create a scenario where he might accept payment from, ah, an undercover Officer for information for anything, I don't know, I sort of wouldn't suggest that may have been the case, um, but my – my concern was that that conflict of interest between Boyd-Skinner, Dolan and [Officer G].⁹³⁵

12.3.4 Mascot seeks LD warrant to record Officer G

On 12 February 2001 a Mascot investigator swore an affidavit in support of an application for LD warrants.⁹³⁶ The warrant application sought authority to use three LDs to be worn or carried by Sea 'for the purpose of' listening to or recording the conversations of a number of people, including Officer G. The only justification the affidavit presented for the inclusion of Officer G was the text drawn from Kaizik's earlier affidavit:

On 29 July 1999, in lawfully recorded conversation with [Sea] over a meal on the Gold Coast, [MSO11] mentioned a number of instances of official corruption, as follows:

...

c) [MSO11] nominated two corrupt NSWPS officers namely, [Officer G] (a serving [rank] of police attached to Kogarah Police) [...] In relation to [Officer G], [MSO11] said "Red hot. Kidnapped guys and take all their money and throw them out." ...⁹³⁷

This affidavit did not reproduce the transcribed conversation of what MSO11 actually said, which had been available since August 1999 – see section 12.3.2.⁹³⁸ The affidavit also did not mention any proposed integrity testing strategy, or how Mascot investigators anticipated recording Officer G's private conversations.

Officer G was named in a further four affidavits as a person whose private conversations were likely to be listened to or recorded by the use of LDs deployed by Sea.⁹³⁹ Those affidavits⁹⁴⁰ supported 12 warrants, granted between 12 February and 7 May 2001. Each affidavit contained the same paragraph that was drawn from Kaizik's affidavit: "In relation to [Officer G], [MSO11] said 'Red hot. Kidnapped guys and take all their money and throw them out.'⁹⁴¹

Officer G's name was also mentioned in two Mascot TI affidavits that supported applications for TI warrants to intercept MSO11's phones. The first of these affidavits was sworn on 5 April 2001, stating that MSO11 "used words to the effect 'Red hot. Kidnapped guys and take all their money and throw them out.'⁹⁴² One textual difference between that and previous statements was the qualification, that MSO11 "used words to the effect...". This paragraph was repeated in the next TI supporting affidavit sworn on 27 April 2001.⁹⁴³

934 Statement of Information (Interview), [a Mascot investigator], 11 March 2014, pp. 152-153.

935 Statement of Information (Interview), [a Mascot investigator], 11 March 2014, pp. 158-159.

936 LD affidavit 01/00640-00646.

937 LD affidavit 01/00640-00646, p. 6.

938 NSWCC Information Report, *Contact with Sea on 10/8/99 – LD Review re [name]/[MSO11]*, reporting officer: Burn, 10 August 1999, p. 2.

939 LD affidavit 01/01175-01181, 01/01795-01801, -01/02271-02277, 01/02769-02775.

940 LD affidavit 01/02769-02775, 01/01175-01181, 01/01795-01801, 01/02271-02277.

941 LD affidavit 01/00640-00646.

942 TI affidavit 311-313/2001, p. 5.

943 TI affidavit 329/2001, p. 5.

On 12 April 2001 a Mascot investigator reviewed Mascot's intelligence about the allegation against Officer G and recommended as follows:

*[Officer G] is currently the subject of an integrity test strategy by MASCOT. There is nothing in this SOD that would constitute a criminal or departmental charge. If the integrity test is unsuccessful then this matter should be regarded as COMPLETED, unless further information is forthcoming or the integrity test is successful.*⁹⁴⁴

In an Information Report of 2 May 2001 a Mascot investigator made a note of a Mascot meeting about an integrity test of a different officer.⁹⁴⁵ The meeting appears to have canvassed general issues relating to integrity testing, and the Information Report refers to Officer G as one of the proposed targets for testing. The Report notes that Dolan had requested an overview of people who Mascot was planning to target for integrity tests. One issue that Dolan wanted advice on was whether the CIS and SOD holdings for proposed integrity test targets "fit within the Integrity Testing Policy and Guidelines?"⁹⁴⁶ A 'CIS file' is a file on the NSWPF Complaints Information System that contains details of all complaints made to the NSWPF about a particular officer's conduct. The Information Report also noted that the Mascot investigator and Burn discussed that "Information, CIS file and SOD holdings are sufficient to support an integrity test on [Officer G]".⁹⁴⁷

The Information Report also recorded that the "meeting was told" that the NSWCC had advised Mascot – in relation to a proposed integrity test of another officer (not Officer G) – that "it 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".⁹⁴⁸ This was confirmed in a memo composed by Bradley five days later on 9 May 2001. The memo was addressed to Giorgiutti, Standen and Scipione (then Commander of SCIA) and expressed concern about Mascot's use of integrity tests and some scenarios Mascot had developed. The memo noted that:

*It is no part of the Commission's charter to be testing police for the purpose of determining whether the Commissioner can have confidence in them.*⁹⁴⁹

Bradley's memo did not specifically mention any planned integrity test of Officer G. However, it seems relevant that the Mascot plan to integrity test Officer G may have stalled around this time. It seems that Mascot did not proceed any further with the plan to test Officer G or with any other proactive targeting of him. Operation Prospect did not locate any record that indicates Mascot developed a specific scenario for an integrity test of Officer G or that a test was ever conducted. In separate interviews with Strike Force Tumen, the two Mascot officers who were mostly responsible for integrity testing both stated that they did not recall Mascot conducting an integrity test of Officer G.⁹⁵⁰

Bradley's memo and other Mascot integrity test issues are discussed in Chapter 17.

12.3.4.1 Resolution of allegation against Officer G

Mascot's investigation of Officer G did not progress after this point. His name was included in a warrant for the last time on 7 May 2001.

It appears that over the course of the next year the allegation against Officer G was not resolved, nor was it "regarded as completed" as recommended in an Information Report of April 2001. However, during this period, Officer G's promotions were delayed – primarily due to information supplied by Mascot.

944 NSWPF, Investigator's Report, *Summary of SOD110 – [MSO11] states that [Officer G] was 'red hot' whilst at Newtown*, 12 April 2001.

945 NSWCC Information Report, *Meeting held re Stroma to further discuss Integrity Test 01/004 (Stroma)*, reporting officer: [name], 2 May 2001, p. 2.

946 NSWCC Information Report, *Meeting held re Stroma to further discuss Integrity Test 01/004 (Stroma)*, reporting officer: [name], 2 May 2001, p. 2.

947 NSWCC Information Report, *Meeting held re Stroma to further discuss Integrity Test 01/004 (Stroma)*, reporting officer: [name], 2 May 2001, p. 2.

948 NSWCC Information Report, *Meeting held re Stroma to further discuss Integrity Test 01/004 (Stroma)*, reporting officer: [name], 2 May 2001, p. 2.

949 NSWCC internal memorandum from Commissioner Phillip Bradley to Director John Giorgiutti, Assistant Director Mark Standen and NSWPF Assistant Commissioner Andrew Scipione, 9 May 2001, p. 1.

950 NSWPF, Record of interview between Detective Inspector Galletta, Detective Inspector Jenkins and [Mascot officer], 12 November 2002, p. 25; NSWPF, Record of interview between Inspector Merryweather and Detective Senior Constable [name], 23 December 2002, pp. 55-56.

On 19 November 2001, a memo was sent to Commissioner of Police Ken Moroney from Burn and Jewiss⁹⁵¹ about people who were of interest to Mascot – “in response to a request about whether there were any adverse mentions on hand at Mascot of persons nominated for promotion”.⁹⁵² This memo mentions Officer G (among other officers), noting that Mascot held only one allegation – which had not been corroborated by Mascot – and that Sea had not made any allegations about Officer G.

Minutes from a 15 January 2002 meeting recorded that Officer G's promotion had been declined because he was a subject of Mascot/Florida investigations.⁹⁵³

A NSWCC overview of the allegation against Officer G records that consideration was given to taking disciplinary action against him under section 181D of the Police Act.⁹⁵⁴ A Mascot intelligence analyst noted in a report of 21 January 2002 that more relevant information might be gained from PIC hearings. The analyst noted that – in addition to the allegation made by MSO11 – Mascot was interested in the current and former police officers who were also mentioned in previous complaints about Officer G relating to thefts from alleged drug dealers, commenting that “[Officer G]’s professional history with such officers heightens Mascot’s interest in him”.⁹⁵⁵ The analyst summarised the investigative steps Mascot had taken to that point, as follows:

*Initial inquiries have been carried out into this matter which revealed that both [MSO11] and [Officer G] were stationed in the Newtown/Marrickville areas in 1986 **MAIN3363**.*

Inquiries into [Officer G]’s CIS, Royal Commission and a de-brief from former [officer] all reveal similar and consistent allegations of [Officer G] stealing money from drug dealers.

*Initial steps were taken to carry out an integrity test into [Officer G], but this was later not continued. Inquiries have been carried out into registered informants of [Officer G] **MAIN3066**. A profile of [Officer G] has been completed.*

The investigation has not been furthered past this point as interviewing [MSO11] in relation to these allegations would have exposed an undercover operative ‘SEA’.⁹⁵⁶ [emphasis in original]

The intelligence analyst then recorded possible actions as:

It is anticipated that during 2002, [MSO11] will be recalled to the Police Integrity Commission to explain this allegation and a number of further allegation which were all recorded on listening device.

At some point [Officer G] should also be interviewed in relation to this allegation.⁹⁵⁷

The intelligence analyst’s report recommended that:

The outcome of this investigation will not be known until [MSO11] is recalled to give evidence before the Police Integrity Commission in 2002. However, at this time there is no evidence to support the allegation raised by [MSO11]. It is most likely that Police will be unable to substantiate [sic] corroborate this allegation. Consideration should be given to 181d proceedings given previous holdings on [Officer G] from the NSW Police Royal Commission, [officer] De-brief and CIS records.⁹⁵⁸

Burn noted on 21 January 2002 that one of Mascot’s proposed activities for the week was to complete “Risks assessment and report regarding officers named during Mascot with the prospect of suspensions etc. ([Officer G], [other officer names])”.⁹⁵⁹

951 NSWCC internal memorandum from Inspector Catherine Burn and Sergeant Greg Jewiss, to Commissioner Ken Moroney, 19 November 2001.

952 NSWPF internal memorandum from Acting Commander Catherine Burn to Commander Brian Reith, 3 June 2002.

953 NSWCC, *Minutes of meeting held in the ground floor hearing room*, 15 January 2002.

954 *Police Act 1990*, s.181D.

955 NSWCC, *Overview of SOD110*, 21 January 2002, p. 2.

956 NSWCC, *Overview of SOD110*, 21 January 2002, pp. 2-3.

957 NSWCC, *Overview of SOD110*, 21 January 2002, p. 3.

958 NSWCC, *Overview of SOD110*, 21 January 2002, p. 4.

959 NSWCC/SCU, *Weekly Activity Report for week ending 19 January 2002*. 21 January 2002, p. 2.

On 19 February 2002 a senior constable from the SCU conducted a risk assessment of Officer G in response to his pending promotion. It categorised Officer G as being of 'medium' risk based on the uncorroborated criminal allegation on Mascot's books and his complaints history.⁹⁶⁰

An Information Report of 7 March 2002 recorded the current status of the investigation regarding Officer G as relying on the pending interview of MSO11 by PIC in the Florida hearings:

[MSO11] will be interviewed about this matter before a private hearing of the Police Integrity Commission.
[Officer G] will be the subject of a Section 181d.⁹⁶¹

The Information Report also made the following general observation on allegations made by MSO11:

It must be remembered that [MSO11] is a well known 'big noter' and 'liar', which may provide a clear explanation as to why a number of the matters cannot be corroborated. However, it is intended to interview [MSO11] in relation to the admissions captured on listening device at a private hearing of the Police Integrity Commission. It is not intended to interview any other serving or former police officer until after that time as there are only uncorroborated allegations made by [MSO11] levelled at those officers. It is felt by this case officer that uncorroborated allegation would pose little concern to the officers involved. However, if [MSO11] were to make further admissions or provide further information concerning any or all of the matters that may be sufficient to enable further investigations to be carried out. But if [MSO11] withdraws from the admissions captured on listening devices, claiming they are only 'untrue boasts' there appears to be little or no further investigation to be carried out in regards to the [MSO11] matters. This decision cannot be made until after [MSO11] attends the Police Integrity Commission. It is requested that [MSO11] be interviewed in a private hearing at the first available opportunity and not left until the proposed hearing date of July 2002.⁹⁶²

There is no record of any action under section 181D of the Police Act being instigated against Officer G.

It is clear that Mascot decided that the allegation against Officer G, although historical and uncorroborated, could not be resolved until MSO11 was questioned at the PIC's Operation Florida hearings. This had the effect of extending the period Officer G remained under investigation.

By March 2002, Officer G had started action in the Supreme Court for a declaration that he be appointed to the new higher ranked position that was on hold at that time due to concerns about his integrity.⁹⁶³ The NSWPF considered what, if any, information could be provided to the Court about the ongoing Mascot investigation.⁹⁶⁴ On 25 March 2002, Burn sent an email to Reith stating that: "The only matter we have regarding Officer G is an uncorroborated cat 1 matter ... Our material, on its own, does not amount to a great deal. However, the file is with C&LS for adjudication because of [Officer G's] lengthy CIS history".⁹⁶⁵ A 'cat 1' matter refers to a category one complaint about a police officer that includes allegations of a more serious nature.⁹⁶⁶ It is recorded, along with all other complaints about police, on the NSWPF CIS. 'C&LS' refers to the NSWPF Court & Legal Services Unit.

In the period before the PIC hearing on 30 May 2002 MSO11 had a 'general conversation' with his lawyer and Giorgiutti – solicitor to the NSWCC. Burn reported on 3 June 2002 that during that conversation "[MSO11] told Giorgiutti that he has never been corrupt in his life and anything that he might have told M5 [Sea] would have been an embellishment to make himself look good".⁹⁶⁷

960 NSWPF, *Risk assessment – status of involved officer*, [Officer G], 19 February 2002.

961 NSWCC Information Report, *Overview of present status of [MSO11] matters being investigated by Operation Mascot*, reporting officer: [a Mascot investigator], 7 March 2002, p. 2.

962 NSWCC Information Report, *Overview of present status of [MSO11] matters being investigated by Operation Mascot*, reporting officer: [a Mascot investigator], 7 March 2002, p. 3.

963 NSWCC Information Report, *Information / memos regarding [Officer G]*, reporting officer: Burn, 27 March 2002; Email from Detective Inspector Catherine Burn, Mascot Reference, NSWCC to Commander Brian Reith, NSWPF, 25 March 2002.

964 Letter from [name], Solicitor, Court and Legal Services, NSWPF, to Commander Andrew Scipione, Commander of SCIA, NSWPF, 10 December 2001.

965 Email from Detective Inspector Catherine Burn, Mascot Reference, NSWCC to Commander Brian Reith, NSWPF, 25 March 2002.

966 *Police Integrity Commission Act 1996* (repealed), s. 67 as in force at 25 March 2002.

967 NSWCC Information Report, *Confidential Report re [Officer G] submitted re Supreme Court action*, reporting officer: Burn, 3 June 2002, p. 2.

MSO11 repeated this assertion at a PIC hearing for Operation Florida on 19 September 2002. He explained that “when I get out and drink off duty I embellish previous jobs”⁹⁶⁸ and that he did this because he was “trying to get on with M5 [Sea]”.⁹⁶⁹ In the PIC hearing, MSO11 denied that he had been involved in corruption and stated that he had made up exaggerated stories about corruption and other officers. He characterised such allegations as “that’s just me drinking, drunk, saying stuff that’s just garbage”.⁹⁷⁰ MSO11 was asked directly about the allegation he had made to Sea about Officer G:

Q. Do you know a police officer named [Officer G]?

A. You’ve asked me that yesterday. Yes.

...

Q. And what was your opinion about him?

A. I didn’t really have an opinion.

...

Q. Did you ever hear any allegations about him stopping people in the street and robbing them, in effect?

A. No.

Q. You didn’t hear an allegation that he stopped somebody on a corner and effectively bailed the person up and stole property from the person?

A. No.⁹⁷¹

On 9 December 2002 in what appears to be a review of outstanding allegations on the Mascot books, a Mascot investigator concluded:

*There is no further evidence to support the assertions of [MSO11]. No other cooeration [sic] can be found to support the allegation that [MSO11] has made. [MSO11] has admiralty [sic] stated that what he said was not true. The matter can’t be progressed any further.*⁹⁷²

Acting Assistant Commissioner Carroll wrote to Officer G on 20 October 2003 and advised that he was “a named officer in one matter” investigated by Mascot which concerned:

*... a generalised allegation of corrupt activity at Newtown Detectives – dealt with in the Supreme Court at the time when your promotion was challenged. Your involvement in this matter was assessed by the Special Crime Unit and classified as requiring ‘No further action’. This means that no further investigation was deemed necessary given the findings of enquiries conducted by Operation Mascot investigators. This also means that in relation to this matter a result of ‘No adverse finding’ is recorded.*⁹⁷³

12.3.5 Analysis and submissions

Officer G was named on 15 LD warrants granted between 12 February and 7 May 2001, and on five affidavits sworn in support of those warrants. Allegations against Officer G were also included in LD affidavits sworn in 1999 and 2000 which did not name him as a person to be recorded, and TI affidavits in 2001 which did not support the interception of his phone. While the evidence before Operation Prospect indicates that Officer G’s private conversations were never listened to or recorded, it does seem that Mascot’s investigation delayed his promotional progress.

968 PIC Hearing Transcript, Examination of [MSO11], 19 September 2002, p. 131.

969 PIC Hearing Transcript, Examination of [MSO11], 19 September 2002, p. 131.

970 PIC Hearing Transcript, Examination of [MSO11], 19 September 2002, p. 122.

971 PIC Hearing Transcript, Examination of [MSO11], 19 September 2002, p. 111-112.

972 NSWCC Information Report, *Investigatots [sic] Report*, reporting officer: [a Mascot investigator], 9 December 2002, p. 6.

973 Letter from Acting Assistant Commissioner John Carroll, NSWPF to [Officer G], NSWPF, 21 October 2003.

The timing of events – and the tone of Dolan’s email of 3 November 2000 to the SCU – give rise to some suspicion that Mascot’s investigation of Officer G intensified in November 2000, after he was recommended for promotion ahead of Boyd-Skinner. Until that time, few steps had been taken to proactively investigate Officer G’s conduct. A month after sending his email, Dolan informed the NSWCC OCC that Officer G would be the subject of an integrity testing strategy.

There is nothing in Mascot records to suggest that Boyd-Skinner had any involvement in the targeting of Officer G. There is also no direct evidence that Dolan instigated the testing strategy as a response to Boyd-Skinner’s missed promotion. Operation Prospect received evidence from a Mascot investigator that Officer G was targeted “purely based upon his horrendous Internal Affairs history”.⁹⁷⁴ Another senior Mascot investigator suggested that it was coincidental that Mascot took a strong interest in Officer G at this time (see section 12.3.3.1). There was nevertheless a basis for suspecting that Officer G was being targeted for personal reasons. Evidence received by Operation Prospect from Mascot investigators on other matters indicates that Dolan and Boyd-Skinner were close.⁹⁷⁵ Dolan’s email to the SCU and his subsequent proactive targeting of Officer G created the distinct impression that Dolan’s decision making lacked impartiality. This was the impression formed by one Mascot investigator in his evidence to Tumen investigators (quoted above at section 12.3.1). There was no other documentary record created at the time to dispel any such impression.

It is not clear why an integrity test on Officer G was not done. It may have been because of Bradley’s expressed concern about the propriety of the NSWCC conducting integrity tests. In any case, Mascot continued to show interest in Officer G based on MSO11’s allegation and Officer G’s complaints history. This continuing Mascot interest delayed at least one of his promotions. Mascot deferred concluding its investigation of Officer G until MSO11 was questioned in the Florida hearings. The reason it seems is that Mascot was concerned that directly confronting Officer G with MSO11’s allegation might expose Sea’s role as an informant and affect the ongoing investigation of other people that MSO11 had made allegations about in his recorded conversation with Sea in July 1999.⁹⁷⁶

Another matter of concern in Mascot’s investigation of Officer G is the inaccurate representation in multiple documents of the allegation that MSO11 first made against Officer G in his recorded conversation with Sea. This allegation was cited as the only justification for including Officer G’s name in LD warrants and supporting affidavits. Mascot’s reliance on this allegation as the sole basis for its ongoing investigation of Officer G was confirmed in Burn’s email to the Commander of SCIA on 25 March 2002 and in a letter to Officer G from Assistant Commissioner Carroll dated 20 October 2003 (see section 12.3.4.1).

As discussed in section 12.3.2, the allegation was first noted by a senior Mascot investigator in an Information Report on 3 August 1999 that summarised a comment made a few days earlier (on 29 July) by MSO11 in a recorded conversation with Sea. This summary account was then picked up in an affidavit sworn by Kaizik on 5 August 1999,⁹⁷⁷ but with changed wording – the description “‘red hot’ when he worked at Newtown. [Officer G] mostly took money from drug dealers and [MSO11] describes this activity as ‘armed robbery’”, was rephrased in Kaizik’s affidavit as “‘Red hot’. Kidnapped guys and take all their money and throw them out”. The transcript of the recorded conversation (see 12.3.3) has a similar though different description to both summaries, and importantly does not use the word ‘kidnapped’. There is no apparent reason why the exact wording from the transcript could not have been used, as it was only slightly longer than the summary used in the Information Report and in Kaizik’s affidavit.

Kaizik’s affidavit of 5 August 1999 did not name Officer G as a person whose private conversations were likely to be recorded. The associated LD warrant application related to MSO11, and the inclusion of the allegation against Officer G was regarded as relevant to that purpose. To that extent, the inaccurate representation of the conversation about Officer G did not inform any decision made by the judicial officer about whether to grant a warrant in relation to him. It is nevertheless important that an allegation in an affidavit of corruption by a

⁹⁷⁴ Statement of Information (interview), [Mascot investigator], 27 August 2013, p. 74.

⁹⁷⁵ Statement of Information (interview), [Mascot investigator], 13 March 2014, pp. 38-39; Ombudsman Transcript, [Mascot investigator], 20 March 2014, p. 96; Ombudsman Transcript, [Mascot investigator], 1 May 2014, p. 24.

⁹⁷⁶ NSWPF internal memorandum from Sergeant Greg Jewiss to [NSWPF Solicitor], [Officer G] v *Commissioner for Police*, 19 December 2001.

⁹⁷⁷ LD affidavit 279-285/1999.

police officer should be carefully and accurately presented. The quotation marks placed around the comment attributed to MSO11 was also likely to give the impression that it was a quotation, rather than a summary. The wording from Kaizik's affidavit was subsequently used in many Mascot affidavits, including five affidavits that did seek authority to record or listen to Officer G's private conversations. These were sworn on 12 February, 5 March, 26 March, 12 April and 7 May 2001.

As discussed in other chapters, the approach adopted in this report is to make an individual finding only against an officer who first swore an affidavit that included inaccurate or misleading material – which in this case was Kaizik. An individual finding is not made against named officers who followed the prevailing Mascot practice of deposing to affidavits without first checking and verifying the content copied from earlier affidavits. In this case, this should have involved checking the allegation relating to Officer G against the transcript or recording. This issue of systemic failures in affidavit preparation is dealt with in Chapter 16.

In a written submission to Operation Prospect, Kaizik stated that his affidavits were all prepared in good faith, he worked collaboratively with and relied upon 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.⁹⁷⁸

12.3.6 Findings

46. Kaizik

Kaizik's conduct as the deponent of LD affidavits 279-285/1999 sworn on 5 August 1999 was unreasonable conduct under section 122(1)(d)(i) of the *Police Act 1990*. As discussed in section 12.3.5, the affidavits did not accurately represent the text of an allegation that had been made against Officer G.

47. NSW Crime Commission

The NSW Crime Commission is responsible for the actions of members of the Mascot Task Force in preparing affidavits (referred to in section 12.3.5) that did not accurately represent the text of an allegation that had been made against Officer G. The NSW Crime Commission was responsible for the Mascot and Mascot II references, and for supervising members of the Mascot Task Force in the investigation of Officer G. The conduct of the NSW Crime Commission in failing to ensure that affidavit content was accurate was unreasonable and otherwise wrong under section 26(1)(b) and (g) of the *Ombudsman Act 1974*.

12.3.7 Recommendation

18. It is recommended under section 26(2) of the *Ombudsman Act 1974*, the NSW Crime Commission provide Officer G with a written apology for inaccurate information about him being included in affidavits.

⁹⁷⁸ Kaizik, T, Submission in reply, 11 June 2015, p. 1.

Chapter 13. LD warrant 266/2000 becomes public

13.1 Chapter overview

LD warrant 266/2000 became public on 12 April 2002, after it was served in a prosecution brief arising from the Mascot investigations. The warrant, which was granted on 14 September 2000, was significant because it named 114 people whose private conversations could be recorded or listened to by a LD worn or carried by a NSWCC informant or officer for a period of 21 days. The list of 114 people included former and serving police officers and a well-known journalist. The warrant listed the offences that were under investigation as money laundering, corruption, corruptly receiving a benefit, conspiracy to pervert the course of justice, and tampering with evidence.

There was strong media interest in both the number of people listed in the warrant and the prominent reputation of some of those listed.⁹⁷⁹ Some senior officers named on the warrant expressed concern that they were listed in connection with a corruption investigation alongside officers who were by then 'known' to be corrupt. One senior police officer named in the warrant went to the office of Bradley, to express his displeasure at being named in the warrant.⁹⁸⁰ The Police Association of NSW also publicly expressed indignation on behalf of its members. The concerns expressed in April 2002 by people who felt they were inappropriately named on the warrant have continued to the present day.

This chapter looks at events that unfolded after the warrant became public, and at steps taken by the NSWCC and individual officers to explain the content of both the warrant and the supporting affidavit.⁹⁸¹ The events examined include public statements made by the Commissioner of Police Peter Ryan and others, and a review of the warrant by the PIC Inspector, the Hon Mervyn Finlay QC.

13.2 Events in early April 2002

In early April 2002 senior executive staff of the NSWPF and the NSWCC became aware that Mascot LD warrant 266/2000 had been included in a brief of evidence related to a prosecution of an officer after the Mascot/Florida hearings.⁹⁸² The brief had been given to the defendant's legal representatives. In circumstances that are unknown, the warrant entered public circulation.

On 9 April 2002 the head of the Gangs and Organised Crime Strike Force in the NSWPF wrote an internal memo to the Commander of NSWPF's Crime Agencies department and the Commissioner of Police outlining his concerns about the warrant. He was named in the warrant, along with other officers involved in criminal investigations. Public suspicion that they were involved in corrupt conduct, the memo explained, could destroy the credibility of officers who gave expert evidence in criminal trials and could also create mistrust among police officers.⁹⁸³ The author of the memo advised the Commander of Crime Agencies that he had already spoken separately with Bradley and Giorgiutti. He had asked for a copy of the affidavit supporting the warrant application and an explanation for why he was named in the warrant. He was refused access to the affidavit, but was told he was not a target of investigation.⁹⁸⁴

979 Cornford, Philip. 'Police taped each other', *Newcastle Herald*, 13 April 2002, p. 1; Murphy, Damien. 'Costa calls for answers on secret police tapes', *Sydney Morning Herald*, 15 April 2002, p. 2.

980 Ombudsman Transcript, Phillip Bradley, 24 November 2014, pp. 3051- 3052; Email from Commissioner Phillip Bradley, NSWCC to Mark Standen, Assistant Director Investigations, NSWCC, Detective Superintendent Catherine Burn, Acting Commander of SCU, Mascot Reference, NSWCC and Detective Acting Inspector Matthew Heenan, Team Leader, NSWCC, 12 April 2002.

981 LD affidavit 262-268/2000.

982 NSWCC internal memorandum from Commissioner Phillip Bradley, unsigned and undated, facsimile dated 12 April 2002.

983 NSWPF internal memorandum from [senior police officer] to Commander, Crime Agencies, 9 April 2002.

984 NSWPF internal memorandum from [senior police officer] to Commander, Crime Agencies, 9 April 2002, p. 2.

Chief Superintendent Brian Reith – Commander of SCIA – wrote an email to Deputy Commissioner Ken Moroney that appears to have been sent on 9 April 2002,⁹⁸⁵ indicating that a journalist had obtained a copy of the warrant and was concerned that he had been named in it along with police officers who were suspected of corruption. Reith advised that he had requested a full briefing from Burn (SCIA), which he would provide to Moroney. Reith also advised that the Commander of Crime Agencies had passed his concerns on to Reith about staff being named in the warrant, and that journalists had contacted some of the named officers seeking information about why they thought they had been named.⁹⁸⁶

Later the same day, Burn emailed Reith to provide an assessment of LD warrant 266/2000. She stated:

All names mentioned in the warrant have been mentioned for legitimate but various reasons.

Some of those mentioned are targets of operation Mascot.

Some of those mentioned are people who the informer was likely to meet and who either had engaged in, or may have had some knowledge of, corrupt / criminal conduct. I note that in those cases, this was made explicit in the affidavit.

I note that the warrant was authorised by a Judge and the Judge was aware of all names mentioned.

I note that the procedure at the NSWCC was for all names to be mentioned in the affidavit/warrant where it was possible that the informer may engage in conversation with such persons. This was the case whether they were suspects or not. For example, the names of [Mr J] and [a senior police officer] were included because of a send-off that they were going to attend with the informer. Their names were left on the warrant for a period of time because the informer was being encouraged to attend as many locations and functions as possible to maintain his cover.

The solicitor at the NSWCC, Neil Owen, advised Mascot staff that if the names were not on the warrant and some incriminating or corroborating conversation was captured then it was not likely to be admissible if we had a reasonable knowledge that the informer may have engaged that person in conversation....⁹⁸⁷

13.3 Events on 12-14 April 2002

On 12 April 2002 Channel 9 News ran a story referring to LD warrant 266/2000.⁹⁸⁸ After LD warrant 266/2000 became public, the NSWCC acted to address the concerns being aired by people who were named in the warrant.

One of the first items of formal correspondence created at the NSWCC about the issue was a document apparently authored by Bradley on NSWCC letterhead titled 'LD 266/2000' (the Bradley memo) and faxed on 12 April 2002.⁹⁸⁹ The Bradley memo was faxed to the Ministry of Police.⁹⁹⁰ It gave some detail about the warrant, stating:

The warrant authorised the applicant to use a listening device to be carried by an undercover police officer to record or listen to the private conversations of a number of serving police, former police and civilians in relation to crimes and corruption in which some but not all were alleged to be involved or have knowledge. [emphasis in original]

This particular undercover police officer was in the field for two years and gathered a great deal of electronic evidence using listening devices. Some of this has already been ventilated in the Florida hearings of the Police Integrity Commission.

985 The email is undated, however Burn's reply to the email request was sent 9 April 2002.

986 Email from Chief Superintendent Brian Reith, NSWPF to Senior Deputy Commissioner Ken Moroney, NSWPF, undated, printed 10 April 2002.

987 Email from Superintendent Catherine Burn, Acting Commander of SCU, Mascot Reference, NSWCC to Chief Superintendent Brian Reith, Commander of SCIA, NSWPF, 9 April 2002.

988 Email from Commissioner Phillip Bradley to Mark Standen, Assistant Director Investigations, NSWCC and others, 12 April 2002.

989 NSWCC internal memorandum from Commissioner Phillip Bradley, unsigned and undated, facsimile dated 12 April 2002.

990 This document is marked with a facsimile transmission strip denoting that it was sent at 17:31 on 12 April 2002 from the NSW Crime Commission fax machine to the Ministry of Police.

The warrants were renewed from time to time. The first in this series was issued in June, prior to a police function to farewell an alleged corrupt officer. Many of the persons named on that warrant were included as they were expected to attend that function. Some of those names remained on renewed warrants after the function.

A particular issue is the inclusion of the name of a journalist, [Mr J]. He was, and is believed to have, knowledge of corruption by a particular former police officer. He was expected to attend, and did attend, farewell functions involving alleged corrupt officers (details to be provided).⁹⁹¹

On the same day, Heenan (acting Mascot Team Leader) prepared an 'Issues Memo' attaching the Bradley memo (Heenan memo).⁹⁹² It referred to the Bradley memo as "a draft response from Mr Bradley of the NSWCC".⁹⁹³ The Heenan memo was addressed jointly to Burn and Reith. Burn signed the memo, but Reith's signature is not on the copy of the memo held by Operation Prospect.

The Heenan memo contained many similarities to the Bradley memo, however a significant difference was that the Heenan memo stated:

Every name mentioned on this warrant is reasonably suspected to have been involved in corruption or had knowledge of corruption.⁹⁹⁴

That statement did not correspond with two statements in the Bradley memo that described those named in the warrant: "some but not all were alleged to be involved or have knowledge"⁹⁹⁵ of crimes and corruption; and "Many of the persons named on that warrant were included as they were expected to attend that function".⁹⁹⁶

At 6.37 pm that day Bradley sent an email to Burn, Heenan and Mark Standen. The email was headed 'LD 266/2000' and said that Bradley had been approached by three senior officers and that journalists had been making enquiries with the Attorney General. The three senior officers worked at Crime Agencies, and two were named on the warrant. Bradley's email continued (abbreviations in original):

The complaint by the police is that their names will appear in print as persons nominated in a warrant with a number of other persons who are known to be crooks. They say that there must have been some basis for there names being put on the warrant, not just that they were likely to be spoken to in the course of SEA moving around (which is what I have been telling them). [A senior officer at Crime Agencies] has said that the relationship of trust between C/As⁹⁹⁷ and the CC⁹⁹⁸ is over. He has, according to [another senior officer at Crime Agencies] filed a five page complaint. [That senior officer] agrees with this view tho he thinks the relationship can be rebuilt over time. He thinks we shd flick all such matters to the PIC and I said that that is not always practical. He thinks we shd have chinese walls and I said we do. We also talked about [an officer] and [an officer]. The former is apparently not complaining and the latter says has been betrayed by JMG [John Giorgiutti] in particular.

I have suggested to Brian Reith that he write to CA saying that the mere fact that a persons name appears on a warrant or is called before the PIC does not mean they are crooks. I have told [senior officer] and [senior officer] the same thing but [senior officer] says they are not appeased.

Tonight the matter appeared on the Channel 9 news and will likely be on the Sunday program. A statement has been issued by the Minister saying that he is seeing the relevant Commissioners on Monday at 0900. I have asked that the Ministers office suggest to the journalists that they not mention the names of the persons referred to in the warrant. A report has been sent to the Ministry tonight.

Mark pls file. Cath has copy of preliminary report.⁹⁹⁹

991 NSWCC internal memorandum from Commissioner Phillip Bradley, unsigned and undated, facsimile dated 12 April 2002.

992 NSWPF internal memorandum from Detective Acting Inspector Matthew Heenan to Assistant Commissioner Brian Reith, 12 April 2002.

993 NSWPF internal memorandum from Detective Acting Inspector Matthew Heenan to Assistant Commissioner Brian Reith, 12 April 2002.

994 NSWPF internal memorandum from Detective Acting Inspector Matthew Heenan to Assistant Commissioner Brian Reith, 12 April 2002.

995 NSWCC internal memorandum from Commissioner Phillip Bradley, unsigned and undated, facsimile dated 12 April 2002.

996 NSWCC internal memorandum from Commissioner Phillip Bradley, unsigned and undated, facsimile dated 12 April 2002.

997 Crime Agencies.

998 NSW Crime Commission.

999 Email from Commissioner Phillip Bradley, NSWCC to Mark Standen, Assistant Director Investigations, NSWCC, Detective Superintendent Catherine Burn, Acting Commander of SCU, Mascot Reference, NSWCC and Detective Acting Inspector Matthew Heenan, Team Leader, NSWCC, 12 April 2002.

At that time, it seems there was a strong working relationship between Crime Agencies and the NSWCC. There was a cooperative arrangement whereby the NSWCC would use Crime Agencies police officers to do field work and investigations, and Crime Agencies could get assistance from the NSWCC to monitor TIs.¹⁰⁰⁰

Both Bradley and Heenan gave evidence to Operation Prospect about their memos and their advice in responding in April 2002 to the public dissemination of LD warrant 266/2000. As noted earlier, their memos were not altogether consistent in explaining why so many names were included in the warrant.

Bradley told Operation Prospect that his involvement in issues relating to the warrant was precipitated by a senior police officer “coming to my office one day”¹⁰⁰¹ and engaging in conversation about his name appearing on the warrant. Bradley said the officer was upset and referred to the fact that there were affidavits “out there”¹⁰⁰² and that “all these people have been defamed as a consequence”.¹⁰⁰³ Bradley stated that he would have responded to the effect: “It didn’t mean that you were under suspicion”.¹⁰⁰⁴ Bradley’s view, which he shared with the complainants at the time, was that they had been named in the warrant because they were likely to be recorded by the informant Sea – but were in effect “bystanders”.¹⁰⁰⁵ He could not remember who told him that.¹⁰⁰⁶

This advice was consistent with the language Bradley used in his memo on 12 April 2002. Bradley agreed that there was a significant difference between the explanation in his memo and the Heenan memo, but he was unable to identify the source of information for his document.¹⁰⁰⁷

Heenan’s memo (which attached Bradley’s memo) stated that all those named on the warrant were “reasonably suspected to have been involved in corruption or had knowledge of corruption”.¹⁰⁰⁸ Heenan was unable to explain to Operation Prospect why his memo reflected that view.¹⁰⁰⁹ He had no independent recollection of talking to anyone else about LD warrant 266/2000 at the time and thought that he was probably directed by Burn to submit the memo. His Duty Book indicated that he had given a copy of the warrant and affidavit to Bradley, a report to the media unit, and liaised with Burn on a draft report to Reith – which he guessed was his memo dated 12 April 2002.¹⁰¹⁰

Heenan told Operation Prospect that he did not know the origins of the names listed on the warrant, but he recognised some names and surmised that the list had probably evolved from the Schedule of Debrief.¹⁰¹¹ Heenan understood that Mascot sought LD warrant 266/2000 to allow Sea to record conversations with anyone who was on the King send-off invite list, even if the conversation was not at the function:

*... he was basically walking around with a – a listening device that he could switch on and switch off 24 hours a day ... I guess that’s why there were these number of people attached to the warrant.*¹⁰¹²

Heenan was surprised that the supporting affidavit did not contain more evidence about why Mascot wanted to record all the people named. He said there must have been some reason why they were nominated and he did not know why that reason was not in the document.¹⁰¹³ Heenan agreed that his memo said that those named were “reasonably suspected to have been involved in corruption or had knowledge of corruption”.¹⁰¹⁴ However,

1000 Ombudsman Transcript, Matthew Heenan, 10 February 2014, p. 119; Ombudsman Transcript, Phillip Bradley, 14 July 2014, p. 498.

1001 Ombudsman Transcript, Phillip Bradley, 24 November 2014, p. 3051.

1002 Ombudsman Transcript, Phillip Bradley, 24 November 2014, p. 3051.

1003 Ombudsman Transcript, Phillip Bradley, 24 November 2014, p. 3052.

1004 Ombudsman Transcript, Phillip Bradley, 24 November 2014, p. 3052.

1005 Ombudsman Transcript, Phillip Bradley, 24 November 2014, p. 3052.

1006 Ombudsman Transcript, Phillip Bradley, 24 November 2014, p. 3056.

1007 Ombudsman Transcript, Phillip Bradley, 24 November 2014, p. 3059.

1008 NSWPF internal memorandum from Detective Acting Inspector Matthew Heenan to Assistant Commissioner Brian Reith, 12 April 2002.

1009 Ombudsman Transcript, Matthew Heenan, 10 February 2014, p. 126.

1010 Ombudsman Transcript, Matthew Heenan, 10 February 2014, pp. 126-127.

1011 Ombudsman Transcript, Matthew Heenan, 10 February 2014, p. 135.

1012 Ombudsman Transcript, Matthew Heenan, 10 February 2014, p. 138.

1013 Ombudsman Transcript, Matthew Heenan, 10 February 2014, p.139.

1014 Ombudsman Transcript, Matthew Heenan, 10 February 2014, pp. 122-123, 143; NSWPF internal memorandum from Detective Acting Inspector Matthew Heenan to Assistant Commissioner Brian Reith, 12 April 2002.

he frankly stated that he did not “know half of these names”¹⁰¹⁵ and did not “know if they are corrupt or not”.¹⁰¹⁶ He stated: “I guess, you know, at the end of the day, unless there’s evidence to, um – to a certain level you – you – you can’t make that assertion”.¹⁰¹⁷ Heenan indicated that the publication of the warrant in the media was a significant period for Mascot, and guessed the NSWCC’s response was a “covering bases exercise, to some extent, to put out the bush fire”.¹⁰¹⁸ He could not recall if it was his view at the time that all those listed were involved in or had knowledge of corruption, and it does not appear that he checked that view for each person named.¹⁰¹⁹

Burn’s Duty Book indicated that she spoke to Heenan on 12 April 2002. She also conferred that day about the warrant with Reith, Jewiss and Moore. She could not recall whether she checked what Heenan had put in his memo.¹⁰²⁰ Her Duty Book also showed that she had discussions on 14 April 2002 with Bradley, Jewiss and Moore.¹⁰²¹ She agreed that it was reasonable to assume they discussed LD warrant 266/2000. She was unable to explain the difference between the explanations given in the Bradley and Heenan memos. Burn was also unable to explain why Bradley said (in his email of 12 April 2002) that he had told the senior police officers who approached him that they were in the affidavit because they “were likely to be spoken to in the course of SEA moving around”.¹⁰²² She noted this did not reflect what was said about two of them in the affidavit supporting LD warrant 266/2000.¹⁰²³ In her view, they were in the affidavit as people who were corrupt or knew about corruption.¹⁰²⁴

13.4 Burn memo and annexure

13.4.1 Preparation of the memo and annexure

Jewiss, who at the time was Burn’s staff officer, was recalled to duty on 13 April 2002 to work on two documents about the publication of the warrant and the NSWCC’s response to the complainants.¹⁰²⁵ It appears these documents were being prepared for a meeting between Reith and the Police Minister, the Hon Michael Costa, due to be held on 15 April 2002.¹⁰²⁶

One of the documents¹⁰²⁷ being prepared by Jewiss ultimately ended up as a two-page memo about ‘Listening Device Warrant 266/2000’ (the Burn memo).¹⁰²⁸ It gave statistics about the warrant and made comments about the people included in it. The memo stated: “Every name mentioned on the warrant was on the warrant for legitimate reasons”.¹⁰²⁹

1015 Ombudsman Transcript, Matthew Heenan, 10 February 2014, p. 140.

1016 Ombudsman Transcript, Matthew Heenan, 10 February 2014, p. 140.

1017 Ombudsman Transcript, Matthew Heenan, 10 February 2014, p. 140.

1018 Ombudsman Transcript, Matthew Heenan, 10 February 2014, p. 141.

1019 Ombudsman Transcript, Matthew Heenan, 10 February 2014, p. 141.

1020 Ombudsman Transcript, Catherine Burn, 12 November 2014, pp. 2837-2838.

1021 NSWPF Duty Book, D044510, C. Burn, SCU, 14 April 2002, p. 109.

1022 Email from Commissioner Phillip Bradley, NSWCC to Mark Standen, Assistant Director Investigations, NSWCC, Detective Superintendent Catherine Burn, Acting Commander of SCU, Mascot Reference, NSWCC and Detective Acting Inspector Matthew Heenan, Team Leader, NSWCC, 12 April 2002.

1023 Ombudsman Transcript, Catherine Burn, 12 November 2014, pp. 2842-2843; Email Commissioner from Phillip Bradley, NSWCC to Mark Standen, Assistant Director Investigations, NSWCC, Detective Superintendent Catherine Burn, Acting Commander of SCU, Mascot Reference, NSWCC and Detective Acting Inspector Matthew Heenan, Team Leader, NSWCC, 12 April 2002.

1024 Ombudsman Transcript, Catherine Burn, 12 November 2014, p. 2843. It is noted that one of those senior police officers who approached Bradley was not mentioned in LD warrant 266/2000 nor the supporting affidavit.

1025 NSWPF Duty Book, D046804, G. Jewiss, SCU, 13 April 2002.

1026 NSWPF, Claim for Overtime, Sergeant Greg Jewiss, 13 April 2002, p. 224; NSWPF, Claim for Overtime, Detective Sergeant [name], 13 April 2002, p. 209; NSWPF Duty Book, D044190, [name], SCIA, 13 April 2002, p. 125. An entry on the NSWCC’s database known as ‘the Chronology’ states that the memorandum and annexure documents were “prepared by Insp Burn & Sgt Jewiss to be handed to the Inspector General” during the 15 April 2002 meeting. The metadata of both those documents indicate they were printed on the morning of 15 April 2002. NSWPF internal memorandum from Acting Superintendent Catherine Burn, Acting Commander of SCU to Assistant Commissioner Brian Reith, Commander of SCIA, 13 April 2002 (metadata in electronic Microsoft Word version indicates ‘Last printed’ at 7.52 am); NSWPF internal memorandum, undated, titled ‘Listening Device Warrant 266/2000, Dated 14 September 2000’ (metadata in electronic Microsoft Word version indicates ‘Last printed’ at 09.13 am).

1027 Marked with a document identifier of ‘POCI0066.doc’.

1028 The version of the Burn memo and annexure available to Operation Prospect is signed CJ Burn, Acting Commander SCU, dated and signed 13 April 2002. However the documents bear a date footnote on the bottom right corner of “15/04/02”, which indicates that this was the date it was printed for signature. NSWPF internal memorandum from Acting Superintendent Catherine Burn, Acting Commander of SCU to Assistant Commissioner Brian Reith, Commander of SCIA, 13 April 2002 – annexure entitled ‘Listening Device Warrant 266/2000 Dated 14 September 2000’.

1029 NSWPF internal memorandum from Acting Superintendent Catherine Burn, Acting Commander of SCU to Assistant Commissioner Brian Reith, Commander of SCIA, 13 April 2002 – annexure entitled ‘Listening Device Warrant 266/2000 Dated 14 September 2000’, p. 2.

The memo then listed the following statistics about those named in LD warrant 266/2000:

- 112 serving police, former police and civilians were named in this warrant
- Of the total, 66 were mentioned in the September affidavit. The majority of the remaining names were mentioned in previous affidavits.
- For all names included in the warrant it was reasonably suspected that M5 [Sea] would be likely to engage those people in recorded conversations in order to corroborate his allegations, gain evidence about their corruption, gain information about their knowledge of the allegations/corruption, and/or would reasonably have been suspected of being present when M5 was going to record conversations.
- Of the total, 99 [crossed out by hand and '100' written above it] had explicit adverse mentions by M5 or were reasonably suspected of being involved in crime and corruption. Of the remaining 13, ten were reasonably suspected to have knowledge of M5's allegations and/or corruption by others, and three were persons of interest who M5 was likely to engage in recorded conversation either to corroborate allegations or who were likely to be present when M5 recorded conversations (two were from Manly Detectives office and one from Crime Agencies).¹⁰³⁰

Two matters of detail should be noted. The number of people named in the warrant was 114, not 112 (only 112 were mentioned in the supporting affidavit); and, after discounting the 100 people named in the warrant who were the subject of adverse mention in Mascot records, the remaining number would be 14 (not 13).

The second document¹⁰³¹ Jewiss worked on was attached to the Burn memo and is referred to here as 'the annexure' to the Burn memo. It is 12 pages long and:

- records whether each person named on LD warrant 266/2000 was mentioned in the supporting affidavit (referred to as the September affidavit)
- gives a summary of the allegations that were allegedly known to Mascot about each person.¹⁰³²

The annexure is headed 'Highly Protected' and 'Listening Device Warrant 266/2000 Dated 14 September 2000'. It starts as follows:

[Sea]	M5
[Mascot Subject Officer 3]	Mentioned in September affidavit.
<i>Numerous allegations of Pervert the Course of Justice, Perjury, Assault and Corruption. He is in thirty-nine SOD'S.</i> ¹⁰³³	
[Mascot Subject Officer 8]	Mentioned in September affidavit.
<i>Numerous allegations of Pervert the Course of Justice and Corruption.</i>	
[Mascot Subject Officer 16]	Mentioned in September affidavit.
<i>Numerous allegations of Pervert the Course of Justice, Corruption, Theft, Assault, and Money Laundering</i>	
[Mascot Subject Officer 15]	Mentioned in September affidavit.
<i>Allegations of Pervert the Course of Justice, Corruption.</i>	
[Mascot Subject Officer 1]	Mentioned in September affidavit.
<i>Numerous allegations of Pervert the Course of Justice, Perjury, Assault and Corruption.</i> ¹⁰³⁴	

¹⁰³⁰ NSWPF internal memorandum from Acting Superintendent Catherine Burn, Acting Commander of SCU to Assistant Commissioner Brian Reith, Commander of SCIA, 13 April 2002 – annexure entitled 'Listening Device Warrant 266/2000 Dated 14 September 2000', p. 2.

¹⁰³¹ Marked with the document identifier 'POCI0067.doc'.

¹⁰³² NSWPF internal memorandum from Acting Superintendent Catherine Burn, Acting Commander of SCU to Assistant Commissioner Brian Reith, Commander of SCIA, 13 April 2002 – annexure entitled 'Listening Device Warrant 266/2000 Dated 14 September 2000'.

¹⁰³³ Schedule of Debriefs.

¹⁰³⁴ NSWPF internal memorandum from Acting Superintendent Catherine Burn, Acting Commander of SCU to Assistant Commissioner Brian Reith, Commander of SCIA, 13 April 2002 – annexure entitled 'Listening Device Warrant 266/2000 Dated 14 September 2000', p. 2.

That list of six names is followed by 108 other names with similar descriptions or comments. Extracts of four other person entries are given in section 9.7.

The annexure gives a summary against each name, but does not convey fully (or at times precisely) what is stated about each person in the supporting affidavit. It also does not indicate that the affidavit gives only the names of 45 of the 114 people, without explaining the reason they are named in the warrant. A summary of some relevant features of LD warrant 266/2000 is given in section 9.3.4.

13.4.2 Authorship of the Burn memo

It appears that Jewiss continued working on the two documents on the morning of Monday 15 April 2002.¹⁰³⁵ Part of his Duty Book entry for that day stated:¹⁰³⁶

... Atten POCI0067.doc re LD 266/2000. Inqs re same & POCI0066. Discussions with Burn re same. Chron inqs to id [Mr J] mentions & various sendoffs. Update Mascot timeline...

Jewiss told Operation Prospect that his Duty Book indicated that:¹⁰³⁷

- he was attending to those matters from 7.50 am to 8.30 am on 15 April 2002
- copies of the two documents (POCI0066.doc and POCI0067.doc) were given to Burn and Reith
- there were discussions regarding the warrant issue and timeline
- discussions were held at level 2 (the location of Reith's office) about Mascot at 8.45 am
- he prepared some documents for "presentation to inspector of PIC" at 4.00 pm. Jewiss identified those documents as copies of the five debrief interviews with Sea along with copies of the LD warrants and affidavit, including LD warrant 266/2000 and its supporting affidavit.¹⁰³⁸

Jewiss was unable to say whether he had worked further on the documents between Saturday evening and the Monday morning.¹⁰³⁹ He was not certain if Burn made changes to his draft document, but felt that she did so.¹⁰⁴⁰ Jewiss's recollection was that he completed a document that focused more on the issues with the warrant – such as the number of people and the issues covered on the second page of the Burn memo. He did not recall putting in as much detail as was in the final version of the Burn memo on 15 April 2002 and, in particular, did not think that a section detailing the 'Background' to the Mascot investigations was his work.¹⁰⁴¹ However, Jewiss concluded that most, if not all, of the annexure to the Burn memo was his work.¹⁰⁴² There are no records or file metadata to indicate what parts of the documents were created by Jewiss or by Burn after she received Jewiss's first draft of the annexure.

Burn was unable to recall how the need for the memo came about and assumed it was prepared for Reith's meeting with the Minister.¹⁰⁴³

13.4.3 Deficiencies in the Burn memo and annexure

There are omissions and inaccuracies in the Burn memo and annexure. Some are mentioned earlier and some others are detailed in Chapter 9 in relation to four people who were described in the annexure.

The significance of these deficiencies needs to be assessed in the context that the memo and annexure were the primary means of explaining to the Police Minister and relevant senior officers of the NSWCC and NSWPF why people were named in the warrant. Although LD warrant 266/2000 was public, the supporting affidavit was

1035 Ombudsman Transcript, Greg Jewiss, 29 July 2014, p. 974; NSWPF Duty Book, D046804, G. Jewiss, SCU, 15 April 2002, p. 15.

1036 NSWPF Duty Book, D046804, G. Jewiss, SCU, 15 April 2002, p. 15.

1037 Ombudsman Transcript, Greg Jewiss, 29 July 2014, p. 974.

1038 Ombudsman Transcript, Greg Jewiss, 29 July 2014, p. 975.

1039 Ombudsman Transcript, Greg Jewiss, 29 July 2014, p. 976.

1040 Ombudsman Transcript, Greg Jewiss, 29 July 2014, pp. 976, 978.

1041 Ombudsman Transcript, Greg Jewiss, 29 July 2014, p. 978.

1042 Ombudsman Transcript, Greg Jewiss, 29 July 2014, p. 982.

1043 Ombudsman Transcript, Catherine Burn, 12 November 2014, p. 2847.

not. In fact, it appears that the PIC Inspector was the only person outside the NSWCC who was given a copy of the supporting affidavit – despite numerous requests by people named on the warrant.

The most significant omission is that the Burn memo and annexure do not mention that 45 people were named in the warrant, but the supporting affidavit does not explain why they were named or refer to corroborative evidence of them being named in the Mascot investigations. Two of the 45 people named in the warrant were not named at all in the supporting affidavit. In short, there was no direct explanation in documentation submitted to the judicial officer who granted the warrant about why Mascot proposed to listen to or record 45 of those to be named in the warrant.

Jewiss expressed concern in his evidence to Operation Prospect about that omission.¹⁰⁴⁴ He agreed with the proposition that the Burn memo conceals that fact, replying: “Well, yes, it potentially does”.¹⁰⁴⁵ Jewiss agreed that the Burn memo did not state that there were mistakes in the affidavit, even though Jewiss knew there were mistakes. He suggested that Burn also knew there were mistakes.¹⁰⁴⁶ Jewiss agreed that overall, as a briefing document, it was not as clear as it could have been.¹⁰⁴⁷

Operation Prospect asked Burn about the fact that the memo failed to identify that there were 45 people named in the warrant without any corresponding explanation in the affidavit. While Burn agreed this was an omission¹⁰⁴⁸ she was unable to explain why it was not identified and drawn to the attention of senior management in her memo.¹⁰⁴⁹

The annexure to the Burn memo contained the following statement against the name of each of the 45 people:

*Not mentioned in the September affidavit.*¹⁰⁵⁰

In evidence to Operation Prospect, Burn said this statement meant there was no explanation in the affidavit for the person’s name being in the warrant.¹⁰⁵¹ She did not agree with the suggestion, put to her by Counsel Assisting, that this was a misleading way of dealing with the failure of the affidavit to explain why these 45 people were named on the warrant. Burn explained: “Well, ‘Not mentioned in the September affidavit’ is pretty direct. The name wasn’t mentioned in the affidavit”.¹⁰⁵² Counsel Assisting’s questioning then proceeded:

Q: *Well, what isn’t said is that there was no explanation for his inclusion in the September affidavit. Isn’t that a better and more proper way of saying it?*

A: *Well, that’s a matter for interpretation. I mean---*

Q: *Well, it’s more than that. You’re not providing the affidavit to these people. You’re purporting by this document to tell them the truth of what happened, aren’t you?*

A: *Yes. But the, the not mentioned in the affidavit is saying they weren’t in it. They weren’t in it.*

Q: *Well, they were in it?*

A: *Weren’t mentioned in it.*

Q: *They were in it. Their name was in it, otherwise you wouldn’t have to explain them. Isn’t that right?*

A: *Yes, yes.*

Q: *Alright and the explanation that you’ve given, what you haven’t said is that explanation wasn’t included in the affidavit, have you? You’ve put the explanation there, but what you haven’t said is ---?*

1044 Ombudsman Transcript, Greg Jewiss, 29 July 2014, pp. 983-984.

1045 Ombudsman Transcript, Greg Jewiss, 29 July 2014, p. 984.

1046 Ombudsman Transcript, Greg Jewiss, 29 July 2014, p. 984.

1047 Ombudsman Transcript, Greg Jewiss, 29 July 2014, p. 985.

1048 Ombudsman Transcript, Catherine Burn, 12 November 2014, p. 2851

1049 Ombudsman Transcript, Catherine Burn, 12 November 2014, p. 2851.

1050 NSWPF internal memorandum from Acting Superintendent Catherine Burn, Acting Commander of SCU to Assistant Commissioner Brian Reith, Commander of SCIA, 13 April 2002 – annexure entitled ‘Listening Device Warrant 266/2000 Dated 14 September 2000’.

1051 Ombudsman Transcript, Catherine Burn, 12 November 2014, p. 2855.

1052 Ombudsman Transcript, Catherine Burn, 12 November 2014, p. 2855.

A: Yes.

Q: “Oh, and the affidavit that went to the court to get the warrant didn’t actually say any of this ---”?

A: That’s correct.

Q: About them?

A: That’s correct.¹⁰⁵³

Burn’s evidence was that she did not prepare the annexure to the Burn memo and recalled that Jewiss had prepared it. When asked if she had checked what was in it, she answered: “Look I might have, and to me at that time it might have seemed reasonable the way we were preparing the annexure that we had, this list”.¹⁰⁵⁴ Burn could not recall what steps she may have taken to check the accuracy of the annexure and other information in the memo, but maintained that her view at the time was that people were named on the warrant for legitimate reasons.¹⁰⁵⁵ In her view, those on the King send-off list were named because many of them were the subject of an allegation of corruption or would have knowledge of corruption, and this was supported by other information known to Mascot – even though it was not specified in the affidavit.¹⁰⁵⁶ In her view: “It wasn’t just a list of people who were going to a send-off. Most of them were already known”.¹⁰⁵⁷

Operation Prospect asked Bradley about the difference between the view expressed in his memo on 12 April 2002, and the information stated in the Burn memo and annexure. He acknowledged that there was a difference of view, but could not remember if that difference “was manifest at the time”.¹⁰⁵⁸

13.4.3.1 Burke/Bourke mix-up

There was an error in Mascot documentation that was obscured in the Burn memo and annexure. The impact of this error on the Mascot investigations is covered in more detail in Chapter 11, and at this stage only the treatment of the error in the memo and annexure will be noted.

The annexure to the Burn memo indicates that a person with the surname ‘Burke’ was named in LD warrant 266/2000. He was a police officer who was in fact a target of the Mascot investigations, and it appears that Mascot intended to name him in a number of affidavits and warrants. However, his surname was misspelt as ‘Bourke’ in 28 affidavits and 69 warrants – including LD warrant 266/2000. Both Burke and Bourke had been police officers and shared the same first name. The annexure to the Burn memo stated the following:

[first name] Burke *Mentioned in September affidavit.*

*Allegations of [offence], adverse mentions in five SOD’s.*¹⁰⁵⁹

1053 Ombudsman Transcript, Catherine Burn, 12 November 2014, p. 2855.

1054 Ombudsman Transcript, Catherine Burn, 12 November 2014, p. 2856.

1055 Ombudsman Transcript, Catherine Burn, 12 November 2014, pp. 2856-2857.

1056 Ombudsman Transcript, Catherine Burn, 12 November 2014, pp. 2858, 2860.

1057 Ombudsman Transcript, Catherine Burn, 12 November 2014, p. 2861.

1058 Ombudsman Transcript, Phillip Bradley, 24 November 2014, p. 3061.

1059 NSWPF internal memorandum from Acting Superintendent Catherine Burn, Acting Commander of SCU to Assistant Commissioner Brian Reith, Commander of SCIA, 13 April 2002 – annexure entitled ‘Listening Device Warrant 266/2000 Dated 14 September 2000’, p. 3.

In her evidence to Operation Prospect, Burn stated that she had no recollection that the incorrect name 'Bourke' was used in LD warrant 266/2000.¹⁰⁶⁰ As to why the correct spelling was used in the annexure, she said: "I'm assuming Greg Jewiss produced that document. I don't know what was his intention or what was playing on his mind when he looked at B-o-u-r-k-e and then put in B-u-r-k-e. I don't know".¹⁰⁶¹ Burn rejected the suggestion put by Counsel Assisting that the correction of the error without explanation was done to gloss over the error or pretend it had not occurred.¹⁰⁶²

She agreed that the 'Bourke' error ought to have been reported to the PIC Inspector Mr Finlay at the time of his review. She acknowledged also that there was no specific system in Mascot to ensure the accurate spelling of the names of people who were recorded, although she suggested that the person profile should have been relied upon to ensure no spelling errors.¹⁰⁶³

13.4.4 60 Minutes interview with Police Commissioner Ryan

On 14 April 2002 *60 Minutes* broadcast a pre-recorded¹⁰⁶⁴ interview with Police Commissioner Ryan about the 'bugging of over 100 prominent police'. The relevant portion of the interview transcript reads:

RICHARD CARLETON: Mr Ryan, what are you going to tell Costa [the Police Minister] on Monday morning about the 100-plus policemen, the barrister and the 60 Minutes producer that you were recording their phone conversations and other conversations?

PETER RYAN: Mmm, I don't think the warrant actually goes that far, but it's in relation to an investigation that's going on through the Integrity Commission at the moment with an operative called M5. What happens is an undercover agent has a tape recorder. We must obtain a warrant for that tape recorder to be used in the presence of another person. From what I can gather, the officer was going to a function at which a lot of people would be present.

RICHARD CARLETON: Oh, I see.

PETER RYAN: And therefore, he may be talking to 100 people, all of whom had to be named in the warrant.

RICHARD CARLETON: I see. So it wasn't an investigation of 110-odd individuals?

PETER RYAN: Oh, no, no. If I was at that function, my name probably would have been on the warrant too.

RICHARD CARLETON: Can you tell me any more about the investigation, please?

PETER RYAN: It's part of the Florida investigation, which is currently before the Integrity Commission. Florida is a corruption inquiry that started in the Manly area of the NSW police.

RICHARD CARLETON: How much corruption is going on right now?

PETER RYAN: It's difficult to say. What we have to do is make sure we catch those responsible for it.

RICHARD CARLETON: Yes, but that's putting it in just general terms. I mean, is it less corrupt now than when you started?

*PETER RYAN: I believe it to be less corrupt now than when I first started, certainly, yes.*¹⁰⁶⁵

The interview then moved to matters unconnected to Mascot.

1060 Ombudsman Transcript, Catherine Burn, 11 November 2014, p. 2757.

1061 Ombudsman Transcript, Catherine Burn, 19 November 2014, p. 2889.

1062 Ombudsman Transcript, Catherine Burn, 11 November 2014, p. 2757.

1063 Ombudsman Transcript, Catherine Burn, 19 November 2014, p. 2886.

1064 Evidence given by a former producer of *60 Minutes* to the Select Committee on the Conduct and Progress of the Ombudsman's Inquiry 'Operation Prospect' on 29 January 2015 is that the interview was recorded on 13 April 2002 at 2 pm, p. 9.

1065 Nine MSN, Transcript of interview between Richard Carleton and Peter Ryan, *60 Minutes*, 14 April 2002, p. 1.

Complaints received by Operation Prospect queried whether Ryan made those statements because he was incorrectly briefed by Mascot officers – in particular, by Burn and through her memo (Burn memo). Operation Prospect sought comment from Ryan. He advised that he had little recollection of the interview and that he was not briefed by anyone beforehand.¹⁰⁶⁶ He said he made some enquiries with Assistant Commissioner Brammer, who was the Commander of SCIA. Ryan said he was “responding with what little information I knew”.¹⁰⁶⁷ He did not recall meeting with Bradley, receiving any briefing note from anyone from Mascot, or speaking to Burn or Heenan. Ryan also had no recollection of reading any memo written by Burn.¹⁰⁶⁸

A similar complaint made to Operation Prospect was that Burn had falsely told Strike Force Emblems during an interview on 30 June 2003 that she did not know how Ryan came to form the views he expressed on the *60 Minutes* program.¹⁰⁶⁹ The suggestion was that Burn may have committed the offence of providing false information to a police officer (Commissioner Ryan) investigating a Part 8A police complaint, knowing the information to be false or misleading in a material particular. At the time, Strike Force Emblems was investigating whether Ryan had been misled by information from Mascot. Burn had told Emblems investigators that she did not know the *60 Minutes* interview had occurred until after it was televised, that Ryan's statements were not accurate, and it appeared he had not been briefed.¹⁰⁷⁰

Burn gave evidence to Operation Prospect that she had no recollection of speaking to or briefing Ryan at any stage before his *60 Minutes* interview.¹⁰⁷¹ That evidence is supported by Burn's Duty Book, which contains no record of any contact between Burn and Ryan before the *60 Minutes* interview. Burn noted important meetings in her Duty Book and said it would have been in keeping with her usual practice to record any contact with Ryan.¹⁰⁷²

Operation Prospect asked Burn whether she was concerned about or corrected what Ryan said on television about why people were listed in the affidavit. She agreed that his descriptions of the warrant were inaccurate,¹⁰⁷³ but was unable to say when she found that out and why he said what he did.¹⁰⁷⁴ Burn could not recall specifically what steps she took after Ryan's misinformed statement.¹⁰⁷⁵

Other documents support that Burn did not brief Ryan. Overtime records for Mascot officers at the time indicate that the Burn memo was prepared for a meeting with the Police Minister, Michael Costa, on 15 April 2002.¹⁰⁷⁶ An entry on the NSWCC's Mascot chronology database also states that the Burn memo and annexure were “prepared by Insp Burn & Sgt Jewiss to be handed to the Inspector General” during the 15 April 2002 meeting.¹⁰⁷⁷ The metadata of both documents indicate they were printed on the morning of 15 April 2002, after the *60 Minutes* interview had occurred.¹⁰⁷⁸

1066 Email from Peter Ryan to Deputy Ombudsman Linda Waugh, NSW Ombudsman, 6 February 2015 – enclosure entitled ‘Former Commissioner Peter Ryan – Response to questions’, p. 2.

1067 Email from Peter Ryan to Deputy Ombudsman Linda Waugh, NSW Ombudsman, 6 February 2015 – enclosure entitled ‘Former Commissioner Peter Ryan – Response to questions’, p. 2. It may be that Commissioner Ryan was mistaken when saying this to Operation Prospect, as Brammer was no longer a serving NSWPF officer at the time of the interview.

1068 Email from Peter Ryan to Deputy Ombudsman Linda Waugh, NSW Ombudsman, 6 February 2015 – enclosure entitled ‘Former Commissioner Peter Ryan – Response to questions’, pp. 2-3.

1069 NSWPF, Record of interview between Detective Inspector Galletta, Assistant Commissioner Dobson and Superintendent Burn, 30 June 2003, p. 46.

1070 NSWPF, Record of interview between Detective Inspector Galletta, Assistant Commissioner Dobson and Superintendent Burn, 30 June 2003, pp. 46-47.

1071 Ombudsman Transcript, Catherine Burn, 12 November 2014, p. 2862.

1072 Ombudsman Transcript, Catherine Burn, 19 November 2014, p. 2876; NSWPF Duty Book, D044510, Catherine Burn, SCU, 12-15 April 2002; and Diary, Catherine Burn, 9 and 14 April 2002.

1073 Ombudsman Transcript, Catherine Burn, 12 November 2014, p. 2863.

1074 Ombudsman Transcript, Catherine Burn, 12 November 2014, pp. 2863-2864.

1075 Ombudsman Transcript, Catherine Burn, 12 November 2014, p. 2864.

1076 NSWPF, Claim for Overtime, Sergeant Greg Jewiss, 13 April 2002, p. 224; NSWPF, Claim for Overtime, Detective Sergeant [name], 13 April 2002, p. 209; NSWPF Duty Book, D044190, [name], SCIA, 13 April 2002, p. 125.

1077 NSWCC, Mascot Chronology Database.

1078 NSWPF internal memorandum from Acting Superintendent Catherine Burn, Acting Commander of SCU to Assistant Commissioner Brian Reith, Commander of SCIA, 13 April 2002 (meta data in electronic Microsoft Word version indicates ‘Last printed’ at 07:52 am); NSWPF internal memorandum, undated, titled ‘Listening Device Warrant 266/2000, Dated 14 September 2000’ (meta data in electronic Microsoft Word version indicates ‘Last printed’ at 09:13 am).

It has been publicly asserted¹⁰⁷⁹ that the *60 Minutes* interview was recorded at 2.00 pm on 13 April 2002. If so, the Burn memo was being drafted at that time and could not have been used to brief Ryan.

When interviewed by Operation Prospect, Bradley noted that Ryan's public statement was consistent with Bradley's view at the time, which continued for quite a while:

*It wasn't till much, much later that people were saying to me, "Hang on a minute. This one doesn't even relate to the King matter. It relates to some other matter," but whatever, but that was a long time after. Can't say how long, but it was a long time after Ryan and I were going around saying it was all about this function that people were going to be overheard.*¹⁰⁸⁰

13.5 Events from 14 April 2002 onwards

13.5.1 Police Association of NSW circular and the Mascot meeting of 15 April 2002

On 14 April 2002 Peter Remfrey – Secretary of the Police Association of NSW – issued a Circular headed 'Warrant Issued Under the Listening Devices Act', which stated:

Members have raised concerns about a warrant, which was apparently issued under the Listening Devices Act in September 2000, which permitted the covert recording of private conversations of more than 100 current and former serving police officers.

Your Association has instructed lawyers to act on behalf of our members named in the warrant. Amongst other things, the lawyers will seek access to the affidavit and other material that formed the basis of the application that was placed before the Supreme Court judge who issued the warrant.

*The legal advice we have received to date is that if any member believes their private conversations were secretly recorded in circumstances where they believe their rights have been infringed, they should file a complaint with the Police Integrity Commission asking the Commission to investigate the basis upon which the application for the warrant was made.*¹⁰⁸¹

On 15 April 2002 a regular weekly Mascot meeting was held that was attended by Bradley, Griffin, Tim Sage (Assistant Commissioner, PIC), McGrath and Jeff Gough (PIC investigators), Reith (SCIA), Standen, Burn, Randall (Team Leader, Internal Affairs), Heenan, other officers from Mascot and Internal Affairs and some NSWCC analysts.¹⁰⁸² The meeting noted that Bradley, Ryan, Moroney, Reith, Burn and the Police Minister had met to discuss the public attention on LD warrant 266/2000 – a meeting, it seems, at 9.00 am that day. The minutes of the meeting noted:

*... the warrant was lawfully obtained and all people named on then warrant were there for a reason (ie Sea may have captured their conversations on the LD). Indeed, there would have a greater issue if those people did not appear on the warrant.*¹⁰⁸³

The minutes also noted that the Minister proposed to have an independent review of that position.¹⁰⁸⁴

1079 Steven Barrett, Parliamentary Select Committee on the conduct and progress of the Ombudsman's inquiry 'Operation Prospect' (Select Committee), NSW, 29 January 2015, p. 9.

1080 Ombudsman Transcript, Phillip Bradley, 24 November 2014, p. 3062.

1081 Police Association of NSW, Circular No. 20, *Warrant Issued Under the Listening Devices Act*, 14 April 2002.

1082 NSWCC, *Minutes of Mascot meeting*, 15 April 2002.

1083 NSWCC, *Minutes of Mascot meeting*, 15 April 2002, p. 2.

1084 NSWCC, *Minutes of Mascot meeting*, 15 April 2002, p. 2.

13.5.2 Standen's reply to Bradley's email

At 1.40 pm on 15 April 2002 Standen replied to Bradley's email of 12 April 2002 about the complaints he had received from the three senior police officers. Referring to one of those complaints in particular, Standen's email said:

Will you be getting a copy of his complaint? Can we agree to "white out" unrelated names when the warrants are served in future briefs? I reckon we should make get [a senior police officer] to acknowledge that they are inflating the issues and ask him why he refuses to accept the (reasonable and truthful) explanation.

He is being obstinate.

*Mark.*¹⁰⁸⁵

At 1.54 pm an email back to Standen, which appears to be from Bradley,¹⁰⁸⁶ states:

*Yes, we can block out the names to avoid embarrassment and a repeat of this week's saga. I've not seen [the senior police officer's] complaint, I understand it runs to 5 pages. The explanation that he was given was that he was not a target or subject to allegations but just a by-stander.*¹⁰⁸⁷

13.5.3 Draft media statement

The NSWCC provided Operation Prospect with a draft media statement dated 15 April 2002, that appears to have been prepared by or for the Police Minister. Operation Prospect has not found evidence that that statement was issued. It read:

15 April 2002

DRAFT STATEMENT

Listening Device Warrant

I have this morning heard from the Commissioner of Police, the Commissioner of the NSW Crime Commission and senior police involved in the investigation of police corruption.

The Listening Device warrant which has caused such concern among serving police has been shown to me. I am assured/persuaded that all of the names appearing on that warrant were properly included.

*Section 16 of the Listening Devices Act requires that the **warrant shall specify 'where practicable the name of any person whose private conversation may be recorded or listened to by the use of a listening device pursuant to the warrant.'** [emphasis in original]*

It is no secret that, as at September 2000, an undercover police officer was in the field wearing a listening device to record conversations of police and others. Not all the persons whose voices were recorded on the device were suspected of crimes. Where practical these names had to be recorded on the warrants. Where the undercover officer was to attend police functions the names of other known attendees had to be included where practical. This happened on more than one occasion as the undercover officer was in the field for some two and a half years. Obviously some innocent persons' conversations were picked up from time to time.

I am not going to go into who was included as a suspect, who might have been a person of interest to the investigation or who was named as a mere bystander. These matters are currently the subject of an investigation before the Police Integrity Commission called Florida which has demonstrated that a number of the targets of the undercover operation were worthy of attention.

¹⁰⁸⁵ Email from Mark Standen, Assistant Director Investigations, NSWCC to Commissioner Phillip Bradley, NSWCC, 15 April 2002.

¹⁰⁸⁶ The sender of this email is not clear, but given the previous email was directed by Standen to Bradley only, it would be reasonable to infer the reply was sent by Bradley.

¹⁰⁸⁷ Email from Commissioner Phillip Bradley, NSWCC to Mark Standen, Assistant Director Investigations, NSWCC, 15 April 2002.

This was not a fishing expedition. There are some 231 specific allegations of crime and corruption being investigated. Electronic surveillance has played a major part in substantiating many of these allegations. Police who have been recorded in this way have 'rolled over' and confirmed their involvement in crime and corruption. Already 160 charges have been laid against 40 civilians and 6 police and there are more to come.

The regime under the Listening Devices Act clearly needs attention as it is cumbersome and out of date. I was surprised to learn today that it has been the subject of review for a decade. I have today requested that a Cabinet Minute be expedited.

I have requested the Police Integrity Commission to review the practices applied in this case and to make recommendations for any procedural change which may be available and appropriate under the existing legislation.

I have heard that some persons are seeking to examine the affidavit which was presented to the Supreme Court. This will not be happening as the matter is the subject of a current investigation. The High Court has held that courts should not go behind the warrant and I have no intention of doing so.

As to the requirements of the existing Act, I have sought the advice of Senior Counsel on the precise meaning of section 16(4).

Finally, I should respond to some other matters raised. This had nothing to do with the Olympics (except in a temporal sense) nor the departure of Mr Ryan. Nor did this warrant authorise the tapping of telephones.¹⁰⁸⁸

After paragraph 5 (referring to the Florida investigation), a handwritten note stated: "offer confidential briefing". After paragraph 8 (referring to the PIC), a handwritten note stated: "Att: Mr Justice Mervyn Finlay QC, Inspector General of the PIC".

13.6 Review by the PIC Inspector

13.6.1 Scope of the review by the PIC Inspector

On 15 April 2002 the Hon Michael Costa wrote to Finlay, asking him to review the appropriateness of Mascot seeking LD warrant 266/2000:

You will no doubt be aware of media interest relating to a listening device warrant obtained in connection with an investigation that now forms part of the Police Integrity Commission's Operation Florida.

I have met today with the Commissioner of the Crime Commission, Phillip Bradley and Police Commissioner Ryan to discuss the matter. Both gentlemen have assured me that the appropriate procedures have been followed.

I have informed the Police and Crime Commission that I do not wish to be apprised of the details of persons named in the warrant or the terms of reference of the investigation. However, given the public interest I believe in [sic] would be appropriate if in accordance with Section 89 of the Police Integrity Commission Act, 1996 you provide me with a report of the matter. In particular, I would ask that you confirm:

The warrant was justifiably sought;

The seeking of the warrant complied with the relevant legislation; and

The material obtained by the warrant was used appropriately.

I would appreciate your advice by the end of the month.¹⁰⁸⁹

1088 Hon Michael Costa MLC, Minister for Police draft media release, 'Draft statement – Listening device warrant', 15 April 2002.

1089 Letter from Hon Michael Costa MLC, Minister for Police to the Hon Mervyn Finlay QC, Inspector of the Police Integrity Commission, 15 April 2002.

On 16 April 2002 Bradley wrote a letter to Finlay headed 'Listening Device Warrant 266/2000'. It stated that:

I refer to our meeting yesterday and confirm that I have provided to you:

- 1. The warrant in question.*
- 2. The briefing note prepared by Catherine Burn.*
- 3. The Schedule dealing with each of the persons named in the warrant.*
- 4. The affidavit granting the warrant.*
- 5. MOUs with the PIC.*

I enclose a copy of the relevant file relating to LD266/2000.

Please indicate any other information or documents you require.

*We will prepare a chronology in relation to the Mascot matter, listing the events relating to this matter.*¹⁰⁹⁰

13.6.2 NSWCC advice to the PIC Inspector

Around this time, Burn met with Finlay on at least a couple of occasions and also had telephone conversations with him.¹⁰⁹¹ It appears that Bradley also attended one of those meetings. In her evidence to Operation Prospect, Burn was not able to recall what she told Finlay about the contents of the affidavit – other than by referring to her memo that Bradley had given to Finlay.¹⁰⁹²

It appears that Finlay wrote to the NSWCC on 16 April 2002, although that letter has not been located by any organisation so has not been provided as evidence to Operation Prospect. However, there is a reference to Finlay's letter in a letter by Bradley dated 19 April 2002, which reads: "I refer to your letter of 16 April and respond as follows".¹⁰⁹³ Bradley's letter continued:

The reference to a barrister is contained in media reports. There was at least one former police officer referred to in the warrant who is admitted as a legal practitioner. As far as we know, he did not act for any of the others mentioned, and associated with them as a former colleague only.

Was the warrant justifiably sought?

The formal justification for seeking a warrant is set out in the affidavit, which has been provided to you. As to whether the general circumstances justified investigation by this means, I refer you to the briefing document prepared by Acting Superintendent Burn, which demonstrates that this was an exceptional investigation. As we discussed on Monday, the issue about this warrant relates to its breadth.

In the usual short term investigation of a murder or drug supply, usually only the targets are mentioned on the warrants, even though it may be reasonably expected that other known persons may be recorded or listened to. The contact which SEA was likely to have with other police, and former police was extensive, and there were likely to be conversations which were relevant to the investigation of the nominated offences with many such persons. Investigators tended to include all persons likely to speak in the presence of the device. At the time that the warrant was sought, three police referred to had not been the subject of any adverse allegations, but were likely to be proximate to the device when it was recording. SEA was instructed to initiate conversations with specific police in relation to specific subjects on a number of occasions, and on other occasions to participate in corrupt conversations and conduct as opportunities arose.

Every person referred to in the warrant is named in the application. 100 of them were the subject of explicit adverse allegations collected during the investigations to that time. 66 persons are referred to as the subject

¹⁰⁹⁰ Letter from Phillip Bradley, Commissioner, NSWCC to the Hon Mervyn Finlay QC, Inspector of the Police Integrity Commission, 16 April 2002.

¹⁰⁹¹ Ombudsman Transcript, Catherine Burn, 19 November 2014, pp. 2871, 2876.

¹⁰⁹² Ombudsman Transcript, Catherine Burn, 19 November 2014, p. 2873.

¹⁰⁹³ Letter from Phillip Bradley, Commissioner, NSWCC to the Hon Mervyn Finlay QC, Inspector of the Police Integrity Commission, 19 April 2002, p. 2.

of specific allegations. 10 are persons thought to have knowledge of adverse matters, and 3 were not considered to be the subject of any adverse information.

Not all of the allegations against the 66 are included in the affidavit. There is reference in the affidavit to the fact that SEA has reported numerous instances of official corruption, and specific examples are given, including current encounters with persons referred to in the warrant at clubs, police stations, hotels, restaurants, various police reunions, send-offs and functions and parties, during the course of police operations, at SEA's home, in SEA's vehicle and at other locations and on the telephone, including unplanned and unexpected encounters. There is also specific reference to the fact that SEA will be transferred to Crime Agencies where he will come into contact with colleagues with whom he has previously engaged in corruption.

Previous warrants are referred to in a Schedule. Several of the persons nominated in the affidavit are also referred to in these previous affidavits.

It is submitted that the nature and quality of the allegations justifies the seeking of a Listening Device warrant.

It is further submitted that, having regard to the nature and extent of the investigation, the seeking of a warrant in those broad terms was justified.

Did the seeking of the warrant comply with the relevant legislation?

We are not aware of any departure from the legislative requirements. The documents were prepared by, or under the supervision, of an experienced lawyer, on the instructions of the applicant and submitted by the lawyer to the justice in chambers. The terms of the affidavit and draft warrant were approved by an Assistant Director of the Commission.

Was the material obtained by the warrant used appropriately?

The material was downloaded from the device worn by SEA and most of it transcribed in draft. Relevant portions were reviewed and certified as correct. It was securely held and used only for the purpose of preparing for PIC hearings, criminal prosecution briefs, and in furtherance of the investigation. We are not aware of any information obtained pursuant to this warrant being used or disseminated for any other purposes.

I enclose documents recording instances of dissemination to the Police Integrity Commission, and to defendants in criminal prosecutions and the DPP. For the purpose of Police Integrity Commission hearings, material obtained pursuant to the warrant was disseminated to lawyers instructed by the Police Service. These lawyers also received some material for the purpose of advising the Commissioner of Police on the question of disciplinary action and promotion. During the course of the hearings, some material would have been disclosed by the Police Integrity Commission to witnesses, lawyers and the public.¹⁰⁹⁴

On 22 April 2002 Finlay faxed Bradley – referring to Bradley's letter of 19 April 2002 and the attached material. That fax stated:

Thank you for your prompt letter of 19 April 2002 and the attached material.

In the last paragraph on page (1) you write:

"Every person referred to in the warrant is named in the application".

As I mentioned on the phone to Acting Superintendent Burn on Sunday morning, there are two names on the warrant, viz [Ms FF and Mr GG], whose names do not appear in the application nor on the affidavit in support of the application.

Would you kindly confirm the correctness of the following:

- 1. that the warrant contains the names of 114 serving police, former police and civilians.*

¹⁰⁹⁴ Letter from Phillip Bradley, Commissioner, NSWCC to the Hon Mervyn Finlay QC, Inspector of the Police Integrity Commission, 19 April 2002, pp. 1-2.

2. that the application and the affidavit in support of the application omitted to include the names of two (2) of the one hundred and fourteen (114) persons whose names are specified in the warrant.
3. that neither of such persons is the subject of criminal nor disciplinary proceedings.
4. that the minor irregularity of the omission of these two names was most likely inadvertent.

I shall assume, unless you advise otherwise, that you submit that such minor irregularity is of no substantial consequence.

I would be pleased to receive an early faxed response as I am in the process of drafting my report.¹⁰⁹⁵

Burn answered Finlay's fax on 22 April 2002. Her letter stated:

Please find responses to your requests of 21 April 2002¹⁰⁹⁶ below:

- *Annexure A contains photocopies of previous warrants sought and granted as outlined in the Section 17 Notice for Listening Device Warrant 266/2000.*
- *The three names mentioned in warrant 266/2000 who were listed but who do not have adverse allegations against them are [Officer T] (Crime Agencies), [Officer Y] and [Mr R] (Manly Local Area Command). Although investigators were not in possession of material to indicate that [Officer T], [Officer Y] and [Mr R] were involved in corruption, it is possible they had some sort of knowledge, and in any case, it was believed that they would be present when corruption was committed or spoken about.*
- *The letter from Mr Bradley dated 19 April 2002 needs to be amended. The warrant contains the names of 114 serving police, former police and civilians. However, neither [Ms FF] nor [Mr GG] were mentioned in the affidavit, although their names appear in the listening device warrant. Annexure B contains an extract from a previous listening device affidavit (NSWCC LD Nos 447-456 of 1999) which makes reference to [Ms FF] and [Mr GG]. Neither person is the subject of criminal or disciplinary proceedings. The omission of their names was inadvertent, and in any case is of no substantial consequence.*
- *The copy of the affidavit provided to you was printed from an electronic copy. The original signed affidavit is not in the file where all such affidavits are usually kept. Searches undertaken have not yet located the original affidavit.¹⁰⁹⁷*

13.6.2.1 Omission of Ms FF and Mr GG from the supporting affidavit

An issue addressed in the correspondence between Finlay and Burn¹⁰⁹⁸ is that two people – Ms FF and Mr GG – were named in LD warrant 266/2000 but not in the supporting affidavit. Finlay's fax of 22 April 2002 suggested that the omission of the names from the affidavit may have been inadvertent. Burn's response confirmed that view. Burn was unable to explain to Operation Prospect why she agreed with Finlay's suggestion that the omission of both names from the affidavit was "inadvertent" and "of no substantial consequence".¹⁰⁹⁹ The annexure to the Burn memo alleges that both were involved in conspiracy to pervert the course of justice, and Mr GG had a significant complaints history and allegations of corruption made against him.¹¹⁰⁰

Operation Prospect examined the Mascot investigations into Ms FF and Mr GG, in part to determine if it was correct to describe their omission from the supporting affidavit as "of no substantial consequence". To the contrary, it appears that there was an active Mascot interest in both of them, though it did not lead to any sustained investigation of their conduct or to any adverse view being formed about them.

¹⁰⁹⁵ Facsimile from the Hon Mervyn Finlay QC, Inspector of the Police Integrity Commission to Phillip Bradley, Commissioner, NSWCC, 22 April 2002.

¹⁰⁹⁶ This appears to be a typographical error as Burn was responding to the Hon Mervyn Finlay's letter of 22 April 2002.

¹⁰⁹⁷ Letter from Acting Superintendent Catherine Burn, Acting Commander of SCU, NSWPF to the Hon Mervyn Finlay QC, Inspector of the Police Integrity Commission, 22 April 2002.

¹⁰⁹⁸ Letter from Acting Superintendent Catherine Burn, Acting Commander of SCU, NSWPF to the Hon Mervyn Finlay QC, Inspector of the Police Integrity Commission, 22 April 2002.

¹⁰⁹⁹ Letter from Acting Superintendent Catherine Burn, Acting Commander of SCU, NSWPF to the Hon Mervyn Finlay, Inspector of the Police Integrity Commission, 22 April 2002. QC

¹¹⁰⁰ Ombudsman Transcript, Catherine Burn, 12 November 2014, p. 2854.

Ms FF and Mr GG were former NSWPF officers who had left the NSWPF prior to Operation Mascot commencing.¹¹⁰¹ They were married to one another at the time of Mascot's investigations. Ms FF was named in a total of seven LD affidavits and 63 LD warrants, and Mr GG in six LD affidavits and 60 LD warrants. It appears that Mascot did not record their private conversations by the use of a LD.

Ms FF was first mentioned during Sea's debrief interview with Burn and Henry on 9 January 1999. Sea alleged that he and other NSWPF officers conspired to give false evidence to assist MSO6, who had been arrested and charged for driving under the influence of alcohol in 1993.¹¹⁰² Sea produced a document to Burn and Henry that related to this matter.¹¹⁰³ Sea named Ms FF as the officer who initially arrested MSO6, but did not nominate her as having been involved in the conspiracy to give false evidence. Mr GG was not mentioned in Sea's debrief interviews.

The handwritten Schedule of Debrief that Burn prepared following the debrief interviews included Sea's allegation of conspiracy to give false evidence as item 66¹¹⁰⁴ (it was later assigned the number 'SOD071'). Neither Ms FF nor Mr GG was named as involved officers for any allegations in the handwritten Schedule of Debrief. However, Ms FF was later listed as the arresting officer in the electronic version of the Schedule of Debrief, and her family name appears in the list of involved officers.¹¹⁰⁵ It is not clear when her name was added, as the Schedule was altered from time to time but no record is available of when such changes were made. Mr GG's family name is listed under 'police involved' in another unrelated allegation, but the incident details do not refer to him.¹¹⁰⁶

Ms FF was first named in a Mascot LD affidavit and warrants on 12 March 1999, as a person whose private conversations could be lawfully recorded.¹¹⁰⁷ The affidavit did not include information about SOD071 (the alleged conspiracy to give false evidence about the arrest and charging of MSO6) nor did the affidavit explain why Ms FF's name was included in the list of people whose private conversations might be recorded under the warrant being applied for.

The next LD supporting affidavit in which Ms FF was named was sworn on 21 December 1999.¹¹⁰⁸ It stated that Sea had provided information that NSWPF officers, including Ms FF, had acted to conceal the fact that MSO6 had been intoxicated when he was arrested in 1993.¹¹⁰⁹ This statement was not consistent with the information that Sea had provided on 9 January 1999: he had mentioned only that Ms FF was the arresting officer. This affidavit also outlined a planned strategy for Sea to make contact with Ms FF and discuss the conspiracy to give false evidence.

Mr GG was also named for the first time in the LD affidavit and warrants of 21 December 1999, as a person who Mascot might listen to or record. The affidavit did not explain why it was considered necessary to use a LD to record his private conversations about the alleged conspiracy to give false evidence. However, the affidavit did state that he was Ms FF's husband, and it also included information about unrelated allegations against Ms FF and Mr GG while they were both serving NSWPF officers. Those allegations had been fully investigated prior to the commencement of Operation Mascot.

The paragraphs from the December 1999 affidavit that referred to Ms FF and Mr GG were repeated, with minor revisions, in five further affidavits.¹¹¹⁰ The last affidavit to mention the strategy of putting Sea into contact with Ms FF as the arresting officer of MSO6 was sworn on 15 March 2000. Ms FF and Mr GG were also named in 42 warrants granted between 4 April and 11 December 2000, but not in the supporting affidavits.

1101 PIC, *Report to Parliament – Operation Florida, Volume 2*, June 2004, p.332; PIC, *PODS Person Profile for [Mr GG]*, accessed by NSW Ombudsman on 2 December 2015.

1102 NSWCC, Record of interview between Detective Inspector Catherine Burn, Detective Senior Sergeant Damien Henry and Sea, 9 January 1999, pp. 35-38.

1103 NSWCC, Information Report, *Documents produced by Sea during ERISP debrief 7/1/99 – 11/1/99*, reporting officer: Burn, 18 January 1999.

1104 NSWCC, Information Report, *Schedule of Debrief with SEA, 91 matters outlined*, reporting officer: Burn, 13 January 1999.

1105 NSWCC, *Schedule of Debrief with SEA, 'SOD071'*, from printed version dated 30 July 2001,

1106 NSWCC, *Schedule of Debrief with SEA, 'SOD186'*, from printed version dated 30 July 2001,

1107 NSWCC LD affidavit 105-111/1999 and LD warrants 109/1999 and 110/1999.

1108 NSWCC LD affidavit 447-456/1999; NSWCC LD warrants 454-456/1999.

1109 NSWCC LD affidavit 447-456/1999.

1110 NSWCC LD affidavits 007-014/2000, 015-021/2000, 036-038/2000, 043-049/2000 and 070-076/2000.

The references to Ms FF and Mr GG in affidavits and warrants appear to be further examples of Mascot deficiencies, in naming people without an accompanying explanation, and including inaccurate information that was not properly verified. However, there is no evidence to suggest that those deficiencies were deliberate.

13.6.3 PIC Inspector's report

Finlay's report was completed on 29 April 2002.¹¹¹¹ Pursuant to a direction¹¹¹² by Finlay that it was in the public interest to do so, copies of his report were provided to Costa the Minister for Police, Tree the Director General of the Ministry for Police, Bradley the Commissioner of the NSWCC, Griffin the Commissioner of the PIC, and to Ken Moroney the Acting Commissioner of Police. Finlay did not 'divulge' it to the media.

The report started with a discussion of background issues including:

- the recommendations of the Royal Commission into the NSW Police Service, which led to the creation of the PIC
- Sea contacting the NSWCC
- the provisions of the LD Act
- the opinion of the Royal Commission into the NSW Police Service that the use of electronic surveillance was the single most important factor in achieving the breakthrough in its investigations.¹¹¹³

Finlay's view was that LD warrant 266/2000 sought to name all those who Sea was reasonably expected to engage in recorded conversations. He emphasised that naming a person in a warrant did not mean the person was necessarily suspected of being involved in or having knowledge of a prescribed offence.¹¹¹⁴ He also referred to advice he had received from the Crown Solicitor that section 16(4) of the LD Act required that a warrant specify, where practicable, the name of any person whose private conversation may be recorded or listened to by way of a LD pursuant to the warrant, whether or not the person is reasonably suspected of having information relating to the prescribed offence. Finlay agreed with this advice in his report.

The report responded to the three questions posed by the Police Minister. Specifically, the Minister asked the PIC Inspector to confirm that:

The warrant was justifiably sought;

The seeking of the warrant complied with the relevant legislation; and

*The material obtained by the warrant was used appropriately.*¹¹¹⁵

Finlay concluded that the warrant was justifiably sought. This was based on his view that Mascot was "an exceptional investigation"¹¹¹⁶ and that:

*... any challenge to the validity of a warrant granted by a Judge of the Supreme Court under the Listening Devices Act 1984 can only be dealt with by the Supreme Court itself, and not by a statutory body such as the Inspector of the Police Integrity Commission.*¹¹¹⁷

¹¹¹¹ The Hon Mervyn Finlay QC, *Operation Florida – Re: Listening Device Warrant – Report by Inspector of Preliminary Investigation*, Inspector of the Police Integrity Commission, 29 April 2002.

¹¹¹² PIC Act, s. 56(4)(c).

¹¹¹³ The Hon Mervyn Finlay QC, *Operation Florida – Re: Listening Device Warrant – Report by Inspector of Preliminary Investigation*, Inspector of the Police Integrity Commission, 29 April 2002, pp. 1-10.

¹¹¹⁴ The Hon Mervyn Finlay QC, *Operation Florida – Re: Listening Device Warrant – Report by Inspector of Preliminary Investigation*, Inspector of the Police Integrity Commission, 29 April 2002, p. 13.

¹¹¹⁵ The Hon Mervyn Finlay QC, *Operation Florida – Re: Listening Device Warrant – Report by Inspector of Preliminary Investigation*, Inspector of the Police Integrity Commission, 29 April 2002, p. 1.

¹¹¹⁶ The Hon Mervyn Finlay QC, *Operation Florida – Re: Listening Device Warrant – Report by Inspector of Preliminary Investigation*, Inspector of the Police Integrity Commission, 29 April 2002, p. 12.

¹¹¹⁷ The Hon Mervyn Finlay QC, *Operation Florida – Re: Listening Device Warrant – Report by Inspector of Preliminary Investigation*, Inspector of the Police Integrity Commission, 29 April 2002, pp. 12, 17.

Finlay also stated that he saw “nothing in the material inspected by me” which would cast any doubts on the validity of LD warrant 266/2000 being granted.¹¹¹⁸

He concluded that the warrant complied with the relevant legislation, subject to one “minor irregularity”.¹¹¹⁹ He noted that the warrant contained the names of 114 serving police, former police and civilians but this was explicable by the magnitude of this exceptional investigation and by the correction of a common misunderstanding.¹¹²⁰ The common misunderstanding was that a warrant could only name people who were involved in or had knowledge of a prescribed offence. Rather, Finlay explained, the warrant could include:

*... all names of those whom it was reasonably suspected M5 (“SEA”) may engage in recorded conversations in order to corroborate his allegations, gain evidence about their corruption, gain information about their knowledge of the allegations/corruption, and/or may reasonably be expected to be present when M5 was going to record conversations.*¹¹²¹

The ‘minor irregularity’ detected by Finlay was that the supporting affidavit did not include the names of two people who were named in the warrant. He added: “Neither of such persons is the subject of criminal nor disciplinary proceedings”.¹¹²²

As to the third question, Finlay advised that he had “no reason not to accept the advice of the Crime Commission” that the material obtained by the warrant was used appropriately.¹¹²³ He quoted from an unsourced document provided by the NSWCC that explained how the material recorded by Sea was downloaded, transcribed, reviewed, securely held and used only for PIC hearings, criminal prosecution briefs, and as part of the Mascot investigations. Finlay added that he had “seen documents recording instances of appropriate dissemination”¹¹²⁴ and concluded: “I am satisfied the material has not been used for any other purposes, nor has the Commission disseminated the material to any other agency”.¹¹²⁵

Finlay also remarked:

*When practicable the destruction of so much of any record obtained by the use of the listening device ‘as does not relate directly or indirectly to the commission of a prescribed offence’ shall be required pursuant to s22 of the Act.*¹¹²⁶

It does not appear that this statutory requirement was followed. Operation Prospect was given a significant amount of material from the use of the Mascot LDs that did not appear to relate to the commission of a prescribed offence – and was not given any evidence that any LD product resulting from the use of LD warrant 266/2000 was destroyed.

13.6.4 Response to the PIC Inspector’s report

In May 2002 a motion was moved and adopted on behalf of the branches of the NSW Police Association that they did not accept Finlay’s findings. The resolution stated that the report did not address many areas of concern, and criticised the “trivial manner in which the lack of any information about two of the people named

1118 The Hon Mervyn Finlay QC, *Operation Florida – Re: Listening Device Warrant – Report by Inspector of Preliminary Investigation*, Inspector of the Police Integrity Commission, 29 April 2002, p. 17.

1119 The Hon Mervyn Finlay QC, *Operation Florida – Re: Listening Device Warrant – Report by Inspector of Preliminary Investigation*, Inspector of the Police Integrity Commission, 29 April 2002, p. 17.

1120 The Hon Mervyn Finlay QC, *Operation Florida – Re: Listening Device Warrant – Report by Inspector of Preliminary Investigation*, Inspector of the Police Integrity Commission, 29 April 2002, p. 17.

1121 The Hon Mervyn Finlay QC, *Operation Florida – Re: Listening Device Warrant – Report by Inspector of Preliminary Investigation*, Inspector of the Police Integrity Commission, 29 April 2002, p. 17.

1122 The Hon Mervyn Finlay QC, *Operation Florida – Re: Listening Device Warrant – Report by Inspector of Preliminary Investigation*, Inspector of the Police Integrity Commission, 29 April 2002, p. 18.

1123 The Hon Mervyn Finlay QC, *Operation Florida – Re: Listening Device Warrant – Report by Inspector of Preliminary Investigation*, Inspector of the Police Integrity Commission, 29 April 2002, p. 18.

1124 The Hon Mervyn Finlay QC, *Operation Florida – Re: Listening Device Warrant – Report by Inspector of Preliminary Investigation*, Inspector of the Police Integrity Commission, 29 April 2002, p. 18.

1125 The Hon Mervyn Finlay QC, *Operation Florida – Re: Listening Device Warrant – Report by Inspector of Preliminary Investigation*, Inspector of the Police Integrity Commission, 29 April 2002, p. 18.

1126 The Hon Mervyn Finlay QC, *Operation Florida – Re: Listening Device Warrant – Report by Inspector of Preliminary Investigation*, Inspector of the Police Integrity Commission, 29 April 2002, p. 18.

in the warrant is dealt with".¹¹²⁷ The Police Association members recorded that it was arguable that the PIC Inspector was not sufficiently independent to assess accurately the information in the application – as he was reporting on an agency he was “actively involved in”.¹¹²⁸ There were accompanying motions to instruct senior counsel to advise, as well as calling for a permanent body – independent of the PIC, NSWCC and SCIA – to review legislation processes and the operations of those agencies.

Law firms acting on behalf of some of the people aggrieved at being mentioned in the warrant asked the NSWCC for a copy of the affidavit, and any supporting materials.¹¹²⁹ These requests were declined by the NSWCC.¹¹³⁰

13.7 Bradley’s evidence

Bradley told Operation Prospect that his view was that the supporting affidavit to LD warrant 266/2000 should not be made public. He expressed this view a number of times in his evidence. The NSWCC view had always been that “you can’t go behind the warrant”.¹¹³¹ His judgement about publicity may also have been influenced by his understanding that some people named in affidavits were not corrupt:

*I was very sympathetic to the impact that the publication of those warrants would have had on them and their reputations and the fact it was in the paper and all of those sorts of things; and so even if I’d seen some of that stuff that said they were under suspicion, I wouldn’t have told them that they were under suspicion because I didn’t suspect them.*¹¹³²

As noted earlier (section 13.3), Bradley gave evidence to Operation Prospect that he had advised three senior police officers on 12 April 2002 that they were included in the warrant as ‘bystanders’ at the King send-off. There was a similar tone in an email Bradley sent to Standen on 12 April 2002 (section 13.3). This view is not stated as clearly in the letter Bradley sent to Finlay on 19 April 2002. This letter refers to “three police referred to [who] had not been the subject of any adverse allegations”,¹¹³³ but intimates that Sea had been instructed generally to initiate conversations with police to elicit further information about corruption. The letter advised that it was Bradley’s view that “the seeking of a warrant in those broad terms was justified”.¹¹³⁴

Operation Prospect asked Bradley if there was an apparent tension in these items of advice, and in particular whether his letter to Finlay imported material from the Burn memo:

Q: *And are you able to assist with how that tension was resolved in your own mind so that you felt comfortable conveying this other information to Mr Finlay as an accurate representation of the position?*

A: *No. There was a point at which I took the view that many of the people on the warrant were bystanders, as I’ve described them in shorthand. It appears that Burn has attached a suspicion to many of those bystanders. I didn’t change the position which I had put to [a senior police officer] and others, and nor did, as far as I’m aware, Ryan change the position which he publically stated.*

1127 Letter from Peter Remfrey, Secretary, Police Association of NSW to Commissioner of Police Ken Moroney, NSWPF, 29 April 2003 – enclosure titled ‘Annexure 1 Motions (4) from Commissioned Police Officer’s – Crime Agencies/IIC, SSG Branch Meeting, 8 May 2002’.

1128 Letter from Peter Remfrey, Secretary, Police Association of NSW to Commissioner of Police Ken Moroney, NSWPF, 29 April 2003 – enclosure titled ‘Annexure 1 Motions (4) from Commissioned Police Officer’s – Crime Agencies/IIC, SSG Branch Meeting, 8 May 2002’.

1129 Facsimile from [solicitor] to John Giorgiutti, Solicitor to the Commission, NSWCC, 21 May 2002; Letters from [solicitor] to NSWCC, 24 June 2002, 23 July 2002, 26 July 2002, 12 August 2002, 15 August 2002, 3 September 2002, 9 September 2002, 9 October 2002.

1130 Letter from John Giorgiutti, Solicitor to the Commission, NSWCC to [solicitor], 24 May 2002; Letter from John Giorgiutti, Solicitor to the Commission, NSWCC to [solicitor], 3 September 2002.

1131 Ombudsman Transcript, Phillip Bradley, 24 November 2014, p. 3053.

1132 Ombudsman Transcript, Phillip Bradley, 24 November 2014, p. 3053.

1133 Letter from Phillip Bradley, Commissioner, NSWCC to the Hon Mervyn Finlay QC, Inspector of the Police Integrity Commission, 19 April 2002, p. 1.

1134 Letter from Phillip Bradley, Commissioner, NSWCC to the Hon Mervyn Finlay QC, Inspector of the Police Integrity Commission, 19 April 2002, p. 2.

Q: *Weren't you concerned though that you were putting one position to Mr Finlay to carry out the report that was going to be a review of this warrant 266 issue, but on the other hand you were aware that Mr Ryan had put misinformation into the public domain?*

A: *I would have been, but I think the material, based on what you've shown me, that went to Finlay was accurate, or at least based on what Burn's report contained, and I would say that it would be not [sic] something that Ryan having been informed, if he was, that the statement he made to 60 Minutes was in part inaccurate as to the numbers of persons who were bystanders, it would be unlikely that he would go back to Richard Carleton [sic] and say "Oh, what I told you last month wasn't right."¹¹³⁵*

Bradley was asked if he had read the affidavit supporting LD warrant 266/2000 to satisfy himself of the correct position. He replied he "might have",¹¹³⁶ but he did not recall doing so. He also did not recall his letter to Finlay.¹¹³⁷ In essence, Bradley said he did not remember looking at the affidavit but relied very heavily on "other people coming and telling [him] things verbally".¹¹³⁸

13.8 Analysis, submissions and recommendation

13.8.1 Introduction

The public circulation of LD warrant 266/2000 in early April 2002 stirred immediate interest and controversy. Complaints and queries were received from a number of quarters, questions were raised in the print and electronic media, the Police Association of NSW made high level representations, senior police officers who were named in the warrant sought an explanation at high levels of government, heads of agencies became directly involved in receiving as well as providing advice, officials with knowledge of the Mascot investigations were called on to prepare written advice, and the controversy was formally referred by the Minister for Police to the PIC Inspector for independent review. Most of these events happened in the short space of four days.

It should have been clear to all those asked to provide advice about LD warrant 266/2000 that a serious matter had arisen which required a frank assessment and honest reporting. This section analyses whether that expectation was met. In doing so, it is important to focus on the two central questions that had been raised in the public domain:

- Were all those named in LD warrant 266/2000 suspected of knowing about or being involved in criminal conduct or corruption?
- Did the warrant include names that should not have been included?

Those two questions were substantially discussed in Chapter 9 of this report, particularly section 9.3.4. Features of the warrant that were highlighted in that discussion were:

- The warrant listed 114 names, but only 112 were named in the supporting affidavit.
- No explanation was given in the supporting affidavit for the inclusion of 45 names in the warrant.
- The list of names included all 30 people who were earlier named as invitees to the King send-off function that was held more than two months earlier.
- Mascot records did not include any allegation against 10 of those named in the warrant, but this was not clear from the supporting affidavit – three examples given in Chapter 9 were Mr J, Officer T and Officer X.

Chapter 9 also summarised the range of views expressed in evidence to Operation Prospect about the warrant and the supporting affidavit. These were, of course, views expressed more than a decade after the warrant had been publicised and with an opportunity for reflection in hindsight. On the one hand, some witnesses

¹¹³⁵ Ombudsman Transcript, Phillip Bradley, 24 November 2014, p. 3067.

¹¹³⁶ Ombudsman Transcript, Phillip Bradley, 24 November 2014, p. 3068.

¹¹³⁷ Ombudsman Transcript, Phillip Bradley, 24 November 2014, p. 3068.

¹¹³⁸ Ombudsman Transcript, Phillip Bradley, 24 November 2014, p. 3069.

held to the view that it was appropriate to name a large number of people in a warrant, including invitees to a social function. This was because of the unpredictable pattern of Sea's conversations, the difficulty of gathering evidence of police corruption, and to ensure a firmer legal basis for recording all those who Sea happened to meet or who were in the vicinity of an active LD. On the other hand, a number of witnesses expressed discomfort at the large number of people named in the warrant, the paucity or absence of the explanations given in the supporting affidavit, and the Mascot practice of rolling over warrants and leaving names in warrants for an extended period. A point of general agreement in the evidence to Operation Prospect was that – if a distinction could be drawn between those suspected of corruption and those included for other reasons – this distinction should be explained in the supporting affidavit and applied as far as possible to those who were named.

Operation Prospect is not in a position to determine whether the deponents of the supporting affidavits for LD warrant 266/2000 and earlier similar warrants had a reasonable basis for the suspicions they held about those named in the warrants. More than 15 years later that inquiry is no longer feasible. However, the questions that were raised in 2002 after LD warrant 266/2000 became public were of a different kind and needed to be responded to in a convincing public manner. The adequacy of the responses, as reflected in the documents of the time that are available to Operation Prospect, will now be analysed.

13.8.2 Discrepancy between the Bradley and Heenan memos

The memos written separately by Bradley and Heenan on 12 April 2002 were among the first documents written in response to LD warrant 266/2000 becoming public. Bradley and Heenan were both senior officers whose views would carry some weight – Bradley as Commissioner of the NSWCC and Heenan as acting Mascot Team Leader.

As discussed in section 13.3, their views on the content of the warrant do not correspond. Bradley's view was that not all those named in the warrant were alleged to be involved in or have knowledge of corruption, and some may have only been included because they had attended a farewell function. He used the description 'bystander' in another conversation at that time. By contrast, Heenan stated in his memo that those named in the warrant "were reasonably suspected to have been involved in corruption or had knowledge of corruption".¹¹³⁹ Bradley's memo was attached to Heenan's memo.

The Bradley memo was given to the Ministry of Police. It is not clear who received or read the Heenan memo, but it is likely that both Burn and Reith received it.

Three interrelated points can be drawn from this analysis. First, different views were being expressed at an early stage after LD warrant 266/2000 became public. Second, those views do not appear to have been formed by careful analysis of the warrant and supporting affidavit. Third, those involved in the discussion at this stage had not identified the discrepancy in the explanations.

13.8.3 Burn memo and annexure

The Burn memo and its annexure was an important document. Burn was a senior officer who was the Mascot Team Leader at the time that LD warrant 266/2000 was granted, and her memo was the primary means of explaining the warrant to the Police Minister and other relevant senior officers. It is also clear that strong reliance was placed on it by the PIC Inspector and by Bradley in his letter to the Inspector on 19 April 2002.

There is uncertainty in the evidence about the exact content that was written by Burn or by Jewiss. However, it is clear that both played an active role in preparing the document – and importantly that Burn signed the memo and therefore approved both it and the annexure, although it seems the annexure was mainly prepared by Jewiss.

It is clear that preparing the document was taken seriously, with some thought and research in the short time available about how to explain the warrant and supporting affidavit. The annexure to the memo separately listed and commented on each person named in the warrant, and acknowledged that 45 of the names were

¹¹³⁹ NSWPF internal memorandum from Detective Acting Inspector Matthew Heenan to Assistant Commissioner Brian Reith, 12 April 2002.

“[n]ot mentioned in the September affidavit”.¹¹⁴⁰ Importantly, the memo also explained that there were numerous reasons why people’s names appeared in the warrant – including that some people “would reasonably have been suspected of being present when M5 was going to record conversations”.¹¹⁴¹

There were nevertheless deficiencies in the memo and annexure, as discussed in section 13.4.3. The memo did not highlight that the supporting affidavit did not explain why 45 people were named in LD warrant 266/2000, that two of those named in the warrant were not mentioned at all in the affidavit, that one of those people named in the affidavit and warrant was incorrectly named and that there was no adverse mention in Mascot records of 10 of those named. Those points were centrally relevant in appraising whether people were inappropriately named in the warrant and whether those who were named were suspected of being involved in or having knowledge of crime or corruption.

The comment against 45 names in the annexure – ‘Not mentioned in the September affidavit’ – was not explained or drawn out. Those people were listed in the supporting affidavit, in association with other names that were suspected of corruption or criminal conduct, but no explanation was given in the affidavit as to why they were named or to differentiate them from others. The annexure to the memo gave a brief summary of why each person was mentioned in the warrant – for example, “suspected to have been involved in or have knowledge of, corrupt or criminal conduct by Police”.¹¹⁴² A person relying only on the Burn memo and annexure may not have understood that for some people the supporting affidavit was bereft of that detail or a satisfactory explanation for the person being named in the warrant. Those receiving the Burn memo were not given the supporting affidavit, with the exception of Finlay.

In other ways too it would be difficult for a person relying only on the memo and annexure to understand that there were problems with the warrant and supporting affidavit. One example given earlier is that the surname ‘Burke’ in the annexure was misspelt in the warrant and affidavit (which subsequently meant that an incorrect person was named in 28 LD affidavits and 69 LD warrants). This was not noted in the memo. Another example given in Chapter 9 (section 9.4) is that Mr J, Officer T and Officer X were named in both the warrant and supporting affidavit, but no explanation was given for why they were named. There is also no Mascot record to support the comment made against those three people in the annexure to the Burn memo that they were “suspected to have been involved in or have knowledge of, corrupt or criminal conduct by Police”.¹¹⁴³

On 10 April 2002 soon after it became known that LD warrant 266/2000 had been released in a criminal brief, Burn gave brief email advice to Reith that “all names mentioned in the warrant have been mentioned for legitimate but various reasons”.¹¹⁴⁴ The Burn memo, five days later, can best be described as a more detailed presentation of that view.

Burn addressed these issues in a written submission to Operation Prospect.¹¹⁴⁵ She emphasised strongly that the memo and annexure were not designed to be less than frank or to mislead as to any problems with the warrant and supporting affidavit. She adhered to the view stated in the memo that “every name mentioned on the warrant was on the warrant for legitimate reasons”,¹¹⁴⁶ but on reflection could see that this was not fully explained or reflected in the memo or the supporting affidavit. Some people were named in the warrant for reasons that were explained in other Mascot documents that were not incorporated into the supporting affidavit. In her submission, the memo alluded to this gap between the names in the warrant and the explanations given in the affidavit.

1140 NSWPF internal memorandum from Acting Superintendent Catherine Burn, Acting Commander of SCU to Assistant Commissioner Brian Reith, Commander of SCIA, 13 April 2002 – annexure entitled ‘Listening Device Warrant 266/2000 Dated 14 September 2000’.

1141 NSWPF internal memorandum from Acting Superintendent Catherine Burn, Acting Commander of SCU to Assistant Commissioner Brian Reith, Commander of SCIA, 13 April 2002 – annexure entitled ‘Listening Device Warrant 266/2000 Dated 14 September 2000’.

1142 NSWPF internal memorandum from Acting Superintendent Catherine Burn, Acting Commander of SCU to Assistant Commissioner Brian Reith, Commander of SCIA, 13 April 2002 – annexure entitled ‘Listening Device Warrant 266/2000 Dated 14 September 2000’.

1143 NSWPF internal memorandum from Acting Superintendent Catherine Burn, Acting Commander of SCU to Assistant Commissioner Brian Reith, Commander of SCUA, 13 April 2002 – annexure entitled ‘Listening Device Warrant 266/2000 Dated 14 September 2000’.

1144 Email from Superintendent Catherine Burn, Acting Commander of SCU, Mascot Reference, NSWCC to Chief Superintendent Brian Reith, Commander of SCIA, NSWPF, 9 April 2002.

1145 Burn, C, Submission in reply, 25 September 2015, Appendix 3, pp. 9–15.

1146 Email from Superintendent Catherine Burn, Acting Commander of SCU, Mascot Reference, NSWCC to Chief Superintendent Brian Reith, Commander of SCIA, NSWPF, 9 April 2002.

Burn's submission commented also on the 'innocent bystander' explanation that had been put forward by others in April 2002. Without endorsing that explanation, she noted that it may have been a rationale adopted for the reason that some targets of the undercover operation were still being investigated.

13.8.4 Commissioner Ryan's interview on 60 Minutes

It has not been disputed that Commissioner Ryan gave misleading information about LD warrant 266/2000 in his *60 Minutes* interview (section 13.4.4). He intimated that anybody attending the same function as M5 (Sea) would probably need to be named in the warrant, and he emphatically denied that the LD was being used to investigate over 110 people.

It appears, on the evidence available to Operation Prospect, that Ryan made this statement without any detailed briefing from operational officers in Mascot. It does not appear that he was briefed by Jewiss, Burn, Dolan¹¹⁴⁷ or Bradley before his interview was recorded, or that the Burn memo (the only briefing document on LD warrant 266/2000 that may have been available at the relevant time) was prepared for the purpose of briefing Ryan before his interview. As discussed in section 13.4.4, it seems the Burn memo was prepared for a meeting with the Police Minister on 15 April 2002, and may not have been completed by the time the *60 Minutes* interview was pre-recorded.

13.8.5 Tenor of the advice given by Bradley

The advice given by Bradley is an important issue, given that he was the Commissioner of the NSWCC and in direct contact with the Minister, the PIC Inspector and senior police who consulted him. Bradley was reliant on others for the information that he conveyed, but he was equally in a position to require that detailed or searching inquiries be undertaken before any advice was provided.

It appears that Bradley did not get fully across the issues – particularly by familiarising himself with the source documents – before expressing his views to others. His advice was not altogether congruent with either the content of the supporting affidavit to LD warrant 266/2000 or the concerns that some Mascot investigators may have felt about the scope of the warrant. Generally, the tenor of the separate items of advice that Bradley gave did not lay the groundwork for an objective appraisal of a serious issue that was prominent in the media about the scope of the Mascot investigations – as embodied in the warrant and supporting affidavit.

As discussed in sections 13.3 and 13.8.2, the Bradley memo of 12 April 2002 stated that some people may have been included in LD warrant 266/2000 because they attended a farewell function – and his evidence to Operation Prospect is that he advised senior officers that they were in effect 'bystanders'. Bradley's letter to Finlay on 19 April 2002 was a more formal advice, and referred to – and was presumably informed by – Burn's memo. The letter stated about the warrant that "investigators tended to include all persons likely to speak in the presence of the device"¹¹⁴⁸ and that three police named in the warrant "had not been the subject of any allegations, but were likely to be proximate to the device when it was recording".¹¹⁴⁹ In other respects, the letter did not draw attention to the features of the warrant and supporting affidavit that had excited controversy – notably, that the affidavit did not explain the inclusion of 45 names in the warrant. The letter expressed Bradley's view that "having regard to the nature and extent of the investigation, the seeking of the warrant in those broad terms was justified".¹¹⁵⁰

1147 John Dolan was on long term sick leave at the time. NSWPF internal memorandum from Detective Superintendent Mark Wright, Commander of SCU, SCIA, 18 November 2003, p. 1.

1148 Letter from Phillip Bradley, Commissioner, NSWCC to the Hon Mervyn Finlay, Inspector of the Police Integrity Commission, 19 April 2002, p. 1.

1149 Letter from Phillip Bradley, Commissioner, NSWCC to the Hon Mervyn Finlay, Inspector of the Police Integrity Commission, 19 April 2002, p. 1.

1150 Letter from Phillip Bradley, Commissioner, NSWCC to the Hon Mervyn Finlay, Inspector of the Police Integrity Commission, 19 April 2002, p. 2.

Bradley made written submissions on this issue to Operation Prospect, which included the following points:

- He was not aware before April 2002 that a large number of people were named on LD warrant 266/2000.¹¹⁵¹
- He never made a public statement on the issue that could have contributed to confusion about the scope of the warrant and the content of the supporting affidavit.¹¹⁵²
- The view he expressed to others was that some people named on the warrant were not alleged to be involved in or to have knowledge of corruption, but could nevertheless be named as bystanders – and this was “consistent with a correct legal understanding”.¹¹⁵³
- His advice “struck a reasonable and correct balance between properly pursuing allegations of police misconduct and keeping an open and fair mind”.¹¹⁵⁴

13.8.6 The PIC Inspector’s report

Finlay’s report¹¹⁵⁵ on the three questions posed by the Minister of Police about LD warrant 266/2000 was produced in less than 14 days. It seems unlikely that Finlay carried out any detailed analysis, and the text of the report suggests that he relied heavily on the written material the NSWCC provided and possibly on discussions with NSWCC staff. The substantive part of the report addressing the three questions posed by the Minister was less than three pages. Finlay is deceased, so it is no longer possible to explore further how his review was conducted and the extent to which he relied on information provided by the NSWCC.

Finlay’s approach to the three questions he was asked was strongly influenced by his view on two issues. One was that Mascot was an exceptional investigation that had achieved successful results resulting in criminal prosecutions by using LDs that recorded a large number of people. The second was that it was legally acceptable to name in a warrant not only those who were suspected of criminal activity – but also those who Sea might engage in conversation to gain information about allegations and those who may be expected to be present when Sea was going to record a conversation. It was not part of the PIC Inspector’s role, Finlay explained, to deal with any challenge to the validity of a warrant and he saw “nothing in the material inspected by me” which would cast any doubt on the validity of the warrant granted.¹¹⁵⁶

Those propositions are unexceptional, but in this case led to a narrow inquiry by Finlay. The report did not consider, for example, whether the supporting affidavit contained an appropriate (or indeed any) explanation for why each of 114 people were named in the warrant – including senior police officers and a journalist. The report did not evaluate the advice Finlay was given that all but three of the people named in the warrant were suspected by Mascot of either being involved in or having knowledge of corruption. There was no cross-referencing between the people named in paragraph 3(c) of the affidavit, the people named in the warrant, and the explanatory paragraphs of the affidavit. Finlay’s only reference to the affidavit was to comment that it was “a comprehensive, very lengthy affidavit”.¹¹⁵⁷

Finlay quotes two statements from other documents that he says he accepted. The source documents are not cited, but Operation Prospect is aware that the statements come from a NSWCC document provided to Finlay. The first statement he accepted was:

1151 Bradley, P, Submission in reply, 28 September 2015, p. 4.

1152 Bradley, P, Submission in reply, 28 September 2015, p. 4; Bradley, P, Submission in reply, 30 November 2015, p. 4.

1153 Bradley, P, Submission in reply, 8 February 2016, p. 15.

1154 Bradley, P, Submission in reply, 8 February 2016, pp. 15-16.

1155 The Hon Finlay, M., *Operation Florida – Re: Listening Device Warrant – Report by Inspector of Preliminary Investigation*, Inspector of the Police Integrity Commission, 29 April 2002.

1156 The Hon Finlay, M., *Operation Florida – Re: Listening Device Warrant – Report by Inspector of Preliminary Investigation*, Inspector of the Police Integrity Commission, 29 April 2002, p. 17.

1157 The Hon Finlay, M., *Operation Florida – Re: Listening Device Warrant – Report by Inspector of Preliminary Investigation*, Inspector of the Police Integrity Commission, 29 April 2002, p. 12.

... the contact which SEA was likely to have with other police, and former police was extensive, and there were likely to be conversations which were relevant to the investigation of the nominated offences with many such persons. Investigators tended to include all persons likely to speak in the presence of the device.¹¹⁵⁸

The second statement he accepted was:

... the documents were prepared by, or under the supervision of, an experienced lawyer (to whom I have spoken), on the instructions of the applicant, and submitted by the lawyer to the Justice in chambers. The terms of the affidavit and draft warrant were approved by an Assistant Director of the (Crime) Commission.¹¹⁵⁹

As to the 'experienced lawyer' that Finlay spoke to, the only relevant evidence Operation Prospect obtained on that matter was from Neil Owen, a NSWCC solicitor – who witnessed LD warrant 266/2000. He recalled in evidence that he attended an office in the city and spoke to a "retired Judge" about Mascot.¹¹⁶⁰ He was unable to say who that was, but was able to say it was shortly after he left the NSWCC in March 2002 and probably before he started work at another organisation in April 2002. Owen recalled that the purpose of his visit was to give information about things to do with Mascot, as the retired judge appeared to be "conducting some kind of inquiry. So it was more than a chat. He asked a series of questions".¹¹⁶¹ Owen was unable to say whether the retired judge showed him documents and Owen did not have any NSWCC documents with him.¹¹⁶² Owen did not recall what he was asked nor his answers, but told Operation Prospect that he answered the questions truthfully and to the best of his ability.¹¹⁶³ He could not say whether he had any discussions with Bradley or Giorgiutti about LD warrant 266/2000 becoming public before he met this person.¹¹⁶⁴ It appears, from that evidence, that Owen was the lawyer Finlay spoke to.

13.8.7 Overall assessment of the events after LD warrant 266/2000 became public

This section started by noting that there was considerable disquiet after LD warrant 266/2000 became public on 12 April 2002. This would have been apparent to those who did work in the following days to review or provide advice on the warrant and supporting affidavit. There was an opportunity in that period to stand back from a 'brewing' controversy and make a frank and objective assessment of the concerns that were being raised. Although those who looked at the issue treated it seriously, they failed to provide the explanation and the answers that people were looking for. The result, as the Operation Prospect investigation shows, is that the controversy continued to grow for another decade – to the point that the NSW Government accepted the need for a comprehensive and extensive inquiry into the Mascot warrants and related issues (carried out by Operation Prospect).

It seems likely that if the affidavit supporting LD warrant 266/2000 had contained clear explanations about why each person was named in the affidavit, many of the problems associated with the publication of LD warrant 266/2000 would have been addressed a long time ago. It would probably have been sufficient to have distinguished between two groups: any people who might be recorded simply because they were going to be bystanders to conversations at social and other events, and those who were suspected of having knowledge of or involvement in criminal or corrupt.

1158 The Hon Finlay, M., *Operation Florida – Re: Listening Device Warrant – Report by Inspector of Preliminary Investigation*, Inspector of the Police Integrity Commission, 29 April 2002, p. 12.

1159 The Hon Finlay, M., *Operation Florida – Re: Listening Device Warrant – Report by Inspector of Preliminary Investigation*, Inspector of the Police Integrity Commission, 29 April 2002, p. 12.

1160 Ombudsman Transcript, Neil Owen, 21 October 2014, pp. 2379-2380.

1161 Ombudsman Transcript, Neil Owen, 21 October 2014, p. 2380.

1162 Ombudsman Transcript, Neil Owen, 21 October 2014, p. 2381.

1163 Ombudsman Transcript, Neil Owen, 21 October 2014, p. 2381.

1164 Ombudsman Transcript, Neil Owen, 21 October 2014, p. 2381.

That being said, the failure to provide an explanation for the inclusion of every person in the associated affidavit associated with the warrant is not, in itself, a breach of the LD Act. There is no provision in the LD Act that requires that an explanation for the inclusion of every single name in the warrant must be detailed in the affidavit. It simply requires that all people whose conversations may be recorded or listened to should be listed in the warrant where practicable, and that sections 17 and 19 of the LD Act are complied with so that the Attorney General and the court are notified as to the use to which warrants were put, including identifying the names of people whose conversations were, in fact, recorded. However, it would have been best practice for the affidavit to clearly account for every person named therein.

Adverse comments are made in the preceding discussion about the failure of some senior officers, including Bradley and Burn, to grasp this opportunity to better understand and address the concerns that were being raised both privately and publicly. However, it is accepted that this was not done with an intention to mislead or to justify the indefensible. It is evident that the preparation of advice was taken seriously as a response by senior managers, with some reliance on assistance from other staff. The advice was also given at a time when the Mascot investigations had not concluded, although the covert phase had ended. That may in part explain the circumspection in some of the advice. Also, at that time, the staff members with more direct knowledge of the Mascot investigations may have felt that it had been properly conducted and tailored their advice accordingly.

The explanations and advice given at the time were nevertheless inadequate and not entirely consistent. Importantly, they failed to quell the controversy at an appropriate time. The narrow inquiry by the PIC Inspector compounded the problem and forestalled a more thorough inquiry. Beyond those adverse comments, it is not appropriate to make adverse findings individually against those who undertook these actions at the time.

13.8.8 Recommendation

- 19.** It is recommended under section 26(2) of the *Ombudsman Act 1974* that following the advice of the Inspector of the Police Integrity Commission, the NSW Crime Commission destroy the listening device recordings (and associated transcripts) obtained under LD warrant 266/2000 that do not relate directly or indirectly to the commission of a prescribed offence.

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