

Operation Prospect

Volume 4

Chapters 14-15

Mascot management of
informants Paddle and Salmon

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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**NSW Ombudsman
Level 24, 580 George Street
Sydney NSW 2000**

**Phone 02 9286 1000
Toll free (outside Sydney Metro Area): 1800 451 524
Facsimile: 02 9283 2911
Website: www.ombo.nsw.gov.au
Email nswombo@ombo.nsw.gov.au**

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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.
GyMEA reference	In 1996 the GyMEA reference was referred by the NSWCC Management Committee to the NSWCC to investigate organised crime (including drug trafficking and money laundering), and the associated involvement of corrupt police. The GyMEA reference was reissued on a number of occasions between 1996 and 2003. It was initially staffed by NSWCC officers but expanded in 1997 to involve the Special Projects Unit of the NSWPF Internal Affairs Command.
handler	Officer assigned as the main contact point for a registered police or NSWCC informant.
hot spot	Location where a check conducted by a handheld battery operated device indicates a listening device may be installed.
inculpatory evidence	Evidence that suggests or points towards the guilt of a person.
[Ind]	Indistinct or indecipherable audio that is unable to be transcribed.
indemnity	Under section 32 of the <i>Criminal Procedure Act 1986</i> , police may apply to the Attorney General via the Director of Public Prosecutions for an indemnity from prosecution to be granted to a person for a specific offence or in respect of specified acts or omissions. The indemnity formally protects the person against prosecution for specified matters in exchange for assistance provided to investigators.
induced statement	An 'induced statement', or one taken following 'an inducement', is a formal statement taken from a person on the basis that the information provided will not be used against the person making the statement in any criminal proceedings.
Information Report	A written report completed by Mascot officers as a formal record of actions that occurred.
integrity test	Part 10A of the <i>Police Act 1990</i> empowers the NSWPF to conduct integrity testing of its own officers. Under section 207A a designated person may offer a police officer the opportunity to engage in certain behaviour to test the officer's integrity. The behaviour of the officer being tested is assessed against NSWPF policy and legislative requirements. The objectives of integrity testing are to test for corrupt conduct, deter corrupt behaviour and analyse NSWPF systems, processes and procedures to reduce potential corrupt activity.

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

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

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

Chapter 14. Deployment and management of the NSWCC informant ‘Paddle’

14.1 Chapter overview

This chapter examines the deployment and management of a NSW Crime Commission (NSWCC) informant who was assigned the code-name ‘Paddle’.

Paddle was registered as an informant with the NSWCC on 13 April 1999. He first came to the attention of Mascot investigators when he was mentioned by informant Sea in his debrief interview on 8 January 1999. Paddle was already well known to police at that time.¹ Included in Sea’s allegations of corrupt conduct by NSW Police Force (NSWPF) officers was an allegation that police verbally Paddle and two others charged in 1994 in relation to an attempted armed robbery in Coffs Harbour that year.

Paddle was approached by Mascot investigators in early April 1999 as part of their investigation into Sea’s allegations. At that time, Paddle was facing charges relating to his role in the Coffs Harbour attempted armed robbery. Paddle initially corroborated Sea’s allegation that oral admissions he had made to arresting police never occurred, that he was verbally, and that he was not involved in the attempted armed robbery. He was registered as a NSWCC informant shortly afterwards in April 1999.

Paddle provided assistance to Mascot investigators over a number of years in relation to serious criminal offences, and helped to identify and investigate a fourth suspect in the 1994 attempted armed robbery, as well as suspects in a homicide. Part of the value in Paddle’s role as an informant arose from his direct involvement in the serious crimes he was helping Mascot to investigate. However, Paddle’s versions of events were not always reliable – for example, in December 1999, he admitted his role in the 1994 attempted armed robbery, contradicting what he had told investigators previously. It is however understandable that Mascot saw his assistance as being potentially highly valuable.

In his debrief in January 1999, Sea stated that his knowledge of the alleged verballing of Paddle came from Officer B and Mascot Subject Officer 4 (MSO4), who were both involved in Paddle’s interview and arrest for the 1994 attempted armed robbery. The investigation of Officer B by Mascot, the NSWPF and Strike Force Volta is discussed in section 6.3 of Chapter 6 of this report. Despite numerous investigations, no evidence was found to support the allegation that Officer B verbally Paddle.

MSO4 was a senior serving police officer at the Coffs Harbour Local Area Command (LAC) for the period relevant to this chapter. He had attained the rank of Detective Inspector and was the Crime Manager for the Coffs Harbour LAC. The Crime Manager is responsible for managing criminal investigations and developing crime reduction strategies for the whole LAC in accordance with the policing strategy of the Local Area Commander. MSO4 is mostly referred to in this chapter by that description – ‘MSO4’ – rather than his role as Crime Manager. The reason is that Mascot viewed MSO4 as a subject officer, and that information helps to understand the Mascot actions and strategies that are discussed in this chapter. However, it is important to emphasise that many of the actions taken by MSO4 were in his capacity as Crime Manager, and should be seen as such. Mascot’s allegation concerning MSO4 is briefly discussed in Chapter 6.

This chapter will focus on the following five aspects of the actions of Mascot investigators in managing and deploying Paddle as an informant:

- The deployment of Paddle to meet with Mr A, who was a former NSWPF officer and expected Crown witness in the (then) ongoing prosecution of Paddle for the attempted armed robbery. This meeting entailed a breach of Paddle’s bail conditions.

¹ Paddle is described as having “a lengthy criminal history...” by police. NSWPF, ‘Facts in the matter’ of the accused [Paddle], [Mr O] and [Mr M], [Mascot Subject Officer 3], 22 October 1997, p. 8.

- The provision of assistance to Paddle to avoid being found by other NSWPF officers who were attempting to locate him in relation to his contact with this Crown witness. This assistance included helping Paddle to change residence, in further breach of his bail conditions.
- The provision of advice to Paddle to hide his work as an informant from the court during court proceedings.
- The inadequate NSWPF and NSWCC response to formal complaints about the way Paddle was deployed.
- The failure to provide the Director of Public Prosecutions (DPP) with information relevant to his decision to discontinue proceedings against Paddle.

The management of Paddle was complicated by a desire to protect Mascot's ongoing covert investigations involving both Paddle and Sea, and a concern that information was being leaked by Internal Affairs (IA) personnel at the time. The leak of information could endanger informants and the integrity of the investigations. A letter of complaint from Mr A's solicitor in September 1999 indicates suspicion, if not knowledge, that Paddle was deployed as part of an investigation and was wearing a listening device (LD). The intersection of these different activities occurring in Mascot, the NSWCC and NSWPF appear to have influenced the decisions that were made at the time to instruct Paddle to behave in a way that meant he could avoid detection by NSWPF officers who were pursuing him for breaching his bail conditions and to advise Paddle not to identify his role as an informant in District Court proceedings relating to his breach of bail. Mascot's management of Paddle was further complicated by the fact that one of the NSWPF officers seeking Paddle for the bail breaches was the Crime Manager – MSO4 – who was also a target of Mascot investigators.

Some of these issues were also raised in complaints to the Ombudsman's office and were mentioned in newspaper articles in 2012.² The investigation of these issues as part of Operation Prospect has also touched on broader themes such as:

- the manner in which Mascot used informants to help gather evidence about possible corrupt activity by police and former police
- the strategies developed by Mascot investigators
- the instructions given to informants about how they should gather relevant information and conceal their work as informants.

14.2 Attempted armed robbery in Coffs Harbour in 1994 and the arrest and prosecution of three suspects

On 3 January 1994 two armed offenders wearing balaclavas entered the home of the duty manager of a Coffs Harbour club and held him and his wife at gunpoint. They intended to take the duty manager to the club and compel him to open the club safe. The armed men left the house after the duty manager explained the safe was controlled by a time delay lock.³ They were driven from the house by a third person. It emerged later that a fourth person had given them information about the club, its cash holdings and the duty manager. This incident is also discussed in Section 6.3 of Chapter 6 of this report and will be referred to as the 'attempted armed robbery' throughout this chapter.

On 7 April 1994 three suspects were arrested and charged by NSWPF officers in relation to the attempted armed robbery. They were Mr O, Mr M and Paddle. It was alleged that Mr O and Mr M were the two armed offenders who broke into the home of the club's manager and that Paddle had driven them from the scene.

2 For example: Mercer, Neil. 'Judicial inquiry the only to end questions over police chief', *Sydney Morning Herald*, 2 October 2012, p. 4; Mercer, Neil. 'Bugging heat on top brass', *Sydney Morning Herald*, 23 September 2012, p. 1; Mercer, Neil. 'Files shed light on shady side of secret police', *Sydney Morning Herald*, 15 September 2012 (website).

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

They were each charged with robbery whilst armed, kidnapping, break and enter with intent to commit a felony and possess prohibited weapon.⁴

On 2 June 1994 Paddle was granted conditional bail by the NSW Supreme Court.⁵ The conditions included that “[Paddle] is not to communicate directly or indirectly, except through his legal advisers, with any person of whom he has received notice is to be called or is likely to be called by the Crown at his trial”.⁶ Although other bail conditions were varied at different times – for example, reporting requirements – this particular bail condition was never varied and was in force throughout the period of the Mascot investigations that are the subject of this chapter.⁷ His Honour also stated that “bail is unto revoked in the event of any breach of any of these conditions and the [person] may thereupon be arrested by any police officer”.⁸

On 28 November 1994 Mr O, Mr M and Paddle were committed for trial to the District Court. On 5 June 1996, Paddle was granted a separate trial as his alleged involvement in the offence as the driver was considered different from that of his co-accused.⁹

In February 1998 Mr O and Mr M had their charges dismissed by His Honour Twigg J QC.¹⁰ The prosecution had relied on evidence that sought to identify the offenders by linking them to the alleged firearms, as they were masked throughout the commission of the offence. His Honour ruled that the evidence of the victims relating to the firearms identification was inadmissible, that the police had not followed proper procedure in identifying the firearms, and that the police evidence could not be reconciled with the evidence given by the victims. There was a suggestion that the identification of the firearms had been contaminated.¹¹ In the absence of any other evidence linking Mr O and Mr M to the offence, the Crown offered no evidence and both were acquitted.

Paddle remained on conditional bail, with the same condition remaining in place – that he not “communicate directly or indirectly, except through his legal advisers, with any person of whom he has received notice is to be called or is likely to be called by the Crown at his trial”.¹²

On 30 November 1998, an application by Paddle’s counsel for a permanent stay of proceedings was rejected by the District Court in Coffs Harbour.¹³ Paddle lodged an appeal against this decision that was to be heard in the Court of Criminal Appeal. After a number of adjournments to the Court of Criminal Appeal proceedings in 1999 and 2000, the DPP directed in May 2000 that there be no further proceedings in the matter. This is discussed in greater detail in section 14.10 of this chapter.

On 1 December 1999 Paddle provided Mascot investigators with information about a fourth suspect – Mr BB – allegedly involved in the attempted armed robbery. Mr BB was a security guard at the club and Paddle alleged Mr BB’s involvement included planning the offence. A new operation was launched on 8 December 1999 to investigate the alleged involvement of Mr BB, and Paddle was deployed to speak to him at a hotel on the mid-north coast of NSW while wearing a LD. This strategy was successful and Mr BB made admissions to Paddle about his involvement in the attempted armed robbery and these were recorded.¹⁴ Mr BB was later charged as a result of the investigation involving Paddle, and was convicted of a range of offences including conspiracy to commit armed robbery in company, drug supply and firearms offences. He was sentenced to 12 years imprisonment with a non-parole period of nine years. His sentence was reduced on appeal to the Court of Criminal Appeal in 2002.¹⁵ He was not prosecuted in relation to the 1994 attempted armed robbery on discretionary grounds.¹⁶

4 Supreme Court of NSW, Common Law Division, Dunford J, 2 June 1994, Judgment on application for bail, p. 1.

5 Supreme Court of NSW, Common Law Division, Dunford J, 2 June 1994, Judgment on application for bail, pp. 3-5.

6 Supreme Court of NSW, Common Law Division, Dunford J, 2 June 1994, Judgment on application for bail, p. 4.

7 Request for Review of Bail Decision, the Supreme Court of NSW, 19 March 1996; *R v [Paddle]*, (Unreported, District Court of NSW, Freeman J, [Date]).

8 Supreme Court of NSW, Common Law Division, Dunford J, 2 June 1994, Judgment on application for bail, pp. 4-5.

9 Office of the Director of Public Prosecutions (ODPP) prosecution file, document dated, 16 February 2000, p. 1.

10 *R v [Mr M] and [Mr O]*, (Unreported, District Court of NSW, Twigg J QC, February 1998).

11 *R v [Mr M] and [Mr O]*, (Unreported, District Court of NSW, Twigg J QC, February 1998), p. 7.

12 Supreme Court of NSW, Common Law Division, Dunford J, June 1994, Judgment on application for bail, p. 4.

13 Office of the Director of Public Prosecutions (ODPP) prosecution file, document dated 16 February 2000, p. 2.

14 NSWCC, Transcript of LD (warrant number not recorded), Tape 99/040, 9 December 1999.

15 *R v [Mr BB]*, [2002], NSWCCA 502.

16 ODPP prosecution file, document dated, 1 August 2002, p. 3. Annotated by the DPP on 6 August 2002.

14.3 Sea’s allegations that police verbed Paddle and his co-accused and fabricated evidence

14.3.1 Sea’s allegations in his debrief interview

During his debrief on 8 January 1999 Sea referred to the investigation and arrest of Mr O, Mr M and Paddle. He alleged that the arresting police (including himself) had engaged in assault, fabricated admissions, made false statements, committed perjury, falsified records and verbed the accused including Paddle. Sea did not provide details of the information or admissions that he alleged were fabricated. He also said he was not present when the alleged verbing of Paddle occurred.¹⁷ At the time of the debrief interview, the proceedings against Paddle for his involvement in the attempted armed robbery were ongoing. Mr O and Mr M had already been acquitted of the relevant charges in 1998.

The allegations were recorded by investigators as follows in the Schedule of Debrief created by Mascot after Sea’s initial debrief interviews in January 1999.

OFFENCE	DATE	LOCATION OF SEA	INCIDENT
20. Assault Fabrication False Statement Perjury falsifying records	87-91	Nth Region AHU	Mr O, Mr M & [Paddle] arrested For kidnapping manager of Coffs Harbour Hotel to Open safe – AHU called out to assist. Mr M assaulted Mr O – [Mascot Subject Officer 3 (MSO3)] and [Sea] verbed Mr O – [Sea] recorded fabricated admissions in [Mascot Subject Officer 6 (MSO6)] notebook false statements, perjury [Paddle] – [Officer B] & [MSO4] – verbed [Paddle] – Drove to Coffs with weapon in car in case they needed to plant it – false statement perjury (trial pending) [an unrelated allegation]. ¹⁸

The officers identified in Sea’s allegations were attached to the Armed Hold Up Unit (AHU) of Major Crime Squad North and/or had worked on Task Force Magnum. The NSWPF had established Magnum in 1991 to deal with the escalation of armed robberies. The conduct of Magnum was later investigated by an IA Task Force called ‘Task Force Ancrum’, which the NSWPF had established in 1996 and was operational at the time of Sea’s debrief interview. The decision to establish Ancrum followed admissions made by a former Detective to the Royal Commission into the New South Wales Police Service¹⁹ and included allegations of verbing and other offences by Magnum members. Those admissions were among several matters assigned to Ancrum, including the investigation of all arrests made by Magnum.²⁰ Some of the Ancrum matters were later subsumed into Mascot.

17 NSWCC, Record of interview between Detective Inspector Burn, Detective Senior Sergeant Henry and ‘Sea’, 8 January 1999, pp. 15-16.

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

19 The Royal Commission into the NSWPF was also known as the ‘Wood Royal Commission’, after the Commissioner, Justice James Wood.

20 NSWPF affidavit (unsigned copy), [Ancrum Investigator], NSWPF, 1998, p. 1.

At the time of Sea's debrief interview, there were concerns that some officers within IA and Ancrum were 'leaking' information (see Chapters 5, 7 and 8). As a result, the strategy to investigate Sea's allegations about the arrests of Mr O, Mr M and Paddle included the covert investigation of Ancrum members. The investigation into one of the investigators attached to Ancrum is discussed in Chapter 8.

Some of the officers who arrested and charged Mr O, Mr M and Paddle were under suspicion at the time for similar conduct that was being investigated by Ancrum. Sea had also alleged during his debrief with Mascot that a number of these officers were involved in other forms of corrupt conduct. These allegations later became the subject of Operation Florida, which was the Police Integrity Commission (PIC) inquiry that arose from Mascot. This inquiry conducted public hearings that examined two arrests by Task Force Magnum and the activities of Major Crime Squad North members and the AHU. Further details of the PIC investigations into Magnum are in the publicly available Operation Florida reports to Parliament published in 2004.²¹

14.3.2 Strategy for investigating Sea's allegations about the attempted armed robbery

The NSWCC and the NSWPF Special Crime and Internal Affairs Command (SCIA) responded quickly to Sea's allegations of police misconduct in relation to the attempted armed robbery. On 21 January 1999 the NSWCC issued a summons to the Office of the Director of Public Prosecutions (ODPP) to produce its file relating to the criminal prosecution of Paddle for the 1994 offence.²² An Information Report dated 27 January 1999 records that the ODPP gave the full brief of evidence to the NSWCC.²³

The ODPP then received a request from NSWCC Commissioner Phillip Bradley for a meeting with the DPP. This meeting occurred on 5 February 1999 and was attended by Bradley, Superintendent John Dolan (in his capacity as Commander of the Special Crime Unit in SCIA), Assistant Commissioner Malcolm Brammer (Commander SCIA), the DPP and the Deputy Solicitor Legal of the ODPP. Details of this meeting and a number of others involving senior officers of the NSWCC, NSWPF and the DPP are provided later in this chapter in sections 14.10.4, 14.10.5, and 14.10.8.

The records indicate that – as from 5 February 1999 – the DPP was advised of Sea's allegations that the criminal brief against Paddle may contain fabricated evidence, that Sea was assisting the NSWCC and SCIA in a covert inquiry to investigate these allegations, and that there were concerns that some IA staff who were working on Ancrum may 'leak' correspondence between the ODPP and IA.²⁴ It was decided at that meeting that the ODPP would conduct a review of the brief of evidence against Paddle.

After reviewing the documents in the Paddle brief, the Deputy Solicitor Legal of the ODPP wrote to Brammer on 2 March 1999. The letter made the following points:

- Paddle had lodged an appeal to the Court of Criminal Appeal and the ODPP had conduct of the appeal. The appeal was against the refusal of the trial judge in the Lismore District Court on 30 November 1998 to grant Paddle's application for a permanent stay of proceedings.
- In preparing for the appeal, the ODPP had examined the police brief of evidence and the transcript of the proceedings relating to Paddle's co-accused (Mr O and Mr M). The review of the transcript "indicates that the credibility of a number of police officers concerned in the investigation which lead to the arrest of [Paddle], Mr M and Mr O, was subject to serious challenge",²⁵ and that some of the prosecution case against Paddle relies on oral admissions of officers which were not subsequently confirmed in an electronically recorded interview or ERISP.²⁶

21 Police Integrity Commission, *Report to Parliament – Operation Florida*, Volumes 1 and 2, 2004.

22 NSWCC Summons, to Director, ODPP, *Notice to Attend and Produce Documents*, 21 January 1999; Ombudsman Transcript, [former DPP], 4 May 2016, p. 4.

23 NSWCC Information Report, *Full Brief of Evidence Re: [Mr O, Mr M & Paddle] – Armed Holdups*, 27 January 1999. Mr O and Mr M had been acquitted of the relevant charges in February 1998.

24 [ODPP solicitor], Submission to the Director, [Paddle] – recommendation for no further action, 16 February 2000, p. 2.

25 Letter from [ODPP Solicitor], ODPP, to Malcolm Brammer, Commander, NSWPF, 2 March 1999.

26 Electronically Recorded Interview of a Suspected Person.

The letter also enclosed a list of the names of the NSWPF officers whose statements had been included in the police brief, and stated:

To assist us in our preparation of this matter, would you please advise whether or not anything adverse to the credit of those named is known to your unit. If so, would you please provided [sic], particulars as soon as practicable.²⁷

There were 17 names on the list, including Mr A – who was one of the officers involved in Paddle’s arrest in 1994 for the attempted armed robbery. By 1999, he had retired from the NSWPF. On the night of his arrest, police found Paddle hiding in a water tank on a nearby property where he lived. Mr A escorted Paddle back to a house on the property while police searched the property. Mr A was not in the police car that conveyed Paddle to the police station. At the police station, Mr A supervised Paddle while two other arresting officers compiled the relevant records in connection with the arrest.²⁸ Mr A was not named or identified by Sea in his initial debrief interviews in January 1999. Paddle named Mr A in April 1999 when he was interviewed by Mascot investigators, but not as an officer involved in the alleged verballing.

Another document prepared on 2 March 1999 was by Dolan. It outlined the broad strategy for investigating Sea’s allegations. The strategy was to “Activate contemporary investigation to stimulate evidence impacting upon corruption by ex-North Region [Armed Hold Up Squad], and Internal Affairs personnel”.²⁹ The strategy involved a number of steps:

- Requesting the ODPP to provide written advice about the officers involved in the arrest of Mr O, Mr M, and Paddle and the ODPP’s concern about the evidence gathered for the prosecution of Paddle. The ODPP’s concern was underpinned by the dismissal of the charges against Mr O and Mr M.
- Using the ODPP’s written advice to initiate a complaint that would be allocated to Ancrum.
- Inserting a Mascot officer into Ancrum to covertly assist in identifying any issues or evidence of operational compromise or corruption within IA.³⁰

Detective Inspector Catherine Burn (Mascot Team Leader) compiled an Information Report about this strategy on 5 March 1999. It referred to the ODPP’s letter of 2 March 1999 to Brammer, and that Brammer would assign it to a member of Ancrum to test if any information in the letter was leaked. Burn’s report noted that IA would investigate the alleged verballing of Paddle by interviewing involved police to generate a conversation by the arresting officers about the matter.³¹

Brammer prepared a memo to the Commander of Ancrum advising of the 2 March 1999 letter from the ODPP. Brammer’s memo directed that an operational plan be prepared for submission to him and that all contact with the ODPP be done through him.³² Task Force Ancrum continued to investigate allegations against Task Force Magnum with this additional information from the ODPP, but under the new name ‘Operation Naman’.

In February 1999 Detective Sergeant Darren Boyd-Skinner – who was working on the Mascot reference – was seconded to Ancrum to work alongside its investigators and also to work ‘undercover’ to observe or investigate if the investigators were leaking information. Ancrum investigators were told he was there to help them finalise their investigation.³³ An Information Report compiled by Burn on 3 February 1999 attached a copy of a memo sent from Brammer to an Ancrum investigator which set out the future directions and actions to be taken by that Task Force. The Information Report records: “The memo also contains information [on Ancrum matters] that has been deliberately included so as to test whether there is a leak from the Internal Affairs area”.³⁴ This aspect of the strategy and subsequent investigations into one Ancrum officer is discussed in Chapter 8. Boyd-Skinner worked on Operation Naman when it started in March 1999.

27 Letter from [ODPP Solicitor], ODPP, to Malcolm Brammer, Commander, NSWPF, 2 March 1999.

28 NSWPF, Record of Interview between Detective Senior Constable McFadden and [Paddle], 12 April 1999.

29 Mascot Strategy document, Commander Special Project Unit, John Dolan, 2 March 1999, p. 1.

30 Mascot Strategy document, Commander Special Project Unit, John Dolan, 2 March 1999.

31 NSWCC Information Report, *Documents re [Paddle], DPP and IA*, reporting officer: Burn, 5 March 1999, p. 1.

32 NSWPF internal memorandum from Commander, Internal Affairs to Commander, Ancrum Task Force, 2 March 1999.

33 NSWCC Information Report, *IA Memo from Mr Brammer to Ancrum re: Future Direction*, reporting officer: Burn, 3 February 1999; NSWPF internal memorandum from Detective Senior Sergeant Darren Boyd-Skinner to Commander, SCIA, 21 August 2003.

34 NSWCC Information Report, *IA Memo from Mr Brammer to Ancrum re: Future Direction*, reporting officer: Burn, 3 February 1999.

Additional details that are not relevant to this chapter about the investigation of Sea's allegation that Paddle was verbalised by Officer B are in Chapter 6, section 6.3.2.

14.4 Recruitment and registration of Paddle as a NSWCC informant

This section provides further details about the NSWCC recruitment and registration of Paddle as an informant on 13 April 1999.

The first documentary entry relevant to the recruitment of Paddle was on 30 March 1999. A crossed-out entry in Boyd-Skinner's Duty Book noted: "Informed by Mr Brammer that I will be given carriage of the [Paddle] investigation". The next note recorded was: "Entered in error. See 6.4.99". Boyd-Skinner had initialled the correction. The entry on 6 April 1999 noted: "Given [Paddle], [Mr M] & [Mr O] investigation to conduct".

On 6 and 7 April 1999 Burn recorded in her Duty Book that she conferred with Boyd-Skinner about Paddle.³⁵ On 8 April 1999 Burn noted: "Confer with Det Boyd-Skinner, Szabo, Jewiss re [Paddle] – activity plan. See Supt Dolan. Confer re [Paddle's solicitor]. Attend to operational plan re same". On the following day, Boyd-Skinner recorded in his Duty Book: "Speak with [Paddle] on telephone & his solicitor [name]".³⁶

A NSWCC Analyst created a personal profile document about Paddle on 8 April 1999.³⁷ This appears to have been standard practice when collecting information on a person of interest.³⁸ A section of the personal profile on Paddle headed 'Warnings' read: "[Paddle] is considered dangerous & should be approached with caution". The source of that information was identified as being an entry on COPS dated 24 January 1997.³⁹ The profile document listed Paddle's criminal record and included that – as at 28 November 1994 – he was committed for trial for charges relating to the attempted armed robbery in Coffs Harbour in 1994. This entry and another about a charge filed in court were bolded, unlike the other entries in this table. The apparent purpose of the bolding was to draw attention to these two particular matters. Another entry under 'ACID & other intelligence'⁴⁰ dated 10 August 1994 stated that "[Mr O] and [Paddle] at present are on bail".⁴¹ No information was recorded about Paddle's specific bail conditions or of any change to his bail conditions that had been in place since 1994.

On 9 April 1999 Burn noted in her Duty Book: "Meeting re [Paddle] ... Confer with Supt Dolan re Boat/admin ... Confer with Boyd-Skinner re [Paddle]".⁴² Operation Boat was a subsidiary investigation conducted under the Mascot references.

On 12 April 1999 Detective Sergeant Brett McFadden and Boyd-Skinner met with Paddle in a regional NSW town and conducted an electronically recorded interview. Paddle gave a version of what occurred on 7 April 1994 when he was arrested for the attempted armed robbery in Coffs Harbour. He denied any involvement in the offence and stated that he was never interviewed by the arresting officers, and the conversations and admissions attributed to him by the arresting officers including Officer B never occurred.⁴³ Paddle's version of events at this point was consistent with Sea's allegations of police misconduct in relation to the attempted armed robbery.

Boyd-Skinner compiled an Information Report dated 14 April 1999 noting Burn as case officer and summarising the 12 April 1999 meeting.⁴⁴ The report noted Paddle had agreed to act as an informant and referred to the alleged 'verbal', but not Paddle's claimed ignorance and innocence of the offence. Burn said in evidence to

35 NSWPF Duty Book, D37833, Catherine Burn, 6 April 1999, p. 12; NSWPF Duty Book, D37833, Catherine Burn, 7 April 1999, p. 12; NSWPF Duty Book, D37833, Catherine Burn, 8 April 1999, p. 13.

36 NSWPF Duty Book, D34383, Darren Boyd-Skinner, 9 April 1999, p. 46.

37 NSWCC, individual profile on [Paddle], report dated: 8 April 1999, profile prepared by [NSW Analyst].

38 Ombudsman Transcript, Catherine Burn, 15 July 2014, p. 574. Mascot records show that profiles were prepared for a large number of individuals.

39 NSWCC, individual profile on [Paddle], report dated: 8 April 1999, profile prepared by [NSW Analyst], p. 2.

40 Australian Criminal Intelligence Database.

41 NSWCC, individual profile on [Paddle], report dated: 8 April 1999, profile prepared by [NSW Analyst], p. 7.

42 NSWPF Duty Book, D37833, Catherine Burn, 9 April 1999, p. 13.

43 NSWPF, Record of Interview between Detective Senior Constable McFadden and [Paddle], 12 April 1999, p. 2.

44 NSWPF Information Report, *Contact with Informant codenamed 'Paddle' on 12 April 1999*, reporting officer: Boyd-Skinner, 14 April 1999.

Operation Prospect that she could not recall what she was told – Boyd-Skinner would have told her some of what Paddle said, although she would not have had an in-depth understanding.⁴⁵

Boyd-Skinner completed and signed a NSWCC informant registration form on 13 April 1999.⁴⁶ The form noted that Paddle was registered as an informant under the Mascot reference. The registration documents were signed and approved on 14 April 1999 by Bradley and Dolan – and signed by Mark Standen, an Assistant Director of the NSWCC. Boyd-Skinner was listed as Paddle’s case officer and was supervised by Dolan.⁴⁷ Bradley, as NSWCC Commissioner, had the ultimate authority to register a person as an informant.⁴⁸ Burn’s Duty Book from 14 April 1999 also has an entry: “Register [Paddle] – Paddle – see Mark Standen re same”,⁴⁹ indicating her awareness of Paddle’s recruitment and registration.

In an Information Report dated 16 April 1999 Burn noted that the DPP was required to be briefed about Paddle and an unrelated matter, and stated:

Sea has provided information which suggests that he and other police involved in this matter fabricated evidence, made false statements and gave perjured evidence. A covert operation is currently in place. [Paddle] has given a signed statement which corroborates Sea. Both Sea and [Paddle] are assisting with gathering further evidence.

*It is requested that the [Court of Criminal Appeal] matter be postponed.*⁵⁰

In an email to Brammer dated 18 April 1999 Burn said:

Darren [Boyd-Skinner] and Brett [McFadden] are going well with the [Paddle] matter. They got some good info from him in the interview ... [Paddle] is on side and has signed statements saying he will give evidence. Although his credibility is zero, (as is Sea’s)...

*... Also, [Paddle] is prepared to assist with proactive strategies with two of the police involved ...*⁵¹

In evidence to Operation Prospect, Burn said that the view she expressed in the email about Paddle’s credibility was based on his criminal experience rather than on what he said in the interview.⁵²

Bradley gave evidence to Operation Prospect that he had a role in registering informants and signing relevant forms. At his Operation Prospect hearing he stated: “There was a form which was an application for registration [and] ... there was a time when I saw and signed every single one”.⁵³ He agreed that it was his signature on the informant registration form for Paddle,⁵⁴ though he noted that he would have had no part in meeting the informant or making any assessment of him.⁵⁵

14.5 Deployment of Paddle to speak with Mr A (May 1999)

14.5.1 Introduction

Mascot investigators deployed Paddle wearing a body worn LD to speak with Mr A on 5 and 24 May 1999. The objective of the deployments was to obtain information and evidence to assist the investigation of Sea and Paddle’s allegations of police misconduct in relation to the 1994 attempted armed robbery. Mr A was involved in the arrest of Paddle and later retired from the NSWPF. As the Court of Criminal Appeal proceedings were

45 Ombudsman Transcript, Catherine Burn, 6 May 2016, pp. 205-206.

46 NSWCC Informant registration form, codename Paddle, Registration no. 583, case officer: Boyd-Skinner, approved date: 14 April 1999.

47 NSWCC Informant registration form, codename Paddle, Registration no. 583, case officer: Boyd-Skinner, approved date: 14 April 1999.

48 Ombudsman Transcript, Phillip Bradley, 6 May 2016, p. 274.

49 NSWPF Duty Book, D37833, Catherine Burn, 14 April 1999, p. 14.

50 NSWCC Information Report, [ODPP Director] *to be Briefed Re: Mr HH / [Paddle] Matters*, 16 April 1999; Ombudsman Transcript, Catherine Burn, 6 May 2016, p. 208.

51 Email from Detective Inspector Catherine Burn, Mascot Reference, NSWCC, to Commander Malcolm Brammer, NSWPF, 18 April 1999.

52 Ombudsman Transcript, Catherine Burn, 6 May 2016, p. 206.

53 Ombudsman Transcript, Phillip Bradley, 14 July 2014, p. 508.

54 NSWCC Informant registration form, codename Paddle, Registration no. 583, case officer: Boyd-Skinner, 14 April, 1999.

55 Ombudsman Transcript, Phillip Bradley, 14 July 2014, p. 509.

still pending, these deployments involved Paddle breaching the condition of his bail that prohibited him from communicating with any person likely to be called as a prosecution witness in his trial.

As an ex-police officer who had been involved in Paddle's arrest, Mr A fell into this category of person. Mr A had been called as a witness for the prosecution during committal proceedings for Mr O, Mr M and Paddle on 5 August 1994 and again on 2 February 1998 during the separate trial of Mr O and Mr M.⁵⁶ It could therefore reasonably be assumed, both at the time Paddle's bail condition was imposed and afterwards, that Mr A was likely to be called as a prosecution witness in proceedings against Paddle for the attempted armed robbery.⁵⁷

The following sections set out the chronology of Paddle's deployment to meet with Mr A, including meetings and discussions held before and during the deployment. The chronology is based on NSWCC documents and police Duty Book entries and, where relevant, the evidence or submissions from involved officers. Mr A was identified as a person of interest to Mascot in April 1999.

14.5.2 Mr A identified by Mascot as relevant to the investigation

As discussed earlier in section 14.3.2, Mr A was listed in the ODPP letter of 2 March 1999 as a police officer whose statement was included in the brief of evidence for the prosecution of Paddle. Although Mr A was present during Paddle's arrest, he had not been named by Sea or Paddle as an officer who had allegedly verbally Paddle. He became a person of interest to Mascot after the meeting between Paddle, Boyd-Skinner and McFadden in Young on 12 April 1999. At that meeting, Paddle advised Boyd-Skinner and McFadden that he had met Mr A in a nightclub sometime previously and Mr A had made certain admissions to involvement in the alleged verballing of Paddle. This information was not recorded in the transcript of the 12 April 1999 meeting, but was later recorded by Boyd-Skinner in a Contact Advice Report (CAR) of the same day. The CAR also noted that Paddle "Agreed to assist in an Internal Affairs proactive investigation into the conduct of police he alleges fabricated an admission by him relating to an armed robbery".⁵⁸

The CAR prepared by Boyd-Skinner on 12 April was reported to Burn on the same day. That day, Burn recorded in her Duty Book: "Contact with D/Sgt Boyd-Skinner, Supt Dolan, [an IA supervisor]. Det Kaizik/Moore. Inquiries re [Mr A]/[another person]".⁵⁹ Burn submitted that it appeared that Mr A's name had been mentioned to her by Boyd-Skinner during their telephone conversation, and "that it was necessary to make inquiries to ascertain precisely who this officer was, in circumstances where he was not at that time a subject of Mascot's (or Ancrum's) investigations".⁶⁰

An Information Report compiled later in July 1999 by another Mascot officer recorded that Paddle had met with Boyd-Skinner and McFadden and that:

- *An ERISP interview was conducted with 'Paddle', five tapes in length, detailing the [Paddle/Mr M/Mr O] arrests, and the allegation that investigating police fabricated admissions by him.*
- *"Paddle" agrees to assist investigators in the role as an informant, acting proactively with the intention of approaching police involved in the [Paddle/Mr M/Mr O] arrests and having them implicate themselves in wrong-doing (to be recorded by lawful L.D's).*⁶¹

On 13 April 1999 Burn recorded in her Duty Book:

*Confer with Team re [Paddle]/affidavits/electronics. Meeting with Boyd-Skinner re same – strategies. See Mark Standen re same. See Supt Dolan re STIB. Confer with Boyd-Skinner.*⁶²

56 *R v [Mr M] and [Mr O]*, (unreported, District Court of NSW, Criminal Jurisdiction, Judge Twigg QC, 2 February 1998), p. 39.

57 District Court of NSW, Master Tape History Sheet, library no: 5192, 5 August 1994, p. 1.

58 NSWCC, *Informant Contact Advice Report*, Contact by Boyd-Skinner and McFadden with Paddle, 12 April 1999, p. 1.

59 NSWPF Duty Book, D37833, Catherine Burn, 12 April 1999, p. 13.

60 Burn, C, Submission in reply, 25 September 2015, Appendix 1, p. 7.

61 NSWCC Information Report, *Contact with 'Paddle' on 12/04/1999 (9.20am)*, reporting officer: Kaizik, 20 July 1999.

62 NSWPF Duty Book, D37833, Catherine Burn, 13 April 1999, p. 14.

Burn submitted to Operation Prospect that these “entries indicate not only that the process of obtaining a LD warrant got underway that day, but also that senior people were put in the picture – Standen and Dolan”.⁶³ In her diary, Burn made a note the same day: “[Mr A] – pawnshop”. Burn submitted that this entry indicated that she made enquiries about Mr A or delegated this task to a staff member, possibly Sergeant Greg Jewiss.⁶⁴ On the same day, Jewiss prepared an Information report – called ‘Inquiries re former S/Cst [Mr A] R/N [number]’ – which listed all known information about Mr A obtained by Mascot from searches of various sources. The Information Report also recorded what Paddle had alleged about the nightclub interaction with Mr A:

*From interviews conducted on 12/04/1999 by Detective Sergeant Darren BOYD-SKINNER with [Paddle], [Paddle] had stated that [Mr A] has apologised to him in relation to the events of 07/04/1994, and that [Mr A] may be able to corroborate some of what [Paddle] has told us. [Mr A] thus represents as a significant opportunity to provide evidence of assistance to the BOAT inquiry.*⁶⁵

All these documents indicate that the deployment plan was developed and put into action within 24 hours of Paddle telling Boyd-Skinner and McFadden on 12 April 1999 of his nightclub interaction with Mr A.

Burn’s entry in her Duty Book on 14 April 1999 shows the implementation of the deployment plan:

*On duty 7.40am SPU. Monitor electronics. Attend to records. Meeting with Supt Dolan. Confer with [IA manager] re Boyd-Skinner. Register [Paddle] – Paddle – see Mark Standen re same. Discuss [the DPP] Re [Paddle]/[name]. Confer with D/Sgt Moore re surveillance. Confer with Sgt [name] re radio channel. Confer with D/Sgt Henry re Staffing. Confer with STIB – briefing re Coffs Harbour CDs – product & NSWCC. Attend to electronics. Confer with Boyd-Skinner re [Paddle] ... 5.25pm – telephone contact with D/Supt Dolan.*⁶⁶

Boyd-Skinner also compiled a report on 14 April 1999 that recorded what occurred at the meeting with Paddle on 12 April 1999.⁶⁷ The report noted that a formal interview had been conducted and that “Paddle agreed to act as a police informant and participate in operations which involved him approaching target police wearing a listening device”. The report described the nightclub interaction between Paddle and Mr A, though the description differs from that recorded by Jewiss in the Information Report of the day before: “and [Mr A] while intoxicated in a Coffs Harbour nightclub allegedly stated words to the effect ‘that he had’ to participate in the verbal”.⁶⁸

The source of these references to the nightclub interaction is not clear, even though it provided the basis for starting a covert operation to approach Mr A. The transcript of the interview between Paddle, Boyd-Skinner and McFadden on 12 April 1999 does not mention this event.⁶⁹ Operation Prospect has not found any other record of interview with Paddle that shows he alleged or stated that he had bumped into Mr A in a nightclub where admissions were made. Mr A told Operation Prospect in evidence that he did recall bumping into Paddle in a nightclub but could not recall the nature of the conversation.⁷⁰ Whatever Paddle may have told Mascot investigators about this nightclub interaction was not recorded anywhere in Paddle’s own words, by way of an interview, written statement or record.

14.5.3 Development of a deployment plan to target Mr A

After his retirement from the NSWPF, Mr A operated pawn shops in Kempsey on the mid-north coast of NSW. Mascot investigators were arranging for Paddle to approach Mr A at one of the pawn shops to elicit further information from him about the alleged verballing – under the pretext of entering the store to pawn a video cassette recorder (VCR).

63 Burn, C, Submission in reply, 25 September 2015, Appendix 1, p. 8.

64 Burn, C, Submission in reply, 25 September 2015, Appendix 1, p. 7.

65 NSWCC Information Report, *Inquiries re former S/Cst [Mr A] R/N [number]*, reporting officer: Jewiss, 13 April 1999, p. 2.

66 NSWPF Duty Book, D37833, Catherine Burn, 14 April 1999, p. 14.

67 NSWCC Information Report, *Contact with Informant codenamed ‘Paddle’ on 12 April 1999*, reporting officer: Boyd-Skinner, 14 April 1999.

68 NSWCC Information Report, *Inquiries re former S/Cst [Mr A] R/N [number]*, reporting officer: Jewiss, 13 April 1999.

69 NSWPF, Record of Interview between Detective Senior Constable McFadden and [Paddle], 12 April 1999.

70 Ombudsman Transcript, [Mr A], 8 July 2014, pp. 36-37.

On 16 April 1999 a Mascot investigator bought a VCR that Boyd-Skinner would later give to Paddle to take to Mr A's premises.⁷¹ On the same day, Burn noted in her Duty Book: "Confer with Boyd-Skinner re: [Paddle] – expenses/VCR etc".⁷²

On 19 April 1999 Burn recorded in her Duty Book: "meeting with Supt Dolan (TIs, LDs, [Paddle] strategy)" and "see Mr Brammer – briefing re Boat", as well as a "Level 4 meeting with Mr Bradley/Mr Brammer".⁷³

On 20 April 1999 Burn recorded: "Meeting with Mr Brammer/Supt Dolan re Boat ... Confer with Boyd-Skinner, Moore, [officer responsible for electronics], [IA supervisor] re: Boat".⁷⁴ On 23 April 1999 Burn noted: "Confer with Boyd-Skinner re Paddle".⁷⁵

On 27 April 1999 Boyd-Skinner recorded in a CAR that he had spoken to Paddle who had agreed to be at Port Macquarie on 2 May 1999. The CAR also recorded that Paddle "indicated his willingness to assist but displayed some frustration and anger with regards to the criminal proceedings against him".⁷⁶ On the same day, Burn noted in her Duty Book: "Confer with D.Sgt Boyd-Skinner re Paddle. Team meeting re Coffs, Mangrove, Paddle etc ... Attend to affidavits re [Paddle] operation".⁷⁷ On 28 April 1999, Burn again noted: "Confer with Boyd-Skinner re [Paddle]".⁷⁸

On 29 April 1999 an affidavit was sworn by Sergeant Greg Moore⁷⁹ in support of four LD warrants – two to be worn or carried by Paddle in various locations, one to be installed in MSO4's office at Coffs Harbour Police Station, and one to be installed within the vicinity of his office.⁸⁰ Moore's affidavit for the Paddle LDs states that they were to record or listen to the private conversations of a range of individuals – including Mr A and other officers involved in the arrest of Paddle and his co-accused for the attempted armed robbery.⁸¹ The affidavit acknowledged that the police officers who allegedly verbally Mr O and verbally and assaulted Mr M denied those allegations under oath at the trial of Mr O and Mr M. The affidavit also recorded that the police officers who dealt with Paddle denied having verbally Paddle when cross-examined on that issue at Paddle's committal hearing. The affidavit said that the Paddle:

*... matter is currently before the New South Wales Criminal Court of Appeal in connection with an application by [Paddle] for a stay of proceedings on the basis the evidence against [Paddle] is tainted.*⁸²

Moore's affidavit also stated that Mr A had bumped into Paddle at a Coffs Harbour nightclub and that Mr A had said words to the effect, "I had to do it".⁸³ The affidavit then stated: "I believe that was a reference to his having 'verballed' [Paddle]". The affidavit does not mention a date on which this meeting occurred – and, as previously indicated, there is no record of interview of Paddle providing such information.

On 2 May 1999 Paddle advised Boyd-Skinner that – as one of his bail conditions – he had to report to Macksville Police Station on 5 May 1999.⁸⁴ An operational plan called 'Covert Operation Boat' had been drafted by that date.⁸⁵ It noted the 'Mission' of the covert operation as follows:

1. *Identify [No] [Street name] Street, Kempsey [which was the location of a pawn shop owned and operated by Mr A]*
2. *Support Sgt Boyd-Skinner with Informant, Paddle.*

71 NSWCC Information Report, *Purchase of VHF Video Recorder for Paddle on the 16-4-99*, reporting officer: Szabo, 19 April 1999.

72 NSWPF Duty Book, D37833, Catherine Burn, 16 April 1999, p. 15.

73 NSWPF Duty Book, D37833, Catherine Burn, 19 April 1999, p. 16.

74 NSWPF Duty Book, D37833, Catherine Burn, 20 April 1999, p. 16.

75 NSWPF Duty Book, D37833, Catherine Burn, 23 April 1999, p. 18.

76 NSWCC *Informant Contact Advice Report*, Contact by Boyd-Skinner with informant Paddle, 27 April 1999.

77 NSWPF Duty Book, D37833, Catherine Burn, 27 April 1999, p. 18.

78 NSWPF Duty Book, D37833, Catherine Burn, 28 April 1999, p. 19.

79 LD affidavits 143-144/1999 and 167-168/1999.

80 The Coffs Harbour Crime Manager was also the subject of Paddle and Sea's allegations that Paddle was verbally.

81 LD affidavits 143-144/1999 and 167-168/1999.

82 LD affidavits 143-144/1999 and 167-168/1999.

83 LD affidavits 143-144/1999 and 167-168/1999.

84 NSWCC, *Informant Contact Advice Report*, Contact by Boyd-Skinner with informant Paddle, 2 May 1999.

85 NSWCC, Briefing Paper, *Covert Operation Boat*, 2 May 1999.

3. *Support STIB⁸⁶ with installations of listening devices in the Crime Manager's office and outside area of this office, within vicinity where person/s gather socially.*⁸⁷

The operational plan also recorded:

*Arrive at Kempsey around 5:00pm briefing at McDonalds carpark located at the eastern side of Pacific Highway. Locate and familiarise team with the surrounding area and Kempsey Pawnbrokers – Licensee/s: Mr A and [name] ...*⁸⁸

A planned task for 3 May 1999 was recorded as: "About 9.00 am (subject to change) travel to Kempsey – Sgt Henry to liaise with Sgt Boyd-Skinner re Paddle and pledging of the VCR at Kempsey Pawnbrokers".

The covert operation was to be carried out across two locations on consecutive days. On 2 May 1999 a team was to be deployed to Kempsey to monitor Paddle during his interaction with Mr A. On the following day, electronic surveillance equipment was to be installed at the Coffs Harbour Police Station to monitor other officers involved in the 1994 arrest of Mr O, Mr M and Paddle.

The operational plan recorded that: "Operation support will be provided by D/Insp Burn, Sgt Jewiss, [a senior monitor] (including rostered monitors) and [an analyst] from the NSWCC".⁸⁹ The other teams or individuals involved in the covert operation and who would be on location at Kempsey/Coffs Harbour were the surveillance team – Detective Senior Sergeant Damien Henry, Detective Senior Constable Arpad Szabo, Moore and a junior constable – four STIB officers, and two officers listed under the heading 'Cordon Entry Team'.⁹⁰ The operational plan did not specify which officers would be at Kempsey and Coffs Harbour respectively. Burn, as Detective Inspector, was the most senior officer listed on the plan as operational support (in Sydney) followed by Henry on the surveillance team (in the field).

On 3 May 1999 Burn recorded: "Confer with Dets Boyd-Skinner, Henry re Coffs Harbour Operation", as well as recording discussions with Dolan.⁹¹ On 4 May 1999 Burn recorded that she had telephone contact with Boyd-Skinner and Henry, and later "Confer with Henry/Dolan/[IA officer] re Coffs", and further telephone contact with Boyd-Skinner and Henry.⁹²

14.5.4 Obtaining a warrant for a LD to be worn by Paddle

Moore swore an affidavit in support of a LD warrant for Paddle's deployment on 29 April 1999.⁹³ The stated intention⁹⁴ was to deploy Paddle wearing a body wire LD to record conversations with Mr A and other officers involved in Paddle's arrest in 1994.

A key statement in Moore's affidavit was that Paddle and Mr A had a nightclub interaction at which Mr A spoke words that may indicate misconduct by the police officers who arrested Paddle and his co-accused. The statement in Moore's affidavit read:

*[Paddle] asserted he engaged [Mr A] in conversation and that [Mr A] had used the words, or words to the effect, "I had to do it". I believe that was a reference to his having 'verballed' [Paddle].*⁹⁵

There is no recording or statement in Paddle's own words of the nightclub interaction, although its occurrence is not doubted. Before Moore's affidavit, the event is referred to in two Information Reports that describe the event as follows:

⁸⁶ State Technical Investigation Branch, NSWPF.

⁸⁷ NSWCC, Briefing Paper, *Covert Operation Boat*, 2 May 1999, p. 1.

⁸⁸ NSWCC, Briefing Paper, *Covert Operation Boat*, 2 May 1999.

⁸⁹ NSWCC, Briefing Paper, *Covert Operation Boat*, 2 May 1999, p. 2.

⁹⁰ NSWCC, Briefing Paper, *Covert Operation Boat*, 2 May 1999, p. 3.

⁹¹ NSWPF Duty Book, D37833, Catherine Burn, 3 May 1999, p. 20.

⁹² NSWPF Duty Book, D37833, Catherine Burn, 4 May 1999, p. 21.

⁹³ LD affidavits 143-144/1999 and 167-168/1999.

⁹⁴ LD affidavits 143-144/1999 and 167-168/1999.

⁹⁵ LD affidavits 143-144/1999 and 167-168/1999, p. 7.

- “[Paddle] stated that [Mr A] has apologised to him in relation to the events of 07/04/1994 ...”⁹⁶ (Information Report prepared by Jewiss dated 13 April 1999)
- “[Mr A] while intoxicated in a Coffs Harbour nightclub allegedly stated words to the effect ‘that he had’ to participate in the verbal”⁹⁷ (Information Report prepared by Boyd-Skinner dated 14 April 1999)

There are notable differences between those two reports and the affidavit:

- The second report mentions Mr A's intoxication and the location of the conversation. Neither of these details is mentioned in the first report, and nor is Paddle's level of intoxication mentioned in the affidavit.
- The words quoted in the affidavit are different to those in the second report, namely, “I had to do it” – not “that he had’ to participate in the verbal”.

In evidence to Operation Prospect, Moore agreed it was not accurate to omit the mention of Mr A's intoxication from his affidavit and that ‘best practice’ would have been to include it. He agreed it was a material fact that could influence a judge's view of the reliability of the information.⁹⁸ However, Moore did not agree that the information conveyed in the affidavit was possibly unreliable because the speaker was intoxicated.⁹⁹ He made the point that “throughout this investigation there were times when people's conversations were recorded whilst they had been drinking, and whilst it is relevant, I did find on occasion that at times, if people had a few beers, they'd let their guard down, they would be more inclined to say things that they might be a bit guarded about otherwise”.¹⁰⁰ Moore said that this information would not have been left out with any intention to mislead and that the omission would be more of an oversight.¹⁰¹ Moore's explanation can be accepted. There is no evidence that there was an intention to mislead or suppress important details or that the omission was other than an oversight.

Burn initialled and dated both Information Reports, which is a practice she and others followed in relation to Information Reports.¹⁰² She explained that Information Reports came to her for situational awareness (noting that not everything was critical all the time), and the reports would then be passed to another officer to assess the content, evidence, intelligence, relevance, purpose and follow-up and also categorise and disseminate them appropriately. Burn also stated the Information Reports were assessed by Jewiss for intelligence, evidence, relevance and categorisation.¹⁰³

When asked about these reports in her evidence to Operation Prospect,¹⁰⁴ Burn agreed that the first Information Report would not provide “the full story” if it was relied upon,¹⁰⁵ and that it would be misleading and inaccurate to omit from the affidavit that Mr A was intoxicated when the conversation with Paddle occurred.¹⁰⁶ Omitting that detail meant that potentially a much stronger case was presented than would otherwise exist.¹⁰⁷ She stated that an officer acting under her supervision should include both inculpatory and exculpatory details about a conversation, so that a judge could properly determine whether to authorise a listening device.¹⁰⁸ Burn's written submission did not repudiate those remarks, but commented that it would be reasonable to infer that alcohol had been consumed from the express mention that the interaction occurred in a nightclub.¹⁰⁹

Burn further agreed in her evidence to Operation Prospect that deploying a LD to record conversations covertly was a significant invasion of privacy. She agreed that the legislation required checks to ensure that people's

96 NSWCC Information Report, *Inquiries re former S/Cst [Mr A] R/N [number]*, reporting officer: Jewiss, 13 April 1999, p. 2.

97 NSWCC Information Report, *Contact with Informant codenamed 'Paddle' on 12 April 1999*, reporting officer: Boyd-Skinner, 14 April 1999, p. 1.

98 Ombudsman Transcript, Gregory Moore, 23 July 2014, p. 737.

99 Ombudsman Transcript, Gregory Moore, 23 July 2014, p. 735.

100 Ombudsman Transcript, Gregory Moore, 23 July 2014, p. 736.

101 Ombudsman Transcript, Gregory Moore, 23 July 2014, p. 737.

102 Ombudsman Transcript, Catherine Burn, 15 July 2014, p. 604.

103 Burn, C, Submissions in reply, 25 September 2015, Appendix 1, p. 19.

104 NSWCC Information Report, *Contact with Informant codenamed 'Paddle'*, reporting officer: Boyd-Skinner, 12 April 1999; NSWCC, *Inquiries re former S/Cst [Mr A] R/N [number]*, reporting officer: Jewiss, 13 April 1999.

105 Ombudsman Transcript, Catherine Burn, 15 July 2014, p. 586; NSWCC Information Report, *Contact with 'Paddle' on the 12/04/1999 (9:20am)*, reporting officer: Kaizik, 20 July 1999; NSWCC Information Report, *Inquiries re former S/Cst [Mr A] R/N [number]*, reporting officer: Jewiss, 13 April 1999.

106 Ombudsman Transcript, Catherine Burn, 15 July 2014, p. 586.

107 Ombudsman Transcript, Catherine Burn, 15 July 2014, p. 594.

108 Ombudsman Transcript, Catherine Burn, 15 July 2014, p. 589.

109 Burn, C, Submission in reply, 25 September 2015, Appendix 1, p. 13.

privacy was not invaded on a whim.¹¹⁰ She also pointed out that it was the deponent's responsibility, as the person signing the affidavit, to ensure that information was accurate.¹¹¹

The differing accounts of the nightclub incident appear to be a consequence of it not being discussed or canvassed during the recorded interview between Paddle, Boyd-Skinner and McFadden on 12 April 1999. It was mentioned by Paddle after their recorded conversation – and Burn's submission noted that this would not be an uncommon occurrence during a debrief with an informant, and that "Boyd-Skinner acted appropriately in recording the information despite there not being a corresponding reference in the ERISP".¹¹² That general point can be accepted, that a skilled investigator may speak both 'off the record' with an informant and 'on the record' and in admissible form.

This aspect of the Mascot investigation nevertheless shows why special care must be taken when mounting a covert operational strategy to ensure that information in an affidavit in support of a warrant application is recorded clearly and precisely. The parties who gave evidence to Operation Prospect on this point accepted that the affidavit should have referred to Mr A's alleged intoxication in the nightclub encounter. The integrity of Moore's affidavit was also undermined by the fact that Moore had no option other than to rely on conflicting hearsay information from two Information Reports. A criticism of Mascot practice, which is discussed further in Chapter 16, is that there was too much reliance in affidavit preparation on hearsay rather than direct evidence – such as a recording, transcript or signed statement.

No specific adverse finding is made in this report in relation to Moore's affidavit. It is accepted that the shortcomings in the affidavit were not intentional, but were a result of systemic flaws in Mascot practice on affidavit preparation that are taken up in other chapters of this report.

14.5.5 Paddle deployed to approach Mr A (5 and 24 May 1999)

The first approach to Mr A took place on 5 May 1999. Paddle was fitted with a body worn LD, he visited the premises to pawn the VCR supplied to him by Mascot investigators, and he engaged Mr A in conversation. The recorded conversation related in part to the earlier arrest and continuing trial process. The conversation referred to Mr A's involvement as a witness in Paddle's forthcoming trial, and Paddle tried to get Mr A to confirm that Paddle had never made any statement or admissions to the arresting officers. Mr A responded saying he would not know because he recalled that Paddle had conversations with the arresting officers in another room. Paddle responded by stating that he was with Mr A the entire time. Mr A simply stated it was a long time ago. The exchange concluded with general discussions about the VCR Paddle had taken in to pawn.¹¹³

On 5 May 1999 Burn was on duty performing a variety of tasks unrelated to Paddle. She recorded: "Confer with Det Henry, Boyd-Skinner & Szabo re Boat", and "Telephone contact with Boyd-Skinner".¹¹⁴

On 6 May 1999 Burn noted in her Duty Book: "Confer with Mr Bradley re [Paddle]. Confer with [DPP Solicitor] re same. Confer with Boyd-Skinner re same",¹¹⁵ and on 7 May 1999: "Confer with [IA officer] re Boyd-Skinner. Meeting with Mr Brammer/Supt Dolan re progress ... Confer with Boyd-Skinner".¹¹⁶

On 9 May 1999 Boyd-Skinner spoke to Paddle on the telephone and Paddle told him that "his solicitor had spoken to the DPP re: review of case".¹¹⁷ Burn recorded in her Duty Book: "Meeting with Boyd-Skinner re [Paddle] ... Meeting with Standen/Boyd-Skinner re Mr O. Confer with [DPP Solicitor], DPP re [Paddle] ... Confer with Boyd-Skinner re [Paddle]".¹¹⁸

110 Ombudsman Transcript, Catherine Burn, 15 July 2014, p. 589.

111 Ombudsman Transcript, Catherine Burn, 15 July 2014, p. 591.

112 Burn, C, Submission in reply, 25 September 2015, Appendix 1, p. 11.

113 NSWCC, Transcript of LD 143-144/99, Tape T99/095, 5 May 1999.

114 NSWPF Duty Book, D37833, Catherine Burn, 5 May 1999, p. 21.

115 NSWPF Duty Book, D37833, Catherine Burn, 6 May 1999, p. 22.

116 NSWPF Duty Book, D37833, Catherine Burn, 7 May 1999, p. 22.

117 NSWCC, *Informant Contact Advice Report*, contact by Boyd-Skinner with informant [Paddle], 9 May 1999.

118 NSWPF Duty Book, D37833, Catherine Burn, 10 May 1999, p. 23.

On 11 May 1999 Szabo compiled an Information Report that attached a copy of the District Court transcripts for Paddle for 27 October 1997 (about the attempted armed robbery). The transcripts recorded that an application to vary bail conditions (including the condition that Paddle not approach directly or indirectly any Crown witness) was made and declined.¹¹⁹ Burn noted in her Duty Book on the same day:

Confer with D/Sgt Boyd-Skinner ... Confer with Mr Brammer/Dolan re Mascot ... Confer with Boyd-Skinner re [Paddle]. Monitor LD re [Paddle]. Confer with Boyd-Skinner re same ... Review [Paddle] transcripts ... Meeting with Mr Bradley/Dolan re [Paddle] – conference with [Deputy Solicitor Legal ODPP].¹²⁰

On 12 May 1999 Burn recorded in her Duty Book: “Meeting with Bradley/Dolan re [Paddle] ... Team meeting re: Paddle ... Team meeting re [Paddle]. Confer with Mark Standen re: same”.¹²¹ On 13 May 1999, she recorded: “Confer with [ODPP re [Paddle]. Team meeting re same. Confer with Boyd-Skinner/[ODPP solicitor] re same”.¹²²

On 14 May 1999 Burn recorded in her Duty Book: “Confer with Boyd-Skinner re Paddle ... Telephone contact with Boyd-Skinner, [ODPP Solicitor], Supt Dolan ... Attend to [Paddle] inquiries ... Out to IA. Confer with Mr Brammer”.¹²³

On 15 May 1999 Boyd-Skinner spoke to Paddle on the telephone and recorded in a CAR:

Paddle contacted & DPP negotiations discussed. Informed that [Paddle’s solicitor] would provide a letter to the DPP to adjourn the [Court of Criminal Appeal] hearing pending our investigation. Advised that negotiations are underway re: change of bail.¹²⁴

On 19 May 1999 Boyd-Skinner spoke again with Paddle on the telephone and met with him – with McFadden present. Bail conditions were again discussed:

Discussions then took place concerning efforts being made by [Paddle’s solicitor] to relax bail conditions currently imposed on Paddle. They also spoke about the DPP and the internal investigation taking place into the [Paddle/Mr M/Mr O] arrests.¹²⁵

On 20 May 1999 Burn noted in her Duty Book: “Confer with Boyd-Skinner re [Paddle/Mr M]”; and on 21 May 1999: “Confer with Boyd-Skinner re Paddle”.

On 24 May 1999 Paddle was deployed to approach Mr A for the second time and covertly recorded their conversation. This time Paddle visited the pawn shop to recover the VCR he had pawned on 5 May 1999. Paddle asked Mr A if he had “heard” anything on what was happening about his matter, to which Mr A replied: “I don’t want anything to do with it any more, I honestly don’t. I don’t hear from anyone. That’s true”.¹²⁶ Burn recorded in her Duty Book that day: “Confer with Boyd-Skinner/Dolan re [Paddle] ... Telephone contact Boyd-Skinner”.¹²⁷ The CAR on the briefing with Paddle that day recorded Boyd-Skinner and McFadden as the officers present.¹²⁸

Boyd-Skinner did not record all the conversations he had with Burn in his Duty Book. However, throughout the period from mid-April until the end of May 1999 Boyd-Skinner recorded working on Operation Naman (the IA title for the investigation into the arresting officers in the Mr O, Mr M and Paddle matter) and being in Coffs Harbour, Port Macquarie and Kempsey for the two deployments.¹²⁹

The available records and evidence indicate that Mascot took no further investigative steps or actions in relation to Mr A after the deployment on 24 May 1999.

119 NSWCC Information Report, *District Court transcripts for [Paddle] at Coffs Harbour District Court on the 27-10-97*, reporting officer: Szabo, 11 May 1999, p. 93 of attached District Court transcript.

120 NSWPF Duty Book, D37833, Catherine Burn, 11 May 1999, p. 23.

121 NSWPF Duty Book, D37833, Catherine Burn, 12 May 1999, p. 24.

122 NSWPF Duty Book, D37833, Catherine Burn, 13 May 1999, p. 24.

123 NSWPF Duty Book, D37833, Catherine Burn, 14 May 1999, p. 25.

124 NSWCC, *Informant Contact Advice Report*, contact by Boyd-Skinner with informant Paddle, 15 May 1999.

125 NSWCC Information Report, *Information re” contact with ‘Paddle’ on 19/04/1999 (8.58am)*, reporting officer: Kaizik, 22 July 1999, p. 1.

126 NSWCC, Transcript of LD 192/99, Tape T99/123, 24 May 1990, p. 3.

127 NSWPF Duty Book, D37833, Catherine Burn, 24 May 1999, p. 28.

128 NSWCC, *Informant Contact Advice Report*, contact by Boyd-Skinner and McFadden with informant Paddle, 24 May 1999.

129 NSWPF Duty Book, D34383, Darren Boyd-Skinner, 19 August 1998 to 31 December 1999.

Soon afterwards Mr A and his solicitor complained that Paddle had breached his bail conditions. These complaints are discussed in section 14.9 of this chapter.

14.5.6 Mascot officers who were aware of and involved in the deployment plan

This section discusses which Mascot officers were aware of and involved in Paddle's deployment to approach Mr A on 5 and 24 May 1999 in breach of his bail conditions.

In March 1999 Dolan developed the broad strategy to investigate Sea's allegations about the arrest and charging of Mr O, Mr M and Paddle and the possible leaking of confidential information by IA staff attached to Ancrum. Dolan's strategy was outlined in a document he created on 2 March 1999.¹³⁰ Records indicate that Bradley, Brammer and Burn were all aware of Dolan's strategy.

There are, however, no Mascot records that identify who was responsible for developing the specific covert plan – that was put into action around 12 April 1999 – to deploy Paddle to speak with Mr A. Operation Prospect conducted a number of hearings to obtain further details and clarity on the planning and execution of the covert deployment plan and which officers were being kept informed.

Boyd-Skinner gave evidence Burn and Dolan jointly made the management decisions on priority operations and strategies.¹³¹ When asked who put together the plan to deploy Paddle, Boyd-Skinner responded: "I believe that to be Catherine Burn".¹³² He also said that it "would have been a small meeting of those central to the investigation [that] most likely came up with a strategy".¹³³ Boyd-Skinner answered "yes" when asked if Burn "knew about the [5 May 1999] deployment, was regularly reported to about how it was setup [sic], and what was happening and was reported to after it occurred, and was told the contents of any listening device conversation".¹³⁴ Boyd-Skinner also stated that he reported to Burn and that she was the primary contact for the strategies being implemented while he was working in a covert capacity at IA.¹³⁵ He said that Burn or Dolan would also ask him to execute certain tasks.¹³⁶

In two reports prepared by Boyd-Skinner in 2003 – in response to an internal investigation of allegations made by Mr A – he noted that during his period of working covertly at IA (and during the deployments of Paddle) that he "covertly reported to Superintendent Cath Burn".¹³⁷ Another memo by Boyd-Skinner in 2003 stated that he deployed Paddle "as per directions from Superintendent Burn".¹³⁸

In relation to Brammer, Boyd-Skinner told Operation Prospect that Brammer did not task him – but he spoke with Brammer directly about the duties he was performing in relation to his deployment to IA and Ancrum "to do certain things in extension of Mascot".¹³⁹

In his evidence to Operation Prospect, Dolan recalled Paddle and the deployment but not the specific detail.¹⁴⁰ Dolan did not think the deployment was a matter about which Boyd-Skinner was reporting to him directly, although Dolan stated there was a time when Boyd-Skinner did report directly to him.¹⁴¹

Burn gave evidence to Operation Prospect that – although she was Boyd-Skinner's supervisor in relation to deploying Paddle – she thought that "for some reason I just, with this particular strand of investigation I think

130 NSWPF, Mascot Strategy document, Commander Special Project Unit, John Dolan, 2 March 1999.

131 Ombudsman Transcript, Darren Boyd-Skinner, 11 July 2014, p. 339.

132 Ombudsman Transcript, Darren Boyd-Skinner, 11 July 2014, p. 345.

133 Ombudsman Transcript, Darren Boyd-Skinner, 11 July 2014, pp. 345-346.

134 Ombudsman Transcript, Darren Boyd-Skinner, 11 July 2014, p. 381.

135 Ombudsman Transcript, Darren Boyd-Skinner, 11 July 2014, p. 337.

136 Ombudsman Transcript, Darren Boyd-Skinner, 11 July 2014, p. 337.

137 NSWPF internal memorandum from Detective Sergeant Boyd-Skinner to Commander, SCIA Investigations Unit and Commander, SCIA, 31 July 2003, p. 1

138 NSWPF internal memorandum from Detective Sergeant Boyd-Skinner to Commander, SCIA Investigations Unit and SCIA Executive, Complaints Management Team, 2 September 2003, p. 2.

139 Ombudsman Transcript, Darren Boyd-Skinner, 11 July 2014, pp. 337-338.

140 Ombudsman Transcript, John Dolan, 31 October 2014, pp. 2,614-2,615.

141 Ombudsman Transcript, John Dolan, 31 October 2014, p. 2613.

John Dolan did have a greater role in the deployment strategies with Paddle”.¹⁴² Her submission explained that she and other people conducting investigations under the Mascot reference were located on separate premises to the IA unit that was managing Paddle’s deployment: “As a result, on a day to day operational level, the Paddle strategy was not a particularly ‘visible’ part of the Mascot reference” and “my capacity to exercise a supervisory role in respect of the Paddle operation was significantly reduced”.¹⁴³

Burn submitted that she did not design the plan to deploy Paddle to meet with Mr A, and that “the scenario creation for this operation most likely came from Boyd-Skinner, Henry and Dolan”.¹⁴⁴ Burn also submitted that there was a strong, pre-existing relationship between Dolan and Boyd-Skinner and “that there were many conversations between them about this particular operational matter to which I was not a party”.¹⁴⁵ Although not referring directly to the deployment of Paddle to meet with Mr A, a few other Mascot investigators gave similar evidence that they observed Dolan and Boyd-Skinner to be particularly close.¹⁴⁶

Burn also submitted that, as the Mascot team leader, she was aware of the deployment of Paddle to meet with Mr A on 5 May 1999 and acknowledged she was listed on the covert operation plan – but said her role was to act “as a conduit for information passing between the officers conducting the deployment ‘on the ground’ and Superintendent Dolan as the supervising officer. I briefed up at every step of the process”. Burn also stated that Paddle and his deployment to meet with Mr A was not necessarily significant to her as it was Boyd-Skinner’s investigation, and she was involved in several other operational strategies and the deployment of Sea for whom she had primary responsibility during 1999.¹⁴⁷

Henry, when asked in evidence to Operation Prospect about his knowledge of Paddle, replied: “Look, I don’t recall any specifics about that. I’m not what you would classify as an informant manager for ... Paddle”.¹⁴⁸ He stated he had no independent recollection of anything to do with Paddle and only remembered him vaguely.¹⁴⁹ He was shown a number of documents¹⁵⁰ that had been shown in evidence to Burn and Boyd-Skinner and said that they did not prompt any further recollection. When shown the operational plan,¹⁵¹ Henry could recall that he was present at the point that the LD was put on Paddle and thought his role was to listen to the transmission from the LD to provide intelligence for surveillance activity and to ensure the safety of those involved.¹⁵²

Although it is clear that Henry was involved in the deployment of Paddle to meet with Mr A on 5 May 1999 and was the most senior officer on the ground in Kempsey, his Duty Book also recorded that he was on leave for most of April and May 1999 – when the deployment to contact Mr A was being planned. He started his leave on 3 April, but was recalled to duty on 19 April to ‘assist STIB re Gynea Boat’, and then again from 2 May to 6 May 1999 to help with the first deployment of Paddle to meet with Mr A. Henry was on duty on 17 May 1999 for one day, and then returned to work full-time on 31 May 1999. Henry was not on duty for the second deployment of Paddle to speak with Mr A on 14 May 1999.

McFadden – who was with Boyd-Skinner at the interview with Paddle on 12 April 1999 – had started duties at the IA Investigation Unit the day before.¹⁵³ He was also present at the deployments of Paddle to meet Mr A on 5 and 24 May 1999. He recalled that he was assigned to assist in a covert investigation, but that his role was to undertake activities that would be overt. A decision was made by others for him to assist Boyd-Skinner with the interview on 12 April 1999.¹⁵⁴ In evidence to Operation Prospect, McFadden recalled the decision to put Paddle

142 Ombudsman Transcript, Catherine Burn, 15 July 2014, p. 557.

143 Burn, C, Submission in reply, 25 September 2015, Appendix 1, p. 5.

144 Burn, C, Submission in reply, 25 September 2015, Appendix 1, p. 12.

145 Burn, C, Submission in reply, 25 September 2015, Appendix 1, p. 5.

146 Statement of Information (Interview), Carlene Mahoney, 13 March 2014, p. 39; Ombudsman Transcript, Scott Haywood, 20 March 2014, p. 96; Ombudsman Transcript, Peter Moroney, 1 May 2014, p. 24.

147 Burn, C, Submissions in reply, 25 September 2016, Appendix 1, p. 15.

148 Ombudsman Transcript, Damian Henry, 9 July 2014, p. 211.

149 Ombudsman Transcript, Damian Henry, 9 July 2014, pp. 211-212.

150 NSWCC Information Report, *Inquiries re former S/Cst [Mr A] R/N [number]*, reporting officer: Jewiss, 13 April 1999; NSWCC, Briefing Paper, *Covert Operation Boat*, 2 May 1999, p. 1.

151 NSWCC, Briefing Paper, *Covert Operation Boat*, 2 May 1999, p. 1.

152 Ombudsman Transcript, Damian Henry, 9 July 2014, p. 224.

153 Ombudsman Transcript, Brett McFadden, 10 July 2014, p. 301.

154 Ombudsman Transcript, Brett McFadden, 10 July 2014, p. 302.

into the pawn shop operated by Mr A, but he could not recall who was responsible for that decision. He stated that his role was task-based and he was not a decision maker.¹⁵⁵ McFadden also stated he was given particular activities that he could help with, but they formed part of wider investigations on which he was not briefed or privy to.¹⁵⁶ McFadden's evidence that he was 'drip fed' information¹⁵⁷ is supported by a notation on the 'Covert Operation Boat' document for the deployment of Paddle on 5 May 1999 – which recorded "N.B. Sgt Boyd-Skinner's partner Brett McFadden does not know the identities (sic) of those on Operation Boat".¹⁵⁸

Standen gave evidence to Operation Prospect that the name Paddle was only vaguely familiar to him.¹⁵⁹

Bradley could not recall the name Paddle, the deployment of Paddle in May 1999 or other specific matters relating to the deployment.¹⁶⁰ Brammer also gave evidence that he had no specific memory of Paddle or his deployment to meet with Mr A in May 1999, and answered 'no' when asked if he would have had an operational role in the deployment.¹⁶¹ A record of the meeting with the DPP on 5 February 1999 (requested by Bradley), establishes that Dolan, Bradley, and Brammer were all aware that Paddle had been previously committed for trial for his alleged involvement in the 1994 attempted armed robbery and proceedings were ongoing at that point in time. The Information Reports prepared by Burn on 5 March 1999 indicate that she was also aware of these matters.

14.5.7 Analysis and submissions

This section analyses issues identified by Operation Prospect in relation to the deployment of Paddle on two occasions in May 1999 to speak with Mr A in breach of his bail conditions. The four issues examined are:

- the identity of the officers who were aware of, or involved in, this deployment
- knowledge of Paddle's bail conditions
- Mascot documentation relating to the deployment
- the responsibility within Mascot for tactical planning for the deployment.

14.5.7.1 Identity of officers aware of or involved in the deployment of Paddle to speak with Mr A

Operation Prospect cannot reach a conclusion about who conceived the plan to deploy Paddle to speak with Mr A on 5 and 24 May 1999 in breach of a condition of Paddle's bail. The documentary evidence does not show this and the oral evidence is inconsistent. Although some witnesses gave evidence that they could not recall Paddle and/or the covert deployment plan, the documentary evidence indicates that a number of people (including senior staff) were involved in the planning process.

Burn has submitted that she did not devise the plan to deploy Paddle, and that the major input most likely came from Boyd-Skinner, Henry and Dolan. Boyd-Skinner, on the other hand, raised two contrasting possibilities in his evidence – that it was Burn's idea, or that it was likely to have come from the small group central to the investigation. The more likely and reliable conclusion, based on the available evidence and submissions, is that the covert deployment plan was not conceived and developed by one person – but jointly by several people who played a guiding role at one or other important stages in this Mascot operation.

The records indicate that both Boyd-Skinner and Burn played a central role in deploying Paddle to meet with Mr A, and communicated frequently in the period leading up to and during both the first and the second deployment. Burn's Duty Book entries show that she consulted with Bradley, Standen, Brammer and Dolan

155 Ombudsman Transcript, Brett McFadden, 10 July 2014, p. 310.

156 Ombudsman Transcript, Brett McFadden, 10 July 2014, p. 302.

157 Ombudsman Transcript, Brett McFadden, 10 July 2014, p. 314.

158 NSWCC, Briefing Paper, *Covert Operation Boat*, 2 May 1999.

159 Ombudsman Transcript, Mark Standen, 21 March 2014, p. 61.

160 Ombudsman Transcript, Phillip Bradley, 14 July 2014, pp. 509-510.

161 Ombudsman Transcript, Malcolm Brammer, 28 October 2014, p. 2542.

during this period about Paddle and the Operation Boat inquiries. Those entries indicate that Dolan was the senior officer who Burn conferred or communicated with most frequently during this period.

Burn's submission accepted that she was involved in developing the strategy to deploy Paddle and in the actual deployment on 5 May 1999, but drew attention to her limited role and the significant role of others.¹⁶² There is nevertheless considerable evidence that shows her central involvement from 12 April 1999 onwards – which is inconsistent with her being simply a 'conduit' with no input on operational strategy and no active supervisory role. Burn is recorded as meeting with Boyd-Skinner and the team to discuss the Paddle strategy and making inquiries about Mr A the day after Paddle told Boyd-Skinner about the nightclub interaction. She recorded discussing with Boyd-Skinner the purchase of the VCR (an integral element of the plan to deploy Paddle to visit Mr A's store) and the logistics and operational arrangements, and she conferred frequently with various individuals about Paddle. She recorded attending to the Paddle affidavit and reviewing Paddle transcripts. Those are active steps in the planning phase of the deployment and indicate that she was involved and played a role.

The evidence points to both Standen and Dolan being aware of the covert plan to deploy Paddle to meet with Mr A as that plan was developing. In particular, Burn recorded meeting with Standen and Dolan on 13 April 1999 to discuss the strategy – which was the day after Paddle reported the nightclub interaction. The evidence also indicates that Burn kept her senior officers – Dolan, Bradley, Brammer and Standen – informed throughout the planning and deployments. Burn's Duty Book entries record that between the first and second deployments of Paddle on 5 and 24 May 1999 she discussed Paddle with Dolan, Bradley, Brammer, Standen and Boyd-Skinner.

Dolan, Bradley and Brammer were all present at the meeting with the DPP on 5 February 1999. ODPP records indicate that the meeting discussed the investigation of Sea's allegations of police misconduct in relation to the arrest and charging of Paddle and his co-accused for the 1994 attempted armed robbery, and the impact of these allegations on the ongoing criminal prosecution of Paddle for his alleged involvement in that offence. After that meeting the ODPP reviewed the brief of evidence. The status of the prosecution of Paddle was outlined in a letter to Brammer on 2 March 1999.¹⁶³ It is reasonable to infer from this, and from Information Reports prepared by Burn on the same matter, that Bradley, Dolan, Brammer and Burn were all aware of the status of the prosecution of Paddle for his alleged role in the attempted armed robbery including that he had been committed for trial. It is also reasonable to infer that the same officers were aware of the covert investigation being undertaken into Sea's allegations.

In summary, there is adequate evidence to indicate which NSWCC and NSWPF officers were involved in the deployments of Paddle to speak to Mr A on 5 and 24 May 1999. There is also evidence of who had knowledge of the deployments either before or afterwards.

14.5.7.2 Knowledge of Paddle's bail conditions

One of Paddle's bail conditions was that he must not communicate, directly or indirectly, except through his legal advisor "with any person of whom he has received notice is to be called or is likely to be called by the Crown in his trial". This is a standard bail condition and is usually imposed on people accused of being involved in a felony such as robbery. The implicit purpose of the condition was to ensure that potential witnesses at Paddle's trial would be free from interference or intimidation before the trial. Although it is not a criminal offence for a person to breach a bail requirement, it is a contravention of a court order that can – and did in this case – lead to that person being brought before a court to address the breach of bail.

There is no evidence before Operation Prospect – from either the Mascot records or the Operation Prospect hearings – that any person involved in or aware of the Paddle deployment plan sought to identify, consider or assess the implications or risks associated with this plan. This oversight suggests that the deployment plan was poorly conceived. One would reasonably expect officers who were developing a plan to deploy an informant who was facing trial and had a lengthy criminal record to examine the legal risks in the activities the informant may be

¹⁶² Burn, C, Submission in reply, 25 September 2015, Appendix 1, p. 22.

¹⁶³ Letter from [ODPP Solicitor], ODPP, to Malcolm Brammer, Commander, NSWPF, 2 March 1999.

instructed to undertake. The NSWPF submission acknowledged this point, but adopted a more qualified position on whether an informant could be deployed in breach of a bail condition. The NSWPF submitted that, “while it is of course the case that police should not encourage a Source to breach their bail, there may well be very strong operational imperatives, in exigent or particularly difficult investigative circumstances, to so deploy a source” – but that such a deployment “should only occur following a thorough risk assessment of the proposed deployment”.¹⁶⁴ There was no apparent strong operational imperative in this case to deploy Paddle in breach of bail – for example, no person’s life was in danger and there were other investigative avenues available to Mascot.

No witness in the Operation Prospect hearings claimed to have been unaware of Paddle’s pending court matter. In fact, Mascot records indicate that a number of officers from Bradley down to the deployment team were aware it was pending. On the other hand, no witness acknowledged in their evidence to Operation Prospect that they were aware either that bail conditions were in place or, by implication, the terms of those bail conditions. This raises the question of whether one or more officers should have been aware of the existence and importance of the particular bail condition about not approaching a Crown witness. That in turn requires two issues to be examined – the Mascot documentation relating to Paddle and the deployment, and the responsibility within Mascot for tactical planning for the deployment.

14.5.7.3 Mascot documentation relating to Paddle and the deployment

There are three important documents relating to Paddle’s deployment. These are Paddle’s personal profile, the informant registration form, and the District Court transcript.

The first document – the personal profile document on Paddle – was dated 8 April 1999. It listed the 1994 charges relating to the attempted armed robbery, and a corresponding results column recorded ‘committed for trial’. The profile document also recorded from 1994 records that Mr O and Paddle were at that time on bail.¹⁶⁵ This clearly linked Paddle’s bail conditions to the 1994 charges for the attempted armed robbery.

In evidence to Operation Prospect, two explanations were put forward to downplay any inference that could be drawn from the reference in the profile document to Paddle’s bail conditions in 1994. One was that the status of the bail conditions in 1999 was not clear and there was no clarification that they remained in place. This explanation cannot reasonably be accepted. The results column for other charges against Paddle was completed with court outcomes. A court outcome described as ‘committed for trial’ would suggest that the trial process was still pending. The reference to Mr O and Paddle being on bail for the 1994 charges would also indicate that bail conditions may still be in force. This and one other outstanding charge were also bolded, which suggests that attention was being drawn to these two matters as they did not have an outcome.

A second explanation was that the person who prepared the profile document (NSWCC Analyst) ought to have specified each bail condition that applied. The difficulty with this explanation is that it assumes the analyst, in preparing the profile, will focus on how the profile may be used. In fact, the analyst compiled the known information as per the pro-forma required – which did not require bail conditions to be explicitly listed or spelt out. The NSWCC analyst told Operation Prospect that profiles were routinely compiled for Mascot and that a profile had no evidentiary value – “a profile, it’s just a one stop shop of information regarding a particular person”.¹⁶⁶

The analyst could not recall preparing the Paddle profile or who Paddle was, but – when asked how Mascot determined who would be profiled – stated that it would be Burn’s call.¹⁶⁷ That issue aside, it is clear the profile was compiled by the analyst in connection to the plan to approach Paddle to assist Mascot investigations. If the matter had been appropriately considered, the issue of bail would have been identified by those developing the deployment plan as a matter that was potentially relevant and to be taken into account when requesting or using the profile document.

¹⁶⁴ NSWPF, Submission in reply, 10 November 2015, p. 4.

¹⁶⁵ NSWCC, Individual profile on [Paddle], report dated: 8 April 1999, profile prepared by [NSW Analyst].

¹⁶⁶ Ombudsman Transcript, [NSWCC Analyst], 3 April 2014, p. 191.

¹⁶⁷ Ombudsman Transcript, [NSWCC Analyst], 3 April 2014, p. 183.

In evidence, Boyd-Skinner was shown the profile document and asked if he recalled reading it. He replied “no”, but said “it makes sense that I would have seen it, but I could have been verbally briefed about the individual when I was tasked to go and interview him”.¹⁶⁸ Boyd-Skinner noted in his Duty Book that at 8 am on 8 April 1999 he attended the NSWCC for a conference, and it is most likely this conference concerned Paddle. Boyd-Skinner was taken to a specific part of the profile document which noted that Paddle was due to appear at the Local Court of a regional town on 9 April 1999. He agreed that he first made contact with Paddle on that date, by leaving a message with the Police Prosecutor in the town.¹⁶⁹ Boyd-Skinner and Paddle spoke by telephone on that date and discussed the arrests of Mr M, Mr O and Paddle and the possibility of Paddle assisting the NSWCC.¹⁷⁰ Whether Boyd-Skinner read the profile document or was briefed on its contents by another person cannot be ascertained. However, the evidence indicates that Boyd-Skinner was aware – from one source or another – of the information in the profile document.

Burn was also asked about the profile document, in the context of her Duty Book entry of 8 April 1999 stating that she was involved in attending an operational plan concerning Paddle. She stated that if she had not been given a copy of the profile “it would have been discussed in terms of his profile, who we’re dealing with”.¹⁷¹ Burn later submitted that she had no recollection of ever reading the profile document and, in any case, that it would not be reasonable to expect a person in her position with so many supervisory responsibilities to check the factual basis of documents such as this.¹⁷²

The second document that could be expected to specify known details about Paddle was the informant registration form. At the time, the NSWCC Informant Management Plan required that when:

*... a person comes forward as an informant and there is a likelihood of a relationship between the Case Officer and that informant, requiring supervision by a Senior Officer, that person shall be required to be registered with the Director of Investigations at the New South Wales Crime Commission.*¹⁷³

Boyd-Skinner prepared the form to register Paddle and it was signed by Dolan, Standen and Bradley. The form had a section to record the person’s criminal record, but it was left blank and only a notation made to a Central Names Index or CNI number. Boyd-Skinner gave evidence that based on Paddle’s informant registration form he either conducted a CNI check or had access to it. He agreed that in the usual course such a check would list a person’s criminal record and refer to any charge for which a person was on bail.¹⁷⁴

Clearly, in this case, the purpose of the form in noting the details of a person’s criminal history was not met. In fact, the notation of a CNI number may have been taken to indicate that the necessary checks had or would be done. If the registration form had been properly completed, the fact that Paddle was on bail would have been disclosed and brought directly to the notice of senior officers who either signed or saw this form.

A third document that contained information about the bail conditions was the District Court Transcript of 27 October 1997. This transcript was attached to an Information Report dated 11 May 1999 – this is after the first deployment but before the second. The report was initialled by Burn on the same day and she recorded in her Duty Book ‘Review Paddle transcripts’. The transcript set out the current bail conditions for Paddle, and that an application to vary those conditions was rejected. Burn gave evidence that she could not recall if she read the court transcript and that her initials may indicate only that the transcript was attached.¹⁷⁵ She later submitted that she did not believe she would have read the entire transcript in close detail due to its length (94 pages).¹⁷⁶ In relation to her Duty Book entry, Burn submitted that it is more likely she was reviewing the transcript of the deployment on 5 May 1999 than the court transcript.¹⁷⁷

168 Ombudsman Transcript, Darren Boyd-Skinner, 11 July 2014, p. 365.

169 Ombudsman Transcript, [Paddle], 7 July 2014, pp. 10-11; NSWPF Duty Book, D34383, Darren Boyd-Skinner, 9 April 1999, p. 46; Ombudsman Transcript, Darren Boyd-Skinner, 11 July 2014, pp. 365-366.

170 Ombudsman Transcript, [Paddle], 7 July 2014, p. 11.

171 Ombudsman Transcript, Catherine Burn, 15 July 2014, p. 574.

172 Burn, C, Submission in reply, 25 September 2015, Appendix 1, p. 6.

173 NSWCC, *Informant Management Plan*, undated, p. 2.

174 Ombudsman Transcript, Darren Boyd-Skinner, 11 July 2014, p. 379.

175 Ombudsman Transcript, Catherine Burn, 15 July 2014, p. 604.

176 Burn, C, Submission in reply, 25 September 2015, Appendix 1, p. 19.

177 Burn, C, Submission in reply, 25 September 2015, Appendix 1, p. 19.

The court transcript was obtained for an important purpose – to assess the suitability of a person with a criminal record to be registered as an informant. In those circumstances, the transcript ought to have been read by Burn or assigned to another officer to review and summarise for Burn's consideration.

14.5.7.4 Responsibility for tactical planning for Paddle's deployment

The next issue to consider is who within Mascot was responsible for the tactical planning for Paddle's deployment. The two officers with primary responsibility were Boyd-Skinner and Burn. Other officers whose role will be discussed are Dolan, Standen, Bradley, Brammer, McFadden, Moore and Henry.

Boyd-Skinner played a central role in the deployment plan. He was Paddle's handler and was assigned the IA investigation of the Mr O, Mr M and Paddle arrests. He was informed first hand of Paddle's pending court matter – both through his direct contact with Paddle and his awareness of the personal profile document that specified that Paddle was subject to bail conditions in connection with the 1994 charges. Boyd-Skinner discussed those charges with Paddle on 12 April 1999 and was aware the matter was still pending. Other documents confirm Boyd-Skinner's close knowledge of events. In a CAR of 2 May 1999, he recorded that Paddle told him he "was required to report at Macksville on Wednesday"¹⁷⁸ – a clear indication that bail conditions were in place. On 15 May 1999, after the first deployment and before the second, Boyd-Skinner recorded in a CAR after speaking with Paddle on the telephone "that negotiations are underway re: change of bail".¹⁷⁹ Bail conditions were again discussed by Paddle and Boyd-Skinner on 19 May 1999.¹⁸⁰

Boyd-Skinner gave evidence to Operation Prospect that he was not aware of the bail conditions: "So at the time of the deployment, which I, you know, certainly affirmed the deployment occurred, both of them, I wasn't aware of the bail conditions".¹⁸¹ That evidence is at odds with the facts in the previous paragraph, and with a memo that Boyd-Skinner prepared on 22 June 1999 in response to a complaint that officers had aided and abetted Paddle to breach his bail conditions (discussed in section 14.9). In that memo, Boyd-Skinner stated he was aware at the time that bail conditions were in place but that he was not aware of the specific condition to not approach a Crown witness.¹⁸²

Boyd-Skinner is a person who ought to have known about Paddle's bail conditions, including the condition to not approach a Crown witness. The evidence points to him knowing of the bail conditions before and after the first deployment. He was an officer with sufficient experience to recognise that a person charged with a serious felony would most likely have a bail condition to not approach a person who was or was likely to be called as a Crown witness. Boyd-Skinner either failed to recognise that Paddle's bail conditions might be relevant to the deployments, or failed to make proper further inquiries about them. However, there is no evidence that this failure to act appropriately was deliberate or intentional – just the result of neglectful oversight.

The evidence before Operation Prospect similarly points to Burn's central role in planning and executing the deployments and in her capacity as team leader providing supervision, management and coordination for the plan. As noted earlier, she played a senior role and had day-to-day tactical responsibilities in the planning and execution phase. She was the most senior officer in the Mascot team responsible for daily operations, including the deployments of Paddle. Burn was aware of the strategy written by Dolan on 2 March 1999 and that Paddle had still to face court on the 1994 attempted armed robbery charges.

178 NSWCC, *Informant Contact Advice Report*, contact by Boyd-Skinner with informant Paddle, 2 May 1999.

179 NSWCC, *Informant Contact Advice Report*, contact by Boyd-Skinner with informant Paddle, 15 May 1999.

180 NSWCC Information Report, *Information re contact with 'Paddle' on 19/4/1999 (8.48am)*, reporting officer: Kaizik, 22 July 1999, p. 1.

181 Ombudsman Transcript, Darren Boyd-skinner, 11 July 2014, p. 345.

182 NSWPF internal memorandum fro Detective Sergeant Darren Boyd-Skinner to Detective Inspector William Lardner, Internal Affairs Investigation Unit and Detective Inspector Catherine Burn, Internal Affairs Special Projects Unit, 22 June 1999.

As for the bail conditions, she submitted that – as at 14 April 1999 – she was “entirely unaware” of “this crucial piece of information” which had not been disclosed in any of the reports on which she had relied to that date.¹⁸³ She also commented that officers may not have fastened on the importance of checking Paddle’s bail conditions because they were aware that Mr A had himself approached Paddle in a nightclub, and that planning was underway for Paddle to speak to other officers who played a role in his arrest.¹⁸⁴ Weighing against those considerations is that Burn had sufficient experience to recognise that a person charged with a serious felony would most likely have a bail condition to not approach a person who was or likely to be called as a Crown witness. She was a senior officer who ought to have known of the bail conditions and the importance of checking whether the deployment plan would breach any condition. However, there is no evidence that her failure to act appropriately was deliberate or intentional – just the result of neglectful oversight.

Two other officers involved in the Paddle strategy were Dolan and Standen. They were more senior to Burn and Boyd-Skinner but did not take control of the detailed tactical planning. They were, nevertheless, direct managers in the Mascot operation – Dolan on the police side and Standen for the NSWCC. The evidence points to them being kept regularly informed of steps that were being taken to implement a strategy that had earlier been outlined by Dolan in a document on 2 March 1999. Because of their knowledge, position and responsibility, Dolan and Standen should each have considered the risks involved in deploying an accused person to approach an officer who was earlier involved in arresting the accused for a serious offence. Dolan and Standen should equally have examined whether this risk had been identified and assessed by officers carrying out the deployment. The failure of Dolan and Standen to discharge their responsibility contributed to the errors that occurred. Their conduct requires censure, but in the absence of more specific information about their actual rather than presumed knowledge or actions a formal finding will not be made.

Bradley as NSWCC Commissioner and Brammer as IA/SCIA Commander were both aware of Paddle and were clearly kept informed as the deployment plan was developed and executed. However, they did not have tactical planning responsibility for the deployment. Their precise level of knowledge at the time of the deployment and of the bail issue is uncertain and cannot be resolved so long after the events.

McFadden, Moore and Henry were three other officers who played particular roles in this matter. McFadden was present at the interview with Paddle, although not the lead investigator. Moore deposed to the affidavit for the LD warrant, and Henry was the most senior officer in the field on the day of the first deployment. Operation Prospect has considered whether any of these officers share responsibility for not raising the question of bail. They were all in a position to do so but did not. On the other hand, none had a specific responsibility to consider the risks during the planning phase – which is when the issue of bail ought to have been recognised. It would be unfair to assign blame to any of them for this omission when more senior officers who were centrally responsible and had direct lines of responsibility did not identify the risk in what was being proposed.

14.5.8 Findings

Officers from the NSWCC and NSWPF who were working on the Mascot reference devised and implemented an operational plan that was flawed. It involved an accused person who was a registered informant (Paddle) being fitted with a concealed LD to approach and speak to a person (Mr A) in breach of the accused’s bail conditions. The bail condition was readily discoverable if those officers had turned their mind to the risks and other issues involved in a deployment operation of this kind. It is reasonable to conclude that one or more officers should have done so at various stages in this deployment.

There is no evidence to suggest that any officer knowingly acted wrongly or was motivated by an improper agenda. It seems that the Mascot officers believed their actions to be justified and proper as part of a broader strategy to gather information about suspected corruption by NSWPF officers. Some of the officers kept an extensive written record of the actions they were taking – and the analysis in this chapter draws heavily from those records.

¹⁸³ Burn, C, Submission in reply, 25 September 2015, Appendix 1, p. 10.

¹⁸⁴ Burn, C, Submission in reply, 25 September 2015, Appendix 1, p. 14.

At a general level, both the NSWCC and the officers involved in the deployment of Paddle must accept responsibility or blame for this wrongful action. In addition, as explained in Chapter 2, the approach adopted by Operation Prospect has been to make a finding of wrongful conduct against an individual officer or agency if the circumstances warrant – consistent with the requirements of sections 122 and 157 of the *Police Act 1990* and section 26 of the *Ombudsman Act 1974*. The following analysis concludes that a finding of unlawful conduct should be made against two officers. The meaning of the term 'unlawful conduct' is discussed in Chapter 2. Briefly, the term can apply broadly to conduct that does not constitute a punishable offence but that contravenes a legal rule or direction that should be observed by the person engaging in the conduct in question.

48. Boyd-Skinner

Boyd-Skinner's conduct in relation to the deployments of Paddle on 5 and 24 May 1999 was unlawful conduct in terms of section 122(1)(c) of the *Police Act 1990*. Boyd-Skinner had primary responsibility for planning and executing the deployment of a NSW Crime Commission informant in a manner that constituted a breach of the informant's bail condition on two occasions.

49. Burn

Burn's conduct in relation to the deployments of Paddle on 5 and 24 May 1999 was unlawful conduct as described in section 122(1)(c) of the *Police Act 1990*. As discussed in section 14.5.7.4, Burn was the team leader with management and supervisory responsibilities for planning and executing the deployment of a NSW Crime Commission informant in a manner that constituted a breach of the informant's bail condition on two occasions.

50. NSW Crime Commission

The NSW Crime Commission is responsible for the actions of members of the Mascot Task Force in deploying Paddle on two occasions to speak to Mr A on 5 and 24 May 1999. This was in breach of a bail condition that was designed to prevent Paddle speaking to a person, such as Mr A, who may be a Crown witness in Paddle's scheduled trial on a serious offence.

Paddle was registered as a NSW Crime Commission Informant in April 1999, with the knowledge of at least two senior officers – Bradley and Standen. NSW Crime Commission Informant Management Guidelines that were in place at the time were breached by the actions of members of the Mascot Task Force. The NSW Crime Commission was responsible for the Mascot reference and for supervising members of the Mascot Task Force. To that extent, the NSW Crime Commission failed to implement its own policies, practices and procedures in conducting the Mascot reference and managing the informant Paddle.

The conduct of the NSW Crime Commission in the deployments of Paddle as a NSW Crime Commission informant in breach of his bail condition on two occasions was unreasonable and otherwise wrong in terms of section 26(1)(b) and (g) of the *Ombudsman Act 1974*.

14.5.9 Recommendation

- 20.** It is recommended under section 26(2)(b) of the *Ombudsman Act 1974* that the NSW Crime Commission provide a written apology to Mr A.
- for the deployments of Paddle on two occasions to speak to Mr A, in breach of a bail condition that was designed to ensure Paddle did not approach a potential Crown witness such as Mr A
 - for arranging for Paddle to record his conversation with Mr A with a concealed LD.

14.6 Paddle placed in covert locations while police attempting to locate him

Between June and late August 1999, Mascot investigators helped Paddle to relocate to a number of different covert locations. This sometimes involved further breaches of Paddle's bail conditions about where he lived. It appears that the motivation to relocate Paddle was a concern for his safety. Police officers from the Coffs Harbour region were trying to locate Paddle for breaching a bail condition in May 1999, and one of those officers (MSO4) was a subject of Paddle's allegation of being verbally abused when arrested for the 1994 attempted armed robbery. At the time, Paddle had also begun providing Mascot with information about other serious criminal activities.

This section will outline the evidence available to Operation Prospect about the assistance given to Paddle by Mascot investigators to relocate to various locations before a controlled operation was granted on 20 August 1999. The controlled operation would thereafter cover any unlawful acts such as breach of bail.¹⁸⁵

14.6.1 Mascot investigators become aware that police attempting to locate Paddle

After Paddle's visit to the pawn shop on 5 May 1999, Mr A contacted a former colleague (MSO4) who was now the Crime Manager at Coffs Harbour LAC to tell him of the visit.¹⁸⁶ Mr A and MSO4 had worked together previously and were both involved in arresting Paddle and his co-accused in 1994. Paddle had alleged that MSO4 and Officer B had verbally abused Paddle at the time of his arrest.

MSO4 told Mr A that Paddle's contact with him could constitute a breach of Paddle's bail conditions in relation to the 1994 attempted armed robbery, and that he would follow it up.

From late May 1999, Paddle started giving information to Boyd-Skinner and the NSWCC about serious criminal activities that were unrelated to the 1994 arrests for the attempted armed robbery.¹⁸⁷ Negotiations between the NSWCC and Paddle occurred throughout June 1999. Paddle wanted help with certain things, and the NSWCC wanted him to participate in a formal induced interview regarding the matters about which he was providing information.¹⁸⁸

Boyd-Skinner and McFadden interviewed MSO4 on 11 June 1999 as part of their investigation into the 1994 arrests of Paddle, Mr O and Mr M for the attempted armed robbery. At the end of the interview MSO4 asked McFadden and Boyd-Skinner:

Have you sent [Paddle] to see [Mr A]?" McFadden replied that investigative steps could not be disclosed. MSO4 then stated: "Well there's a bail condition on [Paddle] that he not approach any witness involved in this matter. Now [Paddle] has been to that shop on two occasions where he's spoke to [Mr A] about this matter, and this is a clear breach of his bail conditions.

MSO4 also suggested that any other officer who had been involved in Paddle approaching Mr A would be "aiding and abetting" a breach of bail.¹⁸⁹

¹⁸⁵ A controlled operation is a police operation allowing what would otherwise be unlawful conduct, for the purpose of obtaining evidence of criminal activity and/or to arrest perpetrators (*Law Enforcement (Controlled Operations) Act 1997* (NSW)).

¹⁸⁶ Ombudsman Transcript, [Mr A], 8 July 2014, p. 105.

¹⁸⁷ For example: NSWCC Information Report, *Information re: Contact with 'Paddle' on 21/05/1999 (8.25am)*, reporting officer: Kaizik, 22 July 1999; NSWCC Information Report, *Information re: Contact with 'Paddle' on 22/05/1999 (8.40am)*, reporting officer: Kaizik, 22 July 1999; NSWCC Information Report, *Information re: Contact with 'Paddle' on 24/05/1999 (8.34am)*, reporting officer: Kaizik, 22 July 1999; NSWCC Information Report, *Information re: Contact with 'Paddle' on 25/05/1999 (4.53am)*, reporting officer: Kaizik, 22 July 1999.

¹⁸⁸ For example: NSWCC Information Report, *Information re: contact with 'Paddle' on 08/06/1999 (5.56pm)*, reporting officer: Kaizik, 22 July 1999; NSWCC Information Report, *Information re: contact with 'Paddle' on 15/06/1999 (3.49pm)*, reporting officer: Kaizik, 22 July 1999; NSWCC Information Report, *Information re: contact with 'Paddle' on 21/06/1999 (9.58pm)*, reporting officer: Kaizik, 22 July 1999.

¹⁸⁹ NSWPF, Record of Interview between Detective Sergeant McFadden and Detective Inspector [Coffs Harbour Crime Manager], 11 June 1999, p. 12.

On 22 June 1999 Paddle was taken to the NSWCC for a meeting with Standen and Boyd-Skinner. The Information Report recorded that:

- Standen explained the role of the NSWCC and its powers to Paddle.
- Paddle was informed that an induced statement could be obtained and the evidence in it could not be used in any prosecution against him. It was also explained that there were exceptions to this procedure, including giving false information.
- Paddle was told that a person's complicity in a crime may reduce his eligibility for immunity from prosecution or for other benefits such as in sentencing.
- Standen explained arrangements that could be made between informants and the NSWCC for providing 'letters of assistance' to the court to aid an informant when sentenced and financial agreements.
- No promise or advantage was held out to Paddle as he had not conveyed any information that could be assessed in a tangible form.
- There were discussions about a hypothetical situation involving a homicide that occurred during an attempted armed hold up. This is discussed further in section 14.7 of this chapter.
- Paddle indicated that he intended to help but wanted time to consider the information he had been given before committing to a statement.¹⁹⁰

There was almost daily contact in this period between Boyd-Skinner and Paddle. Paddle advised that he would provide 'information' after he had sorted out some personal matters, including picking up some belongings from a property on the north coast.¹⁹¹

On 30 June 1999 Boyd-Skinner contacted Paddle by telephone. Paddle stated he was still at his home in regional NSW and had not yet visited the north coast to collect his belongings. He told Boyd-Skinner that he would not give the NSWCC a statement until he had done this, and that he also needed help to relocate. Boyd-Skinner advised Paddle that no help would be given until he disclosed the nature of the information he was intending to provide. During the same conversation, Paddle stated he had an outstanding court matter (for a malicious damage charge not connected to the 1994 charges) at a regional local court on 10 August 1999 and that he would be pleading guilty – but he had concerns that his bail on the 1994 attempted armed robbery might be revoked. Boyd-Skinner advised Paddle that no letter of assistance could be provided by investigators for him to use in court proceedings until he revealed the information he had.¹⁹²

On 1 July 1999 Boyd-Skinner contacted Paddle to tell him that he thought MSO4 may be planning to pursue him for breach of bail because of his approach to Mr A.¹⁹³ Boyd-Skinner then moved Paddle to a 'safe house' to assess whether there was any risk to his safety.¹⁹⁴ On the same day, an ODPP solicitor wrote to the solicitor representing Mr A stating that MSO4 had advised earlier that day "that as the bail condition not to approach witnesses is still on foot he will take action to bring [Paddle] before the court for breach of bail, according to the information you provided".¹⁹⁵

14.6.2 Mascot investigators relocate Paddle to covert accommodation

On 1 July 1999 Boyd-Skinner completed a CAR about the contact he and McFadden had with Paddle on that date. The location is listed as 'Telephone & Beverley Hills/Sans Souci'. The contact is listed as starting at 11.53 am and finishing at 8.20 pm. Under the heading 'Result of contact and reliability assessment', the CAR reads:

190 NSWCC Information Report, *Contact with Informant codenamed 'Paddle' on 22 June 1999*, reporting officer: Boyd-Skinner, 24 June 1999.

191 NSWCC, *Informant Contact Advice Report*, Contact by Boyd-Skinner with informant Paddle, 28 June 1999.

192 NSWCC Information Report, *Information re: contact with 'Paddle' on 30/06/1999 (11.02am)*, reporting officer: Kaizik, 22 July 1999.

193 NSWCC, *Informant Contact Advice Report*, Contact by Boyd-Skinner and McFadden with informant Paddle, 1 July 1999; NSWCC Information Report, *Contact with and relocation of informant Paddle on 1 July 1999*, reporting officer: Boyd-Skinner, 22 July 1999.

194 NSWCC, Record of interview between Detective Sergeant Boyd-Skinner and [Paddle], 3 July 1999, p. 4.

195 Letter from [ODPP solicitor] to [Mr A's solicitor], 1 July 1999.

Initial contact – general update re: status of affairs. Cultivating for debrief.

Paddle advised of intention of [MSO4] to arrest him for breach of bail.

Threat assessment – Required immediate relocation to determine risk to person an investigation.

Accommodated in [Sans Souci].¹⁹⁶

The contact with Paddle on 1 July was also recorded in a later Information Report prepared by Boyd-Skinner on 22 July 1999. It was called 'Contact with and relocation of informant Paddle on 1 July 1999'.¹⁹⁷ The report states: "On Thursday 1 July 1999, Informant Paddle was assisted to relocate to the Sydney Metropolitan Area. He was accommodated at [Sans Souci] ...". The Report has the notation "Police: Det's Boyd-Skinner & McFadden".

A CAR prepared on 2 July 1999 records that Boyd-Skinner contacted Paddle three times by telephone, and that he and Moore went to the Sans Souci accommodation between 4 pm and 6 pm.¹⁹⁸ This contact was also recorded in a later Information Report compiled on 22 July 1999.¹⁹⁹ Two points in that CAR noted concerns held by Paddle. These were:

... concerns about summary matter at [regional Local Court] & revocation of bail

... concerns about personal well being.²⁰⁰

Boyd-Skinner and Moore met with Paddle on 3 July 1999 on two occasions. The location of both meetings is listed in a CAR as 'Covert Motel'.²⁰¹ A separate Information Report (also compiled on 22 July 1999) contains details of the 2 and 3 July meetings.²⁰² For the first meeting, the report noted that Paddle "became increasingly distressed about his safety and depressed about being alone and became upset". Boyd-Skinner and Moore apparently left Paddle alone after this first meeting to compose himself. In the meeting on 3 July Paddle provided valuable information under inducement about serious crimes and this was recorded electronically by the officers. One of the crimes that Paddle provided information about was the 1995 homicide of Mr Robert Jones, who was a Brambles security guard who was shot dead during an attempted armed robbery. This is discussed in section 14.7 of this chapter. The transcript of the electronic record contains the following exchange:²⁰³

Q30 *Do you agree that I contacted you on Thursday, the 1st of July, two days ago, and advised you that I was of the belief that [MSO4] was seeking to revoke your bail?*

A Yes.

Q31 *And you expressed some concerns to me about your well-being in that matter?*

A Yes.

Q32 *What were those concerns?*

A *Ah ... being cornered by [MSO4] in a way that he would revoke my bail.*

Q33 *Do you have any other concerns?*

A *I do have some concerns for my safety yes in regards to the ...*

Q34 *And what are those concerns, just let us know so that we can record them for the record?*

A *Just basically the fact that I know those police officers to be corrupt through my dealings with them and anything that they ... that they did or tried to do wouldn't really come as a shock to me.*

Q35 *Do you agree you also said to us that if you were placed into custody that there would be a danger of you committing some act of self-harm?*

¹⁹⁶ NSWCC, *Informant Contact Advice Report*, Contact by Boyd-Skinner and McFadden with informant Paddle, 1 July 1999.

¹⁹⁷ NSWCC Information Report, *Contact with and relocation of informant Paddle on 1 July 1999*, reporting officer: Boyd-Skinner, 22 July 1999.

¹⁹⁸ NSWCC, *Informant Contact Advice Report*, Contact by Boyd-Skinner and Moore with informant Paddle, 2 July 1999.

¹⁹⁹ NSWCC Information Report, *Contact with informant Paddle on Friday 2 July 1999*, reporting officer: Boyd-Skinner, 22 July 1999.

²⁰⁰ NSWCC Information Report, *Contact with informant Paddle on Friday 2 July 1999*, reporting officer: Boyd-Skinner, 22 July 1999.

²⁰¹ NSWCC, *Informant Contact Advice Report*, Contact by Boyd-Skinner and Moore with informant Paddle, 3 July 1999.

²⁰² NSWCC Information Report, *Contact with informant Paddle on Saturday 3 July 1999*, reporting officer: Boyd-Skinner, 22 July 1999.

²⁰³ NSWCC, Record of Interview between Detective Sergeant Boyd-Skinner and [Paddle], 3 July 1999.

- A *Either self or, or you know there's the worry of someone else being contracted to maybe do some harm to me.*
- Q36 *And do you agree that you said to me that at the time you were in [regional location, NSW] that you wanted to leave [that location], to be put in a position where you felt safe until things were resolved?*
- A *That's correct.*
- Q37 *And do you agree that I relocated ... had you drive to Sydney with a friend but have set you up in a, in a location known only to myself and very few others and that you've been supplied with the capability of ... of some form of protection until we can assess any risk involved in terms of your safety and ... and our investigation?*
- A *That's correct.*

A CAR prepared by Boyd-Skinner on 6 July 1999 recorded meetings between himself, McFadden and Paddle.²⁰⁴ The location is noted as 'Covert Motel/Bundeena/Ramsgate'. The corresponding Information Report for these meetings noted: "Paddle met at [Sans Souci] and taken for a drive to Bundeena and shown location of accommodation".²⁰⁵ The Information Report noted that Paddle provided a signed statement under inducement at the end of the interview on 3 July 1999.

On 7 July 1999 a document headed 'Operational Orders' was completed by a junior Mascot investigator.²⁰⁶ These operational orders were for a different operation but noted the following under the heading 'situation':

*This is a covert operation acting on information received by D/Sergeant BOYD-SKINNER from [a victim] on Monday, 5 July 1999.*²⁰⁷

The Operational Orders then detail information provided by Boyd-Skinner to Mascot investigators. Another comment in the document indicates that Mascot officers knew that NSWPF officers were searching for Paddle to arrest him:

*Coffs Harbour police are currently looking for PADDLE to arrest and charge him for breach of bail (one of the conditions of bail, "not to approach a Crown witness" i.e. [Mr A]).*²⁰⁸

On 7 July 1999 Boyd-Skinner also completed a CAR indicating that he had four telephone calls with Paddle and two face-to-face meetings at the 'Covert Motel' – one meeting in the afternoon (attended by Moore) and another meeting in the evening (attended by McFadden).²⁰⁹ The corresponding Information Report about the contact with Paddle on 7 July (compiled by Boyd-Skinner on 26 July 1999)²¹⁰ indicated that the first contact was made at 9 am on the telephone between himself and Paddle where "Paddle discussed his requirement to report on bail". During the meeting at the Sans Souci accommodation in the afternoon (2:45 pm - 4:30 pm), Paddle asked the NSWCC to supply him with a hire car to travel to his home in regional NSW so that he could visit his children. The Information Report notes: "This issue was discussed at length but refused".²¹¹

Boyd-Skinner and McFadden met with Paddle again on 9 July 1999.²¹² Boyd-Skinner's record of the meeting noted: "Checked out of [Sans Souci accommodation] & driven to Exeter ... to meet with son. Accommodation available for [illegible] Bundeena". The Information Report on the meeting (compiled on 26 July 1999) states that Paddle, his son and their pet dogs were relocated from the Sans Souci accommodation to premises in Bundeena.²¹³

204 NSWCC, *Informant Contact Advice Report*, Contact by Boyd-Skinner and McFadden with informant Paddle, 6 July 1999.

205 NSWCC Information Report, *Contact with informant Paddle on Tuesday 6 July 1999*, reporting officer: Boyd-Skinner, 23 July 1999.

206 NSWCC, Operational Orders, *Operation Mascot/Boat*, 7 July 1999.

207 NSWCC, Operational Orders, *Operation Mascot/Boat*, 7 July 1999, p. 1.

208 NSWCC, Operational Orders, *Operation Mascot/Boat*, 7 July 1999, p. 1.

209 NSWCC, *Informant Contact Advice Report*, Contact by Boyd-Skinner, Moore and McFadden with informant Paddle, 7 July 1999.

210 NSWCC Information Report, *Contact with informant Paddle on Wednesday 7 July 1999*, reporting officer: Boyd-Skinner, 26 July 1999.

211 NSWCC Information Report, *Contact with informant Paddle on Wednesday 7 July 1999*, reporting officer: Boyd-Skinner, 26 July 1999.

212 NSWCC, *Informant Contact Advice Report*, Contact by Boyd-Skinner and McFadden with informant Paddle, 9 July 1999.

213 NSWCC Information Report, *Contact with informant Paddle on Friday 9 July 1999*, reporting officer: Boyd-Skinner, 26 July 1999.

On 10 July 1999 Boyd-Skinner spoke with Paddle over the telephone. An Information Report about that conversation (compiled on 26 July 1999 by Boyd-Skinner) recorded:

*Paddle stated he had relocated to the covert premises at Bundeena without incident and Monday's contact was confirmed.*²¹⁴

The CAR²¹⁵ and associated Information Report²¹⁶ for contact with Paddle on 13 July 1999 reveals that Paddle was taken to Centrelink to submit forms and to inspect a vehicle for sale. The report also revealed that Paddle was taken to the NSWCC premises where he met with the Director and Solicitor to the NSWCC, John Giorgiutti and Assistant Director Tim O'Connor. There is no discussion of bail conditions or Paddle's placement in a covert location in either document.

Boyd-Skinner and McFadden met with Paddle again on 14 July 1999.²¹⁷ Paddle provided additional valuable information at this meeting about the homicide of Mr Robert Jones, including detailing his own involvement and the involvement of other suspects (see section 14.7). The Information Report compiled by Boyd-Skinner about this meeting contains the following two entries: "Contact with Paddle at covert premises – Bundeena 9.15 am - 1.15 pm", and "Paddle's wife informed his son that the [regional location, NSW] Police may have a 'surprise' for him on 10 August 1999 when he is due to go to [the local regional] court for the malicious damage matter".²¹⁸ The 'surprise' was not explained.

In the following period, there is regular and almost daily contact between Paddle and Boyd-Skinner – particularly about other matters unrelated to the allegations of police misconduct. On 20 July 1999 Paddle was advised that McFadden would no longer be involved in the investigation. At the same meeting, Boyd-Skinner introduced Paddle to the NSWCC Investigations Manager and advised him of co-handling arrangements. The NSWCC Investigations Manager's involvement with Paddle was mainly to plan and execute controlled operations that would involve Paddle. The Investigations Manager was usually the person authorised to conduct the operations and would de-brief Paddle as required.

An Information Report prepared by Boyd-Skinner documented a series of telephone calls between himself and Paddle on 3 August 1999. Boyd-Skinner noted that Paddle had told him about police attending his property:

*[Paddle associate A] advised Paddle that [Paddle associate B] told him that police had been to Paddle's property [in regional NSW], kicked in the door and searched the premises. They had also spoken to neighbours about Paddle's whereabouts.*²¹⁹

In another telephone conversation with Boyd-Skinner on the same day, Paddle again raised the issue of police attention at his premises in regional NSW:

*Paddle spoke with [Paddle associate B] on the telephone and was abused about the police attention on the property. The officers had apparently left two notes, one for Paddle and on [sic] for [Paddle's son].*²²⁰

14.6.3 Mascot staff help Paddle to arrange rental accommodation

Records indicate that NSWCC officers helped Paddle in the first half of August 1999 to find rental accommodation outside the Coffs Harbour/Macksville area. An Information Report prepared by Boyd-Skinner on his contact with Paddle on 6 August 1999 recorded that he advised Paddle to try and identify suitable rental premises and "that he could indicate in any applications a willingness to pay 3 months' rent in advance".²²¹ The Information Report noted a later telephone call that day between Boyd-Skinner and Paddle in which Paddle advised he had applied for premises in Sans Souci in Sydney and "Indicated in his application a willingness to pay 2-3 months advance rent".

²¹⁴ NSWCC Information Report, *Contact with informant Paddle on Saturday 10 July 1999*, reporting officer: Boyd-Skinner, 26 July 1999.

²¹⁵ NSWCC, *Informant Contact Advice Report*, Contact by Boyd-Skinner and McFadden with informant Paddle, 13 July 1999.

²¹⁶ NSWCC Information Report, *Contact with informant Paddle on Tuesday 13 July 1999*, reporting officer: Boyd-Skinner, 26 July 1999.

²¹⁷ NSWCC, *Informant Contact Advice Report*, Contact by Boyd-Skinner and McFadden with informant Paddle, 14 July 1999; NSWCC Information Report, *Contact with informant Paddle on Wednesday 14 July 1999*, reporting officer: Boyd-Skinner, 26 July 1999.

²¹⁸ NSWCC Information Report, *Contact with Informant Paddle on Wednesday 14 July 1999*, reporting officer: Boyd-Skinner, 26 July 1999.

²¹⁹ NSWCC Information Report, *Contact with Informant Paddle on Tuesday 3 August 1999*, reporting officer: Boyd-Skinner, 20 August 1999.

²²⁰ NSWCC Information Report, *Contact with Informant Paddle on Tuesday 3 August 1999*, reporting officer: Boyd-Skinner, 20 August 1999.

²²¹ NSWCC Information Report, *Contact with Informant Paddle on Friday 6 August 1999*, reporting officer: Boyd-Skinner, 20 August 1999.

On 9 August 1999 Boyd-Skinner called Paddle who indicated that he was “doing things tough”.²²² Boyd-Skinner and the NSWCC Investigations Manager then visited him at the ‘Covert Location’ at Bundeena. Paddle indicated that he had a number of concerns including “his problems related to [relationship matters], outstanding court matters, police attention on the north coast and inability to find housing”.²²³

On 10 August 1999 Boyd-Skinner told Paddle over the telephone that “he could offer to pay six month’s rent in advance if required”²²⁴ to help Paddle to secure rental accommodation. On 11 August 1999²²⁵ when Boyd-Skinner spoke on the phone to Paddle, Paddle reported his conversation with police when he made his weekly report:

*Paddle stated he reported re: bail at 8:15 am to a police officer named [name]. The officer asked him questions about if he had permission to be in Sydney and where he was. He was asked if he had sought to alter his bail conditions relating to where he was living.*²²⁶

Later that morning Boyd-Skinner gave Paddle details of a real estate advertisement and Paddle advised he was heading towards the city to search for accommodation.²²⁷ Boyd-Skinner and another officer, Detective Senior Constable Scott Haywood met Paddle and his son later that afternoon to discuss their search for accommodation. The officers were advised that various premises had been inspected that day.²²⁸

There was telephone contact between Paddle and Boyd-Skinner on the morning of 12 August 1999 about inspecting various rental premises and submitting a rental application.²²⁹ Later that afternoon, Boyd-Skinner and Haywood met Paddle and his son. The following notation was made in the Information Report about premises inspected at a specified address in Randwick:

*The agent stated the premises were available for 6 months and would be demolished and also indicated that the lease could be broken.*²³⁰

The same Information Report also noted a meeting at 4:30 pm between Boyd-Skinner, Haywood, Paddle and Paddle’s son noting: “Paddle discussed his outstanding matter in the Court of Criminal Appeal and his dislike for [MSO4/the Crime Manager]”.²³¹

On 16 August 1999 Boyd-Skinner had telephone contact with Paddle a number of times.²³² At 3:15 pm, Paddle and his son met with Boyd-Skinner and Haywood – as recorded in an Information Report:

*Paddle stated he was concerned about his bail conditions now that a permanent abode had been rented for him to live in while operations are being conducted. His current conditions require he notify the OIC at Macksville of any change of address. He was told the matter would be addressed. (Controlled Operation to be considered).*²³³

14.6.4 Consideration given to altering bail reporting conditions

After Paddle had raised his concerns on 16 August 1999 about breaching his bail conditions, Mascot officers considered trying to get Paddle’s bail reporting conditions changed. Haywood noted in a CAR on 17 August

²²² NSWCC Information Report, *Contact with* [Paddle and his son] on Monday 9 August 1999, reporting officer: Boyd-Skinner, 20 August 1999.

²²³ NSWCC Information Report, *Contact with* [Paddle and his son] on Monday 9 August 1999, reporting officer: Boyd-Skinner, 20 August 1999.

²²⁴ NSWCC Information Report, *Contact with Informant Paddle on Tuesday 10 August 1999*, reporting officer: Boyd-Skinner, 23 August 1999.

²²⁵ NSWCC, *Informant Contact Advice Report*, Contact by Boyd-Skinner and Haywood with informant Paddle, 11 August 1999.

²²⁶ NSWCC Information Report, *Contact with* [Paddle and his son] on Wednesday 11 August 1999, reporting officer: Boyd-Skinner, 23 August 1999.

²²⁷ NSWCC Information Report, *Contact with* [Paddle and his son] on Wednesday 11 August 1999, reporting officer: Boyd-Skinner, 23 August 1999.

²²⁸ NSWCC Information Report, *Contact with* [Paddle and his son] on Wednesday 11 August 1999, reporting officer: Boyd-Skinner, 23 August 1999.

²²⁹ NSWCC, *Informant Contact Advice Report*, Contact by Boyd-Skinner and Haywood with informant Paddle, 12 August 1999; NSWCC Information Report, *Contact with* [Paddle and his son] on Thursday 12 August 1999, reporting officer: Boyd-Skinner, 23 August 1999.

²³⁰ NSWCC Information Report, *Contact with* [Paddle and his son] on Thursday 12 August 1999, reporting officer: Boyd-Skinner, 23 August 1999.

²³¹ NSWCC Information Report, *Contact with* [Paddle and his son] on Thursday 12 August 1999, reporting officer: Boyd-Skinner, 23 August 1999.

²³² NSWCC, *Informant Contact Advice Report*, Contact by Boyd-Skinner and Haywood with informant Paddle, 16 August 1999; NSWCC Information Report, *Contact with* [Paddle and his son] on Monday 16 August 1999, reporting officer: Boyd-Skinner, 16 August 1999.

²³³ NSWCC Information Report, *Contact with* [Paddle and his son] on Monday 16 August 1999, reporting officer: Boyd-Skinner, 16 August 1999.

1999 that he and another officer had contact with Paddle and “discussed contact to be made with solicitor”.²³⁴ The associated Information Report recorded the following:

*After consultation with Detective BOYD-SKINNER I discussed with Paddle the issue of contacting his solicitor, [name], to make application to alter his bail reporting conditions so that he doesn't have to notify any change of address. He was asked to explain to his solicitor that his mother's house is his base but he would be in Sydney on a regular basis seeking work.*²³⁵

A CAR and Information Report for the following day recorded contact between Haywood, another officer and Paddle on 18 August 1999 at 9:33 am noting: “detectives had left a card at the farm” (that is, at Paddle’s home in regional NSW).²³⁶ Another record for the same day noted that Haywood and another officer met Paddle at 10:46 am and that he “produced a NSW police service business card with the names of [two officers] ... Stated he reported this morning”.²³⁷ The corresponding Information Report recorded the same information but also noted: “Stated he hasn’t spoken to his solicitor as he [name of solicitor] is in Court today as Wednesdays are Court days in Macksville”.²³⁸

Haywood contacted Paddle later the same day at 5.53 pm.²³⁹ The Information Report noted:

*Paddle further advised that [his son] had bumped into a neighbour who told him that the police had visited Paddle's house 5 days in a row when Paddle first went to Sydney. The first couple of days it was a marked four-wheel drive and the other days there were 2 Detectives cars. Paddle believed it was probably to do with the breach of bail where the officer in charge of the case forgot to note down when Paddle reported.*²⁴⁰

14.6.5 Controlled operation arranged

On 20 August 1999 Mascot officers contacted Paddle at 9:00 am to discuss: “The issue of obtaining a controlled operation so that [Paddle] could breach his bail by not notifying the [Officer in Charge] at Macksville of his address”.²⁴¹ A controlled operation is an authorised police operation that allows officers to engage in conduct that might otherwise be unlawful, for the purpose of obtaining evidence of criminal activity and/or to arrest perpetrators.²⁴² For example, a controlled operation can be put in place to allow undercover police officers to purchase illicit drugs or firearms from suppliers. This method could also be relied on in the circumstances described in this chapter to allow officers to help Paddle to engage in conduct that would constitute a breach of bail and to avoid arrest.

Later that day at 5.25 pm, “Paddle was further advised that Controlled Operation applications were being made and that [NSWCC Investigations Manager] would have to brief him about his role”.²⁴³ The NSWCC Investigations Manager gave Paddle a mandatory controlled operation briefing at 7:34 pm that evening.²⁴⁴

The NSWCC Investigations Manager formally applied for the controlled operation on 20 August 1999. The application stated that the ‘Object’ of the controlled operation was: “To counsel and procure Informant Paddle to breach conditions imposed by section 36 of the Bail Act (NSW)”. The period sought was three months. Bradley granted the application the same day.²⁴⁵

²³⁴ NSWCC, *Informant Contact Advice Report*, Contact by Haywood and [officer] with informant Paddle, 17 August 1999.

²³⁵ NSWCC Information Report, *Meeting with Paddle 17 August, 1999*, reporting officer: Haywood, 17 August 1999.

²³⁶ NSWCC, *Informant Contact Advice Report*, Contact by Haywood and [officer] with informant Paddle, 18 August 1999; NSWCC Information Report, *Contact with Paddle 18 August, 1999*, reporting officer: Haywood, 18 August 1999.

²³⁷ NSWCC, *Informant Contact Advice Report*, Contact by Haywood and [officer] with informant Paddle, 18 August 1999.

²³⁸ NSWCC Information Report, *Contact with Paddle 18 August, 1999*, reporting officer: Haywood, 18 August 1999.

²³⁹ NSWCC, *Informant Contact Advice Report*, Contact by Haywood and [officer] with informant Paddle, 18 August 1999.

²⁴⁰ NSWCC Information Report, *Contact with Paddle 18 August, 1999*, reporting officer: Haywood, 18 August 1999.

²⁴¹ NSWCC Information Report, *Contact with [Paddle and his son] on Friday 20 August, 1999*, reporting officer: Boyd-Skinner, 30 August 1999, p. 1.

²⁴² *Law Enforcement (Controlled Operations) Act 1997* (NSW).

²⁴³ NSWCC Information Report, *Contact with [Paddle and his son] on Friday 20 August, 1999*, reporting officer: Boyd-Skinner, 30 August 1999, p. 1.

²⁴⁴ NSWCC Information Report, *Contact with [Paddle and his son] on Friday 20 August, 1999*, reporting officer: Boyd-Skinner, 30 August 1999, p. 2.

²⁴⁵ NSWCC application for authority to conduct a controlled operation, CO99/12, 20 August 1999; NSWCC authority to conduct a controlled operation, CO99/12, dated 20 August 1999; NSWCC Chief Executive Officer’s record of reasons for grant of authority to conduct a controlled operation, CO99/12, 20 August 1999.

It is relevant at this point to deal with a submission from the NSWPF that a controlled operation could not apply to the proposed conduct – and, by implication, that police could not be criticised for not applying earlier for a controlled operation. The NSWPF submitted that a controlled (or authorised) operation could only authorise conduct that would otherwise be unlawful or an offence. This was because of the following words in section 16 of the *Law Enforcement (Controlled Operations) Act 1997* (NSW)²⁴⁶ (the CO Act) – “an activity that is engaged in by a participant in an authorised operation ... is not unlawful, and does not constitute an offence or corrupt conduct, so long as it is authorised by, and is engaged in accordance with, the authority for the operation”. The submission goes on to note that breaching of a bail condition is not a criminal offence,²⁴⁷ and nor – it was submitted – is it unlawful conduct. The *Bail Act 1978* defined bail at the time as “authorisation to be at liberty under this Act instead of in custody”.²⁴⁸

The meaning of the term ‘unlawful’ is discussed in Chapter 2, in relation to the use of the term ‘unlawful conduct’ in section 122(1)(c) of the Police Act. The Police Act distinguishes between conduct that is unlawful, corrupt or an offence. In that context, as Chapter 2 explains, ‘unlawful’ should be defined broadly to cover conduct that contravenes a legal rule or direction – such as disobeying or failing to comply with the order or direction of a court.

It seems appropriate to give the term unlawful the same broad meaning in section 16 of the CO Act. That section (quoted above) uses similar language to section 122 of the Police Act in drawing a distinction between conduct that is unlawful, corrupt or an offence. The submission of the NSWPF is therefore not accepted. An authorised (or controlled) operation was an appropriate procedure to be adopted for deploying Paddle to breach a bail condition and disobey the order of a court.²⁴⁹

Additional support for the view that such conduct is otherwise ‘unlawful’ can be found in the words used in the application for the controlled operation relating to Paddle – “To counsel and procure Informant Paddle to breach conditions imposed by section 36 of the Bail Act (NSW)”. It was also the intention of police to rely on the controlled operation to help Paddle to evade arrest by NSW police officers who were enforcing the lawful orders of the court. Conduct of that kind, undertaken without the support of a controlled operation, might be seen as corrupt and potentially criminal conduct.

Coffs Harbour police were unaware that a controlled operation was authorised on 20 August 1999 and they continued to search for Paddle during this period to arrest him for the bail breach. An Information Report on 1 September 1999 detailed the contact between Paddle and his handlers. The report recorded that Paddle informed either Constable Rohan Cramsie (a Mascot investigator) or Boyd-Skinner that when he reported on bail at Macksville (by telephone) the police officer he spoke to asked for his current address. Paddle told him that it was an address in the Macksville area,²⁵⁰ to which the officer apparently replied: “We believe that’s not your address, are you there now?” Paddle informed the police officer that he was in Sydney with his son and staying at his son’s address in Randwick. No further notation about Paddle’s bail was made in the Information Report. On 4 September 1999, Paddle was arrested and was ultimately brought before the District Court in Coffs Harbour on 23 September 1999.

Throughout this period when Paddle was being relocated to various premises, the NSWCC paid his expenses and rent (including bond). They also paid for furniture for the Randwick premises.²⁵¹

In his evidence to Operation Prospect, Paddle stated that when the arresting officers arrived at his premises in Randwick they told him that he was arrested for breach of bail and he seemed to recall that it was because he had not disclosed his change of address.²⁵² He commented in evidence that he “wasn’t shocked” when arrested, because “I had given my address over the phone to an officer that I was supposed to report to over

246 NSWPF, Submissions in reply, 20 August 2015, p. 4.

247 NSWPF, Submissions in reply, 20 August 2015, p. 4.

248 *Bail Act 1978*, (repealed) s. 4.

249 See also *R v Dalton* [2005] NSWSC 137 in which there are comments intimating that a controlled operation is not limited to situations where criminal conduct is in contemplation.

250 NSWCC Information Report, *Meeting with Informant PADDLE Wednesday 1st September, 1999*, reporting officer: Cramsie, 2 September 1999, p. 1.

251 NSWCC, *Informant Management file (Paddle) 1999-2001*, Payment History, pp. 4-7.

252 Ombudsman Transcript, [Paddle], 7 July 2014, p. 30.

the phone". He was asked if he regretted that afterwards and he stated "no, I felt comfortable about it, but I was chastised over it by the officers who were looking after me at the time". He was asked if the person who chastised him was Boyd-Skinner and he replied "I believe so, yes". He could not remember anyone else who chastised him.²⁵³

14.6.6 Analysis

By June 1999 Paddle indicated to the NSWCC that he had information about serious crimes that was unrelated to the conduct of the officers who had arrested him and Mr O and Mr M in 1994. Paddle was considered a valuable resource, and Boyd-Skinner and Standen urged Paddle to provide an induced statement to the NSWCC about these serious crimes. During the discussions with Paddle, Boyd-Skinner became aware on 1 July 1999 that Coffs Harbour police were intending to arrest Paddle for breaching his bail on 5 and 24 May 1999 by approaching Mr A at the direction of Mascot investigators. On the same day, Boyd-Skinner formed the view that Paddle's imminent arrest presented an immediate risk to NSWCC investigations and to Paddle, and that this warranted the immediate relocation of Paddle from his home in regional NSW to covert temporary accommodation in southern Sydney. After staying in temporary accommodation at two covert locations, Paddle and his son were placed in medium term accommodation in Randwick.

Throughout this period, Paddle's bail conditions included that he live at a specific address in regional NSW, that he telephone the Macksville Police Station once each week, and that he advise the police within 24 hours of any change of residential address.²⁵⁴

Boyd-Skinner was Paddle's handler and main point of contact. Generally, all telephone conversations were directly between Boyd-Skinner and Paddle. Boyd-Skinner was the only officer consistently present at the meetings with Paddle at various locations during this period. He had direct knowledge of Paddle's bail conditions (see 14.5.3, 14.5.5 and 14.5.7.2) and that police were trying to locate and arrest him. This was shown in the following documents:

- the CAR and Information Report by Boyd-Skinner about contact with Paddle on 1 July 1999, which noted that police intended to arrest Paddle/revoke bail
- Boyd-Skinner's statement, in a record of interview with Paddle on 3 July 1999, that he had advised Paddle on 1 July that police intended to revoke Paddle's bail
- operational orders dated 7 July 1999, which contained information provided by Boyd-Skinner that police were looking for Paddle to arrest him
- Information Reports about contact with Paddle on 3 August 1999 (stating that Paddle told Boyd-Skinner over the telephone that police went to his property and left notes) and 9 August 1999 (stating that Paddle was concerned with police attention on the north coast).

There is no Mascot record to indicate that Boyd-Skinner turned his mind in the period 1 July to 20 August 1999 to the effect and consequences of these arrangements for Paddle. Specifically, there is no record to indicate that Boyd-Skinner turned his mind to the fact that Mascot investigators were placing Paddle in breach of his bail conditions, and that the assistance they were giving him to avoid being located and arrested by Coffs Harbour police may constitute an offence. There is no evidence in any Mascot record of a risk assessment being done or contemplated. Boyd-Skinner did not make any submission on those issues to Operation Prospect.

²⁵³ Ombudsman Transcript, [Paddle], 7 July 2014, p. 29.

²⁵⁴ Supreme Court of NSW, bail Order, Dunford J, June 1994; District Court of NSW, Notice of Continuance of Bail pursuant to section 34(1) of the Bail Act, 21 May 1999.

It is reasonable to infer from these matters that Boyd-Skinner acted intentionally to conceal Paddle's location from NSWPF officers from the Coffs Harbour command. Boyd-Skinner advised Paddle of this intention during his recorded interview on 3 July 1999, and it was noted in a number of reports written by Boyd-Skinner. In the interview on 3 July, Boyd-Skinner asked Paddle if he agreed that he had been placed in a covert location "until we can assess any risk involved in terms of your safety ... and our investigation".²⁵⁵ Paddle responded in the affirmative. When prompted by Boyd-Skinner, Paddle expressed his concern that MSO4 may cause his bail to be revoked, and that his safety may be at risk from arresting officers against whom he had made allegations to the NSWCC.

Another officer, Haywood, was also directly involved after 11 August 1999 in helping Paddle to find medium term accommodation in Randwick. Haywood was aware (at least by 16 August 1999) that Paddle's bail conditions were being breached and (at least by 18 August 1999) that other police officers were trying to locate Paddle to arrest him for an earlier breach of bail. On 17 August 1999, Haywood encouraged Paddle to contact his solicitor to apply to the court to alter his bail condition, and to proffer the false explanation that Paddle's mother's house was his base but he would be in Sydney seeking work on a regular basis.

Two other officers, McFadden and Moore, met Paddle in the early part of July with Boyd-Skinner. Moore was present at the 3 July 1999 interview with Paddle and would have heard the question and answer about the emergency relocation of Paddle and the fact that Coffs Harbour police were intending to arrest him. However, Moore did not have an ongoing involvement in managing Paddle and the only other meeting he attended with Boyd-Skinner and Paddle was on 7 July 1999. There is no report from that meeting of any discussion of bail issues or of police trying to locate Paddle. Moore may have understood from a comment at the meeting on 3 July 1999 that a risk assessment would be done, but the responsibility for doing so would rest with Boyd-Skinner as Paddle's handler. There is no evidence that Moore was aware of Paddle's specific bail conditions. No individual finding is made against Moore for Paddle's relocation in the period 1 July to 19 August 1999.

McFadden helped Boyd-Skinner to relocate Paddle on 1 July 1999. He was present at a meeting with Paddle on 7 July 1999 but there is no record of any discussion of the bail conditions or police seeking Paddle at that meeting. McFadden had contact with Paddle on 9 July 1999, primarily to relocate Paddle and his son to different accommodation. McFadden was present at a meeting with Boyd-Skinner and Paddle on 14 July, but again there is no specific mention of bail or police seeking to arrest Paddle. After that, McFadden played no part in the investigation. He was also an officer from IA/SCIA not a Mascot officer, and other records indicate that McFadden was not informed of all Mascot strategies (see 14.6.2). No individual finding is made against McFadden for Paddle's relocation in the period 1 July to 19 August 1999.

The NSWCC Investigations Manager was appointed Paddle's handler to replace McFadden on 20 July 1999. There is a record of some contact between the Investigations Manager and Paddle after that date, at a time when steps were being taken to find medium term accommodation for Paddle in Randwick. However, the records suggest that the NSWCC Investigations Manager met with Paddle only when a briefing or debriefing for a controlled operation was required. There is no direct evidence that he was aware of Paddle's bail condition or that police were seeking to arrest Paddle until the Investigations Manager became involved with the controlled operation. He is recorded as the officer who applied for the controlled operation and briefed Paddle on the application when Paddle moved to Randwick. There is insufficient evidence to conclude that the Investigations Manager acted wrongly and no individual finding is made against him.

The first date on which Mascot officers considered changing their approach to managing and relocating Paddle appears to be 16 August 1999 when there is mention of a controlled operation. This was in the context of Paddle voicing his concern about complying with his bail conditions. An application for a controlled operation was made and granted on 20 August 1999.

²⁵⁵ NSWCC, Record of interview between Detective Sergeant Boyd-Skinner and [Paddle], 3 July 1999, p. 4.

14.6.7 Findings

51. Boyd-Skinner

Boyd-Skinner's conduct in the relocation of Paddle may be conduct of a police officer that constitutes an offence in terms of section 122(1)(a) of the *Police Act 1990*. The relevant offence is the "General offence of perverting the course of justice" in section 319 of the *Crimes Act 1900*. That offence is defined in section 312 of the *Crimes Act 1900* as referring to "obstructing, preventing, perverting or defeating the course of justice or the administration of the law". As discussed in section 14.6.6, Boyd-Skinner was aware that NSW Police Force officers were searching for Paddle to arrest him for breaching his bail conditions on two occasions in May 1999 by approaching Mr A. Boyd-Skinner actively facilitated Paddle's relocation to avoid apprehension.

52. Haywood

Haywood's conduct in the relocation of Paddle may be conduct of a police officer that constitutes an offence in terms of section 122(1)(a) of the *Police Act 1990*. The relevant offence is the "General offence of perverting the course of justice" in section 319 of the *Crimes Act 1900*, as further defined in section 312 of the *Crimes Act 1900*. As discussed in section 14.6.6, Haywood was aware that NSW Police Force officers were searching for Paddle to arrest him for breaching his bail conditions on two occasions in May 1999 by approaching Mr A. Haywood advised Paddle to give false instructions to his solicitor for the purposes of a submission to the court.

53. NSW Crime Commission

The NSW Crime Commission is responsible for the actions of members of the Mascot Task Force in relocating Paddle to covert accommodation to avoid his apprehension by NSW Police Force officers for having breached his bail conditions on two occasions by speaking to Mr A on 5 and 24 May 1999. The relocation of Paddle was also in breach of his bail conditions and may have constituted an offence by Mascot officers.

Paddle was registered as a NSW Crime Commission Informant in April 1999 with the knowledge of at least two senior officers – Bradley and Standen. The NSW Crime Commission was responsible for the Mascot reference and for supervising members of the Mascot Task Force. To that extent, the NSW Crime Commission failed to implement its own policies, practices and procedures in conducting the Mascot reference and managing the informant Paddle.

The conduct of the NSW Crime Commission in the deployment of Paddle as a NSW Crime Commission informant in breach of his bail conditions was unreasonable and otherwise wrong in terms of section 26(1)(b) and (g) of the *Ombudsman Act 1974*.

14.7 Allegations that the homicide of Mr Robert Jones was not properly investigated

14.7.1 Allegations made to Operation Prospect

Between 1999 and 2001 Paddle provided assistance to Mascot investigators in relation to a number of covert investigations into serious criminal offences. The most serious offence involved the homicide of Mr Robert Jones in July 1995, during an attempted armed robbery of an armoured security van. Mascot investigators and SCIA became involved in June 1999 in investigating the Jones homicide.

Operation Prospect received two complaints alleging that SCIA officers working with the NSWCC failed to properly investigate the Jones homicide because they wanted to continue to use Paddle as an informant. Mr O, Mr M and Paddle were suspected of being involved in Mr Jones's death. The allegation received by Operation Prospect was that SCIA did not properly pursue the investigation into these people.

Operation Prospect found no evidence to support the allegation of failure by Mascot officers to investigate the Jones homicide. This section briefly records the homicide and previous NSWPF investigations, including the work of NSWPF officers attached to the NSWCC.

Paddle's assistance to investigators about this offence occurred around the same time as Mascot investigators were relocating Paddle to avoid him being arrested for breach of bail (see 14.6). Paddle had also requested a reward on 12 July 1999 for providing information about the Jones homicide.²⁵⁶

14.7.2 Homicide of Mr Jones on 25 July 1995

On 25 July 1995 three men – including Mr Jones – were working for Brambles Security Services Ltd carrying out collection and delivery duties at banks in a shopping area in Miranda, Sydney. While Mr Jones was keeping guard at the rear of the armoured van, an offender armed with a shotgun appeared from the fire doors of the nearby Westfield shopping centre and confronted Mr Jones.²⁵⁷ There was an exchange of gunfire and Mr Jones was shot once at close range and fatally wounded. He was aged 34 years. The offender ran from the scene.²⁵⁸ In 1997 the NSW Government offered a \$100,000 reward for information leading to the arrest and conviction of people involved in Mr Jones's death.²⁵⁹

14.7.3 NSWPF investigations into the homicide

The homicide sparked two NSWPF investigations. The first was Strike Force Redbud – established by the Miranda LAC with the Homicide Unit, Major Crime Squad South. Redbud operated from 1998-1999. Operation Prospect received evidence that Paddle had been the main Redbud target as early as 1998, and possibly earlier.²⁶⁰ The NSW investigation actively targeted Paddle and two other suspects. Apart from information police obtained from an informant in 1995, there was no forensic evidence found to link them to Mr Jones's death. The informant had outlined a conversation he had with Paddle about a bungled armed robbery attempt in a Sydney shopping centre where a security guard was shot.²⁶¹ No-one was charged as a result of the Redbud investigation.²⁶²

In June 1999 Strike Force Legend was established by the Bankstown LAC with the Violent and Major Offenders Unit, Crime Agencies, NSWPF.²⁶³ Legend initially investigated other serious criminal offences that resulted in three people being charged with numerous armed robberies and the attempted murder of a police officer. Legend suspected the three accused were also responsible for the homicide of Mr Jones. The accused were "habitually involved in armed robberies including those committed upon Brambles guards", and one of them had been arrested in September 1999 with a shortened shotgun similar to that used to shoot Mr Jones.²⁶⁴ However, Legend had no direct evidence linking the three accused to the Jones homicide.

14.7.4 NSWCC investigation of the homicide

Between July 1999 and late 2001 officers attached to SCIA investigated Mr Jones's death under the NSWCC reference 'Oberon II', which was established to investigate two homicides and other serious criminal activity.

As detailed in section 14.4, Paddle was registered as an informant with the NSWCC in April 1999 and helped Mascot and other investigators with a number of investigations into serious criminal activity. Paddle also provided assistance to investigators under Oberon II.

256 NSWCC, Operation Storm Chronology Listed printed 12 November 1999.

257 NSWPF, Statement of Police, Detective Chief Inspector [name], 22 June 2009, p. 2.

258 NSWPF, Statement of Police, Detective Chief Inspector [name], 22 June 2009, p. 2.

259 Letter from [DPP], Office of the Director of Public Prosecutions to the Hon. J. Hatzistergos MLC, Attorney General, 4 September 2008, p. 2.

260 Statement of Information (Interview), Detective Chief Inspector [name], 15 April 2016, p. 18.

261 Statement of Information (Interview), Detective Chief Inspector [name], 15 April 2015, p. 19.

262 NSWCC internal memorandum from Senior Sergeant [a senior Mascot investigator], 9 July 2000.

263 NSWCC internal memorandum from Senior Sergeant [a senior Mascot investigator], 9 July 2000, p. 1.

264 NSWCC internal memorandum from Senior Sergeant [a senior Mascot investigator], 9 July 2000, p. 2.

14.7.4.1 Paddle's involvement as an informant in the homicide

In June 1999 the Assistant Director of the NSWCC and a SCIA officer offered to make an application for immunity from prosecution under Oberon II to secure Paddle's continued cooperation as an informant.²⁶⁵ On 2 July 1999, Paddle met with officers to discuss making an induced statement.²⁶⁶ On 3 July 1999, he admitted his involvement in the Jones homicide and named two co-offenders – Mr M (who was involved in the 1994 attempted armed robbery) and Mr CC.²⁶⁷

On 14 July 1999 Paddle took part in an electronically recorded interview in which he detailed his involvement in the Jones homicide.²⁶⁸ Paddle nominated Mr M and Mr CC as being present at the murder, as well as three others who provided stolen vehicles for the robbery and other assistance.

The following day investigators held a re-enactment at the scene of the crime with Paddle. They found that his version of events precisely matched the evidence found at the crime scene and of the two witnesses who observed the shooting of Mr Jones.²⁶⁹ Paddle then signed an induced statement about his involvement in the homicide.²⁷⁰

On 24 August 1999 Operation Storm was established under Oberon II to investigate the Jones homicide. Storm was staffed by police officers from both the NSWPF Special Crime Unit (SCU) and the NSWCC, under the command of Dolan.²⁷¹ Storm investigators learned that the three suspects identified by Strike Force Legend were about to be charged with the Jones homicide. Paddle's evidence to the NSWCC was that they were not involved. As soon as this was established (in August 1999), the NSWCC confidentially informed the Violent and Major Offenders Unit in Bankstown LAC that it would be inappropriate to proceed with the charges against the three suspects.²⁷²

In September 1999 Paddle was deployed while wearing a LD to talk to one of the people he said was his co-offender. The use of the device was authorised by warrant, but nothing specific about the death of Mr Jones was discussed in the recorded conversation.²⁷³ Operation Storm investigators recovered a portion of a shotgun barrel in February 2000 but it did not match the ballistic evidence recovered from the scene of the homicide.²⁷⁴

Also in September 1999 Paddle was arrested for breach of his bail conditions relating to his approach to Mr A in a pawn shop in Kempsey in May 1999 (see 14.5) and appeared in the District Court on 23 September 1999.

14.7.4.2 Paddle's immunity from prosecution

In late 2001 after a full review of the information gathered during Operation Storm, an application for immunity from prosecution was prepared on behalf of Paddle by a SCIA officer.²⁷⁵ The immunity covered the Jones homicide and two other armed robberies. The application included evidence that Paddle had conducted surveillance on the drivers of the armoured vehicle in the days before the shooting, he provided Mr M with the shotgun used to kill Mr Jones, he drove Mr M to and from the crime scene, heard the shot that killed Mr Jones, put the safety catch on the shotgun after the shooting and unloaded the firearm. The application prepared by SCIA was never sent to the ODPP or the Attorney General for processing. Operation Prospect has not been able to establish why this application for immunity was not progressed.²⁷⁶

265 NSWPF, Statement of Police, Detective Chief Inspector [name], 22 June 2009, p. 26.

266 NSWPF, Statement of Police, Detective Chief Inspector [name], 22 June 2009, p. 26.

267 NSWPF, Statement of Police, Detective Chief Inspector [name], 22 June 2009, p. 27.

268 NSWCC Operation Storm Chronology Listing, Document ID 182-184, 12 November 1999, p. 3.

269 NSWPF, Statement of Police, Detective Chief Inspector [name], 22 June 2009, p. 37.

270 NSWPF, Statement of Police, Detective Chief Inspector [name], 22 June 2009, p. 40.

271 NSWCC internal memorandum from Senior Sergeant [a senior Mascot investigator], 9 July 2000.

272 NSWCC internal memorandum from Senior Sergeant [a senior Mascot investigator], 9 July 2000.

273 NSWPF, Statement of Police, Detective Chief Inspector [name], 22 June 2009, p. 6; LD warrant 316/1999.

274 NSWPF, Statement of Police, Detective Chief Inspector [name], 22 June 2009, p. 96.

275 NSWPF, Statement of Police, Detective Chief Inspector [name], 22 June 2009, p. 25.

276 Statement of Information (Interview), Detective Chief Inspector [name], 15 April 2016, pp. 16-27.

Prospect was also unable to find any final report or similar document for Operation Storm. No-one was charged in relation to the Jones homicide after the Storm investigation.²⁷⁷ After the NSWCC concluded their investigation into Mr Jones's death, it was handed over to the NSWPF Homicide Squad. One of the officers involved in Task Force Redbud also continued to work on the matter.

In February 2008 a police officer involved in the continued investigation of the Jones homicide made an application for indemnity to the DPP in relation to Paddle's involvement in the homicide. It was refused by the Attorney General.²⁷⁸

14.7.5 Conclusions about NSWCC investigation into the homicide

Operation Prospect found that Operation Storm's investigation into the Jones homicide was not compromised by other NSWPF investigations into allegations of police misconduct made by Sea and Paddle. It is clear that the investigations were occurring simultaneously. Paddle was not 'shielded' by Mascot investigators in the investigation of the Jones homicide. He was not charged in relation to the homicide because there was insufficient admissible evidence available to charge him.

On the evidence considered by Operation Prospect, the homicide of Mr Jones was thoroughly investigated by both the NSWCC and NSWPF. Although there were suspects (one who is now presumed dead), there was insufficient admissible evidence to charge anyone. There was no ballistic, fingerprint or forensic evidence to prove who was involved.²⁷⁹ There was circumstantial evidence linking Paddle and others to the crime, but it was not sufficient to charge any person.

As a result, there is no basis to make any findings or adverse comment against any person in this matter.

14.8 Instructions by Mascot officers resulting in Paddle committing perjury

14.8.1 Paddle arrested for breach of bail

On 4 September 1999 Paddle was arrested in Sydney for breach of bail in relation to his contact with Mr A on 5 and 24 May 1999 and for having moved residence without notifying police. He was taken to Maroubra police station, but released on the same day on his pre-existing bail conditions. This section outlines the details of contact and advice given to Paddle by Mascot officers between 15 September and 21 September 1999 about his expected appearance in the District Court on 23 September 1999. At this court appearance, Paddle misled the court by withholding certain information and providing other inaccurate information.

An Information Report recorded the telephone discussions with Boyd-Skinner on the day of arrest as follows:

- 11.40am *IN COMING CALL. PADDLE INFORMED BOY-SKINNER [sic] that he was being arrested and that he was told it was unlikely for him to be going to court today.*
- 11:45am *OUT GOING CALL. Paddle was informed to say nothing to the police and that legal advice would be arranged for him. PADDLE was advised to leave his phone at home.*
- 12:00pm *OUT GOING CALL. [Paddle's son] contacted and told not to discuss anything with PADDLE. He was told he may have to go to the police station to see PADDLE.*
- 12.14pm *IN COMING CALL. [Paddle's son] just checking number.*
- 12:30pm *OUT GOING CALL. [Paddle's son] advised to contact Maroubra and tell them that PADDLE was a suicide risk.*²⁸⁰

277 NSWPF, Statement of Police, Detective Chief Inspector [name], 22 June 2009, pp. 2 and 96.

278 NSWPF, Statement of Police, Detective Chief Inspector [name], 22 June 2009, p. 104.

279 NSWPF, Statement of Police, Detective Chief Inspector [name], 22 June 2009, p. 98.

280 NSWCC Information Report, *Contact by Dets BOYD-SKINNER and [Mascot Senior Constable] with PADDLE and [Paddle's son] regarding arrest of PADDLE 11.30am Saturday 4/9/1999*, reporting officer: [Mascot Senior Constable], 7 September 1999, p. 1.

The Information Report also recorded that Boyd-Skinner arranged for a solicitor, Terry Griffin,²⁸¹ to contact the police station about Paddle's bail conditions. Griffin did so and was informed that Paddle would be bailed to Waverley Local Court on 22 September 1999 on his pre-existing bail conditions.²⁸² The matter was transferred for relisting in the Coffs Harbour District Court. Paddle appeared in that court on 23 September 1999.

The day after Paddle's arrest on 4 September, a Mascot Senior Constable went to Paddle's home and, as well as adjusting LDs fitted there, collected a copy of the documents given to Paddle by police on his arrest – including a statement of the conditions of bail.²⁸³

An Information Report compiled by Burn on 7 September 1999 called 'DOCUMENTS RE THE CHARGING OF PADDLE ON 4/9/99' attached the documents that were given to Paddle when he was released. The report also attached the facts sheet and noted:

... re arrest of Paddle on 4/9/99 for breaching his bail, namely that on 5/5/99 and 24/5/99 Paddle approached the witness, [Mr A] contrary to his bail condition not to approach any person likely to be involved in his charge re the conspiracy to commit armed robbery in Coffs Harbour in 1994.

Other records attached included the charge sheets, bail determination, bail undertakings with conditions and custody management records.²⁸⁴

14.8.2 Mascot officers' instructions to Paddle about his court appearance

Before Paddle's court appearance at Coffs Harbour on 23 September 1999 about his bail conditions, Mascot investigators instructed him not to reveal the fact that he was wearing a LD when he approached Mr A in the pawn shop in May 1999. Details of the communications between Mascot officers and Paddle between 15 and 21 September 1999 are provided below.

14.8.2.1 Conversation on 15 September 1999

On 15 September 1999 there was a telephone discussion between Paddle and Boyd-Skinner. There are two Information Reports about this conversation in Mascot records – the first is unsigned and the second is signed by Boyd-Skinner.

The first (unsigned) Information Report records that Boyd-Skinner told Paddle that "the prosecution was trying to revoke or alter his bail conditions as a result of him approaching [Mr A] in May 1999 at Kempsey"²⁸⁵ and that "I further informed Paddle that his solicitor [name] wanted to disclose those facts and that I was against that course of action". The second (signed) Report records that Boyd-Skinner told Paddle that he:

*... had spoken to [Paddle's solicitor] and my understanding was that police involved wanted to change or revoke his bail ... I further explained that [Paddle's solicitor] wanted to disclose that he was wearing a listening device during an Internal Affairs investigation (targeting [Mr A]) and I advised against this indicating that I believe in [sic] may be a dangerous course of action. Paddle was told that he would have to attend court and not to agree to disclose his role in the investigation.*²⁸⁶

281 Terry Griffin worked in a Manly legal practice and had a working relationship with the NSWCC during this period. Mr Griffin was later appointed to the position of PIC Commissioner in 2001.

282 Facsimile from Solicitor Terry Griffin to Commissioner Phillip Bradley, NSWCC, 6 September 1999.

283 NSWCC Information Report, *Contact with Registered Informant 'Paddle' by [Mascot Senior Constable] Sunday 05.09.1999*, reporting officer: [Mascot Senior Constable], 6 September 1999.

284 NSWCC Information Report, *Documents re The charging of Paddle on 4/9/99*, reporting officer: Burn, 7 September 1999.

285 NSWCC Information Report, *Telephone contact with Informant Paddle on Wednesday 15 September 1999*, reporting officer: Boyd-Skinner, 17 September 1999.

286 NSWCC Information Report, *Telephone contact with Informant Paddle on Wednesday 15 September 1999*, reporting officer: Boyd-Skinner, 18 October 1999.

14.8.2.2 Conversations on 16 September 1999

On 16 September 1999 there were five telephone discussions between Paddle and Boyd-Skinner. There are two Information Reports about those conversations – the first is unsigned and the second is signed by Boyd-Skinner.

The unsigned Information Report prepared on 17 September 1999 referred to the five conversations between Boyd-Skinner and Paddle on 16 September 1999 – at 9:55 am, 11 am, 1:15 pm, 3:55 pm and 4:42 pm.²⁸⁷ Four of those calls specifically concerned keeping the covert nature of the operation hidden during Paddle's upcoming court appearance:

...

11AM IN CALL

Paddle advised I was waiting for information from Mr O'Connor and Mr Bradley as to the course of action for the upcoming call over.

1.15PM OUT CALL

Paddle advised I had just spoken to [Paddle's Solicitor]. I clearly informed Paddle that he is to instruct [his Solicitor] not to disclose the fact that he was wearing a Δj or involved in an operation during May with Internal Affairs which is when it is alleged he breached bail by approaching a crown witness. Paddle indicated he is confused about the situation and will need advice.

3.55 PM OUT CALL

Paddle advised that [his Solicitor] is less than cooperative. He was also directed to advise [his Solicitor] about his arrest at [Randwick address] re bail Discussed [Paddle's Solicitor] intention to adjourn the matter to Thursday 23 September 1999 at Coffs Harbour DC. Paddle indicated he would ring [his Solicitor].

4:42 PM OUT CALL

Paddle advised he had spoken to [his Solicitor] and was told that instructions would be provided to him the following day. Paddle was told that under no circumstances should he disclose to the court or any public forum that he was wearing a listening device when he approached [Mr A] nor that he was acting under my instructions. Paddle was told that if he breached those instructions we could not be held responsible for his safety. Paddle stated he understood the instructions.

The second Information Report was compiled on 18 October 1999²⁸⁸ and signed by Boyd-Skinner. It documented the same telephone conversations, but in slightly different terms to the unsigned report of 17 September.²⁸⁹ There were the following differences in the signed October report:

- 11 am call: there is no reference in the October Report to O'Connor and Bradley, and it refers instead to Boyd-Skinner "awaiting management to resolve a measure to address the court matter".
- 1.15 pm call: the reference in the September Report to Paddle being "clearly informed" is replaced with a reference to him being "directed"; and the October Report contains the following additional sentences in the record of conversation:

If his bail was revoked I undertook to disclose the information however if the bail was altered I suggested it might be a better course of action to accept the alterations. I stated that disclosure of that information could be dangerous and could pose a threat to Paddle. Legal procedures were discussed and Paddle stated that he was confused.

- 4.42 pm call: the comment in the September report that "we could not be held responsible for his safety" should Paddle or his lawyer disclose that he was wearing a listening device under Boyd-Skinner's instructions, was annotated as "Direction from Supt Dolan".

287 NSWCC Information Report, *Telephone contact with Informant Paddle on Thursday 16 September 1999*, reporting officer: Boyd-Skinner, 17 September 1999.

288 NSWCC, Information Report, *Telephone contact with Informant on 16 September 1999*, reporting officer: Boyd-Skinner, 18 October 1999.

289 NSWCC, Information Report, *Telephone contact with Informant on 16 September 1999*, reporting officer: Boyd-Skinner, 18 October 1999.

14.8.2.3 Conversation on 17 September 1999

A CAR signed by Cramsie and Haywood records they met with Paddle at his house at 3.03 pm on 17 September 1999.²⁹⁰ The associated Information Report stated that they discussed with Paddle his appearance in the Coffs Harbour District Court the following week (the Report erroneously records that the meeting occurred on 20 rather than 17 September). The Report recorded:

Paddle was informed that we had instructions which had been drafted for him to give to Solicitor in the way he was to act for Paddle. The instructions were based on his solicitor not divulging to the court that when he attended the pawn shop in Kempsey that he had been 'wired up'. Paddle stated that he was of the opinion that the people involved already knew that he was 'wired up' so he could not understand the need to hide such a fact. He also stated that he was unsure who was actually heading the investigation any more whether it was Internal Affairs based or the New South Wales Crime Commission and inquired where [the NSWCC Investigations Manager] was and that he hadn't seen him for a while. Paddle stated that he was not allowed to be involved in making any decisions...Paddle showed further dissatisfaction with having police apart from Detective Boyd-Skinner coming to see him as anyone apart from him, noone knew the entirety of what was happening – Paddle stated he wanted police who knew the situation from "A-Z".

Detective Haywood Contact Detective Boyd-Skinner regarding Paddle's dissatisfaction.

Whilst Detective Haywood was absent – Paddle discussed the charges which he was due to attend Waverley Local Court on Wednesday the 22nd September, 1999...

...Detective Haywood returned from speaking with Detective Boyd-Skinner and further discussions took place about what Paddle should instruct his defence solicitor in the matters in Coffs Harbour...

...Paddle was of the opinion that the main reason that the police did not want him to disclose to anyone regarding him being 'wired up' was that it was a mistake on behalf of the police in the first place and it was matter of the police involved trying to ensure that that 'mistake' was not revealed. Paddle was informed that we were passing a message on to him what we had been instructed to and believed that it was matter of safety for him not to reveal his involvement with Internal Affairs.

Paddle was informed that he needed to:

A) Inform [his Solicitor] about not disclosing the fact regarding wearing a Listening Device....²⁹¹

The Information Report records that Haywood and Cramsie emphasised to Paddle that he should complete the letter of instruction to his lawyer and ensure it was provided or faxed to his solicitor before his court appearance. It then records:

Paddle was prompted of what to include in a letter to [his solicitor] and drafted the following letter to him.

Dear [name of Solicitor],

In relation to my court appearance next week, re: court matter on Monday 20th and Wednesday 23rd September, I wish you to address the following issues.

- (1) under no circumstances are you to disclose to the court or any person the fact that I was working with Internal Affairs when I went to a Pawn broker and to approach [Mr A].*

...

- (3) The reason to me going to Kempsey Pawn Brokers office was to perform a legitimate business transaction.²⁹²*

²⁹⁰ NSWCC, *Informant Contact Advice Report*, Contact by Cramsie and Haywood with informant Paddle, 17 September 1999 (15:03), (signed 20 September 1999).

²⁹¹ NSWCC Information Report, *Meeting with [Paddle and his son] by Detective Haywood and Cramsie on Friday 20 September, 1999. Coffs Harbour Court Appearance discussed*, reporting officer: Cramsie, 20 September 1999, pp. 1-3.

²⁹² NSWCC Information Report, *Meeting with [Paddle and his son] by Detective Haywood and Cramsie on Friday 20 September, 1999. Coffs Harbour Court Appearance discussed*, reporting officer: Cramsie, 20 September 1999, p. 3.

14.8.2.4 Conversation on 21 September 1999

Boyd-Skinner had contact with Paddle on 21 September 1999 that he recorded in an Informant CAR. It reads: "Discussed trip to Coffs Harbour re: bail review. [Paddle's solicitor] instructed not to disclose LD ... DBS to contact [Paddle's solicitor]".²⁹³ The associated Information Report prepared by Boyd-Skinner noted: "I confirmed that [Paddle's] lawyer [name] had been instructed not to disclose the IA operation listening device ... I indicated I would speak further with [Paddle's solicitor]".²⁹⁴

It appears that Boyd-Skinner also spoke with Burn about Paddle on the same day, as noted in her Duty Book.²⁹⁵ The Duty Book entry does not indicate what the conversation was specifically about, and neither Boyd-Skinner nor Burn could recollect the content of the discussion.²⁹⁶

14.8.3 Paddle's evidence to the District Court in September 1999

On 23 September 1999 Paddle appeared before the District Court in Coffs Harbour for a review of his bail conditions. The transcript of proceedings records the following evidence given by Paddle that is consistent with the advice and instructions he was given by Boyd-Skinner:

Q: *Can I turn now to the visit to the pawn broking shop in Kempsey. On the first occasion that you went to the pawn broking shop did you take something with you?*

A: Yes.

Q: *What did you take with you?*

A: *I took a video player.*

Q: *And what did you take that with you to the pawn broking shop for?*

A: *To pawn it for some money. I had to travel up here for reporting etc and needed some money at the time.*²⁹⁷

...

Q: *Now Mr [Paddle] when you went to the pawn shop can you tell us what was displayed out the front in terms of identifying who was the owner?*

A: *I didn't take any notice. I actually went to the front of the shop first thinking it was all just the one place ... I'd seen it driving past a heap of times when I'd go to Kempsey and do shopping etc. ...*

Q: *Could you just tell us then what happened when you went into the shop who you spoke to?*

A: *I spoke to the gentleman behind the counter, and I also spoke to [Mr A].*

Q: *Can you recall the conversation you had with [Mr A]?*

A: *I do recall some of the conversation yes I ---*

Q: *Would you please tell us those pieces which you recall please?*

A: *I asked [Mr A] whether he remembered me. I asked him I believe whether he intended – or whether he was still a part of the charges pending against me – and whether he had been called as a witness or knew anything about what was happening with the court case. Just a general type of – I didn't realise he had left the police force at that stage. And – and it was as much of a surprise for me to see him there as for him to see me I guess.*²⁹⁸

293 NSWCC, *Informant Contact Advice Report*, Contact by Boyd-Skinner with informant Paddle, 21 September 1999 (12:10 pm).

294 NSWCC Information Report, *Telephone Contact with Informant Paddle on Thursday 21 September 1999*, reporting officer: Boyd-Skinner, 22 November 1999.

295 NSWPF, Duty Book, D37833, Catherine Burn, 21 September 1999.

296 Ombudsman Transcript, Darren Boyd-Skinner, 11 July 2014, p. 369; Ombudsman Transcript, Catherine Judith Burn, 15 July 2014, p. 629.

297 *R v [Paddle]* (unreported), District Court of NSW Criminal Jurisdiction, Judge Twigg QC, 23 September 1999, pp. 4-5.

298 *R v [Paddle]* (unreported), District Court of NSW Criminal Jurisdiction, Judge Twigg QC, 23 September 1999, pp. 5-6.

Paddle further stated in evidence to the court that he told Mr A at the first meeting on 5 May 1999 that he would be back for the video player he had pawned. He returned on 24 May 1999 and again spoke to Mr A, as recounted in Paddle's evidence to the Court:

...there were a couple of things we spoke about on the first occasion that were bothering me at the time and I wanted to clarify with him from the previous conversation, but I don't remember exactly what those things were now, and he more or less, as he said earlier, was too busy to talk. So it was all very – over and done with very quickly...²⁹⁹

Under cross-examination by the Crown Prosecutor, Paddle agreed that his visit to and conversation with Mr A was in breach of a bail condition:

Q: *And the fact is that you approached [Mr A] knowing that he was an important witness for the prosecution in the trial, correct?*

A: Yes

Q: *And although you were in the store to pawn a video on that day, there was no need for you to go into any discussion about the case with him was there?*

A: No.³⁰⁰

The Court decided to continue Paddle's bail, with a varied condition requiring him to live at the Randwick address (the residence he was sharing with his son). The Notice of Continuance of Bail required Paddle to advise police in writing of any change of address, including a temporary change of address.³⁰¹

14.8.4 Evidence to Operation Prospect on the instructions to Paddle about his Court appearance

The following section discusses the evidence given to Operation Prospect by five NSWCC officers about their role in or recollection of circumstances leading up to the false evidence that Paddle gave to the Coffs Harbour District Court on 23 September 1999. Those officers are Boyd-Skinner, Cramsie, Haywood, Burn and Bradley. Another officer, Dolan, was examined by Operation Prospect about these matters but could not provide any reliable evidence. Section 14.8.4.6 discusses the evidence given to Operation Prospect by the Crown Prosecutor in Paddle's matter.

14.8.4.1 Boyd-Skinner's role and recollection

Boyd-Skinner told Paddle on three occasions – that are documented in Mascot records – that neither he nor his solicitor should reveal to a court that Paddle was either wearing a 'wire' or visited Mr A's pawn shop as part of a covert investigation. Those three occasions were 15, 16 and 21 September 1999. There was also a telephone conversation between Boyd-Skinner and Haywood on 17 September 1999 about the instructions Paddle should give to his solicitor. After this, Haywood and Cramsie instructed Paddle to inform his solicitor not to disclose to the Court that Paddle had been wearing a LD when he entered Mr A's pawnshop.

Boyd-Skinner told Operation Prospect he did not have any recollection of the phone calls between Paddle and himself during Paddle's arrest on 4 September 1999, nor of organising a solicitor (Griffin) for Paddle.³⁰² Boyd-Skinner acknowledged that it was likely he had prepared the unsigned Information Report about the telephone discussion between him and Paddle on 15 September 1999.³⁰³ When asked any question about what he said to Paddle during the telephone discussion, he relied on the privilege against self-incrimination to decline to answer.³⁰⁴

299 *R v [Paddle]* (unreported), District Court of NSW Criminal Jurisdiction, Judge Twigg QC, 23 September 1999, p. 7; Ombudsman Transcript, [Crown Prosecutor] 8 July 2014, p. 159.

300 *R v [Paddle]* (unreported), District Court of NSW Criminal Jurisdiction, Judge Twigg QC, 23 September 1999, p.8.

301 District Court of NSW, Notice of Continuance of Bail pursuant to section 34(1) of the Bail Act, 23 September 1999.

302 Ombudsman Transcript, Darren Boyd-Skinner, 11 July 2014, pp. 393-394.

303 Ombudsman Transcript, Darren Boyd-Skinner, 11 July 2014, p. 406.

304 Ombudsman Transcript, Darren Boyd-Skinner, 11 July 2014, pp. 401-402 and 406.

Boyd-Skinner is recorded as the author of the two Information Reports about his five telephone discussions with Paddle on 16 September 1999 – one compiled on 17 September 1999 which is unsigned and the other on 18 October 1999, which is signed by Boyd-Skinner. He agreed that the unsigned Information Report was his record, he did not dispute the accuracy of the record, and he agreed that it was likely to be an account of the conversations on 16 September.³⁰⁵ Boyd-Skinner said this in relation to the reference in the unsigned report to the phone call at 4:42 pm:

Paddle was told that under no circumstances should he disclose to the court or any public forum that he was wearing a listening device when he approached [Mr A] nor that he was acting under my instructions. Paddle was told that if he breached these instructions we could not be held responsible for his safety. Paddle stated he understood the instructions.

Boyd-Skinner observed that the use of the word ‘directed’ in the 3.55 pm call record in the unsigned Report – to encapsulate what Paddle should tell his solicitor about the arrest – was a “poor use of English, and a consequence of police jargon”.³⁰⁶ However, on any question as to whether Boyd-Skinner had the conversations as recorded in the unsigned Report or why he said certain things to Paddle or his lawyer, Boyd-Skinner relied on the privilege against self-incrimination to decline to answer.³⁰⁷

Boyd-Skinner gave evidence about the statement in the 11.00 am call record in the unsigned Report that he was waiting for information from O’Connor and Bradley about the course of action for the upcoming call-over. Boyd-Skinner agreed there would have been a concern that he needed advice from a higher level about what should happen in that situation,³⁰⁸ but he was unable to explain what advice, if any, he ultimately received. Boyd-Skinner further commented that it would have been more usual for instructions to come from Burn or Dolan, but “the nature of the work environment did afford interactions with the executive of the crime commission, probably, with the exclusion of Mr Bradley, quite regularly or very regularly”.³⁰⁹

O’Connor and Bradley were also asked about this, but were unable to recall if any contact was made.³¹⁰ Both stated in evidence to Operation Prospect that they would not have advised Boyd-Skinner (or anyone) to cause a witness to commit perjury. Such an issue could be dealt with through a controlled operation or by a private conversation with the Crown or Judicial Officer.³¹¹

When asked about the differences between the unsigned and signed Information Reports about his conversations with Paddle on 16 September 1999, Boyd-Skinner could not recall why the 18 October Report was prepared or whether he was directed to amend the 17 September report.

In relation to the telephone discussion between Haywood and Boyd-Skinner on 17 September 1999, Boyd-Skinner told Operation Prospect that he did not recall instructing Haywood and Cramsie to meet with Paddle, or directing them to tell Paddle the advice to give his solicitor about the way to approach the bail matter.³¹² He was shown the Information Report compiled by Cramsie – and signed by Cramsie and Haywood – about their meeting with Paddle on 17 September 1999.³¹³ This did not prompt any recollection of either tasking the officers to speak to Paddle or of the telephone call recorded in the Information Report. When asked specifically if he denied tasking them, Boyd-Skinner replied: “no ... I don’t deny, but I don’t have a clear recollection of it”.³¹⁴ Boyd-Skinner relied on the privilege against self-incrimination to decline to answer whether he had briefed Haywood and Cramsie in detail, including the advice to give Paddle about instructions to his solicitor.³¹⁵ Boyd-Skinner was also shown his Duty Book which recorded that he worked overtime on 17 September 1999.³¹⁶ He relied on the privilege against self-incrimination to decline to answer whether he did overtime that day waiting for Haywood and Cramsie to meet Paddle and report back to him.³¹⁷

305 Ombudsman Transcript, Darren Boyd-Skinner, 11 July 2014, pp. 398 and 400.

306 Ombudsman Transcript, Darren Boyd-Skinner, 11 July 2014, p. 400.

307 Ombudsman Transcript, Darren Boyd-Skinner, 11 July 2014, pp. 398, 403.

308 Ombudsman Transcript, Darren Boyd-Skinner, 11 July 2014 pp. 398-399.

309 Ombudsman Transcript, Darren Boyd-Skinner, 11 July 2014, p. 405.

310 Ombudsman Transcript, Phillip Bradley, 14 July 2014, p. 510; Ombudsman Transcript, Tim O’Connor, 11 July 2014, p. 425.

311 Ombudsman Transcript, Phillip Bradley, 14 July 2014, p. 510; Ombudsman Transcript, Tim O’Connor, 11 July 2014, p. 425.

312 Ombudsman Transcript, Darren Boyd-Skinner, 11 July 2014, p. 405.

313 NSWCC Information Report, *Meeting with [Paddle and his son] by Detective Haywood and Cramsie on Friday 20th September, 1999. Coffs Harbour Court Appearance discussed*, reporting officer: Cramsie, 20 September 1999.

314 Ombudsman Transcript, Darren Boyd-Skinner, 11 July 2014, p. 408.

315 Ombudsman Transcript, Darren Boyd-Skinner, 11 July 2014, p. 408.

316 NSWPF Duty Book, D34383, Darren Boyd-Skinner, 17 September 1999.

317 Ombudsman Transcript, Darren Boyd-Skinner, 11 July 2014, p. 407.

14.8.4.2 Cramsie's role and recollection

Cramsie gave evidence to Operation Prospect about the 17 September 1999 meeting that he and Haywood held with Paddle. Cramsie's evidence was that "dealing with informant Paddle was always under the guise of a controlled operation".³¹⁸ Cramsie held this view because Paddle was deployed regularly to speak to other known criminals and a controlled operation would be required to protect him if he engaged in those conversations.

As to the Information Report about the 17 September meeting,³¹⁹ Cramsie could not recall who instructed him to contact Paddle – but it was something that, as a junior constable, he would not do without instruction. He thought either Boyd-Skinner or Haywood instructed him.³²⁰ He could not recall who drafted the letter for Paddle to give to his solicitor, but again thought it was most likely Boyd-Skinner.³²¹ When asked if the letter was an odd course of action, he replied: "No; only because I suppose I was of the understanding that a controlled operation may have been covering this particular interaction",³²² and "In my mind, all contact that would've otherwise been unlawful would've been covered by a controlled operation".³²³

It was pointed out to Cramsie in evidence that nothing on that or any other document he was shown indicated that a controlled operation was in place. If that were the case, he agreed that "it shouldn't have occurred".³²⁴

It can also be noted that Cramsie was involved in briefing and debriefing Paddle for at least three operations or deployments before 17 September.³²⁵ The briefings discussed with Paddle the aims of the particular operations, what he should say and how he should say or raise matters. The discussion recorded with Paddle on 17 September 1999 was not described as a briefing or debriefing, and did not include commentary about the objectives or aims of the instructions being given. Those circumstances make it difficult to accept that Cramsie believed that at the 17 September meeting he was conducting a briefing for a controlled operation.

Cramsie made a submission to Operation Prospect to provide additional context for his actions in dealing with Paddle. The submission noted that, at the relevant time, he was the most junior officer in the Mascot team – having been in the NSWPF for three years and in the Mascot team at the NSWCC for less than three weeks. He had not done any formal training in criminal investigation (unlike other members of the team), he had not received specific training about LDs or controlled operations, and generally he was a young and inexperienced officer.³²⁶ Operation Boat was underway when he joined the Mascot team, he had limited knowledge or understanding of the operation, he received an induction package of documents that were not easily accessible or readily comprehensible, he was given one month to familiarise himself with the package (which ended later than the meeting on 17 September 1999), and as a junior officer he did not participate in all relevant meetings. He received limited instruction from senior officers in the team, and the management style of senior officers was inhibiting and difficult for him to question.³²⁷ He recorded his interaction with Paddle in a detailed report with a high level of transparency, and acted in an open and honest manner that belies any suggestion of an intentional breach of the law.³²⁸ It was never his intention, he submitted, to influence Paddle to give false testimony but rather to protect the identity of an informant in accordance with the direction of senior officers.³²⁹ Cramsie also submitted that a lack of reference to a controlled operation in an IR doesn't necessarily mean there was no controlled authority in place.³³⁰

318 Ombudsman Transcript, Rohan Cramsie, 10 July 2014, p. 259. A "controlled operation" is an authority to conduct an activity that would otherwise be unlawful.

319 NSWCC Information Report, *Meeting with [Paddle and his son] by Detective Haywood and Cramsie on Friday 20 September, 1999. Coffs Harbour Court Appearance discussed*, reporting officer: Cramsie, 20 September 1999.

320 Ombudsman Transcript, Rohan Cramsie, 10 July 2014, p. 272.

321 Ombudsman Transcript, Rohan Cramsie, 10 July 2014, p. 273.

322 Ombudsman Transcript, Rohan Cramsie, 10 July 2014, p. 274.

323 Ombudsman Transcript, Rohan Cramsie, 10 July 2014, p. 276.

324 Ombudsman Transcript, Rohan Cramsie, 10 July 2014, p. 276.

325 NSWCC Information Report, *Meeting with Informant PADDLE Wednesday 1st September 1999*, reporting officer: Cramsie, 2 September 1999; NSWCC Information Report, *Meeting with Informant PADDLE on Friday 10th September, 1999 at [location] and his subsequent meeting with target [Name] at the [Name] Hotel*, reporting officer: Cramsie, 14 September 1999; NSWCC Information Report, *Meeting with informant Paddle by Detectives Haywood and Cramsie and Paddle's subsequent meeting with Target [Name] on Wednesday 15th September, 1999*, reporting officer: Cramsie and Haywood, 16 September 1999.

326 Cramsie, R, Supplementary submission in reply, 7 October 2016, p. 5.

327 Cramsie, R, Supplementary submission in reply, 7 October 2016, pp. 6-7, 10.

328 Cramsie, R, Supplementary submission in reply, 7 October 2016, pp. 15-16.

329 Cramsie, R, Supplementary submission in reply, 7 October 2016, p. 7.

330 Cramsie, R, Supplementary submission in reply, 7 October 2016, p. 9.

14.8.4.3 Haywood's role and recollection

Haywood gave evidence to Operation Prospect about his role in the Mascot investigation. He thought that his supervisor at the time was either Boyd-Skinner or Senior Constable Craig Goozee (who was the Investigations Coordinator for Mascot at the time).³³¹ Haywood said he "had a substantial amount" to do with Paddle and agreed that at times he was Paddle's handler.³³² He said that Boyd-Skinner most likely tasked him in relation to Paddle, and that those tasks may have come from a more senior officer or from a joint decision between 'the hierarchy' and Boyd-Skinner. Haywood said that, as far as he could recall, Burn was not part of the decision-making and tasking process.³³³

Haywood could recall two controlled operations involving Paddle – one at Coffs Harbour where the target was a person selling firearms or drugs, and another in Victoria.³³⁴ Neither controlled operation related to Mr A.

As to the Information Report about the 17 September 1999 meeting,³³⁵ Haywood was asked if he felt any disquiet about instructing an informant what to tell their lawyer to say in court. He replied, "certainly on my part no",³³⁶ and explained: "Because we were acting on instructions and carrying out our duty as, or I was carrying out my duty as I believed appropriate".³³⁷ He continued:

Q. *Do you see that one of the things you were asked to do was – well, you say you were asked to do was to instruct the informant to draft a letter to his lawyer instructing the lawyer to not reveal certain information to the court?*

A. Yes.

Q. *Do you see now that that has the potential to lead to a misleading of the court if a question is asked that requires that information to be disclosed?*

A. Yes.

Q. *Did you think about that at the time, or you're just unable to say because you don't recollect the event?*

A. *I don't know what if I would have thought about that at all.*

Q. *Acting as a responsible and experienced police officer though, surely that would have crossed your mind that what you had been tasked to do was to instruct a lawyer to potentially mislead the court. Do you agree with me?*

A. *No, I can't say that it would have crossed my mind, and from reading this it's my understanding that the main concern was the welfare of Paddle, and that it didn't get revealed that he'd been wearing a body wire or a listening device – recording device.*³³⁸

Haywood could not recall who tasked him to provide Paddle with instructions for his solicitor, but thought it may have been Boyd-Skinner – as the Information Report records that at one point Haywood made a phone call to Boyd-Skinner.³³⁹ When asked if at that stage it was an option to put a controlled operation in place to protect Paddle from potentially having to lie in court, he replied: "I imagine so".³⁴⁰

Haywood could not recall what he knew about Paddle's breach of bail as at 17 September 1999. The Information Report notes: "Paddle was presented with photocopy of charge sheets, fact sheets, and custody

331 Ombudsman Transcript, Scott Haywood, 9 July 2014, p. 168.

332 Ombudsman Transcript, Scott Haywood, 9 July 2014, p. 169.

333 Ombudsman Transcript, Scott Haywood, 9 July 2014, pp. 184-185.

334 Ombudsman Transcript, Scott Haywood, 9 July 2014, p. 173.

335 NSWCC Information Report, meeting with [Paddle and his son] by Detective Haywood and Cramsie on Friday 20th September, 1999. Coffs Harbour Court Appearance discussed, reporting officer: Cramsie, 20 September 1999.

336 Ombudsman Transcript, Scott Haywood, 9 July 2014, p. 187.

337 Ombudsman Transcript, Scott Haywood, 9 July 2014, p. 187.

338 Ombudsman Transcript, Scott Haywood, 9 July 2014, p. 188.

339 Ombudsman Transcript, Scott Haywood, 9 July 2014, p. 189.

340 Ombudsman Transcript, Scott Haywood, 9 July 2014, p. 192.

records when he was arrested in relation breaching his bail".³⁴¹ Haywood agreed that those court documents³⁴² revealed that the upcoming court appearance was in relation to Paddle breaching bail by approaching a Crown witness, Mr A. Haywood agreed that Paddle had approached Mr A on the instruction of the NSWCC, and that he and Cramsie were instructing Paddle to tell the court that he was at the pawn broker for a legitimate business transaction. Haywood agreed that was a lie.³⁴³

Haywood was asked at the end of his evidence if he would agree that – on the basis of the evidence showing that Paddle had given evidence to the court along the lines instructed by Haywood and Cramsie – there was a high likelihood that he had been involved in a criminal offence. He replied: "yes".³⁴⁴

14.8.4.4 Burn's role and recollection

Burn was Team Leader at Mascot and the most senior officer in Operation Boat to deploy Paddle as an informant. On 7 September 1999 she prepared and initialled a memo that attached the bail documents that a Mascot Senior Constable had obtained from Paddle on 5 September 1999.³⁴⁵ She agreed in evidence to Operation Prospect that her agreement to the bail documents being attached meant she must have read them.³⁴⁶

Although those circumstances suggest general awareness by Burn of Paddle's arrest arising from an operation in which she was directly involved, she could not find anything in her Duty Book that helped her to recall whether she participated in tasking Haywood and Cramsie to instruct Paddle to give false evidence to the Court or to instruct Paddle's lawyer not to disclose that Paddle was wearing a wire. She stated that, at this particular point in time, she started to have less involvement in the matter: "Mr Dolan had a hands-on role in this investigation, he was in the office all the time and there was visibility on everything".³⁴⁷

She agreed that her Duty Book showed she was talking regularly to Boyd-Skinner, although she did not recall any discussions about tasking Haywood and Cramsie to act in this way. When asked if Boyd-Skinner as Paddle's handler would be responsible for liaising with Paddle and resolving the problem, she replied:

*I think it's definitely shared, and the diary entries would indicate that if this is what we are talking about, there are discussions going on about this with me and with Mr Dolan and others, so I think it would be a shared response to what we were going to do.*³⁴⁸

Burn was asked whether there was an appropriate way of stopping Paddle's status as an informant from being made public. She replied: "either a controlled operation, either talking to the court".³⁴⁹

Burn was asked about advising Paddle to instruct his solicitor to provide false evidence to the Court. She agreed this could be illegal, was suborning a witness, encouraging a person to mislead the court and most likely would be perverting the course of justice.³⁵⁰ She added:

... if this is what happened, which it clearly did because it's in the Information Report, there would have had to have been high level discussions about this. ... I don't think these officers would just go and do that.

By 'high level discussions' she meant potentially but not necessarily her, "but definitely Dolan and potentially Bradley".³⁵¹ She later agreed a plan to have Paddle give false evidence would be inconsistent with the way Bradley and O'Connor conducted themselves.³⁵²

341 NSWCC Information Report, *Meeting with [Paddle and his son] by Detective Haywood and Cramsie on Friday 20 September, 1999. Coffs Harbour Court Appearance discussed*, reporting officer: Cramsie, 20 September 1999, p. 3.

342 NSWCC Information Report, *Documents RE the charging of Paddle on 4/9/99*, reporting officer: Burn, 7 September 1999.

343 Ombudsman Transcript, Scott Haywood, 9 July 2014, p. 194.

344 Ombudsman Transcript, Scott Haywood, 9 July 2014, p. 199.

345 NSWCC Information Report, *Documents RE the charging of Paddle on 4/9/99*, reporting officer: Burn, 7 September 1999.

346 Ombudsman Transcript, Catherine Burn, 15 July 2014, p. 620.

347 Ombudsman Transcript, Catherine Burn, 15 July 2014, p. 617.

348 Ombudsman Transcript, Catherine Burn, 7 July 2014, p. 622.

349 Ombudsman Transcript, Catherine Burn, 7 July 2014, p. 623.

350 Ombudsman Transcript, Catherine Burn, 7 July 2014, p. 624.

351 Ombudsman Transcript, Catherine Burn, 7 July 2014, p. 631.

352 Ombudsman Transcript, Catherine Burn, 7 July 2014, p. 633.

Burn gave evidence that it was wrong for Paddle to be told that, unless he complied, IA could not be held responsible for his safety. She explained: “Because Paddle has been instructed ... to do something he might not want to do, and then we’re not going to – because of what we wanted to do, and then he’s not going to be – we’re not going to be held responsible for what might happen”.³⁵³ She agreed this read a bit like a threat, and that the advice was not in Paddle’s best interests and placed him in a difficult position as a result.³⁵⁴

Burn also submitted that the assertions in the documents prepared by Boyd-Skinner are not reliable and that he was seeking to minimise his responsibility by blaming her.³⁵⁵

14.8.4.5 Bradley’s role and recollection

The only evidence of Bradley’s potential involvement in these events is the comment in Boyd-Skinner’s Information Report of 17 September 1999: “waiting for information from Mr O’Connor and Mr Bradley as to the course of action for the upcoming call over”. As noted before, that comment did not appear in a later version of the Report prepared by Boyd-Skinner on 18 October 1999. There is no other evidence – Information Reports, meeting minutes or recollections – that Bradley provided advice or guidance on Paddle’s court appearance. Boyd-Skinner, O’Connor and Bradley could also not recall ever speaking or meeting about this matter. Bradley could not recall events involving Paddle.

Bradley acknowledged in evidence to Operation Prospect that a police officer instructing an informant and his lawyer to mislead a court to avoid revealing that an informant was wearing a LD was inappropriate conduct. He made the following observations:

*[T]here have been lots of instances where there have been collateral conversations with prosecutors and judges in fact, some extreme cases which will never be publicised whereby the status of informers has been protected in extraordinary circumstances and that’s usually done by high level representations.*³⁵⁶

...

*[W]hat is regarded in the criminal justice system as one of the things that we have to be most careful about is the disclosure of informers. There’s a whole range of very complicated rules and laws about that and if I was told that a person was about to disclose his role as an informer, or the person’s solicitor was about to disclose a role of an informer I would have been concerned to make sure that didn’t happen, but not to mislead a court and not to breach bail. I mean there are ways, as we have heard that that can be got around.*³⁵⁷

Bradley was asked about the comment in the Information Report of 17 September 1999 that Boyd-Skinner was waiting for advice and guidance from O’Connor and Bradley. He replied:

*Well, I think he probably would be casting about for advice but whether he asked me about it, it’d be unusual to ask me about it but he could ask O’Connor who could ask me, or they could both ask me but I don’t remember any of that happening.*³⁵⁸

14.8.4.6 Evidence of the Crown Prosecutor

The Crown Prosecutor for the 23 September 1999 proceedings gave evidence to Operation Prospect that he had not been told anything before the Court hearing about Paddle being an informant.³⁵⁹ He said that if the matter had been dealt with “in a legitimate way” he would have expected to be informed before the hearing “that [Paddle] was intending to give fabricated or false evidence”.³⁶⁰ Operation Prospect also inspected the relevant ODPP files and they did not contain any reference to Paddle being an informant.

353 Ombudsman Transcript, Catherine Burn, 15 July 2014, p. 627.

354 Ombudsman Transcript, Catherine Burn, 15 July 2014, p. 627.

355 Burn, C, Submission in reply, 19 September 2016, p. 2.

356 Ombudsman Transcript, Phillip Bradley, 14 July 2014, p. 511.

357 Ombudsman Transcript, Phillip Bradley, 14 July 2014, p. 520.

358 Ombudsman Transcript, Phillip Bradley, 14 July 2014, p. 510.

359 Ombudsman Transcript, [Crown Prosecutor], 8 July 2014, p. 159.

360 Ombudsman Transcript, [Crown Prosecutor], 8 July 2014, p. 162.

14.8.5 Analysis

It is indisputable that a police officer should not influence a person to give false testimony to a court or to withhold true evidence – and it is a criminal offence to do so.

It is clear that Paddle gave false and misleading evidence to the Coffs Harbour District Court on 23 September 1999. The false and misleading statements were that the reason for his visit to the pawn shop was that he needed money, and that he was surprised to find Mr A in the pawn shop. He also withheld true evidence about the purpose and circumstances of his visit to the shop.

Paddle's evidence is consistent with the discussions that he had with Mascot officers before his Court appearance. The main theme in those discussions – as recorded in internal Mascot documents – was that Paddle should not disclose that he was wearing a LD and working with IA officers. To avoid that revelation, Paddle was to inform the Court that he visited the pawn shop "to perform a legitimate business transaction". The words 'directed' and 'instructed' were used to describe Boyd-Skinner's message to Paddle. This was coupled with a warning to Paddle of adverse consequences if he acted differently.

It is unnecessary in this report to pursue the explanation for the differences between the 17 September 1999 and 18 October 1999 reports of the conversations between Boyd-Skinner and Paddle. Both reports are consistent with the view expressed above – which is also based on other evidence such as the letter that Mascot officers prepared for Paddle to give to his solicitor.

The officer who controlled interactions with Paddle at this stage of the operation was Boyd-Skinner. He spoke to Paddle a number of times from the date of his arrest on 4 September 1999 to the date of his Court appearance on 23 September 1999 – although he could not recall those conversations. He is noted as speaking to two solicitors (one called Griffin as well as Paddle's solicitor) and to Burn, and is mentioned in other documents on which this analysis is based. Boyd-Skinner is mentioned also by Haywood and Cramsie as the senior officer most likely to have given instructions to them. Based on that evidence, it is reasonable to conclude that Boyd-Skinner played an influential role in Paddle giving false and misleading evidence to the Court.

Two other officers who conveyed a similar message to Paddle about the evidence he should give to the Court and how to instruct his lawyer were Haywood and Cramsie. They met with him and discussed his forthcoming Court appearance, and they gave him a letter to give to his solicitor that foreshadowed the evidence that he should (and should not) give to the Court.

Haywood's explanation was that he acted in accordance with instructions from senior officers, and they were acting to safeguard Paddle's welfare by not revealing that he was wearing a concealed LD. Cramsie's explanation was that he acted in accordance with instructions from senior officers, he believed that a controlled operation was in place, and he was a junior and inexperienced member of the Mascot Task Force at that time. Neither Haywood nor Cramsie could elaborate in any meaningful way on taking action at the time to clarify that it was lawful or proper to instruct Paddle to give false and misleading evidence. Indeed, it was implicit in their responses to Operation Prospect that on reflection this should have been a prominent issue in their minds at the time.

There is insufficient evidence to conclude that any other NSWCC officer (and in particular Bradley, O'Connor, Dolan or Burn) played a role in influencing Paddle to give false and misleading evidence to the Court.

There was acknowledgement by some officers who gave evidence to Operation Prospect that it was inexcusable for Paddle to be influenced or instructed in this way. They noted that an alternative course of action could have been adopted – such as a controlled operation or discussing the matter privately with the Crown prosecutor and the District Court Judge. It is unnecessary for this analysis to examine how those alternatives may have been implemented. It is sufficient to note that alternative measures could have been considered, and it is difficult to understand why this did not occur at the time among the officers who were liaising with Paddle and his solicitor. It is clear that Boyd-Skinner and Burn were aware by June 1999 that the Coffs Harbour Crime Manager (MSO4) had voiced his concerns about Paddle's approach to Mr A. That should have been an early trigger that a well-thought out approach may be needed to contain knowledge of Paddle's work as an informant. As it was, a controlled operation was not sought and authorised until 20 August 1999.

14.8.6 Findings

54. Boyd-Skinner

Boyd-Skinner's conduct in persuading or causing Paddle to give false evidence under oath to the Coffs Harbour District Court on 23 September 1999 may be conduct of a police officer that constitutes an offence in terms of section 122(1)(a) of the *Police Act 1990*. The relevant offences are "Influencing witnesses and jurors" in section 323 of the *Crimes Act 1900* and "Subornation of perjury" in section 333 of the *Crimes Act 1900*. As discussed in sections 14.8.4.1 and 14.8.5, Boyd-Skinner played an influential role in persuading or causing Paddle to give evidence to the Court that Boyd-Skinner knew to be false and misleading evidence.

55. Haywood

Haywood's conduct in persuading or causing Paddle to give false evidence under oath to the Coffs Harbour District Court on 23 September 1999 may be conduct of a police officer that constitutes an offence in terms of section 122(1)(a) of the *Police Act 1990*. The relevant offences are "Influencing witnesses and jurors" in section 323 of the *Crimes Act 1900* and "Subornation of perjury" in section 333 of the *Crimes Act 1900*. As discussed in sections 14.8.4.3 and 14.8.5, Haywood advised Paddle at a meeting on 17 September 1999 to give evidence to the Court that Haywood knew to be false and misleading evidence.

56. Cramsie

Cramsie's conduct in persuading or causing Paddle to give false evidence under oath to the Coffs Harbour District Court on 23 September 1999 may be conduct of a police officer that constitutes an offence in terms of section 122(1)(a) of the *Police Act 1990*. The relevant offences are "Influencing witnesses and jurors" in section 323 of the *Crimes Act 1900* and "Subornation of perjury" in section 333 of the *Crimes Act 1900*. As discussed in sections 14.8.4.2 and 14.8.5, Cramsie advised Paddle at a meeting on 17 September 1999 to give evidence to the Court that Cramsie knew to be false and misleading evidence.

57. NSW Crime Commission

The NSW Crime Commission is responsible for the actions of members of the Mascot Task Force in persuading or causing Paddle to give false evidence under oath to the Coffs Harbour District Court on 23 September 1999. Paddle was registered as a NSW Crime Commission Informant in April 1999, with the knowledge of at least two senior officers – Bradley and Standen. NSW Crime Commission Informant Management Guidelines that were in place at the time were breached by the actions of members of the Mascot Task Force in persuading or causing Paddle to give false evidence to the Court. The NSW Crime Commission was responsible for the Mascot reference and for supervising members of the Mascot Task Force. To that extent, the NSW Crime Commission failed to implement its own policies, practices and procedures in conducting the Mascot reference and managing the informant Paddle. The conduct of the NSWCC was unreasonable and otherwise wrong in terms of section 26(1)(b) and (g) of the *Ombudsman Act 1974*.

14.9 Inadequate response to complaints about Paddle's deployment

Operation Prospect investigated the response to formal complaints made about the deployment of Paddle to speak with Mr A.

14.9.1 Initial complaints (June 1999)

Mr A contacted MSO4 (Coffs Harbour LAC Crime Manager) after Paddle's visit to his pawn shop on 5 May 1999 to tell him of the visit.³⁶¹ MSO4 told Mr A that the contact may constitute a breach of bail and he would follow it up.

On 11 June 1999 MSO4 was interviewed by McFadden with Boyd-Skinner present. As outlined in Chapter 6, MSO4 and Officer B were under investigation for the alleged verballing of Paddle during the 1994 arrest. The interview related to that allegation and associated matters. At the end of the interview, MSO4 asked McFadden and Boyd-Skinner: "Have you sent [Paddle] to see [Mr A]?" McFadden replied that investigative steps could not be disclosed. MSO4 then stated:

Well there's a bail condition on [Paddle] that he not approach any witness involved in this matter. Now [Paddle] has been to that shop on two occasions where he's spoken to [Mr A] about this matter, and this is a clear breach of his bail conditions.

He also suggested that any other officer who had been involved in Paddle approaching Mr A would be 'aiding and abetting' a breach of bail.³⁶² The response to MSO4's comments is discussed further in section 14.9.2. As discussed in section 14.6, Boyd-Skinner subsequently contacted Paddle on 1 July 1999 to tell him that MSO4 may be planning to pursue him for breach of bail – and then Mascot investigators took action to relocate Paddle into temporary covert accommodation.

On 16 June 1999 Mr A's solicitor wrote to Internal Affairs³⁶³ noting that two Internal Affairs officers had recently spoken with Mr A at his business premises. The lawyer asked for a copy of the record of interview and a copy of any complaint made about Mr A. The letter noted:

Our client recently had a man by the name of [Paddle] attend at his business premises. Please indicate if you can whether [Paddle] has any role or is any part of your investigations.

*We would also be pleased if you could give us your assurance that [Paddle] is not entering our client's business premises as part of your investigations.*³⁶⁴

14.9.2 Response to initial complaints (June 1999)

On 22 June 1999 Boyd-Skinner prepared a memorandum about the complaint made by MSO4 during his interview with McFadden and Boyd-Skinner on 11 June 1999. The memorandum was addressed jointly to Detective Inspector William Lardner (as the Inspector for the Internal Affairs Investigations Unit) and to Burn (as the Inspector of the Special Projects Unit).³⁶⁵ Boyd-Skinner wrote that the operation to approach Mr A was "conducted in conjunction with the Mascot reference of the NSW Crime Commission", that he (Boyd-Skinner) was unaware of Paddle's bail condition to not approach a Crown witness, and recommended "that this complaint be recorded and assessed as to an appropriate course of action".³⁶⁶ Despite Boyd-Skinner's recommendation the complaint was not recorded as a complaint under the Police Act, nor assessed and managed in accordance with the NSWPF complaint handling procedures.

Lardner acknowledged receipt of the memorandum on 22 June 1999, by signing and making the following notation: "Forwarded for attention of D/I BURN re Op Mascot & consideration of the necessary action – determine need for an initiation or address in other form".³⁶⁷

361 Ombudsman Transcript, [Mr A], 8 July 2014, p. 105.

362 NSWPF, Record of interview between Detective Sergeant McFadden and MSO4, 11 June 1999, p. 12.

363 Throughout this period Mr A's solicitor and MSO4 assumed that any investigation that might have been occurring would have been an Internal Affairs or SCIA investigation, as they would not have been aware of NSWCC involvement. Consequently, their correspondence always refers to an IA investigation.

364 Letter from [Mr A's lawyer] to Officer in Charge, Internal Affairs, [Mr A], 16 June 1999, p. 1.

365 NSWPF internal memorandum from Detective Sergeant Darren Boyd-Skinner to Detective Inspector William Lardner, 22 June 1999.

366 NSWPF internal memorandum from Detective Sergeant Darren Boyd-Skinner, Internal Affairs Investigation Unit and Detective Inspector Catherine Burn, Internal Affairs, Special Projects Unit, 22 June 1999. p. 1.

367 NSWPF internal memorandum from Detective Sergeant Darren Boyd-Skinner, Internal Affairs Investigation Unit and Detective Inspector Catherine Burn, Internal Affairs, Special Projects Unit, 22 June 1999.

On the same day Burn compiled an Information Report³⁶⁸ about two reports she had received from Boyd-Skinner which “relate to alleged complaints made during the course of the IA investigation into the [Paddle], Mr M and Mr O matter”. The first report was the complaint made by MSO4 and the second was unrelated to the deployment of Paddle. For MSO4’s complaint she recorded:

*Report 2: Dated 22 June 1999 refers to a comment made by [MSO4] during an ERISP interview with Boyd-Skinner on 11/6/99 referring to [Paddle]. This matter has been discussed with Supt Dolan and is assessed as not requiring initiation.*³⁶⁹

Burn initialled the Information Report with the date 23.6.99. Dolan also initialled the Information Report and dated it 23/6/99. This chain of events was confirmed four years later (in 2003) in a document prepared by Boyd-Skinner about the complaint by MSO4, which noted:

*On 11 June 1999, [MSO4] alleged that I had aided and abetted the offence [being the breach of bail by Paddle when he approached Mr A] during an ERISP interview ... I reported this to Superintendent Burn in writing. A/Superintendent Dolan decided that this was not a complaint and the matter was recorded and filed.*³⁷⁰

On 28 June 1999 Boyd-Skinner replied to the 16 June letter from Mr A’s solicitor. His response did not address the solicitor’s queries about whether Paddle had any role in any Internal Affairs investigations or whether Paddle’s attendance at Mr A’s pawn shop in May 1999 was part of Boyd-Skinner’s investigations. Boyd-Skinner’s only comment in relation to these queries was that “No correspondence will be entered into with respect to the conduct of our investigation”.³⁷¹

Mr A’s lawyers responded the same day, thanking Boyd-Skinner for his response but again stating:

*We assume from the last paragraph of your letter of 28th June that [Paddle] has not been entering our client’s premises as part of your investigations. If our assumption is not correct we would be pleased if you could apprise us of the exact correct situation.*³⁷²

There was no further correspondence with Mr A’s lawyer until much later – and only after Mr A’s lawyer formally complained to the Commissioner of Police on 27 September 1999 on behalf of Mr A (see 14.9.5).

14.9.3 Mr A’s statement to police (July 1999)

On 19 July 1999 Mr A made a signed statement to police that Paddle had been in to see him at the pawn shop and that he felt intimidated given Paddle’s history of serious offences with firearms. Mr A noted that Paddle had been committed to stand trial and given conditional bail for that matter. Mr A stated:

*I made further inquiries into the matter and was later informed that [Paddle] was not to approach any witness involved in the prosecution of his matter. The trial is yet to commence, and I am still a witness in the matter.*³⁷³

Mr A also stated: “I was also of the opinion that he was questioning me about the evidence I was to give at his Trial”.³⁷⁴ Mr A told Operation Prospect that he made this statement at the urging of MSO4.

368 NSWCC Information Report, *Reports from Boyd-Skinner RE [Paddle] complaints*, reporting officer: Burn, 22 June 1999.

369 NSWCC Information Report, *Reports from Boyd-Skinner RE [Paddle] complaints*, reporting officer: Burn, 22 June 1999.

370 NSWPF Internal Memorandum from Detective Sergeant Darren Boyd-Skinner to the Commander, SCIA Investigations Unit and SCIA Executive, Complaints Management Team, 2 September 2003.

371 Letter from Detective Sergeant Darren Boyd-Skinner to [Mr A’s solicitors], 28 June 1999.

372 Letter from [Mr A’s lawyers] to Officer in Charge, NSWPF, Internal Affairs Investigation Unit, 28 June 1999.

373 Facsimile from [Deputy Solicitor Legal], ODPP, to Commissioner Phillip Bradley, NSWCC, 20 September 1999 attached: Statement of [Mr A] in the matter of Attempt to Suborn Witness: Victim: [Mr A] [Paddle] charged, dated 19 July 1999, p. 2.

374 Facsimile from [Deputy Solicitor Legal], ODPP, to Commissioner Phillip Bradley, NSWCC, 20 September 1999 attached: Statement of [Mr A] in the matter of Attempt to Suborn Witness: Victim: [Mr A] [Paddle] charged, dated 19 July 1999, p. 3.

14.9.4 Request for review of Paddle's bail conditions (September 1999)

On 17 September 1999 MSO4 wrote to the ODPP in Lismore requesting a bail review of Paddle's bail conditions because "Paddle has clearly breached his previous bail conditions and instilled fear into a witness who is to be called at his trial". He requested that more stringent conditions be placed on bail and noted:

- Paddle was arrested and charged with a number of serious criminal offences but the matter had not yet proceeded to trial.
- The bail conditions currently required Paddle to report once per week to the officer in charge at Macksville Police Station, to notify any change of address to the officer in charge, and not to approach any person who may be called as a witness.
- On 5 and 24 May 1999, Paddle entered the shop of Mr A, a former police officer and witness who is to be called at [Paddle's] trial, and commenced to speak to him on both occasions about his evidence.
- Attempts made to locate Paddle were unsuccessful because he had changed his address without notifying the officer in charge, and that "this is another clear breach of [Paddle's] bail conditions".³⁷⁵

14.9.5 Mr A's complaint to the Commissioner of Police (September 1999)

On 27 September 1999 Mr A's lawyer wrote on his behalf to the Commissioner of Police making a formal complaint (Mr A's complaint).³⁷⁶ The letter was date stamped as received by Internal Affairs on 11 October 1999. For reasons that are unclear, the letter was not acknowledged.

The letter to the Commissioner of Police stated that it "became apparent" before Paddle's bail review hearing in the Coffs Harbour District Court on 23 September 1999 that he had entered Mr A's premises:

... at the behest of Internal Affairs, in an attempt to obtain evidence against [Mr A], and that he had a recording device attached to his body for such purposes.

The letter referred to Paddle's evidence in court that he had been surprised and shocked to see Mr A in the pawn shop. The letter did not explain why it was 'apparent' that Paddle had attended Mr A's premises as part of an investigation or how it was known Paddle was wearing a body worn LD.

The letter noted that IA had not responded to the lawyer's previous letter dated 28 June 1999, and sought "an immediate response" from the Commissioner on eight issues:

- if IA sent Paddle to see Mr A knowing that it was a breach of his bail conditions, whether the Commissioner thought that was acceptable police conduct
- to confirm if Paddle was wearing a recording device and, if so, to provide a copy of the transcript of the recordings
- if IA sent Paddle to see Mr A, whether Paddle's evidence at the bail review hearing on 23 September 1999 that he was surprised and shocked to see Mr A was perjury that should be investigated by the NSWPF
- if police sent Paddle to see Mr A knowing it was a breach of his bail conditions, whether those officers were guilty of aiding and abetting/interfering with a witness
- if police sent Paddle to see Mr A to gather evidence and instructed Paddle not to reveal this at court, whether Paddle and those officers were guilty of perverting the course of justice or aiding and abetting perjury by Paddle
- details of communications between police and Paddle's solicitor
- whether police had instructed Paddle's solicitor not to reveal that police arranged for Paddle to visit Mr A and breach his bail
- whether Paddle was a registered police informant, and what other information he has provided to police concerning alleged crimes.

³⁷⁵ Letter from [MSO4] to [name] ODPP, Lismore, 17 September 1999.

³⁷⁶ Letter from [Mr A's solicitor] to Commissioner Peter Ryan, NSWPF, 27 September 1999.

The NSWPF completed a complaints assessment form on 10 November 1999 and registered Mr A's complaint under Part 8A of the Police Act.³⁷⁷ On 23 November 1999 the matter was referred to Dolan to conduct inquiries. On 9 December 1999 Dolan provided a written interim advice to the Commander of Internal Affairs and recommended that the complaint be reallocated to an independent officer for an appropriate investigation.³⁷⁸ The matter was referred to a case officer within Internal Affairs on 16 December 1999, though it appears no action was taken until March 2001 (see 14.9.7).

14.9.6 Paddle's breach of bail notified to Bradley (September 1999)

On 20 September 1999 the Deputy Solicitor Legal from the ODPP faxed to the attention of 'P. Bradley' two of the documents noted above. They were Mr A's statement to police on 19 July 1999 and MSO4's letter of 17 September 1999 asking for a review of Paddle's bail conditions. Both documents mention that Paddle's two approaches to Mr A were in breach of Paddle's bail conditions. There is a written notation on the fax cover sheet – 'Copy to Darren 21/9/99' – which is initialled by Dolan.³⁷⁹ No other NSWCC records indicate what occurred within the NSWCC after receipt of this fax.

The Deputy Solicitor Legal's fax to Bradley was also noted in an Information Report prepared by Burn on 22 September 1999:

On 20-9-99 Mr Bradley received a fax from [the Deputy Solicitor Legal, DPP] re the matter of [Paddle]. The fax contained a statement of [Mr A] dated 19/7/99 and relates to the the [sic] attendance of [Paddle] at [Mr A's business]. There is also correspondence from [MSO4] to the Lismore DPP requesting a bail review re [Paddle] due to his approach of crwon [sic] witness.

These documents were disseminated to D/Sgt Boyd-Skinner on 21/9/99 who has carriage of the [Paddle] matter.³⁸⁰

14.9.7 Ombudsman query on status of Mr A's complaint (March 2001)

In March 2001 the NSW Ombudsman queried the status of a number of delayed Internal Affairs matters – including Mr A's complaint.³⁸¹ An internal memorandum prepared in response to that request suggested that the complaint file had been allocated to an Internal Affairs officer, but there was some confusion about who should be dealing with the file. The memo also noted that complete inquiries could not be made due to some material or information being 'covert'. A notation indicated that a SCIA Detective Inspector was assigned responsibility on 9 May 2001 for dealing with specific issues within the complaint.³⁸²

14.9.8 Mr A withdraws his complaint (November 2001)

An internal memorandum by the SCIA Detective Inspector dated 14 July 2001 recorded that he met with Mr A on 22 June 2001. Mr A told the Detective Inspector at that meeting that SCIA had not responded to his last letter. When asked about his expectations, Mr A indicated that "he would probably not want any further action as this was now all behind him". The memo also noted that the Detective Inspector asked Mr A to notify SCIA of his decision in writing.³⁸³ Mr A gave evidence to Operation Prospect that he felt pressured at this meeting to withdraw his complaint.³⁸⁴

377 NSWPF Complaints Assessment Form, *Perverting the course of Justice Aiding and Abetting tampering with witness*, 10 November 1999.

378 NSWPF internal memorandum from Detective Superintendent John Dolan to Commander Internal Affairs, 9 December 1999.

379 Facsimile from [Deputy Solicitor Legal], ODPP, to Commissioner Phillip Bradley, NSWCC, 20 September 1999 attached: Statement of [Mr A] in the matter of Attempt to Suborn Witness: Victim: [Mr A] [Paddle] charged, dated 19 July 1999 and letter from [Coffs Harbour Crime Manager] to [name] DPP, Lismore, dated 17 September 1999.

380 NSWCC Information Report, *Statement of [Mr A] re: [Paddle]*, reporting officer: Burn, 22 September 1999.

381 NSWPF internal memorandum from [Senior Sergeant] to [Internal Affairs Manager], 29 March 2001.

382 NSWPF internal memorandum from [Senior Sergeant] to [Internal Affairs Manager], 8 May 2001.

383 NSWPF internal memorandum from [SCIA Detective Inspector] to SCIA Operations Manager, 14 July 2001.

384 The SCIA Inspector was unable to be examined by Operation Prospect as he was on extended leave and there are no other documentary records on this issue. Consequently this issue could not be progressed any further.

On 29 August 2001 the SCIA Detective Inspector wrote to the NSW Ombudsman with an interim report on the status of Mr A's complaint. The letter noted that further enquiries had been undertaken and the complainant (Mr A) would be seeking further legal advice – but it was likely he would withdraw the complaint. The complaint file would remain assigned to the Detective Inspector “pending finalisation of these enquiries and any subsequent investigation”.³⁸⁵ On 20 November 2001 Mr A wrote to the SCIA Detective Inspector advising: “I do not require any further action to [my complaint]”.³⁸⁶

14.9.9 Ombudsman request for further investigation (February 2002)

Following Mr A's letter of 20 November 2001 the SCIA Detective Inspector prepared a memo advising that Mr A had withdrawn his complaint and the matter should “now be declined and no further action taken”.³⁸⁷ SCIA Commander, Brian Reith wrote to the Ombudsman advising this on 28 January 2002.³⁸⁸ The Ombudsman responded on 27 February 2002 advising the NSWPF that the complaint should be investigated despite the withdrawal by Mr A and, in particular, that the NSWPF should address the eight issues in Mr A's complaint of 27 September 1999.³⁸⁹

14.9.10 Burn's response to Mr A's complaint issues (March/May 2002)

In 2002 Burn prepared two memoranda relating to Paddle's deployment – dated 22 March 2002³⁹⁰ and 23 May 2002.³⁹¹

The 22 March 2002 memorandum was addressed to the Commander, Investigation Unit SCIA and records a discussion between Burn and Reith in which Burn was asked to address the eight issues in Mr A's complaint.³⁹² Burn's memorandum responds to each issue as follows:

1. On 5 May 1999, Henry and Boyd-Skinner conducted an undercover operation in the Kempsey area that was part of the larger Mascot operation. Burn stated that no officer deliberately breached any bail conditions of any person.
2. If a recording of a conversation did exist, Burn noted that the NSWPF was not required to acknowledge its existence nor provide it “on the basis of a claim of privilege in the public interest”, and “I am not aware of what may have transpired in any subsequent public court hearing with regard to [Paddle]”.
3. Burn was unaware of Paddle's evidence in his bail review hearing at Coffs Harbour District Court on 23 September 1999, but suggested that the transcript now be reviewed.
4. Burn stated that no officer deliberately breached any bail conditions of any person and “It is my understanding that the officers did not have knowledge of [Paddle's] bail conditions prior to conducting the operation”.
5. Burn stated she was unaware of any instructions given to Paddle by Internal Affairs police, but noted that “issues of possible compromise that may have arisen at [Paddle's] court matter were discussed between Detective Sergeant Boyd-Skinner, Superintendent Dolan and the prosecuting authority”.
6. Burn stated she was aware there had been contact between Boyd-Skinner and Paddle's solicitor but she was unaware if any documents had been produced.
7. Burn stated she was unaware of the nature of the conversations between Boyd-Skinner and Paddle's solicitor and “I reject the claim that Internal Affairs police arranged for [Paddle] to breach his bail”.
8. Burn noted that Mr A and his lawyer are not entitled to information provided by Paddle on other crimes, on the basis of a claim of privilege in the public interest.³⁹³

³⁸⁵ Letter from [SCIA Detective Inspector], NSWPF to NSW Ombudsman, 29 August 2001.

³⁸⁶ Ombudsman Transcript, [Mr A], 8 July 2014, pp. 121-122; Letter from [Mr A] to [SCIA Detective Inspector], NSWPF, 20 November 2001.

³⁸⁷ NSWPF internal memorandum from [SCIA Detective Inspector], 14 January 2002. (Note memorandum date incorrectly states 2001.)

³⁸⁸ Letter from Commander SCIA B J Reith, NSWPF to Assistant Ombudsman (Police), Steve Kinmond, NSW Ombudsman, 28 January 2002.

³⁸⁹ Letter from Assistant Ombudsman (Police) Steve Kinmond, NSW Ombudsman to NSWPF, 27 February 2002.

³⁹⁰ NSWPF internal memorandum from Acting Commander SCU Catherine Burn, to Commander Lawrence Baker, SCIA Investigations Unit, 22 March 2002.

³⁹¹ NSWPF internal memorandum from Acting Commander Special Crime Unit (SCU) Catherine Burn to Commander SCIA Brian Reith, 23 May 2002.

³⁹² NSWPF internal memorandum from Acting Commander SCU Catherine Burn to Commander Lawrence Baker, SCIA Investigations Unit, 22 March 2002.

³⁹³ NSWPF internal memorandum from Acting Commander SCU Catherine Burn, to Commander Lawrence Baker, SCIA Investigations Unit, 22 March 2002, pp. 1-2.

There is no record that shows why Burn was asked to prepare the additional memorandum dated 23 May 2002, which was addressed to Commander Reith. It set out how Paddle, a NSWCC informant, provided information of interest to Mascot about the 1994 arrests of himself, Mr O and Mr M. There is mention of the alleged contact between Paddle and Mr A at a nightclub in Coffs Harbour where Mr A allegedly said words to the effect, "I had to do it". This incident had been included in the affidavit in support of the application for LD warrants 143–144/99, which was attached to the memo – although the affidavit was an unsigned draft that listed another officer and not Moore as the deponent.³⁹⁴ The memo outlined the scenario devised for the approach to Mr A, and details of the deployment on 5 and 24 May 1999. Burn noted: "It is my understanding that investigators did not know that there was a bail condition for [Paddle] not to approach crown witnesses", but noted there were discussions on altering other bail conditions between Boyd-Skinner and Paddle in mid-May. Burn also noted:

On 23 May 2002 I conducted a search of the holdings regarding this matter and I was unable to locate any other information relating to bail re [Paddle]. I have attached a contents list regarding the documentation on hand at Mascot with regard to [Paddle] (Attachment 4).

I also checked the informer registration file on hand at the New South Wales Crime Commission and there is nothing in this file relating to bail conditions. I understand that the former Commander, Mr Dolan, had dealings with Boyd-Skinner about [Paddle's] bail. I suggest that contact will need to be made with Boyd-Skinner to clarify this issue. I have attached other IRs that may be relevant.³⁹⁵

14.9.11 Further consideration of Mr A's complaint and referral to Emblems (2002 to 2003)

Reith replied to the Ombudsman in May 2002 to advise that he had a report from Burn and a copy of the affidavit in support of LD Warrants 143-144 of 1999. He stated he was satisfied that "the deponent was not aware of Paddle's bail conditions". Reith also noted that the Computerised Operational Policing System (COPS) holdings did not contain details of the bail undertaking, and that Burn had advised him that the informant registration file at the NSWCC had no reference to bail conditions.³⁹⁶ Nevertheless, Reith advised that the complaint file remained active and further inquiry activities were being undertaken by SCIA.

On 8 November 2002 Reith prepared a memorandum to Burn asking about the NSWCC Information Report³⁹⁷ she prepared on 22 June 1999. This Information Report discussed the complaint made by MSO4 during his interview with Boyd-Skinner and McFadden on 11 June 1999 about Paddle breaching his bail conditions when he approached Mr A on two occasions. Reith noted that Burn had written on the Information Report that the matter had been discussed with Dolan and was assessed as not requiring further initiation. Reith asked Burn to report on her knowledge of the Information Report, the context of the discussions she may have had with Dolan, and any other knowledge she may have about Boyd-Skinner's report of the interview.³⁹⁸

Burn responded to Reith the same day advising that she could not recall the content of her discussion with Dolan, but the outcome was as recorded in the Information Report. Burn stated that Dolan discussed the matter with Brammer and an IA officer, but she could not recall why the complaint was not initiated. She noted that Boyd-Skinner had raised his interview with MSO4 with her, and that she and Boyd-Skinner agreed that he needed to submit a report on the matter.³⁹⁹

³⁹⁴ As noted in section 14.5.3 on the deployment of Paddle on 5 May 1999, Moore was the deponent on the affidavit and warrant application for the LD worn by Paddle and used to record his conversations with Mr A.

³⁹⁵ NSWPF internal memorandum from Acting Commander SCU Catherine Burn to Commander, SCIA Investigation Unit Brian Reith, 23 May 2002.

³⁹⁶ Letter from Commander Brian Reith, NSWPF to Assistant Ombudsman (Police) Steve Kinmond, NSW Ombudsman, undated. (Note: handwritten note suggests this letter was received by the Ombudsman office in May 2002).

³⁹⁷ NSWCC Information Report, *Reports from Boyd Skinner RE [Paddle] complaints*, reporting officer: Burn, 22 June 1999.

³⁹⁸ NSWPF internal memorandum from Commander SCIA Brian Reith to Chief Inspector Catherine Burn, 8 November 2002.

³⁹⁹ NSWPF internal memorandum from Chief Inspector Catherine Burn to Commander, SCIA, Brian Reith, 8 November 2002.

A memorandum dated 28 March 2003⁴⁰⁰ noted that Reith had advised the Ombudsman that the delay in handling Mr A's complaint may partly have been because the matter was part of the Mascot/Florida investigation and could result in some officers being charged. The memorandum also noted Reith's view that the eight issues raised in Mr A's complaint were speculative and the NSWPF would argue those matters were subject to public interest immunity. The memorandum also stated there were conflict of interests if the complaint was investigated by SCIA and this may account for some of the delay.⁴⁰¹ As noted before, no reply was made to the letter from Mr A's lawyer so he had not been advised of any public interest immunity concerns.

SCIA made enquiries with Boyd-Skinner about the allegations and further reports made on the progress of the investigation. By late 2003, the issues raised in Mr A's complaint were transferred to Strike Force Emblems for investigation. Operation Prospect is aware that a detailed and competent plan of investigation was drawn up,⁴⁰² but a full investigation was not completed by Strike Force Emblems. The following explanation was given in the Emblems report:

*The NSWCC has not disseminated adequate source material to thoroughly investigate this issue. Witnesses (including the involved officers) that could assist in the investigation of this issue have not been interviewed due to secrecy clauses provided in S.29 of the NSW Crime Commission Act. Without these sanctions being lifted and/or material disseminated this investigation cannot progress to adequate conclusion.*⁴⁰³

14.9.12 Analysis and submissions

This section discusses the roles and responsibility of the NSWPF and NSWCC in handling the complaints and allegations about Paddle's actions, and the incorrect comments recorded in two memoranda prepared by Burn on the issues.

14.9.12.1 NSWPF's handling of the complaints and issues

MSO4 complained to Boyd-Skinner and McFadden in June 1999 shortly after Paddle's deployment to speak to Mr A. The complaint raised serious allegations that ought to have been recognised by the officers involved. In fact, Boyd-Skinner did so in his memorandum of 22 June 1999 that recommended the complaint be recorded and assessed for appropriate action.

That memorandum was addressed to Detective Inspector William Lardner of the IA Investigation Unit, and Burn. Lardner noted on the document that he forwarded it to Burn. When asked by Operation Prospect why he did so, Lardner said:

*Well, I didn't know the matter. It obviously related to Operation Mascot. Initiation would be whether it was to be forwarded on for assessment as a complaint ... As I indicated, they were reporting to DI Burn. He's given it to me. I'm going to give it to Burn because I don't know what's going on.*⁴⁰⁴

Lardner's response can be better understood in the context of the time. As noted earlier, Boyd-Skinner had been appointed to SCIA to work in a dual role – overtly, as a member of IA investigating the arrests of Paddle and his co-accused for the 1994 attempted armed robbery, and covertly for Mascot and their investigation of officers involved in the arrests. Others in IA were unaware of Boyd-Skinner's dual role, but Burn was his supervisor. This explains why Lardner, who was not directly involved in Paddle's deployment, acted reasonably and appropriately in forwarding the matter to Burn.

400 NSWPF internal memorandum from [name], Acting Professional Standards Manager, 28 March 2003.

401 NSWPF internal memorandum from [name], Acting Professional Standards Manager, 28 March 2003.

402 Facsimile from NSWPF Professional Standards Command to NSW Ombudsman, 7 July 2003.

403 NSWPF Report, *Complaint number (numbers)*, *Investigators report by Detective Inspector M Galletta, Strike Force Emblems Report*, 22 March 2004, Attachment 11, pp. 9, 15, 17 and 20.

404 Ombudsman Transcript, William Lardner, 8 July 2014, pp. 84-85.

Burn – when asked by Reith in 2002 about Dolan’s decision to ‘not initiate’ a complaint – stated that she could not recall the content of any discussion she had with Dolan nor the reason the complaint was not initiated. She gave similar evidence to Operation Prospect, although she said:

*... these decisions, these actions, what has happened was not done in isolation of Mr Dolan and Mr Bradley. I reported up as I was required to do, as this document suggests, but I mean this is, this is clear, but – and I don’t recall the nature of the discussion, but that was the decision that was made.*⁴⁰⁵

When pressed on this issue and reminded that a serious allegation had been made that should have been referred for complaint initiation, she said:

*It is a serious matter. Look, I, I, I agree. I can’t help with the context of when we realised that bail had been breached, and then what the discussions were and the decision-making was, and then if anything else was put in place at a higher level between Mr Bradley and the DPP or others about it. I just don’t recall, but that [discussions between Bradley and the DPP] sometimes was a course of action that was taken, because it was of the covert nature of the job at the time.*⁴⁰⁶

Burn reiterated in her evidence that the appropriate course of action for her to take was to report the matter up the chain of command – which she did by discussing the matter with Dolan and recording it in the Information Report she compiled on 22 June 1999 that was signed off by Dolan.⁴⁰⁷ It can be accepted that this was an appropriate reporting arrangement for Burn to take at that time.

Burn’s Information Report does not state who decided the complaint should not be initiated – only that it was discussed with Dolan and was assessed as not requiring initiation. Dolan was not able to provide oral evidence on this matter to Prospect. It is apparent, however, that Dolan considered this to be the appropriate course of action as he was the senior officer and initialled the Information Report. A memorandum prepared by Boyd-Skinner in 2003 also noted it was Dolan who made the decision and the reason was that the matter was not a complaint.⁴⁰⁸ That explanation is consistent with the fact that the matter was not triaged or placed on the police complaints system.

The failure to formally register the complaint was inappropriate. The allegations made by MSO4 during an interview that were later transcribed constituted a police complaint under Part 8A of the Police Act. They should have been registered and formally assessed by an officer who was independent of the officers involved in Mascot. A proper assessment would have identified that further action was required, whether by the NSWPF or by referral to the Commissioner of the NSWCC.

No further action was taken until Mr A’s solicitor wrote to the Commissioner of Police on 27 September 1999 – after Paddle’s bail review hearing. The issues raised included allegations about Paddle’s deployment and breach of bail, that police officers may have engaged in police misconduct, and that Paddle may have committed perjury at the behest of police officers. These allegations went further than the issues raised by MSO4. There was no response to the solicitor’s letter and internal handling of the allegations was slow and delayed. The matter was eventually passed to Strike Force Emblems – they attempted a comprehensive investigation but were unable to reach a conclusion or findings as the NSWCC did not provide access to relevant documents.

The NSWPF’s handling of the complaints by MSO4 and Mr A reflected poorly on its complaint handling performance at that time. Other opportunities also arose in the following years for either the NSWPF or the NSWCC to investigate the complaints properly. Those opportunities, it seems, were not taken up. The NSWPF submission in response to the statement of provisional findings explains some of the legal and logistical difficulties they faced in providing a response to Mr A’s solicitor.⁴⁰⁹ These difficulties included that:

405 Ombudsman Transcript, Catherine Burn, 15 July 2014, p. 613.

406 Ombudsman Transcript, Catherine Burn, 15 July 2014, p. 613.

407 Ombudsman Transcript, Catherine Burn, 15 July 2014, p. 616.

408 NSWPF internal memorandum from Detective Sergeant Darren Boyd-Skinner to the Commander, SCIA Investigations Unit and SCIA Executive, Complaints Management Team, 2 September 2003.

409 NSWPF, Submission in reply, 20 August 2015, pp. 5-7

- The Mascot investigations were conducted covertly until 2001 and a response may have indirectly confirmed that Paddle was a NSWCC informant who had been deployed as part of a covert investigation.
- There was uncertainty about which of a number of agencies would address the complaint.
- A NSWPF analysis of the complaint may have come up against the same legal barriers as Strike Force Emblems in accessing information held by the NSWCC.

These are relevant considerations, but they do not adequately explain why the NSWPF allowed complaints that raised serious issues to drift, nor do they justify its apparent failure to explore avenues for responding to the complainants. The NSWPF response does not address the unsatisfactory explanations that were given internally about the complaint issues and the action being taken – as discussed below in relation to Burn’s memoranda of 22 March 2002 and 23 May 2002.

14.9.12.2 NSWCC’s handling of the complaints and issues

A fax sent from Deputy Solicitor Legal at the DPP to Bradley at the NSWCC on 20 September 1999 advised that Paddle had breached his bail conditions (see 14.9.6). In evidence to Operation Prospect, Bradley was asked about this fax – but he could not recall receiving it or being informed of the bail breach.⁴¹⁰ Bradley said he recognised the fax number on the document as a fax machine located on the floor he worked on, but also noted it was a shared fax.⁴¹¹ He stated: “the likelihood is that this would have come to me, unless she [Deputy Solicitor Legal] has contacted the police and said, ‘There’s something coming for you’”.⁴¹²

After reviewing the document, Bradley acknowledged why the fax would have been sent to him:

Now I have a kind of an idea of why it has been sent, because it’s the substance of the complaint that he has breached bail, but until today I had no recollection of [Paddle] breaching bail...⁴¹³

The only documentary record about this fax is Burn’s Information Report of 22 September 1999 which states the fax was received by Bradley – as opposed to some other person. Dolan’s initials on the fax indicate that he had seen it. Burn also saw it as she prepared the Information Report. Both that Information Report and a notation on the fax indicate the fax was given to Boyd-Skinner.

There are other NSWCC records about the breach of bail issue. In particular, a NSWCC Information Report compiled by Burn on 22 June 1999 discusses the allegations made by MSO4.

The NSWCC took no action to consider Paddle’s breach of bail or the allegations against officers involved in the deployment. This was a shortcoming. The deployment was part of a NSWCC investigation under a NSWCC reference and the NSWCC had applied for the LD worn by Paddle. The NSWCC should have taken action to consider the allegations. The outcome of any investigation could have been reported to the Commissioner of Police to deal with managerially if necessary. The NSWCC shares responsibility with the NSWPF for the overall and general failure to respond in an appropriate and timely way to the breach of bail and associated allegations.

14.9.12.3 Accuracy of Burn’s memoranda

Burn prepared two memoranda in 2002 about Paddle’s deployment and the complaints that had been received. The content of those memoranda has been summarised earlier (see 14.9.10). It is clear from the summary that Burn’s advice was partly based on her recollection of events occurring some years before or about which she did not have direct knowledge. Reference was made to other documents that could be consulted. However, in some respects, the memoranda gave misleading advice.

⁴¹⁰ Ombudsman Transcript, Phillip Bradley, 14 July 2014, p. 512.

⁴¹¹ Ombudsman Transcript, Phillip Bradley, 14 July 2014, p. 516.

⁴¹² Ombudsman Transcript, Phillip Bradley, 14 July 2014, p. 512.

⁴¹³ Ombudsman Transcript, Phillip Bradley, 14 July 2014, p. 516.

Her memorandum of 22 March 2002 made the following comment on issue 7 in Mr A's complaint: "I reject the claim that Internal Affairs police had arranged for [Paddle] to breach his bail". That is incorrect, as police officers had made arrangements that resulted in Paddle breaching his bail condition under their direction – albeit as part of a NSWCC operation. Other comments in the memorandum indicate that Burn was not stating that the incident did not occur – but that there was no 'intentional' or 'deliberate' action by officers to have Paddle breach his bail as they were unaware of the bail conditions. She noted: "It is my understanding that the officers did not have knowledge of [Paddle's] bail conditions prior to conducting the operation". This can also be read as an acknowledgement that bail conditions were in place at the time. Burn submitted to Operation Prospect that her responses in the memorandum to the eight complaint issues were both honestly given and strictly correct in conveying the knowledge that officers held at particular points in time.⁴¹⁴

The memorandum does not clearly show Burn's role and involvement in the planning and deployment of Paddle on 4 May 1999. The language quoted above – "it is my understanding" – could be read as distancing her from any involvement. She identifies Boyd-Skinner and Henry as the officers who conducted the "undercover operation in the Kempsey area".⁴¹⁵

The memorandum of 23 May 2002 commented incorrectly on Sea's and Paddle's allegation that the arresting officers in the 1994 arrests verbaled the accused. The memorandum stated: "All police made false statements and gave perjured evidence".⁴¹⁶ This inaccurately suggests that the alleged conduct occurred or that an offence had been committed. Apart from Sea's admission about his own conduct, Mascot only had allegations at that time. The information available to Operation Prospect indicates that Mascot was unsuccessful in obtaining sufficient admissible evidence to prosecute any of the officers involved in the 1994 arrests – and, by February 2000, the ODPP had advised it would not start criminal proceedings in relation to two of those referrals arising from Mascot.⁴¹⁷

Burn's memorandum of 23 May did not indicate her role or involvement in the planning or deployment of Paddle, and again used language that could be read as distancing her from those actions.⁴¹⁸ She commented in terms similar to those in her 22 March memorandum: "It is my understanding that investigators did not know that there was a bail condition for [Paddle] not to approach crown witnesses".⁴¹⁹ Burn pointed to Boyd-Skinner's and Henry's involvement, and to Dolan's discussion with Boyd-Skinner about Paddle's bail conditions – but did not identify her own involvement or awareness of bail conditions at the relevant time.

The 23 May 2002 memorandum stated that Burn had conducted a search of holdings and was unable to locate any information (aside from that in the memorandum) relating to Paddle's bail conditions. A contents list of the Mascot documentation in relation to Paddle was attached. An item in the list was a full brief of evidence about Mr O, Mr M and Paddle and an entry marked 'Call over for [Paddle] matters at Lismore District Court on the 10-2-99'. Those documents would ordinarily contain criminal histories and bail details. However, the issue cannot be taken further in this report – as the relevant Mascot folders have since been archived and combined with other documents. It is not now possible to identify the specific documents in the folders marked '29.1 to 29.4 Mascot [Paddle] matter'.

Another item in the list of documents attached to Burn's memorandum (item 9 in folder 29.2) refers to 'District Court Transcripts for [Paddle] at Coffs Harbour District Court on the 27-10-97'. Burn had earlier initialled an Information Report dated 11 May 1999 that attached that transcript, in which the Judge dealt with Paddle's bail conditions at some length in a hearing.⁴²⁰ The transcript also revealed that Paddle agreed in evidence to abide by a condition not to approach any prosecution witness. Burn's evidence to Operation Prospect was that her initials would generally indicate that she had read the attachments – but in this case she did not recall reading the transcript.⁴²¹ She also submitted to Operation Prospect (see section 14.5.7.3) that she did not believe she would have read the entire transcript in close detail at the time due to its length (94 pages).⁴²²

414 Burn, C. Submission in reply, 25 September 2015, Appendix 1, pp. 28-29.

415 NSWPF internal memorandum from Acting Commander SCU Catherine Burn to Commander SCIA Investigation Unit Lawrence Baker, 22 March 2002, p. 1.

416 NSWPF internal memorandum from Acting Commander SCU Catherine Burn to Commander SCIA Brian Reith, 23 May 2002.

417 NSWPF Information Report, *Advice provided to [Mr A's solicitor] re [Mr A's] status*, reporting officer: Detective Sergeant [name], 14 February 2000.

418 NSWPF internal memorandum from Acting Commander SCU Catherine Burn to Commander SCIA Brian Reith, 23 May 2002.

419 NSWPF internal memorandum, from Acting Commander SCU Catherine Burn to Commander SCIA Brian Reith, 23 May 2002, p. 1.

420 NSWCC, Information Report, *District Court Transcripts for [Paddle] at Coffs Harbour District Court on [date] 1997*, reporting officer Arpad Szabo, 11 May 1999, with attachment: Transcript of Court proceedings, *R v [Paddle]* (unreported), 27 October 1997.

421 Ombudsman Transcript, Catherine Burn, 15 July 2014, p. 604.

422 Burn, C. Submission in reply, 25 September 2015, Appendix 1, p. 19.

A further incorrect statement in Burn's 23 May 2002 memorandum was that she had checked the informant registration file and that "there is nothing in this file relating to bail conditions".⁴²³ As noted in section 14.4, a personal profile document dated 8 April 1999 on that file recorded that Mr O and Paddle were at that time on bail.⁴²⁴ This linked Paddle's bail condition to the 1994 charges. The criminal records section of the profile document listed the 1994 charges as 'committed for trial' in the result column, which would indicate that those charges were pending.

Burn submitted that she had limited time to review the holdings on Paddle in preparing the 23 May 2002 memo (only part of that day), and she reported what she was aware of at that time.⁴²⁵ She also submitted that she did not review in any detail the full brief of evidence attached to the memorandum, and did not review the District Court transcript at the time it was received by Mascot.⁴²⁶ Those are not acceptable explanations for providing misleading or inaccurate information to Commanders who were seeking the facts about what occurred in a matter where serious allegations against police officers had been made. Burn should either have conducted a proper and thorough review of the document holdings, or more strongly qualified her statements as being partial or incomplete – and not ruling out that Mascot records included information about Paddle's bail conditions before his deployment.

Burn also submitted that her recollection at the time of preparing the two memoranda in 2002 would not have been clear as three years had passed since Paddle's deployment.⁴²⁷ It is accepted that her recollection may have dimmed in that period. However, the required records were at her disposal to prompt her recollection and fill any 'gaps' in the events – or the memoranda could have been more strongly qualified.

Burn also submitted that her memoranda were not disingenuous or an attempt to deflect any potential criticism of herself.⁴²⁸ It is accepted that it was not her intention to be disingenuous, but – as commented earlier – the advice she was giving to senior officers should have outlined her own role and involvement in the deployment and that she was aware of Paddle's breach of bail in 1999.

14.9.13 Findings

58. Dolan

Dolan's conduct in determining that the complaint by Mascot Subject Officer 4 (made during his interview on 11 June 1999) required no initiation or investigation was unreasonable conduct in terms of section 122(1)(d)(i) of the *Police Act 1990*. As discussed in section 14.9.12.1, the complaint made a serious allegation against NSW Police Force officers that should have been recorded and assessed at Dolan's initiation in his role as Superintendent of the Special Crime Unit.

59. Burn

Burn's conduct in preparing two memoranda on 22 March 2002 and 23 May 2002 that contained misleading or inaccurate information was unreasonable conduct in terms of section 122(1)(d)(i) of the *Police Act 1990*. As discussed in section 14.9.12.3, the purpose of those memoranda was to advise senior officers about the nature and status of serious allegations that had been made against NSW Police Force officers. It was important that accurate advice was prepared, or that appropriate reservations or qualifications were made about the reliability of the analysis and advice in the memoranda.

⁴²³ NSWPF internal memorandum, from Acting Commander SCU Catherine Burn to Commander SCIA Brian Reith, 23 May 2002, p. 2.

⁴²⁴ NSWPF individual profile for [Paddle], report date: 8 April 1999, prepared by [NSWCC Analyst].

⁴²⁵ Burn, C, Submission in reply, 25 September 2015, Appendix 1, pp. 61-62 and 63.

⁴²⁶ Burn, C, Submission in reply, 25 September 2015, Appendix 1, pp. 62-63.

⁴²⁷ Burn, C, Submission in reply, 25 September 2015, Appendix 1, p. 62.

⁴²⁸ Burn, C, Submission in reply, 25 September 2015, Appendix 1, pp. 63-64.

60. NSW Police Force

The conduct of the NSW Police Force in failing to deal with Mr A's complaint (made on 27 September 1999) in a timely and appropriate manner is conduct that is 'otherwise wrong' in terms of section 26(1)(g) of the *Ombudsman Act 1974*, for the reasons discussed in section 14.9.12.1.

61. NSW Crime Commission

The conduct of the NSW Crime Commission in failing to deal with the allegations about Paddle's deployments that were brought to its attention is conduct that is 'otherwise wrong' in terms of section 26(1)(g) of the *Ombudsman Act 1974*, for the reasons discussed in section 14.9.12.2.

14.9.14 Recommendations

21. It is recommended under section 26(2)(b) of the *Ombudsman Act 1974* that the NSW Police Force provide a written apology to Mr A for failing to progress his complaint in a timely manner.
22. It is recommended under section 26(2) of the *Ombudsman Act 1974* that the NSW Crime Commission provide a written apology to Mr A for the NSW Crime Commission's failure to investigate allegations – that were received by or known to officers who were working under the NSW Crime Commission's supervision – about the actions of a registered NSW Crime Commission informant (Paddle) in speaking to Mr A contrary to Paddle's bail conditions.

14.10 Omission of information to ODPP about Paddle's admission of guilt

14.10.1 Introduction

Operation Prospect examined whether the ODPP was informed that Paddle had admitted his involvement in the 1994 offence, before directing there be no further proceedings for that offence. This section reports the evidence and findings about this issue.

This chapter outlined earlier the details of Paddle's arrest in 1994 with two co-accused for an attempted armed robbery at a Coffs Harbour club (see section 14.2). On 5 June 1996, Paddle was granted a separate trial to his co-accused,⁴²⁹ and on 4 February 1998 his co-accused had their charges dismissed. The attempted armed robbery became a focus for Mascot investigators when Sea alleged that arresting police, including himself, had – among other things – verbally charged those charged.

Paddle was registered as a NSWCC informant on 13 April 1999. He later admitted his involvement in the 1994 attempted armed robbery, during an interview on 7 December 1999 with Boyd-Skinner and another police officer. This admission could not be used against him in any criminal proceedings because of an inducement offered to him by investigators. The criminal proceedings against him for the attempted armed robbery were pending at the time he made this admission.

In 1999 and early 2000 NSWCC, SCU and SCIA senior officers communicated and met with the DPP and a member of his staff on a number of occasions about the proceedings against Paddle for the attempted armed robbery. The purpose of these communications was to alert the DPP of the allegations made by both Sea and Paddle of verballing and other police misconduct in relation to the 1994 attempted armed robbery. There was a concern that police evidence may be tainted and fail to withstand the scrutiny of a trial. Another concern was that the trial may expose the ongoing work of Sea and Paddle as NSWCC informants. The DPP acted on these concerns by seeking a number of adjournments of the pending Court of Criminal Appeal (CCA) proceedings in relation to the prosecution of Paddle. Ultimately, the DPP directed that there be no further proceedings for the 1994 attempted armed robbery. It appears that neither the DPP, nor his office, was advised that Paddle had admitted his involvement in the 1994 offence in his interview with police on 7 December 1999.

429 [Deputy Solicitor Legal], File note, *Confidential Note for Director's Safe Relating to Submission Dated 16/2/00*, DPP, 16 February 2000.

14.10.2 Initial contact with ODPP about Sea's allegations of police misconduct

On 5 February 1999 Bradley, Brammer and Dolan met with the DPP and his colleague, the Deputy Solicitor Legal.⁴³⁰ The Deputy Solicitor Legal's confidential record of the meeting included the following information:

- The meeting was held at the request of Bradley.
- The DPP was advised of allegations made by Sea against police involved in the arrest and charge of Paddle and his co-accused in relation to the 1994 offence.
- The allegations included verballing, loading and assaults.
- Sea was assisting a NSWCC and IA covert inquiry.
- Bradley and Brammer expressed concern that correspondence between the ODPP and IA investigators may be leaked.
- It was agreed the DPP would advise IA of the status of the appeal and seek further information from IA about the police involved in Paddle's prosecution.⁴³¹

In evidence to Operation Prospect, Bradley said he recalled attending meetings with the DPP but had no independent recollection of meetings about Paddle.⁴³² Brammer said he did not recall attending meetings with the DPP.⁴³³

In a letter dated 2 March 1999 the Deputy Solicitor Legal advised Brammer of the status of the appeal and sought information about the police involved in Paddle's prosecution.⁴³⁴

14.10.3 Paddle's interview and registration as an informant (April 1999)

Paddle was formally registered as a NSWCC informant on 13 April 1999, just over two months after the initial meeting with the DPP about Sea's allegations relating to the 1994 attempted armed robbery in Coffs Harbour. Some relevant details will be revisited here.

On 12 April 1999 officers Boyd-Skiner and McFadden travelled to a regional NSW town and conducted an electronically recorded interview with Paddle.⁴³⁵ In this interview Paddle stated he had no knowledge of the offence and could not have been involved in it.⁴³⁶ He also claimed police falsely stated he made oral admissions to the attempted armed robbery.⁴³⁷ In evidence to Operation Prospect, Boyd-Skiner said the approach was successful in cultivating Paddle as an informant,⁴³⁸ and this was a significant development for Mascot.⁴³⁹ Boyd-Skiner said he reported what occurred in the meeting to Burn.⁴⁴⁰ This was that Paddle claimed he was 'verballled', but he could not say whether he told her Paddle denied involvement in the offence.⁴⁴¹

Boyd-Skiner compiled an Information Report dated 14 April 1999 noting Burn as case officer and summarising the 12 April 1999 meeting.⁴⁴² The record referred to the alleged 'verbal' but not Paddle's claimed ignorance and innocence of the offence. Burn said in evidence to Operation Prospect she could not recall what she was told. Boyd-Skiner would have told her some of what Paddle said, although she would not have had an in-depth understanding.⁴⁴³

430 While it is noted that the ODPP has two Deputy Solicitor positions, one in Legal and one in Operations, all references to the Deputy Solicitor in this chapter refer to the Deputy Solicitor Legal.

431 [Deputy Solicitor Legal], File note, *Confidential Note for Director's Safe Relating to Submission Dated 16/2/00*, DPP, 16 February 2000.

432 Ombudsman Transcript, Phillip Bradley, 6 May 2016, p. 275.

433 Ombudsman Transcript, Malcolm Brammer, 6 May 2016, p. 268.

434 Letter from [Deputy Solicitor Legal], ODPP to Commander Malcolm Brammer, NSWPF, 2 March 1999.

435 NSWPF, Record of interview between Detective Sergeant Boyd-Skiner, Detective Senior Constable McFadden and Paddle, 12 April 1999.

436 NSWPF, Record of interview between Detective Sergeant Boyd-Skiner, Detective Senior Constable McFadden and Paddle, 12 April 1999.

437 NSWPF, Record of interview between Detective Sergeant Boyd-Skiner, Detective Senior Constable McFadden and Paddle, 12 April 1999, p. 18.

438 Ombudsman Transcript, Darren Boyd-Skiner, 5 May 2016, p. 112.

439 Ombudsman Transcript, Darren Boyd-Skiner, 5 May 2016, p. 112.

440 Ombudsman Transcript, Darren Boyd-Skiner, 5 May 2016, p. 112.

441 Ombudsman Transcript, Darren Boyd-Skiner, 5 May 2016, p. 112.

442 NSWCC Information Report, *Contact with Informant codenamed 'Paddle' on 12 April 1999*, reporting officer: Boyd-Skiner, 14 April 1999.

443 Ombudsman Transcript, Catherine Burn, 6 May 2016, pp. 205-206.

Boyd-Skinner completed a NSWCC informant registration form on 13 April 1999.⁴⁴⁴ The registration form establishes that Dolan, Standen and Bradley were aware of Paddle's registration as their signatures are on the registration document.⁴⁴⁵ Burn's Duty Book from 14 April 1999 also contains an entry: "Register [Paddle] – Paddle – see Mark Standen re same",⁴⁴⁶ indicating her awareness of the recruitment and registration of Paddle.

In an Information Report dated 16 April 1999 Burn noted the DPP needed to be briefed about Paddle and an unrelated matter, and stated:

Sea has provided information which suggests that he and other police involved in this matter fabricated evidence, made false statements and gave perjured evidence. A covert operation is currently in place. [Paddle] has given a signed statement which corroborates Sea. Both Sea and [Paddle] are assisting with gathering further evidence.

*It is requested that the CCA matter be postponed ...*⁴⁴⁷

14.10.4 Meeting with ODPP (April 1999)

Not long after Paddle was formally registered as a NSWCC informant, Bradley requested a second meeting with the DPP. This meeting took place on 22 April 1999 at the ODPP. The DPP, the Deputy Solicitor Legal, Bradley, and Dolan were in attendance. The Deputy Solicitor Legal made a contemporaneous note of the meeting, which recorded:

- The meeting was held at the request of Bradley.
- A briefing note dated 16 April was presented.
- Paddle was cooperating with the NSWCC and has given an account which corroborates Sea's version of events.
- Paddle was assisting the NSWCC in the investigation of police corruption in the attempted armed robbery.
- Concerns were again expressed about exposure of Sea's ongoing assistance in covert inquiries.
- Bradley advised that, on the material provided to the NSWCC, the police had fabricated the evidence against Paddle and his co-accused even though all three had been involved in the attempted armed robbery. Bradley also advised that Paddle drove his co-accused to the residence of the club manager who was held at gunpoint in the attempted armed robbery.⁴⁴⁸
- It was agreed that the DPP would consider further advice and, if the prospects of success in the appeal and at trial were reasonable, request an adjournment of the appeal.⁴⁴⁹

The DPP then obtained advice from a Deputy Senior Crown Prosecutor that the prospects of success against Paddle's appeal (against the refusal for a permanent stay) and at trial were reasonable, and gave instructions to request an adjournment of the appeal to allow time for further investigation to occur.⁴⁵⁰

14.10.5 Additional contact with the ODPP about adjourning Paddle's appeal

Records viewed by Operation Prospect indicate there was additional contact between the ODPP and officers from Mascot, the NSWCC and IA about adjourning Paddle's CCA proceedings for the attempted armed robbery.

444 NSWCC Informant registration form, codenamed Paddle, Registration no. 583, case officer: D Boyd-Skinner, approved date: 14 April 1999.

445 NSWCC Informant registration form, codenamed Paddle, Registration no. 583, case officer: D Boyd-Skinner, approved date: 14 April 1999.

446 NSWPF Duty Book, D37833, Catherine Burn, SCIA, 14 April 1999, p. 14.

447 NSWCC Information Report, [DPP] to be Briefed Re: [Mr HH]/[Paddle] Matters, reporting officer: Burn, 16 April 1999; Ombudsman Transcript, Catherine Burn, 6 May 2016, pp. 208-209.

448 [Deputy Solicitor Legal], File note, Confidential Note for Director's Safe Relating to Submission Dated 16/2/00, DPP, 16 February 2000.

449 [Deputy Solicitor Legal], File note, Confidential Note for Director's Safe Relating to Submission Dated 16/2/00, DPP, 16 February 2000.

450 Letter from Peter Berman, Deputy Senior Crown Prosecutor Chambers to the [Deputy Solicitor Legal], ODPP, 10 May 1999; Ombudsman Transcript, [Deputy Solicitor Legal], 4 May 2016, p. 13.

In evidence to Operation Prospect, Burn said her diary entries confirmed she had direct contact with the Deputy Solicitor Legal on a number of occasions in 1999 about Paddle. Although she could not recall their conversations, they liaised about adjourning the appeal as well as the IA re-investigation relating to the attempted armed robbery.⁴⁵¹

In an Information Report dated 13 May 1999 Burn reported a telephone conference between Bradley, Dolan, Burn and the Deputy Solicitor Legal on 11 May 1999.⁴⁵² Burn noted the Deputy Solicitor Legal had advised that the DPP had received advice that the prosecution of Paddle was likely to succeed. Burn noted it was agreed the ODPP would attempt to adjourn the CCA matter on behalf of Operation Boat (a subsidiary of Mascot),⁴⁵³ and that Brammer would send the DPP a letter requesting the adjournment. Burn noted that Brammer compiled and sent the letter to the Deputy Solicitor Legal requesting the adjournment pending an IA investigation. Bradley told Operation Prospect he did not recall the telephone conference.⁴⁵⁴

A letter signed by Brammer dated 11 May 1999 addressed to the DPP and marked for the attention of the Deputy Solicitor Legal, stated:

Following consultation with your office, Internal Affairs has been investigating the circumstances in which the evidence in this prosecution was obtained. Although the investigation is not complete, Investigators have developed evidence and it is likely that the outcome of the investigation will impact upon your decision to continue the prosecution against [Paddle].

In my view, it is not in the public interest for this prosecution to proceed until the outcome of the Internal Affairs investigation ... is known.

The information contained in this report can be declared in open court...⁴⁵⁵

In evidence to Operation Prospect, Brammer said he did not recall writing any letters to the DPP about the CCA proceedings involving Paddle.⁴⁵⁶ Brammer said other officers sometimes wrote letters for him to sign or provided information on which he based the letters he wrote. Brammer said the letter's format and expression were inconsistent with his own,⁴⁵⁷ and the letter would have been compiled for him to sign.⁴⁵⁸ Burn said she did not recall whether others drafted letters for Brammer's signature, but the letterhead was not that used at the NSWCC premises.⁴⁵⁹ Burn said Brammer was "acutely aware" of everything that happened with the Mascot investigation and was actively involved in the Paddle matter.⁴⁶⁰ Burn said the rationale for re-investigating the attempted armed robbery came from Brammer and Dolan and they continued to have "intense" involvement.⁴⁶¹ Bradley said he had no recollection of involvement in the letter.⁴⁶²

14.10.6 Four adjournments of the court proceedings (May 1999 to February 2000)

Following advice from IA the DPP made four more requests for Paddle's CCA proceedings to be adjourned between May and November 1999. The proceedings were eventually adjourned to February 2000, with the ODPP advising IA that no further adjournment would be sought after that date. Reasons for seeking these adjournments included evidence gathering in relation to this and other Mascot investigations and the need to maintain the security and safety of Sea.⁴⁶³ The details of the correspondence and contact between relevant staff are outlined below.

451 Ombudsman Transcript, Catherine Burn, 6 May 2016, p. 207.

452 NSWCC Information Report, *Letter from Mr Brammer to DPP re [Paddle] Adjournment*, reporting officer: Burn, 13 May 1999; Ombudsman Transcript, Catherine Burn, 6 May 2016, pp. 208-209.

453 Ombudsman Transcript, Catherine Burn, 6 May 2016, p. 209. Burn advised Operation Prospect that Operation Boat was a subsidiary of Mascot.

454 Ombudsman Transcript, Phillip Bradley, 6 May 2016, p. 276.

455 Memorandum from Commander Malcolm Brammer, NSWPF to DPP, ODPP, 11 May 1999.

456 Ombudsman Transcript, Malcolm Brammer, 6 May 2016, p. 249.

457 Ombudsman Transcript, Malcolm Brammer, 6 May 2016, pp. 248-250.

458 Ombudsman Transcript, Malcolm Brammer, 6 May 2016, p. 250.

459 Ombudsman Transcript, Catherine Burn, 6 May 2016, p. 211.

460 Ombudsman Transcript, Catherine Burn, 6 May 2016, p. 210.

461 Ombudsman Transcript, Catherine Burn, 6 May 2016, pp. 210-211.

462 Ombudsman Transcript, Phillip Bradley, 6 May 2016, p. 276.

463 NSWCC Information Report, *Meeting with the DPP, the [Deputy Solicitor Legal], and Mr Bradley on 14/2/00*, reporting officer: Burn, 15 February 2000.

In a handwritten note on the 11 May 1999 letter the Deputy Solicitor Legal requested the DPP to authorise an application for an adjournment of the appeal.⁴⁶⁴ In another handwritten note on the letter, the DPP endorsed the request.⁴⁶⁵

The Deputy Solicitor Legal formally advised Brammer in a letter dated 18 May 1999 that the appeal proceedings had been adjourned, and asked Brammer to arrange for formal advice to be given to the DPP before the proceedings were next listed.⁴⁶⁶ Brammer advised Burn in an email the next day that the Deputy Solicitor Legal had telephoned about a letter advising on the Paddle proceedings and noted, "it would be difficult for the DPP to again argue an adjournment".⁴⁶⁷ In evidence to Operation Prospect, Brammer said he had no recollection of this correspondence.⁴⁶⁸

In email dated 23 June 1999 Burn informed Brammer that Paddle had "agreed to supply an induced statement about criminal activity. Hopefully he will tell about a murder".⁴⁶⁹ In evidence to the inquiry, Brammer said sometimes Burn sent him limited information.⁴⁷⁰

In a letter to the Deputy Solicitor Legal dated 29 June 1999, the IA Investigations Unit Operations Manager (IA Operations Manager) referred to a previous letter of the Deputy Solicitor Legal⁴⁷¹ and requested that the CCA proceedings be adjourned for a further six weeks while the investigation and a submission were finalised.⁴⁷²

In a memorandum dated 2 July 1999 the Deputy Solicitor Legal referred to correspondence received from Brammer⁴⁷³ and the IA Operations Manager,⁴⁷⁴ and requested the DPP's instructions to seek a further adjournment of the appeal proceedings.⁴⁷⁵ In a handwritten note on the memorandum of the same date, the DPP instructed as requested.⁴⁷⁶ A further adjournment of the CCA proceedings was then sought.⁴⁷⁷

In a letter to the Deputy Solicitor Legal dated 3 August 1999, the IA Operations Manager again requested that the appeal proceedings be adjourned while the investigation was finalised.⁴⁷⁸ The IA Operations Manager also suggested that the Deputy Solicitor Legal liaise directly with McFadden about the progress of the investigation.

In a letter to the IA Operations Manager dated 19 August 1999, the Deputy Solicitor Legal referred to the IA Operations Manager's letter of 3 August 1999 and requested advice about the length of an adjournment of the appeal proceedings required to complete the investigation.⁴⁷⁹

In an undated letter to the Deputy Solicitor Legal, the IA Operations Manager said he had liaised again with investigators and requested the appeal proceedings be adjourned for a period of three months.⁴⁸⁰ In an email to the DPP dated 23 August 1999, the Deputy Solicitor Legal noted attached correspondence from IA and sought instructions to request adjournment of the CCA proceedings for a period of three months. In a further handwritten note of the same date, the DPP approved the request but added, "This must be the last adjournment sought".⁴⁸¹

464 Memorandum from Commander Malcolm Brammer, NSWPF to the DPP, ODPP, 11 May 1999; Ombudsman Transcript, [Deputy Solicitor Legal], 4 May 2016, p. 13.

465 Memorandum from Commander Malcolm Brammer, NSWPF to DPP, ODPP, 11 May 1999; Ombudsman Transcript, [Deputy Solicitor Legal], 4 May 2016, p. 14.

466 Letter from [Deputy Solicitor Legal], ODPP to Commander Malcolm Brammer, NSWPF, 18 May 1999.

467 Email from Commander Malcolm Brammer, NSWPF to Detective Inspector Catherine Burn, Mascot Reference NSWCC, 19 May 1999.

468 Ombudsman Transcript, Malcolm Brammer, 6 May 2016, p. 251.

469 Email from Commander Malcolm Brammer, NSWPF to Detective Inspector Catherine Burn, Mascot Reference NSWCC, 23 June 1999.

470 Ombudsman Transcript, Malcolm Brammer, 6 May 2016, p. 251.

471 Letter from [Deputy Solicitor Legal], ODPP to Commander Malcolm Brammer, NSWPF, 2 March 1999.

472 Letter from [Internal Affairs Operations Manager], NSWPF to the [Deputy Solicitor Legal], ODPP, 29 June 1999.

473 Memorandum from Commander Malcolm Brammer, NSWPF to the DPP, ODPP, 11 May 1999.

474 Letter from [Internal Affairs Operations Manager], NSWPF to the [Deputy Solicitor Legal], ODPP, 29 June 1999.

475 ODPP internal memorandum from [Deputy Solicitor Legal], to DPP, ODPP, 2 July 1999.

476 Ombudsman Transcript, [Deputy Solicitor Legal], 4 May 2016, pp. 14-15.

477 Ombudsman Transcript, [Deputy Solicitor Legal], 4 May 2016, p. 15.

478 Letter from [IA Operations Manager], NSWPF to the [Deputy Solicitor Legal], ODPP, 3 August 1999.

479 Letter from [Deputy Solicitor Legal], ODPP to [IA Operations Manager], NSWPF, 19 August 1999.

480 Letter from [IA Operations Manager], NSWPF to the [Deputy Solicitor Legal], ODPP, August 1999.

481 Email from the [Deputy Solicitor Legal], ODPP to DPP, ODPP, 23 August 1999.

In an Information Report dated 24 August 1999 and called 'Negative interaction with [the Deputy Solicitor Legal] of the Office of the DPP', McFadden reported a telephone conversation with the Deputy Solicitor Legal on 23 August 1999 about the Paddle appeal proceedings.⁴⁸² McFadden noted that the Deputy Solicitor Legal raised "a further issue which triggered animosity" and "adverse discussions relevant to prior reporting protocols", relating to a paragraph in the IA Operations Manager's letter signed on 3 August 1999. In evidence to Operation Prospect, McFadden said he did not recall the conversation but thought the issue concerned the appropriate contact for dealings with the SCU.⁴⁸³

In a letter to the Deputy Solicitor Legal dated 15 November 1999 the IA Operations Manager referred to his 29 June 1999 letter and further liaison with investigators, and requested the appeal proceedings be adjourned until February 2000 while the investigation into allegations of police misconduct involved in the attempted armed robbery matter was completed.⁴⁸⁴

In a letter to the IA Operations Manager dated 23 November 1999 the Deputy Solicitor Legal referred to his letter of 15 November 1999 and advised that the appeal proceedings had been adjourned until 21 February 2000. The Deputy Solicitor Legal noted that the DPP had instructed her not to make any further applications for adjournment as there had now been four adjournments. The Deputy Solicitor Legal requested that the IA Operations Manager provide any further information arising from the investigation before 21 February 2000 – when the matter was listed for hearing.⁴⁸⁵

In evidence to Operation Prospect, the Deputy Solicitor Legal said that – after this correspondence – the appeal would proceed unless the DPP directed further action, such as supporting a permanent stay of proceedings or directing that there be no further proceedings.⁴⁸⁶

14.10.7 Interviews with Paddle (July and December 1999)

In July and December 1999 Boyd-Skinner conducted several interviews with Paddle under inducement. The effect of these inducements was to make any self-incriminating evidence provided by Paddle inadmissible in criminal proceedings against him. In one of these induced interviews, Paddle admitted to his involvement in the 1994 attempted armed robbery. This is significant because the CCA proceedings involving Paddle were pending at the time. The inducement meant that Paddle's admission could not be used in the ongoing proceedings against him, but it also clarified to investigators that – despite Sea's allegations of police misconduct in relation to the charging of Paddle – Paddle was, by his own admission, involved in the attempted armed robbery. The relevant details are outlined below.

On 22 June 1999 Boyd-Skinner took Paddle to meet Standen – then NSWCC Assistant Director of Investigations. An Information Report dated 24 June 1999 records that Paddle's eligibility for immunity against prosecution for the attempted armed robbery, other serious criminal activity, and a reward were discussed in the meeting.⁴⁸⁷ In an email dated 23 June 1999, Burn informed Brammer that Paddle had agreed to supply an induced statement about criminal activity.⁴⁸⁸

482 NSWPF Information Report, *Re: Negative interaction with the Deputy Solicitor Legal of the Office of the D.P.P.*, reporting officer: McFadden, 24 August 1999.

483 Ombudsman Transcript, Brett McFadden, 4 May 2016, pp. 96-97.

484 Letter from [IA Operations Manager], NSWPF to the [Deputy Solicitor Legal], ODPP, 15 November 1999.

485 Letter from the [Deputy Solicitor Legal], ODPP to the [IA Operations Manager], NSWPF, 23 November 1999.

486 Ombudsman Transcript, [Deputy Solicitor Legal], 4 May 2016, p. 17.

487 NSWCC Information Report, *Re: Contact with [Paddle] on 22 June 1999*, reporting officer: Boyd-Skinner, 24 June 1999.

488 Email from Detective Inspector Catherine Burn, NSWPF to Commander Malcolm Brammer, NSWPF, 23 June 1999.

14.10.7.1 Induced interviews with Paddle (July 1999)

In July 1999 Boyd-Skinner conducted several induced interviews with Paddle.⁴⁸⁹ In these interviews, Paddle disclosed his knowledge and involvement in criminal offences – such as the homicide of Mr Jones discussed in section 14.7 – other than the attempted armed robbery. He also indicated he was unwilling to discuss the attempted armed robbery because it was still before the courts.⁴⁹⁰

It is not clear who authorised that inducements could be offered to Paddle by interviewing police officers. Those inducements were so that Paddle could provide self-incriminatory evidence without it being able to be used to prosecute him. Boyd-Skinner participated in each interview and, in evidence to Operation Prospect, said he understood he was acting under NSWCC authority in conducting the interviews. He could not recall who authorised offering the inducements.⁴⁹¹ McFadden also participated in some of the July 1999 induced interviews. McFadden advised Operation Prospect that he did not recall who authorised offering the inducements, but he would have been satisfied the NSWCC team running Mascot and Operation Boat would have given Boyd-Skinner authority.⁴⁹²

14.10.7.2 Paddle identifies a fourth suspect allegedly involved in the attempted armed robbery

Paddle was interviewed by Boyd-Skinner and Hutcheson on 1 December 1999. In this interview, he named a fourth suspect, Mr BB, in the 1994 attempted armed robbery and offered to participate in a further interview about this offence.⁴⁹³ Investigators developed a strategy to investigate Mr BB. A Mascot Weekly Activity Report for the week ending 6 December 1999 noted proposed activities that included deploying Paddle while wearing a LD to approach Mr BB about Mr BB's alleged involvement in the attempted armed robbery.⁴⁹⁴ Burn initialled the Weekly Activity Report and it named her as case officer.⁴⁹⁵ In evidence to Operation Prospect, Burn said the Weekly Activity Report confirmed it was resolved within Mascot that Paddle would approach Mr BB while wearing a LD in an attempt to obtain admissions from him.⁴⁹⁶

14.10.7.3 Induced interview with Paddle (7 December 1999)

On 7 December 1999 Paddle was interviewed by Boyd-Skinner and Moore under inducement. The subject of this interview was the 1994 attempted armed robbery. This was the first occasion Paddle was interviewed about this under inducement. With the protection of the inducement, Paddle admitted to his own involvement in the attempted armed robbery and provided details of the involvement of Mr BB and his co-accused – Mr O and Mr M.⁴⁹⁷ The charges against Mr O and Mr M for this offence had been dismissed in the District Court in February 1998.

In hearings in May 2016 Operation Prospect questioned Boyd-Skinner, Moore, Burn, Dolan and Bradley about the decision to interview Paddle under inducement, and their knowledge of Paddle's admission to being involved in the 1994 attempted armed robbery. Boyd-Skinner said he did not specifically recall the interview on 7 December 1999 with Paddle.⁴⁹⁸ Operation Prospect provided Boyd-Skinner with a copy of the interview and access to his Duty Book of the time. When asked who authorised the interview, Boyd-Skinner suggested it would have been Burn⁴⁹⁹ or Dolan⁵⁰⁰ because of the subject matter. Boyd-Skinner said that

489 NSWPF Record of interview between [Paddle] and Detective Sergeant Boyd-Skinner, 3 July 1999; NSWPF Record of interview, between [Paddle] and Detective Sergeant Boyd-Skinner, NSWPF, 6 July 1999; Record of interview, Detective Sergeant Fadden and [Paddle], 14 July 1999; Transcript, Induced Interview with [Paddle], 15 July 1999.

490 NSWPF Record of interview between [Paddle] and Detective Sergeant Boyd-Skinner, NSWPF, 3 July 1999, pp. 24-25.

491 Ombudsman Transcript, Darren Boyd-Skinner, 5 May 2016, p. 119.

492 Ombudsman Transcript, Brett McFadden, 4 May 2016, p. 92.

493 NSWCC Information Report, *Re: Contact between Detectives Boyd-Skinner, Hutcheson and registered informant PADDLE on Wednesday 1 December 1999*, reporting officer: C Hutcheson, 3 December 1999.

494 NSWCC, Weekly Activity report for week ending 6 December 1999, dated 6 December 1999.

495 Ombudsman Transcript, Catherine Burn, 6 May 2016, p.215.

496 Ombudsman Transcript, Catherine Burn, 6 May 2016, p.215.

497 NSWPF Record of Interview between Detective Sergeant Darren Boyd-Skinner and [Paddle], 7 December 1999.

498 Ombudsman Transcript, Darren Boyd-Skinner, 5 May 2016, p. 119.

499 Ombudsman Transcript, Darren Boyd-Skinner, 5 May 2016, p. 119.

500 Ombudsman Transcript, Darren Boyd-Skinner, 5 May 2016, pp.121 and 124.

Dolan was “very hands on” and it was a small team at the time.⁵⁰¹ Instructions were often given in roundtable meetings and Burn would have been aware if Dolan authorised it.⁵⁰²

Boyd-Skinner further said in evidence that he did not recall why Paddle was being interviewed in December 1999 about the 1994 attempted armed robbery.⁵⁰³ He also stated that Mascot was informed of all Paddle interactions and disclosures concerning the attempted armed robbery throughout.⁵⁰⁴

Moore was attached to the SCU and performed some Mascot duties from the beginning of 1999 onwards under Burn.⁵⁰⁵ Moore helped Boyd-Skinner with the 7 December 1999 induced interview with Paddle.⁵⁰⁶ In evidence to Operation Prospect, Moore advised he did not recall who tasked him to help with the interview but it would have been someone from Mascot.⁵⁰⁷ Moore said he did not know why Paddle was interviewed about the 1994 attempted armed robbery,⁵⁰⁸ but the admissions were a significant development and he would have reported this development to whoever had instructed him to participate in the interview.⁵⁰⁹

In evidence to Operation Prospect, Burn said she did not know who authorised taking the interview on an induced basis.⁵¹⁰ She acknowledged that it was “very likely” she knew of Paddle’s admissions, but could not recall when this occurred.⁵¹¹ Burn also told Operation Prospect that – although she was involved in the Paddle matter – she had little involvement in operational decision-making.⁵¹²

Dolan stated that personal circumstances often resulted in him being absent from work between September 1999 and January 2000.⁵¹³ He said that, although he did not recall, he expected he would have known of Paddle’s admissions as they were significant.⁵¹⁴ Dolan said Paddle’s admissions would have been an important development in the management of an informant.⁵¹⁵ He said he expected the whole Mascot team would have been told about the admissions in a team meeting.⁵¹⁶

In evidence to Operation Prospect, Bradley said there were hundreds of registered informants and he did not maintain an interest in developments with each individual one.⁵¹⁷ He said he did not expect he would have been advised if an informant made admissions about an offence then being prosecuted.⁵¹⁸

14.10.7.4 Impact of Paddle’s admission on the credibility of his and Sea’s allegations of police misconduct in the 1994 attempted armed robbery

Senior NSWPF and NSWCC staff acknowledged to Operation Prospect that Paddle’s admission to being involved in the 1994 attempted armed robbery would affect the credibility of his allegations of being verbaled for that offence. However, lead investigators such as Boyd-Skinner gave evidence that they believed the verballing allegations to be true – despite Paddle’s admission. Both Moore and McFadden thought the idea that both the admission and the verballing allegations were true was credible. Boyd-Skinner stated: “the source of my understanding that it was likely he had been verbaled came from Sea”.⁵¹⁹

501 Ombudsman Transcript, Darren Boyd-Skinner, 5 May 2016, p. 121.

502 Ombudsman Transcript, Darren Boyd-Skinner, 5 May 2016, p. 122.

503 Ombudsman Transcript, Darren Boyd-Skinner, 5 May 2016, p. 124.

504 Ombudsman Transcript, Darren Boyd-Skinner, 5 May 2016, p. 126.

505 Ombudsman Transcript, Greg Moore, 4 May 2016, p. 58.

506 Ombudsman Transcript, Greg Moore, 4 May 2016, p. 61.

507 Ombudsman Transcript, Greg Moore, 4 May 2016, pp. 63-64.

508 Ombudsman Transcript, Greg Moore, 4 May 2016, p. 65.

509 Ombudsman Transcript, Greg Moore, 4 May 2016, p. 71.

510 Ombudsman Transcript, Catherine Burn, 6 May 2016, p. 213.

511 Ombudsman Transcript, Catherine Burn, 6 May 2016, p. 217.

512 Ombudsman Transcript, Catherine Burn, 6 May 2016, pp. 215-216.

513 Ombudsman Transcript, John Dolan, 5 May 2016, p. 175.

514 Ombudsman Transcript, John Dolan, 5 May 2016, p. 178.

515 Ombudsman Transcript, John Dolan, 5 May 2016, p. 184.

516 Ombudsman Transcript, John Dolan, 5 May 2016, p. 179.

517 Ombudsman Transcript, Phillip Bradley, 6 May 2016, p. 281.

518 Ombudsman Transcript, Phillip Bradley, 6 May 2016, p. 281.

519 Ombudsman Transcript, Darren Boyd-Skinner, 5 May 2016, p. 125.

Boyd-Skinner said he did not ask Paddle in the interview whether he still claimed he had been verbaled because he believed that Paddle had both committed the attempted armed robbery and been verbaled by police.⁵²⁰ Moore said he could not recall why Paddle was not asked in the 7 December 1999 interview whether he still claimed he had been verbaled.⁵²¹ Moore said sometimes people claimed they had been verbaled but they had also committed the offence.⁵²² He said it would depend on the circumstances whether admissions would cause him to view a verbal claim in a different light.⁵²³ McFadden said it was possible for someone to be involved in an offence but verballing to have taken place.⁵²⁴ He acknowledged there were “certainly some credibility issues” given Paddle’s admissions and his earlier claims of verballing and innocence.⁵²⁵ Bradley said admissions would make one assess an informant’s claim of verballing in a different light.⁵²⁶ He said it flowed from the admissions that a verbal was unlikely, as the admission accurately reflected details in the verbaled statements allegedly created by police – that police would not have been able to accurately invent at the time.⁵²⁷

14.10.7.5 Paddle deployed to speak to fourth alleged suspect in the attempted armed robbery

Operation Prospect explored which officers were aware of Paddle’s admission to being involved in the 1994 attempted armed robbery. Part of the evidence relevant to that issue was the knowledge of other officers of an operation set up to investigate Paddle’s allegation that Mr BB was also involved in the 1994 attempted armed robbery. This was relevant because Bradley, Dolan and Burn said that such an operation would only have occurred once Paddle had admitted his involvement in the 1994 offence.⁵²⁸

A new operation was launched – the day after Paddle’s admission in his interview on 7 December 1999 – to investigate the alleged involvement of Mr BB in the attempted armed robbery. On 8 and 9 December 1999, Paddle was deployed to speak to Mr BB at a hotel on the mid-north coast of NSW while wearing a LD. Mr BB made recorded admissions to Paddle about his involvement in the attempted armed robbery.⁵²⁹ Paddle was then deployed to meet with Mr BB on a number of additional occasions in late December and early 2000. During these deployments, Mr BB and Paddle discussed a proposed armed robbery and drug supply among other things. Ultimately, Mr BB was charged and convicted of five counts – including conspiracy to commit an armed robbery in company, drug supply and firearms offences. He was sentenced to 12 years’ imprisonment with a non-parole period of nine years as a result of this operation. This was reduced on appeal by the CCA in 2002.⁵³⁰ He was not charged in relation to the 1994 attempted armed robbery on discretionary grounds.⁵³¹

Boyd-Skinner and Moore participated in this operation. Records also show that Burn was involved. A Mascot Weekly Activity Report for the week ending 13 December 1999 noted weekly outcomes including the Mr BB operation, and referred to ‘admissions’ about the 1994 attempted armed robbery.⁵³² Burn was noted as case officer and initialled the Weekly Activity Report.⁵³³

In evidence to Operation Prospect, Bradley said he did not recall the operation.⁵³⁴ However, he would have expected to be informed that Paddle had been involved in the operation targeting Mr BB, after Paddle had admitted his own involvement in an induced interview – but whether he was informed or not was another matter.⁵³⁵

520 Ombudsman Transcript, Darren Boyd-Skinner, 5 May 2016, p. 124.

521 Ombudsman Transcript, Greg Moore, 4 May 2016, p. 75.

522 Ombudsman Transcript, Greg Moore, 4 May 2016, p. 70.

523 Ombudsman Transcript, Greg Moore, 4 May 2016, pp. 70-71.

524 Ombudsman Transcript, Brett McFadden, 4 May 2016, pp. 95-96.

525 Ombudsman Transcript, Brett McFadden, 4 May 2016, p. 96.

526 Ombudsman Transcript, Phillip Bradley, 6 May 2016, p. 283.

527 Ombudsman Transcript, Phillip Bradley, 6 May 2016, pp. 296-297.

528 Ombudsman Transcript, Phillip Bradley, 6 May 2016, p. 285; Ombudsman Transcript, John Dolan, 5 May 2016, p. 179; Ombudsman Transcript, Catherine Burn, 6 May 2016, p. 214.

529 NSWCC Transcript of LD [unidentified], Tape 99/040, 9 December 1999.

530 *R v [Mr BB]*, NSWCCA (2002).

531 Police Service Request for Advice: Sufficiency of evidence to charge Mr BB in connection with an attempted armed robbery in 1994 at Coffs Harbour, 1 August 2002, signed and annotated by the DPP on 6 August 2002.

532 NSWCC, Weekly Activity report for week ending 13 December 1999, dated 13 December 1999.

533 Ombudsman Transcript, Catherine Burn, 6 May 2016, p. 216.

534 Ombudsman Transcript, Phillip Bradley, 6 May 2016, p. 285.

535 Ombudsman Transcript, Phillip Bradley, 6 May 2016, p. 286.

In evidence to Operation Prospect, Boyd-Skinner said Burn was a case officer for the operation targeting Mr BB.⁵³⁶ Boyd-Skinner said he did not recall whether the reference to 'admissions' in the 13 December 1999 Weekly Activity Report related to the admissions of Paddle or Mr BB.⁵³⁷ Burn said she understood this reference to 'admissions' to relate to Paddle's admissions.⁵³⁸ Burn said she did not recall the Mr BB operation but it was likely to have been conducted under the Mascot reference.⁵³⁹

Moore also said he did not recall the operation.⁵⁴⁰ Moore's contemporaneous Duty Book entries indicated the operation was named 'Oberon' – an offshoot of Mascot – and Mascot officers had an interest in Oberon activity.⁵⁴¹ At this time, the NSWCC had a number of operations underway involving Paddle under the reference 'Oberon II'. Moore said he was associated with Mascot not Oberon, but could be engaged in any reference on any given day.⁵⁴² Moore said he did not know who tasked him to participate in the operation, but both Burn and Henry had knowledge of it.⁵⁴³ He said his Duty Book recorded that he conferred with Burn and Henry after the operation.⁵⁴⁴

Dolan said he did not recall the operation but that the responsibility to authorise an operation of that type would have fallen to Bradley.⁵⁴⁵ Burn said she expected such an operation would only have occurred once the informant admitted involvement.⁵⁴⁶ Brammer said he did not recall the operation and was not involved in the day-to-day operations of SCU officers at the NSWCC.⁵⁴⁷

An email dated 3 February 2000 records that Bradley was given a report about Paddle's involvement in Oberon (and another operation) for a meeting that day.⁵⁴⁸ Mascot team meeting minutes for 3 February 2000 record that Bradley, Standen, Burn and others were present when Paddle's activities were discussed. These minutes state:

*The consensus was that [Paddle's solicitor] would reveal Paddle's involvement should the matter come to court, and would want to call in IA for proof to help in the court matter. It was determined that another adjournment of the matter would be sought.*⁵⁴⁹

The covert involvement of Sea in other criminal investigations was also discussed.⁵⁵⁰

14.10.8 DPP's decision to direct no further proceedings against Paddle

In February 2000 the DPP directed that there be no further proceedings against Paddle for his involvement in the 1994 attempted armed robbery. Communication between the ODPP, the NSWCC and Mascot investigators immediately preceded the DPP's decision.

In an email dated 9 February 2000 from Bradley to Dolan, Standen and Burn, Bradley foreshadowed a meeting with the DPP on Monday 14 February 2000.⁵⁵¹ Mascot team meeting minutes for that date noted the presence of Bradley, Dolan, Burn and others and stated:

*Paddle's matter is due to be dealt with this afternoon. There is a letter for the DPP from Mr Brammer, and the matter should be pulled.*⁵⁵²

536 Ombudsman Transcript, Darren Boyd-Skinner, 5 May 2016, p. 128.

537 Ombudsman Transcript, Darren Boyd-Skinner, 5 May 2016, p. 128.

538 Ombudsman Transcript, Catherine Burn, 6 May 2016, p. 217.

539 Ombudsman Transcript, Catherine Burn, 6 May 2016, p. 218.

540 Ombudsman Transcript, Greg Moore, 4 May 2016, p. 63.

541 Ombudsman Transcript, Greg Moore, 4 May 2016, p. 73.

542 Ombudsman Transcript, Greg Moore, 4 May 2016, pp. 77-78.

543 Ombudsman Transcript, Greg Moore, 4 May 2016, p. 73.

544 Ombudsman Transcript, Greg Moore, 4 May 2016, p. 73.

545 Ombudsman Transcript, John Dolan, 5 May 2016, pp. 179-180.

546 Ombudsman Transcript, Catherine Burn, 6 May 2016, p. 214.

547 Ombudsman Transcript, Malcolm Brammer, 6 May 2016, p. 255.

548 Email from Senior Sergeant Craig Goozee, NSWPF to Phillip Bradley, Commissioner, NSWCC, 3 February 2000.

549 NSWCC, *Confidential Minutes of the Mascot Team Meeting*, 3 February 2000. Also present were J. Giorgiutti (Solicitor to the NSWCC), three analysts and one Senior Monitor.

550 NSWCC, *Confidential Minutes of the Mascot Team Meeting*, 3 February 2000, pp. 1-2.

551 Email from Commissioner Phillip Bradley, NSWCC to Detective Superintendent John Dolan, Mascot Reference NSWCC, Assistant Director Mark Standen, NSWCC and Detective Inspector Catherine Burn, NSWCC, 9 February 2000.

552 NSWCC, *Confidential Minutes of the Mascot Team Meeting*, 14 February 2000.

In evidence to Operation Prospect, Dolan said he thought this was a reference to the proceedings being discontinued but he did not recall why this decision had been made.⁵⁵³ Burn said it was likely a reference to there being no further proceedings against Paddle for the attempted armed robbery.⁵⁵⁴ She said she did not recall the meeting but – as the DPP had previously advised no more adjournments would be sought – some other form of strategy was required. Burn said she did not know what the motivation was for the DPP to direct no further proceedings against Paddle for the attempted armed robbery, but thought it was police and NSWCC concern over the exposure of Sea and Paddle’s work as informants.⁵⁵⁵ She said that such “high level conversations” between the DPP and the Commissioner of the NSWCC were “way above” her “pay grade” at the time.⁵⁵⁶ Bradley said that he understood the minutes to mean the DPP was going to do something about the matter.⁵⁵⁷

In a letter to the Deputy Solicitor Legal dated 9 February 2000 Brammer stated:

[Paddle] was charged with [Mr O] and [Mr M] in 1994 with conspiracy to commit armed robbery and related offences. In 1998, [Mr O] and [Mr M] were acquitted of the charges. [Paddle] has lodged an application with the Criminal Court of Appeal for a permanent stay of proceedings. If this application is unsuccessful the matter will proceed to trial.

Since early 1999, the Special Crime Unit and Internal Affairs Command has been investigating, and is continuing to investigate, allegations of corruption associated with the charging and subsequent prosecutions of [Paddle], [Mr M] and [Mr O]. These allegations include fabrication of evidence and perjury. Requests were made in 1999 to have the [Court of Criminal Appeal] matter adjourned until the finalisation of the investigation. However, even at this stage of our enquiries, I am strongly of the view that the evidence of the police involved in this matter is tainted and will not withstand scrutiny at a criminal trial. I am, however, not in a position to prefer charges against police, I therefore consider this is not a matter which should proceed to trial, and I recommend consideration be given to supporting a permanent stay of proceedings.⁵⁵⁸

An Information Report dated 9 February 2000 – noting Burn as case officer – recorded McFadden was to convey an application for a permanent stay of proceedings from Brammer to the Deputy Solicitor Legal.⁵⁵⁹ McFadden confirmed he delivered a document to the ODPF for the attention of the Deputy Solicitor Legal on 10 February 2000.⁵⁶⁰

In evidence to Operation Prospect, Brammer said he did not recall the 9 February 2000 letter.⁵⁶¹ He said such a letter would have been prepared in consultation with Bradley and with Bradley’s endorsement.⁵⁶² Brammer said the views expressed in the letter – that the evidence of police was ‘tainted’ – would have been based on advice from investigators.⁵⁶³ He said the recommendation in the letter would have been based on advice from investigators in consultation with Bradley, not on his own assessment.⁵⁶⁴ Brammer said he was unsure why he signed the letter, but it may have been because they did not want it exposed as a NSWCC investigation.⁵⁶⁵

In evidence Dolan also said he did not recall the 9 February 2000 letter when shown a copy of it by Operation Prospect, but thought it did not contain enough information for the DPP to act on.⁵⁶⁶ Bradley said he had no recollection of a discussion in a Mascot team meeting about this letter from Brammer to the DPP.⁵⁶⁷ He

553 Ombudsman Transcript, John Dolan, 5 May 2016, p. 176.

554 Ombudsman Transcript, Catherine Burn, 6 May 2016, p. 221.

555 Ombudsman Transcript, Catherine Burn, 6 May 2016, pp. 222-223.

556 Ombudsman Transcript, Catherine Burn, 6 May 2016, p. 221.

557 Ombudsman Transcript 2, Phillip Bradley, 6 May 2016, p. 288.

558 Letter from Commander Malcolm Brammer, NSWPF to the DPP, ODPF 9 February 2000.

559 NSWCC Information Report, [PADDLE] *Court of Criminal Appeal call over on 21.2.2000 – application by Assistant Commissioner BRAMMER to DPP for permanent stay of proceedings*, reporting officer: [name] 9 February 2000.

560 In evidence to Operation Prospect, McFadden said his Duty Books confirmed he delivered a document to the DPP for the attention of the [Deputy Solicitor Legal] on 10 February 2000. Ombudsman Transcript, Brett McFadden, 4 May 2016, p. 99.

561 Ombudsman Transcript, Malcolm Brammer, 6 May 2016, p. 258.

562 Ombudsman Transcript, Malcolm Brammer, 6 May 2016, p. 259.

563 Ombudsman Transcript, Malcolm Brammer, 6 May 2016, p. 260.

564 Ombudsman Transcript, Malcolm Brammer, 6 May 2016, p. 261.

565 Ombudsman Transcript, Malcolm Brammer, 6 May 2016, p. 261.

566 Ombudsman Transcript, John Dolan, 5 May 2016, pp. 176-177.

567 Ombudsman Transcript, Phillip Bradley, 6 May 2016, p. 288.

told Operation Prospect he would expect to know of any letter sent to the DPP about a permanent stay of proceedings for a NSWCC informant.⁵⁶⁸

The Deputy Solicitor Legal said the only information she was aware of that substantiated the allegation that evidence of police was tainted was the 'briefing note' of 16 April 1999 and the brief of evidence against police involved in the prosecution of Mr O and Mr M.⁵⁶⁹ She said she was not aware of any other document provided to support the recommendation for a permanent stay of proceedings.⁵⁷⁰

On 14 February 2000 Bradley, Dolan and Burn met with the DPP and the Deputy Solicitor Legal. The Deputy Solicitor Legal's confidential note recorded the information provided at the meeting as follows:

Commander Brammer's letter of 9 February 2000 was discussed, and its contents confirmed by Mr Bradley. Mr Bradley and the IA officers advised that the covert inquiries using Sea were ongoing, and would not be completed within the next few months. The Commission's inquiries confirmed that the brief in the [Paddle] matter had been fabricated ie the oral confession allegedly made by [Paddle], which is denied by [Paddle] himself, was not made or was made in dubious circumstances, and the case against [Mr O] and [Mr M] had been similarly fabricated.

The disclosure of Sea's assistance to the authorities at this stage would abort current covert inquiries in which Sea is assisting IA and the Commission. These inquiries concern corrupt conduct by police officers investigating serious matters. The Commission and IA request that the DPP not disclose Sea's existence or assistance to other DPP officers or police.

*The Director indicated that he would consider the matter further after a submission from me.*⁵⁷¹

In evidence to Operation Prospect, neither the Deputy Solicitor Legal nor the DPP could recall whether it was Bradley, Dolan or Burn who advised of the matters the Deputy Solicitor Legal noted above.⁵⁷² Dolan said it was unlikely he provided the information as Burn had specific knowledge of Paddle, and Bradley "did the talking" in the meeting.⁵⁷³ Dolan said his recollection was that the meetings were about exposure of Sea as an informant and he did not recall discussing Paddle.⁵⁷⁴ Dolan said Sea was integral, whereas Paddle was peripheral to the investigation.⁵⁷⁵

Burn advised Operation Prospect that she recalled attending meetings with the DPP, Bradley, Dolan and the Deputy Solicitor Legal and one meeting about Sea.⁵⁷⁶ Burn said she did not recall the 14 February 2000 meeting specifically, but believed she would have gone because she had been liaising with the Deputy Solicitor Legal over the CCA adjournments.⁵⁷⁷

In evidence to Operation Prospect, Brammer said he may have known about the 14 February 2000 meeting at the time but could not recall how he had this knowledge.⁵⁷⁸ He said the fact that the Deputy Solicitor Legal's note recorded that Bradley confirmed the contents of Brammer's letter reflected that the letter was prepared by or on the advice of Bradley, Dolan and Burn.⁵⁷⁹ Brammer said, the more he looked at it, the letter was to take away any link to the NSWCC to ensure the Mascot investigations were not compromised – and it was probably on Bradley's advice or with his endorsement that Brammer signed it for the meeting.⁵⁸⁰ Bradley said he accepted that he requested the meetings with the DPP about Paddle, but could not recall the actual meetings.⁵⁸¹

568 Ombudsman Transcript, Phillip Bradley, 6 May 2016, pp. 288-289.

569 Ombudsman Transcript, [Deputy Solicitor Legal], 4 May 2016, pp. 18-19.

570 Ombudsman Transcript, [Deputy Solicitor Legal], 4 May 2016, p. 19.

571 [Deputy Solicitor Legal], File note, *Confidential Note for Director's Safe Relating to Submission Dated 16/2/00*, DPP, 16 February 2000.

572 Ombudsman Transcript, [Deputy Solicitor Legal], 4 May 2016, p. 20; Ombudsman Transcript, [DPP], 4 May 2016, p. 42.

573 Ombudsman Transcript, John Dolan, 5 May 2016, pp. 172 and 178.

574 Ombudsman Transcript, John Dolan, 5 May 2016, pp. 171-172.

575 Ombudsman Transcript, John Dolan, 5 May 2016, p. 185.

576 Ombudsman Transcript, Catherine Burn, 6 May 2016, p. 228.

577 Ombudsman Transcript, Catherine Burn, 6 May 2016, p. 228.

578 Ombudsman Transcript, Malcolm Brammer, 6 May 2016, p. 262.

579 Ombudsman Transcript, Malcolm Brammer, 6 May 2016, p. 264.

580 Ombudsman Transcript, Malcolm Brammer, 6 May 2016, p. 266.

581 Ombudsman Transcript, Phillip Bradley, 6 May 2016, p. 291.

In evidence to Operation Prospect, Burn, Dolan, Brammer and Bradley all agreed the DPP should have been told about Paddle's admission to his involvement in the attempted armed robbery when the DPP was required to decide whether to continue the prosecution.⁵⁸²

Burn said she did not think she would have had any information that Bradley and Dolan did not.⁵⁸³ Her concern was exposure of Sea as he was still a primary focus of their investigations at the time.⁵⁸⁴ Another consideration was that Paddle was an informant.⁵⁸⁵

Dolan stated that Paddle's admission would have been significant to the DPP in determining the future course of the prosecution and, if the DPP had been informed of the admission, it would be recorded in the Deputy Solicitor Legal's confidential note of the meeting.⁵⁸⁶ Dolan said he would have expected that both he and Burn would have been informed of Paddle's admission.⁵⁸⁷

Bradley accepted that the Deputy Solicitor Legal's note did not refer to any admissions, but said he inferred it was common ground between those present at the meeting that Paddle was involved in the offence.⁵⁸⁸ He said the reference in the Deputy Solicitor Legal's note about Paddle and his co-accused all being involved in the offence suggested this.⁵⁸⁹ Relevantly, the note states:

Bradley advised that, on the material provided to the Commission, the police had fabricated the evidence against [Mr O], [Mr M], and [Paddle], even though all three had been involved in the burglary. ([Paddle] drove [Mr M] and [Mr O] to the [Club Manager's] house.)⁵⁹⁰

Bradley accepted that the Deputy Solicitor Legal's note did not record that the DPP was advised Paddle had made the admissions in the 7 December 1999 interview.⁵⁹¹ He said her note was a very brief summary of meetings that would have gone for an hour each.⁵⁹² He could not agree with the proposition that the DPP was not informed Paddle had made admissions before deciding there would be no further proceedings.

The Deputy Solicitor Legal said her note indicated she was aware Paddle had made admissions about his involvement in the offence.⁵⁹³ She stated this was because the note referred to Paddle providing an account that corroborated Sea, and Sea providing information that the offence had occurred and that police had fabricated evidence.⁵⁹⁴ The Deputy Solicitor Legal agreed Paddle's corroboration might have related to either of these propositions, and she could not say which it was.⁵⁹⁵ The Deputy Solicitor Legal said she could not now confirm the basis of her belief that Paddle committed the offence,⁵⁹⁶ but she was sure she had not seen the transcript of the record of interview of 7 December 1999 before 2004.⁵⁹⁷

The DPP said he was confident he was not aware of the 7 December 1999 interview at the time of the 14 February 2000 meeting because the conversation would have been different. This was because the admissions may have provided a basis for further negotiations with Paddle's lawyers and exploration of whether he would give evidence against others.⁵⁹⁸ The DPP said knowledge of Paddle's admissions would have completely changed his perspective on Paddle's denial of alleged oral admissions.⁵⁹⁹ The Deputy Solicitor

582 Ombudsman Transcript, Catherine Burn, 6 May 2016, p. 232; Ombudsman Transcript, John Dolan, 5 May 2016, p. 191; Ombudsman Transcript, Malcolm Brammer, 6 May 2016, p. 266; Ombudsman Transcript, Phillip Bradley, 6 May 2016, p. 295.

583 Ombudsman Transcript, Catherine Burn, 6 May 2016, pp. 230-231.

584 Ombudsman Transcript, Catherine Burn, 6 May 2016, pp. 221-222.

585 Ombudsman Transcript, Catherine Burn, 6 May 2016, p. 222.

586 Ombudsman Transcript, John Dolan, 5 May 2016, p. 180.

587 Ombudsman Transcript, John Dolan, 5 May 2016, pp. 189-190.

588 Ombudsman Transcript, Phillip Bradley, 6 May 2016, p. 293.

589 Ombudsman Transcript, Phillip Bradley, 6 May 2016, pp. 293, 295-296.

590 [Deputy Solicitor Legal], File note, *Confidential Note for Director's Safe Relating to Submission Dated 16/2/00*, DPP, 16 February 2000, p. 3.

591 Ombudsman Transcript, Phillip Bradley, 6 May 2016, p. 294.

592 Ombudsman Transcript, Phillip Bradley, 6 May 2016, pp. 295-296.

593 Ombudsman Transcript, [Deputy Solicitor Legal], 4 May 2016, p. 30.

594 Ombudsman Transcript, [Deputy Solicitor Legal], 4 May 2016, p. 30.

595 Ombudsman Transcript, [Deputy Solicitor Legal], 4 May 2016, p. 30.

596 Ombudsman Transcript, [Deputy Solicitor Legal], 4 May 2016, p. 32.

597 Ombudsman Transcript, [Deputy Solicitor Legal], 4 May 2016, p. 23.

598 Ombudsman Transcript, [DPP], 4 May 2016, p. 46.

599 Ombudsman Transcript, [DPP], 4 May 2016, p. 46.

Legal also agreed that Paddle's admissions – giving details of his involvement in the offence – would have affected the assessment of whether or not the allegation of verballing had substance.⁶⁰⁰

In an Information Report dated 15 February 2000 – reporting on the 14 February 2000 meeting – Burn noted that the DPP was in possession of Brammer's 9 February 2000 letter, and that:

Further information was supplied verbally to [the DPP] about Sea and the need to maintain the security and safety of Sea. Information was also supplied about the brief of evidence being prepared by Mascot re the police involved in the [Paddle, Mr M and Mr O] matter ...

*It was agreed that a further adjournment or other delay of these matter [sic] was in the best interests of Mascot, Sea and the evidence gathering process.*⁶⁰¹

In evidence to Operation Prospect, Burn agreed that the Information Report did not record that the DPP was advised Paddle had made admissions about the attempted armed robbery, or that he was acting as a NSWCC informant in relation to other matters.⁶⁰²

In an email dated 16 February 2000 Bradley advised Burn of a conversation with the Deputy Solicitor Legal about a submission to go to the DPP that day, and referred to the prospect that the DPP may discontinue the matter.⁶⁰³

In a submission dated 16 February 2000 the Deputy Solicitor Legal recommended that the DPP direct there be no further proceedings against Paddle for the attempted armed robbery.⁶⁰⁴ The submission summarises the evidence for the offence but makes no reference to the 7 December 1999 interview. In a handwritten notation on the submission, the DPP recorded his concurrence with the recommendation. In evidence to Operation Prospect, the DPP said this constituted a direction that there be no further proceedings for the offence.⁶⁰⁵

In evidence to Operation Prospect, the Deputy Solicitor Legal said she was sure that she had not seen the transcript of the record of interview conduct on 7 December 1999 before making the submission to the DPP dated 16 February 2000.⁶⁰⁶ The DPP said the interview would have been material to his determination and the Deputy Solicitor Legal's submission would not have been framed as it was if they had been informed of the admission.⁶⁰⁷

In a further handwritten note on the submission, the DPP recorded in brackets 'Confidential material in Director's safe'.⁶⁰⁸ In evidence to Operation Prospect, the DPP said he was confident the only material in the safe was the Deputy Solicitor Legal's note.⁶⁰⁹ The Deputy Solicitor Legal said she was unaware of any material in the safe other than her note.⁶¹⁰

In an email to Standen, Dolan and Burn dated 17 February 2000 Bradley reported that the DPP had directed not to proceed with the Paddle matter.⁶¹¹ In an email dated 18 February 2000 it was reported that Paddle had been informed the DPP were no longer 'pursuing' him over the attempted armed robbery.⁶¹²

600 Ombudsman Transcript, [Deputy Solicitor Legal], 4 May 2016, p. 34.

601 NSWCC Information Report, *Re: Meeting with [the DPP], the [Deputy Solicitor Legal], Mr Bradley on 14/2/00*, reporting officer: Burn, 15 February 2000.

602 Ombudsman Transcript, Catherine Burn, 6 May 2016, p. 224.

603 Email from Commissioner Phillip Bradley, NSWCC to Detective Inspector Catherine Burn, Mascot References NSWCC, 16 February 2000.

604 ODPP internal submission from [Deputy Solicitor Legal] to [DPP], ODPP, 16 February 2000.

605 Ombudsman Transcript, [DPP], 4 May 2016, p. 47.

606 Ombudsman Transcript, [Deputy Solicitor Legal], 4 May 2016, p. 23.

607 Ombudsman Transcript, [DPP], 4 May 2016, p. 48.

608 Ombudsman Transcript, [DPP], 4 May 2016, p. 48.

609 Ombudsman Transcript, [DPP], 4 May 2016, p. 48.

610 Ombudsman Transcript, [Deputy Solicitor Legal], 4 May 2016, p. 23.

611 Email from Commissioner Phillip Bradley, NSWCC to Assistant Director Mark Standen, Mascot Reference NSWCC, Detective Superintendent John Dolan, Mascot Reference NSWCC and Detective Inspector Catherine Burn, Mascot Reference NSWCC, 17 February 2000.

612 Email from Detective Sergeant Rohan Cramsie, Mascot Reference NSWCC to SCIA staff, 18 February 2000.

In an internal report dated 14 February 2001 about further prosecutions for the attempted armed robbery, Burn noted:

After the corruption allegations were raised Mascot investigators engineered an approach to [Paddle] and subsequently cultivated him as an informant. Under inducement, [Paddle] admitted his involvement in the offence, and the involvement of [Mr O and Mr M]. It was during this time that police first became aware of [Mr BB's] involvement. A strategy was put in place to obtain corroborative electronic evidence from [Mr BB]. This was achieved. The crucial evidence against [Mr BB] is [Paddle's] evidence together with the corroborative electronic evidence, and of course, the evidence from the [Manager of the club and his wife] ...⁶¹³

Burn also stated in the 14 February 2001 report that Mr BB's prosecution could occur only after Sea's exposure as an informant, and made recommendations including obtaining "the Supreme Court judgment re the decision to grant a permanent stay of proceedings" and "legal advice re [Paddle's] position in light of the permanent stay of proceedings. That is, is an indemnity required etc".⁶¹⁴

In evidence to Operation Prospect, Burn said it was clear from the 14 February 2001 report that she was aware Paddle had participated in the induced interview and made admissions about his involvement in the 1994 attempted armed robbery.⁶¹⁵

14.10.9 Application to the ODPP for indemnity against prosecution for Paddle

In 2001 Mascot investigators were involved in preparing an application for immunity against prosecution for Paddle for his involvement in the attempted armed robbery and other serious criminal activities – including the homicide of Mr Jones discussed in section 14.7. Police may apply to the Attorney General via the DPP for an indemnity from prosecution to be granted to a person for a specific offence or for specified acts or omissions.⁶¹⁶

This indemnity was to be offered to Paddle in exchange for his continued assistance to investigators in relation to a number of serious offences. The DPP had directed in February 2000 that there be no further proceedings against Paddle for the attempted armed robbery, but this direction allowed for the possibility that the charges for the attempted armed robbery could be re-instituted against Paddle at a later date.

In an email dated 30 September 2001 Burn asked Boyd-Skinner:

*How is the Paddle indemnity progressing? I appreciate that you probably haven't had time to look at it, and it is a lesser priority at the moment, however, it would be useful to have the application in the system at the moment.*⁶¹⁷

In late 2001 Hutcheson and another officer took over responsibilities for managing Paddle from Boyd-Skinner.⁶¹⁸ On 6 November 2001, Boyd-Skinner emailed Hutcheson advising that "Paddle's indemnity will need to be proceeded as well".⁶¹⁹ Hutcheson replied to Boyd-Skinner via email, "Paddle's applic for indem was complete up until the point that [Dolan] asked me to freeze it".⁶²⁰

613 NSWPF Internal Report, C Burn, *Issues Impacting on Mascot in Relation to [Paddle], [Mr M], [Mr O] and [Mr BB] and Their Involvement in a Conspiracy to Commit Armed Robbery in Coffs Harbour in 1994*, 14 February 2001.

614 NSWPF Internal Report, C Burn, *Issues Impacting on Mascot in Relation to [Paddle], [Mr M], [Mr O] and [Mr BB] and Their Involvement in a Conspiracy to Commit Armed Robbery in Coffs Harbour in 1994*, 14 February 2001.

615 Ombudsman Transcript, Catherine Burn, 6 May 2016, p. 235.

616 *Criminal Procedure Act 1986*, s. 32. Police officers used the term 'indemnity' interchangeably with 'immunity' however, they are distinct legal applications. Operation Prospect has concluded that the application considered was an application for an indemnity under s. 32 of the Criminal Procedure Act.

617 Email from Detective Inspector Catherine Burn, Mascot Reference NSWCC to Detective Sergeant Darren Boyd-Skinner, Mascot Reference NSWCC, 30 September 2001.

618 Ombudsman Transcript, Craig Hutcheson, 5 May 2016, p. 146.

619 Email from Detective Sergeant Darren Boyd-Skinner, Mascot Reference NSWCC to Detective Senior Constable Craig Hutcheson, Mascot Reference NSWCC, 6 November 2001.

620 Email from Detective Senior Constable Craig Hutcheson, Mascot Reference NSWCC to Detective Sergeant Darren Boyd-Skinner, Mascot Reference NSWCC, 6 November 2001.

In evidence to Operation Prospect, Dolan said he could think of no reason why the application for Paddle's indemnity against prosecution was not made at the outset and also why it was necessary to 'freeze it'.⁶²¹ He said he did not give direct instructions to Mascot officers, Burn did⁶²² – and it would have been Burn who instructed Boyd-Skinner to prepare the indemnity application.⁶²³ Hutcheson stated he could not remember why he was asked to freeze the application.⁶²⁴ Boyd-Skinner's recollection was that the indemnity application was not prepared until an investigation into the homicide of Mr Jones was referred to the Homicide Squad in the NSWPF for further action.⁶²⁵

In evidence to Operation Prospect, Burn stated she recalled an indemnity application for Paddle but not whether she had input into the application.⁶²⁶ She said the indemnity application was progressed when the Mascot investigation moved from a covert into an overt phase.⁶²⁷

On 7 November 2001 Boyd-Skinner advised Hutcheson via email: "I am working on some additional information to be cut & pasted into the Paddle [indemnity] application".⁶²⁸ In a further email to Hutcheson dated 12 November 2001, Boyd-Skinner referred to "Additional information relevant to the Application for Immunity from Prosecution for Paddle".⁶²⁹ This email contained the following passages:

In an induced statement [date???], [Paddle] has disclosed and admitted his participation in the original offence....

*[Paddle] had an application for a permant [sic] stay of proceedings at the Court of Criminal Appeal which was subsequently no-billed by the [DPP], the Director of the Office of Public Prosecutions in consultation with the Commissioner of the New South Wales Crime Commission and the Commander of the New South Wales Police Service Internal Affairs Command in 1999. This action was taken to preserve the integrity of the operation Boat and maintain the cooperation of [Paddle]...*⁶³⁰

A memorandum to Hutcheson from Boyd-Skinner dated 7 November 2001 contains identical passages.⁶³¹

In an 'Application for Immunity from Prosecution on behalf of [Paddle]' dated 24 November 2001, it was recommended that Paddle be granted immunity from prosecution for three offences including the 1994 attempted armed robbery and the homicide of Mr Jones. The application was signed by Hutcheson and Greg Randall, then SCU Commander – and provided spaces for the signatures of Bradley, the SCIA Commander, and the Attorney General's Department.⁶³² The application contained the following passages which are largely repeated from the email quoted above sent from Boyd-Skinner to Hutcheson on 12 November 2001:

[Paddle] subsequently received a 'no-billing' as a result of an assessment by the Department of Public Prosecutions. As a result, the brief against [Paddle] was such that there were insufficient reasoning and evidence to proceed against [Paddle] with the matter. There has been no other evidence forthcoming in relation to this incident independent of the induced statement provided by [Paddle].

[Paddle] was subsequently no-billed under the authority of ... the Director of the Office in consultation with the Commissioner of the New South Wales Crime Commission and the Commander of the New South Wales Police Service Internal Affairs Command in 1999. This action was taken to preserve the integrity of operation Boat and maintain the cooperation of [Paddle] in relation to the more serious matters...

621 Ombudsman Transcript, John Dolan, 5 May 2016, p. 182.

622 Ombudsman Transcript, John Dolan, 5 May 2016, p. 182.

623 Ombudsman Transcript, John Dolan, 5 May 2016, p. 183.

624 Ombudsman Transcript, Craig Hutcheson, 5 May 2016, pp. 150-151.

625 Ombudsman Transcript, Darren Boyd-Skinner, 5 May 2016, p. 129.

626 Ombudsman Transcript, Catherine Burn, 6 May 2016, p. 237.

627 Ombudsman Transcript, Catherine Burn, 6 May 2016, p. 237.

628 Email from Detective Sergeant Darren Boyd-Skinner, Mascot Reference NSWCC to Detective Senior Constable Craig Hutcheson, Mascot Reference NSWCC, 7 November 2001.

629 Email from Detective Sergeant Darren Boyd-Skinner, Mascot Reference NSWCC to Detective Senior Constable Craig Hutcheson, Mascot Reference NSWCC, 12 November 2001.

630 Email from Detective Sergeant Darren Boyd-Skinner, Mascot Reference NSWCC to Detective Senior Constable Craig Hutcheson, Mascot Reference NSWCC, 12 November 2001.

631 NSWCC, Internal memorandum from Detective Sergeant Darren Boyd-Skinner to Detective Senior Constable Craig Hutcheson, 7 November 2001.

632 NSWPF Internal Report Detective Senior Constable Craig Hutcheson to Commander Malcolm Brammer, *Application for Immunity from Prosecution on behalf of [Paddle] born [date]*, 26 November 2001.

In an email to Randall dated 13 December 2001 Bradley said he had read the attached detailed report and that the NSWCC would be happy to endorse an application for indemnity against prosecution for Paddle.⁶³³

In their evidence to Operation Prospect:

- Hutcheson said he assumed he would have been tasked to prepare the application for the indemnity and collate the information in it because of his recent involvement with Paddle.⁶³⁴ He said he would have been concerned to ensure the information in the application was correct.⁶³⁵ He believed he relied on information from Boyd-Skinner to make the assertion in the application about the reasons the matter was discontinued, and that he would have been unaware of the reasons before receiving that information.⁶³⁶ Hutcheson said he had no idea what happened to the application after Randall signed it and forwarded it to Bradley.⁶³⁷
- Boyd-Skinner said he did not recall this, but suggested there must have been some document that informed the statement.⁶³⁸ He suggested either Burn or Dolan must have provided the information.⁶³⁹
- Burn said Paddle's cooperation on other matters may have been a motivation for there to be no further proceedings, and thought if the matter proceeded to trial it would have exposed Sea.⁶⁴⁰ She said it was not her understanding that the DPP directed there be no further proceedings against Paddle to maintain his cooperation in other matters, and she did not think that was the rationale.⁶⁴¹
- Dolan said he did not accept that Bradley and Brammer wanted to have the DPP discontinue the proceedings against Paddle to maintain his cooperation on other matters, as Paddle was peripheral to investigations (unlike Sea).⁶⁴² He said he would be very surprised, as the matters the subject of the indemnity outweighed Paddle's assistance.⁶⁴³
- Brammer said he was no longer the SCIA Commander when the indemnity application was signed.⁶⁴⁴ He had no knowledge of Paddle's proceedings being discontinued to maintain his cooperation about more serious matters.⁶⁴⁵
- Bradley said he could not recall whether the indemnity application he endorsed in the 13 December 2001 email was in the form of the document Hutcheson signed.⁶⁴⁶ He could not say what his understanding was at the time about why the DPP directed there be no further proceedings against Paddle for the attempted armed robbery.⁶⁴⁷ He said preservation of covertness was a factor, but he could not say whether Paddle's other forms of cooperation were disclosed at the time.⁶⁴⁸ Bradley said he did not accept that he would not have disclosed something of relevance to the DPP's determination.⁶⁴⁹

14.10.10 Discovery by the ODPP of Paddle's admission to the attempted armed robbery

In mid-2002 the ODPP became aware of Paddle's 7 December 1999 admission – made under inducement – about his involvement in the 1994 attempted armed robbery.

633 NSWCC Internal memorandum from Commissioner Phillip Bradley to Detective Inspector Greg Randall, 13 December 2001.

634 Ombudsman Transcript, Craig Hutcheson, 5 May 2016, p. 156.

635 Ombudsman Transcript, Craig Hutcheson, 5 May 2016, p. 155.

636 Ombudsman Transcript, Craig Hutcheson, 5 May 2016, pp. 154, 156.

637 Ombudsman Transcript, Craig Hutcheson, 5 May 2016, p. 158.

638 Ombudsman Transcript, Darren Boyd-Skinner, 5 May 2016, pp. 134, 138.

639 Ombudsman Transcript, Darren Boyd-Skinner, 5 May 2016, p. 139.

640 Ombudsman Transcript, Catherine Burn, 6 May 2016, pp. 222-223.

641 Ombudsman Transcript, Catherine Burn, 6 May 2016, p. 236.

642 Ombudsman Transcript, John Dolan, 5 May 2016, p. 188.

643 Ombudsman Transcript, John Dolan, 5 May 2016, p. 187.

644 Ombudsman Transcript, Malcolm Brammer, 6 May 2016, p. 266.

645 Ombudsman Transcript, Malcolm Brammer, 6 May 2016, p. 267.

646 Ombudsman Transcript, Phillip Bradley, 6 May 2016, p. 301.

647 Ombudsman Transcript, Phillip Bradley, 6 May 2016, p. 300.

648 Ombudsman Transcript, Phillip Bradley, 6 May 2016, pp. 300-301.

649 Ombudsman Transcript, Phillip Bradley, 6 May 2016, pp. 302-303.

ODPP records created in 2002 show that the DPP was not aware of Paddle's admission at the time he directed no further proceedings against Paddle in February 2000. It seems the DPP became aware of Paddle's admission after receiving a brief of evidence for the fourth suspect allegedly involved in that offence. The relevant records and evidence are outlined below.

In an email dated 22 July 2002 a Manager of Group 6 within the ODPP queried whether the DPP had been informed that Paddle was an informant and had made admissions in the 7 December 1999 induced interview.⁶⁵⁰ On 25 July 2002 the DPP handwrote the following notation on a copy of the email:

*This office was not informed of the contents of any statement made by [Paddle] to police on 7.12.99. The information given to this Office in confidence did include the fact that [Paddle] was assisting investigators in ongoing inquiries.*⁶⁵¹

In evidence to Operation Prospect, the DPP said he was confident his recollection at the time of the note was correct. It was less than two and a half years after the events and he would probably have referred to the file before responding to the query.⁶⁵²

In 2002 the Professional Assistant to the Director's Chambers responsible for providing legal advice to the DPP reported to the DPP in a submission dated 1 August 2002 that the DPP had not been informed that Paddle had made admissions in December 1999 to involvement in the 1994 attempted armed robbery. The Assistant commented that IA "withheld information about which the Director was entitled to make his own assessment before directing no further proceedings against [Paddle]".⁶⁵³

In evidence to Operation Prospect, the DPP agreed that Paddle's admission obtained in December 1999 was not disclosed to him.⁶⁵⁴ He also agreed with the Senior ODPP Solicitor's comment that it was information he was entitled to assess before directing there be no further proceedings.⁶⁵⁵

On 6 August 2002 the DPP handwrote the following on a copy of the Assistant's 1 August 2002 submission: "There are particular reasons why the disclosure issue will not be further pursued at this stage".⁶⁵⁶

In evidence to Operation Prospect, the DPP said he did not recall the reasons for not pursuing the failure to disclose Paddle's admission at that time – but he was confident that he intended it would be pursued later.⁶⁵⁷ He said he considered the disclosure issue a matter of some significance – because information that Paddle had made the admission would have been taken into account in determining whether to continue with the prosecution and would have enabled discussions about pleas and use of his evidence against other co-accused or suspects. The DPP said the information would have put a "different complexion" on the way he viewed the prosecution.⁶⁵⁸

14.10.11 Relevant policies and guidelines

The ODPP's Prosecution Policy and Guidelines issued in March 1998 were current throughout the period 1999 to 2001.⁶⁵⁹ Guideline 11 stated that a guideline about disclosure to the ODPP had been issued to police under section 14 of the *Director of Public Prosecutions Act 1986*.⁶⁶⁰ This guideline stated that police were to notify the DPP of the existence of "all other documentation, material and other information" which "might be of relevance to the prosecution" – in addition to the brief of evidence.⁶⁶¹

650 Email from [Manager of Group 6], ODPP to [Deputy Solicitor Legal], 22 July 2002.

651 Ombudsman Transcript, [DPP], 4 May 2016, p.49; Handwritten note on email from [Manager of Group 6], ODPP to [Deputy Solicitor Legal], 22 July 2000.

652 Ombudsman Transcript, [DPP], 4 May 2016, p. 49.

653 ODPP Submission from [Senior Solicitor] to DPP, *Police Service Request for Advice: Sufficiency of Evidence to Charge [Mr BB] in Connection with an Attempted Armed Robbery in 1994 at Coffs Harbour*, 1 August 2002.

654 Ombudsman Transcript, [DPP], 4 May 2016, p. 50.

655 Ombudsman Transcript, [DPP], 4 May 2016, p. 50.

656 Ombudsman Transcript, [DPP], 4 May 2016, p. 50.

657 Ombudsman Transcript, [DPP], 4 May 2016, p. 50.

658 Ombudsman Transcript, [DPP], 4 May 2016, p. 51.

659 Ombudsman Transcript, [Deputy Solicitor Legal], 4 May 2016, p. 28; Ombudsman Transcript, [DPP], 4 May 2016, p. 52; and ODPP, *Prosecution Policy and Guidelines*, March 1998.

660 ODPP, *Prosecution Policy and Guidelines*, March 1998, p. 17.

661 ODPP, *Prosecution Policy and Guidelines*, March 1998, p. 35.

Policy 5 of the ODPP Prosecution Policy and Guidelines prescribed a three-limb test to be applied in determining whether to prosecute an offence. Under Guideline 7, the same test was to be applied when considering applications that there be no further proceedings.⁶⁶² The three limbs of the test were:

1. *Whether or not the admissible evidence available is capable of establishing each element of the offence;*
2. *Whether or not it can be said that there is no reasonable prospect of conviction by a reasonable jury (or other tribunal of fact) properly instructed as to the law; and if not*
3. *Whether or not discretionary factors nevertheless dictate that the matter should not proceed in the public interest.*⁶⁶³

Policy 5 also listed 22 discretionary factors that might be taken into account in determining whether to proceed with a prosecution.

In evidence to Operation Prospect, the Deputy Solicitor Legal said her submission in Paddle's case did not rely on the third limb of Guideline 7 but – with hindsight – discretionary considerations were relevant.⁶⁶⁴ The DPP said it was unnecessary to proceed past the second limb of Guideline 7 in Paddle's case because the third limb was to be considered only if the second limb was satisfied.⁶⁶⁵ The DPP said his decision was based on the assessment in the submission that there was no reasonable prospect of conviction, not on discretionary considerations.⁶⁶⁶

Guideline 18 of the Prosecution Policy and Guidelines related to the taking of induced statements. Appendix G set out the guideline, which included the following:

Where investigators propose to take an induced statement they are to first seek to obtain written advice from the Solicitor for Public Prosecutions as to the appropriateness of that course ...

*This protocol does not apply to police carrying out investigations pursuant to ... NSW Crime Commission references.*⁶⁶⁷

In evidence to Operation Prospect, the DPP said that – if the ODPP had carriage of a prosecution of an offence – it was incumbent on investigators to seek the authority of the DPP before taking an induced statement for that offence. This was because section 14 of the Director of Public Prosecutions Act gave the guidelines the force of a direction.⁶⁶⁸

In evidence to Operation Prospect, Boyd-Skinner said that – seen from 'the lens of today' – it was unusual to conduct an induced interview with an informant about a matter before the court, but he did as he was instructed.⁶⁶⁹ He also said his experience today was that DPP approval was required to conduct an induced interview with an informant about a matter in ODPP hands.⁶⁷⁰ Moore said it was his understanding that authority was required before an inducement was offered, but he was unsure who had such authority and suggested that NSWCC officers may have had such authority.⁶⁷¹ He said he thought DPP authority was now required to conduct an induced interview with an informant about a matter the subject of court proceedings, but he was unsure whether it was at the time.⁶⁷² McFadden said his understanding was that authority to conduct an induced interview was dependent on seniority.⁶⁷³ His understanding was that a senior NSWPF officer, such as a superintendent, or certain NSWCC officers were able to authorise an inducement.⁶⁷⁴ Dolan said Bradley and

662 ODPP, *Prosecution Policy and Guidelines*, March 1998, p. 15.

663 ODPP, *Prosecution Policy and Guidelines*, March 1998, p. 5.

664 Ombudsman Transcript, [Deputy Solicitor Legal], 4 May 2016, p. 27.

665 Ombudsman Transcript, [DPP], 4 May 2016, p. 53.

666 Ombudsman Transcript, [DPP], 4 May 2016, p. 48.

667 ODPP, *Prosecution Policy and Guidelines*, March 1998, p. 42.

668 Ombudsman Transcript, [DPP], 4 May 2016, p. 54.

669 Ombudsman Transcript, Darren Boyd-Skinner, 5 May 2016, pp. 124-125.

670 Ombudsman Transcript, Darren Boyd-Skinner, 5 May 2016, p. 125.

671 Ombudsman Transcript, Greg Moore, 4 May 2016, pp. 66-67.

672 Ombudsman Transcript, Greg Moore, 4 May 2016, p. 69.

673 Ombudsman Transcript, Brett McFadden, 4 May 2016, p. 92.

674 Ombudsman Transcript, Brett McFadden, 4 May 2016, pp. 93-94.

NSWCC officers of assistant director level were able to authorise an inducement.⁶⁷⁵ He said the NSWCC was not obliged to seek DPP approval before offering an inducement to interview an informant about a matter in ODPP hands and, “It just seemed to be normal practice”.⁶⁷⁶

Brammer advised Operation Prospect that the authority to conduct an induced statement in these circumstances would have come from someone at the NSWCC.⁶⁷⁷ He said it was certainly not under his authority when investigators acting under NSWCC auspices took an induced statement.⁶⁷⁸ He did not know whether it was necessary for investigators acting under NSWCC auspices to obtain DPP approval before taking an induced statement about a matter the subject of ODPP prosecution.⁶⁷⁹ Burn said she did not recall the seniority required to authorise an inducement but believed she did not have this authority and would have “referred up” to a more senior officer.⁶⁸⁰ She did not know what the guidelines said, but assumed DPP approval would be required to conduct an induced interview with an informant about a matter in ODPP hands.⁶⁸¹

Bradley said that, in the NSWCC, directors and assistant directors could authorise an induced statement – there were rules but no formal authorisation process.⁶⁸² He said he did not know the police rules for taking induced statements from informants.⁶⁸³ Bradley said the NSWCC may not have been obliged to inform the DPP if an informant made admissions about an offence that the ODPP was prosecuting as he was unsure whether it was “in the needed to know category”.⁶⁸⁴ He suspected the DPP would be told that an informant had made admissions as it would be a factor in the DPP’s decision whether to proceed with a prosecution.⁶⁸⁵ He said he “would think” the DPP would be told an informant had made admissions when there had been communications from NSWCC or SCIA officers urging the DPP to proceed no further with a prosecution, but he did not make that judgement – and if the DPP needed to know, they were told.⁶⁸⁶

14.10.12 Analysis

The evidence examined and received by Operation Prospect establishes the following facts and circumstances.

14.10.12.1 Failure to advise the DPP of Paddle’s admission to involvement in the attempted armed robbery

The evidence before Operation Prospect establishes that the DPP was not informed of Paddle’s admission on 7 December 1999 before directing – on 16 February 2000 – that there be no further proceedings against Paddle for the attempted armed robbery. This information was relevant to the DPP’s decision.

There is no evidence to support the suggestion that the DPP might have been told of Paddle’s admission in the 14 February 2000 meeting but the Deputy Solicitor Legal’s note did not record it. No-one present in this meeting gave evidence to Operation Prospect that they recalled the DPP being informed of Paddle’s admission – although the lack of recall would be reasonable given the time elapsed since the meeting. However, on 25 July 2002 – less than two and a half years after the 14 February 2000 meeting – the DPP noted that his office had not been informed of Paddle’s admission. The Deputy Solicitor Legal’s 16 February 2000 note recorded information provided to the DPP, including that Paddle denied the earlier alleged oral admissions, but does not refer to the recorded admission in the induced interview on 7 December 1999. Burn’s 15 February 2000 Information Report recorded information provided to the DPP, but does not refer to the 7 December 1999 admission by Paddle.

675 Ombudsman Transcript, John Dolan, 5 May 2016, p. 69.

676 Ombudsman Transcript, John Dolan, 5 May 2016, p. 69.

677 Ombudsman Transcript, Malcolm Brammer, 6 May 2016, p. 252.

678 Ombudsman Transcript, Malcolm Brammer, 6 May 2016, p. 253.

679 Ombudsman Transcript, Malcolm Brammer, 6 May 2016, pp. 253-254.

680 Ombudsman Transcript, Catherine Burn, 6 May 2016, pp. 212-213.

681 Ombudsman Transcript, Catherine Burn, 6 May 2016, p. 213.

682 Ombudsman Transcript, Phillip Bradley, 6 May 2016, pp. 278-279.

683 Ombudsman Transcript, Phillip Bradley, 6 May 2016, p. 279.

684 Ombudsman Transcript Phillip Bradley, 6 May 2016, p. 282.

685 Ombudsman Transcript, Phillip Bradley, 6 May 2016, p. 282.

686 Ombudsman Transcript, Phillip Bradley, 6 May 2016, pp. 282-283.

All those present in the 14 February 2000 meeting agreed that Paddle's admissions would have been relevant to the DPP's decision to direct that there be no further proceedings for the attempted armed robbery. Although the induced interview was inadmissible, knowledge of Paddle's admission would have allowed the DPP to negotiate with his lawyers about his plea and to consider using his evidence against an alleged co-accused – with Paddle receiving the benefit for his assistance. The fact that Paddle had made a detailed admission to the attempted armed robbery was also relevant to the proper assessment of whether or not his claims of verballing could be substantiated. Despite the consensus about the significance of Paddle's admissions to the DPP, the Deputy Solicitor Legal's 16 February 2000 submission to the DPP – recommending that there be no further proceedings against Paddle – makes no reference to these admissions.

The evidence does not support an inference that it was 'common ground' in the 14 February 2000 meeting that Paddle had admitted the attempted armed robbery. The references in the Deputy Solicitor Legal's note to information that Paddle and his co-accused had in fact committed the offence related to advice provided in the 5 February 1999 and 22 April 1999 meetings.

The 5 February 1999 meeting was convened because Sea had alleged that police involved in the attempted armed robbery had fabricated evidence against Paddle and two co-accused, and Paddle's Court of Criminal Appeal proceedings relating to the attempted armed robbery were in the DPP's hands at the time. Concern was expressed in this meeting that Sea's ongoing involvement in the covert investigation of police could be exposed, including through correspondence. Internal Affairs became the conduit for correspondence with the DPP to avoid exposing the NSWCC investigation. The DPP was advised in the meeting that Sea had confirmed Paddle and his co-accused committed the offence despite the police fabrication of evidence. The basis for this advice was not any of Paddle's admissions as he had not been interviewed at the time.

The meeting with the DPP on 22 April 1999 (discussed at 14.10.4) was convened by Bradley because Paddle made similar allegations to Sea about police 'verballing' and misconduct in relation to the attempted armed robbery and had begun to assist investigators. At this meeting, the DPP was advised that Sea's involvement in covert investigations was continuing that "on the material provided to the NSWCC" evidence had been fabricated against Paddle, Mr O and Mr M – even though it was believed they had committed the offence. The basis for this advice was not any admission by Paddle, as no admission had been made by that time. In the 12 April 1999 interview (discussed at 14.10.3), Paddle denied involvement in the attempted armed robbery.

14.10.12.2 Knowledge of Paddle's admission

Paddle indicated a willingness to admit his involvement in the attempted armed robbery to Mascot investigators for the first time on or about 1 December 1999. In the 7 December 1999 induced interview, Paddle gave a detailed account to Boyd-Skinner and Moore of his own involvement in the attempted armed robbery and that of his co-accused Mr O, Mr M, and a fourth suspect Mr BB. Although Paddle was the subject of proceedings in the Court of Criminal Appeal for this offence at the time, the DPP was not informed of the intention to interview him about the offence. The DPP's approval was also not sought before Paddle was offered the inducement to participate in the interview.

The 7 December 1999 interview was a preliminary to the Mr BB operation – which involved Paddle approaching Mr BB while wearing a LD and engaging him in conversation about the attempted armed robbery in an attempt to obtain admissions. This operation could not have occurred until Paddle had admitted his involvement in the offence under protection of an inducement so that his own admission could not be used against him. Officers with decision-making responsibility for the operation are likely to have known that Paddle had been offered an inducement to participate in the interview. However, the evidence does not establish who authorised the offer of the inducement.

Evidence to Operation Prospect establishes that Burn knew about Paddle's admissions in the 7 December 1999 interview. She has accepted she very likely knew of the admissions. Evidence also indicates that Burn knew about the Mr BB operation. Although it formed part of another operation, Mascot retained an interest in it and Burn was Mascot Team Leader at the time. Burn was identified as case officer in the Weekly Advice Report about the operation targeting Mr BB that Burn initialled. Boyd-Skinner gave evidence that Burn was case

officer for the operation and Moore's Duty Book records he conferred with Burn after completing the operation. Mascot team meeting minutes record Burn was present when Paddle's activities were discussed.

The evidence establishes it is likely that Dolan knew of Paddle's admissions in the 7 December 1999 interview. He was often absent from work in the period September 1999 to January 2000 during the Mr BB operation, but he had returned to work on a full-time basis before the 14 February meeting. Dolan said Paddle's admissions were an important development in the management of an informant and he would have expected to have been informed about them.

The evidence does not establish whether Brammer knew about Paddle's admissions in the 7 December 1999 interview. No-one gave evidence that Brammer would have been likely to have been informed of these admissions. The operation targeting Mr BB was conducted within the SCU command and Brammer gave evidence that he had no operational responsibility for such investigations.

The evidence establishes it is likely that Bradley knew about Paddle's admissions in the 7 December 1999 interview. Bradley said in evidence that he would not necessarily expect to have been told about an informant's admissions – but he would expect to have been told that an informant had participated in an operation such as the Mr BB operation after induced admissions. Dolan gave evidence that Bradley would have approved an operation such as the Mr BB operation. Documentary evidence also establishes that Bradley was given a report relating to Oberon, which included the Mr BB operation, and Mascot team meeting minutes record Bradley was present when Paddle's activities were discussed.

Correspondence to the DPP from Brammer dated 11 May 1999 – and from the IA Operations Manager dated 29 June 1999, 3 August 1999 and 15 November 1999 – cited the ongoing covert investigations as the basis for the requested adjournments of the CCA proceedings. The DPP sought adjournments of the CCA proceedings on four occasions in 1999 on the basis of this correspondence. Ultimately, the DPP indicated that no further adjournments would be sought and that the DPP had been advised there were good prospects of success against Paddle in the Court of Criminal Appeal and at trial.

In these circumstances, the NSWCC and/or NSWPF officers might be thought to have had an interest in ensuring the DPP discontinued Paddle's prosecution so that he could continue to act as an informant. However, the evidence does not establish that any NSWCC or NSWPF officer deliberately withheld Paddle's 7 December 1999 admission to the attempted armed robbery from the DPP. Rather, the evidence suggests that other factors might explain the failure of NSWCC and/or NSWPF officers to make sure that information in their possession that was important to the DPP's determination was disclosed.

There is evidence of a presumption held by police and present in Brammer's letter of 9 February 2000 that there was police misconduct involved in the arrest and charging of Paddle and his co-accused for the attempted armed robbery and that the police evidence was therefore tainted.⁶⁸⁷ Paddle had effectively corroborated Sea's allegations of police verballing and Sea's allegations were based, in part, on admissions of his own misconduct. The belief that police evidence was fabricated and that Paddle, Mr O and Mr M were all involved in the attempted armed robbery was communicated to the DPP by Bradley at the meeting on 22 April 1999. This is recorded in the Deputy Solicitor Legal's confidential note.⁶⁸⁸ The fact that these circumstances had been previously communicated to the DPP may have contributed to a failure to consider the importance of disclosing Paddle's actual admission to the offence made on 7 December 1999. The fact that the admission was made in an interview connected with the Mr BB operation may have caused officers to overlook disclosure of the admission in communications in connection with Paddle's prosecution. Finally, a focus on ensuring that ongoing covert operations were not exposed may have displaced proper consideration of disclosure requirements in communications with the DPP about Paddle's prosecution.

687 For example, see Letter from Commander Malcolm Brammer, NSWPF to the [DPP], ODPP 9 February 2000.

688 [Deputy Solicitor Legal], File note, Confidential Note for Director's Safe Relating to Submission Dated 16/2/00, DPP, 16 February 2000, p. 3.

14.10.12.3 Information provided to the DPP about Paddle's assistance

The evidence establishes that the DPP was not informed of Paddle's assistance to the NSWCC in relation to other matters before the 16 February 2000 direction by the DPP that there be no further proceedings for the attempted armed robbery. The DPP's determination was based on the Deputy Solicitor Legal's advice in the 16 February 2000 submission about the prospect of conviction, not on discretionary factors – such as a perceived need to maintain Paddle's cooperation in other matters.

Boyd-Skinner provided the information – that the DPP used to direct there be no further proceedings against Paddle for the attempted armed robbery – to maintain Paddle's cooperation in other matters, and Hutcheson inserted this in the 26 November 2001 draft indemnity application. The evidence does not establish that any participant in the 14 February 2000 meeting endorsed an indemnity application in the form of Hutcheson's 26 November 2001 draft application. There is also no evidence that anyone in the 14 February 2000 meeting informed Boyd-Skinner of the matters discussed in the meeting. The information that Boyd-Skinner provided to Hutcheson was incorrect, but its source is unknown. Boyd-Skinner may have made a mistaken assumption about the reasons for the DPP's determination.

Boyd-Skinner and Moore were participants in the 7 December 1999 induced interview with Paddle. However, they were not part of any communications between NSWPF officers and the DPP about proceedings against Paddle. Neither officer occupied a position with responsibility for ensuring the admissions were disclosed to the DPP. There is also no evidence that either Boyd-Skinner or Moore failed to disclose the admissions to superior officers.

14.10.13 Submissions

14.10.13.1 Overview of submissions

All witnesses on this issue before Operation Prospect accepted that the ODPP should have been informed of Paddle's admission in an induced interview on 7 December 1999 to the 1994 attempted armed robbery. The witnesses readily accepted that investigating officers are obliged to provide full and frank disclosure to the ODPP, particularly in urging the ODPP to discontinue serious criminal proceedings that had a reasonable prospect of success.

Some parties against whom provisional adverse findings were made also made written submissions on the issue to Operation Prospect. Those submissions re-affirmed the importance of providing full and frank disclosure to the ODPP. However, another theme in the submissions was that there was no direct evidence that any officer deliberately withheld Paddle's admission from the ODPP. There was general acknowledgement in the written submissions that Paddle's complicity had been assumed – 'common ground' – but there was no evidence, it was submitted, that his admission was deliberately withheld from the ODPP.

That point has been accepted by Operation Prospect. As discussed in section 14.10.12.2, a probable explanation for the failure to disclose Paddle's admission to the offence was that the participants in the meeting on 14 February 2000 had focused on other matters and overlooked the importance of disclosing this important item of information (to the extent that it was known by any party) or ensuring they were in a position to give full and adequate advice to the DPP.

The submissions also pointed out that the meeting with the DPP was held more than 16 years before witnesses were required to give evidence about the meeting to Operation Prospect. Due allowance should be made for this gap, it was submitted, in drawing inferences from the parties' evidence as to what was known or said at the meeting.

The individual submissions made other specific points that will be discussed, along with the explanations for the findings that are made in this section.

14.10.13.2 NSWCC

Both the NSWCC and Bradley submitted that the fact that Paddle made admissions to the 1994 attempted armed robbery would not have changed anything in terms of how the matter was dealt with.⁶⁸⁹ As discussed in section 14.10.10, the DPP gave contrary evidence to Operation Prospect. In his view, the admission could have affected the ODPP's ability to negotiate with Paddle's lawyers and potentially pursue charges against other suspects. The admissions in December 1999 substantially undermined Paddle's credibility and were fundamental to assessing his claim that the arresting officers had verbaled him.

The NSWCC was of the view that consideration should be given to the principles enunciated in the High Court decisions of *X7 v Australian Crime Commission* and *Lee v The Queen*.⁶⁹⁰ Those decisions discuss the constitutional and common law constraints on an admission of guilt being conveyed to a prosecutor, in the context of the exercise of the compulsory examination powers of the Australian Crime Commission and the NSWCC.

Those decisions are distinguishable from the issue presently under consideration. This report is concerned with discussions between officers of the ODPP, NSWCC and NSWPF about whether to proceed with a prosecution of Paddle, who was a registered NSWCC informant. The issue was whether an admission he made to an offence in an induced interview should have been advised to the DPP in those discussions. The admission could not be used against Paddle in criminal proceedings, but disclosing the admission to the DPP is a separate issue.

The conclusion reached in this report is that the NSWCC was responsible for the failure of NSWCC officers and NSWPF officers in the Mascot investigations to inform the DPP at a meeting on 14 February 2000 of Paddle's admission in an induced interview on 7 December 1999. Paddle was a registered NSWCC informant who was charged with a serious offence. The NSWCC requested that the DPP discontinue proceedings against Paddle for the offence because the NSWCC was concerned to avoid exposure of its ongoing covert operations. The NSWCC knew or ought to have known that the DPP – in making the determination about the proceedings against Paddle – was reliant on information in its possession. In these circumstances, the NSWCC bore an institutional responsibility to ensure that the DPP was informed of all matters relevant to the determination that the NSWCC had requested the DPP to make.

14.10.13.3 Bradley

Bradley submitted that there is no direct evidence that he was told of Paddle's admission before the meeting with the DPP and "[i]t cannot be assumed that a Commissioner would routinely know the content of every interview conducted by investigators".⁶⁹¹ He accepted that others under his command or at the meeting with the DPP may have known of the confession, but there is no evidence that this knowledge was conveyed to him.

Bradley submitted that a file note prepared by the Deputy Solicitor Legal on 16 February 2000 in combination with her evidence to Operation Prospect indicates that the DPP was in fact probably aware of the admissions.⁶⁹² However, the evidence before Operation Prospect does not support that submission. The Deputy Solicitor Legal did not have an independent recollection as to when she became aware of the admission. Documentary evidence discussed in section 14.10.10 suggests that the ODPP was not aware of Paddle's admissions prior to the direction of no further proceedings.

Bradley submitted that he ensured the appropriate police officers in possession of such knowledge such as Burn and Dolan were present when the matter was discussed with the DPP. No finding should be made against him, he submitted, due to lack of particularisation about his knowledge and actions.⁶⁹³

689 Bradley, P, Submission in reply, 29 July 2016, p. 3; NSWCC, Submissions in reply 29 July 2016, pp. 7-8.

690 Respectively *X7* (2013), 248 CLR 92; [2013] HCA 29; and *Lee* (2014) HCA 20; NSWCC, Submissions in reply 29 July 2016, pp. 8-9.

691 Bradley, P, Submission in reply, 29 July 2016, p. 3.

692 Bradley, P, Submission in reply, 29 July 2016, p. 5.

693 Bradley, P, Submission in reply, 29 July 2016, pp. 8-9.

The finding that is made against Bradley in this section takes account of those submissions about the role he played in providing advice to the ODPP. As Commissioner of the NSWCC, Bradley was responsible for ensuring that the DPP was informed of all matters relevant to the determination that the NSWCC had requested the DPP to make. Bradley requested each of the meetings with the DPP and, in the meeting on 14 February 2000, he confirmed the content of Brammer's letter dated 9 February 2000 recommending the DPP support a permanent stay of proceedings against Paddle. Despite his lack of specific recall of the events after so many years, it is likely that Bradley knew about Paddle's admissions in the 7 December 1999 interview. Overall, Bradley bore ultimate responsibility within the NSWCC for ensuring that the DPP was informed of all matters relevant to the DPP's determination.

14.10.13.4 Brammer

Brammer submitted generally that his knowledge and involvement was at a much higher and remote corporate level than that of Burn operating at ground level.⁶⁹⁴ He had confidence in her and other officers. He rejected any suggestion that he was "acutely aware of everything that happened with the Mascot investigation".⁶⁹⁵

Brammer has no independent recollection of being aware of the admissions or of the meeting with the DPP. He was confident that if he had been aware of the admissions he would have made enquiries and discussed the issue with others, to ensure the NSWCC provided that information to the ODPP.⁶⁹⁶

Brammer also submitted that he was constrained by a secrecy provision in section 29 of the NSWCC Act from disclosing to the DPP information he had received from the NSWCC. The authority to disclose that information, or to authorise its disclosure, rested with Bradley.⁶⁹⁷ That submission does not adequately take account of the responsibility of senior officers participating jointly in an investigation of this nature to ensure that there is full disclosure to the ODPP about a serious criminal matter and if necessary to explore options for ensuring that full disclosure occurs.

The finding that is made against Brammer in this section takes account of those submissions about the role he played in providing advice to the ODPP. As SCIA Commander, Brammer had overall responsibility for NSWPF officers in the SCU performing duties relating to NSWCC investigations. Brammer was the signatory on the 9 February 2000 letter to the DPP recommending it support a permanent stay of proceedings against Paddle. In those circumstances, whether or not Brammer knew about Paddle's 7 December 1999 interview, Brammer was responsible for making adequate enquiries to ensure that all material in the possession of officers within the SCIA command relevant to Paddle's prosecution was given to the ODPP to permit the DPP to make an informed decision.

14.10.13.5 Dolan

Dolan submitted that he did not accept the adverse finding and comment were reasonably available on the evidence, however did not seek to make any written submissions on this issue to Operation Prospect.

As SCU Commander, Dolan was responsible for NSWPF officers in SCU performing duties relating to NSWCC references. Dolan was present – but Brammer was absent – at the 14 February 2000 meeting when the content of Brammer's 9 February 2000 letter recommending that the DPP support a permanent stay of proceedings against Paddle was confirmed. In those circumstances, whether or not he knew about Paddle's 7 December 1999 interview, Dolan was responsible for ensuring that Brammer – as Commander of SCIA to whom Dolan reported – was aware of all material in possession of officers within his command of relevance to the determination that Brammer had recommended the DPP should make. Dolan also had a responsibility to ensure that all material in possession of officers within SCU relevant to Paddle's prosecution was given to the ODPP to permit the DPP to make an informed decision.

⁶⁹⁴ Brammer, M, Submission in reply, 5 August 2016, p. 9.

⁶⁹⁵ Brammer, M, Submission in reply, 5 August 2016, p. 9.

⁶⁹⁶ Brammer, M, Submission in reply, 5 August 2016, pp. 19, 29.

⁶⁹⁷ Brammer, M, Submission in reply, 5 August 2016, pp. 19-20.

14.10.13.6 Burn

Burn accepted that she was responsible for supervising the NSWPF officers in SCU. She submitted that she was not intimately familiar with all operational details and relied on Mascot investigators to carry out their duties. Burn relied on the fact that Boyd-Skinner was Paddle's handler and that she did not have significant involvement. Burn further submitted that despite being named as case officer on the Mascot Weekly Activity Reports it did not necessarily follow that she actually performed the role of case officer in every activity recorded in the reports.⁶⁹⁸

Burn asserts her presence at the meeting was to ensure that Sea's covert identity was preserved. She said it was "not my call" to decide if a permanent stay of proceedings should be sought against Paddle, and that the NSWCC was driving that process.⁶⁹⁹ The presence of Dolan and Bradley, as more senior officers, would have made it difficult for her to provide information to the DPP as that could have been perceived as being undermining.⁷⁰⁰ She also thought that insufficient weight was being given to the circumstance that Paddle's complicity was 'common ground' among those at the meeting.

Burn's view was that if she had known about the admissions she would certainly have disclosed them, or ensured they were reflected in Brammer's 9 February 2000 letter to the DPP recommending the DPP support a permanent stay of proceedings against Paddle.

The finding that is made against Burn in this section takes account of those submissions about the role she played in the meetings with the ODPP. As team leader, Burn was responsible for NSWPF officers in SCU performing duties for the Mascot references. She liaised with the ODPP Deputy Solicitor Legal about adjourning the DPP's proceedings against Paddle in the Court of Criminal Appeal. Burn was present in Mascot team meetings when Brammer's 9 February 2000 letter to the DPP was discussed. She was also present in the 14 February 2000 meeting when the contents of Brammer's letter were confirmed. Burn knew the DPP had been asked to make a determination about the prosecution of Paddle. In these circumstances, Burn was responsible for ensuring the DPP was informed of all material in the possession of officers that was relevant to the prosecution of Paddle.

14.10.14 Findings

62. Bradley

As discussed in sections 14.10.12.1 and 14.10.12.2, Bradley's conduct in failing to ensure that the Director of Public Prosecutions was informed of Paddle's admissions in the 7 December 1999 interview was unreasonable conduct in terms of section 26(1)(b) of the *Ombudsman Act 1974*.

63. Brammer

As discussed in sections 14.10.12.1 and 14.10.12.2, Brammer's conduct in failing to ensure that the Director of Public Prosecutions was informed of Paddle's admissions in the 7 December 1999 interview was unreasonable conduct in terms of section 122(1)(d)(i) of the *Police Act 1990*.

64. Dolan

As discussed in sections 14.10.12.1 and 14.10.12.2, Dolan's conduct in failing to ensure that the Director of Public Prosecutions was informed of Paddle's admissions in the 7 December 1999 interview was unreasonable conduct in terms of section 122(1)(d)(i) of the *Police Act 1990*.

⁶⁹⁸ Burn, C, Submission in reply, 30 August 2016, p. 4.

⁶⁹⁹ Burn, C, Submission in reply, 30 August 2016, p. 11.

⁷⁰⁰ Burn, C, Submission in reply, 30 August 2016, p. 12.

65. Burn

As discussed in sections 14.10.12.1 and 14.10.12.2, Burn's conduct in failing to ensure that the Director of Public Prosecutions was informed of Paddle's admissions in the 7 December 1999 interview was unreasonable conduct in terms of section 122(1)(d)(i) of the *Police Act 1990*.

66. NSW Crime Commission

As discussed in sections 14.10.12.1 and 14.10.12.2, the conduct of the NSW Crime Commission in failing to ensure that the Director of Public Prosecutions was informed of Paddle's admissions in the 7 December 1999 interview was unreasonable conduct in terms of section 26(1)(b) of the *Ombudsman Act 1974*.

14.10.15 Recommendation

- 23.** It is recommended under section 26(2) of the *Ombudsman Act 1974* that the Director of Public Prosecutions give consideration to amending the 'Prosecution Policy and Guidelines' to clarify the authority to offer an inducement to an informant in an investigation under a NSW Crime Commission reference about a matter that is the subject of DPP proceedings.

Chapter 15. Deployment and management of informant ‘Salmon’

15.1 Chapter overview

This chapter examines a number of issues arising from the use of LDs worn by a NSWCC informant who was deployed to investigate alleged corrupt and criminal activities by serving NSW police officers and other individuals. The operation to investigate these allegations was called ‘Operation Wattles’ and was conducted under the Mascot references. The informant came to Mascot’s attention due to his being involved in corruption at Manly which was recorded on LDs by the informant Sea. That corruption was exposed publicly at the PIC Florida hearings.

The informant was a NSW police officer who was registered as an informant in 2002, under the codename ‘Salmon’. He was deployed on a number of occasions with a body worn LD to record private conversations with two serving police officers and their associates. The use of the LDs was authorised by a succession of warrants for which NSWPF investigators had applied for through the NSWCC. On two occasions, conversations were recorded that did not fall within the scope of those warrants. The recorded conversations were later used in hearings conducted by the Police Integrity Commission (PIC), and resulted in the prosecution of two people who were required to give evidence in those hearings.

The themes examined in this chapter about the Operation Wattles investigation are:

- unlawful recordings of a person of interest to Operation Wattles
- reliance on unlawful recordings in PIC hearings
- reliance on unlawful recordings in the criminal prosecutions of two individuals
- the failure of the NSWCC to ensure compliance with its own procedures governing the use of LDs.

The chapter concludes with a finding of unlawful conduct against a police officer who played a central role in Operation Wattles, and a finding in relation to the practices and procedures of the NSWCC.

15.2 Background to Operation Wattles

15.2.1 Salmon registered as a NSWCC informant

On 30 September 2002, a NSW police officer was registered as an informant by the NSWCC and given the codename ‘Salmon’.⁷⁰¹ At that time, Salmon was facing numerous serious criminal charges where a custodial sentence was expected. Mascot investigators formed the view that Salmon was motivated to cooperate in order to “minimise his custodial period”.⁷⁰²

Salmon alleged serious corrupt conduct by two then serving NSW police officers – Mascot Subject Officer 25 (MSO25)⁷⁰³ and Mascot Subject Officer 26 (MSO26).⁷⁰⁴ He also made allegations that Mr U, a civilian, was involved in criminal activity. The allegations involving MSO25 and MSO26 included illicit drug manufacture and supply, perverting the course of justice, and break, enter and steal in circumstances of aggravation.

701 NSWCC, Informant registration form, codename Salmon, Registration no. 689, case officer: G. Moore, approved date: 30 September 2002.

702 NSWPF, Operation Wattles, Investigator’s Report, Complaint number [number], 8 December 2003, p. 2.

703 A Senior Constable of the NSW Police Force.

704 A Senior Constable of the NSW Police Force.

In late 2002, a number of operations – including Operation Wattles – were set up to finalise the investigation of Mascot-related allegations. The stated aim of Operation Wattles was to investigate “whether [MSO25], [MSO26] or any other current or former Police Officer is involved in serious Police Corruption”.⁷⁰⁵ Operation Wattles investigated a total of 34 allegations of police corruption and misconduct, and made 13 adverse findings against MSO25 and five adverse findings against MSO26.⁷⁰⁶ Both officers were recommended for removal from the NSWPF under section 181D of the Police Act.

The PIC was also involved in Operation Wattles.⁷⁰⁷ Between 13 March and 22 August 2003, the PIC held a number of private hearings into the alleged behaviour and conduct of MSO25, MSO26 and other people of interest to the investigation. These hearings relied partly on recordings made by Salmon and an undercover operative while wearing LDs authorised by NSWCC warrants. Unknown to the PIC, two of the recordings used in the hearings were beyond the scope of the warrant that authorised the device. One of the recordings later formed part of the briefs of evidence against MSO25 and Mr V (another civilian who became a person of interest to Operation Wattles) – they were prosecuted for providing false evidence to the PIC under section 107 of the *Police Integrity Commission Act 1996* (PIC Act).

15.2.2 Involvement of the NSWCC and the NSWPF in Operation Wattles

The allegations against MSO25, MSO26 and Mr U were investigated using NSWCC powers and resources. The investigation relied on the deployment of the NSWCC registered informant Salmon and a NSWCC undercover operative, ‘James Allan’. Between 9 October and 10 December 2002, Salmon and James Allan were deployed by Operation Wattles while wearing LDs to record their conversations with targets of the investigation.

Detective Sergeant Glen Trayhurn was the main ‘handler’ for Salmon and took the leading role in investigating Salmon’s allegations. In 2002, Trayhurn was attached to Special Crimes and Internal Affairs (SCIA) and was also a member of the staff of the NSWCC for the purposes of investigating Salmon’s allegations.⁷⁰⁸ After the Professional Standards Command (PSC) was set up by the NSWPF, Trayhurn was listed as attached to that command.⁷⁰⁹

The first supporting affidavit for a LD warrant sworn by Trayhurn on 8 October 2002 stated that alternative investigative methods were not likely to succeed as the suspects had extensive experience and exposure to police investigation methods.⁷¹⁰ From 8 October 2002, Trayhurn applied for a total of 14 warrants for LDs to investigate the alleged criminal activities of MSO25, MSO26, Mr U and their associates or people in their company. The warrant applications were prepared in and made through the NSWCC, and the supporting affidavits were witnessed by a NSWCC solicitor.

Between October and mid-December 2002, Salmon recorded a number of conversations with MSO25, MSO26, Mr U and Mr V. A conversation recorded by Salmon on 10 October 2002 appears to have led to the request for the use of the undercover operative to be deployed wearing a LD to capture conversations during targeted drug purchases.⁷¹¹

On 21 October 2002, an application by Mark Standen, NSWCC Assistant Director (Investigations), to register an undercover operative was approved by the Commissioner of the NSWCC, Phillip Bradley.⁷¹² James Allan – also known as ‘Jimmy’ – was the codename for the operative. From 22 October 2002 onwards, LD warrants were obtained for James Allan to authorise his wearing of a LD.

705 NSWPF, Operation Wattles, Investigator’s Report, Complaint number [number], 8 December 2003, p. 1.

706 NSWPF, Operation Wattles, Investigator’s Report, Complaint number [number], 8 December 2003, p. 8.

707 NSWPF, Operation Wattles, Investigator’s Report, Complaint number [number], 8 December 2003, p. 3.

708 Trayhurn is a current member of the NSW Police Force, holding the rank of Detective Inspector.

709 The ‘Investigators report’ for Operation Wattles was completed in December 2003 and certified by officers from the Professional Standards Command (PSC) of the NSW Police Force (NSWPF). The PSC was established in late 2003 and involved the amalgamation of three police commands including the SCIA.

710 LD affidavit 02/8442, pp. 5-6. Pursuant to s. 16(2)(c) of the *Listening Devices Act 1984* (repealed) a judicial officer is required to have regard to alternative means of obtaining the evidence sought to be obtained.

711 NSWCC Transcript of Ref 10731/161, CD Salmon 2, 10 October 2002, p. 27.

712 NSWCC, *Application for Authority to Conduct a Controlled Operation*, Operation No. 02/08901, 21 October 2002, and NSWCC, *Chief Executive Officer’s Record of Reasons for Grant of Authority to Conduct a Controlled Operation*, Operation No. 02/08901, 21 October 2002.

This investigative strategy required the involvement of the Special Technical Investigation Branch (STIB) of the NSWPF, the group responsible for providing technical expertise in this context.

Trayhurn prepared the investigator's report on Operation Wattles dated 8 December 2003. It was certified for "quality, timeliness and completeness" by then Detective Inspector Brett McFadden of the PSC Investigations Unit.⁷¹³ Detective Sergeant Cliff Harris assisted Trayhurn. McFadden was one of the main supervisors of both Trayhurn and Harris during Operation Wattles.⁷¹⁴

Another issue in the investigation arose from advice Salmon gave Trayhurn that MSO25 was able to obtain a false passport that would enable Salmon to leave Australia and avoid an expected custodial sentence. On 22 October 2002, Trayhurn recorded in his Duty Book that he spoke to McFadden and Standen about including the 'passport issue' in a controlled operation targeting MSO25. Trayhurn recorded Standen's advice that the passport issue should not form part of a controlled operation as the alleged offence did not attract a high enough sentence to be lawfully included.⁷¹⁵

15.2.3 LD Act and NSWCC policies and procedures

The statutory framework created by the *Listening Devices Act 1984* (LD Act) is detailed in Chapter 5 of this report. The elements of the Act that are relevant to this chapter are noted briefly here:

- Section 5 of the LD Act made it an offence to "use, or cause to be used, a listening device ... to record or listen to a private conversation".⁷¹⁶ In the circumstances discussed in this chapter, the offence can be committed by a police officer who instructs and assists an undercover operative to record a private conversation using a LD that is body worn or installed on premises.
- No offence is committed if the use of the LD comes within an exception listed in the LD Act. Two relevant exceptions are that the LD was used in accordance with a warrant granted under the LD Act by an 'eligible' Judge of the Supreme Court of NSW, or there was an "unintentional hearing of a private conversation by means of a listening device".⁷¹⁷
- The general prohibition in the LD Act applied only to the use of a LD to record a 'private conversation'. The LD Act defined a conversation to be private if one person speaks words to another "in circumstances that may reasonably be taken to indicate that any one of those persons desires the words to be listened to only by themselves" or another person who has their consent to listen.⁷¹⁸
- The LD Act deals with the admissibility of a recorded conversation as evidence in legal proceedings. Section 13 provides that "where a private conversation has come to the knowledge of a person as a result, direct or indirect, of the use of a listening device in contravention" of the LD Act, evidence of the conversation may not be given in any civil or criminal proceedings.⁷¹⁹ Exceptions to that prohibition are found in section 13(2), and include that a court may decide in the public interest to admit the evidence in proceedings for a serious indictable or narcotics offence.⁷²⁰

The NSWCC *Listening Devices Manual* provided guidance to officers on the use of LDs. This manual is also discussed in Chapter 5 of this report, but a few points relevant to Operation Wattles will be highlighted here. The manual instructed that:

1. *Strict compliance with the Listening Devices Act is essential.*
2. *Documents must be accurate as to content and form; and all assertions in affidavits supported.*⁷²¹

713 NSWPF, Operation Wattles, Investigator's Report, Complaint number [number], 8 December 2003, p. 61.

714 McFadden is a current member of the NSW Police Force, holding the rank of Detective Superintendent.

715 NSWPF Duty Book, D047681, G. Trayhurn, SCIA, 22 October 2002, p.35.

716 *Listening Devices Act 1984*, s. 5.

717 *Listening Devices Act*, ss. 5(2)(a) and (d).

718 *Listening Devices Act*, s. 3.

719 Note that this prohibition does not apply to PIC hearings as they are not deemed to be civil or criminal proceedings.

720 *Listening Devices Act*, ss. 13(2)(d) and (3).

721 NSWCC, *Listening Devices Manual*, December 1999, p. 2.

The manual also outlined the consequences of using a LD “in a manner not authorised by the Act”. They were that:

- The evidence obtained may be ruled inadmissible.
- Use of a LD in contravention of the LD Act is an offence.⁷²²

In relation to using recorded conversations as evidence in proceedings, the manual observed that the LD Act reflected the common law and, in particular, that a judge may allow evidence from an unlawfully recorded conversation to be used in cases of “minor, accidental or technical illegality, but exclude it in the case of deliberate or reckless disregard for the provisions of the Act”.⁷²³

In a hearing on 29 March 2016, Operation Prospect asked Standen about the process of obtaining a warrant under the LD Act. Standen stated:

The police prepared a draft affidavit. I think that for practical reasons that was often the one person to get the documents to a starting point and my recollection is that was [named] a New South Wales police member; but it was the role of the deponent, the person who was to become the deponent to update the document or to work with [named] to prepare the affidavit. Those would usually be delivered to me, that is, the draft affidavit and the draft warrant and any other documents that were relevant to the process. I say “usually” because my role was many and varied and it included conducting Commission hearings which often would run all day, into the night and resume the next day and follow that pattern for some time. So subject to availability I would usually read those documents, make any corrections or suggestions based on my knowledge of the matters, hand them back for those changes to be considered and/or made. Then the deponent, usually, would take the documents to the allocated team lawyer whose job it was to provide the final checking of the documents prior to making an application and proceeding with the application process, that process being the obtaining of the warrant.⁷²⁴

When asked if he saw any signed warrants (as a general rule) once they had been granted, he replied:

No, there was no need for me to do that.⁷²⁵

Standen was referred to the NSWCC *Listening Devices Manual* and asked how NSWCC staff were made aware of such policies. Although he could not recall how this particular manual was made available, he stated:

[T]he general process of induction was that a commission officer, usually [a NSWCC staff member] but occasionally [another NSWCC staff member], dealt with inductions and that involved them meeting with the person or persons to be inducted, the provision of several manuals or at least a manual comprising multiple parts and the person to be inducted at some point, either then or I think later, signing a document to indicate that they had been provided with and had read the induction material. Then I think there’s some formality to be completed by Phillip Bradley, the then Commissioner, to confirm the induction but that generally describes the process.⁷²⁶

15.3 The investigation of Salmon’s allegations by Operation Wattles

15.3.1 Initial LD warrants and the deployment of Salmon

The first relevant warrant was granted on 8 October 2002 (NSWCC LD 02/08442).⁷²⁷ It authorised a LD to be used to record the private conversations of Salmon, MSO26, MSO25, Mr U and their associates “at a place, or at places ... as yet not known”.⁷²⁸ The warrant authorised the installation of the LD on the (unknown) premises,

⁷²² NSWCC, *Listening Devices Manual*, December 1999, p. 13.

⁷²³ NSWCC, *Listening Devices Manual*, December 1999, p. 13.

⁷²⁴ Ombudsman Transcript, Mark Standen, 29 March 2016, p. 4.

⁷²⁵ Ombudsman Transcript, Mark Standen, 29 March 2016, p. 4.

⁷²⁶ Ombudsman Transcript, Mark Standen, 29 March 2016, p. 5.

⁷²⁷ LD warrant 02/08442.

⁷²⁸ LD affidavit 02/08442, p. 1.

its retrieval from the premises, and entry onto the premises for the installation and retrieval.⁷²⁹ These conditions were in keeping with a warrant intended to be installed at a fixed location or premises. They were not necessary conditions for a warrant authorising a LD to be worn on a person.

In his evidence to Operation Prospect, Trayhurn was shown a copy of an unsigned affidavit for this warrant that had various markings and amendments made in green pen.⁷³⁰ Trayhurn accepted that it appeared to be his writing on the document.⁷³¹ He also accepted that he was the deponent on the signed copy of the supporting affidavit for this warrant.

Salmon was deployed on 9, 10, 11 and 14 October 2002 wearing a LD authorised by the warrant. The LD was never installed at premises. With the exception of the first recording on 9 October, all subsequent recordings were transcribed and used to inform Operation Wattles.⁷³²

On 10 October 2002, Salmon recorded a conversation with Mr U in which Mr U stated: "I was up at [a hotel on Oxford Street, Darlinghurst] the other day and fuckin' sellin' pills to the coppers".⁷³³ This appears to have led to the NSWCC request for the use of an undercover operative to be deployed wearing a LD to capture conversations during targeted drug purchases.⁷³⁴

15.3.2 Initial LD warrants and the deployment of James Allan

The first LD warrant for a device to be worn by James Allan, the undercover operative, was granted on 22 October 2002 and numbered NSWCC LD 02/08936. The practice adopted in deploying a NSWCC undercover operative in this way was that the conversation being recorded by the LD would also be transmitted live to investigators at another location. The apparent purpose of this was to protect the safety of the undercover operative.

LD warrant 02/08936 authorised the use of a LD "integrated with a transmitter":

*... by which to record or listen to the private conversations of ... [MSO26], ... [MSO25], ..., ... [Mr U] ..., and their associates, the New South Wales Crime Commission registered informer codenamed 'SALMON', the New South Wales Crime Commission undercover operative codenamed "James ALLAN" at a place, or places in the State of New South Wales that are not as yet known ("the premises").*⁷³⁵

Trayhurn was the deponent for the affidavit seeking this warrant. An entry in his Duty Book on 22 October 2002 records that he went to the NSWCC offices to meet with a NSWCC solicitor, and then reviewed, amended and signed the warrant documentation.⁷³⁶

The same conditions present in the first warrant (LD warrant 02/08442) authorising installation and retrieval of the LD itself were included in LD warrant 02/08936 (LD warrant 02/08936 no. 1).⁷³⁷ When the NSWPF STIB saw the conditions in LD warrant 02/8936, they described it as a premises warrant and insisted a new warrant be sought that accurately reflected the fact the LD was intended to be worn – not installed at premises.

On 23 October 2002, in keeping with STIB's advice, another warrant – also numbered NSWCC LD 02/08936 – was sought by Trayhurn on behalf of the NSWCC (LD warrant 02/08936 no. 2).⁷³⁸ The same affidavit sworn by Trayhurn was used to support the application.

729 LD warrant 02/08442, pp. 1-2.

730 NSWCC, *Informant Contact Advice Report*, Contact by Trayhurn and Harris with informant Salmon, 9 October 2002.

731 Ombudsman Transcript, Glenn Trayhurn, 5 April 2016, pp. 249-250.

732 NSWCC Transcript of Ref 10731/231, CD Salmon 2, 10 October 2002; NSWCC Transcript of Ref 10731/161, CD Salmon 2, 10 October 2002; NSWCC Transcript of Ref 10731/162, CD Salmon 3, 11 October 2002; and NSWCC Transcript of Ref 10731/163, CD Salmon 4, 14 October 2002. The recording on 9 October 2002 was not able to be transcribed due to its poor quality.

733 NSWCC Transcript of Ref 10731/161, CD Salmon 2, 10 October 2002, p. 27.

734 NSWPF, *Special Services Group Request for Assistance Form*, Requesting officer G Trayhurn, 18 October 2002.

735 LD warrant 02/8936, p.1.

736 NSWPF Duty Book, D047681, Glenn Trayhurn, SCIA, 22 October 2002, p.1.

737 LD warrant 02/08936, issued on 22 October 20002, cancelled on 23 October 2002 but replaced with a warrant of the same number.

738 LD warrant 02/08936, issued on 23 October 2002.

The key differences between this replacement warrant and its predecessor were that it explicitly stated the LD was “to be worn or carried”,⁷³⁹ and the paragraphs that authorised the installation and retrieval of the LD and entry to the relevant premises were removed.⁷⁴⁰

On 24 October 2002, STIB raised additional concerns with the content of the replacement warrant. STIB advised that two warrants were needed – one to cover the LD to be worn and a second to cover the transmitter that would transmit the conversations live to investigators.⁷⁴¹ Acting on this concern, Trayhurn swore an affidavit on 25 October 2002 in support of an application for an additional LD warrant. Trayhurn’s affidavit was witnessed by a different NSWCC solicitor on this occasion.⁷⁴² On 25 October 2002, warrant NSWCC LD 02/09137 was granted.⁷⁴³

There was a small but significant change in the wording of paragraph 3 of LD warrant 02/09137 compared to the earlier warrants. The earlier warrants authorised the recording of MSO25, MSO26 and Mr U “and their associates”. LD warrant 02/09137 limited authorisation to the recording of MSO25, MSO26 and Mr U “and any other person having a conversation in his presence”.⁷⁴⁴ It is not clear why this more restrictive wording was used in the new warrant.

While Trayhurn intended the LDs authorised by these warrants to be worn by James Allan, LD warrant 02/08936 also authorised Salmon to wear the device. LD warrant 02/08936 was in force from 23 October 2002 to 12 November 2002 and included the less restrictive phrase “and their associates”.

15.3.3 Mr V as a person of interest to the investigation

In October 2002, Mr V became a person of interest to Operation Wattles. Initially, a person called ‘[first name of Mr V]’ was mentioned in a recorded conversation between Salmon and Mr U on 10 October 2002 in relation to selling illicit drugs to unnamed police officers and others.

On 15 October 2002, a senior constable created a profile for Mr V in regard to Operation Wattles identifying him as a person of interest. Trayhurn printed the profile using the NSW police *e@gle.i* system on 28 October 2002.⁷⁴⁵

On 30 and 31 October 2002, Trayhurn made a number of references to Mr V in both his Duty Book and in Contact Advice Reports (CARs). He made the following Duty Book entry on 30 October 2002:

Speak with McFadden, advised of strategies, supported, requested core team Harris, Calmon [sic] +Thomas...

Contact Salmon. Requested to contact [Mr U] +arrange meeting to discuss Jimy [sic] and knowledge of [Mr V]...

*Meet Salmon 4.20pm. Discuss objectives. CAR submitted. Salmon provided \$110. Device activate 4.39pm. Meet Salmon 6.07pm device deactivated.*⁷⁴⁶

Salmon was deployed by Trayhurn and Harris wearing a LD to meet with Mr U at a hotel in East Sydney in the afternoon of 30 October 2002.⁷⁴⁷ Trayhurn gave Salmon two specific objectives for this deployment:

739 LD warrant 02/08936, issued on 23 October 2002.

740 LD warrant 02/08936, issued on 22 October 2002, cancelled on 23 October 2002 but replaced with a warrant of the same number.

741 NSWPF Collins 3880 Account Book (red), G. Trayhurn, 24 October 2002, p. 3. Trayhurn recorded STIB’s concerns in his day book at the time.

742 LD affidavit 02/09137.

743 LD warrant 02/09137.

744 LD warrant 02/09137.

745 NSWPF individual profile, [Mr V], report date: 28 October 2002.

746 NSWPF Duty Book D047681, Glenn Trayhurn, SCIA, 30 October 2002, p. 44.

747 NSWPF, *Contact Advice Report 28B(1)*, Contact by Trayhurn with informant Salmon, 30 October 2002.

- 1 Gather intelligence on [Mr V] and his association with police. Also any recent drug activities he is aware [Mr V] is involved in...
- 2 Gather intelligence as to whether [Mr U] has any knowledge of any places that have had Psuedophadrine [sic] stolen from...⁷⁴⁸

Salmon met Trayhurn shortly after this meeting and advised the following:

- Salmon suggested that [Mr U] look at [Mr V]'s clients from [a hotel on Oxford Street]. [Mr U] stated he did not want to supply them in case he supplied a bad pill (inference that [Mr V's] clients may be Police)
- [Mr U] stated that '[Mr V]' was working at [a hotel on Oxford Street] on Friday and Saturday nights
- ... [Mr U] gave '[Mr V]' eight or ten tablets one night (date not stated) and '[Mr V]' took them to [a hotel on Oxford Street] (inference that [Mr V] supplied them).⁷⁴⁹

In addition to receiving information that allegedly connected Mr V to illicit drug supply, Trayhurn also became aware that Mr V may have Salmon's police identification badge which could not be located at that time. On 31 October 2002, Trayhurn and Harris deployed Salmon to meet with MSO25 while wearing a LD.⁷⁵⁰ One purpose of this meeting was for Salmon to locate his lost badge. At the meeting, MSO25 advised he had given Salmon's badge to Mr V and suggested that Salmon approach Mr V to request its return.⁷⁵¹

By 31 October 2002, the records of the investigation establish that Mr V was a person of interest – with intelligence sourced from Mr U and MSO25 about Mr V's alleged connection to illicit drug supply and as having Salmon's lost police identification badge in his possession. However, Mr V was not named on any of the LD warrants relied on by Operation Wattles.

15.3.4 Targeting and recording of Mr V on 8 November 2002

To avoid a period of time without access to authorised LDs, Trayhurn sought to 'rollover' the initial warrants authorising the devices worn by Salmon and James Allan. On 29 October 2002, warrants NSWCC LD 02/09169 and NSWCC LD 02/09186 were granted.⁷⁵² They remained in force until 19 November 2002. Trayhurn's Duty Book entries on 28 and 29 October 2002 indicate his continued involvement in preparing the required documentation for these warrants.⁷⁵³ His Duty Book also recorded that he advised Standen by telephone that a warrant was obtained for Salmon.⁷⁵⁴

LD warrants 02/09169 and 02/09186 authorised the use of a LD:

... to be worn or carried by the applicant or by one of the persons named in the annexed schedule on the applicant's behalf, at as yet unknown locations in the State of New South Wales, by which to record or listen to the private conversations of ... [MSO26], ... [MSO25]... , [Mr U]... , and any other person having a conversation in their presence.⁷⁵⁵

Salmon, James Allan, NSWPF and NSWCC personnel were listed in the schedule annexed to the warrants.

⁷⁴⁸ NSWPF, *Contact Advice Report 28B(1)*, Contact by Trayhurn with informant Salmon, 30 October 2002.

⁷⁴⁹ NSWPF, *Contact Advice Report 28B(2)*, Contact by Trayhurn with informant Salmon, 30 October 2002.

⁷⁵⁰ NSWPF, *Contact Advice Report 30B(1)*, Contact by Trayhurn and Harris with informant Salmon, 31 October 2002 and NSWPF Duty Book D047681, Glenn Trayhurn, SCIA, 31 October 2002, p. 45.

⁷⁵¹ NSWPF, *Contact Advice Report 30B(2)*, Contact by Trayhurn and Harris with informant Salmon, 31 October 2002, p. 1.

⁷⁵² LD warrant 02/09169 and 02/09186.

⁷⁵³ NSWPF Duty Book, D047681, Glenn Trayhurn, SCIA, 28 October 2002, p. 42 and NSWPF Duty Book, D047681, Glenn Trayhurn, SCIA, 29 October 2002, pp. 42-43.

⁷⁵⁴ NSWPF Duty Book, D047681, Glenn Trayhurn, SCIA, 29 October 2002, p. 42.

⁷⁵⁵ LD warrants 02/09169, p. 1 and 02/09186, p. 1.

On 7 November 2002, Trayhurn specifically requested Salmon to organise to meet with Mr V while wearing a LD. This is reflected in Trayhurn's Duty Book:

Request Salmon make contact with [Mr V] Re: Police ID ...

3pm Speak with Salmon advised he had spoken to [Mr V] + he was going to have a beer with him.⁷⁵⁶

This is also reflected in a CAR written by Trayhurn at 4.37 pm on 7 November 2002:

Whilst speaking to Salmon I requested that he make contact with [Mr V] '[Nickname of Mr V]' in order to have his police identification badge returned. Salmon to inform me of the result of this contact.⁷⁵⁷

In a further CAR created 10 minutes later, Trayhurn recorded:

I returned his call and he (Salmon) indicated that he had heard from [Mr V] and had arranged to meet him tomorrow (8/11/02). Salmon indicated that [Mr V] wanted to meet for a beer during the day. Salmon to contact [Mr V] upon finishing court tomorrow regarding the time and place. Salmon was advised to meet [Mr V] at [a hotel in East Sydney], near the pool table area at 12midday...⁷⁵⁸

Trayhurn's decision to deploy Salmon to speak with Mr V while wearing a LD was also recorded in his Duty Book:

Speak with Salmon 10am. Advised meeting confirmed with [Mr V] at 12md. Time + place chosen by [Mr V]. Location [a hotel in East Sydney] ...

Meet Salmon 11.10am. Provide instructions Re proposed meeting with [Mr V]. CAR prepared. Device activated 11.35am...

2.50pm De-brief Salmon...⁷⁵⁹

At midday on 8 November 2002, the planned meeting between Salmon and Mr V took place at the hotel. Salmon was wearing a LD, purportedly authorised by LD warrants 02/09169 and 02/09186.⁷⁶⁰ Salmon returned from the meeting Mr V at 2.45 pm on the same day and a debrief with Trayhurn confirmed that Salmon:

Met [Mr V] at the [a hotel in East Sydney]...

Salmon asked [Mr V], "Have you still got the tin [MSO25] gave you". He said yes. [Mr V] stated he had been using the badge to travel on public transport...

[Mr V] left the Hotel and short [sic] time later Salmon went and met him near College and Francis Street. [Mr V] returned with his Police identification badge. At the time [Mr V] was with [Mr U].⁷⁶¹

Transcripts of recordings made during this meeting at the hotel in East Sydney were later created.⁷⁶² Only Salmon and Mr V were party to the conversation and recorded at that time. Trayhurn and Harris also conducted a recorded interview with Salmon on 8 November 2002 about his deployment that day and the retrieval of the police identification badge from Mr V.⁷⁶³

Trayhurn's Duty Book at the time also reflected that investigative strategies were discussed with his NSWPF supervisor, McFadden. An entry in his Duty Book on 8 November 2002 stated:⁷⁶⁴

On duty 6.45am SCIA. Attention to inside duties so engaged. Meeting with McFadden + Harris Re Wattles + future strategies...

756 NSWPF Duty Book, D047681, Glenn Trayhurn, SCIA, 7 November 2002, p. 48.

757 NSWPF, *Contact Advice Report 32*, Contact by Trayhurn with informant Salmon, 7 November 2002.

758 NSWPF, *Contact Advice Report 33*, Contact by Trayhurn with informant Salmon, 7 November 2002, p. 1.

759 NSWPF Duty Book, D047681, Glenn Trayhurn, SCIA, 8 November 2002, pp. 49-50.

760 NSWPF, *Contact Advice Report 34*, Contact by Trayhurn with Informant Salmon, 8 November 2002.

761 NSWPF, *Contact Advice Report 34*, Contact by Trayhurn with Informant Salmon, 8 November 2002.

762 NSWCC Transcript of Ref 10731/171, Tape Salmon LD 9, 8 November 2002; NSWCC LD Transcript, Ref 10731/172, Tape Salmon 9, 8 November 2002; NSWCC Transcript of Ref 10731/173, Tape Salmon LD 9, 8 November 2002; NSWCC Transcript of Ref 10731/174, Tape Salmon LD 9, 8 November 2002; and NSWCC Transcript of Ref 10731/175, Tape Salmon LD 9, 8 November 2002.

763 NSWPF, Record of Interview between Detective Sergeant Trayhurn, Detective Sergeant Cliff Harris and Informant Salmon, 8 November 2002.

764 NSWPF Duty Book, D047681, Glenn Trayhurn, SCIA, 8 November 2002, p. 49.

McFadden told Operation Prospect that he was “ultimately responsible for the supervision, oversight and management of the investigation”.⁷⁶⁵

In evidence to Operation Prospect, Trayhurn confirmed that he advised Salmon to arrange to meet with Mr V at midday at the hotel in East Sydney on 8 November 2002.⁷⁶⁶ During the same hearing, Trayhurn also accepted that Salmon had been deployed wearing a LD to meet with and record Mr V on 8 November 2002. He was then asked several questions about whether he felt that deployment was within the authority of the LD warrants 02/09169 and 02/09186 warrants, given only Salmon and Mr V were present:

- Q. *Reading the document today, I'll focus – so reading the document today, as you read the document here in front of the Ombudsman and the wording of it, do you think recording Salmon – sorry, recording [Mr V] in the circumstances that we've talked about on 8 November 2002, is within the authority granted by [NSWCC LD 02/09169 and NSWCC LD 02/09186]? That's my question.*
- A. *---I think you could have – I would say “in their presence” is a sticking point with me. Whether it's within the ambit of the warrant, I don't know if that would make it outside the ambit of the warrant. I've probably got to get some advice on that. In my opinion I would have acted on caution, probably not have used it in today's, but look, if you want me to concede and say, “Look, it's an error and it's caused some issues,” is that what you want me to say? How can I say that when everything I did around that in my view was in good faith? You know, “in their presence”, you know, does that also include Salmon's presence?⁷⁶⁷*

As outlined in section 15.3.3, Mr V became a legitimate person of interest to Operation Wattles in October 2002. Operation Prospect sought to clarify with Trayhurn why Mr V was not named on the relevant warrants despite being a person of interest. Trayhurn was asked about this matter at a hearing on 5 April 2016, and specifically about the supporting affidavit he prepared on 21 November 2002 for LD warrants 02/10055 and 02/10056:

- Q. *Looking at paragraph 3 of the affidavit again, “If this application is granted, I intend to cause two listening devices, one of which may be integrated with a transmitter, to record the private conversations of [MSO26], [MSO25] and [Mr U], and their associates”?*
- A. *---Yes.*
- Q. *Reference to Salmon and James Allen?*
- A. *---Yes.*
- Q. *And again as at 21 November 2002 no mention of [Mr V] as a named person in the affidavit?*
- A. *---That's correct.*
- Q. *Are you able to provide any reason as to why you may not have put [Mr V]'s name in there at this point in time?*
- A. *---Yes. I just don't – look, to be fair, I am a bit vague, a bit, you know, confused why I wouldn't have put him down because it looks like he's starting to pop up as someone who is putting themselves out there as involved in some pretty serious criminal offences. I don't know why his name wasn't put down there. Obviously the information that I would have become privy to would have been given to the lawyers at the Crime Commission, you know, and maybe he was still a peripheral – he was still on the periphery. I notice he is mentioned within the content of the affidavit, but why he wasn't spelt out as a person I don't know at this point. Our main focus of the investigation probably still remained with [MSO26], [MSO25] and [Mr U]. Why – I don't know. It's probably something in retrospect, you know, I'd probably get some advice on now as to suggest that he perhaps should have been someone who was listed, and I don't think the judge would have had a problem listing his name with the information we had at that point either.*

⁷⁶⁵ Ombudsman Transcript, Brett McFadden, 30 March 2016, p. 7.

⁷⁶⁶ Ombudsman Transcript, Glenn Trayhurn, 5 April 2016, p. 325.

⁷⁶⁷ Ombudsman Transcript, Glenn Trayhurn, 5 April 2016, p. 330.

- Q. *Page 3, paragraph (i)?*
- A. ---Yes.
- Q. *You make reference there to Salmon meeting [Mr V], and [Mr V] gave the police badge, and then the conversation during the meeting was recorded by a listening device. You make reference to that?*
- A. ---Yes.
- Q. *And you've agreed that that would have been pursuant to [LD warrants 02/09169 and 02/09186]?*
- A. ---Yes.
- Q. *Which we know was on 8 November 2002?*
- A. ---Yes.
- Q. *Given your reading of [LD warrants 02/09169 and 02/09186], does that cause any need in your mind to perhaps clarify the circumstances in which that recording happened? If you don't understand the question, I'll repeat it?*
- A. ---Yes, if you could, please.
- Q. *You're referring there to the conversation recorded pursuant to [LD warrants 02/09169 and 02/09186] on 8 November?*
- A. ---Yes.
- Q. *We've looked at [LD warrants 02/09169 and 02/09186] in terms of what they authorise. In your mind is there anything that, assuming you read those warrants back at the time---*
- A. *---I don't think anything would have been put in front of my mind that I needed to re-address something that – of a previously authorised warrant. I can't – as I said before, you know, when you look at all the records here, everything that was going on, I was very busy during that period of time, which is not a shaving off as an excuse or whatever, but what was front of mind at the time, you know, wasn't going back to the previous warrant on the 8th and uploading some information on it that has become out on 21 November.*
- Q. *Okay. Do you see anything in that paragraph that would alert a reader of this document to any issues or problems with the recording of [Mr V] in the way that we've talked about?*
- A. ---No.⁷⁶⁸

Trayhurn gave evidence in the District Court trial of MSO25 in 2008 that the warrants he relied on to authorise the LDs worn by Salmon to record Mr V on 8 November 2002 were LD warrants 02/09169 and 02/09186. However, LD warrant 02/08936 was also in force at the time of the recording. That warrant authorised the recording of MSO25, MSO26, Mr U “and their associates” and was able to be lawfully worn by Salmon. Mr V was an associate of the people listed on the warrant. In effect, Trayhurn could have relied on that warrant to record the private conversation of Mr V on 8 November 2002 – despite his apparent reliance on alternative warrants that did not.

15.3.5 Targeting and recording of Mr V on 27 November 2002

On 21 November 2002, Trayhurn applied to rollover the LD warrants that expired on 19 November 2002.⁷⁶⁹ His Duty Book recorded that he met with a solicitor at the NSWCC to attend to this task:

⁷⁶⁸ Ombudsman Transcript, Glenn Trayhurn, 5 April 2016, pp. 338-339.

⁷⁶⁹ LD affidavit 02/10055-10056, pp. 1 and 10-11.

*Attention to warrant rollover material. Out to Crime Commission attention to same with [NSWCC solicitor]. So engaged see [NSWCC solicitor] Re s19 certificates so engaged.*⁷⁷⁰

Trayhurn swore a supporting affidavit for two more LD warrants⁷⁷¹ – NSWCC LD 02/10055 and NSWCC LD 02/10056. They were granted on 21 November 2002 and were valid to 12 December 2002.⁷⁷² Both warrants authorised the use of a LD:

*... to be worn or carried by the applicant or by one of the persons named in the annexed schedule on the applicant's behalf, at as yet unknown locations in the State of New South Wales, by which to record or listen to the private conversations of ... [MSO26],..., ... [MSO25], ... ,...[Mr U] ..., and any other person having a conversation in their presence...*⁷⁷³

Mr V was not named on the warrants. On 27 November 2002, Salmon was deployed a second time to meet with Mr V while wearing a LD. On this occasion, the objectives of his deployment were broader than on 8 November 2002 and included discussing the alleged supply of illicit drugs and other allegations about criminal activities. Trayhurn recorded the details of this deployment in his Duty Book:

Out 10.30am with Harris (prearranged to meet Salmon 11am Re: [Mr V] meeting) to ... [a hotel]. Arrange accommodation. Meet Salmon 11am objectives provided Re: meeting with [Mr V] – discuss 14k, passport, pills [Mr V] in Spain + corruption...

Salmon device installed by Harris activated 11.37am. Salmon leave unit 11.45am...

*Meeting with Salmon + [Mr V] [a hotel in East Sydney], ... 1.55pm. Meet Salmon, device deactivated Debrief Salmon. CAR prepared.*⁷⁷⁴

On this occasion, Salmon's recorded conversation with Mr V was transcribed.⁷⁷⁵ Salmon and Mr V were the only two people party to the recorded conversation. They discussed drug use and drug dealing, and Mr V's previous involvement in criminal activity including stealing \$14,000 from a Sydney metropolitan council. The warrant authorised the recording of MSO25, MSO26 or Mr U and any other person having a conversation "in their presence". Neither MSO25, MSO26 nor Mr U were present when Mr V was recorded. Trayhurn was asked about this discrepancy during his Operation Prospect hearing on 5 April 2016:

Q. *You don't see any problem with it?*

A. *---Well, you know, I'm here, aren't I? I have a problem. I can foresee that there's a problem by the mere fact of the amount of questions that I've had to answer. I'm not silly. But, you know, as I gave in the last answer, I think it would be a matter of advice that I would like to receive in terms of whether or not I agree or disagree that that was outside of the warrant. I would like to say that it was my belief at the time that [Mr V] was an associate and I was acting in good faith and in that belief that [Mr V] could be recorded because of the fact that he was an associate of [Mr U], [MSO25] and [MSO26].*

Q. *Did you read [LD warrants 02/10055 and 02/10056] when they were granted?*

A. *---We've been over this so ---*

Q. *I haven't asked you about [LD warrants 02/10055 and 02/10056]. Did you read [LD warrants 02/10055 and 02/10056] when they were granted?*

770 NSWPF Duty Book, D047681, Glenn Trayhurn, SCIA, 21 November 2002, p. 55.

771 LD affidavit 02/10055-10056.

772 LD warrants 02/10055 and 02/10056.

773 LD warrants 02/10055, p. 1 and 02/10056, p. 1.

774 NSWPF Duty Book, D047681, Glenn Trayhurn, SCIA, 27 November 2002, p. 59. Details of the deployment were also recorded in NSWPF, *Contact Advice Report 40*, Contact by Trayhurn and Harris with informant Salmon, 27 November 2002.

775 NSWCC Transcript of Ref 10731/206, Tape Salmon LD 16, 27 November 2002.

- A. ---Well, as I said to you before in my answers as well, and we're going back I know 14 years and I'm not trying to upset you with my answers, but I was – you can clearly see from the documents that you've read and shown me today that I was very busy during this time. If I was shown that document, I don't know whether I've rang the solicitor and said, "Do we have the document? What does the document outline? Has it been approved?" I don't know if I read it physically on the day, or whether I was just told, "The document has been authorised. You're allowed," and I was operating on the sense that, you know, my application said for their associates. There's been an extra word inserted "in their presence". We've already argued and I don't know how many more times you want to ask me the same questions. Whether I agree that "in the presence" made that warrant something where I wasn't authorised to do what I was allowed to do, I'd probably want to get some advice on that, and I think there would be an argument either side.⁷⁷⁶

15.3.6 Targeting and recording of Mr V on 3 December 2002

On 3 December 2002, Salmon was deployed a third time to meet with Mr V while wearing a LD – authorised by LD warrants 02/10055 and 02/10056. Those warrants authorised the use of a LD to record or listen to the private conversations of MSO26, MSO25, Mr U "and any other person having a conversation in their presence".⁷⁷⁷

Trayhurn's Duty Book entries of 3 December 2002 recorded the deployment:

10am confer with Salmon. Advised contact made with [Mr V]. Meeting arranged for 12md coffee shop opposite [a pub in Darlinghurst]. Inform McFadden PIA prepared. See Harris, unavailable Re: foot injury. See Thomas. Out 10.40am to vicinity of NSW Art gallery. Meet Salmon 11.10am. Provide objective. (NB prior to leaving see Insp Martin provided advice Re Salmon meeting + no controlled Op. Informed not to invite [Mr V] into anything he wouldn't ordinarily do...). Device activated 11.55am...

Then meet Salmon 1.10pm in vicinity of NSW art gallery. Device de-activated debrief same...⁷⁷⁸

Salmon was debriefed by Trayhurn just over an hour after the meeting, and confirmed he had met Mr V at a coffee shop opposite the hotel in Darlinghurst before going into the hotel itself.⁷⁷⁹ A transcript of the recording made by Salmon of this meeting with Mr V was later created.⁷⁸⁰ They discussed a person planning to purchase drugs from Mr U among other things. As with the two earlier recordings of Mr V by Salmon, only Salmon and Mr V were party to the conversation and recorded at that time. MSO25, MSO26 and Mr U were not present. Trayhurn was asked about his deployment on 3 December 2002 during his Operation Prospect hearing on 5 April 2016:

- Q. *Again on the basis of that document do you agree that it seems that [Mr V] was – sorry, Salmon was deployed to go and meet with [Mr V] on that day?*
- A. *---Yes, he was.*
- Q. *Do you recall whether he was recorded on that day?*
- A. *---I believe he was. It says that the device was activated.*
- Q. *Again you will appreciate I have to ask questions. Do you have any comment on whether or not that deployment fitted within the authority of [LD warrants 02/10055 and 02/10056]?*
- A. *---In my mind yes it did.*
- Q. *Do you recall whether you read the warrants prior to that deployment?*
- A. *---No, I can't recall.⁷⁸¹*

776 Ombudsman Transcript, Glenn Trayhurn, 5 April 2016, p. 343.

777 LD warrants 02/10055 and 02/10056.

778 NSWPF Duty Book, D047681, Glenn Trayhurn, SCIA, 3 December 2002, p. 61. It is unclear to Operation Prospect what 'PIA' represents.

779 NSWPF Duty Book, D047681, Glenn Trayhurn, SCIA, 3 December 2002, p. 61 and NSWPF, *Contact Advice Report 41*, Contact by Trayhurn with informant Salmon, 3 December 2002.

780 NSWCC Transcript, Tape Salmon LD 17, 3 December 2002.

781 Ombudsman Transcript, Glenn Trayhurn, 5 April 2016, p. 344.

There is no indication in the records outlined in sections 15.3.4, 15.3.5 or 15.3.6 that Trayhurn had any expectation that Mr V would be in the company of MSO25, MSO26 or Mr U when Salmon was deployed to meet with him on 8 November, 27 November or 3 December 2002. There is also no indication in any of the evidence that Trayhurn was aware of any issues about the lawfulness of the recording of Mr V by Salmon when he was not in the presence of MSO25, MSO26 or Mr U.

15.4 PIC hearings in 2003

The PIC held private hearings in March and August 2003 during which MSO25, MSO26 and Mr U were examined in relation to the allegations about their involvement in criminal activity. Mr V was also examined. The hearings were conducted under the name of 'Operation Acer' and involved examining information and evidence gathered by Operation Wattle's investigators – including recordings made using LDs worn by Salmon. No-one participating in the PIC hearings was aware at the time that some of the recordings may have contravened the LD Act and therefore would be likely to be inadmissible as evidence in legal proceedings.

The scope and purpose of the Operation Acer hearings was stated as:

*... to investigate whether former or current police officers who are or have been associated with [Mr V] or [Mr U] are involved in serious police misconduct.*⁷⁸²

MSO25, MSO26, Mr U and Mr V appeared separately on different days and were legally represented. The hearings were conducted by PIC Assistant Commissioner Sage, with Counsel Assisting PIC.

Mr U appeared before the PIC on 13 March 2003.⁷⁸³ Officers Trayhurn, Harris and McFadden were present at the hearing.⁷⁸⁴ At the start of the hearing, Mr U's counsel indicated she would be requesting a copy of the relevant warrant before any recordings were played, and seeking Assistant Commissioner Sage's permission to examine the warrant(s) before the recording was played in the hearing. She stated:

*I am seeking to obtain the warrants to ensure that those transcriptions are lawfully obtained and admissible in these proceedings, Mr Assistant Commissioner.*⁷⁸⁵

After a request for advice from Assistant Commissioner Sage, the following exchange took place:

[Counsel Assisting PIC]: *I am aware of my friend's request and some steps have been put in place to ascertain whether the warrants can be obtained but, Assistant Commissioner, my submission is that the application doesn't, at this stage, have a proper foundation because this hearing is investigative in nature. My friend hasn't pointed to any specific basis upon which she might have cause to believe that the evidence that I'm about to have played is in any way illegally obtained.*

In any event, an application such as this, in my submission, is really one to be made at some later stage, if any other proceedings arise, that might occur, in which this evidence would be relied upon.

[The Assistant Commissioner]: [Counsel for Mr U], *I'm not going to facilitate the provision of the warrants to you. This is an investigation and the obtaining of the evidence, I am satisfied, is lawful and it can be played.*

[Counsel for Mr U]: *In my respectful submission, whether or not evidence is obtained for an investigation or otherwise, the question of the proper obtaining of those warrants is, in my submission, still a relevant factor and the admissibility of any evidence is still subject to proper obtaining of those warrants.*

[The Assistant Commissioner]: *The admissibility in another place is a matter for challenge, and the obtaining of the evidence in this investigation has been obtained pursuant to warrant and lawfully obtained. Any challenge to the admissibility is a matter for another day.*⁷⁸⁶

⁷⁸² PIC Hearing Transcript, *Examination of [Mr U]*, 13 March 2003, p. 3.

⁷⁸³ PIC Hearing Transcript, *Examination of [Mr U]*, 13 March 2003.

⁷⁸⁴ PIC Hearing Transcript, *Examination of [Mr U]*, 13 March 2003, p. 3.

⁷⁸⁵ PIC Hearing Transcript, *Examination of [Mr U]*, 13 March 2003, p. 26.

⁷⁸⁶ PIC Hearing Transcript, *Examination of [Mr U]*, 13 March 2003, pp. 26-27.

Counsel Assisting PIC then played a tape from a LD worn by Salmon (under LD warrant 02/08442) on 10 October 2002 during a meeting with Mr U.⁷⁸⁷ Trayhurn, Harris and McFadden all noted Mr U's counsel's objection to the playing of the recording in their respective notebooks.⁷⁸⁸

Mr V was examined in a private PIC hearing the following day, 14 March 2003.⁷⁸⁹ Trayhurn, Harris and McFadden were present at this hearing.⁷⁹⁰ Counsel Assisting PIC played recorded conversations to Mr V from a LD worn by Salmon under LD warrants 02/09169 and 02/09186, and LD warrants 02/10055 and 02/10056. These were the recordings of conversations between Salmon and Mr V made on 8 and 27 November and on 3 December 2002.

MSO25 attended a private PIC hearing on 8 August 2003 before Assistant Commissioner Sage.⁷⁹¹ He was legally represented, and Trayhurn and another detective sergeant were present at the hearing.⁷⁹² Counsel Assisting PIC played recordings of conversations between Salmon and MSO25 that took place on 11, 14 and 17 October 2002 under the initial LD warrant 02/08442. Counsel Assisting PIC also played recordings of conversations between MSO25 and Salmon that took place on 31 October, 12 and 15 November, and 9 December 2002 under LD warrants 02/09169, 02/09186, 02/10055 and 02/10056.

In a document titled, 'Police Integrity Commission – Operation Acer – Counsel Assisting Submissions' dated 29 March 2004 (but unsigned),⁷⁹³ Counsel Assisting PIC set out his submissions to the PIC as a result of the hearings in which he appeared. These submissions referred to recordings made by LDs that had been played to various witnesses as part of the PIC hearings, and to the witnesses' answers to questions. In particular, reference was made to the events between 8 and 27 November 2002 – when conversations between Salmon and Mr V were recorded by LDs authorised by LD warrants 02/09169, 02/09186, 02/10055 and 02/10056. Counsel Assisting PIC later relied on the evidence in these recordings to support his written submissions that consideration should be given to Mr V being prosecuted for certain offences – including giving false or misleading evidence to the PIC and perverting the course of justice.⁷⁹⁴

There is no reference in either the PIC hearings or Counsel Assisting's written submissions to indicate that he was aware that:

- The warrants relied on to authorise the LDs worn by Salmon on those occasions permitted the recording of the private conversations of MSO25 MSO26 or Mr U or others having a conversation 'in their presence'.
- Mr V was recorded in the absence of MSO25, MSO26 and Mr U.
- Mr V was not named on the warrants.

15.5 Prosecution of Mr V and MSO25 for providing false and misleading evidence to the PIC

In April 2004, Operation Wattles sought legal advice from the Office of the Director of Public Prosecutions (ODPP) about bringing criminal charges against MSO25, MSO26, Mr U and Mr V.⁷⁹⁵ Advice was requested in relation to a variety of criminal charges, including offences involving illicit drug supply and perverting the course of justice. The ODPP advised there was insufficient evidence to support any charges, other than – under

787 PIC Hearing Transcript, *Examination of [Mr U]*, 13 March 2003, p. 27.

788 NSWPF Duty Book, D047681, Glenn Trayhurn, SCIA, 13 March 2003, p. 100; NSWPF Notebook A000032, Cliff Harris, 13 March 2003, p. 10; and NSWPF Notebook A000187, Brett McFadden, 13 March 2003, p. 35.

789 PIC Hearing Transcript, *Examination of [Mr V]*, 14 March 2003.

790 PIC Hearing Transcript, *Examination of [Mr V]*, 14 March 2003, p. 3.

791 PIC Hearing Transcript, *Examination of [MSO25]*, 8 August 2003.

792 PIC Hearing Transcript, *Examination of [MSO25]*, 8 August 2003, p. 111.

793 PIC, *Operation Acer Counsel Assisting's Submissions*. Counsel Assisting the PIC: [Counsel Assisting], 29 March 2004.

794 PIC, *Operation Acer Counsel Assisting's Submissions*. Counsel Assisting the PIC: [Counsel Assisting], 29 March 2004, pp. 96-99.

795 NSWPF Internal memorandum from Detective Inspector Glenn Trayhurn to Director Operations, Professional Standards Command, 15 December 2004, p. 2.

section 107 of the PIC Act – providing false and misleading evidence to the PIC.⁷⁹⁶ These charges were based on Mr V and MSO25's evidence during the 2003 PIC hearings discussed in section 15.4.

This section will discuss issues relating to those charges. Part of the information provided to the ODPP by Operation Wattles was the recordings of Mr V made by Salmon on 27 November and 3 December 2002. Documentation created at the time and inspected by Operation Prospect indicates that the ODPP was not aware of any concerns about the lawfulness of these recordings. In particular, the ODPP was not aware that:

- The warrants relied on to authorise the LDs worn by Salmon on 8 November, 27 November and 3 December 2002 permitted recording of the private conversations of MSO25, MSO26, Mr U or others having a conversation 'in their presence'.
- Mr V was recorded in the absence of MSO25, MSO26 and Mr U.
- Mr V was not named on the relevant warrants.

The following comment was in an internal ODPP memo that analysed the evidence against Mr V and was sent to the manager of the ODPP team responsible for prosecuting police officers:

In summary the crucial evidence relied upon in the [sic] this matter stemmed from admissions made from [Mr V] to Salmon recorded on a listening device.⁷⁹⁷

In October 2004, the ODPP advised Trayhurn that there may be sufficient evidence to support two counts of providing false and misleading evidence to the PIC against Mr V, and to support two counts of the same charge against MSO25. The ODPP advice stated:

Accordingly, please prepare briefs of evidence in admissible form in relation to these allegations and forward them to this Office.⁷⁹⁸

15.5.1 Prosecution of Mr V

After the advice from the ODPP, a Court Attendance Notice was served on Mr V on 18 February 2005. Briefs of evidence, including facts and supporting evidence, were also prepared.⁷⁹⁹ Trayhurn prepared and signed a document called 'Facts in the matter of [Mr V]' on 18 February 2005.⁸⁰⁰ Included in this document was the following:

Offence 1:

That [Mr V] provided False and Misleading Evidence to the PIC at Sydney on the 14 March 2003 when he denied ever helping to arrange a false passport for anyone. (S.1 07 Police Integrity Commission Act 1996 No.28)...

On the 8 November 2002 Salmon had cause to meet [Mr V]. The conversation between Salmon and [Mr V] was lawfully recorded on Listening Device. During this meeting Salmon discussed the passport issue and the \$6,000 Salmon provided Senior Constable [MSO25] before leaving for overseas. Mr V stated the following;

Mr V. Yeah, yeah. Well, I didn't have to know all the details (ui) but everything was there right? And I said, "Well, have you got it?" and he goes, "oh, no, there's been a hiccup" and I've gone, "[name], there's no fuckin' hiccups. Whatever it costs them, get it sorted". He goes, "Well ... " and he came up with a price list ... one and a half, one and a half thousand (1500).

Salmon. Pounds?

796 Letter from [Mr DD], ODPP to Detective Inspector Glenn Trayhurn, NSWPF, 1 October 2004.

797 Document to the Manager, Group 6 ODPP (sender unknown), *Re: Submission in relation to offences arising from Operation Wattles/Acer concerning New South Wales police officers and civilians*, 22 February 2004, p. 48. NB: The document does not disclose the author or agency, but was provided to the Ombudsman's office (on CD) by Mr. McFadden on 10 July 2014 during a Section 19 hearing.

798 Letter from [Mr EE], Solicitor for Public Prosecutions, ODPP to Detective Inspector Glenn Trayhurn, NSWPF, 1 October 2004.

799 NSWPF internal memorandum from Detective Inspector Glenn Trayhurn to Director Operations Professional Standards Command, 15 December 2004.

800 NSWPF, *Brief of Evidence: [Mr V]*, prepared by: Detective Inspector Trayhurn and Detective Sergeant Harris, 18 February 2005.

Mr V: No, one and a half thousand dollars (\$1500) to have in three or four weeks. He said, "Don't we don't fuckin' have that. You've got that in hours. Like the bloke's on his way. He's gonna be there soon. He's gonna ring you and get (ui) like. It's gonna cost double for me to bust me balls to fuck these people". "Alright". So he went out and done that. And I said to [MSO25], "What's go in' all this?" He goes, "Well, tell Bailey" and I said, "Well, you tell him what you 'vee [sic] got to tell him.: So I walked away and he's go in ', "How ya goin'?" blah, blah, blah. [Mr V's] (unintelligible) such and such. So this is what the go is. I've given you the money. Like [Mr V's] gonna transfer the money" which I done through the PCU (Police Credit Union)...

Offence 2:

That [Mr V] provided false and misleading evidence to the PIC at Sydney on the 14 March 2003 when he denied ever arranging for anyone to supply ecstasy to Police that he knew. (S.107 Police Integrity Commission Act 1996 No.28)...

On the 8 November, 2002 Salmon met with [Mr V] at East Sydney. This conversation was lawfully recorded by a recording device. Salmon asked whether [Mr V] was supplying prohibited drugs at [a hotel on Oxford Street]. With respect to the issue [Mr V] made the following comments:

Salmon: ...I've heard a nasty rumour and I know that you'll set me straight on this ... that ah somebody's being naughty at [a hotel on Oxford Street].

Mr V: Someone's being...

Salmon: Namely you, lookin' after the coppers up there.

Mr V: How.

Salmon: Tablets.

Mr V: (ui)

Salmon: (ui) none of my business. I'm just telling you I've heard a nasty rumour. It's not a stress thing.

Mr V: I've had... I'm doin' what?

Salmon: You're lookin' after the blokes up there, tablets (ui).

Mr V: None of them are right. One of them's asked me and I've done the ... what I said to everyone else, I've gone straight ... "If you want something, I'll put you into someone but ... no chance"....

On the 27 November 2002 Salmon met [Mr V] and [Mr U]. This conversation was lawfully recorded. During the meeting Salmon and [Mr V] spoke about Senior Constable [MSO25] in the following matter:

Mr V: Yeah, all the time. We all, we all thought when he (Senior Constable [MSO25]) started going loopy and that, we thought he'd fuckin' had a dependency to it. Just fuckin' sent, sent him loopy.

Salmon: I though he, really.

Mr V: Yeah, you know when you said to me "oh, you've been doing this, that and the other up at the [a hotel on Oxford Street] with the boys". I'm thinkin' "Fuck, who would have said that?" The only bloke up there that I know that does that, like, that I've seen is him. And he's (ui) talks to out of all of them and I'm well fuckin' hell. He's fuckin' callin' the kettle black isn't he. He's a freak. He's um, gets them for everyone and he goes out of his way to get them for people at the [pub in Manly] and that. At Manly, he goes to some bloke (ui) "one for you, two for you".(ui).

Transcripts of recorded conversations between Salmon and Mr V on 8 and 27 November 2002 formed part of the brief of evidence against Mr V.⁸⁰¹ Copies of the relevant warrants were also included in the brief of evidence. A proper review of these warrants would have shown that Mr V was not named on them and the recording of 27 November 2002 was therefore unlawful. However, as a result of this lack of review, the admissibility of the recording was not considered.

In a witness statement signed by Trayhurn on 1 March 2005 and prepared for the prosecution of Mr V, Trayhurn stated that one of the methods used to gather evidence during the investigation was “by utilising lawfully obtained listening devices”.⁸⁰² Trayhurn’s witness statement outlined that:

- he was the applicant for all the relevant warrants
- on 8 November 2002, he met with Salmon before and after Salmon’s meeting with Mr V on that day
- on 27 November 2002, he met with Salmon before and after Salmon’s meeting with Mr V on that day
- Trayhurn and Harris were responsible for activating and deactivating the LD worn by Salmon before and after the meetings on 8 and 27 November 2002
- conversations between Salmon and Mr V on 8 and 27 November 2002 were recorded by a LD worn by Salmon and later transcribed.⁸⁰³

Mr V later entered guilty pleas to two counts of providing false and misleading evidence to the PIC, in breach of section 107 of the PIC Act. On 30 January 2006 he was sentenced to nine months’ imprisonment, with a minimum term of six months to be suspended.⁸⁰⁴

15.5.2 Prosecution of MSO25

The prosecutions of Mr V and MSO25 for giving false or misleading evidence to the PIC occurred largely concurrently. On 1 October 2004, the ODPP advised Trayhurn in writing that there may be sufficient evidence to support the following charges against MSO25:

1. *That he gave false evidence when he denied ever receiving money from ‘Salmon’ for a false passport- 30/5/03, p 97.*
2. *That he gave false evidence when he denied receiving a police identification badge from ‘Salmon’- 8/8/03. p168.*
3. *That he gave false evidence when he denied ever being involved in discussions with [Mr U] and ‘Salmon’ concerning a drug debt of \$10,000 owed by [Mr U] to a drug dealer- 8/8/03, p 176.⁸⁰⁵*

MSO25 defended the charges in the District Court. He was served a Court Attendance Notice on 9 February 2005 for three offences of giving false or misleading evidence to PIC – arising from his evidence before the PIC in the 2003 hearings. At the time, MSO25 was a serving police officer.⁸⁰⁶

Salmon signed a witness statement on 2 February 2005 for the prosecution of MSO25.⁸⁰⁷ This statement was taken and witnessed by Trayhurn. The statement refers to the recorded conversations between Salmon and MSO25 on 14 and 31 October 2002, and between Salmon and Mr V on 8 November 2002. Both recordings are referred to as being recorded by a lawfully obtained LD.

801 NSWPF, *Brief of Evidence*: [Mr V], prepared by: Detective Inspector Trayhurn and Detective Sergeant Harris, 18 February 2005.

802 NSWPF, Statement by Detective Inspector Glenn Trayhurn in the matter of Operation Wattles, Professional Standards Command, 1 March 2005, p. 1.

803 NSWPF, Statement by Detective Inspector Glenn Trayhurn in the matter of Operation Wattles, Professional Standards Command, 1 March 2005.

804 PIC, *Annual Report 2005-2006*, October 2006, p. 61.

805 Letter from [Mr EE], Solicitor for Public Prosecutions, ODPP, to Detective Inspector Glenn Trayhurn, NSWPF, 1 October 2004.

806 NSWPF, *Notification of Intention to Arrest and Charge a Police Officer*, Detective Inspector Trayhurn, Professional Standards Command, 9 February 2005.

807 NSWPF, Statement by [Salmon] in the matter of [MSO25], Long Bay Correctional Facility, 2 February 2005.

Trayhurn prepared a witness statement for the prosecution of MSO25 dated 15 February 2005. It stated that one of the methods used to gather evidence during the investigation was “by utilising lawfully obtained listening devices”.⁸⁰⁸ The warrants relied on were annexed to Trayhurn’s statement, which read:

*With respect to the Listening Device, warrants were issued under the NSW Listening Devices Act 1984 and authorised a listening device to be worn or carried by the applicant or a person named on an annexed schedule of that warrant. I was the applicant of these warrants and informer ‘Salmon’ is named on the annexure of that warrant.*⁸⁰⁹

Trayhurn’s statement also refers to conversations between Salmon and MSO25 recorded on 14, 17, 25 and 31 October 2002, and between Salmon and Mr V recorded on 8 and 27 November 2002. The transcripts of those recorded conversations were exhibited.

On 4 May 2005, Harris made a witness statement in the prosecution of MSO25 which mirrored Trayhurn’s 15 February 2005 statement.⁸¹⁰ Harris also asserted in his statement that Operation Wattles used lawfully obtained LDs and referred to the recorded conversations between Salmon and Mr V on 8 and 27 November 2002.

MSO25 defended the three counts he faced of providing false and misleading evidence to the PIC. The matters were committed for trial to the District Court. The trial was aborted in May 2008 and set down for retrial starting on 15 September 2008. After a significant delay, the matter returned to the District Court for hearing in 2011.⁸¹¹

On 15 September 2008, Trayhurn made a further witness statement in the prosecution of MSO25.⁸¹² This statement reiterated that he had applied for and obtained seven LD warrants between 8 October 2002 and 2 January 2003 – and the relevant warrants were attached.⁸¹³ In the statement, Trayhurn also confirmed that Salmon was instructed to meet Mr V on 8 November 2002 and, as a result of that meeting, Salmon obtained his police identification badge from Mr V.

The trial of MSO25 continued in March 2011 in the District Court. In late March 2011, Trayhurn was called to give evidence.⁸¹⁴ After being sworn, he was referred to the fact that he had made various witness statements in this matter. During an exchange with the Crown Prosecutor, Trayhurn stated there was no problem with the LD warrants or transcripts of the recorded conversations between MSO25 and Salmon that were tendered in evidence.⁸¹⁵

Trayhurn continued to give evidence two days later.⁸¹⁶ He was cross-examined by MSO25’s Counsel about the warrants obtained on 8 and 29 October, 21 November and 12 December 2002:

[Counsel for MSO25]: *I just want to take you to another area and that’s connected with the listening device warrants.*

Trayhurn: Sure.

...

[Counsel for MSO25]: *You became concerned about an issue about the first warrant referring to the listening device being associated with places rather than being worn. You got legal advice on it and you were told that it was a valid--*

Trayhurn: That’s correct.

808 NSWPF, Statement by Detective Inspector Glenn Trayhurn in the matter of Operation Wattles, Professional Standards Command, 15 February 2005, p. 1.

809 NSWPF, Statement by Detective Inspector Glenn Trayhurn in the matter of Operation Wattles, Professional Standards Command, 15 February 2005, p. 1.

810 NSWPF, Statement of Cliff Harris in the matter of Operation Wattles, Professional Standards Command, 4 May 2005.

811 *R v [MSO25]*, (Unreported, District Court of NSW, October 2011), pp. 24-26.

812 NSWPF, Statement of Detective Inspector Glenn Trayhurn in the matter of [MSO25], 45 Clarence Street Sydney, 15 September 2008.

813 NSWPF, Statement of Detective Inspector Glenn Trayhurn in the matter of [MSO25], 45 Clarence Street Sydney, 15 September 2008.

814 Transcript of Proceedings, *R v [MSO25]*, (Unreported, District Court of NSW, March 2011).

815 Transcript of Proceedings, *R v [MSO25]*, (Unreported, District Court of NSW, March 2011), pp. 3-4.

816 Transcript of Proceedings, *R v [MSO25]*, (Unreported, District Court of NSW, March 2011).

[Counsel for MSO25]: -- one but in any case, to be prudent, you actually amended the warrants in the subsequent applications to include that the person can wear or carry a listening device. Is that correct?

A. Yes.⁸¹⁷

Counsel for MSO25 continued her cross-examination:

[Counsel for MSO25]: In relation to all those three warrants they authorised Mr Salmon to wear or carry a listening device and intercept or to record or listen to private conversations of [MSO26], [MSO25] and [Mr U]. That's correct?

Trayhurn: And their associates.

[Counsel for MSO25]: Any person having a conversation in their presence I think were the words on the warrant.

Trayhurn: That's right.

...

[Counsel for MSO25]: You met with Salmon and arranged for him to intercept conversations or listen to and record conversations with [Mr V] on 8 November and 27 November 2002.

Trayhurn: Yes.

[Counsel for MSO25]: You took no steps to amend the warrant or get a new warrant to include [Mr V's] name on the warrant.

Trayhurn: No.⁸¹⁸

In mid-April 2011, Trayhurn continued to give evidence.⁸¹⁹ When being questioned by the Crown Prosecutor, Trayhurn confirmed he was the officer in charge and that the warrant dated 29 October 2002 was the warrant relied on to record the conversation between Salmon and Mr V on 8 November 2002:

Crown Prosecutor: Is there in fact more than one warrant that you relied on in relation to the recording of that particular conversation on 8 November 2002?

Trayhurn: No.

Crown Prosecutor: Just the one?

Trayhurn: Yes.

...

Crown Prosecutor: Inspector, did you make the application for this particular warrant?

Trayhurn: Yes.

Crown Prosecutor: Do you have a copy of that application here with you today?

Trayhurn: No.

Crown Prosecutor: Could you get it if it's required?

Trayhurn: The application is with the New South Wales Crime Commission.

Crown Prosecutor: Would it be difficult to get it if it's required?

Trayhurn: No, I don't know. I'd have to make inquiries with the New South Wales Crime Commission.

817 Transcript of Proceedings, *R v [MSO25]*, (Unreported, District Court of NSW, March 2011), pp. 172-174.

818 Transcript of Proceedings, *R v [MSO25]*, (Unreported, District Court of NSW, March 2011), pp. 176-177.

819 Transcript of Proceedings, *R v [MSO25]*, (Unreported, District Court of NSW, April 2011).

Crown Prosecutor: Just going to the warrant that you've tagged with the orange Post-it note, paragraph 2 of that warrant that authorises the use by the applicant, and on the applicant's behalf, the persons named in the annexed schedule of the listening device.

Trayhurn: That's correct.

Crown Prosecutor: In brackets, "the listening device", to be worn or carried by the applicant or by one of the persons named in the annexed schedule on the applicant's behalf.

Trayhurn: Yes.

Crown Prosecutor: At as yet unknown locations in the State of New South Wales.

Trayhurn: That's correct.

Crown Prosecutor: And it goes on to say, "By which to record or listen to the private conversations of [MSO26], born on [DOB], [MSO25], born on [DOB], [Mr U], born on [DOB], and any other person having a conversation in their presence subject to the conditions that, if any" – and there are no conditions specified.

Trayhurn: That's correct.

Crown Prosecutor: Do you know if the name [Mr V] appeared on the annexed schedule of the listening device referred to in paragraph 2 of that warrant?

Trayhurn: No, I don't think I did.

Crown Prosecutor: Have you had access to that schedule?

Trayhurn: Over the previous trials I have.

Crown Prosecutor: When you had access to the schedule, did you check the schedule to see whether the name [Mr V] appeared on it?

Trayhurn: No, I don't believe I did.

Crown Prosecutor: Would you be able to check that schedule?

Trayhurn: I think I might have the schedule here.

Crown Prosecutor: Could the witness be given permission, your Honour, just to see if we can--

His Honour: Yes.

Crown Prosecutor: Is your Honour content to continue sitting? I just note the time.

His Honour: I guess we ought to be adjourning. I won't be once this is completed.

Trayhurn: No, [Mr V] is not on the schedule.

Crown Prosecutor: Is the person known as Salmon on the schedule?

Trayhurn: Yes.

Crown Prosecutor: Inspector, what was your understanding as to the legality of Salmon wearing a listening device on 8 November 2002 and engaging in a conversation with a person called [Mr V]?

Trayhurn: My understanding was that the warrant authorised me to record the conversations of Salmon and his associates, which [Mr V] was at the time.⁸²⁰

Later, the Crown Prosecutor asked Trayhurn some further questions about Mr V:

Crown Prosecutor: Before lunch, I think you told us that [Mr V's] name did not appear in the schedule that attached to the warrant.

Trayhurn: That's correct.

⁸²⁰ Transcript of Proceedings, *R v [MSO25]*, (District Court of NSW, April 2011), pp. 606-608.

Crown Prosecutor: Are you able to say why his name didn't appear in the schedule?

Trayhurn: At the commencement of the investigation, or throughout, he wasn't a – he hadn't come up as a person we were seeking information from to have been recorded on the warrant. He was – he came up later in the investigation, some months later.

Crown Prosecutor: Are you able to recall now when the person [Mr V] became relevant to your investigation, or would you need to have access to, for example, your contact advice reports?

Trayhurn: I believe it was on 30 October when Salmon met with [MSO25] and asked for his passport back, and in that conversation--⁸²¹

Trayhurn continued giving evidence in April 2011.⁸²² MSO25's Counsel asked Trayhurn some questions about recording the conversations between Salmon and Mr V:

[Counsel for MSO25]: In the period between 29 October and 19 December 2002, you arranged for Salmon to wear the listening device on a number of occasions.

Trayhurn: That's correct.

[Counsel for MSO25]: ... and they included targeting specifically [Mr V]

Trayhurn: Yes, we were seeing information from [Mr V]

...

[Counsel for MSO25]: At no time did you amend or change or apply for a fresh application for Salmon to record conversations that he had with [Mr V]

Trayhurn: Concerning the passport or the badge?

...

[Counsel for MSO25]: Concerning matters involving the passport or the passport, firstly.

Trayhurn: I never amended the application for the passport, no.

[Counsel for MSO25]: You never sought a new application?

Trayhurn: No

[Counsel for MSO25]: You were aware, as an experienced officer, that you were only authorised or at least the warrant only authorised you to do certain things in respect of the listening devices?

Trayhurn: Yes

[Counsel for MSO25]: You were aware of the importance of ensuring that private conversations are not recorded unless under a specific power?

Trayhurn: That's correct

His Honour Bennett J, the trial judge, then asked some questions about this topic.⁸²³

Bennett J: Then on 8 November 2002, you met with Salmon, instructed him upon objectives in the meeting with [Mr V] that was proposed on that day?

Trayhurn: Yes.

Bennett J: and he was then fitted with a listening device. You were relying upon the warrants issued by Justice Levine on 29 October 2002?

Trayhurn: That's correct, your Honour.

⁸²¹ Transcript of Proceedings, *R v [MSO25]*, (District Court of NSW, April 2011), pp. 606-608.

⁸²² Transcript of Proceedings, *R v [MSO25]*, (District Court of NSW, April 2011), pp. 678-679.

⁸²³ Transcript of Proceedings, *R v [MSO25]*, (District Court of NSW, April 2011), pp. 680-682.

Bennett J: In each of those they are confined to the recording or listening to of private conversations of [MSO26], [MSO25] and [Mr U]

Trayhurn: Yes

Bennett J: And they do not include, in paragraph 2 of each of those warrants, the name of [Mr V]?

Trayhurn: That's correct

Bennett J: Did you turn your mind to that issue?

Trayhurn: No

Bennett J: Can you explain that to me?

Trayhurn: Your Honour, it was my understanding.

...

Bennett J: Do you recall the question that I asked?

Trayhurn: I do, your Honour. It was my understanding that the listening device authorised the recording of those persons and their associates, not that those associates had to be in the company with those people at the same time. And if I was wrong, that's what I was relying on.

Bennett J: Because the warrant in its terms doesn't extend so far, you acknowledge that.

Trayhurn: The wording of the first warrant – I've since looked at those warrants and I believe the warrant in the first, the first warrant-

Bennett J: Is that the warrant before this one?

Trayhurn: Yeah

Bennett J: The one that preceded-

Trayhurn: The very first one

Bennett J: 29 October 2002.

Trayhurn: Well, the very first warrant which would have been the one that preceded it, yes. I thought it just had the wording "and their associates" not "and their associate in company". And I thought that was also carried on to the other one.

The recorded conversations with Salmon were ultimately allowed into evidence in the prosecution of MSO25 although the court acknowledged conversations were recorded "beyond the scope of the warrant, a matter the Crown has conceded".⁸²⁴ On 29 July 2011, MSO25 was found to have committed three offences of providing false or misleading evidence to the PIC in contravention of section 107 of the PIC Act. He was sentenced to concurrent limiting terms totalling 18 months under the *Mental Health (Forensic Provisions) Act 1990*.

15.6 McFadden's supervision of Trayhurn

Detective Inspector McFadden was Trayhurn's supervisor in the NSWPF. Analysis of the contemporaneous records created by Trayhurn show that McFadden was involved in discussing investigative strategies with Trayhurn – including the deployment of Salmon on 30 October, 8, 25 and 27 November and 3 December 2002. McFadden was aware that Salmon was repeatedly deployed wearing a LD to record his conversations with Mr V on 8 and 27 November and 3 December 2002.

⁸²⁴ Unreported Judgment, *R v [MSO25]*, (unreported, District Court of NSW, April 2011), p. 1.

Trayhurn spoke with McFadden on 30 October 2002 and received support for the investigative strategies he proposed, including asking Salmon to meet with Mr U to discuss Mr U's knowledge of Mr V.⁸²⁵ This is reflected in Trayhurn's Duty Book.

On 8 November 2002, Trayhurn met McFadden in the morning and discussed 'future strategies' for the investigation.⁸²⁶ Within three hours of that meeting, Trayhurn spoke with Salmon and "advised meeting confirmed with [Mr V]" at midday on the same day.⁸²⁷ Records also show that Trayhurn met Salmon immediately before the meeting with Mr V, gave him instructions about the "proposed meeting with [Mr V]" and noted the activation of the LD Salmon was wearing.⁸²⁸

On 25 November 2002, Trayhurn met McFadden to discuss proposed strategies relevant to the investigation.⁸²⁹ They met again on 28 November 2002 – with the recorded purpose of the meeting being to 'confer' about a proposed meeting between Trayhurn and Salmon.⁸³⁰ The entry that Trayhurn made in his Duty Book on 3 December 2002 refers to meeting Salmon that day, providing him with objectives for the meeting, and activating the LD for a meeting with Mr V. It also notes "Inform McFadden PIA prepared".⁸³¹

On 30 March 2016, Operation Prospect asked McFadden about Trayhurn's Duty Book entry for 8 November 2002. McFadden confirmed he was responsible for additional writing in the Duty Book including the text – "[s]een 10.15 am 8/11/02" – and for approving meal and overtime allowances recorded in the Duty Book.⁸³²

Operation Prospect showed McFadden copies of LD warrants 02/09169 and 02/09186. These were the warrants purportedly relied on to authorise the LD worn by Salmon when he met with Mr V on 8 November 2002. The following exchange occurred:

[Counsel Assisting] Q. *If it's the case that Salmon was deployed on 8 November 2002, pursuant to [LD warrants 02/09169 and 02/09186], effectively really identical save for the listening device warrant number, and Salmon spoke to [Mr V] alone, I think it was in a pub according to the references. What is your view on whether that is authorised by the [LD warrants 02/09169 and 02/09186]?*

[McFadden] A. *Reading the warrant, in the circumstances you explain (indistinct) there's some argument about whether it's appropriate or its admissibility.*

Q. *Isn't that – simpler than that, isn't it outside the scope of the authority of those warrants?*

A. *---On the face of it, I have to say yes.*

Q. *Were you aware of that issue prior to today?*

A. *---No. Not to my knowledge. I've demonstrated not only with the notes I've provided today, but in previous forum before previous Ombudsmen in other coercive hearings that if there were issues you come across for my attention during the course of my investigations, I am prepared to raise them. I am prepared to take them on. So to have this come up as a deficiency in our investigation, it's something that I would have addressed different to what I addressed on the 23rd about the issues associated with it, bringing it to the attention of my commander and (indistinct) that's something with the benefit of hindsight I should have paid more attention to.⁸³³*

825 NSWPF Duty Book, D047681, Glenn Trayhurn, SCIA, 30 October 2002, p. 44.

826 NSWPF Duty Book, D047681, Glenn Trayhurn, SCIA, 8 November 2002, p. 49.

827 NSWPF Duty Book, D047681, Glenn Trayhurn, SCIA, 8 November 2002, p. 49.

828 NSWPF Duty Book, D047681, Glenn Trayhurn, SCIA, 8 November 2002, p. 49.

829 NSWPF Duty Book, D047681, Glenn Trayhurn, SCIA, 25 November 2002, p. 57.

830 NSWPF Duty Book, D047681, Glenn Trayhurn, SCIA, 28 November 2002, p. 60.

831 NSWPF Duty Book, D047681, Glenn Trayhurn, SCIA, 3 December 2002, p. 61.

832 Ombudsman Transcript, Brett McFadden, 30 March 2016, p. 50.

833 Ombudsman Transcript, Brett McFadden, 30 March 2016, p. 58.

Later in the hearing, McFadden said:

Q. *And it's not inadvertently used, is it? We've covered that he seems to have been raised as being in possession of the badge on 31 August, and then Salmon is deployed to go and speak to him about that on 8 November?*

A. *---I'll make it clear, the investigative decisions associated with what was (indistinct) my authority and my responsibility. This is not something I'm handing over to Mr. Trayhurn or any other officer. If I didn't make myself acutely aware of the state of the warrant in light of the advice provided to me, including the warrant's existence (indistinct) what we were doing, I was in part hampered by access issues. It's immaterial. At the end of the day it's my investigation, I'm (indistinct) responsible.⁸³⁴*

Operation Prospect showed McFadden a Contact Advice Report (CAR) drafted by Trayhurn on 27 November 2002 that details contact with Salmon on that date. McFadden was also shown copies of LD warrants 02/10055 and 02/10056. These were the warrants relied on to authorise the LD worn by Salmon when he met with Mr V on 27 November and 3 December 2002. The following exchange occurred:

Q. *So six days after [a judicial officer] granted [LD warrants 02/10055 and 02/10056], again it's recorded that, "Meet with Salmon at 11 am with Detective Harris, provide objectives regarding proposed meeting with [Mr V] at the [hotel in East Sydney]," and then, "Objectives provided," and then there's a set of four. Then we see, "Salmon device activated." Then later, just under that, "Salmon returned to the [name] Hotel. Debrief regarding meeting with [Mr V]." Do you have that? Then there's a series of points put out there?*

A. *---Yes.*

Q. *That's a document that you – if you turn over to page 2 – on 19 December 2002 at 11.51 am you appeared to have signed it in your red pen, as you have on earlier occasions?*

A. *---Yes.*

Q. *Again, we've just gone through [LD warrants 02/10055 and 02/10056]?*

A. *---Yes.*

Q. *Would you say that the deployment of Salmon pursuant to [LD warrants 02/10055 and 02/10056] to speak to [Mr V] at the [hotel in East Sydney] was in accordance with those warrants?*

A. *---No.*

Q. *Were you aware of this occurrence in terms of this deployment?*

A. *---I've signed the document, so yes.*

Q. *But in terms of – again, did you ever look at [LD warrants 02/10055 and 02/10056]?*

A. *---No.⁸³⁵*

15.7 Analysis and submissions

This section analyses the issues that Operation Prospect has identified in relation to Operation Wattles and Salmon's deployment. The common theme is that some private conversations were recorded by LDs in contravention of section 5 of the LD Act, and these recordings were then used in PIC hearings and criminal proceedings.

834 Ombudsman Transcript, Brett McFadden, 30 March 2016, p. 60.

835 Ombudsman Transcript, Brett McFadden, 30 March 2016, p. 67.

Operation Prospect is satisfied that this was done unknowingly and not in bad faith. The evidence examined in this chapter indicates that NSWPF and NSWCC officers and staff acted diligently and in good faith in applying for and using LDs in Operation Wattles. Nevertheless, there were legal and administrative errors in using the LD recordings that would not have occurred had officers checked the LD warrants that they were relying on. That is a basic step that should have been taken – but apparently was not.

15.7.1 Recordings of Mr V on 8 and 27 November and 3 December 2002

Sections 15.3.3 to 15.3.6 of this chapter outline when and how Mr V became a person of interest to Operation Wattles, followed by the deployment of Salmon to meet with Mr V on three separate occasions in November and December 2002 while wearing a LD. The evidence before Operation Prospect indicates that Salmon's conversations with Mr V were recorded on at least two of those occasions in breach of the LD Act.

The contemporaneous records created by Trayhurn in his Duty Book and in CARs detail his interactions with Salmon. Those records establish that Trayhurn fitted Salmon with a body worn LD, and deployed Salmon to meet with and record Mr V on 8 and 27 November and 3 December 2002. In his evidence to Operation Prospect on 5 April 2016, Trayhurn accepted that he had intentionally deployed Salmon to meet with Mr V on those dates.

On 8 November 2002, Salmon was wearing a LD authorised by LD warrants 02/09169 and 02/09186, and on 27 November and 3 December he was wearing a LD authorised by LD warrants 02/10055 and 02/10056. All four warrants contained an identical paragraph that gave clear instruction on how the LD could be used to record private conversations:

... to be worn or carried by the applicant or by one of the persons named in the annexed schedule on the applicant's behalf, at as yet unknown locations in the State of New South Wales, by which to record or listen to the private conversations of ... [MSO26], ..., ... [MSO25], ..., ... [Mr U] ..., and any other person having a conversation in their presence.⁸³⁶

Trayhurn was the applicant for each warrant. The people named in the annexed schedule were NSWPF and NSWCC staff, including Salmon. Mr V was not named on any of the four warrants as a person whose private conversations could be recorded. When he was recorded on these three occasions he was not in the presence of MSO26, MSO25 or Mr U. Also – according to his contemporaneous CARs and Duty Book entries (see sections 15.3.4 to 15.3.6) – Trayhurn did not have any expectation that Mr V might be in the company of MSO26, MSO25 or Mr U when Salmon was deployed to meet with him and record their conversations.

It is also clear that the conversations between Salmon and Mr V would have been seen by Mr V as a private conversation – even though two of them occurred in a hotel and the third in a coffee shop. Salmon and Mr V were the only two parties to the conversation. Mr V was unaware that Salmon was wearing a concealed LD that had been activated, the topics of conversation included criminal conduct, Mr V shared information that was self-incriminating, and on one of the occasions (8 November) Mr V returned a police identification badge to Salmon that was unlawfully in Mr V's possession and that he may have used unlawfully.

Operation Prospect conducted hearings from 29 to 31 March 2016 in which evidence was given by Standen,⁸³⁷ a NSWCC solicitor,⁸³⁸ McFadden,⁸³⁹ and Counsel Assisting PIC in the Operation Acer hearings in 2003. All witnesses agreed that using a LD to record the private conversation of a person who was not listed on the warrant – or was not in the presence of a person listed on the warrant – would be outside the scope of the warrant.

⁸³⁶ LD warrants 02/09169, p. 1; 02/09186, p. 1; 02/10055 p. 1; 02/10056 p. 1.

⁸³⁷ Ombudsman Transcript, Mark Standen, 29 March 2016, p. 34.

⁸³⁸ Ombudsman Transcript, [solicitor of NSWCC], 31 March 2016, p. 224.

⁸³⁹ Ombudsman Transcript, Brett McFadden, 30 March 2016, p. 58.

Trayhurn gave evidence to Operation Prospect on 5 April 2016. He was asked whether he believed the recording of Mr V on each of the three dates was lawfully permitted by the relevant warrants. In response, Trayhurn maintained:

I would like to say that it was my belief at the time that [Mr V] was an associate and I was acting in good faith and in that belief that [Mr V] could be recorded because of the fact that he was an associate of [Mr U], [MSO25] and [MSO26].

...

Whether I agree that “in the presence” made that warrant something where I wasn’t authorised to do what I was allowed to do, I’d probably want to get some advice on that, and I think there would be an argument either side.⁸⁴⁰

The LD Act is summarised in Chapter 5. Section 5(2)(c) and (d) of the Act stated some exceptions to the general prohibition in section 5 on using a LD to record a private conversation. One exception in section 5(2)(c) allows a conversation to be recorded, without the authority of a warrant, to obtain information or evidence in connection with an “imminent threat of serious violence” or “a serious narcotics offence” in circumstances where “it is necessary to use the device immediately to obtain that evidence or information”.⁸⁴¹ There is no indication in any record created by Trayhurn or others of an urgent need to obtain evidence. Another exception in section 5(2)(d) applies to an “unintentional hearing of a private conversation by means of a listening device”.⁸⁴² The CARs and Duty Book entries created by Trayhurn at the time establish that Salmon was intentionally deployed by Trayhurn to meet with Mr V on the three occasions.

The recordings of Mr V by Salmon on 27 November and 3 December 2002 were not authorised by LD warrants 02/10055 and 02/10056, and did not fall within any statutory exception in section 5 of the LD Act. It follows that the use of a LD on those dates to record a private conversation was in contravention of section 5(1) of the LD Act. It is clear also that Trayhurn ‘caused’ the LD to be used by Salmon.

To the extent that Trayhurn may have genuinely believed he could record Mr V as an ‘associate’ of one of the people named in the warrant, he was mistaken. The wording used in the warrants was that he could record ‘any other person having a conversation in their presence’.

A separate issue arises in relation to the recording of Mr V on 8 November 2002. That recording was not authorised by LD warrants 02/09169 and 02/09186 for the reasons given earlier. However, another warrant was in force at that time on which Trayhurn might have relied – namely LD warrant 02/08936. That warrant authorised the recording of the private conversations of MSO26, MSO25, Mr U “and their associates” (see section 15.3.2). A question arises as to whether that refers to associates who are accompanying the named people, or whether the associates can be recorded independently. If the latter, it is probably open to Trayhurn to rely on that warrant – in accordance with the principle that an action that would otherwise be lawful is not ordinarily invalidated by an incorrect recital or assumption about the source of power for the action.⁸⁴³

It is unnecessary for Operation Prospect to take those issues further, in light of the finding that the recording of Mr V on two other occasions was not authorised by the LD warrant relied on. It nevertheless deserves adverse comment that Trayhurn did not check the warrant on which he purportedly relied on to ensure that it permitted the recording of Mr V on 8 November 2002.

The offence in section 5(1) of the LD Act of causing a LD to be used without the authorisation of a valid warrant is an offence of strict liability (this is discussed in section 5.4.3 of Chapter 5). This means that the knowledge or intention of the person using or causing the LD to be used is not an element of the offence. No weight can therefore be attached to Trayhurn’s evidence (accepted below) that he acted in good faith and unknowingly. In this case, the terms of the only LD warrants that could be relied on were clear and did not extend to recording Mr V’s private conversations. It is also clear from the evidence that Mr V was intentionally targeted and recorded.

⁸⁴⁰ Ombudsman Transcript, Glenn Trayhurn, 5 April 2016, p. 343.

⁸⁴¹ Listening Devices Act, s. 5(2)(c).

⁸⁴² Listening Devices Act, s. 5(2)(d).

⁸⁴³ *Mercantile Mutual Life Insurance Co Ltd v Australian Securities Commission* (1993) 40 FCR 409.

15.7.2 Use of the recordings of Mr V in PIC hearings and criminal prosecutions

The unlawful recordings of Mr V on 27 November and 3 December 2002 were given to the PIC and relied on to question Mr V and MSO25 in private hearings conducted by the PIC in 2003. As a result of their evidence to PIC – and on ODPP advice – both Mr V and MSO25 were charged with two and three counts respectively of providing false and misleading evidence to the PIC in contravention of section 107 of the PIC Act. The transcript of the unlawful recording on 27 November 2002 formed part of the briefs of evidence against both Mr V and MSO25 for these offences. As outlined in section 15.5, Mr V pleaded guilty and MSO25 was found to have committed the offences charged.

On 31 March 2016, Counsel Assisting PIC in the Operation Acer hearings in 2003 gave evidence to Operation Prospect that during the PIC hearings he did not view the original warrants relied on to record Mr V on the relevant dates in November and December 2002. He further stated that access to those warrants would have influenced how he participated in the hearings and possibly his conclusions and recommendations in his written submissions to PIC.⁸⁴⁴ Counsel Assisting PIC gave the following evidence in response to questions in the Operation Prospect hearing:

- Q. *If it was the case that Salmon, the informant, was sent to meet [Mr V] at a location with the person who had accepted the authority to use the warrant, the police officer with that authority had sent Salmon knowing that the conversation was going to be Salmon and [Mr V]?*
- A. ---Yes.
- Q. *And, it was recorded using listening device pursuant to [LD warrants 02/10055 and 02/10056], which we know were issued on 21 November, a few days before.*
- A. ---Yes.
- Q. *What would your view be on the legality or otherwise of such an action?*
- A. ---Well, if neither (a), (b) or (c) would be there, then that would be outside the terms of that warrant.
- Q. *And again in your professional view the use or value or otherwise of any evidence obtained in that circumstance?*
- A. ---My initial view is that it would be an illegal use of the listening device.
- Q. *Was that issue ever made known to you?*
- A. ---No.⁸⁴⁵

15.7.3 Trayhurn's knowledge and actions at the time

In evidence to Operation Prospect on 5 April 2016 and in his written submission,⁸⁴⁶ Trayhurn asserted that he acted honestly and in good faith while investigating Salmon's allegations of criminal activity. When Trayhurn deployed Salmon to record Mr V in November and early December 2002, he created and maintained proper and appropriate records of his activities and his contact with Salmon in both his Duty Book and in CARs. Trayhurn also discussed investigative strategies with McFadden and asked senior officers for advice when questions were raised about the scope of the warrants.

⁸⁴⁴ LD warrants 02/09169; 02/09186, 02/10055; 02/10056.

⁸⁴⁵ Ombudsman Transcript, [Counsel Assisting PIC for 2003 private hearings], 31 March 2016, p. 159.

⁸⁴⁶ Trayhurn, G, Submission in reply, 5 September 2016, pp. 29-30.

It appears credible that the targeting and recording of Mr V – beyond the scope of the relevant warrants – may have been the result of error, misunderstanding and inadequate guidance and work practices rather than intentional misconduct. There was a reasonable basis for Trayhurn to consider Mr V to be a person of interest to Operation Wattles who should be investigated (as outlined in section 15.3.3). It seems probable that the failure to include Mr V on the relevant warrants was an oversight. The affidavits that Trayhurn swore in support of the warrant application referred to Salmon's engagement with Mr V and that he was a person of interest. This oversight – in not naming Mr V – nevertheless resulted in unlawful recordings on 27 November and 3 December 2002 being given to the PIC and the ODPP, and the recording of 27 November 2002 being used in the criminal prosecution of two individuals. The oversight would have been avoided if Trayhurn and others had confirmed beforehand the details of the warrants authorising the LDs to be worn by Salmon.

As noted in section 15.2.3, under section 13 of the LD Act, LD material that has come to a person's knowledge as a result of a contravention of section 5 is inadmissible in civil and criminal proceedings. There is no evidence before Operation Prospect to suggest that Trayhurn or others knew that the material that was being used in the PIC hearings and tendered in court was obtained in contravention of section 5. Trayhurn makes the point in his submission that all relevant documents, including the warrants, were available for inspection by the experienced officials who were officiating and participating in the PIC hearings and the criminal proceedings – and no-one questioned the scope of the warrant or admissibility of the recorded conversations. Trayhurn also submitted that the recording was admitted into evidence in the District Court in 2008 and 2011, following a challenge. It is nevertheless the case that the matter would not have developed to this point if those who were relying on the warrants to deploy Salmon to talk to Mr V had taken the precautionary step of returning to and reading the warrants.

Another issue of concern should also be noted. The witness statement of Trayhurn dated 15 September 2008 stated that the warrants authorised "the recording of private conversations of [MSO26], [MSO25], [Mr U] and their associates". This was incorrect. The words "and their associates" did not appear on those warrants – but had appeared on an earlier warrant. The wording used on the warrants relevant to the PIC hearing and criminal proceedings was "and any person having a conversation in their presence". This more precisely (and narrowly) describes the people who could be recorded by the LD, and requires one of the three targets to be present at the time of recording. Trayhurn acknowledged this point in his submission and explained that it was an innocent error.⁸⁴⁷

Trayhurn's submission also described his reliance on and consultation with other NSWCC officers in a difficult operation of this kind. He noted that it was unlikely he was given a copy of the warrant between the time it was authorised by a judicial officer and Salmon was deployed – he was typically notified only by phone that the warrant had been granted. There were, nevertheless, a number of opportunities in the warrant application and administration process to consult the terms of the warrant, and it was annexed to Trayhurn's witness statement. An officer as experienced as Trayhurn should have been aware of the need to check a source document in a witness statement that is sworn to be true and correct and is to be presented to a court in evidence on a serious criminal charge.

Throughout the investigation and proceedings about Mr V, Trayhurn continued to represent that the evidence collected and used in the prosecution of MSO25 and Mr V was lawfully obtained. The ODPP relied on that evidence when laying and prosecuting criminal charges.

There does not appear to have been any breach of section 6 of the LD Act, which makes it an offence 'knowingly' to communicate or publish a private conversation that was recorded in breach of section 5. It is clear that Trayhurn genuinely believed that the evidence obtained by using a LD was lawfully obtained.

⁸⁴⁷ Trayhurn, G, Submission in reply, 5 September 2016, p. 37.

15.7.4 Compliance with NSWCC policy for use of listening devices

As outlined in section 15.2.3, the NSWCC produced a *Listening Devices Manual* for the guidance of staff administering the LD Act. This manual advised of the need to comply strictly with the requirements of the LD Act.

Standen gave evidence to Operation Prospect on the steps taken to ensure NSWCC staff members were aware of its policies (see section 15.2.3). Although he could not recall how this particular manual was made available to staff, he outlined his understanding of an induction process for new staff that involved an induction package or manual being provided, and staff signing a document to indicate they had received and read the induction material.⁸⁴⁸

Trayhurn was shown the *Listening Devices Manual* in his Operation Prospect hearing on 5 April 2016 and asked if he had seen it before 2016. He replied, "Perhaps. Seventeen years ago, perhaps".⁸⁴⁹

Despite the procedures mandated in the NSWCC *Listening Devices Manual*, Mr V was recorded on two separate occasions in contravention of the LD Act. The unlawful recording of Mr V was undertaken by a NSWCC registered informant, deployed by a NSWPF officer who was also a NSWCC staff member – purportedly relying on warrants that were prepared and applied for within the NSWCC. The inference to be drawn is that the NSWCC failed to implement its own procedures to ensure compliance with the LD Act.

15.7.5 McFadden's supervision of Trayhurn

McFadden's evidence to Operation Prospect is set out in section 15.6. Generally, McFadden accepted that he played an active role as Trayhurn's supervisor and that, "At the end of the day it's my investigation, I'm (indistinct) responsible". Trayhurn's Duty Book refers to regular discussions with McFadden about strategies in Operation Wattles. McFadden also accepted in evidence that he signed off on a CAR on 27 November 2002 when informant Salmon was deployed to record Mr V.

As Trayhurn's supervisor – and being aware that Mr V was going to be targeted and recorded – McFadden should have taken steps to ensure Mr V could be lawfully recorded under the relevant warrants that authorised the LDs worn by Salmon on 27 November 2002 and 3 December 2002. However, it is doubtful if the evidence before Operation Prospect supports a finding that McFadden 'caused' a LD to be used in contravention of section 5(1) of the LD Act.

McFadden's evidence to Operation Prospect – at the hearing and in a written submission⁸⁵⁰ – was frank and open. He acknowledged in the hearing that the warrants may not support the LD actions that were taken and he accepted responsibility as supervisor for these failings. His written submission reiterated that "it is plainly desirable that the warrant application process work as flawlessly as possible", yet "it is inevitable that innocent mistakes and oversights do occur, particularly in an environment that was as time-sensitive and content-sensitive as that in which [he] was then operating".⁸⁵¹ His submission expanded on the careful investigative planning that he and Trayhurn undertook, that McFadden was an extensive record keeper, his diligence as a supervisor, his honesty and unblemished policing career, and the unavailability of some diaries that may substantiate other actions he took at the time. Those points are accepted. Nevertheless, McFadden's failure to check the warrants in the circumstances outlined in this chapter contributed to the errors that occurred in using the LD warrants and warrants adverse comment.

848 Ombudsman Transcript, Mark Standen, 29 March 2016, p. 5.

849 Ombudsman Transcript, Glenn Trayhurn, 5 April 2016, p. 241.

850 McFadden, B, Submission in reply, 12 August 2016.

851 McFadden, B, Submission in reply, 12 August 2016, p. 9.

15.7.6 Use of body worn LD's relying on the warrants

A prominent issue in the hearings that Operation Prospect held on Operation Wattles was whether the LD warrant that the NSWCC relied on to deploy Salmon – and the LD warrant intended to be used to deploy James Allan – authorised the use of a body worn LD. This matter is referred to briefly in section 15.3.2, where it was noted that the NSWPF STIB adopted the view that a warrant on which Wattles investigators were relying (LD warrant 02/08936) was a 'premises warrant' and not a 'body worn warrant'. STIB would therefore not attach the device to James Allan based on this warrant.

That was a distinction that was routinely followed at the time in the NSWCC, and was reflected in the wording of warrants and the conditions placed on their use. The distinction was referred to in the *Listening Devices Manual* – it included two precedents for 'Warrant for LD on premises' and 'Warrant for LD on person'.⁸⁵² As a result of STIB's view, new warrants were obtained in Operation Wattles that after that were regarded as body worn warrants that Salmon and James Allan could wear when they were recording conversations with MSO25, MSO26, Mr U and Mr V.

The distinction between premises and body worn warrants was acknowledged and accepted by a number of the current and former NSWCC and NSWPF officers who gave evidence in the Operation Prospect hearings in 2016. The distinction was also discussed at the time of Operation Wattles by NSWCC staff after STIB's intervention.

The written submissions that were made to Operation Prospect in response to Counsel Assisting's submissions pointed out that the practice of classifying a warrant as either a premises warrant or a person warrant is not supported by the text of the LD Act.⁸⁵³ Section 16(4) of the LD Act provided in part:

- (4) *A warrant granted by the Court under this section shall specify –*
- (a) *the prescribed offence in respect of which the warrant is granted;*
 - (b) *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;*
 - (c) *the period (being a period not exceeding 21 days) during which the warrant is in force;*
 - (d) *the name of any person who may use a listening device pursuant to the warrant and the persons who may use the device on behalf of that person;*
 - (e) *where practicable, the premises on which a listening device is to be installed, or the place at which a listening device is to be used, pursuant to the warrant;*
 - (f) *any conditions subject to which premises may be entered, or a listening device may be used, pursuant to the warrant ...*

Section 16 clearly supports the concepts of premises and body worn warrants, as well as warrants being used in other ways – for example, for devices concealed in a briefcase. It is clear also that a single warrant may incorporate multiple different uses of a LD. The section refers generally to 'the use of a listening device', without tying down expressly how a device can be used or requiring that a warrant specify the type of device to be used. Schedule 2 to the LD Act contains a warrant template that did not distinguish between premises and people and LD warrant 02/08936 utilised this template.

Operation Prospect has accepted that LD warrant 02/08936 (and similarly worded warrants) could – in the context of the LD Act – be construed as permitting Salmon to use a body worn LD to lawfully record private conversations. It is probable, nevertheless, that those who prepared these warrants had in mind that the warrants were designed to record conversations after being installed on premises. The wording of the warrant was aligned to that objective and it was changed after STIB's intervention.

⁸⁵² NSWCC, *Listening Devices Manual*, December 1999, p. 18

⁸⁵³ Standen, M, Submission in reply, 12 July 2016, p.1; NSWCC, Submission in reply, 29 July 2016, p. 3; Trayhurn, G, Submission in reply, 5 September 2016, pp. 9-10.

Although Operation Prospect has accepted the submissions on this point, the matter should not pass without adverse comment on the practices of the NSWCC and the actions of the NSWPF officers who applied for and relied on these warrants. Wattles investigators changed the wording of LD warrants after STIB's intervention, but they continued to rely on and refer to LD warrant 02/08442 – even though it contained the old wording. For example, LD recordings that were obtained using that warrant were referred to in subsequent supporting affidavits. Any doubts that NSWCC officers had at the time about the warrant or the recordings should have been disclosed and acted upon to lessen the chance that a LD was improperly used or that an unlawful recording was relied on in subsequent investigations or legal proceedings. Equally, action could have been taken in the NSWCC to amend the *Listening Devices Manual* to clarify this point and lessen the risk of misunderstanding among its officers.

Beyond that adverse comment, a formal finding on this issue will not be made against the NSWCC or any individual officer. It is no longer feasible to resolve satisfactorily whether the matter was discussed but not recorded at the time. The adverse comment nevertheless illustrates the central theme of this chapter – that it is vitally important that officers who are using LDs to record private conversations should be scrupulous in ensuring that warrants are worded correctly and used lawfully. The evidence available to Operation Prospect suggests that inadequate attention was paid to that obligation during Operation Wattles.

15.8 Findings

67. Trayhurn

As discussed in section 15.7.1, Trayhurn's conduct in causing a LD to be used to record Mr V's private conversations on 27 November 2002 and 3 December 2002 may be conduct that constitutes an offence in terms of section 122(1)(a) of the *Police Act 1990*. The relevant offence is 'Prohibition on use of listening devices' in section 5 of the *Listening Devices Act 1984*.

68. NSW Crime Commission

The NSW Crime Commission is responsible for the actions of Operation Wattles investigators in using a LD authorised by a NSW Crime Commission warrant to record the private conversations of Mr V on two occasions – on 27 November 2002 and 3 December 2002. As discussed in sections 15.7.1 and 15.7.4, the use of the LDs on those days was in contravention of section 5 of the LD Act and of instructions given in the NSW Crime Commission *Listening Devices Manual*. The NSW Crime Commission was responsible for the Mascot and Mascot II references. Operation Wattles was set up to finalise Mascot-related allegations and relied on NSW Crime Commission resources. Salmon was registered as a NSW Crime Commission informant and the applications for the LDs were prepared and made within the NSW Crime Commission. The NSW Crime Commission was responsible for ensuring that the use of LDs in Operation Wattles was done in accordance with the requirements of the LD Act and the *Listening Devices Manual*. 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*.

NSW Ombudsman
Level 24, 580 George Street
Sydney NSW 2000

General enquiries: 02 9286 1000
Toll free (outside Sydney Metro Area, NSW only): 1800 451 524
Tel. typewriter (TTY): 02 9264 8050
Facsimile: 02 9283 2911
Email: nswombo@ombo.nsw.gov.au

www.ombo.nsw.gov.au